

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2009

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

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

ACADIA REALTY TRUST

(Exact name of registrant as specified in its charter)

Maryland
(State of incorporation)

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

1311 Mamaroneck Avenue, Suite 260

White Plains, NY 10605

(Address of principal executive offices)

(914) 288-8100

(Registrant's telephone number)

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

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

(Title of Class)

New York Stock Exchange

(Name of Exchange on which registered)

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

None

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

YES NO

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

YES NO

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

YES NO

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

YES NO

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

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

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

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

YES NO

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was approximately \$523.5 million, based on a price of \$13.05 per share, the average sales price for the registrant's common shares of beneficial interest on the New York Stock Exchange on that date.

The number of shares of the registrant's common shares of beneficial interest outstanding on March 1, 2010 was 40,111,565.

DOCUMENTS INCORPORATED BY REFERENCE

Part III – Portions of the registrant's definitive proxy statement relating to its 2010 Annual Meeting of Shareholders presently scheduled to be held May 10, 2010 to be filed pursuant to Regulation 14A.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

ITEM 1. BUSINESS.**GENERAL**

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

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

BUSINESS OBJECTIVES AND STRATEGIES

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

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

Investment Strategy — External Growth through Opportunistic Acquisition Platforms

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

Fund I

During September of 2001, we and four of our institutional shareholders formed Fund I, and during August of 2004 formed a limited liability company, Acadia Mervyn Investors I, LLC (“Mervyns I”), whereby the investors committed \$70.0 million for the purpose of acquiring real estate assets. The Operating Partnership committed an additional \$20.0 million in the aggregate to Fund I and Mervyns I, as the general partner or managing member with a 22.2% interest. In addition to a pro-rata return on its invested equity, the Operating Partnership is entitled to a Promote based upon certain investment return thresholds. Cash flow was distributed pro-rata to the partners (including the Operating Partnership) until a 9% cumulative return was achieved (“Preferred Return”) on, and a return of all capital contributions.

During 2006, the Fund I investors received a return of all of their capital invested in Fund I and their unpaid preferred. Accordingly, all cash flow is now distributed 80% to the partners (including the Operating Partnership) and 20% to the Operating Partnership as a Promote. The Operating Partnership also earns fees and/or priority distributions for asset management services equal to 1.5% of the allocated invested equity, as well as for property management, leasing, legal and construction services. All such fees and priority distributions are reflected as a reduction in the noncontrolling interest share in income from Opportunity Funds in the Consolidated Financial Statements beginning on page F-1 of this Form 10-K.

Our acquisition program was executed primarily through Fund I through June 2004. Fund I focused on targeting assets for acquisition that had superior in-fill locations, restricted competition due to high barriers to entry and in-place below-market anchor leases with the potential to create significant additional value through re-tenanting, timely capital improvements and property redevelopment.

As of December 31, 2009, there were 21 assets comprising approximately 1.0 million square feet remaining in Fund I in which the Operating Partnership's interest in cash flow and income is 37.8% as a result of the Promote.

Fund II

Following our success with Fund I, during June of 2004 we formed a second, larger Opportunity Fund, Fund II, and during August of 2004, formed Acadia Mervyn Investors II, LLC ("Mervyns II"), with the investors from Fund I as well as two additional institutional investors, whereby the investors, including the Operating Partnership, committed capital totaling \$300.0 million. The Operating Partnership is the managing member with a 20% interest in Fund II and Mervyns II and can invest the committed equity on a discretionary basis within the parameters defined in the Fund II and Mervyns II operating agreements. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I with the exception that the Preferred Return is 8%. As of December 31, 2009, \$223.3 million of Fund II's and Mervyns II's capital was invested and the balance of \$76.7 million is expected to be utilized to complete development activities for existing Fund II investments.

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

New York Urban/Infill Redevelopment Initiative

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

Retailer Controlled Property Venture (the "RCP Venture")

On January 27, 2004, through Funds I and II, we entered into an association, known as the RCP Venture, with Klaff Realty, L.P. ("Klaff") and Lubert-Adler Management, Inc. ("Lubert-Adler") for the purpose of making investments in surplus or underutilized properties owned by retailers. The initial expected size of the RCP Venture is approximately \$300.0 million in equity, of which our share is \$60.0 million. Each participant in the RCP Venture has the right to opt out of any potential investment. We would consider expanding the size of the RCP Venture and our share thereof based on investment opportunities. Investments under the RCP Venture are structured as separate joint ventures as there may be other investors participating in certain investments in addition to Klaff, Lubert-Adler and us. Affiliates of Mervyns I and II and Fund II have invested \$60.8 million in the RCP Venture to date on a non-recourse basis. While we are not required to invest any additional capital into any of these investments, should additional capital be required and we elect not to contribute our share, our proportionate share in the investment will be reduced. Cash flow from any RCP Venture investments 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 ("Klaff's Promote") and 80% to the partners (including Klaff). The Operating Partnership may also earn market-rate fees for property management, leasing and construction services on behalf of the RCP Venture. While we are primarily a passive partner in the investments made through the RCP Venture, historically we have provided our support in reviewing potential acquisitions and operating and redevelopment assistance in areas where we have both a presence and expertise. We seek to invest opportunistically with the RCP Venture primarily in any of the following four ways:

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

During 2004, we made our first RCP Venture investment with our participation in the acquisition of Mervyns. From 2006 through 2009, we made additional investments as further discussed in “—PROPERTY ACQUISITIONS – RCP Venture” below in this Item 1.

Fund III

Following the success of Fund I and the full commitment of Fund II, Fund III was formed during 2007, with fourteen institutional investors, including a majority of the investors from Fund I and Fund II, whereby the investors, including the Operating Partnership, committed capital totaling \$503.0 million. The Operating Partnership’s share of the committed capital is \$100.0 million and it is the sole managing member with a 19.9% interest in Fund III and can invest the committed equity on a discretionary basis within the parameters defined in the Fund III operating agreements. The terms and structure of Fund III are substantially the same as the previous Funds with the exception that the Preferred Return is 6%. As of December 31, 2009, \$96.5 million of Fund III’s capital was invested. To date, Fund III has invested in 14 projects as discussed further in “—PROPERTY ACQUISITIONS” below in this Item 1.

Notes Receivable, Preferred Equity and Other Real Estate Related Investments

We may also invest in mortgage loans, preferred equity investments, other real estate interests and other investments. As of December 31, 2009, our notes receivable and preferred equity investments aggregated \$125.2 million, and were collateralized by either the properties (either first or second mortgage liens) or the borrower’s ownership interest in the properties. In addition, certain notes receivable are personally guaranteed by principals of the borrowers. Interest rates on our notes receivable, mezzanine loan investments and preferred equity investment, ranged from 10% to 22.4% with maturities that range from demand notes to January 2017.

Capital Strategy — Balance Sheet Focus and Access to Capital

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

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

During December of 2006 and January of 2007, we issued \$115.0 million of 3.75% unsecured Convertible Notes (the “Notes”). See Note 9 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K for a discussion of the terms and conditions of the Notes. The \$112.1 million in proceeds, net of related costs, were used to retire variable rate debt, provide for future Opportunity Fund capital commitments and for general working capital purposes. During 2008, we purchased \$8.0 million in principal amount of the Notes and purchased an additional \$57.0 million in principal amount during 2009, all at an average discount of approximately 19%.

Operating Strategy — Experienced Management Team with Proven Track Record

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

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

We typically hold our Core Portfolio properties for long-term investment. As such, we continuously review the existing portfolio and implement programs to renovate and modernize targeted centers to enhance the property's market position. This in turn strengthens the competitive position of the leasing program to attract and retain quality tenants, increasing cash flow and consequently property value. We also periodically identify certain properties for disposition and redeploy the capital to existing centers or acquisitions with greater potential for capital appreciation. Our Core Portfolio consists primarily of neighborhood and community shopping centers, which are generally dominant centers in high barrier-to-entry markets and are principally anchored by supermarkets and necessity-based retailers. We believe these attributes enable our properties to better withstand the current post recessionary period.

During 2009, 2008 and 2007 we sold three non-core properties and redeployed capital to acquire three retail properties as further discussed in "—ASSET SALES AND CAPITAL/ASSET RECYCLING" below in this Item 1.

PROPERTY ACQUISITIONS

RCP Venture

Albertson's

In June 2006, the RCP Venture, as part of an investment consortium, participated in the acquisition of 699 stores from Albertson's and 26 Cub Food stores. Mervyns II's share of equity invested totaled \$20.7 million. The Operating Partnership's share was \$4.2 million.

During February of 2007, Mervyns II received cash distributions totaling approximately \$44.4 million from its ownership position in Albertson's. The Operating Partnership's share of this distribution amounted to approximately \$8.9 million. Mervyns II received additional distributions from this investment totaling \$8.8 million in 2007, \$10.6 million in 2008, and \$2.0 million in 2009. The Operating Partnership's share of these distributions aggregated \$4.3 million.

Through December 31, 2009, Mervyns II has made additional add-on investments in Albertson's totaling \$2.4 million and received distributions totaling \$1.2 million. The Operating Partnership's share of these combined amounts was \$0.4 million and \$0.2 million, respectively.

Mervyns Department Stores

In September 2004, we made our first RCP Venture investment. Through Mervyns I and Mervyns II, we invested in a consortium to acquire the Mervyns Department Store chain ("Mervyns") consisting of 262 stores ("REALCO") and its retail operation ("OPCO") from Target Corporation. To date, REALCO has disposed of a significant portion of the portfolio. In addition, in November 2007, we sold our interest in OPCO and, as a result, have no further investment in OPCO. During 2008 and 2007, Mervyns I and Mervyns II made additional investments in Mervyns totaling \$2.9 million. The Operating Partnership's share of the total investment in Mervyns was \$4.9 million.

Through December 31, 2009, Mervyns I and Mervyns II have also made add-on investments in Mervyns properties totaling \$5.1 million including \$1.7 million in 2009. The Operating Partnerships share of this amount was \$0.8 million.

During 2005, Mervyns made a distribution to the investors from the proceeds from the sale of a portion of the portfolio and the refinancing of existing debt, of which a total of \$42.7 million was distributed to Mervyns I and Mervyns II. The Operating Partnership's share of this distribution amounted to \$10.2 million. Subsequently, Mervyns and Mervyns add-ons distributed additional cash totaling \$5.0 million. The Operating Partnership's share of this distribution totaled \$1.4 million.

Other RCP Venture Investments

During 2006, Fund II invested \$1.1 million in Shopko and \$0.7 million in Marsh. The Operating Partnership's share of these investment totaled \$0.3 million. Fund II received a \$1.1 million distribution from the Shopko investment during 2007 and a \$1.0 million distribution from the Marsh investment during 2008, of which the Operating Partnership's share totaled \$0.4 million. During 2008, Fund II made additional investments of \$2.0 million in Marsh. The Operating Partnership's share was \$0.4 million. During 2009, Fund II received additional distributions of \$1.6 million from Marsh, of which the Operating Partnership's share was \$0.3 million.

During 2007, Mervyns II invested \$2.7 million in REX Stores Corporation. The Operating Partnership's share was \$0.5 million. During 2009, Fund II received a distribution of \$0.4 million from REX, of which the Operating Partnership's share was \$0.1 million.

The following table summarizes the RCP Venture investments from inception through December 31, 2009:

(dollars in millions)

Investor	Investment	Year acquired	Invested Capital	Distributions	Operating Partnership Share	
					Invested Capital	Distributions
Mervyns I and Mervyns II	Mervyns	2004	\$ 26.1	\$ 46.0	\$ 4.9	\$ 11.3
Mervyns I and Mervyns II	Mervyns add-on investments	2005/2008	5.1	1.7	0.8	0.3
Mervyns II	Albertson's	2006	20.7	65.8	4.2	13.2
Mervyns II	Albertson's add-on investments	2006/2007	2.4	1.2	0.4	0.2
Fund II	Shopko	2006	1.1	1.1	0.2	0.2
Fund II	Marsh	2006	2.7	2.6	0.5	0.5
Mervyns II	Rex	2007	2.7	0.4	0.5	0.1
Total			\$ 60.8	\$ 118.8	\$ 11.5	\$ 25.8

New York Urban/Infill Redevelopment Initiative

As of December 31, 2009, we had ten New York Urban/Infill projects. Construction is substantially complete at six of the projects, one is under construction and three are in the design phase as follows:

Construction Substantially Complete

Fordham Place — During September of 2004, Acadia-P/A purchased 400 East Fordham Road, Bronx, New York. Construction of a 119,000 square foot retail component and 157,000 square foot office tower are complete. The retail component is 100% occupied and the office component is 34% occupied. The total cost of the project to Acadia-P/A was approximately \$130.0 million.

Pelham Manor Shopping Plaza — During October of 2004, Acadia-P/A entered into a 95-year, inclusive of extension options, ground lease to redevelop a 16-acre site in Pelham Manor, Westchester County, New York. We demolished the existing industrial and warehouse buildings, and completed construction of a 229,000 square foot community retail center and a 90,000 square foot self-storage facility at a total cost of approximately \$62.0 million. Home Depot was originally slated to anchor the project, but announced its decision to curtail plans for expansion. As part of our lease termination agreement with Home Depot, we purchased the building that Home Depot had constructed on the site for \$10 million, representing approximately half of their cost of construction. The retail center is currently 74% occupied and anchored by a BJ's Wholesale Club.

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

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

161st Street - During August of 2005, Acadia-P/A purchased 244-268 161st Street located in the Bronx, New York for \$49.3 million. The redevelopment plan for this currently 99% leased and 84% occupied, 10-story office building, is to recapture and convert street level office space into retail. Additional redevelopment costs to Acadia-P/A are anticipated to be approximately \$16.0 million.

Atlantic Avenue – During May of 2007, we, through Fund II and in partnership with Post Management, LLC (“Storage Post”), acquired a property on Atlantic Avenue in Brooklyn, New York. Storage Post is our unaffiliated partner in our self-storage portfolio (see below) and at two of our other New York urban projects with a self-storage component. During 2009, we completed construction of the 110,000 square feet, six-story storage facility and commenced operations. The total cost of the project was approximately \$23.0 million.

Under Construction

Canarsie - During October of 2007, Acadia-P/A acquired a 530,000 square foot warehouse building in Canarsie, Brooklyn for approximately \$21.0 million. The development plan for this property includes the demolition of a portion of the warehouse and the construction of a 265,000 square foot mixed-use project consisting of retail and office. The total cost of the redevelopment, including acquisition costs, is expected to be approximately \$77.0 million. We had executed a lease with Home Depot to anchor the project. However, during 2008, Home Depot terminated their lease and paid us a fee of \$24.5 million. The project is currently under construction and 80% pre-leased to BJ's Wholesale Club and the New York City Police Department.

In Design

Sherman Plaza - During April of 2005, Acadia-P/A acquired 4650 Broadway located in the Washington Heights/Inwood section of Manhattan. The property, which was occupied by an agency of the City of New York ("NYC") and a commercial parking garage, was acquired for a purchase price of \$25.0 million. During 2007 we relocated NYC to Acadia-P/A's 216th St. redevelopment as discussed above. We are currently reviewing various alternatives to redevelop the site to include retail and office components.

CityPoint - During June of 2007, Acadia-P/A and an unaffiliated joint venture partner purchased the leasehold interests in The Gallery at Fulton Street in downtown Brooklyn for approximately \$115.0 million, with an option to purchase the fee position, which is owned by the City of New York, at a later date. Redevelopment plans for the property, renamed "CityPoint", include the demolition of the existing structure (completed) and the development of a 1.3 million square foot project to include retail and residential components. Acadia-P/A will participate in the development of the retail component. Acadia-P/A does not plan on participating in the development of, or have an ownership interest in, the residential component of the project. The current plan calls for the commencement during 2010 of the first of four phases of redevelopment which is expected to include between 40,000 and 50,000 square feet of retail space on five levels. Development of the balance of the project, including the residential component, is expected to occur over multiple years. The project has been conditionally awarded \$20.0 million of federal stimulus bond financing to fund construction of the first phase. Please refer to the discussion under the heading "Off Balance Sheet Arrangements" in Item 7 of this Form 10-K for a discussion of \$26.0 million of debt on this property that will mature in August 2010 and potential additional capital requirements Fund II may have if our unaffiliated joint venture partner determines not to fund its requisite share of capital.

Sheepshead Bay - During November of 2007, Fund III acquired a property in Sheepshead Bay, Brooklyn for approximately \$20.0 million. The project is currently in the design phase and we have demolished one of two buildings on the existing site and expect to develop a multi-story retail center with approximately 240,000 square feet of gross leasable area.

Self-Storage Portfolio

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

Other Investments

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

During January 2009, we purchased Cortlandt Towne Center for \$78.0 million. The operating property is a 642,000 square foot shopping center located in Westchester County, New York.

During November 2007, we acquired 125 Main Street, Westport, Connecticut for approximately \$17.0 million. Our plan is to redevelop the existing building into 30,000 square feet of retail and office space.

Core Portfolio

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

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

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

Preferred Equity, Notes Receivable and Other Real Estate Related Investments

During December 2009, the Operating Partnership made a loan for \$8.6 million which bears interest at 14.5% with a one year term and one six month extension.

During June 2008, the Operating Partnership made a \$40.0 million preferred equity investment in a portfolio of 18 properties located primarily in Georgetown, Washington D.C. The portfolio consists of 306,000 square feet of principally retail space.

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

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

The following table sets forth our preferred equity and notes receivable investments as of December 31, 2009:

Notes Receivable
(dollars in thousands)

Investment	Principal	Accrued interest	Total	Stated Interest rate	Effective interest rate ¹	Maturity date	Extension options (years)	Weighted Averages	
								Amount	Maturity dates
Georgetown A - 5 property portfolio	\$ 8,000	\$ 994	\$ 8,994	9.75%	10.19%	11/2010	2 x 1 year	8,375	2010 through 2012
Georgetown B - 18 property portfolio	40,000	5,405	45,405	13.00%	13.44%	6/2010	2 x 1 year	115,454	2011 through 2016
72nd Street First mortgage and other notes	40,975	3,637	44,612	13.00%	19.48%	7/2011	1 year	185,000(2)	2011 w/ 1 year extension
Mezzanine notes	20,853	72	20,925	12.87%	13.42%	2010	1 year	n/a	n/a
	15,393	145	15,538	13.97%	14.83%	2013	—	272,559	2011 through 2019
Total notes receivable	\$ 125,221	\$ 10,253	\$ 135,474	12.89%	15.38%				

¹ The effective rate includes upfront points and exit fees

² The first mortgage amount for 72nd Street represents the maximum availability under the loan

ASSET SALES AND CAPITAL/ASSET RECYCLING

Core Portfolio

We periodically identify certain core properties for disposition and redeploy the capital to existing centers or acquisitions with greater potential for capital appreciation. Since January of 2007, we have sold the following Core Portfolio assets:

Property	Location	Date sold	Gross leasable area	Sales price (dollars in thousands)
Blackman Plaza	Wilkes-Barre, Pennsylvania	November 2009	125,264	\$ 2,500
Village Apartments	Winston-Salem, North Carolina	April 2008	599,106	23,300
Colony and GHT Apartments	Columbia, Missouri	December 2007	625,545	15,500
Total			1,349,915	\$ 41,300

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

Monetization of Fund I

Given that Fund I was established as a finite life entity, we are currently engaged in the multi-year process of monetizing the fund's investments. As of December 31, 2009 there were 21 assets comprising 1.0 million square feet remaining in Fund I as summarized by region below

Shopping Center	Location	Year acquired	GLA
New York Region			
<i>New York</i>			
Tarrytown Centre	Tarrytown	2004	35,291
Midwest Region			
<i>Ohio</i>			
Granville Centre	Columbus	2002	134,997
<i>Michigan</i>			
Sterling Heights Shopping Center	Detroit	2004	154,835
Various Regions			
Kroger/Safeway Portfolio	Various (18 properties)	2003	709,400
Total			1,034,523

On February 2, 2009, The Kroger Co. purchased the fee at six locations in Fund I's Kroger/Safeway Portfolio for \$14.6 million, resulting in a \$5.6 million gain. The Operating Partnership's share of the gain was \$1.6 million.

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

During November 2007, Fund I sold Amherst Marketplace and Sheffield Crossing, community shopping centers in Ohio, for \$26.0 million, resulting in a \$7.5 million gain. The Operating Partnership's share of the gain was \$2.8 million.

PROPERTY REDEVELOPMENT AND EXPANSION

Our redevelopment program focuses on selecting well-located neighborhood and community shopping centers within our Core Portfolio and creating significant value through re-tenanting and property redevelopment.

ENVIRONMENTAL LAWS

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

COMPETITION

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

FINANCIAL INFORMATION ABOUT MARKET SEGMENTS

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

CORPORATE HEADQUARTERS AND EMPLOYEES

Our executive offices are located at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and our telephone number is (914) 288-8100. As of December 31, 2009, we had 118 employees, of which 90 were located at our executive office and 28 were located at regional property management offices. None of our employees are covered by collective bargaining agreements. Management believes that its relationship with employees is good.

COMPANY WEBSITE

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

CODE OF ETHICS AND WHISTLEBLOWER POLICIES

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

ITEM 1A. RISK FACTORS.

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

We rely on revenues derived from major tenants.

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

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

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

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

Our operations and performance depend on general economic conditions. The U.S. economy has recently experienced a financial downturn, with consumer spending on the decline, credit tightening and unemployment rising. Many financial and economic analysts are predicting that the world economy has entered a prolonged economic downturn characterized by high unemployment, limited availability of credit and decreased consumer and business spending. This economic downturn has and may continue to adversely affect the businesses of many of our tenants. We and the Opportunity Funds may experience higher vacancy rates as well as delays in re-leasing vacant space.

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

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

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

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

Since January 1, 2007, there have been two significant tenant bankruptcies within our portfolio:

On December 11, 2008, KB Toys ("KB") filed for protection under Chapter 11 Bankruptcy. KB operated in two locations in our Core Portfolio, totaling approximately 12,000 square feet. Rental revenues from KB at these locations totaled \$0.03 million, \$0.3 million, and \$0.3 million for the years ended December 31, 2009, 2008 and 2007, respectively. Both leases were rejected by KB in February 2009.

On November 10, 2008, Circuit City Stores Inc. ("Circuit City") filed for protection under Chapter 11 Bankruptcy. Circuit City operated at two of our Core Portfolio locations totaling approximately 59,278 square feet. Rental revenues from Circuit City at these locations totaled \$0.1 million, \$1.0 million and \$0.7 million for the years ended December 31, 2009, 2008 and 2007 respectively. Circuit City has rejected both leases. In addition, Circuit City executed a lease at a property owned by Acadia-P/A Holding Company. Circuit City has rejected that lease. On January 16, 2009, Circuit City sought Bankruptcy Court approval to liquidate its assets.

There are risks relating to investments in real estate.

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

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

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

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

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

Our loan agreements contain customary representations, covenants and events of default. Certain loan agreements require us to comply with certain affirmative and negative covenants, including the maintenance of certain debt service coverage and leverage ratios.

Interest expense on our variable debt as of December 31, 2009 would increase by \$3.4 million annually for a 100 basis point increase in interest rates. We may seek additional variable-rate financing if and when pricing and other commercial and financial terms warrant. As such, we would consider hedging against the interest rate risk related to such additional variable-rate debt through interest rate swaps and protection agreements, or other means.

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

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

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

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

Our performance depends on the economic conditions in markets in which our properties are concentrated. We have significant exposure to the greater New York region, from which we derive 36% of the annual base rents within our Core Portfolio. Our operating results could be adversely affected if market conditions, such as an oversupply of space or a reduction in demand for real estate, in this area become more competitive relative to other geographic areas.

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

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

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

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

Acquisitions of additional properties entail the risk that investments will fail to perform in accordance with expectations, including operating and leasing expectations. Redevelopment is subject to numerous risks, including risks of construction delays, cost overruns or uncontrollable events that may increase project costs, new project commencement risks such as the receipt of zoning, occupancy and other required governmental approvals and permits, and the incurrence of development costs in connection with projects that are not pursued to completion.

A component of our growth strategy is through private-equity type investments made through our RCP Venture. These include investments in operating retailers. The inability of the retailers to operate profitably would have an adverse impact on income realized from these investments.

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

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

Limited control over joint venture investments.

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

Our joint venture investments, including our Opportunity Fund investments may involve risks not otherwise present for investments made solely by us, including the possibility that our joint venture partner might have different interests or goals than we do. Other risks of joint venture investments include impasse on decisions, such as a sale, because neither we nor a joint venture partner would have full control over the joint venture. Also, there is no limitation under our organizational documents as to the amount of funds that may be invested in joint ventures. Please refer to the discussion under the heading “Off Balance Sheet Arrangements” in Item 7 of this Form 10-K for a discussion of \$26.0 million of debt on the CityPoint property that will mature in August 2010 and potential additional capital requirements Fund II may have if our unaffiliated joint venture partner determines not to fund its requisite share of capital.

Through our investments in joint ventures we have also invested in operating businesses that have operational risk in addition to the risks associated with real estate investments, including among other risks, human capital issues, adequate supply of product and material, and merchandising issues.

During 2009, 2008 and 2007, our Fund I and Mervyns I joint ventures provided Promote income. There can be no assurance that the joint ventures will continue to operate profitably and thus provide additional Promote income in the future.

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

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

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

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

Possible liability relating to environmental matters.

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

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

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

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

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

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

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

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

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

Distribution requirements imposed by law limit our operating flexibility.

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

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

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

Limits on ownership of our capital shares.

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

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

Concentration of ownership by certain investors.

Six institutional shareholders own 5% or more individually, and 48.8% in the aggregate, of our Common Shares. A significant concentration of ownership may allow an investor or a group of investors to exert a greater influence over our management and affairs and may have the effect of delaying, deferring or preventing a change in control of us.

Restrictions on a potential change of control.

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

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

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

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

ITEM 1B. UNRESOLVED STAFF COMMENTS.

None.

ITEM 2. PROPERTIES.

SHOPPING CENTER PROPERTIES

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

As of December 31, 2009, excluding two properties under redevelopment, there are 32 properties in our Core Portfolio totaling approximately 4.8 million square feet of gross leasable area ("GLA"). Adjusting for our pro-rata ownership share of partially-owned centers, we own approximately 3.9 million square feet of GLA. The Core Portfolio properties are located in 12 states and are generally well-established community and neighborhood shopping centers anchored by supermarkets or value-oriented retail. The properties are diverse in size, ranging from approximately 10,000 to 875,000 square feet. As of December 31, 2009, our Core Portfolio was 92.9% occupied and 92.6% on a pro-rata ownership basis.

As of December 31, 2009, we owned and operated 26 properties totaling 2.1 million square feet of GLA, excluding properties under redevelopment, in our Opportunity Funds. In addition to shopping centers, the Opportunity Funds' have invested in mixed-use properties, which generally include retail activities, and self-storage properties. The Opportunity Fund properties are located in 15 states. As of December 31, 2009, the properties owned by our Opportunity Funds were, in total, 86.8% occupied.

Within our Core Portfolio and Opportunity Funds, we had approximately 500 leases as of December 31, 2009. A majority of our rental revenues were from national tenants. A majority of the income from the properties consists of rent received under long-term leases. These leases generally provide for the payment of fixed minimum rent monthly in advance and for the payment by tenants of a pro-rata share of the real estate taxes, insurance, utilities and common area maintenance of the shopping centers. Minimum rents and expense reimbursements accounted for approximately 80% of our total revenues for the year ended December 31, 2009.

As of December 31, 2009, approximately 34% of our existing leases also provided for the payment of percentage rents either in addition to, or in place of, minimum rents. These arrangements generally provide for payment to us of a certain percentage of a tenant's gross sales in excess of a stipulated annual amount. Percentage rents accounted for approximately 0.3% of the total 2009 revenues of the Company.

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

No individual property contributed in excess of 10% of our total revenues for the years ended December 31, 2009, 2008 and 2007. Reference is made to Note 8 to our Consolidated Financial Statements, which begin on page F-1 of this Form 10-K, for information on the mortgage debt pertaining to our properties. The following sets forth more specific information with respect to each of our shopping centers at December 31, 2009:

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy (1) % 12/31/09	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
Core Portfolio						
New York						
<u>Connecticut</u>						
239 Greenwich Avenue	Greenwich	1998 (A)	Fee	16,834(2)	100%	Restoration Hardware 2014/2024 Coach 2016/2021
<u>New Jersey</u>						
Elmwood Park Shopping Center	Elmwood Park	1998 (A)	Fee	149,491	92%	A&P 2017/2052 Walgreen's 2022/2062
A&P Shopping Plaza	Boonton	2006 (A)	Fee	62,908	92%	A&P 2024/2069
<u>New York</u>						
Village Commons Shopping Center	Smithtown	1998 (A)	Fee	87,237	73%	
Branch Shopping Plaza	Smithtown	1998 (A)	LI (3)	125,751	95%	A&P 2013/2028 CVS 2010/—
Amboy Road	Staten Island	2005 (A)	LI (3)	60,090	100%	King Kullen 2028/—Duane Reade 2013/2018
Bartow Avenue	Bronx	2005 (C)	Fee	14,676	76%	
Pacesetter Park Shopping Center	Pomona	1999 (A)	Fee	96,353	89%	Stop & Shop 2020/2040
West Shore Expressway	Staten Island	2007 (A)	Fee	55,000	100%	LA Fitness 2021/2036
West 54 th Street	Manhattan	2007 (A)	Fee	9,693	100%	Stage Deli 2018/—
East 17 th Street	Manhattan	2008 (A)	Fee	19,622	100%	Barnes & Noble 2011/2016
Crossroads Shopping Center	White Plains	1998 (A)	JV (4)	310,742	94%	A&P/Waldbaum's 2012/2032 Kmart 2012/2032 B. Dalton 2012/2022 Modell's 2014/2019 Pier 1 2012/— Home Goods 2018/2033
Total New York Region				1,008,397	92%	

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy (1) % 12/31/09	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
Core Portfolio, continued						
New England						
<u>Connecticut</u>						
Town Line Plaza	Rocky Hill	1998 (A)	Fee	206,346(5)	98%	Stop & Shop 2024/2064 Wal-Mart(5)
<u>Massachusetts</u>						
Methuen Shopping Center	Methuen	1998 (A)	Fee	130,021	100%	Demoulas Market 2010/2015 Wal-Mart 2012/2052
Crescent Plaza	Brockton	1984 (A)	Fee	218,141	91%	Supervalu 2012/2042 Home Depot 2021/2056
<u>New York</u>						
New Loudon Center	Latham	1982 (A)	Fee	255,826	100%	Price Chopper 2015/2035 Marshall's 2014/2029 Bon Ton 2014/2034 Raymour and Flanigan 2019/2034 AC Moore 2014/2024
<u>Rhode Island</u>						
Walnut Hill Plaza	Woonsocket	1998 (A)	Fee	284,717	96%	Supervalu 2013/2028 Sears 2013/2033 CVS 2011/2014
<u>Vermont</u>						
The Gateway Shopping Center	South Burlington	1999 (A)	Fee	101,784	94%	Supervalu 2024/2053
Total New England Region				1,196,835	97%	
Midwest						
<u>Illinois</u>						
Hobson West Plaza	Naperville	1998 (A)	Fee	99,126	93%	Garden Fresh Markets 2012/2032
Clark Diversey	Chicago	2006 (A)	Fee	19,265	92%	
<u>Indiana</u>						
Merrillville Plaza	Merrillville	1998 (A)	Fee	235,026	94%	TJ Maxx 2019/2029 JC Penney 2013/2018 Office Max 2013/2028 Pier 1 2014 David's Bridal 2010/2020 K&G Fashion 2017/2027
<u>Michigan</u>						
Bloomfield Town Square	Bloomfield Hills	1998 (A)	Fee	232,181	87%	TJ Maxx 2019/2029 Marshalls 2011/2026 Home Goods 2010/2020 Office Max 2010/2025
<u>Ohio</u>						
Mad River Station	Dayton	1999 (A)	Fee	125,984	88%	Babies 'R' Us 2010/2020 Office Depot 2010/—Pier 1 2010/—
Total Midwest Region				711,582	91%	

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy (1) % 12/31/09	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
Core Portfolio, continued						
Mid-Atlantic						
<u>New Jersey</u>						
Marketplace of Absecon	Absecon	1998 (A)	Fee	104,718	65%	Rite Aid 2020/2040
<u>Delaware</u>						
Brandywine Town Center	Wilmington	2003 (A)	JV (7)	874,908	95%	Michaels 2011/2026 Old Navy (The Gap) 2011/2016 PetSmart 2017/2042 Thomasville Furniture 2011/2021 Access Group 2015/2025 Bed, Bath & Beyond 2014/2029 Dick's Sporting Goods 2013/2028 Lowe's Home Centers 2018/2048 Regal Cinemas 2017/2037 Target 2018/2058 TransUnion Settlement 2013/2018 Lane Home Furnishings 2015/— MJM Designer 2015/2035 Christmas Tree Shops 2028/2048
Market Square Shopping Center	Wilmington	2003 (A)	JV (7)	102,047	96%	TJ Maxx 2011/2016 Trader Joe's 2019/2034
Route 202 Shopping Center	Wilmington	2006 (C)	LI/JV (3) (7)	19,970	55%	
<u>Pennsylvania</u>						
Mark Plaza	Edwardsville	1968 (C)	LI/Fee (3)	216,401	81%	Redner's Markets 2018/2028 Kmart 2014/2049
Plaza 422	Lebanon	1972 (C)	Fee	156,279	100%	Home Depot 2028/2058 Dunham's 2016/2031
Route 6 Mall	Honesdale	1994 (C)	Fee	175,519	99%	Kmart 2020/2070 Rite Aid 2011/2026 Fashion Bug 2016/—
Chestnut Hill	Philadelphia	2006 (A)	Fee (8)	40,570	68%	Borders 2010/2020 TJ Maxx 2010/2020
Abington Towne Center	Abington	1998 (A)	Fee	216,369(6)	99%	Target (6)
Total Mid-Atlantic Region				1,906,781	93%	
Total Core Operating Properties				4,823,595	92.9%	
Properties under Redevelopment						
2914 Third Avenue	Bronx	2006 (A)	Fee	42,400	79%	Dr. J's 2021/—
Ledgewood Mall	Ledgewood	1983 (A)	Fee	517,151	86%	Wal-Mart 2019/2049 Macy's 2010/2025 The Sports Authority 2012/2037 Marshalls 2014/2034 Ashley Furniture 2010/2020 Barnes and Noble 2010/2035
Total Core Properties				5,383,146	92%	

Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy (1) % 12/31/09	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
Opportunity Fund Portfolio						
Fund I Properties						
<u>Ohio</u>						
Granville Centre	Columbus	2002 (A)	Fee	134,997	36%	Lifestyle Family Fitness 2017/2027
<u>New York</u>						
Tarrytown Shopping Center	Tarrytown	2004 (A)	Fee	35,291	85%	Walgreen's 2080/—
VARIOUS REGIONS						
Kroger/Safeway Portfolio	Various	2003 (A)	JV	709,400	100%	18 Kroger/Safeway Supermarkets Various
Total Fund I Properties				879,688	90%	
Fund II Properties						
<u>Illinois</u>						
Oakbrook	Oakbrook	2005 (A)	LI (3)	112,000	100%	Neiman Marcus 2011/2036
<u>New York</u>						
Liberty Avenue	New York	2005 (A)	LI/JV (3)	26,125	100%	CVS 2032/2052
216 th Street	New York	2005 (A)	JV	60,000	100%	City of New York 2027/2032
Fordham Place	Bronx	2004(A)	JV	119,446	82%	Best Buy 2019/2039 Sears 2023/2033
Pelham Manor Shopping Plaza	Pelham Manor	2004 (A)	LI/JV (3)	229,183	74%	BJ's Wholesale Club 2033/2053 Michaels 2013/2033
Total Fund II Properties				546,754	85%	
Fund III Properties						
<u>New York</u>						
Cortlandt Towne Center	Mohegan Lake	2009 (A)		641,797	85%	Walmart 2018/2048 A&P 2022/2047 United Artists Theatre 2018/2038 Barnes & Noble 2013/2028 Officemax 2013/2028 Petsmart 2014/2034 Modell's 2013/2023 Michaels 2017/2037 Old Navy 2014/2019 Marshalls 2014/2024 Best Buy 2017/2032
Total Fund III Properties				641,797	85%	
Total Opportunity Fund Operating Properties				2,068,239	87%	
Properties under Redevelopment						
<u>Sterling Heights Shopping Center</u>						
Sherman Plaza	Detroit	2004 (A)	JV (9)	154,835	60%	
CityPoint	New York	2005 (A)	JV	—	—	Target
Atlantic Ave	Brooklyn	2007 (A)	JV	—	—	
Canarsie Plaza	Brooklyn	2007 (A)	JV	—	—	
Westport	Brooklyn	2007 (A)	JV	—	—	
Sheepshead Bay	Westport	2007 (A)	JV	—	—	
161 st Street	Brooklyn	2007 (A)	JV	—	—	
	Bronx	2005 (A)	JV	227,379	84%	City of New York 2011/—
Total Redevelopment Properties				382,214	74%	

Notes:

- (1) Does not include space leased for which rent had not yet commenced as of December 31, 2009.
- (2) In addition to the 16,834 square feet of retail GLA, this property also has 21 apartments comprising 14,434 square feet.
- (3) We are a ground lessee under a long-term ground lease.
- (4) We have a 49% investment in this property.
- (5) Includes a 97,300 square foot Wal-Mart which is not owned by us.
- (6) Includes a 157,616 square foot Target Store that is not owned by us.
- (7) We have a 22% investment in this property.
- (8) Property consists of two buildings.
- (9) Fund I has a 50% interest in this property.

MAJOR TENANTS

No individual retail tenant accounted for more than 5.8% of minimum rents for the year ended December 31, 2009 or occupied more than 6.8% of total leased GLA as of December 31, 2009. The following table sets forth certain information for the 20 largest retail tenants based upon minimum rents in place as of December 31, 2009. The amounts below include our pro-rata share of GLA and annualized base rent for the Operating Partnership's partial ownership interest in properties, including the Opportunity Funds (GLA and rent in thousands):

Retail Tenant	Number of Stores in Portfolio	Total GLA	Annualized Base Rent ⁽¹⁾	Percentage of Total Represented by Retail Tenant	
				Total Portfolio GLA ⁽²⁾	Annualized Base Rent ⁽²⁾
A&P (Waldbaum's, Pathmark)	5	191,902	\$ 3,468,127	3.8%	5.8%
Supervalu (Shaw's)	3	175,801	2,420,980	3.5%	4.0%
TJX Companies (T.J. Maxx, Marshalls, Homegoods)	10	255,843	2,254,281	5.1%	3.8%
Wal-Mart	3	235,996	1,713,410	4.7%	2.9%
Sears (Sears, Kmart)	5	341,708	1,653,320	6.8%	2.8%
Stage Deli	1	4,211	1,403,822	0.1%	2.3%
Ahold (Stop & Shop)	2	117,911	1,363,237	2.4%	2.3%
L.A. Fitness	1	55,000	1,265,000	1.1%	2.1%
Safeway	12	123,626	1,212,747	2.5%	2.0%
Barnes & Noble	4	43,260	1,146,102	0.9%	1.9%
Home Depot	2	211,003	1,099,996	4.2%	1.8%
Restoration Hardware	1	12,293	1,041,152	0.2%	1.7%
Walgreens	3	22,692	854,313	0.5%	1.4%
Sleepy's	5	33,635	828,474	0.7%	1.4%
Price Chopper	1	77,450	802,105	1.6%	1.3%
BJ's Wholesale Club	1	25,881	772,834	0.5%	1.3%
King Kullen	1	37,266	745,320	0.7%	1.2%
Macy's	1	73,349	651,245	1.5%	1.1%
Kroger	6	77,383	626,822	1.5%	1.0%
Payless Shoesource	8	27,739	603,259	0.6%	1.0%
Total	75	2,143,949	\$ 25,926,546	42.9%	43.1%

Notes:

- (1) Base rents do not include percentage rents (except where noted), additional rents for property expense reimbursements, and contractual rent escalations due after December 31, 2009.
- (2) Represents total GLA and annualized base rent for our retail properties including the Operating Partnership's pro-rata share of joint venture properties, including the Opportunity Funds.

LEASE EXPIRATIONS

The following table shows scheduled lease expirations for retail tenants in place as of December 31, 2009, assuming that none of the tenants exercise renewal options. (GLA and Annualized Base Rent in thousands):

Core Portfolio:

Leases maturing in	Number of Leases	Annualized Base Rent (1)		GLA	
		Current Annual Rent	Percentage of Total	Square Feet	Percentage of Total
Month to Month	11	\$ 355	1%	17	0%
2010	62	6,013	9%	543	12%
2011	62	7,107	10%	379	8%
2012	52	6,468	9%	555	12%
2013	55	8,803	13%	524	11%
2014	57	7,842	12%	556	12%
2015	22	5,000	7%	285	6%
2016	12	1,940	3%	123	3%
2017	18	4,592	7%	202	4%
2018	25	7,013	10%	403	9%
Thereafter	47	13,055	19%	1,128	23%
Total	423	\$ 68,188	100%	4,715	100%

Opportunity Funds:

Leases maturing in	Number of Leases	Annualized Base Rent (1)		GLA	
		Current Annual Rent	Percentage of Total	Square Feet	Percentage of Total
Month to Month	9	\$ 428	1%	31	1%
2010	6	239	1%	13	1%
2011	27 ⁽²⁾	11,172	31%	980	47%
2012	8	859	2%	38	2%
2013	6	2,086	6%	95	5%
2014	13	2,160	6%	107	5%
2015	4	221	1%	9	0%
2016	1	177	0%	9	0%
2017	5	1,583	4%	97	5%
2018	10	2,383	7%	198	9%
Thereafter	22	14,595	41%	522	25%
Total	111	\$ 35,903	100%	2,099	100%

Note:

- (1) Base rents do not include percentage rents, additional rents for property expense reimbursements, nor contractual rent escalations due after December 31, 2009.
- (2) Includes 18 Kroger/Safeway leases representing annualized base rent of \$6,492 and GLA of 709 square feet. Reference is made to page 27 below for a discussion of the Kroger/Safeway portfolio.

GEOGRAPHIC CONCENTRATIONS

The following table summarizes our retail properties by region as of December 31, 2009. (GLA and Annualized Base Rent in thousands):

Region	GLA (1)	Occupied % (2)	Annualized Base Rent (2)	Annualized Base Rent per Occupied Square Foot	Percentage of Total Represented by Region	
					GLA	Annualized Base Rent
Core Properties:						
New York Region (3)	1,051	92%	\$ 24,453	\$ 25.42	20%	36%
New England	1,197	97%	10,225	9.66	22%	15%
Midwest	711	91%	8,666	13.45	13%	13%
Mid-Atlantic	2,424	91%	24,844	12.19	45%	36%
Total core properties	5,383	92%	\$ 68,188	\$ 14.50	100%	100%
Opportunity Funds:						
Operating Properties:						
Midwest (4)	247	65%	\$ 1,418	\$ 8.87	12%	5%
New York Region (5)	1,112	83%	23,044	24.87	54%	74%
Various (Kroger/Safeway Portfolio) (6)	709	100%	6,492	9.15	34%	21%
Total Opportunity Fund operating properties	2,068	87%	\$ 30,954	\$ 17.23	100%	100%
Redevelopment Properties:						
Midwest (7)	155	61%	\$ 563	\$ 6.02	41%	11%
New York Region (8)	227	84%	4,385	23.09	59%	89%
Total Opportunity Fund redevelopment properties	382	74%	\$ 4,948	\$ 17.46	100%	100%

Notes:

- (1) Property GLA includes a total of 255,000 square feet, which is not owned by us. This square footage has been excluded for calculating annualized base rent per square foot.
- (2) The above occupancy and rent amounts do not include space that is currently leased, but for which payment of rent had not commenced as of December 31, 2009.
- (3) We have a 49% interest in two partnerships, which together, own the Crossroads Shopping Center.
- (4) We have a 37.78% interest in future earnings and distributions from Fund I, which owns one property, and a 20% interest in Fund II, which owns one property.
- (5) We have a 37.78% interest in future earnings and distributions from Fund I, which owns one property, a 20% interest in Fund II, which has a 99.01% interest in four properties, and a 20% interest in Fund III, which owns one property.
- (6) Fund I portfolio of 18 triple-net, anchor-only leases with Kroger and Safeway supermarkets.
- (7) We have a 37.78% interest in future earnings and distributions from Fund I, which has a 50% interest in one property.
- (8) We have a 20% interest in Fund II, which has a 99.01% interest in one property.

SELF-STORAGE PORTFOLIO

During February 2008, through Fund III, we acquired a 95% controlling interest in a portfolio of eleven self-storage properties from Storage Post's existing institutional investors for approximately \$174.0 million. In addition, we, through Fund II, developed three self-storage properties. The fourteen self-storage property portfolio, located throughout New York and New Jersey, totals 1,126,708 net rentable square feet, and is operating at various stages of stabilization as detailed in the table below. The portfolio is operated by Storage Post, which is an equity partner.

Owner	Operating Properties	Location	Net Rentable Square Feet	Occupancy as of December 31, 2009
Stabilized				
Fund III	Suffern	Suffern, New York	78,950	
Fund III	Yonkers	Westchester, New York	100,523	
Fund III	Jersey City	Jersey City, New Jersey	76,720	
Fund III	Webster Ave	Bronx, New York	36,535	
Fund III	Linden	Linden, New Jersey	84,235	
Subtotal Stabilized			376,963	85.3%
Redeveloped - in Lease-up				
Fund III	Bruckner Blvd	Bronx, New York	89,448	
Fund III	New Rochelle	Westchester, New York	42,203	
Fund III	Long Island City	Queens, New York	134,816	
Subtotal in Lease-up			266,467	70.9%
Total Operating Properties			643,430	79.3%
In Initial Lease-up				
Fund III	Fordham Road	Bronx, New York	84,955	
Fund III	Ridgewood	Queens, New York	88,839	
Fund III	Lawrence	Lawrence, New York	97,693	
Fund II	Liberty Avenue	Queens, New York	72,850	
Fund II	Pelham Plaza	Pelham Manor, New York	62,020	
Fund II	Atlantic Avenue	Brooklyn, New York	76,921	
Subtotal in Initial Leaseup			483,278	51.7%
Total Self-Storage Portfolio			1,126,708	

KROGER/SAFEWAY PORTFOLIO

At December 31, 2009, Fund I, together with an unaffiliated joint venture partner ("Kroger/Safeway JV"), owns interests, through two master leases with an unaffiliated entity ("Master Lessee"), in 18 triple-net Kroger and Safeway supermarket leases ("Operating Leases") aggregating approximately 0.7 million square feet. There are six Kroger and twelve Safeway locations in eleven states averaging approximately 39,000 square feet at rents ranging from approximately \$3.90 to \$7.00 per square foot. The master leases expire in 2011 with the Master Lessee having the option of extending the term of either or both of the master leases. The Kroger/Safeway JV acquired its interest subject to long-term ground leases, which have a term in excess of 80 years inclusive of multiple renewal options. Although there is no obligation for the Kroger/Safeway JV to pay ground rent during the initial term of the master lease, to the extent it exercises an option to renew a ground lease for a property thereafter, it will be obligated to pay an average ground rent of approximately \$2.00 per square foot.

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

The initial Operating Leases expired during 2009. Options on these leases provide for extensions through 2049 at an average rent of approximately \$5.00 per square foot upon the commencement of the initial option period during 2009. All of the remaining locations

exercised their extension options during 2009.

ITEM 3. LEGAL PROCEEDINGS.

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

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

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

No matter was submitted to a vote of security holders through the solicitation of proxies or otherwise during the fourth quarter of 2009.

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

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

The following table shows, for the period indicated, the high and low sales price for our Common Shares as reported on the New York Stock Exchange, and cash dividends declared during the two years ended December 31, 2009 and 2008:

Quarter Ended	High	Low	Dividend Per Share
2009			
March 31, 2009	\$ 14.69	\$ 8.50	\$ 0.2100
June 30, 2009	15.44	10.37	0.1800
September 30, 2009	16.51	11.55	0.1800
December 31, 2009	17.69	13.31	0.1800
2008			
March 31, 2008	\$ 26.09	\$ 21.17	\$ 0.2100
June 30, 2008	26.78	22.54	0.2100
September 30, 2008	26.14	21.38	0.2100
December 31, 2008	25.23	9.04	0.7600

At March 1, 2010, there were 326 holders of record of our Common Shares.

We have determined for income tax purposes that the composition of dividends for 2009 are as follows. 95% of the total dividends distributed to shareholders represented ordinary income, 4% represented unrecaptured Section 1250 gain and 1% represented Section 1231 gain. The dividend for the quarter ended December 31, 2009 was paid on February 1, 2010 and will be taxable in 2010. Our cash flow is affected by a number of factors, including the revenues received from rental properties, our operating expenses, the interest expense on our borrowings, the ability of lessees to meet their obligations to us and unanticipated capital expenditures. Future dividends paid by us will be at the discretion of the Trustees and will depend on our actual cash flows, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code and such other factors as the Trustees deem relevant. In addition, we have the ability to pay dividends in cash, Common Shares or in any combination of cash (minimum 10%) and Common Shares (maximum 90%).

(b) Issuer purchases of equity securities

We have an existing share repurchase program that authorizes management, at its discretion, to repurchase up to \$20.0 million of our outstanding Common Shares. The program may be discontinued or extended at any time and there is no assurance that we will purchase the full amount authorized. There were no Common Shares repurchased by us during the fiscal year ended December 31, 2009.

(c) Securities authorized for issuance under equity compensation plans

The following table provides information related to our 1999 Share Incentive Plan (the “1999 Plan”), 2003 Share Incentive Plan (the “2003 Plan”) and the 2006 Share Incentive Plan (the “2006 Plan”) as of December 31, 2009:

	Equity Compensation Plan Information		(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column a)
	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted - average exercise price of outstanding options, warrants and rights	
Equity compensation plans approved by security holders	159,283	\$ 18.04	1,037,444(1)
Equity compensation plans not approved by security holders	—	—	—
Total	159,283	\$ 18.04	1,037,444(1)

Notes:

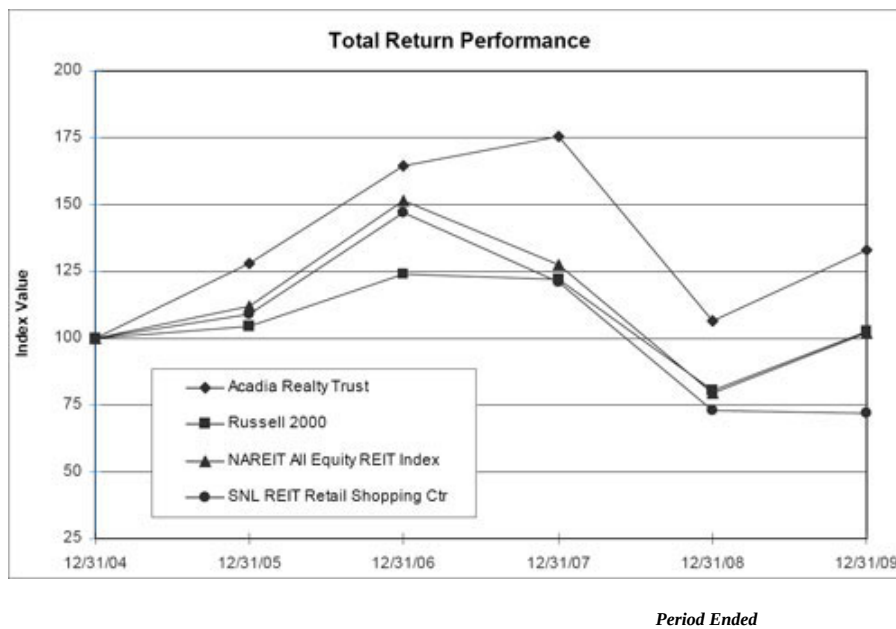
- (1) The 1999 Plan authorizes the issuance of options equal to up to 8% of the total Common Shares outstanding from time to time on a fully diluted basis. However, not more than 4,000,000 of the Common Shares in the aggregate may be issued pursuant to the exercise of options and no participant may receive more than 5,000,000 Common Shares during the term of the 1999 Plan. The 2003 Plan authorizes the issuance of options equal to up to 4% of the total Common Shares outstanding from time to time on a fully diluted basis. However, no participant may receive more than 1,000,000 Common Shares during the term of the 2003 Plan. The 2006 Plan authorizes the issuance of a maximum number of 500,000 Common Shares. No participant may receive more than 500,000 Common Shares during the term of the 2006 Plan.

Remaining Common Shares available is as follows:

Outstanding Common Shares as of December 31, 2009	39,787,018
Outstanding OP Units as of December 31, 2009	657,786
Total Outstanding Common Shares and OP Units	40,444,804
12% of Common Shares and OP Units pursuant to the 1999 and 2003 Plans	4,853,376
Common Shares pursuant to the 2006 Plan	500,000
Total Common Shares available under equity compensation plans	5,353,376
Less: Issuance of Restricted Shares and LTIP Units Granted	(1,540,413)
Issuance of Options Granted	(2,775,519)
Number of Common Shares remaining available	1,037,444

(d) Share Price Performance Graph (1)

The following graph compares the cumulative total shareholder return for our Common Shares for the period commencing December 31, 2004 through December 31, 2009 with the cumulative total return on the Russell 2000 Index (“Russell 2000”), the NAREIT All Equity REIT Index (the “NAREIT”) and the SNL Shopping Center REITs (the “SNL”) over the same period. Total return values for the Russell 2000, the NAREIT, the SNL and the Common Shares were calculated based upon cumulative total return assuming the investment of \$100.00 in each of the Russell 2000, the NAREIT, the SNL and our Common Shares on December 31, 2004, and assuming reinvestment of dividends. The shareholder return as set forth in the table below is not necessarily indicative of future performance.



<i>Index</i>	<i>12/31/04</i>	<i>12/31/05</i>	<i>12/31/06</i>	<i>12/31/07</i>	<i>12/31/08</i>	<i>12/31/09</i>
Acadia Realty Trust	100.00	127.93	164.70	175.34	106.43	132.98
Russell 2000	100.00	104.55	123.76	121.82	80.66	102.58
NAREIT All Equity REIT Index	100.00	112.16	151.49	127.72	79.53	101.79
SNL REIT Retail Shopping Ctr Index	100.00	109.12	146.88	120.93	72.81	71.87

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

ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth, on a historical basis, our selected financial data. This information should be read in conjunction with our audited Consolidated Financial Statements and Management’s Discussion and Analysis of Financial Condition and Results of Operations appearing elsewhere in this Form 10-K. Funds from operations (“FFO”) amounts for the year ended December 31, 2009 have been adjusted as set forth in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations – Reconciliation of Net Income to Funds from Operations and Adjusted Funds From Operations.”

(dollars in thousands, except per share amounts)	Years ended December 31,				
	2009	2008	2007	2006	2005
OPERATING DATA:					
Revenues	\$ 147,345	\$ 137,936	\$ 95,092	\$ 89,335	\$ 87,592
Operating expenses	71,141	61,390	46,265	40,525	36,250
Interest expense	32,154	28,893	24,564	19,929	16,166
Depreciation and amortization	37,218	33,334	25,114	23,016	22,375
Gain on sale of land	—	763	—	—	—
Equity in (losses) earnings of unconsolidated partnerships	(5,297)	19,906	6,619	2,559	21,280
Impairment of notes receivable	(1,734)	(4,392)	—	—	—
Gain on extinguishment of debt	7,057	1,523	—	—	—
Income tax provision (benefit)	1,541	3,362	297	(508)	2,140
Income from continuing operations	5,317	28,757	5,471	8,932	31,941
Income from discontinued operations	7,389	8,680	7,246	25,223	2,657
Income from extraordinary item (1)	—	—	27,844	—	—
Net income	12,706	37,437	40,561	34,155	34,598
Loss (income) attributable to noncontrolling interests in subsidiaries:					
Continuing operations	23,282	(11,630)	9,558	5,594	(13,650)
Discontinued operations	(4,855)	(739)	(606)	(829)	(322)
Extraordinary item	—	—	(24,167)	—	—
Net loss (income) attributable to noncontrolling interests in subsidiaries	18,427	(12,369)	(15,215)	4,765	(13,972)
Net income attributable to Common Shareholders	\$ 31,133	\$ 25,068	\$ 25,346	\$ 38,920	\$ 20,626
Supplemental Information:					
Income from continuing operations attributable to Common Shareholders	\$ 28,599	\$ 17,127	\$ 15,029	\$ 14,526	\$ 18,291
Income from discontinued operations attributable to Common Shareholders	2,534	7,941	6,640	24,394	2,335
Income from extraordinary item attributable to Common Shareholders	—	—	3,677	—	—
Net income attributable to Common Shareholders	\$ 31,133	\$ 25,068	\$ 25,346	\$ 38,920	\$ 20,626
Basic earnings per share:					
Income from continuing operations	\$ 0.75	\$ 0.51	\$ 0.45	\$ 0.43	\$ 0.55
Income from discontinued operations	0.07	0.23	0.20	0.72	0.07
Income from extraordinary item	—	—	0.11	—	—
Basic earnings per share	\$ 0.82	\$ 0.74	\$ 0.76	\$ 1.15	\$ 0.62
Diluted earnings per share:					
Income from continuing operations	\$ 0.75	\$ 0.50	\$ 0.44	\$ 0.42	\$ 0.55
Income from discontinued operations	0.07	0.23	0.19	0.71	0.07
Income from extraordinary item	—	—	0.11	—	—
Diluted earnings per share	\$ 0.82	\$ 0.73	\$ 0.74	\$ 1.13	\$ 0.62
Weighted average number of Common Shares outstanding					
- basic	38,005	33,813	33,600	33,789	33,236
- diluted	38,242	34,267	34,282	34,440	33,501
Cash dividends declared per Common Share	\$ 0.7500	\$ 0.8951(3)	\$ 1.0325	\$ 0.7550	\$ 0.7025
BALANCE SHEET DATA:					
Real estate before accumulated depreciation	\$ 1,207,406	\$ 1,091,995	\$ 817,620	\$ 613,828	\$ 634,871
Total assets	1,382,464	1,291,383	998,783	851,396	841,204
Total mortgage indebtedness	732,287	653,543	399,997	315,147	372,957
Total convertible notes payable	47,910	100,403	105,790	90,256	—
Total Common Shareholders' equity	312,185	227,722	249,717	250,567	220,576
Noncontrolling interests in subsidiaries	220,292	214,506	171,111	113,737	146,290
Total equity	532,477	442,228	420,828	364,304	366,866
OTHER:					
Funds from Operations, adjusted for extraordinary item (1) (2)	49,613	37,964	42,094	39,860	35,842
Cash flows provided by (used in):					
Operating activities	47,462	66,517	105,294	39,627	50,239
Investing activities	(123,380)	(302,265)	(208,998)	(58,890)	(135,470)
Financing activities	83,035	199,096	87,476	68,359	159,425

Notes:

(1) The extraordinary item only relates to 2007 and represents the Company's share of an extraordinary gain from its private-equity investment in Albertson's. The Company considers its private-equity investments to be investments in operating businesses as opposed to real estate. Accordingly, all gains and losses from private-equity investments are included in FFO, which management believes

provides a more accurate reflection of the operating performance of the Company.

- (2) The Company considers funds from operations (“FFO”) as defined by the National Association of Real Estate Investment Trusts (“NAREIT”) to be an appropriate supplemental disclosure of operating performance for an equity REIT due to its widespread acceptance and use within the REIT and analyst communities. FFO is presented to assist investors in analyzing the performance of the Company. It is helpful as it excludes various items included in net

income that are not indicative of the operating performance, such as gains (losses) from sales of depreciated property and depreciation and amortization. However, the Company's method of calculating FFO may be different from methods used by other REITs and, accordingly, may not be comparable to such other REIT's. FFO does not represent cash generated from operations as defined by generally accepted accounting principles ("GAAP") and is not indicative of cash available to fund all cash needs, including distributions. It should not be considered as an alternative to net income for the purpose of evaluating the Company's performance or to cash flows as a measure of liquidity. Consistent with the NAREIT definition, the Company defines FFO as net income (computed in accordance with GAAP), excluding gains (losses) from sales of depreciated property, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures.

(3) In addition to the \$0.8951 cash dividends declared in 2008, the Company declared a Common Share dividend of \$0.4949.

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

OVERVIEW

As of December 31, 2009, we operated 79 properties, which we own or have an ownership interest in, within our Core Portfolio or within our three Opportunity Funds. Our Core Portfolio consists of those properties either 100% owned by, or partially owned through joint venture interests by the Operating Partnership, or subsidiaries thereof, not including those properties owned through our Opportunity Funds. These 79 properties consist of commercial properties, primarily neighborhood and community shopping centers, self-storage and mixed-use properties with a retail component. The properties we operate are located primarily in the Northeast, Mid-Atlantic and Midwestern regions of the United States. Excluding two properties under redevelopment, there are 32 properties in our Core Portfolio totaling approximately 4.8 million square feet. Fund I has 21 properties comprising approximately 1.0 million square feet. Fund II has 10 properties, seven of which (representing 1.2 million square feet) are currently operating, one is under construction, and two are in design phase. Three of the properties also include self-storage facilities. We expect the Fund II portfolio will have approximately 2.0 million square feet upon completion of all current construction and anticipated redevelopment activities. Fund III has 14 properties totaling approximately 1.8 million square feet, of which 11 locations representing 0.9 million net rentable square feet are self-storage facilities. The majority of our operating income is derived from rental revenues from these 79 properties, including recoveries from tenants, offset by operating and overhead expenses. As our RCP Venture invests in operating companies, we consider these investments to be private-equity style, as opposed to real estate, investments. Since these are not traditional investments in operating rental real estate but investments in operating businesses, the Operating Partnership invests in these through a taxable REIT subsidiary ("TRS").

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

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

BUSINESS OUTLOOK

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

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

RESULTS OF OPERATIONS

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

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

Revenues	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Minimum rents	\$ 50.7	\$ 35.7	\$ 9.8	\$ —	\$ 50.4	\$ 22.4	\$ 4.8	\$ —
Percentage rents	0.5	—	—	—	0.5	—	—	—
Expense reimbursements	13.7	7.2	—	—	14.1	2.7	—	—
Lease termination income	2.8	—	—	—	—	24.0	—	—
Other property income	0.2	1.4	1.3	—	0.3	(0.6)	0.8	0.6
Management fee income (1)	—	—	—	2.0	—	—	—	3.4
Interest income	—	—	—	20.3	—	—	—	14.5
Other income	1.7	—	—	—	—	—	—	—
Total revenues	\$ 69.6	\$ 44.3	\$ 11.1	\$ 22.3	\$ 65.3	\$ 48.5	\$ 5.6	\$ 18.5

Note:

- (1) Includes fees earned by the Company as general partner/managing member of the Opportunity Funds that are eliminated in consolidation. The Operating Partnership's share of these fees are recognized as a reduction in noncontrolling interests. The net balance reflected herein represents third party fees which are not eliminated in consolidation.

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 \$7.5 million and additional leases at Fordham Place and Pelham Manor Shopping Plaza commencing in 2009 ("Fordham and Pelham"). The increase in minimum rents in the Storage Portfolio relates to the February 2008 acquisition of the Storage Post Portfolio and the Company's election in 2008 to report the Storage Portfolio activity one month in arrears to enhance the accuracy and timeliness of reporting. Accordingly, the year ended December 31, 2008 reflects nine months of activity while the year ended December 31, 2009 reflects twelve months of activity ("Storage Acquisition"). In addition, the increase in minimum rents in the Storage Portfolio was also attributable to the full amortization of acquired lease intangible cost during 2009.

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

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

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

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

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

Operating Expenses	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Property operating	\$ 12.1	\$ 10.2	\$ 8.7	\$ (1.2)	\$ 12.2	\$ 7.0	\$ 5.3	\$ (0.4)
Real estate taxes	9.3	5.3	2.2	—	8.8	2.0	1.3	—
General and administrative	24.0	13.5	0.1	(15.6)	26.0	16.1	0.1	(17.6)
Depreciation and amortization	17.2	17.1	4.4	(1.5)	20.3	10.0	3.0	—
Abandonment of project costs	—	2.5	—	—	—	0.6	—	—
Reserve for notes receivable	—	—	—	1.7	—	—	—	4.4
Total operating expenses	\$ 62.6	\$ 48.6	\$ 15.4	\$ (16.6)	\$ 67.3	\$ 35.7	\$ 9.7	\$ (13.6)

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

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

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

Depreciation expense in the Core Portfolio decreased \$2.4 million in 2009. This was principally a result of increased depreciation expense in 2008 resulting from the write-down of tenant improvements at two properties attributable to the bankruptcy of Circuit City. Amortization expense in the Core Portfolio decreased \$0.7 million primarily as a result of lower amortization expense in 2009 associated with the Klaff management contracts. Depreciation expense increased \$5.0 million and amortization expense increased \$2.1 million in the Opportunity Funds primarily due to the 2009 Fund Acquisition as well as Fordham and Pelham. Depreciation expense and amortization expense increased \$1.4 million in the Storage Portfolio primarily as a result of the Storage Acquisition as previously discussed. Depreciation and amortization expense decreased \$1.5 million in Other as a result of depreciation associated with the elimination of capitalizable costs within the consolidated group.

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

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

Other	2009				2008			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Equity in (losses) earnings of unconsolidated affiliates	\$ 0.7	\$ (2.2)	\$ —	\$ —	\$ —	\$ 19.9	\$ —	\$ —
Unconsolidated affiliate impairment reserve	—	(3.8)	—	—	—	—	—	—
Interest expense	(18.7)	(8.4)	(5.0)	—	(19.8)	(5.5)	(3.6)	—
Gain on debt extinguishment	7.1	—	—	—	1.5	—	—	—
Gain on sale of land	—	—	—	—	0.8	—	—	—
Income tax provision	(1.5)	—	—	—	(3.4)	—	—	—
Income from discontinued operations	—	—	—	7.4	—	—	—	8.7
Loss (income) attributable to noncontrolling interests in subsidiaries:								
- Continuing operations	(0.4)	22.3	(0.5)	1.9	0.2	(15.8)	0.4	3.6
- Discontinued operations	—	—	—	(4.9)	—	—	—	(0.7)

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

The \$3.8 million unconsolidated affiliate impairment reserve in 2009 relates to a Fund I unconsolidated investment.

Interest expense in the Core Portfolio decreased \$1.1 million in 2009. This was primarily the result of lower interest expense related to the purchase of the Company's convertible notes payable offset by a \$0.7 million write-off of the unamortized premium related to the repayment of a mortgage note payable during 2008. Interest expense in the Opportunity Funds increased \$2.9 million in 2009. This was primarily attributable to an increase of \$4.2 million due to higher average outstanding borrowings in 2009 and \$0.6 million of lower capitalized interest in 2009. These increases were offset by a \$2.2 million decrease related to lower average interest rates in

2009. Interest expense in the Storage Portfolio increased \$1.4 million in 2009. This was primarily due to an increase of \$0.9 million due to higher average outstanding borrowings in 2009 as well as an increase of \$0.8 million due to higher interest rates in 2009.

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

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

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

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

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

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

Comparison of the year ended December 31, 2008 ("2008") to the year ended December 31, 2007 ("2007")

Revenues	2008				2007			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
(dollars in millions)								
Minimum rents	\$ 50.4	\$ 22.4	\$ 4.8	\$ —	\$ 48.6	\$ 17.0	\$ 0.3	\$ —
Percentage rents	0.5	—	—	—	0.5	—	—	—
Expense reimbursements	14.1	2.7	—	—	12.4	0.9	—	—
Lease termination income	—	24.0	—	—	—	—	—	—
Other property income	0.3	(0.6)	0.8	0.6	0.8	0.1	—	—
Management fee income (1)	—	—	—	3.4	—	—	—	4.1
Interest income	—	—	—	14.5	—	—	—	10.3
Other income	—	—	—	—	0.2	—	—	—
Total revenues	\$ 65.3	\$ 48.5	\$ 5.6	\$ 18.5	\$ 62.5	\$ 18.0	\$ 0.3	\$ 14.4

Note:

- (1) Includes fees earned by the Company as general partner/managing member of the Opportunity Funds that are eliminated in consolidation. The Operating Partnership's share of these fees are recognized as a reduction in noncontrolling interests. The net balance reflected herein represents third party fees which are not eliminated in consolidation.

The increase in minimum rents in the Core Portfolio was attributable to additional rents following the acquisitions of 200 West 54th Street, 145 East Service Road and East 17th Street ("2007/2008 Core Acquisitions") of \$1.8 million. The increase in rents in the Opportunity Funds primarily relates to additional rents following the acquisition of 125 Main Street ("2007 Fund Acquisitions") of \$0.5 million, 216th Street being placed in service October 1, 2007 of \$2.1 million, and Pelham Manor Shopping Plaza and Fordham Plaza being partially placed in service in 2008. The increase in minimum rents in the Storage Portfolio relates to the acquisition of the Storage Post Portfolio ("2008 Storage Acquisition").

Expense reimbursements in the Core Portfolio increased for both real estate taxes and common area maintenance ("CAM"). Real estate tax reimbursements increased \$0.7 million in the Core Portfolio as a result of the 2007/2008 Core Acquisitions as well as general increases in real estate taxes experienced across the Core Portfolio in 2008. CAM expense reimbursements in the Core Portfolio increased \$1.0 million. As a result of the completion of a multi-year review of CAM billings during 2007 and the resolution of the majority of all outstanding CAM billing issues with our tenants, 2007 CAM expense reimbursements were adversely impacted by charges related to this settlement and the related accrual adjustments totaling \$1.0 million. The increase in expense reimbursements in the Opportunity Funds relates primarily to the billing in 2008 of previous year's operating expenses at 161st Street for \$1.2 million and the billing of previous year's utility charges to an anchor tenant for \$0.3 million.

Lease termination income in the Opportunity Funds for 2008 relates to a termination fee earned, net of costs, from Home Depot at Canarsie Plaza.

The increase in interest income was the result of higher interest earning assets in 2008, primarily from new notes/mezzanine financing investments.

Operating Expenses

(dollars in millions)	2008				2007			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
Property operating	\$ 12.2	\$ 7.0	\$ 5.3	\$ (0.4)	\$ 10.4	\$ 3.0	\$ 0.7	\$ (0.3)
Real estate taxes	8.8	2.0	1.3	—	8.1	1.3	—	—
General and administrative	26.0	16.1	0.1	(17.6)	25.1	13.0	—	(15.2)
Depreciation and amortization	20.3	10.0	3.0	—	17.4	7.4	0.3	—
Abandonment of project costs	—	0.6	—	—	—	0.1	—	—
Reserve for notes receivable	—	—	—	4.4	—	—	—	—
Total operating expenses	\$ 67.3	\$ 35.7	\$ 9.7	\$ (13.6)	\$ 61.0	\$ 24.8	\$ 1.0	\$ (15.5)

The increase in property operating expenses in the Core Portfolio relates to additional reserves for tenant receivables, including straight line rent. The increase in property operating expenses in the Opportunity Funds was attributable to 216th Street being placed in service October 1, 2007 of \$0.6 million, allocated property operating expenses related to Pelham Manor Shopping Plaza and Fordham Plaza being partially placed in service in 2008 of \$2.3 million as well as additional reserves for tenant receivables, which was primarily for straight line rent receivables. The increase in property operating expenses in the Storage Portfolio relates to the 2008 Storage Acquisition.

The increase in real estate taxes in the Core Portfolio was due to the 2007/2008 Core Acquisitions as well as general increases in real estate taxes experienced across the Core Portfolio. The increase in real estate taxes in the Opportunity Funds was primarily attributable to allocated real estate taxes related to Pelham Manor Shopping Plaza and Fordham being partially placed in service in 2008. The increase in real estate taxes in the Storage Portfolio relates to the acquisition of the 2008 Storage Acquisition.

The increase in general and administrative expense in the Core Portfolio was primarily attributable to increased compensation expense of \$1.1 million for additional personnel hired in the second half of 2007 and in 2008 as well as increases in existing employee salaries. In addition, there was an increase of \$0.3 million for other overhead expenses following the expansion of our infrastructure related to increased activity in Opportunity Fund assets and asset management services. The increase in general and administrative expense in the Opportunity Funds primarily related to additional Fund III asset management fees of \$2.8 million in 2008 as well as an increase in other professional fees. These increases were offset by a \$0.8 million decrease in Promote expense related to Fund I and Mervyns I. The decrease in general and administrative in "Other" primarily relates to the elimination of the Fund III asset management fees offset by the elimination of the Fund I and Mervyns I Promote expense for consolidated financial statement presentation purposes.

Depreciation expense in the Core Portfolio increased \$2.9 million in 2008. This was principally a result of increased depreciation expense following the full depreciation of tenant improvements at two properties following the bankruptcy of Circuit City of \$2.4 million and increased depreciation expense resulting from the 2007/2008 Core Acquisitions. The increase in depreciation and amortization expense for the Opportunity Funds is primarily related to 216th Street being placed in service October 1, 2007 as well as Pelham Manor Shopping Plaza and Fordham Plaza being partially placed in service in 2008. The increase in depreciation and amortization in the Storage Portfolio relates to the acquisition of the 2008 Storage Acquisition.

The reserve for notes receivable of \$4.4 million in 2008 relates to the impairment of a mezzanine loan.

Other

(dollars in millions)	2008				2007			
	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other	Core Portfolio	Opportunity Funds	Self-Storage Portfolio	Notes Receivable and Other
Equity in (losses) earnings of unconsolidated affiliates	\$ —	\$ 19.9	\$ —	\$ —	\$ 0.6	\$ 5.8	\$ —	\$ 0.2
Interest expense	(19.8)	(5.5)	(3.6)	—	(19.4)	(5.3)	(0.4)	0.5
Gain on debt extinguishment	1.5	—	—	—	—	—	—	—
Gain on sale of land	0.8	—	—	—	—	—	—	—
Income tax provision	(3.4)	—	—	—	(0.3)	—	—	—
Income from discontinued operations	—	—	—	8.7	—	—	—	7.2
Extraordinary item	—	—	—	—	—	27.8	—	—
Loss (income) attributable to noncontrolling interests in subsidiaries:								
- Continuing operations	0.2	(15.8)	0.4	3.6	—	6.5	—	3.0
- Discontinued operations	—	—	—	(0.7)	—	—	—	(0.6)
- Extraordinary item	—	—	—	—	—	(24.2)	—	—

Equity in earnings of unconsolidated affiliates in the Opportunity Funds increased primarily as a result of our pro-rata share of gains from the sale of Mervyns locations in 2008 of \$5.2 million, additional distributions in excess of basis from our Albertson's investment of \$7.9 million and our pro-rata share of gain from the sale of the Haygood Shopping Center of \$3.3 million. These increases were partially offset by a decrease in our pro-rata share of distributions in excess of basis from our investment in Hitchcock Plaza of \$2.7 million as compared to 2007.

Interest expense in the Core Portfolio increased \$0.4 million in 2008. This was primarily the result of a \$1.1 million increase attributable to higher average outstanding borrowings in 2008 and a \$0.2 million increase related to higher average interest rates in 2008. These increases were offset by a \$0.7 million write-off of the unamortized premium related to the repayment of a mortgage note payable in 2008 and a \$0.4 million decrease resulting from costs associated with a loan payoff in 2007. Interest expense in the Opportunity Funds increased \$0.2 million in 2008. This was the result of an increase of \$3.2 million due to higher average outstanding borrowings in 2008 offset by a \$3.1 million decrease related to lower average interest rates in 2008. Interest expense in the Storage Portfolio increased \$3.2 million as a result of the 2008 Storage Acquisition.

The gain on debt extinguishment of \$1.5 million is attributable to the purchase of the Company's convertible debt at a discount in 2008.

The gain on sale of land in 2008 in the Core Portfolio relates to a land parcel sale at Bloomfield Town Square.

The variance in income tax provision in the Core Portfolio primarily relates to income taxes at the 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, 2008 and 2007.

The extraordinary item in 2007 in the Opportunity Funds relates to the extraordinary gain, net of income taxes, from our Albertson's investment.

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 2008 and 2007 represents the noncontrolling interests' share of all the Opportunity Funds variances discussed above. Loss (income) attributable to noncontrolling interests in subsidiaries - Continuing operations in Notes Receivable and Other relates to the noncontrolling interests' share of capitalized construction, leasing and legal fees.

Loss (income) attributable to noncontrolling interests in subsidiaries - Discontinued operations primarily represents the noncontrolling interests' share of activity related to properties sold in 2009, 2008 and 2007.

Loss (income) attributable to noncontrolling interests in subsidiaries - Extraordinary item represents the noncontrolling interests' share of the extraordinary gain from the Albertson's investment.

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

(dollars in thousands)	For the Years Ended December 31,				
	2009	2008	2007	2006	2005
Net income attributable to Common Shareholders	\$ 31,133	\$ 25,068	\$ 25,346	\$ 38,920	\$ 20,626
Depreciation of real estate and amortization of leasing costs:					
Consolidated affiliates, net of noncontrolling interests' share	18,847	18,519	19,669	20,206	16,676
Unconsolidated affiliates	1,603	1,687	1,736	1,806	746
Income attributable to noncontrolling interests in operating partnership (1)	465	437	614	803	416
Gain on sale of properties (net of noncontrolling interests' share)					
Consolidated affiliates	(2,435)	(7,182)	(5,271)	(20,974)	50
Unconsolidated affiliates	—	(565)	—	(901)	(2,672)
Extraordinary item (net of noncontrolling interests' share and income taxes) (3)	—	—	(3,677)	—	—
Funds from operations (2)	49,613	37,964	38,417	39,860	35,842
Add back: Extraordinary item, net (3)	—	—	3,677	—	—
Funds from operations, adjusted for extraordinary item	\$ 49,613	\$ 37,964	\$ 42,094	\$ 39,860	\$ 35,842

Notes:

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

LIQUIDITY AND CAPITAL RESOURCES

Uses of Liquidity

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

Distributions

In order to qualify as a REIT for Federal income tax purposes, we must currently distribute at least 90% of our taxable income to our shareholders. For the year ended December 31, 2009, we paid dividends and distributions on our Common Shares and Common OP Units totaling \$29.1 million. In addition, in December of 2008, our Board of Trustees approved a special dividend of approximately \$0.55 per share, or \$18.0 million in the aggregate, which was associated with taxable gains arising from property dispositions in 2008, which was paid on January 30, 2009, to shareholders of record on December 31, 2008. Ninety percent of the special dividend was paid with the issuance of 1.3 million Common Shares and 10%, or \$1.8 million, was paid in cash.

Fund I and Mervyns I

In September 2001, the Operating Partnership committed \$20.0 million to a newly formed Opportunity Fund with four of our institutional shareholders, who committed \$70.0 million for the purpose of acquiring a total of approximately \$300.0 million of community and neighborhood shopping centers on a leveraged basis. During 2006, the Fund I investors received a return of all their invested capital in Fund I and their unpaid preferred return. The Operating Partnership is entitled to 37.8% of all future income and distributions (Promote and pro-rata share of the remaining 80%).

As of December 31, 2009, Fund I has a total of 21 properties totaling 1.0 million square feet as further discussed in “PROPERTY ACQUISITIONS” in Item 1 of this Form 10-K.

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

Notes:

(1) During 2009, Fund I recorded an impairment reserve of \$3.8 million related to this investment.

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

Fund II and Mervyns II

On June 15, 2004, we formed our second opportunity fund, Fund II, and during August 2004, formed Mervyns II with the investors from Fund I as well as two additional institutional investors, whereby the investors, including the Operating Partnership, committed capital totaling \$300.0 million. The Operating Partnership is the managing member with a 20% interest in the joint venture. The terms and structure of Fund II are substantially the same as Fund I with the exception that the preferred return is 8%. As of December 31, 2009, \$223.3 million had been contributed to Fund II, of which the Operating Partnership's share was \$44.7 million.

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

New York Urban/ Infill Redevelopment Initiative

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

Property	Location	Year acquired	Costs to date	Redevelopment (dollars in millions)		
				Anticipated additional costs	Estimated construction completion	Square feet upon completion
Liberty Avenue (1)	Queens	2005	\$ 15.2	\$ —	Completed	125,000
216 th Street	Manhattan	2005	27.7	—	Completed	60,000
Fordham Place	Bronx	2004	123.5	6.5	Substantially completed	276,000
Pelham Manor Shopping Plaza (1)	Westchester	2004	58.0	4.0	Substantially completed	320,000
161 st Street	Bronx	2005	55.3	9.7	(2) (4)	230,000
Atlantic Avenue (3)	Brooklyn	2007	21.0	2.0	Completed	110,000
Canarsie Plaza	Brooklyn	2007	32.1	44.9	1 st half 2011	265,000
Sherman Plaza	Manhattan	2005	34.1	—(2)	(2)	—(2)
CityPoint (1)	Brooklyn	2007	43.7	—(2)	(2)	—(2)
Total			\$ 410.6	\$ 67.1		1,386,000

Notes:

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

RCP Venture

See “Property Acquisitions” in Item 1 of this Form 10-K for a table summarizing the RCP Venture investments from inception through December 31, 2009.

Fund III

In May 2007, we formed Fund III with fourteen institutional investors, including a majority of the investors from Fund I and Fund II with a total of \$503.0 million of committed discretionary capital. The Operating Partnership’s share of the committed capital is \$100.0 million and it is the sole managing member with a 19.9% interest in Fund III. 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 December 31, 2009, \$96.5 million has been invested in Fund III, of which the Operating Partnership contributed \$19.2 million.

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

Property	Location	Year acquired	Costs to date	Redevelopment (dollars in millions)	
				Anticipated additional costs	Square feet upon completion
Sheepshead Bay	Brooklyn, NY	2007	\$ 22.7	\$ —(1)	—
125 Main Street	Westport, CT	2007	17.6	5.4(2)	30,000
Total			\$ 40.3	\$ 5.4	30,000

Notes:

- (1) To be determined
- (2) Completion to be determined

During February 2008, Acadia, through Fund III, and in conjunction with an unaffiliated partner, Storage Post, acquired a portfolio of eleven self-storage properties from Storage Post’s existing institutional investors for approximately \$174.0 million. The properties are located throughout New York and New Jersey. The portfolio continues to be operated by Storage Post, which is a 5% equity partner. During January 2009, Fund III purchased Cortlandt Towne Center for \$78.0 million. The property is a 642,000 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, Mezzanine Loan Investments and Notes Receivable

At December 31, 2009, our preferred equity investment, mezzanine loan investments and notes receivable, net aggregated \$125.2 million, with accrued interest thereon of \$10.3 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. Effective interest rates on our preferred equity investment, mezzanine loan investments and notes receivable ranged from 10.0% to 22.4% with maturities through January 2017.

During December 2009, we made a loan for \$8.6 million which bears interest at 14.5% with a one year term and one six month extension.

Other Investments

Acquisitions made during 2007, 2008 and 2009 are discussed in “PROPERTY ACQUISITIONS” in Item 1 of this Form 10-K:

Property Redevelopment and Expansion

Our redevelopment program focuses on selecting well-located neighborhood and community shopping centers and creating significant value through re-tenanting and property redevelopment.

Purchase of Convertible Notes

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

Share Repurchase

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

SOURCES OF LIQUIDITY

We intend on using Fund III, as well as new funds that we may establish in the future, as the primary vehicles for our future acquisitions, including investments in the RCP Venture and New York Urban/Infill Redevelopment Initiative. Additional sources of capital for funding property acquisitions, redevelopment, expansion and re-tenanting and RCP Venture investments, are expected to be obtained primarily from (i) the issuance of public equity or debt instruments, (ii) cash on hand and cash flow from operating activities, (iii) additional debt financings, (iv) noncontrolling interests’ unfunded capital commitments of \$61.3 million and \$325.2 million for Funds II and III, respectively, and (v) future sales of existing properties.

During 2009, Fund II received capital contributions of \$31.2 million to fund redevelopment projects and paydown the line of credit of Fund II.

As of December 31, 2009, we had approximately \$139.5 million of additional capacity under existing debt facilities and cash and cash equivalents on hand of \$93.8 million.

Issuance of Convertible Notes

During December of 2006 and January of 2007, we issued \$115.0 million of 3.75% Convertible Notes. These notes were issued at par and are due in 2026. The \$112.1 million in proceeds, net of related costs, was used to retire variable rate debt, fund capital commitments and general corporate purposes.

Shelf Registration Statements and Issuance of Equity

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

Asset Sales

Asset sales are an additional source of liquidity for us. During November 2009, we sold Blackman Plaza for \$2.5 million, which resulted in a gain on sale of \$1.5 million. During February 2009, 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. During April 2008, we sold a residential complex located in Winston-Salem, North Carolina. During December of 2007, we sold an apartment complex in Columbia Missouri. These sales are discussed in “ASSET SALES AND CAPITAL/ASSET RECYCLING” in Item 1 of this Form 10-K.

Notes Receivable Repayment and Mezzanine Loan Paydowns

During the year ended December 31, 2009, we received \$12.6 million in loan repayments on several first mortgage notes and \$1.0 million in paydowns on mezzanine loans.

Financing and Debt

At December 31, 2009, mortgage and convertible notes payable aggregated \$780.1 million, net of unamortized premium of \$0.1 million, and the mortgage notes were collateralized by 28 properties and related tenant leases. Interest rates on our outstanding indebtedness ranged from 0.72% to 7.18% with maturities that ranged from March 2010 to November 2032. Taking into consideration \$83.4 million of notional principal under variable to fixed-rate swap agreements currently in effect, as of December 31, 2009, \$439.0 million of the portfolio, or 56%, was fixed at a 5.8% weighted average interest rate and \$341.1 million, or 44% was floating at a 3.1% weighted average interest rate. There is \$132.6 million of debt maturing in 2010 at weighted average interest rates of 2.2%. Of this amount, \$2.1 million represents scheduled annual amortization. The loans relating to \$80.3 million of the 2010 maturities provide for extension options, which we believe we will be able to exercise. If we are unable to extend these loans and refinance the balance of \$52.3 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 2010, we may not have sufficient cash on hand to repay such indebtedness, we may have to refinance this indebtedness or select other alternatives based on market conditions at that time. Given the current post recessionary period, refinancing this debt will be very difficult. See "Item 1A. Risk Factors—The current economic environment, while improving, may cause us to lose tenants and may impair our ability to borrow money to purchase properties, refinance existing debt or finance our current redevelopment projects."

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 year ended December 31, 2009	Amount borrowed as of December 31, 2009	Letters of credit outstanding as of December 31, 2009	Amount available under credit facilities as of December 31, 2009
Acadia Realty, LP	\$ 64.5	\$ 48.9	\$ (18.9)	\$ 30.0	\$ 4.0	\$ 30.5
Acadia Realty, LP	30.0	—	2.0	2.0	—	28.0
Fund II	53.5	34.7	13.6	48.3	5.2	—
Fund III	221.0	62.3	77.2	139.5	0.5	81.0
Total	\$ 369.0	\$ 145.9	\$ 73.9	\$ 219.8	\$ 9.7	\$ 139.5

Reference is made to Note 8 and Note 9 to our Consolidated Financial Statements, which begin on Page F-1 of this Form 10-K, for a summary of the financing and refinancing transactions since December 31, 2008.

CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS

At December 31, 2009, maturities on our mortgage notes ranged from March 2010 to November 2032. In addition, we have non-cancelable ground leases at six of our shopping centers. We lease space for our White Plains corporate office for a term expiring in 2015. The following table summarizes our debt maturities, obligations under non-cancelable operating leases and construction commitments as of December 31, 2009:

Contractual obligations:	Total	Payments due by period			
		Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
(dollars in millions)					
Future debt maturities	\$ 782.1	\$ 132.6	\$ 388.5	\$ 31.8	\$ 229.2
Interest obligations on debt	145.2	31.2	46.0	29.7	38.3
Operating lease obligations	111.6	4.8	9.8	10.0	87.0
Construction commitments ¹	32.3	32.3	—	—	—
Total	\$ 1,071.2	\$ 200.9	\$ 444.3	\$ 71.5	\$ 354.5

Notes:

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

OFF BALANCE SHEET ARRANGEMENTS

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

(dollars in millions)	Pro-rata share of mortgage debt		Interest rate at	Maturity date
Investment	Opportunity Funds	Operating Partnership	December 31, 2009	
Crossroads	\$ n/a	\$ 30.6	5.37%	December 2014
Brandywine	n/a	36.9	5.99%	July 2016
CityPoint	6.1	1.2	2.73%	August 2010
Sterling Heights	2.1	0.8	2.08%	August 2010
Total	\$ 8.2	\$ 69.5		

As of December 31, 2009, there was \$26.0 million of debt at CityPoint scheduled to mature during August of 2010. There are no options to extend this debt. Fund II and its unaffiliated joint venture partner's ("JV Partner") share of this debt was \$6.1 million and \$19.9 million, respectively. If CityPoint is unable to extend the maturity date of this debt, Fund II and its JV Partner may be required to fund their requisite share of capital to repay this obligation. In the event that the JV Partner does not fund its requisite share of capital, pursuant to the joint venture agreement, Fund II would have the option to fund the JV Partner's share of capital to repay this debt either as a loan to the JV Partner or as additional equity in CityPoint.

In addition, we have arranged for the provision of four separate letters of credit in connection with certain leases and investments. As of December 31, 2009, there were no outstanding balances under any of the letters of credit. If the letters of credit were fully drawn, the combined maximum amount of exposure would be \$9.7 million.

HISTORICAL CASH FLOW

The following table compares the historical cash flow for the year ended December 31, 2009 ("2009") with the cash flow for the year ended December 31, 2008 ("2008").

(dollars in millions)	Years Ended December 31,		
	2009	2008	Variance
Net cash provided by operating activities	\$ 47.5	\$ 66.5	\$ (19.0)
Net cash used in investing activities	(123.4)	(302.3)	178.9
Net cash provided by financing activities	83.0	199.1	(116.1)
Totals	\$ 7.1	\$ (36.7)	\$ 43.8

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

A decrease of \$19.0 million in net cash provided by operating activities resulted from the following: (i) lease termination income of \$24.0 million from Home Depot at Canarsie Plaza in 2008 and (ii) a \$13.5 million decrease in distributions (primarily Albertson's) of operating income from unconsolidated affiliates in 2009. These 2009 decreases were offset by a \$24.0 million increase in other assets primarily related to additional cash used for the purchase of short term financial instruments in 2008 and the subsequent redemption of these financial instruments in 2009.

A decrease of \$178.9 million of net cash used in investing activities resulted from the following: (i) a decrease of \$112.4 million in expenditures for real estate, development and tenant installations in 2009 and (ii) a decrease of \$81.5 million in advances of notes receivable in 2009. These decreases in cash used were offset by (i) an additional \$11.7 million in proceeds from the sale of properties in 2008 and (ii) a decrease of \$6.3 million in collections of notes receivable in 2009.

The \$116.1 million decrease in net cash provided by financing activities resulted from the following decreases in cash for 2009: (i) \$114.2 million of additional cash used for repayment of debt in 2009, (ii) an additional \$40.7 million of cash used for the purchase of convertible notes in 2009, (iii) a decrease of \$21.1 million of proceeds received on borrowings of debt in 2009, and (iv) a decrease of \$20.4 million in capital contributions from noncontrolling interests in 2009. These 2009 cash decreases were offset by the following: (i) \$65.2 million of additional cash from the issuance of Common Shares, net of costs, in 2009, (ii) an additional \$13.7 million of distributions to noncontrolling interests in 2008, and (iii) an additional \$4.5 million of dividends paid to Common Shareholders in 2008.

CRITICAL ACCOUNTING POLICIES

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

Valuation of Property Held for Use and Sale

On a quarterly basis, we review the carrying value of both properties held for use and for sale. We perform the impairment analysis by calculating and reviewing net operating income on a property-by-property basis. We evaluate leasing projections and perform other analyses to conclude whether an asset is impaired. We record impairment losses and reduce the carrying value of properties when indicators of impairment are present and the expected undiscounted cash flows related to those properties are less than their carrying amounts. In cases where we do not expect to recover our carrying costs on properties held for use, we reduce our carrying cost to fair value. For properties held for sale, we reduce our carrying value to the fair value less costs to sell. For the years ended December 31, 2009, 2008 and 2007, no impairment losses were recognized. Management does not believe that the value of any properties in its portfolio was impaired as of December 31, 2009.

Investments in and Advances to Unconsolidated Joint Ventures

The Company periodically reviews its investment in unconsolidated joint ventures for other than temporary declines in market value. Any decline that is not expected to be recovered in the next twelve months is considered other than temporary and an impairment charge is recorded as a reduction in the carrying value of the investment. During the year ended December 31, 2009, the Company recorded a \$3.8 million impairment reserve related to a Fund I unconsolidated joint venture. No impairment charges related to the Company's investment in unconsolidated joint ventures were recognized for the years ended December 31, 2008 and 2007.

Bad Debts

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of tenants to make payments on arrearages in billed rents, as well as the likelihood that tenants will not have the ability to make payments on unbilled rents including estimated expense recoveries. We also maintain a reserve for straight-line rent receivables. For the years ended December 31, 2009 and 2008, we had recorded an allowance for doubtful accounts of \$7.0 million and \$5.7 million, respectively. If the financial condition of our tenants were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

Real Estate

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

Upon acquisitions of real estate, we assess the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases and acquired in-place leases and customer relationships) and acquired liabilities in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 805 "Business Combinations" (formerly Statement of Financial Accounting Standards ("SFAS") No. 141, "Business Combinations") and ASC Topic 350 "Intangibles – Goodwill and Other" (formerly SFAS No. 142, "Goodwill and Other Intangible Assets"), and allocate purchase price based on these assessments. We assess fair value based on estimated cash flow projections that utilize appropriate discount and capitalization rates and available market information. Estimates of future cash flows are based on a number of factors including the historical operating results, known trends, and market/economic conditions that may affect the property.

Revenue Recognition and Accounts Receivable

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

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

Notes Receivable and Preferred Equity Investment

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

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

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

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

INFLATION

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

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

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

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

Information as of December 31, 2009

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

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

The following table sets forth information as of December 31, 2009 concerning our long-term debt obligations, including principal cash flows by scheduled maturity and weighted average interest rates of maturing amounts (dollars in millions): Consolidated mortgage debt:

Year	Scheduled amortization	Maturities	Total	Weighted average interest rate
2010	\$ 2.1	\$ 130.5	\$ 132.6	2.2%
2011	2.5	328.6	331.1	2.9%
2012	2.5	52.9	55.4	3.8%
2013	2.9	8.8	11.7	5.5%
2014	2.8	17.3	20.1	5.8%
Thereafter	14.2	215.0	229.2	5.9%
	<u>\$ 27.0</u>	<u>\$ 753.1</u>	<u>\$ 780.1</u>	

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

Year	Scheduled amortization	Maturities	Total	Weighted average interest rate
2010	\$ 0.5	\$ 2.0	\$ 2.5	2.5%
2011	0.5	—	0.5	n/a%
2012	0.5	—	0.5	n/a%
2013	0.5	—	0.5	n/a%
2014	0.6	28.0	28.6	5.4%
Thereafter	—	36.9	36.9	6.0%
	<u>\$ 2.6</u>	<u>\$ 66.9</u>	<u>\$ 69.5</u>	

\$132.6 million of our total consolidated debt and \$2.5 million of our pro-rata share of unconsolidated outstanding debt will become due in 2010. \$331.1 million of our total consolidated debt and \$0.5 million of our pro-rata share of unconsolidated debt will become due in 2011. As we intend on refinancing some or all of such debt at the then-existing market interest rates, which may be greater than the current interest rate, our interest expense would increase by approximately \$4.7 million annually if the interest rate on the refinanced debt increased by 100 basis points. After giving effect to noncontrolling interests, the Company's share of this increase would be \$1.7 million. Interest expense on our variable debt of \$341.1 million, net of variable to fixed-rate swap agreements currently in effect, as of December 31, 2009 would increase \$3.4 million if LIBOR increased by 100 basis points. After giving effect to noncontrolling interests, the Company's share of this increase would be \$0.6 million. We may seek additional variable-rate financing if and when pricing and other commercial and financial terms warrant. As such, we would consider hedging against the interest rate risk related to such additional variable-rate debt through interest rate swaps and protection agreements, or other means.

Based on our outstanding debt balances as of December 31, 2009, the fair value of our total consolidated outstanding debt would decrease by approximately \$18.3 million if interest rates increase by 1%. Conversely, if interest rates decrease by 1%, the fair value of our total outstanding debt would increase by approximately \$20.5 million.

As of December 31, 2009 and 2008, we had preferred equity investments and notes receivable of \$125.2 million and \$125.6 million, respectively. We determined the estimated fair value of our preferred equity investment and notes receivable as of December 31, 2009 and 2008 were \$126.4 million and \$122.3 million, respectively, by discounting future cash receipts utilizing a discount rate equivalent to the rate at which similar notes receivable would be originated under conditions then existing.

Based on our outstanding preferred equity investments and notes receivable balances as of December 31, 2009, the fair value of our total outstanding preferred equity investments and notes receivable would decrease by approximately \$0.7 million if interest rates increase by 1%. Conversely, if interest rates decrease by 1%, the fair value of our total outstanding preferred equity investments and notes receivable would increase by approximately \$0.7 million.

Summarized Information as of December 31, 2008

As of December 31, 2008, we had total mortgage and convertible notes payable of \$753.8 million of which \$505.6 million, or 67% was fixed-rate, inclusive of interest rate swaps, and \$248.2 million, or 33%, was variable-rate based upon LIBOR plus certain spreads. As of December 31, 2008, 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 \$73.4 million and \$30.0 million of LIBOR-based variable-rate debt, respectively.

Interest expense on our variable debt of \$248.2 million as of December 31, 2008 would have increased \$2.5 million if LIBOR increased by 100 basis points. Based on our outstanding debt balances as of December 31, 2008, the fair value of our total outstanding debt would have decreased by approximately \$18.1 million if interest rates increased by 1%. Conversely, if interest rates decreased by 1%, the fair value of our total outstanding debt would have increased by approximately \$19.3 million.

Changes in Market Risk Exposures from 2008 to 2009

Our interest rate risk exposure from December 31, 2008 to December 31, 2009 has increased, as we had \$248.2 million in variable-rate debt (or 33% of our total debt) at December 31, 2008, as compared to \$341.1 million (or 44% of our total debt) in variable-rate debt at December 31, 2009. In addition, the amount of our total debt increased from \$753.8 million at December 31, 2008 to \$780.1 million at December 31, 2009. This increased amount of debt could expose us to greater fluctuations in the fair value of our debt.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

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

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

None.

ITEM 9A. CONTROLS AND PROCEDURES.

(i) Disclosure Controls and Procedures

We conducted an evaluation, under the supervision and with the participation of management including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2009 to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(ii) Internal Control Over Financial Reporting

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

Management of Acadia Realty Trust is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Securities Exchange Act of 1934 Rule 13(a)-15(f). Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2009 as required by the Securities Exchange Act of 1934 Rule 13(a)-15(c). In making this assessment, we used the criteria set forth in the framework in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). Based on our evaluation under the COSO criteria, our management concluded that our internal control over financial reporting was effective as of December 31, 2009 to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

BDO Seidman, LLP, an independent registered public accounting firm that audited our Financial Statements included in this Annual Report, has issued an attestation report on our internal control over financial reporting as of December 31, 2009, which appears in paragraph (b) of this Item 9A.

Acadia Realty Trust
White Plains, New York
March 1, 2010

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

The Shareholders and Trustees of
Acadia Realty Trust

We have audited Acadia Realty Trust and subsidiaries' internal control over financial reporting as of December 31, 2009, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). Acadia Realty Trust and subsidiaries' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on a company's internal control over financial reporting based on our audit.

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

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

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

In our opinion, Acadia Realty Trust and subsidiaries maintained in all material respects effective internal control over financial reporting as of December 31, 2009, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Acadia Realty Trust and subsidiaries as of December 31, 2009 and 2008 and the related consolidated statements of income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2009 and our report dated March 1, 2010 expressed an unqualified opinion thereon.

/s/ BDO Seidman, LLP
New York, New York
March 1, 2010

(c) Changes in internal control over financial reporting

There was no change in our internal control over financial reporting during our fourth fiscal quarter ended December 31, 2009 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION.

None

PART III

In accordance with the rules of the SEC, certain information required by Part III is omitted and is incorporated by reference into this Form 10-K from our definitive proxy statement relating to our 2010 annual meeting of stockholders (our "2010 Proxy Statement") that we intend to file with the SEC no later than April 30, 2010.

ITEM 10. DIRECTORS; EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

The information under the following headings in the 2010 Proxy Statement is incorporated herein by reference:

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

ITEM 11. EXECUTIVE COMPENSATION.

The information under the following headings in the 2010 Proxy Statement is incorporated herein by reference:

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

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

The information under the heading "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT" in the 2010 Proxy Statement is incorporated herein by reference.

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

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

The information under the following headings in the 2010 Proxy Statement is incorporated herein by reference:

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

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

The information under the heading "AUDIT COMMITTEE INFORMATION" in the 2010 Proxy Statement is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.

1. *Financial Statements*: See "Index to Financial Statements" at page F-1 below.
2. *Financial Statement Schedule*: See "Schedule III—Real Estate and Accumulated Depreciation" at page F-43 below.
3. *Exhibits*: The index of exhibits below is incorporated herein by reference.

SIGNATURES

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

ACADIA REALTY TRUST (Registrant)

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

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

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

Dated: March 1, 2010

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

Signature	Title	Date
/s/ Kenneth F. Bernstein (Kenneth F. Bernstein)	Chief Executive Officer, President and Trustee (Principal Executive Officer)	March 1, 2010
/s/ Michael Nelsen (Michael Nelsen)	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	March 1, 2010
/s/ Jonathan W. Grisham (Jonathan W. Grisham)	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)	March 1, 2010
/s/ Douglas Crocker II (Douglas Crocker II)	Trustee	March 1, 2010
/s/ Suzanne Hopgood (Suzanne Hopgood)	Trustee	March 1, 2010
/s/ Lorrence T. Kellar (Lorrence T. Kellar)	Trustee	March 1, 2010
/s/ Wendy Luscombe (Wendy Luscombe)	Trustee	March 1, 2010
/s/ William T. Spitz (William T. Spitz)	Trustee	March 1, 2010
/s/ Lee S. Wielansky (Lee S. Wielansky)	Trustee	March 1, 2010

EXHIBIT INDEX

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

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

Exhibit No.	Description
10.17	Mortgage, Assignment of Leases and Rents and Security Agreement from Acadia Cortlandt LLC to Bank of America, N.A. dated July 29, 2009 [Initial Advance], Note made by Acadia Cortlandt LLC in favor of Bank of America, N.A. dated July 29, 2009 [Initial Advance], Mortgage, Assignment of Leases and Rents and Security Agreement from Acadia Cortlandt LLC to Bank of America, N.A. dated July 29, 2009 [Future Advance] and Note made by Acadia Cortlandt LLC in favor of Bank of America, N.A. dated July 29, 2009 [Future Advance] (33)
10.18	Consolidated, Amended and Restated Term Loan Agreement among Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC as borrower and The lenders Party Hereto as lenders and Eurohypo AG, New York Branch as Administrative Agent; Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC in favor of Eurohypo AG, New York Branch as Administrative Agent; Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and Amalgamated Bank; Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and Deutsche Genossenschafts – Hypothekenbank AG; Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and Eurohypo AG, New York Branch; and Replacement Note between Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC and TD Bank. All dated November 4, 2009. (34)
10.20	Secured Promissory Note between RD Absecon Associates, L.P. and Fleet Bank, N.A. dated February 8, 2000 (7)
10.21	Promissory Note between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18)
10.22	Open-End Mortgage, Assignment of Leases and Rents, and Security Agreement between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18)
10.23	Promissory Note between Merrillville Realty, L.P. and Sun America Life Insurance Company dated July 7, 1999 (7)
10.24	Secured Promissory Note between Acadia Town Line, LLC and Fleet Bank, N.A. dated March 21, 1999 (7)
10.25	Promissory Note between RD Village Associates Limited Partnership and Sun America Life Insurance Company Dated September 21, 1999 (7)
10.26	First Amendment to Severance Agreements between the Company and Joel Braun Executive Vice President and Chief Investment Officer, Michael Nelsen, Senior Vice President and Chief Financial Officer, Robert Masters, Senior Vice President, General Counsel, Chief Compliance Officer and Secretary and Joseph Hogan, Senior Vice President and Director of Construction dated January 19, 2007 (21) (26)
10.33	Term Loan Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10)
10.34	Mortgage Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10)
10.44	Prospectus Supplement Regarding Options Issued under the Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan (19) (21)
10.45	Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan Deferral and Distribution Election Form (19) (21)
10.46	Amended, Restated And Consolidated Promissory Note between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19)
10.47	Amended, Restated And Consolidated Mortgage, Assignment Of Leases And Rents And Security Agreement between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19)
10.51	Mortgage, Assignment of Leases and Rents and Security Agreement between Acadia Crescent Plaza, LLC and Greenwich Capital Financial Products, Inc. dated August 31, 2005 (22)

Exhibit No.	Description
10.52	Mortgage, Assignment of Leases and Rents and Security Agreement between Pacesetter/Ramapo Associates and Greenwich Capital Financial Products, Inc. dated October 17, 2005 (22)
10.53	Loan Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (22)
10.54	Mortgage and Security Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (22)
10.55	Agreement and Plan Of Merger Dated as of December 22, 2005 by and among Acadia Realty Acquisition I, LLC, Ara Btc LLC, ARA MS LLC, ARA BS LLC, ARA BC LLC and ARA BH LLC, Acadia Investors, Inc., AII BTC LLC, AII MS LLC, AII BS LLC, AII BC LLC And AII BH LLC, Samuel Ginsburg 2000 Trust Agreement #1, Martin Ginsburg 2000 Trust Agreement #1, Martin Ginsburg, Samuel Ginsburg and Adam Ginsburg, and GDC SMG, LLC, GDC Beechwood, LLC, Aspen Cove Apartments, LLC and SMG Celebration, LLC (23)
10.56	Amended and Restated Loan Agreement between Acadia Realty Limited Partnership, as lender, and Levitz SL Woodbridge, L.L.C., Levitz SL St. Paul, L.L.C., Levitz SL La Puente, L.L.C., Levitz SL Oxnard, L.L.C., Levitz SL Willowbrook, L.L.C., Levitz SL Northridge, L.L.C., Levitz SL San Leandro, L.L.C., Levitz SL Sacramento, L.L.C., HL Brea, L.L.C., HL Deptford, L.L.C., HL Hayward, L.L.C., HL San Jose, L.L.C., HL Scottsdale, L.L.C., HL Torrance, L.L.C., HL Irvine 1, L.L.C., HL West Covina, L.L.C., HL Glendale, L.L.C. and HL Northridge, L.L.C., each a Delaware limited liability company, Levitz SL Langhorne, L.P. and HL Fairless Hills, L.P., each a Delaware limited partnership (each, together with its permitted successors and assigns, a “ <i>Borrower</i> ”, and collectively, together with their respective permitted successors and assigns, “ <i>Borrowers</i> ”), dated June 1, 2006 (24)
10.57	Consent and Assumption Agreement between Thor Chestnut Hill, LP, Thor Chestnut Hill II, LP, Acadia Chestnut, LLC, Acadia Realty Limited Partnership and Wells Fargo Bank, N.A. dated June 9, 2006, original Mortgage and Security Agreement between Thor Chestnut Hill, LP and Thor Chestnut Hill II, LP and Column Financial, Inc. dated June 5, 2003 and original Assignment of Leases and Rents from Thor Chestnut Hill, LP and Thor Chestnut Hill II, LP to Column Financial, Inc. dated June 2003. (24)
10.58	Loan Agreement and Promissory Note between RD Woonsocket Associates, L.P. and Merrill Lynch Mortgage Lending, Inc. dated September 8, 2006 (25)
10.59	Amended and Restated Revolving Loan Agreement dated as of December 19, 2006 by and among RD Abington Associates LP, Acadia Town Line, LLC, RD Methuen Associates LP, RD Absecon Associates, LP, RD Bloomfield Associates, LP, RD Hobson Associates, LP, and RD Village Associates LP, and Bank of America, N.A. and the First Amendment to Amended and Restated Revolving Loan Agreement dated February, 2007. (26)
10.60	Loan Agreement between Bank of America, N.A. and RD Branch Associates, LP dated December 19, 2006. (26)
10.61	Loan Agreement between 239 Greenwich Associates Limited Partnership and Wachovia Bank, National Association dated January 25, 2007. (28)
10.62	Revolving Credit Agreement between Acadia Realty Limited Partnership and Washington Mutual Bank dated March 29, 2007. (28)
10.63	Loan Agreement between Acadia Merrillville Realty, L.P. and Bear Stearns Commercial Mortgage, Inc dated July 2, 2007. (29)
10.64	Promissory Note between Acadia Merrillville Realty, L.P. and Bear Stearns Commercial Mortgage, Inc dated July 2, 2007. (29)
10.65	Loan Agreement Note between APA 216 th Street and Bank of America, N.A. dated September 11, 2007. (29)
10.66	Promissory Note between APA 216 th Street and Bank of America, N.A. dated September 11, 2007. (29)
10.67	Acquisition and Project Loan agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007 (30)

Exhibit No.	Description
10.68	Building Loan Agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007 (30)
10.69	Revolving credit agreement between Acadia Strategic Opportunity Fund III, LLC. and Bank of America, N.A. dated October 10, 2007 (30)
10.70	Mortgage Consolidation and Modification Agreement between Acadia Tarrytown LLC and Anglo Irish Bank Corporation, PLC dated October 30, 2007 (30)
10.71	Project Loan Agreement between P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (30)
10.72	Building Loan Agreement P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (30)
10.73	Project Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (30)
10.74	Building Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (30)
10.75	Certain information regarding the compensation arrangements with certain officers of registrant (Incorporated by reference to Item 5.02 of the registrant’s Form 8-K filed with the SEC on February 4, 2008)
10.76	Real Estate Purchase and Sale Agreement between Suffern Self Storage, L.L.C., Jersey City Self Storage, L.L.C., Linden Self Storage, L.L.C., Webster Self Storage, L.L.C., Bronx Self Storage, L.L.C., American Storage Properties North LLC, and The Storage Company LLC (collectively, as Seller) and Acadia Storage Post LLC, a Delaware limited liability company, as Buyer, for ten Properties and Storage Facilities located thereon (31)
10.77	Real Estate Purchase and Sale Agreement between American Storage Properties North LLC, as Seller and Acadia Storage Post Metropolitan Avenue LLC, as Buyer for 4805 Metropolitan Avenue, Unit 2, Maspeth, Queens, New York (31)
10.78	First Amendment to Real Estate Purchase and Sale Agreement between Suffern Self Storage, L.L.C., Jersey City Self Storage, L.L.C., Linden Self Storage, L.L.C., Webster Self Storage, L.L.C., Bronx Self Storage, L.L.C., American Storage Properties North LLC, and The Storage Company LLC (collectively, “Seller”) and Acadia Storage Post LLC (“Buyer”) (31)
10.79	Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11)
10.80	First and Second Amendments to the Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11)
10.81	Third Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18)
10.82	Fourth Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18)
21	List of Subsidiaries of Acadia Realty Trust (34)
23.1	Consent of Registered Public Accounting Firm to incorporation by reference its reports into Forms S-3 and Forms S-8 (34)
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 (34)
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 (34)
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 (34)
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 (34)

Exhibit No.	Description
99.1	Certificate of Designation of Series A Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (2)
99.2	Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (18)

Notes:

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

Notes:

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

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Report of Independent Registered Public Accounting Firm

The Shareholders and Trustees of
Acadia Realty Trust

We have audited the accompanying consolidated balance sheets of Acadia Realty Trust and subsidiaries (the “Company”) as of December 31, 2009 and 2008 and the related consolidated statements of income, shareholders’ equity, and cash flows for each of the three years in the period ended December 31, 2009. In connection with our audits of the financial statements we have also audited the accompanying financial statement schedule listed on page F-1. These financial statements and schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Acadia Realty Trust and subsidiaries at December 31, 2009, and 2008 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009, in conformity with generally accepted accounting principles in the United States of America.

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

As discussed in Note 1 to the consolidated financial statements, the Company retrospectively changed its method of accounting for its convertible debt instruments with the adoption of the guidance originally issued in FSP APB 14-1 “Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)” (ASC Topic 470-20, “Debt with Conversion and Other Options”) effective January 1, 2009. The Company also retrospectively changed its presentation of non-controlling interests with the adoption of the guidance originally issued in SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements” (ASC Topic 810-10, “Consolidation”) effective January 1, 2009.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Acadia Realty Trust and subsidiaries’ internal control over financial reporting as of December 31, 2009, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated March 1, 2010 expressed an unqualified opinion thereon.

/s/ BDO Seidman, LLP

New York, New York
March 1, 2010

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	December 31,	
	2009	2008
	(dollars in thousands)	
ASSETS		
Operating real estate		
Land	\$ 221,740	\$ 192,496
Buildings and improvements	845,751	648,112
Construction in progress	2,575	16,618
	1,070,066	857,226
Less: accumulated depreciation	193,745	165,067
	876,321	692,159
Real estate under development	137,340	234,769
Cash and cash equivalents	93,808	86,691
Cash in escrow	8,582	6,794
Investments in and advances to unconsolidated affiliates	51,712	54,978
Rents receivable, net	16,782	12,648
Notes receivable and preferred equity investment, net	125,221	125,587
Deferred charges, net of amortization	28,311	21,899
Acquired lease intangibles, net of amortization	22,382	19,476
Prepaid expenses and other assets, net of amortization	22,005	31,692
Assets of discontinued operations	—	4,690
	\$ 1,382,464	\$ 1,291,383
LIABILITIES AND SHAREHOLDERS' EQUITY		
Mortgage notes payable	\$ 732,287	\$ 653,543
Convertible notes payable, net of unamortized discount of \$2,105 and \$6,597, respectively	47,910	100,403
Acquired lease and other intangibles, net of amortization	6,753	6,506
Accounts payable and accrued expenses	17,548	22,179
Dividends and distributions payable	7,377	25,514
Distributions in excess of income from, and investments in, unconsolidated affiliates	20,589	20,633
Other liabilities	17,523	18,896
Liabilities of discontinued operations	—	1,481
	849,987	849,155
Shareholders' equity:		
Common shares, \$.001 par value, authorized 100,000,000 shares, issued and outstanding 39,787,018 and 32,357,530 shares, respectively	40	32
Additional paid-in capital	299,014	218,527
Accumulated other comprehensive loss	(2,994)	(4,508)
Retained earnings	16,125	13,671
	312,185	227,722
Total Common Shareholders equity	312,185	227,722
Noncontrolling interests in subsidiaries	220,292	214,506
	532,477	442,228
Total equity	532,477	442,228
	\$ 1,382,464	\$ 1,291,383

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

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME

	Years ended December 31,		
	2009	2008	2007
(dollars in thousands except per share amounts)			
Revenues			
Minimum rents	\$ 96,239	\$ 77,610	\$ 65,908
Percentage rents	477	510	526
Expense reimbursements	20,982	16,789	13,259
Lease termination income	2,751	23,961	—
Other property income	2,895	1,099	855
Management fee income	1,961	3,434	4,064
Interest income	20,340	14,533	10,315
Other income	1,700	—	165
Total revenues	147,345	137,936	95,092
Operating Expenses			
Property operating	29,829	24,092	13,792
Real estate taxes	16,812	12,123	9,415
General and administrative	22,013	24,545	22,929
Depreciation and amortization	37,218	33,334	25,114
Abandonment of project costs	2,487	630	129
Reserve for notes receivable	1,734	4,392	—
Total operating expenses	110,093	99,116	71,379
Operating income	37,252	38,820	23,713
Equity in (losses) earnings of unconsolidated affiliates	(1,529)	19,906	6,619
Impairment of investment in unconsolidated affiliate	(3,768)	—	—
Interest and other finance expense	(32,154)	(28,893)	(24,564)
Gain on debt extinguishment	7,057	1,523	—
Gain on sale of land	—	763	—
Income from continuing operations before income taxes	6,858	32,119	5,768
Income tax expense	(1,541)	(3,362)	(297)
Income from continuing operations	5,317	28,757	5,471
Discontinued operations			
Operating income from discontinued operations	246	1,498	1,975
Gain on sale of property	7,143	7,182	5,271
Income from discontinued operations	7,389	8,680	7,246
Extraordinary item			
Share of extraordinary gain from investment in unconsolidated affiliate	—	—	30,200
Income tax provision	—	—	(2,356)
Income from extraordinary item	—	—	27,844
Net income	12,706	37,437	40,561
Loss (income) attributable to noncontrolling interests in subsidiaries:			
Continuing operations	23,282	(11,630)	9,558
Discontinued operations	(4,855)	(739)	(606)
Extraordinary item	—	—	(24,167)
Net loss (income) attributable to noncontrolling interests in subsidiaries	18,427	(12,369)	(15,215)
Net income attributable to Common Shareholders	\$ 31,133	\$ 25,068	\$ 25,346
Income from continuing operations attributable to Common Shareholders	\$ 28,599	\$ 17,127	\$ 15,029
Income from discontinued operations attributable to Common Shareholders	2,534	7,941	6,640
Income from extraordinary item attributable to Common Shareholders	—	—	3,677
Net income attributable to Common Shareholders	\$ 31,133	\$ 25,068	\$ 25,346
Basic earnings per share			
Income from continuing operations	\$ 0.75	\$ 0.51	\$ 0.45
Income from discontinued operations	0.07	0.23	0.20
Income from extraordinary item	—	—	0.11

Basic earnings per share	\$	0.82	\$	0.74	\$	0.76
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Diluted earnings per share						
Income from continuing operations	\$	0.75	\$	0.50	\$	0.44
Income from discontinued operations		0.07		0.23		0.19
Income from extraordinary item		—		—		0.11
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Diluted earnings per share	\$	0.82	\$	0.73	\$	0.74
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The accompanying notes are an integral part of these consolidated financial statements

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(amounts in thousands, except per share amounts)

	Common Shares	Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Common Shareholders' Equity	Noncontrolling Interests	Total Shareholders' Equity
Balance as originally stated at January 1, 2007	31,773	\$ 31	\$ 227,555	\$ (234)	\$ 13,767	\$ 241,119	\$ 113,736	\$ 354,855
Adjustment Due to ASC 470-20 cumulative effect of accounting change			9,544		(96)	9,448		9,448
Revised balance as of January 1, 2007	31,773	31	237,099	(234)	13,671	250,567	113,736	364,303
Conversion of 4,000 Series B Preferred OP Units to Common Shares by limited partners of the Operating Partnership	312	—	4,000	—	—	4,000	(4,000)	—
Employee Restricted Share awards	103	1	3,151	—	—	3,152	134	3,286
Dividends declared (\$1.0325 per Common Share)	—	—	(8,349)	—	(25,346)	(33,695)	(690)	(34,385)
Employee exercise of 17,474 options to purchase Common Shares	17	—	174	—	—	174	—	174
Common Shares issued under Employee Share Purchase Plan	7	—	183	—	—	183	—	183
Issuance of Common Shares to Trustees	13	—	346	—	—	346	—	346
Employee Restricted Shares cancelled	(41)	—	(1,094)	—	—	(1,094)	—	(1,094)
Conversion options on Convertible Notes issued (Note 11)	—	—	1,457	—	—	1,457	—	1,457
Noncontrolling interest distributions	—	—	—	—	—	—	(63,691)	(63,691)
Noncontrolling interest contributions	—	—	—	—	—	—	110,542	110,542
Net income	—	—	—	—	25,346	25,346	15,216	40,562
Unrealized loss on valuation of swap agreements	—	—	—	(921)	—	(921)	(136)	(1,057)
Amortization of derivative instrument	—	—	—	202	—	202	—	202
Total comprehensive income	—	—	—	—	—	24,627	15,080	39,707
Balance at December 31, 2007	32,184	32	236,967	(953)	13,671	249,717	171,111	420,828
Employee Restricted Share awards	137	—	2,917	—	—	2,917	1,863	4,780
Dividends declared (\$1.39 per Common Share)	—	—	(20,385)	—	(25,068)	(45,453)	(1,192)	(46,645)
Employee exercise of 110,245 options to purchase Common Shares	110	—	841	—	—	841	—	841
Common Shares issued under Employee Share Purchase Plan	7	—	180	—	—	180	—	180
Issuance of Common Shares to Trustees	2	—	81	—	—	81	—	81
Employee Restricted Shares cancelled	(83)	—	(1,997)	—	—	(1,997)	—	(1,997)
Conversion options on Convertible Notes purchased (Note 11)	—	—	(77)	—	—	(77)	—	(77)
Noncontrolling interest distributions	—	—	—	—	—	—	(15,347)	(15,347)
Noncontrolling interest contributions	—	—	—	—	—	—	46,014	46,014
Net income	—	—	—	—	25,068	25,068	12,369	37,437
Unrealized loss on valuation of swap agreements	—	—	—	(4,179)	—	(4,179)	(421)	(4,600)
Reclassification of realized interest on swap agreements	—	—	—	624	—	624	109	733
Total comprehensive income	—	—	—	—	—	21,513	12,057	33,570
Balance at December 31, 2008	32,357	32	218,527	(4,508)	13,671	227,722	214,506	442,228

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(amounts in thousands, except per share amounts)

	Common Shares	Common Shares Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Common Shareholders' Equity	Noncontrolling Interests	Total Shareholders' Equity
Conversion of 15,666 OP Units to Common Shares by limited partners of the Operating Partnership	16	—	90	—	—	90	(90)	—
Issuance of Common Shares through special dividend	1,287	2	16,190	—	—	16,192	—	16,192
Employee Restricted Share awards	253	—	2,957	—	—	2,957	890	3,847
Dividends declared (\$0.75 per Common Share)	—	—	—	—	(28,679)	(28,679)	(795)	(29,474)
Employee exercise of 258,900 options to purchase Common Shares	259	—	1,556	—	—	1,556	—	1,556
Common Shares issued under Employee Share Purchase Plan	9	—	106	—	—	106	—	106
Issuance of Common Shares to Trustees	25	—	635	—	—	635	—	635
Employee Restricted Shares cancelled	(359)	—	(5,423)	—	—	(5,423)	—	(5,423)
Issuance of Common Shares, net of issuance costs	5,750	6	65,216	—	—	65,222	—	65,222
Deferred shares converted to Common Shares	190	—	—	—	—	—	—	—
Conversion options on Convertible Notes purchased (Note 11)	—	—	(840)	—	—	(840)	—	(840)
Noncontrolling interest distributions	—	—	—	—	—	—	(1,624)	(1,624)
Noncontrolling interest contributions	—	—	—	—	—	—	25,653	25,653
Net income	—	—	—	—	31,133	31,133	(18,427)	12,706
Unrealized loss on valuation of swap agreements	—	—	—	(912)	—	(912)	319	(593)
Reclassification of realized interest on swap agreements	—	—	—	2,426	—	2,426	(140)	2,286
Total comprehensive income (loss)	—	—	—	—	—	32,647	(18,248)	14,399
Balance at December 31, 2009	39,787	\$ 40	\$ 299,014	\$ (2,994)	\$ 16,125	\$ 312,185	\$ 220,292	\$ 532,477

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

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	2009	Years ended December 31, 2008	2007
	(dollars in thousands)		
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 12,706	\$ 37,437	\$ 40,561
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	37,242	34,908	28,361
Gain on sale of property	(7,143)	(7,945)	(5,271)
Gain on debt extinguishment	(7,057)	(1,523)	—
Amortization of lease intangibles	5,006	6,856	722
Amortization of mortgage note premium	(36)	(782)	(111)
Amortization of discount on convertible debt	1,280	2,101	1,991
Non-cash accretion of notes receivable	(5,352)	(2,367)	(148)
Share compensation expense	3,969	3,434	3,285
Equity in (earnings) losses of unconsolidated affiliates	1,529	(19,906)	(36,819)
Impairment of investment in unconsolidated affiliate	3,768	—	—
Distributions of operating income from unconsolidated affiliates	880	14,420	36,666
Abandonment of project costs	2,487	630	129
Amortization of derivative settlement included in interest expense	—	—	202
Reserve for notes receivable	1,734	4,392	—
Provision for bad debt	4,132	3,593	881
Changes in assets and liabilities:			
Changes in assets and liabilities			
Cash in escrows	(1,788)	(157)	667
Rents receivable	(8,370)	(2,305)	(2,061)
Prepaid expenses and other assets, net	8,156	(15,865)	24,074
Accounts payable and accrued expenses	(5,902)	8,368	4,962
Other liabilities	221	1,228	7,203
Net cash provided by operating activities	47,462	66,517	105,294
CASH FLOWS FROM INVESTING ACTIVITIES:			
Investment in real estate and improvements	(127,322)	(245,033)	(210,356)
Deferred acquisition and leasing costs	(11,368)	(6,068)	(1,746)
Investments in and advances to unconsolidated affiliates	(5,603)	(7,918)	(39,712)
Return of capital from unconsolidated affiliates	4,705	4,052	26,625
Repayments of notes receivable	13,614	19,922	11,071
Advances on notes receivable	(9,362)	(90,847)	(14,548)
Proceeds from sale of property	11,956	23,627	19,668
Net cash used in investing activities	(123,380)	(302,265)	(208,998)

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	2009	Years ended December 31, 2008	2007
	(dollars in thousands)		
CASH FLOWS FROM FINANCING ACTIVITIES:			
Principal payments on mortgage notes	(182,610)	(68,412)	(165,451)
Proceeds received on mortgage notes	260,065	281,192	222,218
Purchase of convertible notes	(46,736)	(6,042)	—
Proceeds received on convertible notes	—	—	15,000
Increase in deferred financing and other costs	(1,755)	(1,763)	(4,128)
Capital contributions from noncontrolling interests in partially-owned affiliates	25,653	46,014	110,542
Distributions to noncontrolling interests in partially-owned affiliates	(1,624)	(15,347)	(63,662)
Dividends paid to Common Shareholders	(30,163)	(34,710)	(26,039)
Distributions to noncontrolling interests in Operating Partnership	(1,222)	(809)	(527)
Distributions on preferred Operating Partnership Units to noncontrolling interests	(33)	(27)	(86)
Proceeds from issuance of Common Shares, net of issuance costs	65,222	—	—
Cancellation of Common Shares	(5,424)	(2,102)	(1,094)
Common Shares issued under Employee Share Purchase Plan	106	261	529
Exercise of options to purchase Common Shares	1,556	841	174
Net cash provided by financing activities	83,035	199,096	87,476
Increase (decrease) in cash and cash equivalents	7,117	(36,652)	(16,228)
Cash and cash equivalents, beginning of period	86,691	123,343	139,571
Cash and cash equivalents, end of period	\$ 93,808	\$ 86,691	\$ 123,343
Supplemental disclosure of cash flow information:			
Cash paid during the period for interest, including capitalized interest of \$3,516, \$6,779, and \$3,031, respectively	\$ 33,699	\$ 33,778	\$ 26,705
Cash paid for income taxes	\$ 777	\$ 6,633	\$ 348
Supplemental disclosure of non-cash investing and financing activities:			
Acquisition of real estate through assumption of debt	\$ —	\$ 39,967	\$ —
Issuance of notes receivable in connection with sale of real estate	\$ —	\$ —	\$ (18,000)
Dividends paid through the issuance of Common Shares	\$ 16,192	\$ —	\$ —

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

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

As of December 31, 2009, the Company operated 79 properties, which it owns or has an ownership interest in, principally located in the Northeast, Mid-Atlantic and Midwest regions of the United States.

All of the Company’s assets are held by, and all of its operations are conducted through, Acadia Realty Limited Partnership (the “Operating Partnership”) and entities in which the Operating Partnership owns a controlling interest. As of December 31, 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 referred to as an umbrella partnership REIT or “UPREIT.”

During September of 2001, the Company formed a partnership, Acadia Strategic Opportunity Fund I, LP (“Fund I”), and during August of 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 a total of \$70.0 million for the purpose of acquiring real estate investments. As of December 31, 2009, Fund I was fully invested, with the Operating Partnership having contributed \$16.5 million to Fund I and \$2.7 million to Mervyns I.

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

During June of 2004, the Company formed Acadia Strategic Opportunity Fund II, LLC (“Fund II”), and during August 2004 formed Acadia Mervyn Investors II, LLC (“Mervyns II”), with the investors from Fund I as well as two additional institutional investors with a total of \$300.0 million of committed discretionary capital. The Operating Partnership’s share of committed capital is \$60.0 million. The Operating Partnership is the managing member with a 20% interest in both Fund II and Mervyns II. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I, including the Promote structure, with the exception that the Preferred Return is 8%. As of December 31, 2009, the Operating Partnership had contributed \$37.1 million to Fund II and \$7.6 million to Mervyns II.

During May of 2007, the Company formed Acadia Strategic Opportunity Fund III LLC (“Fund III”) with fourteen institutional investors, including a majority of the investors from Fund I and Fund II with a total of \$503.0 million of committed discretionary capital. The Operating Partnership’s share of the invested capital is \$100.0 million and it is the managing member with a 19.9% interest in Fund III. The terms and structure of Fund III are substantially the same as the previous Funds I and II, including the Promote structure, with the exception that the Preferred Return is 6%. As of December 31, 2009, the Operating Partnership had contributed \$19.2 million to Fund III.

Principles of Consolidation

The consolidated financial statements include the consolidated accounts of the Company and its controlling investments in partnerships and limited liability companies in which the Company is presumed to have control in accordance Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 810 “Consolidation” (formerly Emerging Issues Task Force (“EITF”) Issue No. 04-5) (“ASC Topic 810”). The ownership interests of other investors in these entities are recorded as noncontrolling interests. All significant intercompany balances and transactions have been eliminated in consolidation. Investments in entities for which the Company has the ability to exercise significant influence over, but does not have financial or operating control, are accounted for using the equity method of accounting. Accordingly, the Company’s share of the earnings (or loss) of these entities are included in consolidated net income.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

Variable interest entities within the scope of ASC Topic 810 (formerly FASB Interpretation No. 46-R, "Consolidation of Variable Interest Entities") are required to be consolidated by their primary beneficiary. The primary beneficiary of a variable interest entity is determined to be the party that bears a majority of the entity's expected losses, receives a majority of its expected returns, or both. Management has evaluated the applicability of ASC Topic 810 to its investments in certain joint ventures and determined that these joint ventures are not variable interest entities or that the Company is not the primary beneficiary and, therefore, consolidation of these ventures is not required. These investments are accounted for using the equity method.

Investments in and Advances to Unconsolidated Joint Ventures

The Company accounts for its investments in unconsolidated joint ventures using the equity method as it does not exercise control over significant asset decisions such as buying, selling or financing nor is it the primary beneficiary under ASC Topic 810, as discussed above. The Company does have significant influence over the investments which requires equity method accounting. Under the equity method, the Company increases its investment for its proportionate share of net income and contributions to the joint venture and decreases its investment balance by recording its proportionate share of net loss and distributions. The Company recognizes income for distributions in excess of its investment where there is no recourse to the Company. For investments in which there is recourse to the Company, distributions in excess of the investment are recorded as a liability. Although the Company accounts for its investment in Albertson's (Note 4) under the equity method of accounting, the Company adopted the policy of not recording its equity in earnings or losses of this unconsolidated affiliate until it receives the audited financial statements of Albertson's to support the equity earnings or losses in accordance with ASC Topic 323 "Investments – Equity Method and Joint Ventures" (formerly Accounting Principles Board ("APB") 18 "Equity Method of Accounting for Investments in Common Stock").

The Company periodically reviews its investment in unconsolidated joint ventures for other than temporary losses in investment value. Any decline that is not expected to be recovered is considered other than temporary and an impairment charge is recorded as a reduction in the carrying value of the investment. During the year ended December 31, 2009, the Company recorded a \$3.8 million impairment charge related to a Fund I unconsolidated joint venture. No impairment charges related to the Company's investment in unconsolidated joint ventures were recognized for the years ended December 31, 2008 and 2007.

Use of Estimates

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

Real Estate

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

Upon acquisitions of real estate, the Company assesses the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases and acquired in-place leases and customer relationships) and acquired liabilities in accordance with ASC Topic 805 "Business Combinations" (formerly SFAS No. 141, "Business Combinations")

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

and ASC Topic 350 “Intangibles – Goodwill and Other” (formerly SFAS No. 142, “Goodwill and Other Intangible Assets”), and allocates acquisition price based on these assessments. The Company assesses fair value based on estimated cash flow projections that utilize appropriate discount and capitalization rates and available market information. Estimates of future cash flows are based on a number of factors including the historical operating results, known trends, and market/economic conditions that may affect the property.

The Company reviews its long-lived assets used in operations for impairment when there is an event, or change in circumstances that indicates that the carrying amount may not be recoverable. The Company records impairment losses and reduces the carrying value of properties when indicators of impairment are present and the expected undiscounted cash flows related to those properties are less than their carrying amounts. In cases where the Company does not expect to recover its carrying costs on properties held for use, the Company reduces its carrying cost to fair value, and for properties held for sale, the Company reduces its carrying value to the fair value less costs to sell. During the years ended December 31, 2009, 2008 and 2007, no impairment losses were recognized. Management does not believe that the values of its properties within the portfolio are impaired as of December 31, 2009.

Sale of Real Estate

The Company recognizes property sales in accordance with ASC Topic 970 “Real Estate” (formerly SFAS No. 66, “Accounting for Sales of Real Estate”). The Company generally records the sales of operating properties and outparcels using the full accrual method at closing when the earnings process is deemed to be complete. Sales not qualifying for full recognition at the time of sale are accounted for under other appropriate deferral methods.

Real Estate Held for Sale

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

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

Deferred Costs

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

Management Contracts

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

Revenue Recognition and Accounts Receivable

Leases with tenants are accounted for as operating leases. Minimum rents are recognized on a straight-line basis over the term of the respective leases, beginning when the tenant takes possession of the space. As of December 31, 2009 and 2008, included in rents receivable, net on the accompanying consolidated balance sheet, unbilled rents receivable relating to straight-lining of rents were \$12.7 million and \$11.1 million, respectively. Certain of these leases also provide for percentage rents based upon the level of sales achieved by the tenant. Percentage rent is recognized in the period when the tenants’ sales breakpoint is met. In addition, leases typically provide for the reimbursement to the Company of real estate taxes, insurance and other property operating expenses. These reimbursements are recognized as revenue in the period the expenses are incurred.

The Company makes estimates of the uncollectability of its accounts receivable related to tenant revenues. An allowance for doubtful accounts has been provided against certain tenant accounts receivable that are estimated to be uncollectible. Once the amount is ultimately deemed to be uncollectible, it is written off. Rents receivable at December 31, 2009 and 2008 are shown net of an allowance for doubtful accounts of \$7.0 million and \$5.7 million, respectively.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

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

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

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

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents.

Restricted Cash and Cash in Escrow

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

Income Taxes

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

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

TRS income taxes are accounted for under the liability method as required by ASC Topic 740 "Income Taxes" (formerly SFAS No. 109, "Accounting for Income Taxes"). Under the liability method, deferred income taxes are recognized for the temporary differences between the financial reporting basis and the tax basis of the TRS income, assets and liabilities.

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued**Stock-based Compensation**

The Company accounts for stock options pursuant to ASC Topic 718 “Compensation – Stock Compensation” (formerly SFAS No. 123R “Accounting for Stock-Based Compensation”). As such, all equity based awards are reflected as compensation expense in the Company’s consolidated financial statements over their vesting period based on the fair value at the date the stock option was granted.

Recent Accounting Pronouncements

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

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

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

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

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

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

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

Net income	\$ 42,485	\$ 40,561	\$ (1,924)
Net income attributable to Common Shareholders	\$ 27,270	\$ 25,346	\$ (1,924)
Basic earnings per share	\$ 0.81	\$ 0.76	\$ (0.05)
Diluted earnings per share	\$ 0.80	\$ 0.74	\$ (0.06)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

Recent Accounting Pronouncements, continued

Affected Consolidated Statement of Cash Flow Accounts

	Year ended December 31, 2008		
	Before Adjustment	As Adjusted	Effect of Change
Depreciation and amortization	\$ 34,964	\$ 34,908	\$ (56)
Gain on debt extinguishment	\$ (1,958)	\$ (1,523)	\$ 435
Amortization of discount on convertible debt	\$ —	\$ 2,101	\$ 2,101

	Year ended December 31, 2007		
	Before Adjustment	As Adjusted	Effect of Change
Depreciation and amortization	\$ 28,428	\$ 28,361	\$ (67)
Amortization of discount on convertible debt	\$ —	\$ 1,991	\$ 1,991

In April 2009, the FASB issued ASC Topic 825 “Financial Instruments” (formerly FSP SFAS 107-1 and APB 28-1, “Interim Disclosures About Fair Value of Financial Instruments”) (“ASC Topic 825”). ASC Topic 825 amends SFAS No. 107, “Disclosures about Fair Values of Financial Instruments” and Accounting Principles Board Opinion No. 28, “Interim Financial Reporting,” to require disclosures about fair value of financial instruments in interim financial statements. ASC Topic 825 is effective for interim periods ending after June 15, 2009. The Company adopted ASC Topic 825 and has provided the disclosures in Note 10 to the Consolidated Financial Statements. The adoption did not have an impact on the Company’s financial position and results of operations.

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

In June 2009, the FASB issued ASC 810 (formerly SFAS No. 167, “Amendments to FASB Interpretation No. 46(R)),” which changes the approach to determining the primary beneficiary of a variable interest entity and requires companies to more frequently assess whether they must consolidate a variable interest entity. ASC 810 is effective on the first annual reporting period that begins after November 15, 2009. The adoption of ASC 810 on January 1, 2010 did not have a material impact on the Company’s financial position and results of operations.

Comprehensive income

The following table sets forth comprehensive income for the years ended December 31, 2009, 2008 and 2007:

(dollars in thousands)	Years ended December 31,		
	2009	2008	2007
Net income attributable to Common Shareholders	\$ 31,133	\$ 25,068	\$ 25,346
Other comprehensive income (loss)	1,514	(3,555)	(719)
Comprehensive income attributable to Common Shareholders	\$ 32,647	\$ 21,513	\$ 24,627

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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

The following table sets forth the change in accumulated other comprehensive loss for the years ended December 31, 2009 and 2008:

Accumulated other comprehensive loss

(dollars in thousands)	Years ended December 31,	
	2009	2008
Beginning balance	\$ (4,508)	\$ (953)
Unrealized loss on valuation of derivative instruments and amortization of derivative	(912)	(4,179)
Reclassification of loss on derivative instruments to interest expense	2,426	624
Ending balance	\$ (2,994)	\$ (4,508)

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

The Company has historically made acquisitions through its Opportunity Funds and the Operating Partnership.

Acquisitions

On January 29, 2009, the Company acquired the 642,000 square foot Cortlandt Towne Center in Cortlandt, NY for \$78.0 million.

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

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

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

Additionally, on March 20, 2007, the Company purchased a single-tenant building located at 1545 East Service Road in Staten Island, New York for \$17.0 million.

On May 31, 2007, the Company purchased a property located on Atlantic Avenue in Brooklyn, New York for \$5.0 million. The property was redeveloped into a 110,000 square foot, six-story self-storage facility.

On June 13, 2007, the Company (approximately 25% of the invested equity), along with an unaffiliated partner (approximately 75% of the invested equity), acquired a leasehold interest in The Gallery at Fulton Street and adjacent parking garage located in downtown Brooklyn, New York for \$115.0 million. The property has been demolished and redevelopment plans for CityPoint are in the design phase.

On October 31, 2007, the Company, in conjunction with an unaffiliated partner, P/A Associates, LLC (collectively, "Acadia-P/A") acquired a 530,000 square foot warehouse building in Canarsie, Brooklyn for approximately \$21.0 million. Demolition and construction has commenced on the 320,000 square foot mixed-use project.

On November 1, 2007, the Company, and an unaffiliated partner acquired a property in Westport, Connecticut for approximately \$17.0 million. The plan is to redevelop the existing building into 30,000 square feet of retail and office use.

On November 5, 2007, the Company acquired a property in Sheepshead Bay, Brooklyn for approximately \$20.0 million. Redevelopment plans for this property are in the design phase.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

2. Acquisition and Disposition of Properties and Discontinued Operations, continued

Dispositions

During 2009, 2008 and 2007, the Company disposed of the following properties:

(dollars in thousands)

Property	Year sold	Sales Price	Gain/(Loss)	GLA
Blackman Plaza	2009	\$ 2,500	\$ 1,506	125,264
Six Kroger locations	2009	9,481	5,637	277,700
Village Apartments	2008	23,300	7,182	599,106
Amherst Marketplace & Sheffield Crossing	2007	26,000	7,516	192,479
Colony & GHT Apartments	2007	15,500	(2,245)	625,545
Total		\$ 76,781	\$ 19,596	1,820,094

B. Discontinued Operations

In accordance with ASC 205-20 "Presentation of Financial Statements, Discontinued Operations", which requires discontinued operations presentation for disposals of a "component" of an entity, for all periods presented, the Company reclassified its consolidated statements of income to reflect income and expenses for properties that were sold prior to December 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 as of December 31, 2008 and results of operations of the properties classified as discontinued operations for the years ended December 31, 2009, 2008 and 2007 are summarized as follows:

ASSETS	December 31, 2008
(dollars in thousands)	
Net real estate	\$ 4,635
Rents receivable, net	12
Prepaid expenses and other assets, net	43
Total assets of discontinued operations	\$ 4,690
LIABILITIES	
Mortgage Notes Payable	1,325
Accounts payable and accrued expenses	57
Other liabilities	99
Total liabilities of discontinued operations	\$ 1,481

STATEMENT OF OPERATIONS	2009	Years ended December 31, 2008	2007
(dollars in thousands)			
Total revenues	\$ 644	\$ 4,136	\$ 12,948
Total expenses	398	2,638	10,973
Operating Income	246	1,498	1,975
Gain on sale of property	7,143	7,182	5,271
Income from discontinued operations	7,389	8,680	7,246
Income from discontinued operations attributable to noncontrolling interests in subsidiaries	(4,855)	(739)	(606)
Income from discontinued operations attributable to Common Shareholders	\$ 2,534	\$ 7,941	\$ 6,640

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

3. Segment Reporting

The Company has five reportable segments: Core Portfolio, Opportunity Funds, Self-Storage Portfolio, Notes Receivable and Other. Notes Receivable consists of the Company's notes receivable and preferred equity investment and related interest income. Other consists primarily of management fees and interest income. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. The Company evaluates property performance primarily based on net operating income before depreciation, amortization and certain nonrecurring items. Investments in the Core Portfolio are typically held long-term. Given the contemplated finite life of the Opportunity Funds, these investments are typically held for shorter terms. Fees earned by the Company as the general partner/member of the Opportunity Funds are eliminated in the Company's consolidated financial statements. The following table sets forth certain segment information for the Company, reclassified for discontinued operations, as of and for the years ended December 31, 2009, 2008, and 2007 (does not include unconsolidated affiliates):

(dollars in thousands)	2009						Total
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable	Other	Elimination	
Revenues	\$ 69,553	\$ 44,326	\$ 11,166	\$ 19,156	\$ 23,681	\$ (20,537)	\$ 147,345
Property operating expenses and real estate taxes	21,335	15,427	11,029	—	—	(1,150)	46,641
Reserve for notes receivable	—	—	—	1,734	—	—	1,734
Abandonment of project costs	—	2,487	—	—	—	—	2,487
Other expenses	23,983	13,597	3	—	—	(15,570)	22,013
Income before depreciation and amortization	\$ 24,235	\$ 12,815	\$ 134	\$ 17,422	\$ 23,681	\$ (3,817)	\$ 74,470
Depreciation and amortization	\$ 17,200	\$ 17,051	\$ 4,437	\$ —	\$ —	\$ (1,470)	\$ 37,218
Interest and other finance expense	\$ 18,744	\$ 8,404	\$ 5,006	\$ —	\$ —	\$ —	\$ 32,154
Real estate at cost	\$ 475,486	\$ 534,393	\$ 208,574	\$ —	\$ —	\$ (11,047)	\$ 1,207,406
Total assets	\$ 558,240	\$ 607,706	\$ 196,658	\$ 125,221	\$ —	\$ (105,361)	\$ 1,382,464
Expenditures for real estate and improvements	\$ 1,938	\$ 119,665	\$ 10,996	\$ —	\$ —	\$ (5,277)	\$ 127,322
Reconciliation to net income							
Income before depreciation and amortization							\$ 74,470
Depreciation and amortization							(37,218)
Equity in losses of unconsolidated partnerships							(1,529)
Interest and other finance expense							(32,154)
Gain on debt extinguishment							7,057
Impairment of investment in unconsolidated affiliate							(3,768)
Income tax provision							(1,541)
Income from discontinued operations							7,389
Net income							12,706
Net loss attributable to noncontrolling interests in subsidiaries							18,427
Net income attributable to Common Shareholders							\$ 31,133

ACADIA REALTY TRUST AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

3. Segment Reporting, continued

(dollars in thousands)	2008						
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable	Other	Elimination	Total
Revenues	\$ 65,347	\$ 48,400	\$ 5,589	\$ 10,903	\$ 30,928	\$ (23,231)	\$ 137,936
Property operating expenses and real estate taxes	20,973	8,954	6,669	—	—	(381)	36,215
Reserve for notes receivable	—	—	—	4,392	—	—	4,392
Abandonment of project costs	—	630	—	—	—	—	630
Other expenses	26,007	16,131	58	—	—	(17,651)	24,545
Income before depreciation and amortization	\$ 18,367	\$ 22,685	\$ (1,138)	\$ 6,511	\$ 30,928	\$ (5,199)	\$ 72,154
Depreciation and amortization	\$ 20,296	\$ 10,036	\$ 3,002	\$ —	\$ —	\$ —	\$ 33,334
Interest and other finance expense	\$ 19,698	\$ 5,549	\$ 3,650	\$ —	\$ —	\$ (4)	\$ 28,893
Real estate at cost	\$ 474,684	\$ 438,260	\$ 186,529	\$ —	\$ —	\$ (7,478)	\$ 1,091,995
Total assets	\$ 567,882	\$ 487,182	\$ 194,992	\$ 125,587	\$ —	\$ (84,260)	\$ 1,291,383
Expenditures for real estate and improvements	\$ 18,424	\$ 94,191	\$ 135,391	\$ —	\$ —	\$ (2,973)	\$ 245,033

Reconciliation to net income

Income before depreciation and amortization	\$ 72,154
Depreciation and amortization	(33,334)
Equity in earnings of unconsolidated partnerships	19,906
Interest and other finance expense	(28,893)
Gain on sale	763
Gain on debt extinguishment	1,523
Income tax provision	(3,362)
Income from discontinued operations	8,680
Net income	37,437
Net income attributable to noncontrolling interests in subsidiaries	(12,369)
Net income attributable to Common Shareholders	\$ 25,068

(dollars in thousands)	2007						
	Core Portfolio	Opportunity Funds	Storage Portfolio	Notes Receivable	Other	Elimination	Total
Revenues	\$ 62,520	\$ 17,901	\$ 291	\$ 3,682	\$ 31,065	\$ (20,367)	\$ 95,092
Property operating expenses and real estate taxes	18,467	4,264	756	—	—	(280)	23,207
Abandonment of project costs	—	129	—	—	—	—	129
Other expenses	25,217	12,903	—	—	—	(15,191)	22,929
Income (loss) before depreciation and amortization	\$ 18,836	\$ 605	\$ (465)	\$ 3,682	\$ 31,065	\$ (4,896)	\$ 48,827
Depreciation and amortization	\$ 17,394	\$ 7,409	\$ 311	\$ —	\$ —	\$ —	\$ 25,114
Interest and other finance expense	\$ 19,430	\$ 5,291	\$ 359	\$ —	\$ —	\$ (516)	\$ 24,564
Real estate at cost	\$ 458,042	\$ 350,699	\$ 12,407	\$ —	\$ —	\$ (3,528)	\$ 817,620
Total assets	\$ 578,310	\$ 403,844	\$ 15,200	\$ 57,662	\$ —	\$ (56,233)	\$ 998,783
Expenditures for real estate and improvements	\$ 58,575	\$ 149,453	\$ 6,626	\$ —	\$ —	\$ (4,298)	\$ 210,356

Reconciliation to net income

Income before depreciation and amortization	\$ 48,827
Depreciation and amortization	(25,114)
Equity in earnings of unconsolidated partnerships	6,619
Interest and other finance expense	(24,564)
Income tax provision	(297)
Income from discontinued operations	7,246
Extraordinary item	27,844
	<hr/>
Net and other finance income	40,561
Net income attributable to noncontrolling interests in subsidiaries	(15,215)
	<hr/>
Net income attributable to Common Shareholders	\$ 25,346
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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. 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 December 31, 2009, the Company has invested \$60.8 million through the RCP Venture on a non-recourse basis. Upon formation, it was contemplated the RCP Venture would invest \$300.0 million, of which the Company’s share would be \$60.0 million. Cash flow from any individual 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 related 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

In September 2004, the Company made its first RCP Venture investment. Through Mervyns I and Mervyns II, the Company 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. To date, REALCO has disposed of a significant portion of the portfolio. In addition, in November 2007, the Company sold its interest in OPCO and, as a result, has no further investment in OPCO. Subsequent to the initial acquisition, the Company, through Mervyns I and Mervyns II, made additional investments of \$2.9 million.

During the year ended December 31, 2009, REALCO recorded an impairment charge on its investment in certain 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 \$0.6 million.

Through December 31, 2009, the Company, through Mervyns I and Mervyns II, made additional investments in locations that are separate from the original investment (“Add-On Investments”) in Mervyns totaling \$5.1 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. During February of 2007, the Company received a cash distribution of \$44.4 million from this investment, which was sourced from the disposition of certain operating stores and a refinancing of the remaining assets held by Albertson’s. The Company recognized distributions in excess of its invested capital in income, including \$30.2 million characterized as extraordinary consistent with the accounting treatment by Albertson’s. Through December 31, 2009, the Company has received additional distributions from this investment totaling \$21.3 million.

Through December 31, 2009, the Company, through Mervyns II, made Add-On investments in Albertson’s totaling \$2.4 million and received distributions totaling \$1.2 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 Investments

During 2006, the Company, through Fund II, made investments of \$1.1 million in Shopko and \$0.7 million in Marsh. During 2007, Fund II received a \$1.1 million cash distribution from the Shopko investment representing 100% of its invested capital. As of December 31, 2009, the Company, through Fund II, made investments of \$2.0 million in additional Add-On investments in Marsh and has received distributions totaling \$2.6 million.

During July of 2007, the RCP Venture acquired a portfolio of 87 retail properties from Rex Stores Corporation, which the Company invested through Mervyns II. The Company’s share of this investment was \$2.7 million. In December of 2009, the Company received distributions of \$0.4 million.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. Investments In and Advances to Unconsolidated Partnerships, continued

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.

The following table summarizes the Company's RCP Venture investments from inception through December 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	\$ 26,058	\$ 45,966	\$ 4,901	\$ 11,251
Mervyns I and Mervyns II	Mervyns add-on investments	2005/2008	5,126	1,703	753	283
Mervyns II	Albertson's	2006	20,717	65,757	4,239	13,151
	Albertson's add-on investments	2006/2007	2,409	1,215	386	243
Mervyns II	Shopko	2006	1,100	1,100	220	220
Fund II	Marsh	2006	2,667	2,639	533	528
Mervyns II	Rex Stores	2007	2,701	400	535	80
Total			\$ 60,778	\$ 118,780	\$ 11,567	\$ 25,756

Brandywine Portfolio

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

Crossroads

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

Other Investments*Fund I Investments*

Fund I owns a 50% interest in the Sterling Heights Shopping Center which is accounted for using the equity method of accounting. During 2009, Fund I recorded an impairment charge of \$3.8 million related to this investment.

Fund II Investments

Fund II's approximately 25% investment in CityPoint is accounted for using the equity method. The Company has determined that CityPoint is a variable interest entity, and the Company is not the primary beneficiary. The Company's maximum exposure is its current investment balance of \$37.4 million.

As of December 31, 2009, there was \$26.0 million of debt at CityPoint scheduled to mature during August of 2010. There are no options to extend this debt. Fund II and its unaffiliated joint venture partner's ("JV Partner") share of this debt was \$6.1 million and \$19.9 million, respectively. If CityPoint is unable to extend the maturity date of this debt, Fund II and its JV Partner may be required to fund their requisite share of capital to repay this obligation. In the event that the JV Partner does not fund its requisite share of capital, pursuant to the joint venture agreement, Fund II would have the option to fund the JV Partner's share of capital to repay this debt either as a loan to the JV Partner or as additional equity in CityPoint.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. Investments In and Advances to Unconsolidated Partnerships, continued

The following tables summarize the Company's investments in unconsolidated affiliates as of December 31, 2009, December 31, 2008 and December 31, 2007.

	December 31, 2009					
	RCP Venture	CityPoint	Brandywine Portfolio	Crossroads	Other Investments	Total
(dollars in thousands)						
Balance Sheets						
Assets						
Rental property, net	\$ —	\$ —	\$ 127,091	\$ 4,968	\$ 10,631	\$ 142,690
Real Estate under development		166,381	—	—	—	166,381
Investment in unconsolidated affiliates	209,407	—	—	—	—	209,407
Other assets	—	3,265	11,388	4,322	1,976	20,951
Total assets	\$ 209,407	\$ 169,646	\$ 138,479	\$ 9,290	\$ 12,607	\$ 539,429
Liabilities and partners' equity						
Mortgage note payable	\$ —	\$ 25,990	\$ 166,200	\$ 62,295	\$ 4,200	\$ 258,685
Other liabilities	—	2,096	7,762	977	1,250	12,085
Partners equity (deficit)	209,407	141,560	(35,483)	(53,982)	7,157	268,659
Total liabilities and partners' equity	\$ 209,407	\$ 169,646	\$ 138,479	\$ 9,290	\$ 12,607	\$ 539,429
Company's investment in and advances to unconsolidated affiliates	\$ 12,832	\$ 37,357	\$ —	\$ —	\$ 1,523	\$ 51,712
Share of distributions in excess of share of income and investment in unconsolidated affiliates	\$ —	\$ —	\$ (8,212)	\$ (12,377)	\$ —	\$ (20,589)
(dollars in thousands)						
Balance Sheets						
Assets						
Rental property, net	\$ —	\$ —	\$ 129,679	\$ 5,143	\$ 11,481	\$ 146,303
Real Estate under development	—	159,922	—	—	—	159,922
Investment in unconsolidated affiliates	295,168	—	—	—	—	295,168
Other assets	—	3,983	8,769	5,283	2,770	20,805
Total assets	\$ 295,168	\$ 163,905	\$ 138,448	\$ 10,426	\$ 14,251	\$ 622,198
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
Total liabilities and partners' equity	\$ 295,168	\$ 163,905	\$ 138,448	\$ 10,426	\$ 14,251	\$ 622,198
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

5. Notes Receivable and Preferred Equity Investment

At December 31, 2009, the Company's preferred equity investment and notes receivable, net aggregated \$125.2 million, and were collateralized by the underlying properties, the borrower's ownership interest in the entities that own the properties and/or by the borrower's personal guarantee. Interest rates on the Company's preferred equity investment and notes receivable ranged from 10.0% to 22.4% with maturities that range from demand notes to January 2017. Notes receivable and preferred equity investments are as follows:

Description	Effective interest rate	Final maturity date	Periodic payment terms	Prior liens	Face amount of mortgages	Carrying amount of mortgages
(dollars in thousands)						
72nd Street	19.48%	7/18/2011	(1)	\$ 185,000	\$ 47,000	\$ 40,975
Georgetown A	10.19%	11/12/2010	(3)	8,375	8,000	8,000
Georgetown B	13.44%	6/27/2010	(2)	115,454	40,000	40,000
Individually less than 3%	10.00% - 22.43%	Demand note – 1/1/2017		272,559	24,390	15,393
Other loan	14.50%	12/30/2010	(2)	—	8,585	8,585
First mortgage loan	12.75%	9/11/2010	(3)	—	10,000	10,000
First mortgage loan	12.29%	12/31/2011	(2)	—	7,134	2,268
Total					\$ 145,109	\$ 125,221

Notes:

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

During December 2009, the Company has made a loan of \$8.6 million which bears interest at 14.5% with a one year term and one six month extension.

During December 2009, the Company received a payment of \$4.7 million, representing a paydown on the first mortgage loan secured by three retail properties, following the sale of one of the collateralized properties.

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

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

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

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

During June 2008, the Company made a \$40.0 million preferred equity investment in an entity that owns a portfolio of 18 properties located primarily in Georgetown, Washington D.C. The portfolio consists of 306,000 square feet of principally retail space. The term of this investment is for two years, with two one-year extensions, and provides a 13% preferred return.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

5. Notes Receivable and Preferred Equity Investment, continued

During July 2008, the Company made a \$34.0 million mezzanine loan, which is collateralized by a mixed-use retail and residential development at 72nd Street and Broadway on the Upper West Side of Manhattan. Upon completion, this project is expected to include approximately 50,000 square feet of retail on three levels and 196 luxury residential rental apartments. The term of the loan is for a period of three years, with a one year extension, and is expected to yield in excess of 20%.

During September 2008, the Company, through Fund III, made a \$10.0 million first mortgage loan, which is collateralized by land located on Long Island, New York. The term of the loan is for a period of two years, and provides an effective annual return of approximately 13%.

The following table reconciles notes receivable and preferred equity investments from January 1, 2007 to December 31, 2009:

(dollars in thousands)	For the years ended December 31,		
	2009	2008	2007
Balance at beginning of period	\$ 125,587	\$ 57,662	\$ 36,038
Additions during period:			
New mortgage loans	9,362	88,480	32,548
Deductions during period:			
Collections of principal	(13,614)	(19,923)	(11,071)
Amortization of premium	5,352	2,368	147
Reserves	(1,466)	(3,000)	—
Balance at close of period	\$ 125,221	\$ 125,587	\$ 57,662

6. Deferred Charges

Deferred charges consist of the following as of December 31, 2009 and 2008:

(dollars in thousands)	December 31,	
	2009	2008
Deferred financing costs	\$ 22,852	\$ 22,750
Deferred leasing and other costs	33,169	22,117
	56,021	44,867
Accumulated amortization	(27,710)	(22,968)
	\$ 28,311	\$ 21,899

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

7. Acquired Lease Intangibles

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

The scheduled amortization of acquired lease intangible assets as of December 31, 2009 is as follows:

(dollars in thousands)	
2010	\$ 3,648
2011	3,086
2012	2,596
2013	2,011
2014	1,644
Thereafter	9,397
	\$ 22,382

The scheduled amortization of acquired lease intangible liabilities as of December 31, 2009 is as follows:

(dollars in thousands)	
2010	\$ 991
2011	994
2012	948
2013	730
2014	451
Thereafter	2,639
	\$ 6,753

8. Mortgage Loans

At December 31, 2009 and 2008, mortgage notes payable, excluding the net valuation premium on the assumption of debt, aggregated \$732.2 million and \$653.4 million, respectively, and were collateralized by 28 and 57 properties and related tenant leases, respectively. Interest rates on the Company's outstanding mortgage indebtedness ranged from 0.72% to 7.18% with maturities that ranged from March 2010 to November 2032. Certain loans are cross-collateralized and cross-defaulted. The loan agreements contain customary representations, covenants and events of default. Certain loan agreements require the Company to comply with affirmative and negative covenants, including the maintenance of debt service coverage and leverage ratios.

The following reflects mortgage loan activity for the year ended December 31, 2009:

- i) borrowed \$20.3 million on three existing construction loans,
- ii) paid off \$4.8 million of self-amortizing debt,
- iii) closed on a \$19.0 million loan that bears interest at a floating rate of LIBOR plus 150 basis points and matures on January 15, 2010. The proceeds of the loan were used to repay a maturing loan of \$19.0 million,
- iv) extended a credit facility, with a balance of \$53.7 million, to March 1, 2010 and adjusted the interest rate spread over LIBOR from 100 basis points to 250 basis points,

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

8. Mortgage Loans, continued

- v) extended a \$11.4 million note that was to mature on May 18, 2009 to July 18, 2009. On July 18, 2009 this note was paid down by \$0.9 million and extended to July 19, 2010 at an interest rate of LIBOR plus 325 basis points with a one year extension option,
- vi) closed on a \$4.8 million loan that bears interest at a fixed rate of 6.35% and matures on July 1, 2014,
- vii) paid off \$1.1 million of principal on an outstanding loan,
- viii) closed on a \$45.0 million note that bears interest at a floating rate of LIBOR plus 400 basis points and matures on July 29, 2012 with a two one-year extension options. The loan provides for a future advance of up to \$2.0 million to finance tenant improvements and leasing commissions incurred in leasing the property,
- ix) paid off the outstanding balance of \$33.7 million on a loan that had matured,
- x) paid off the outstanding balance of \$4.8 million on a loan that had matured; and
- xi) paid off the balance of \$19.0 million on an outstanding loan,

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

(dollars in thousands) Borrower	Total amount of credit facility	Amount borrowed as of December 31, 2008	2009 net borrowings (repayments) during the year ended December 31, 2009	Amount borrowed as of December 31, 2009	Letters of credit outstanding as of December 31, 2009	Amount available under credit facilities as of December 31, 2009
Acadia Realty, LP	\$ 64,498	\$ 48,900	\$ (18,900)	\$ 30,000	\$ 4,000	\$ 30,498
Acadia Realty, LP	30,000	—	2,000	2,000	—	28,000
Fund II	53,455	34,681	13,564	48,245	5,210	—
Fund III	221,000	62,250	77,200	139,450	500	81,050
Total	\$ 368,953	\$ 145,831	\$ 73,864	\$ 219,695	\$ 9,710	\$ 139,548

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

8. Mortgage Loans, continued

The following table summarizes our mortgage indebtedness by lender or issuer as of December 31, 2009 and December 31, 2008:

(dollars in thousands)	December 31, 2009	December 31, 2008	Interest Rate at December 31, 2009	Maturity	Properties Encumbered	Payment Terms
Mortgage notes payable – variable-rate						
Bank of America, N.A.	\$ 9,467	\$ 9,624	1.63% (LIBOR +1.40%)	6/29/2012	(1)	(32)
RBS Greenwich Capital	30,000	30,000	1.63% (LIBOR +1.40%)	4/1/2010	(2)	(33)
PNC Bank, National Association	10,450	11,423	3.48% (LIBOR +3.25%)	7/18/2010	(4)	(42)
Bank of America, N.A.	14,179	15,526	1.53% (LIBOR +1.30%)	12/1/2011	(7)	(32)
Anglo Irish Bank Corporation	9,800	9,800	1.88% (LIBOR +1.65%)	10/30/2010	(11)	(33)
			Greater of 1.5% + 3.5% or			
Eurohypo AG	86,000	80,443	5.00% (LIBOR +3.50%)	10/4/2011	(6)	(33)
Bank of China	—	19,000	2.29% (LIBOR +1.85%)	1/15/2009	(23)	(33)
Bank of America, N.A.	44,878	—	4.23% (LIBOR +4.00%)	8/1/2012	(5)	(32)
Sub-total mortgage notes payable	204,774	175,816				
Secured credit facilities:						
Bank of America, N.A.	30,000	48,900	1.48% (LIBOR +1.25%)	12/1/2010	(8)	(34)
JP Morgan Chase Bank, N.A.	2,000	—	1.48% (LIBOR +1.25%)	3/29/2010	(31)	(33)
Bank of America, N.A./ Bank of New York	48,245	34,681	2.73% (LIBOR +2.50%)	3/1/2010	(9)	(33)
Bank of America, N.A.	139,450	62,250	0.72% (Base rate +0.50%)	10/9/2011	(10)	(33)
Sub-total secured credit facilities	219,695	145,831				
Interest rate swaps (43)	(83,416)	(73,415)				
Total variable-rate debt	341,053	248,232				
Mortgage notes payable – fixed-rate						
RBS Greenwich Capital	14,343	14,554	5.64%	9/6/2014	(14)	(32)
RBS Greenwich Capital	17,600	17,600	4.98%	9/6/2015	(15)	(35)
RBS Greenwich Capital	12,313	12,485	5.12%	11/6/2015	(16)	(32)
Bear Stearns Commercial	34,600	34,600	5.53%	1/1/2016	(17)	(36)
Bear Stearns Commercial	20,500	20,500	5.44%	3/1/2016	(18)	(33)
American United Life Insurance Company	4,751	—	6.35%	7/1/2014	(19)	(32)
J.P. Morgan Chase	8,182	8,322	6.40%	11/1/2032	(20)	(32)
Column Financial, Inc.	9,481	9,663	5.45%	6/11/2013	(21)	(32)
Merrill Lynch Mortgage Lending, Inc.	23,500	23,500	6.06%	10/1/2016	(22)	(37)
Cortlandt Deposit Corp	—	1,150	6.62%	2/1/2009	(24)	(41)
Cortlandt Deposit Corp	—	2,318	6.51%	1/15/2009	(25)	(41)
Bank of America N.A.	25,500	25,500	5.80%	10/1/2017	(3)	(33)
Bear Stearns Commercial	26,250	26,250	5.88%	8/1/2017	(12)	(38)
Wachovia	26,000	26,000	5.42%	2/11/2017	(13)	(33)
Bear Stearns Commercial	31,652	25,284	7.18%	1/1/2020	(29)	(39)
GEMSA Loan Services, L.P.	—	4,944	5.37%	12/1/2009	(26)	(32)
Wachovia	—	34,322	5.86%	6/11/2009	(27)	(32)
GEMSA Loan Services, L.P.	41,500	41,500	5.30%	3/16/2011	(28)	(33)
Bear Stearns Commercial	11,543	3,265	7.14%	1/1/2020	(30)	(40)
Interest rate swaps (43)	83,416	73,415	5.35%	(45)		
Total fixed-rate debt	391,131	405,172				
Total fixed and variable debt	732,184	653,404				
Valuation of premium, net of amortization (44)	103	139				
Total	\$ 732,287	\$ 653,543				

8. Mortgage Loans, continued

Notes:

- (1) Village Commons Shopping Center
- (2) 161st Street
- (3) 216th Street
- (4) Liberty Avenue
- (5) Cortlandt Towne Center
- (6) Fordham Place
- (7) Branch Shopping Center
- (8) 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
- (9) Acadia Strategic Opportunity Fund II, LLC line of credit secured by unfunded investor capital commitments
- (10) Acadia Strategic Opportunity Fund III, LLC line of credit secured by unfunded investor capital commitments
- (11) Tarrytown Center
- (12) Merrillville Plaza
- (13) 239 Greenwich Avenue
- (14) New Loudon Center
- (15) Crescent Plaza
- (16) Pacesetter Park Shopping Center
- (17) Elmwood Park Shopping Center
- (18) Gateway Shopping Center
- (19) Clark Diversey
- (20) Boonton Shopping Center
- (21) Chestnut Hill
- (22) Walnut Hill
- (23) Sherman Avenue
- (24) Kroger Portfolio
- (25) Safeway Portfolio
- (26) Acadia Suffern
- (27) Acadia Storage Company, LLC
- (28) Acadia Storage Post Portfolio CO, LLC
- (29) Pelham Manor
- (30) Atlantic Avenue
- (31) Line of credit secured by Ledgewood Mall
- (32) Monthly principal and interest.
- (33) Interest only monthly.
- (34) Annual principal and monthly interest.
- (35) Interest only monthly until 9/10; monthly principal and interest thereafter.
- (36) Interest only monthly until 1/10; monthly principal and interest thereafter.
- (37) Interest only monthly until 10/11; monthly principal and interest thereafter.
- (38) Interest only monthly until 7/12 monthly principal and interest thereafter.
- (39) Interest only monthly until 1/13 monthly principal and interest thereafter.
- (40) Interest only monthly until 1/15 monthly principal and interest thereafter
- (41) Annual principal and semi-annual interest payments.
- (42) Interest only upon draw down on construction loan.
- (43) Maturing between 1/1/10 and 11/30/2012.
- (44) In connection with the assumption of debt in accordance with the requirements of ASC Topic 805, the Company has recorded valuation premium that is being amortized to interest expense over the remaining terms of the underlying mortgage loans.
- (45) Represents the amount of the Company's variable-rate debt that has been fixed through certain cash flow hedge transactions (Note 20).

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

8. Mortgage Loans, continued

The scheduled principal repayments of all indebtedness included Convertible Notes as of December 31, 2009 are as follows (does not include \$103 net valuation premium on assumption of debt):

(dollars in thousands)

2010	\$	132,620
2011		331,047
2012		55,379
2013		11,692
2014		20,117
Thereafter		229,239
	\$	<u>780,094</u>

9. Convertible Notes Payable

In December 2006 and January 2007, the Company issued a total of \$115.0 million in principal of convertible notes with a fixed interest rate of 3.75% due 2026 (the "Convertible Notes"). The Convertible Notes were issued at par and require interest payments semi-annually in arrears on June 15th and December 15th of each year. The Convertible Notes are unsecured unsubordinated obligations and rank equally with all other unsecured and unsubordinated indebtedness. The Convertible Notes had an initial conversion price of \$30.86 per share. The conversion rate may be adjusted under certain circumstances, including the payment of cash dividends in excess of the regular quarterly cash dividend in place at the time the Convertible Notes were issued. As of December 31, 2009, the adjusted conversion price is \$29.26. Upon conversion of the Convertible Notes, the Company will deliver cash and, in some circumstances, Common Shares, as specified in the indenture relating to the Convertible Notes. In general, the Convertible Notes may only be converted prior to maturity during any calendar quarter beginning after December 31, 2006 if the Company's Common Shares trade at 130% of the conversion price for at least 20 days within a consecutive 30 day trading period. Prior to December 20, 2011, the Company will not have the right to redeem Convertible Notes, except to preserve its status as a REIT. After December 20, 2011, the Company will have the right to redeem the notes, in whole or in part, at any time and from time to time, for cash equal to 100% of the principal amount of the notes plus any accrued and unpaid interest to, but not including, the redemption date. The Holders of notes may require the Company to repurchase their notes, in whole or in part, on December 20, 2011, December 15, 2016, and December 15, 2021 for cash equal to 100% of the principal amount of the notes to be repurchased plus any accrued and unpaid interest to, but not including, the repurchase date.

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

During 2009 and 2008, the Company purchased \$57.0 million and \$8.0 million in face amount, respectively, of its convertible debt at an average discount of approximately 19%. The transactions resulted in a gain on debt extinguishment of \$7.1 million and \$1.5 million for the years ended December 31, 2009 and 2008, respectively. The outstanding Convertible Note face amount as of December 31, 2009 and 2008 was \$50.0 million and \$107.0 million, respectively.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

10. Fair Value Measurements

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

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

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

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

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

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

(dollars in thousands)	Level 1	Level 2	Level 3
<u>Liabilities</u>			
Derivatives	\$ —	\$ 3,256	\$ —
Total liabilities measured at fair value	\$ —	\$ 3,256	\$ —

11. Shareholders' Equity and Noncontrolling Interests**Common Shares**

During the first quarter of 2009, 107,331 employee Restricted Shares were cancelled to pay the employees' income taxes due on the value of the portion of the Restricted Shares that vested. During the year ended December 31, 2009, the Company recognized accrued Common Share and Common OP Unit-based compensation totaling \$3.7 million in connection with the vesting of Restricted Shares and Units (Note 15).

During April 2009, the Company issued 5.75 million Common Shares and generated net proceeds of approximately \$65.2 million.

On October 29, 2009, Kenneth Bernstein, President and CEO, exercised 250,000 Options and received 81,897 Common Shares after using shares to pay income tax and exercise price.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

11. Shareholders' Equity and Noncontrolling Interests, continued

Noncontrolling Interests

The following table summarizes the change in the noncontrolling interests since December 31, 2008:

	Noncontrolling Interests in Operating Partnership	Noncontrolling Interests in Partially- Owned Affiliates
(dollars in thousands)		
Balance at December 31, 2008	\$ 5,667	\$ 208,839
Distributions declared of \$0.75 per Common OP Unit	(795)	—
Net income for the period January 1 through December 31, 2009	465	(18,892)
Conversion of 15,666 Preferred OP Units	(90)	—
Other comprehensive income – unrealized loss on valuation of swap agreements	40	279
Reclassification of realized interest expense on swap agreements	(1)	(139)
Noncontrolling Interest contributions	—	25,653
Noncontrolling Interest distributions	—	(1,624)
Employee Long-term Incentive Plan Unit Awards	890	—
Balance at December 31, 2009	\$ 6,176	\$ 214,116

Noncontrolling interest in the Operating Partnership represents (i) the limited partners' 626,606 and 642,272 Common OP Units at December 31, 2009 and 2008, (ii) 188 Series A Preferred OP Units at both December 31, 2009 and 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, and (iii) 393,909 and 186,951 LTIP units as of December 31, 2009 and December 31, 2008 respectively, as discussed in Share Incentive Plan (Note 15).

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

In 2004 and 2005, the Company issued 4,000 Series B Preferred OP Units and 250,000 Restricted Common OP Units, respectively, to Klaff in consideration for interest in certain management contract rights. The Preferred OP Units were convertible into Common OP Units based on the stated value of \$1,000 divided by \$12.82 at any time. The Restricted Common OP Units are convertible into the Company's Common Shares on a one-for-one basis after a five-year lock-up period. During 2007, Klaff converted all 4,000 Series B Preferred Units into 312,013 Common OP Units and ultimately into Common Shares.

The Series A Preferred OP Units were issued in 1999 in connection with the acquisition of a property. Through December 31, 2008, 696 Series A Preferred OP Units were converted into 92,800 Common OP Units and then into Common Shares. The 188 remaining Series A Preferred OP Units are currently convertible into Common OP Units based on the stated value divided by \$7.50. Either the Company or the holders can currently call for the conversion of the Series A Preferred OP Units at the lesser of \$7.50 or the market price of the Common Shares as of the conversion date.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

12. Related Party Transactions

During 2007, Klaff converted 4,000 Series B Preferred OP Units into 312,013 Common Shares (Note 11).

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 \$0.4 million, \$0.8 million and \$2.1 million for the years ended December 31, 2009, 2008 and 2007 respectively.

The Company earns fees from two of its investments in unconsolidated partnerships (Note 4). The Company earned property management, construction, legal and leasing fees from the Brandywine Portfolio totaling \$0.7 million, \$1.1 million and \$1.7 million for the years ended December 31, 2009, 2008 and 2007, respectively. In addition, the Company earned property management and development fees from CityPoint totaling \$1.0 million and \$0.2 million for the years ended December 31, 2008 and 2007, respectively.

Lee Wielansky, the Lead Trustee of the Company, was paid a consulting fee of \$0.1 million for each of the years ended December 31, 2009, 2008, and 2007.

13. Tenant Leases

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

Minimum future rentals to be received under non-cancelable leases for shopping centers and other retail properties as of December 31, 2009 are summarized as follows:

(dollars in thousands)	
2010	\$ 95,778
2011	84,952
2012	78,014
2013	70,807
2014	61,606
Thereafter	471,436
	\$ 862,593

During the years ended December 31, 2009, 2008 and 2007, no single tenant collectively accounted for more than 10% of the Company's total revenues.

14. Lease Obligations

The Company leases land at six of its shopping centers, which are accounted for as operating leases and generally provide the Company with renewal options. Ground rent expense was \$2.7 million, \$2.4 million, and \$3.8 million (including capitalized ground rent at properties under development of \$0.6 million, \$1.1 million and \$2.7 million) for the years ended December 31, 2009, 2008 and 2007, respectively. The leases terminate at various dates between 2017 and 2066. These leases provide the Company with options to renew for additional terms aggregating from 20 to 60 years. The Company leases space for its White Plains corporate office for a term expiring in 2015. Office rent expense under this lease was \$1.5 million, \$1.2 million and \$0.8 million for the years ended December 31, 2009, 2008 and 2007, respectively. Future minimum rental payments required for leases having remaining non-cancelable lease terms are as follows:

(dollars in thousands)	
2010	\$ 4,827
2011	4,864
2012	4,932
2013	5,009
2014	5,012
Thereafter	86,958
	\$ 111,602

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

15. Share Incentive Plan

During 2003, the Company adopted the 2003 Share Incentive Plan (the "2003 Plan"). The 2003 Plan authorizes the issuance of options, share appreciation rights, restricted shares ("Restricted Shares"), restricted OP Units ("LTIP Units") and performance units (collectively, "Awards") to officers, employees and trustees of the Company and consultants to the Company equal to up to four percent of the total Common Shares of the Company outstanding from time to time on a fully diluted basis. However, no participant may receive more than the equivalent of 1,000,000 Common Shares during the term of the 2003 Plan with respect to Awards. Options are granted by the Compensation Committee (the "Committee"), which currently consists of three non-employee Trustees, and will not have an exercise price less than 100% of the fair market value of the Common Shares and a term of greater than ten years at the grant date. Vesting of options is at the discretion of the Committee. Share appreciation rights provide for the participant to receive, upon exercise, cash and/or Common Shares, at the discretion of the Committee, equal to the excess of the market value of the Common Shares at the exercise date over the market value of the Common Shares at the grant date. The Committee determines the restrictions placed on Awards, including the dividends or distributions thereon and the term of such restrictions. The Committee also determines the award and vesting of performance units and performance shares based on the attainment of specified performance objectives of the Company within a specified performance period. Through December 31, 2009, no share appreciation rights or performance units/shares had been awarded.

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

On March 5, 2009, the Company issued 8,612 Restricted Shares and 200,574 LTIP Units to officers of the Company. Vesting with respect to these awards is recognized ratably over the next five annual anniversaries of the issuance date. The vesting on 39% of these awards is also generally subject to achieving certain total shareholder returns on the Company's Common Shares or certain Company performance measures. LTIP Units are similar to Restricted Shares but provide for a quarterly partnership distribution in a like amount as paid to Common OP Units. This distribution is paid on both unvested and vested LTIP Units. The LTIP Units are convertible into Common OP Units and Common Shares upon vesting and a revaluation of the book capital accounts.

Also on March 5, 2009 and March 10, 2009, the Company issued a total of 36,347 Restricted Shares and 8,221 LTIP Units to employees of the Company, other than the Company's officers. Vesting with respect to these awards is recognized ratably over the next five annual anniversaries of the issuance date. In addition, 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. The weighted average fair value for Restricted Shares and LTIP Units granted for the years ended December 31, 2009, 2008 and 2007 were \$10.31, \$24.51 and \$24.91, respectively.

For the years ended December 31, 2009, 2008 and 2007, \$3.7 million, \$3.5 million and \$3.3 million, respectively, were recognized in compensation expense related to Restricted Share and LTIP Unit grants.

On May 13, 2009, the Company issued 5,435 unrestricted Common Shares to Trustees of the Company in connection with Trustee fees. In addition, on May 28, 2009, the Company issued an additional 1,299 unrestricted Common Shares to the Lead Trustee of the Company in connection with the Lead Trustee fee. The Company also issued 10,000 Restricted Shares to Trustees, which vest over three years with 33% vesting on each of the next three anniversaries of the issuance date. The Restricted Shares do not carry voting rights or other rights of Common Shares until vesting and may not be transferred, assigned or pledged until the recipients have a vested non-forfeitable right to such shares. Dividends are not paid currently on unvested Restricted Shares, but are paid cumulatively, from the issuance date through the applicable vesting date of such Restricted Shares vesting. Trustee fee expense of \$0.2 million for the year ended December 31, 2009 has been recognized in the accompanying consolidated financial statements related to this issuance.

During 2009, the Company adopted the Long Term Investment Alignment Program (the "Program") pursuant to which the Company may award units for up to 25% of its Fund III Promote to senior executives when and if such Promote is ultimately realized. As of December 31, 2009, the Company has awarded units representing 60% of the Program, which were determined to have no value at issuance. In accordance with ASC Topic 718 "Compensation- Stock Compensation" (formerly SFAS No. 123R, "Share-Based Payments") compensation relating to these awards will be recorded based on the change in the estimated fair value at each reporting period.

As of December 31, 2009, the Company had 101,283 options outstanding to officers and employees of which all have vested. These options are for ten-year terms from the grant date and vested in three equal annual installments, which began on the Grant Date. In addition, 58,000 options have been issued, of which all have vested, to non-employee Trustees as of December 31, 2009.

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

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

15. Share Incentive Plan, continued

Options	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value (dollars in thousands)
Outstanding at January 1, 2009	421,244	\$ 10.65	—	—
Granted	—	—	—	—
Exercised	(258,900)	5.99	—	—
Forfeited or Expired	(3,061)	19.67	—	—
Outstanding and exercisable at December 31, 2009	159,283	\$ 18.04	5.5	\$ —

The total intrinsic value of options exercised during the years ended December 31, 2009, 2008 and 2007 was \$2.8 million, \$0.8 million and \$0.3 million, respectively.

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

Unvested Shares and LTIP Units	Restricted Shares	Weighted Grant-Date Fair Value	LTIP Units	Weighted Grant-Date Fair Value
Unvested at January 1, 2009	487,434	\$ 21.37	181,350	\$ 24.55
Granted	54,960	10.95	208,796	10.30
Vested	(249,825)	20.07	(25,472)	24.60
Forfeited	(20,057)	17.35	(1,841)	24.61
Unvested at December 31, 2009	272,512	\$ 20.76	362,833	\$ 16.35

As of December 31, 2009, there was \$6.6 million of total unrecognized compensation cost related to unvested share-based compensation arrangements granted under share incentive plans. That cost is expected to be recognized over a weighted-average period of 1.7 years. The total fair value of Restricted Shares that vested during the years ended December 31, 2009, 2008 and 2007 was \$5.0 million, \$2.7 million and \$1.6 million, respectively.

16. Employee Share Purchase and Deferred Share Plan

The Acadia Realty Trust Employee Share Purchase Plan (the "Purchase Plan"), allows eligible employees of the Company to purchase Common Shares through payroll deductions. The Purchase Plan provides for employees to purchase Common Shares on a quarterly basis at a 15% discount to the closing price of the Company's Common Shares on either the first day or the last day of the quarter, whichever is lower. A participant may not purchase more than \$25,000 in Common Shares per year. Compensation expense will be recognized by the Company to the extent of the above discount to the closing price of the Common Shares with respect to the applicable quarter. During 2009, 2008 and 2007, 8,744, 7,499, and 7,123 Common Shares, respectively, were purchased by employees under the Purchase Plan. Associated compensation expense of \$0.02 million was recorded in 2009 and \$0.03 million was recorded in 2008 and 2007.

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

During May of 2006, the Company adopted a Trustee Deferral and Distribution Election ("Trustee Deferral Plan") whereby the participating Trustees have deferred compensation of \$0.05 million, \$0.4 million and \$0.2 million for 2009, 2008 and 2007, respectively. During 2009, certain trustees elected to receive 14,722 Common Shares, which were previously deferred, from the Trustee Deferral Plan.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

17. Employee 401(k) Plan

The Company maintains a 401(k) plan for employees under which the Company currently matches 50% of a plan participant's contribution up to 6% of the employee's annual salary. A plan participant may contribute up to a maximum of 15% of their compensation but not in excess of \$16,500 for the year ended December 31, 2009. The Company contributed \$0.2 million, \$0.3 million and \$0.2 million for the years ended December 31, 2009, 2008 and 2007, respectively.

18. Dividends and Distributions Payable

On December 15, 2009, the Board of Trustees declared a cash dividend for the quarter ended December 31, 2009, of \$0.18 per Common Share, which was paid on February 1, 2010 to holders of record as of December 31, 2009.

19. Federal Income Taxes

The Company has elected to qualify as a REIT in accordance with Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"), and intends at all times to qualify as a REIT under the Code. To qualify as a REIT, the Company must meet a number of organizational and operational requirements, including a requirement that it currently distribute at least 90% of its annual REIT taxable income to its shareholders. As a REIT, the Company generally will not be subject to corporate Federal income tax, provided that distributions to its shareholders equal at least the amount of its REIT taxable income as defined under the Code. As the Company distributed sufficient taxable income for the years ended December 31, 2009, 2008 and 2007, no U.S. Federal income or excise taxes were incurred. If the Company fails to qualify as a REIT in any taxable year, it will be subject to Federal income taxes at the regular corporate rates (including any applicable alternative minimum tax) and may not be able to qualify as a REIT for the four subsequent taxable years. Even though the Company qualifies for taxation as a REIT, the Company is subject to certain state and local taxes on its income and property and Federal income and excise taxes on any undistributed taxable income. In addition, taxable income from non-REIT activities managed through the Company's Taxable REIT Subsidiary ("TRS") is subject to Federal, state and local income taxes.

The difference between the GAAP and tax reported amounts of the Company's assets and liabilities is due largely to the higher GAAP basis in the Company's real estate properties. This variance is primarily the result of assets acquired as a result of property contributions in exchange for OP Units and the utilization of Code Section 1031 tax-deferred exchanges.

Reconciliation between GAAP net income and Federal taxable income

The following unaudited table reconciles GAAP net income to taxable income for the years ended December 31, 2009, 2008 and 2007:

(dollars in thousands)	2009 (Estimated)	2008 (Actual)	2007 (Actual)
Net income (1)	\$ 31,133	\$ 25,068	\$ 25,346
Net income attributable to TRS	946	1,155	2,514
Net income attributable to REIT	30,187	23,913	22,832
GAAP to tax difference related to:			
Depreciation and amortization (2)	2,383	(1,214)	4,155
Exercise of stock options and vesting of Restricted Shares	(2,373)	81	(689)
Property dispositions (3)	(2,577)	11,960	8,300
Reserves and impairment loss (4)	1,700	6,779	(138)
Gain on repurchase of Convertible Notes (5)	(7,057)	—	—
Differences pursuant to ASC Topic 805 "Business Combinations" (6)	1,300	1,221	1,610
Convertible Notes (1)	1,280	2,536	—
Other GAAP/tax differences, net	537	(1,602)	919
REIT taxable income before dividends paid deduction	\$ 25,380	\$ 43,674	\$ 36,989

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

19. Federal Income Taxes, continued

Reconciliation between GAAP net income and Federal taxable income, continued

Notes:

- (1) Net income for 2007 and 2008 has been restated pursuant to ASC Topic 470-20, which reclassified a portion of the interest expense on the Company's convertible debt as equity distributions. This restatement has no impact on the Company's taxable income.
- (2) Includes one-time deduction of \$4,907 in 2008, resulting from reclassification of certain fixed assets for income tax purposes.
- (3) 2009 difference due to higher tax basis on sold properties (net of noncontrolling interests). In 2007 and 2008, principally the result of the deferral of the gain from the sale of properties for income tax purposes. Also affected by special tax allocations pursuant to Code Section 704(c).
- (4) 2009 impairment loss of \$1,700 (net of noncontrolling interest and deduction of 2008 impairment of \$4,286) not recognized for tax. 2008 impairment loss includes 100% of mezzanine loans (principal & accrued interest) for redevelopment of the retail complexes associated with seven public rest stops along the toll roads in and around Chicago, Illinois. Deducted for income tax purposes in 2009. Includes difference between bad debt allowance and bad debts deducted for income tax purposes.
- (5) Recognition of the taxable gain has been deferred for five years pursuant to Code Section 108(i).
- (6) Formerly SFAS No. 141R "Business Combinations".

Characterization of Distributions:

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

	For the years ended December 31,		
	2009	2008	2007
Ordinary income	95%	54%	51%
Capital gain	5%	46%	49%
	<u>100%</u>	<u>100%</u>	<u>100%</u>

Taxable REIT Subsidiaries

Income taxes have been provided for using the liability method as required by ASC Topic 740 "Income Taxes" (formerly SFAS No. 109). The Company's TRS income and provision for income taxes for the years ended December 31, 2009, 2008 and 2007 are summarized as follows:

(dollars in thousands)	2009 (Estimated)	2008 (Actual)	2007 (Actual)
TRS income before income taxes	\$ 2,263	\$ 4,359	\$ 5,077
Provision for income taxes:			
Federal	1,025	2,441	2,097
State and local	292	763	466
TRS net income	<u>\$ 946</u>	<u>\$ 1,155</u>	<u>\$ 2,514</u>

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

(dollars in thousands)	2009	2008	2007
Federal provision at statutory tax rate	\$ 908	\$ 1,996	\$ 1,726
State and local taxes, net of federal benefit	141	277	255
Tax effect of:			
Change in estimate	268	931	582
REIT state and local income and franchise taxes	224	158	90
Total provision for income taxes	<u>\$ 1,541</u>	<u>\$ 3,362</u>	<u>\$ 2,653</u>

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

20. Financial Instruments**Fair Value of Financial Instruments:**

ASC Topic 825 "Financial Instruments" requires disclosure on the fair value of financial instruments. Certain of the Company's assets and liabilities are considered financial instruments. Fair value estimates, methods and assumptions are set forth below.

Cash and Cash Equivalents, Restricted Cash, Cash in Escrow, Rents Receivable, Prepaid Expenses, Other Assets, Accounts Payable and Accrued Expenses, Dividends and Distributions Payable, and Other Liabilities — the carrying amount of these assets and liabilities approximates fair value due to the short-term nature of such accounts.

Notes Receivable and Preferred Equity Investments — as of December 31, 2009 and 2008, the Company has determined the estimated fair values of its preferred equity investments and notes receivable were \$126.4 million and \$122.3 million, respectively, by discounting future cash receipts utilizing a discount rate equivalent to the rate at which similar notes receivable would be originated at the reporting date.

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

Mortgage Notes Payable and Notes Payable — As of December 31, 2009 and 2008, the Company has determined the estimated fair values of its mortgage notes payable, including those relating to discontinued operations, were \$751.0 million and \$731.8 million, respectively, by discounting future cash payments utilizing a discount rate equivalent to the rate at which similar mortgage notes payable would be originated at the reporting date.

ASC Topic 815 "Derivative and Hedging", as amended and interpreted, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. As required by ASC Topic 815, the Company records all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and the resulting designation. Derivatives used to hedge the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives used to hedge the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges.

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

As of December 31, 2009 and 2008, no derivatives were designated as fair value hedges or hedges of net investments in foreign operations. Additionally, the Company does not use derivatives for trading or speculative purposes and currently does not have any derivatives that are not designated as hedges. As of December 31, 2009, none of the Company's hedges were ineffective.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

20. Financial Instruments, continued

Derivative Financial Instruments:

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

Hedge Type	Notional Value	Rate	Maturity	Fair Value
(dollars in thousands)				
Interest rate swaps				
LIBOR Swap	\$ 4,390	4.71%	01/01/10	\$ (2)
LIBOR Swap	10,741	4.90%	10/01/11	(674)
LIBOR Swap	8,035	5.14%	03/01/12	(607)
LIBOR Swap	9,800	4.47%	10/29/10	(319)
LIBOR Swap	15,000	3.79%	11/30/12	(783)
LIBOR Swap	15,000	3.41%	11/30/12	(628)
LIBOR Swap	10,000	2.65%	11/30/12	(211)
LIBOR Swap	10,450	0.90%	07/19/10	(32)
Interest rate swaps	\$ 83,416			(3,256)
Interest rate LIBOR Cap	\$ 30,000	6.00%	04/01/10	—
Net Derivative instrument liability				\$ (3,256)

The above derivative instruments have been designated as cash flow hedges and hedge the future cash outflows on mortgage debt. Such instruments are reported at the fair values reflected above. As of December 31, 2009 and 2008, unrealized losses totaling \$3.3 and \$4.9 million, respectively were reflected in accumulated other comprehensive loss. It is estimated that approximately \$2.3 million included in accumulated other comprehensive income related to derivatives will be reclassified to interest expense in the 2010 results of operations.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

21. Earnings Per Common Share

Basic earnings per share was determined by dividing the applicable net income to common shareholders for the year by the weighted average number of Common Shares outstanding during each year consistent with ASC Topic 260, "Earnings Per Share". Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue Common Shares were exercised or converted into Common Shares or resulted in the issuance of Common Shares that then shared in the earnings of the Company. In accordance with GAAP, all Common Shares used to calculate EPS have been adjusted to reflect a special dividend paid on January 30, 2009, which resulted in the issuance of approximately 1.3 million additional Common Shares. The following table sets forth the computation of basic and diluted earnings per share from continuing operations for the periods indicated:

(dollars in thousands, except per share amounts)	Years ended December 31,		
	2009	2008	2007
Numerator:			
Income from continuing operations attributable to Common Shareholders	\$ 28,599	\$ 17,127	\$ 15,029
Effect of dilutive securities:			
Preferred OP Unit distributions	19	—	23
Numerator for diluted earnings per Common Share	28,618	17,127	15,052
Denominator:			
Weighted average shares for basic earnings per share	38,005	33,813	33,600
Effect of dilutive securities:			
Employee share options	212	454	616
Convertible Preferred OP Units	25	—	66
Dilutive potential Common Shares	237	454	682
Denominator for diluted earnings per share	38,242	34,267	34,282
Basic earnings per Common Share from continuing operations attributable to Common Shareholders	\$ 0.75	\$ 0.51	\$ 0.45
Diluted earnings per Common Share from continuing operations attributable to Common Shareholders	\$ 0.75	\$ 0.50	\$ 0.44

The weighted average shares used in the computation of basic earnings per share include unvested Restricted Shares and LTIP Units (Note 15) that are entitled to receive dividend equivalent payments. The effect of the conversion of Common OP Units is not reflected in the above table, as they are exchangeable for Common Shares on a one-for-one basis. The income allocable to such units is allocated on this same basis and reflected as noncontrolling interest in the accompanying consolidated financial statements. As such, the assumed conversion of these units would have no net impact on the determination of diluted earnings per share. The conversion of the convertible notes payable (Note 9) is not reflected in the table above as such conversion based on the market price of the Common Shares would be effected with only cash. The effect of the assumed conversion of 25,067 Series A Preferred OP Units for the year ended December 31, 2009 would be dilutive and they are included in the table. The effect of the assumed conversion of 25,067 Series A Preferred OP Units and 41,696 Series B Preferred OP Units for the year ended December 31, 2007 would be dilutive and they are included in the table.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

22. Summary of Quarterly Financial Information (unaudited)

The quarterly results of operations of the Company for the years ended December 31, 2009 and 2008 are as follows:

(dollars in thousands, except per share amounts)	March 31, 2009	June 30, 2009	September 30, 2009	December 31, 2009
Revenue	\$ 35,018	\$ 35,226	\$ 39,055	\$ 38,046
Income from continuing operations attributable to Common Shareholders	\$ 9,352	\$ 7,117	\$ 7,276	\$ 4,854
Income from discontinued operations attributable to Common Shareholders	\$ 947	\$ 18	\$ 31	\$ 1,538
Net income attributable to Common Shareholders	\$ 10,299	\$ 7,135	\$ 7,307	\$ 6,392
Net income attributable to Common Shareholders per Common Share – basic:				
Income from continuing operations	\$ 0.27	\$ 0.18	\$ 0.18	\$ 0.12
Income from discontinued operations	0.03	—	—	0.04
Net income	\$ 0.30	\$ 0.18	\$ 0.18	\$ 0.16
Net income attributable to Common Shareholders per Common Share – diluted:				
Income from continuing operations	\$ 0.27	\$ 0.18	\$ 0.18	\$ 0.12
Income from discontinued operations	0.03	—	—	0.04
Net income	\$ 0.30	\$ 0.18	\$ 0.18	\$ 0.16
Cash dividends declared per Common Share	\$ 0.21	\$ 0.18	\$ 0.18	\$ 0.18
Weighted average Common Shares outstanding:				
Basic	33,902,958	38,592,289	39,685,623	39,756,060
Diluted	34,050,446	38,804,108	39,967,714	40,037,555
(dollars in thousands, except per share amounts)	March 31, 2008	June 30, 2008	September 30, 2008	December 31, 2008
Revenue	\$ 27,928	\$ 51,549	\$ 28,089	\$ 30,370
Income (loss) from continuing operations attributable to Common Shareholders	\$ 7,652	\$ 10,222	\$ 4,417	\$ (5,164)
Income from discontinued operations attributable to Common Shareholders	\$ 586	\$ 7,176	\$ 49	\$ 130
Net income (loss) attributable to Common Shareholders	\$ 8,238	\$ 17,398	\$ 4,466	\$ (5,034)
Net income attributable to Common Shareholders per Common Share – basic:				
Income (loss) from continuing operations	\$ 0.23	\$ 0.30	\$ 0.13	\$ (0.15)
Income from discontinued operations	0.01	0.21	—	—
Net income (loss)	\$ 0.24	\$ 0.51	\$ 0.13	\$ (0.15)
Net income attributable to Common Shareholders per Common Share – diluted:				
Income (loss) from continuing operations	\$ 0.23	\$ 0.30	\$ 0.13	\$ (0.15)
Income from discontinued operations	0.01	0.21	—	—
Net income (loss)	\$ 0.24	\$ 0.51	\$ 0.13	\$ (0.15)
Cash dividends declared per Common Share	\$ 0.21	\$ 0.21	\$ 0.21	\$ 0.76
Weighted average Common Shares outstanding:				
Basic	33,747,797	33,806,747	33,845,368	33,850,271
Diluted	34,244,449	34,376,530	34,366,022	33,850,271

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

23. Commitments and Contingencies

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

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

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

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

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

The Company has arranged for the provision of four separate letters of credit in connection with certain leases and investments. As of December 31, 2009, there were no outstanding balances under any of the letters of credit. If the letters of credit were fully drawn, the combined maximum amount of exposure would be \$9.7 million.

24. Subsequent Events

The Company has evaluated subsequent events from December 31, 2009 through the time of filing this Form 10-K with the SEC on March 1, 2009. Material subsequent events that have occurred since December 31, 2009 are discussed below.

On January 12, 2010, the Company closed on a \$48.0 million construction loan on its Canarsie Plaza redevelopment project. The loan bears interest equal to the greater of (a) LIBOR plus 4% or (b) an interest rate floor of 6.5% and matures on January 12, 2012.

On February 16, 2010, Klaff converted all 250,000 Restricted Common OP Units into 250,000 Common Shares (Note 11).

ACADIA REALTY TRUST
SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2009

Description	Encumbrances	Land	Buildings & Improvements	Costs Capitalized Subsequent to Acquisition	Land	Buildings & Improvements	Total	Accumulated Depreciation	Date of Acquisition (a) Construction (c)
Shopping Centers									
Core Portfolio:									
Crescent Plaza Brockton, MA	\$ 17,600	\$ 1,147	\$ 7,425	\$ 1,219	\$ 1,147	\$ 8,644	\$ 9,791	\$ 5,581	1984(a)
New Loudon Center Latham, NY	14,343	505	4,161	10,879	505	15,040	15,545	10,321	1982(a)
Ledgewood Mall Ledgewood, NJ	2,000	619	5,434	33,199	619	38,633	39,252	32,784	1983(a)
Mark Plaza Edwardsville, PA	—	—	4,268	4,690	—	8,958	8,958	6,496	1968(c)
Plaza 422 Lebanon, PA	—	190	3,004	2,189	190	5,193	5,383	3,369	1972(c)
Route 6 Mall Honesdale, PA	—	—	—	12,696	1,664	11,032	12,696	5,667	1994(c)
Bartow Avenue Bronx, NY	—	1,691	5,803	560	1,691	6,363	8,054	1,233	2005(c)
Amboy Rd. Shopping Ctr. Staten Island, NY	—	—	11,909	1,519	—	13,428	13,428	1,501	2005(a)
Abington Towne Center ¹ Abington, PA	—	799	3,197	2,007	799	5,204	6,003	2,105	1998(a)
Bloomfield Town Square ¹ Bloomfield Hills, MI	—	3,207	13,774	9,570	3,207	23,344	26,551	7,721	1998(a)
Walnut Hill Plaza Woonsocket, RI	23,500	3,122	12,488	1,840	3,122	14,328	17,450	4,555	1998(a)
Elmwood Park Plaza Elmwood Park, NJ	34,600	3,248	12,992	14,764	3,798	27,206	31,004	9,813	1998(a)
Merrillville Plaza Hobart, IN	26,250	4,288	17,152	1,645	4,288	18,797	23,085	5,996	1998(a)
Marketplace of Absecon ¹ Absecon, NJ	—	2,573	10,294	3,416	2,577	13,706	16,283	4,181	1998(a)
Clark Diversey Chicago, IL	4,751	10,061	2,773	9	10,061	2,782	12,843	282	2006(a)
Boonton Boonton, NJ	8,182	1,328	7,188	—	1,328	7,188	8,516	704	2006(a)
Chestnut Hill Philadelphia, PA	9,481	8,289	5,691	44	8,289	5,735	14,024	505	2006(a)
Third Avenue Bronx, NY	—	11,108	8,038	1,015	11,855	8,306	20,161	685	2006(a)
Hobson West Plaza ¹ Naperville, IL	—	1,793	7,172	1,370	1,793	8,542	10,335	2,599	1998(a)
Village Commons Shopping Center Smithtown, NY	9,467	3,229	12,917	2,438	3,229	15,355	18,584	5,131	1998(a)
Town Line Plaza ¹ Rocky Hill, CT	—	878	3,510	7,303	907	10,784	11,691	7,399	1998(a)
Branch Shopping Center Village of the Branch, NY	14,179	3,156	12,545	777	3,156	13,322	16,478	4,043	1998(a)
The Methuen Shopping Center ¹ Methuen, MA	—	956	3,826	594	961	4,415	5,376	1,331	1998(a)
Gateway Shopping Center Burlington, VT	20,500	1,273	5,091	11,536	1,273	16,627	17,900	4,343	1999(a)
Mad River Station Dayton, OH	—	2,350	9,404	693	2,350	10,097	12,447	2,903	1999(a)
Pacesetter Park Shopping Center Ramapo, NY	12,313	1,475	5,899	1,121	1,475	7,020	8,495	2,348	1999(a)
239 Greenwich Greenwich, CT	26,000	1,817	15,846	549	1,817	16,395	18,212	4,428	1998(a)
West Shore Expressway Staten Island, NY	—	3,380	13,554	10	3,380	13,564	16,944	1,041	2007(a)
West 54th Street Manhattan, NY	—	16,699	18,704	28	16,699	18,732	35,431	1,281	2007(a)
Acadia 5-7 East 17th Street Manhattan, NY	—	3,048	7,281	—	3,048	7,281	10,329	337	2008(a)

ACADIA REALTY TRUST
SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2009

Description	Encumbrances	Land	Buildings & Improvements	Costs Capitalized Subsequent to Acquisition		Buildings & Improvements	Total	Accumulated Depreciation	Date of Acquisition (a) Construction(c)
				Land	Buildings & Improvements				
Fund I:									
Tarrytown Centre Westchester, NY	9,800	2,323	7,396	359	2,323	7,755	10,078	1,136	2004(a)
Granville Center Columbus, OH	—	2,186	8,744	59	2,186	8,803	10,989	1,643	2002(a)
Kroger/Safeway Various	—	—	34,586	—	—	34,586	34,586	27,899	2003(a)
Fund II:									
Liberty Avenue New York, NY	10,450	—	12,627	471	—	13,098	13,098	982	2005(a)
Pelham Manor Westchester, NY	31,652	905	—	49,006	9,020	40,891	49,911	1,783	2004(a)
400 E. Fordham Road Bronx, NY	86,000	11,144	18,010	93,559	16,254	106,459	122,713	4,347	2004(a)
4650 Broadway/Sherman Ave New York, NY	—	—	—	32,020	25,267	6,753	32,020	—	2005(a)
216th Street New York, NY	25,500	7,261	—	19,224	7,261	19,224	26,485	1,298	2005(a)
161st Street Bronx, NY	30,000	16,679	28,410	4,409	16,679	32,819	49,498	3,111	2005(a)
Oakbrook Oakbrook, IL	—	—	6,906	17	—	6,923	6,923	2,438	2005(a)
Atlantic Avenue Brooklyn, NY	11,543	5,322	—	15,007	5,322	15,007	20,329	146	2007(a)
Canarsie Plaza Brooklyn, NY	—	32,543	—	26,025	32,543	26,025	58,568	—	2007(a)
Pelham Manor Westchester, NY	—	—	10,161	638	511	10,288	10,799	442	2004(a)
ASOF II, LLC	48,245	—	—	—	—	—	—	—	—
Fund III:									
125 Main Street Assoc. Westport, CT	—	12,993	4,316	1,687	12,993	6,003	18,996	62	2007(a)
Sheepshead Bay Brooklyn, NY	—	20,391	—	3,313	20,391	3,313	23,704	—	2007(a)
Suffern Self Storage Suffern, NY	—	4,561	7,484	3	4,561	7,487	12,048	368	2008(a)
Linden Self Storage ² Linden, NJ	—	3,515	6,139	10	3,515	6,149	9,664	324	2008(a)
Webster Self Storage ² Bronx, NY	—	959	5,506	7	959	5,513	6,472	264	2008(a)
Jersey City Self Storage ² Jersey City, NJ	—	2,377	9,654	2	2,377	9,656	12,033	480	2008(a)
Bronx Self Storage ² Bronx, NY	—	10,835	5,936	17	10,835	5,953	16,788	308	2008(a)
Lawrence Self Storage ² Lawrence, NY	—	6,977	12,688	—	6,977	12,688	19,665	579	2008(a)
Starr Avenue Self Storage Queens, NY	—	7,597	22,391	366	7,597	22,757	30,354	1,092	2008(a)
New Rochelle Self Storage Westchester, NY	—	1,977	4,769	139	1,977	4,908	6,885	233	2008(a)
Yonkers Self Storage Westchester, NY	—	3,121	17,457	60	3,121	17,517	20,638	795	2008(a)
Bruckner Blvd. Self Storage Bronx, NY	—	6,244	10,551	25	6,244	10,576	16,820	487	2008(a)
Ridgewood Self Storage Queens, NY	—	8,000	—	13,260	8,000	13,260	21,260	187	2008(c)
Document Storage New York City, NY	—	—	—	1,080	—	1,080	1,080	55	2008(a)
Cortlandt Towne Center Cortlandt, NY	44,878	7,293	61,395	—	7,293	61,395	68,688	2,603	2009(a)
ASOF III, LLC	139,450	—	—	—	—	—	—	—	—
Underdeveloped land	—	251	—	—	251	—	251	—	—
Construction in progress and other investments	—	—	—	—	—	4,814	4,814	—	—
	\$ 732,184	\$ 267,683	\$ 546,466	\$ 388,443	\$ 309,685	\$ 897,721	\$ 1,207,406	\$ 193,745	

Notes:

- (1) These properties serve as collateral for the financing with Bank of America, N.A. in the amount of \$30,000
- (2) These properties serve as collateral for the financing with GEMSA, in the amount of \$41,500

ACADIA REALTY TRUST
SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2009

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

Buildings: 30 to 40 years

Improvements: Shorter of lease term or useful life

2. The aggregate gross cost of property included above for Federal income tax purposes was \$1,123.5 million as of December 31, 2009

3. (a) Reconciliation of Real Estate Properties:

The following table reconciles the real estate properties from January 1, 2007 to December 31, 2009:

(dollars in thousands)	For the years ended December 31,		
	2009	2008	2007
Balance at beginning of year	\$ 1,091,995	\$ 818,816	\$ 615,024
Other improvements	46,723	103,476	75,776
Property Acquired	68,688	169,703	128,016
Balance at end of year	\$ 1,207,406	\$ 1,091,995	\$ 818,816

3. (b) Reconciliation of Accumulated Depreciation:

The following table reconciles accumulated depreciation from January 1, 2007 to December 31, 2009:

(dollars in thousands)	For the years ended December 31,		
	2009	2008	2007
Balance at beginning of year	\$ 165,067	\$ 142,312	\$ 124,088
Depreciation related to real estate	28,678	22,755	18,224
Balance at end of year	\$ 193,745	\$ 165,067	\$ 142,312

CONSOLIDATED, AMENDED AND RESTATED

TERM LOAN AGREEMENT

among

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

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

**The LENDERS Party Hereto,
as Lenders**

and

EUROHYPO AG, NEW YORK BRANCH

as Administrative Agent

Date: As of November __, 2009

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LOAN AGREEMENT

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

RECITALS

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

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

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

D. Borrower has represented to the Lenders that the Borrower has completed construction of the Improvements (as defined in the Original Acquisition and Project Loan Agreement) and requested that the Lenders amend, reduce and restate and consolidate the Original Loan Agreement to, among other things, extend the maturity date and reflect that no

further amounts will be advanced under the Original Loan Agreement, and the Lenders have indicated their willingness to so amend and restate and consolidate the Original Loan Agreement, on the terms and subject to the conditions set forth herein.

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

ARTICLE 1

CERTAIN DEFINITIONS

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

(1) “**Additional Cash Collateral Account**” has the meaning assigned to such term in the Cash Management Agreement.

(2) “**Additional Costs**” has the meaning assigned to such term in Section 2.9(1)(a).

(3) “**Additional Interest**” means any and all amounts which may become due and payable by Borrower in accordance with the terms and provisions of any Hedge Agreement provided by a Eurohypo Counterparty which is secured by the Mortgage in accordance with Section 9.15 which amounts shall be evidenced by and payable pursuant to the Notes in favor of Eurohypo and/or such Affiliate; provided, however, that Additional Interest shall not include any amounts which may become due and payable pursuant to any Hedge Agreement which is not secured by the Mortgage.

(4) “**Adjusted LIBOR Rate**” means, for any Interest Period for any LIBOR-based Loan, a rate per annum (rounded upwards to the nearest 1/32 of 1%) determined by Administrative Agent to be equal to the LIBOR Rate for such Interest Period divided by 1 minus the Reserve Requirement (if any) for such Interest Period.

(5) “**Adjusted Operating Expenses**” means Operating Expenses as determined and adjusted by Administrative Agent in accordance with its then current audit policies and procedures.

(6) “**Adjusted Operating Revenues**” means Operating Revenues as determined and adjusted by Administrative Agent in accordance with its then current audit policies and procedures.

(7) “**Administrative Fee**” means the administrative fee agreed to by Borrower and Administrative Agent pursuant to the Fee Letter.

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

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

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

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

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

(13) “**Applicable Lending Office**” means, for each Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan on the respective signature pages hereof or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which its loans of such Type are to be made and maintained.

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

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

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

(b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(17) “**Arranger**” means Eurohypo.

(18) “**Assignment and Acceptance**” means an Assignment and Acceptance, duly executed by the parties thereto, in substantially the form of Exhibit D hereto and consented to by Administrative Agent in accordance with Section 12.24(2).

(19) “**Award**” means any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Project.

(20) “**Bankruptcy Party**” has the meaning assigned to such term in Section 10.8.

(21) “**Base Rate**” means, for any day, a rate per annum equal to the highest of (a) the Federal Funds Rate for such day plus 1/2 of 1%, (b) the Prime Rate for such day or (c) the LIBOR Rate plus 1.50%. Each change in any interest rate provided for herein based upon the Base Rate resulting from a change in the Base Rate shall take effect at the time of such change in the Base Rate.

(22) “**Base Rate Loans**” means Loans that bear interest at rates based upon the Base Rate.

(23) “**Basel II Accord**” means the proposals for risk-based capital framework described by the Basel Committee on Banking Regulations and Supervisory Practices in its paper entitled “International Convergence of Capital Measurement and Capital Standards: a Revised Framework – Comprehensive Version” dated June 2006, as amended, modified and supplemented and in effect from time to time or any replacement thereof.

(24) “**Bifurcation**” has the meaning assigned to such term in Section 12.29(1).

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

(26) “**Borrower Party**” means Borrower, any Guarantor or Managing Member

(27) “**Business Day**” means (a) any day other than a Saturday, a Sunday, or other day on which commercial banks located in New York City are authorized or required by law to remain closed and (b) in connection with a borrowing of, a payment or prepayment of

principal of or interest on, a Conversion of or into, or an Interest Period for, a LIBOR-based Loan or a notice by Lead Borrower with respect to any such borrowing, payment, prepayment or Conversion, the term "Business Day" shall, in addition to the days excluded in subsection (a) above, also exclude a day on which banks are not open for dealings in Dollar deposits in the London interbank market.

(28) "**Calculated Debt Service**" means, for any period, an amount equal to the outstanding principal balance of the Loans as of the date of calculation multiplied by a loan constant of seven percent (7.0%).

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

(30) "**Cash Management Agreement**" means that certain Cash Management and Security Agreement to be executed, dated and delivered by Borrower, Administrative Agent (on behalf of the Lenders) and the Depository Bank subsequent to the Closing Date, as the same may be modified, amended and/or supplemented and in effect from time to time.

(31) "**Casualty**." has the meaning specified in Section 3.3 hereof.

(32) "**Casualty Consultant**" has the meaning assigned to such term in Section 3.2(2)(c).

(33) "**Casualty Retainage**" has the meaning assigned to such term in Section 3.2(2)(d).

(34) "**Casualty/Taking Account**" has the meaning assigned to such term in the Cash Management Agreement.

(35) "**Change of Control**" means any transaction, transfer, admission, redemption, withdrawal, change in organizational documents or structure, or otherwise, whether directly or indirectly, as a result of which (a)(i) Sponsor, whether directly or indirectly, owns less than 18% of the membership interests in and rights to distributions from Borrower, or (ii) any Person other than Managing Member has the responsibility for managing and administering the day-to day business and affairs of Borrower or (iii) in any other respects, any Person other than Sponsor directly or indirectly Controls Borrower, (b) (i) Sponsor no longer directly or indirectly owns at least 18% of the membership interests in and rights to distributions from the Managing Member, or (ii) Sponsor no longer directly or indirectly has responsibility for managing and administering the day-to day business and affairs of the Managing Member or (iii) in any other respects, any Person other than Sponsor directly or indirectly Controls the Managing Member, (c)(i) anyone other than Acadia Realty Trust, whether directly or indirectly, owns less than 75% of the partnership interests in Sponsor, or (ii) any Person other than Acadia Realty Trust has the responsibility for managing and administering the day-to day business and affairs of Sponsor or (iii) in any other respects, any Person other than Acadia Realty Trust directly or indirectly Controls Sponsor, or (d) a change in the management control of Acadia Realty Trust such that Kenneth F. Bernstein is no longer the Chief Executive Officer of Acadia Realty Trust or Kenneth F. Bernstein fails to devote a substantial amount of his business time and attention in any consecutive six (6) month period to the affairs of Acadia Realty Trust; provided, however, such

occurrence shall not be an Event of Default if within sixty (60) days of the occurrence thereof the Administrative Agent approves, in the exercise of its reasonable judgment, the replacement or successor management of Acadia Realty Trust. As used in this definition, “**Control**” of one Person (the “controlled Person”) by another Person (the “**controlling Person**”) shall mean the possession, directly or indirectly, by the controlling Person of the power or ability to direct or cause the direction of the management or policies of the controlled Person, whether through the ability to exercise voting power, by contract or otherwise (“**Controlled**” and “**Controlling**” each have the meanings correlative thereto).

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

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

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

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

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

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

(42) “**Collateral Letter of Credit**” means a clean, irrevocable and unconditional standby letter of credit that is (a) issued for the account of an applicant other than Borrower, (b) issued in favor of Administrative Agent (on behalf of the Lenders) in the amount of any cash required pursuant to the terms of this Agreement or any other Loan Document pursuant to which it is being issued, (c) issued by an issuer having a paying office in the City of New York (or, with respect to Bank of America, N.A. only, such other office as is acceptable to Administrative Agent in its reasonable discretion) and having a rating with respect thereto of “AA” or better by S&P (or any equivalent rating from Moody’s) or such other issuer as shall be approved by Administrative Agent in its sole and absolute discretion (Bank of America, N.A. is hereby approved by Administrative Agent, provided that the letter of credit is in form and substance acceptable to Administrative Agent in its reasonable discretion), (d) drawable, in whole or in part from time to time, by Administrative Agent upon the presentment to the issuer of a clean sight-draft demanding such payment, (e) an “evergreen” letter of credit that initially has an expiration date of at least one (1) year from the date of deposit and is automatically renewed from year to year or one which does not expire until at least thirty (30) Business Days

after the Maturity Date, and (f) freely assignable upon presentation of customary documents by Administrative Agent at no cost and expense to Administrative Agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(77) “**Fee Letter**” means the letter agreement, dated the date hereof, between Borrower and Administrative Agent with respect to certain fees payable by Borrower in connection with the Loans, as the same may be modified or amended from time to time.

(78) “**Flood Insurance Acts**” has the meaning assigned to such term in Section 3.1(1)(g).

(79) “**GAAP**” means accounting principles generally accepted in the United States of America.

(80) “**Governmental Authority**” means any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, federal, state or local, or foreign having jurisdiction over the matter or matters in question.

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

(82) “**Guarantor Documents**” means collectively, the Guaranty and the Environmental Indemnity.

(83) “**Guaranty**” means the instruments of guaranty, if any, now or hereafter in effect from a Guarantor to Administrative Agent (on behalf of the Lenders).

(84) “**Hazardous Materials**” has the meaning assigned to such term in Article 5.

(85) “**Hedge Agreement**” means any swap/cap agreement between Borrower and one or more financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies, as the same may be modified, amended and/or supplemented and in effect from time to time in accordance with Section 9.15; provided, however, that any such agreement may only be secured by the Liens and Security Documents securing the Loans, if, and only if, the protection is provided by one or more Eurohypo Counterparties and otherwise complies with Section 9.15.

(86) “**Hedge Agreement Pledge**” means that certain Assignment, Pledge and Security Agreement substantially in the form of Exhibit E attached hereto, to be executed, dated and delivered by Borrower to Administrative Agent (on behalf of the Lenders) in accordance with Section 9.15 and at any other time Borrower elects or is required to enter into a Hedge Agreement, covering Borrower’s right, title and interest in and to any such Hedge Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.

(87) “**Improvements**” has the meaning assigned to such term in the Mortgage.

(88) “**Indebtedness**” has the meaning assigned to such term in the Mortgage.

(89) “**Independent Manager**” means, in the case of a corporation, limited liability company or limited partnership, a director, member or manager that is a natural person who has no affiliation with any Borrower Party and who is approved by Administrative Agent.

(90) “**Insurance Premiums**” has the meaning assigned to such term in [Section 3.1\(2\)](#).

(91) “**Insurance Proceeds Deficiency**” has the meaning assigned to such term in [Section 3.2\(2\)](#).

(92) “**Interest Period**” means, with respect to any LIBOR-based Loan, each period commencing on the date such LIBOR-based Loan is made or Converted from a Base Rate Loan or (in the event of a Continuation) the last day of the immediately preceding Interest Period for such Loan and ending on the numerically corresponding day in the first calendar month thereafter; provided that (i) each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; (ii) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next succeeding calendar month, on the immediately preceding Business Day); (iii) no Interest Period shall have a duration of less than one month and, if the Interest Period for any LIBOR-based Loan would otherwise be a shorter period, such Loan shall bear interest at the Base Rate plus the Applicable Margin for Base Rate Loans; (iv) in no event shall any Interest Period extend beyond the Maturity Date; and (v) there may be no more than one (1) Interest Period in respect of LIBOR based Loans outstanding at any one time.

(93) “**Interest Rate Hedge Period**” has the meaning assigned to such term in [Section 9.15](#).

(94) “**Interest Reserve Account**” has the meaning assigned to such term in the Cash Management Agreement.

(95) “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

(96) “**Land**” has the meaning assigned to such term in the Recitals.

(97) “**Leasing Guidelines**” means the Leasing Guidelines described in [Schedule 1.1\(97\)](#) attached hereto.

(98) “**Lender**” and “**Lenders**” have the respective meanings assigned to such terms in the Preamble.

(99) “**LIBOR Rate**” means, for any Interest Period for any LIBOR-based Loan, the greater of (a) 1.50% and (b) the rate per annum appearing on Reuters Screen LIBOR01 (formerly operated as Page 3750 of the Dow Jones Market Service (Telerate)) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service,

as determined by Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m. London time on the date two (2) Business Days prior to the first day of such Interest Period as the rate for the offering of Dollar deposits having a term comparable to such Interest Period, provided that if such rate does not appear on such page, or if such page shall cease to be publicly available, or if the information contained on such page, in the reasonable judgment of Administrative Agent shall cease accurately to reflect the rate offered by leading banks in the London interbank market as reported by any publicly available source of similar market data selected by Administrative Agent, the LIBOR Rate for such Interest Period shall be determined from such substitute financial reporting service as Administrative Agent in its discretion shall determine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

which it is a party, (d) the validity or enforceability of any of the Loan Documents or (e) the rights and remedies of the Lenders and Administrative Agent under any of the Loan Documents.

(116) “**Maturity Date**” means the earlier of (a) October 4, 2011, as such date may be extended by the Extension Period, or (b) any earlier date on which all of the Loans are required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.

(117) “**Mold**” has the meaning assigned to such term in [Section 5.1\(6\)](#).

(118) “**Mortgage**” means the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by Borrower in favor of Administrative Agent (on behalf of the Lenders), covering the Project and any amendments, modifications, renewals, substitutions, consolidations, severances and replacements thereof.

(119) Intentionally Omitted.

(120) Intentionally Omitted.

(121) “**Net Cash Flow**” means, for any period, the amount by which Operating Revenues exceed the sum of (a) Operating Expenses, (b) Debt Service, and (c) any actual payment into impounds, escrows, or reserves required by Administrative Agent, except to the extent included within the definition of Operating Expenses.

(122) “**Net Operating Income**” means the amount by which Adjusted Operating Revenues exceed Adjusted Operating Expenses.

(123) “**Net Proceeds**” has the meaning assigned to such term in [Section 3.2\(2\)](#).

(124) “**Net Proceeds Deficiency**” has the meaning assigned to such term in [Section 3.2\(2\)\(f\)](#).

(125) “**Notes**” means the four (4) promissory notes of even date herewith as provided for in [Section 2.1\(4\)](#), and in the Note Consolidation, Severance and Modification Agreement of even date herewith between Administrative Agent, and all promissory notes delivered in substitution or exchange therefor, in each case as the same may be consolidated, replaced, severed, modified, amended or extended from time to time.

(126) “**Office Component**” means the portion of the Improvements belonging to Fordham Office consisting of a 14-story Class A office building containing approximately 151,685 square feet of net leaseable space.

(127) “**Operating Expenses**” means all reasonable and necessary expenses of operating the Project in the ordinary course of business calculated in accordance with GAAP which are directly associated with and fairly allocable to the Project for the applicable period, including annualized ad valorem real estate taxes and assessments, capital expenditures at an imputed rate of \$0.10 per square foot on an annualized basis of gross leasable area at the Project, annualized insurance premiums, regularly scheduled tax impounds paid to Administrative Agent,

maintenance costs, management fees and costs in an amount equal to the greater of the management fees and costs actually paid or an imputed rate of four percent (4%) of Operating Revenues, accounting, legal, and other professional fees, fees relating to environmental and Net Cash Flow and Net Operating Income audits, and other expenses incurred by Administrative Agent and reimbursed by Borrower under this Agreement and the other Loan Documents, deposits to any capital replacement reserves required by Administrative Agent, wages, salaries, and personnel expenses, but excluding Debt Service, capital expenditures, any of the foregoing expenses which are paid from deposits to cash reserves previously included as Operating Expenses, any payment or expense for which Borrower was or is to be reimbursed from proceeds of the Loans or insurance or by any third party, and any non-cash charges such as depreciation and amortization. Any management fee or other expense payable to Borrower or to an Affiliate of Borrower shall be included as an Operating Expense only with Administrative Agent's prior approval. Operating Expenses shall not include federal, state or local income taxes or legal and other professional fees unrelated to the operation of the Project.

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

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

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

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

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

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

(a) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of Borrower or any Affiliate of Borrower, so long as Lead Borrower delivers notice to Administrative Agent as soon as practicable thereafter and that Borrower or such Affiliate is promptly reconstituted, if applicable, following the death of such member partner or shareholder;

(b) transfers for estate planning purposes of an individual's interest in Borrower or any Affiliate of Borrower to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower or such Affiliate is reconstituted, if required, following such transfer;

(c) the sale or pledge, in one or a series of transactions, of the stock, limited partnership interests or non-managing membership interests (as the case may be) in Borrower or an Affiliate of Borrower; provided, however, that no such transfers shall result in any sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of the Project, and as a condition to each such transfer, Administrative Agent shall receive no less than thirty (30) days prior written notice of such proposed transfer;

(d) a transfer by P/A Associates, LLC ("**P/A Associates**") of 100% of its membership interest in Managing Member to Acadia Strategic Opportunity Fund II, LLC ("**Fund II**") or an Affiliate of Fund II; and

(e) the sale, transfer, or issuance of stock in Acadia Realty Trust (the "**Trust**"), in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange.

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

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

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

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

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

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

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who is known to Borrower to commit, threaten or conspire to commit or support “terrorism”, as defined in the Executive Order;

(e) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list; or

(f) who is known to Borrower to be an Affiliate of or affiliated with a Person listed above.

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

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

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

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

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

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

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

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

(147) “**Proposed Lender**” has the meaning assigned to such term in Section 2.9(7).

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

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

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

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

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

(153) “**Requesting Lender**” has the meaning assigned to such term in Section 2.9(7).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(j) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns, except to the extent that it is required or permitted to file consolidated tax returns by law;

(k) has not commingled and will not commingle its funds or assets with those of any other Person;

(l) has held and will hold its assets in its own name;

(m) has maintained and will maintain financial statements that properly and accurately show its separate assets and liabilities and do not show the assets or liabilities of any other Person, and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity other than an Affiliate (but in such case noting that such entity and the Affiliate are separate entities);

(n) has paid and will pay its own liabilities and expenses, including, but not limited to, the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees or has entered into appropriate alternative arrangements for workforce services in light of its contemplated business operations;

(o) has observed and will observe all corporate, partnership or limited liability company formalities, as applicable;

(p) has not incurred and will not incur any Debt other than (a) with respect to Borrower, the Loans and (b) trade and operational debt which is (i) incurred in the ordinary course of business, (ii) not more than sixty (60) days past due, (iii) with trade creditors, (iv) with respect to Borrower, in the aggregate, in an amount less than \$1,000,000.00, (v) not evidenced by a note, and (vi) paid when due. No Debt other than the Loans may be secured (subordinate or pari passu) by the Project;

(q) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(r) has not and will not acquire obligations or securities of its members or shareholders or any other Affiliate;

(s) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including, but not limited to, paying for shared office space and services performed by any officer or employee of an Affiliate;

(t) maintains and uses and will maintain and use separate invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Single Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name

and shall not bear the name of any other entity unless such entity is clearly designated as being the Single Purpose Entity's agent;

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

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

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

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

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

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

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

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

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

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

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

(166) “**State**” means the State of New York.

(167) “**Stub Interest Period**” has the meaning assigned to such term in Section 2.4(1).

(168) “**Subordination of Property Management Agreement**” means that certain Property Manager’s Consent and Subordination of Property Management Agreement, dated the date hereof, by the Property Manager in favor of Administrative Agent (on behalf of the Lenders), as the same may be modified, amended and/or supplemented and in effect from time to time.

(169) “**Syndication**” has the meaning assigned to such term to in Section 12.28.

(170) “**Tax and Insurance Reserve Account**” has the meaning assigned to such term in the Cash Management Agreement.

(171) “**Tax and Insurance Reserve Fund**” has the meaning assigned to such term in Section 4.1(1).

(172) “**Taxes**” has the meaning assigned to such term in Section 9.2.

(173) “**Terrorism Insurance**” has the meaning assigned to such term in Section 3.1(2).

(174) “**Terrorism Insurance Cap**” has the meaning assigned to such term in Section 3.1(2).

(175) “**Terrorism Insurance Required Amount**” has the meaning assigned to such term in Section 3.1(2).

(176) “**Third-Party Counterparty**” has the meaning assigned to such term in Section 9.15(3).

(177) “**Third-Party Hedge Agreement**” has the meaning assigned to such term in Section 9.15(3).

(178) “**Threshold Amount**” means \$2,000,000.

(179) “**TI/LC Letter of Credit**” has the meaning assigned to such term in Section 4.2.

(180) “**Transfer**” has the meaning assigned to such term in Section 9.1.

(181) “**Type**” has the meaning assigned to such term in Section 2.1.

(182) “**Unit**” means each unit of the Condominium, together with all rights, interests and easements in and to the Project Amenities that are held by the owner of such unit as a result of the operation of the terms of the Condominium Declaration.

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

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

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

ARTICLE 2

LOAN TERMS

Section 2.1 The Commitments, Loans and Notes.

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

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

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

(4) **Notes.**

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

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

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

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

Section 2.2 Conversions or Continuations of Loans.

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

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

Section 2.3 Interest Rate; Late Charge.

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

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

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

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

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

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

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

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

Section 2.4 Terms of Payment.

The Loans shall be payable as follows:

(1) **Interest.** On the date hereof, Borrower shall make a payment of interest only (covering the period from the date hereof through and including December 1, 2009 (the "**Stub Interest Period**"), and beginning with the first Business Day of each month thereafter, commencing on January 1, 2010, Borrower shall pay interest in arrears on each Payment Date in accordance with the wire transfer instructions set forth in Schedule 2.4(1) hereto (or such other

instructions as Administrative Agent may from time to time provide) until all amounts due under the Loan Documents are paid in full.

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

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

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

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

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

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

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

(1) Lead Borrower shall notify (the "Extension Notice") Administrative Agent of Borrower's exercise of such option between sixty (60) and one hundred twenty (120) days prior to the original Maturity Date;

(2) No Potential Default or Event of Default exists as of the date of the Extension Notice, as of the original Maturity Date or would result from the extension of the maturity of the Loans for the Extension Period;

(3) The Loan to Value Ratio does not exceed 70%, based on a new Appraisal obtained by Administrative Agent not more than sixty (60) days prior to the original Maturity Date, such Appraisal to be at Borrower's expense and satisfactory to Administrative Agent in all respects;

(4) The Pro Forma Debt Service Coverage Ratio as of the original Maturity Date shall be equal to or greater than 1.45:1.00;

(5) The Debt Yield as of the original Maturity Date shall not be less than ten percent (10.0%).

(6) The expiration date of any Collateral Letters of Credit, if still outstanding pursuant to the terms of this Agreement or any other Loan Document, shall be extended to a date which is thirty (30) days beyond the end of the Extension Period, or shall otherwise contain evergreen provisions satisfactory to Administrative Agent, in its sole and absolute discretion;

(7) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the Extension Notice) and all other financial statements and other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;

(8) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;

(9) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and

legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;

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

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

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

Section 2.6 Reserved.

Section 2.7 Cash Management.

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

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

(3) The insufficiency of funds on deposit in the Clearing Account or the Cash Management Account (or any sub-account thereunder) shall not absolve Borrower of the obligation to make any payments as and when due pursuant to this Agreement and the other

Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

Section 2.8 Payments; Pro Rata Treatment; Etc.

(1) Payments Generally.

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

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

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

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

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

Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

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

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

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

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

Each such notice of a Loan Transaction shall specify the amount (subject to Section 2.8(4)), Type, and Interest Period of such proposed Loan Transaction, and the date (which shall be a Business Day) of such proposed Loan Transaction. Notices for Conversions and Continuations shall be in the form of Exhibit F. Each such notice specifying the duration of an Interest Period shall specify the portion of the Loans to which such Interest Period is to relate. Administrative Agent shall promptly notify the Lenders of the contents of each such notice. If Lead Borrower

fails to select (i) the Type of Loan or (ii) the duration of any Interest Period for any LIBOR-based Loan within the time period (i.e., three (3) Business Days prior to the first day of the next applicable Interest Period) and otherwise as provided in this Section 2.8(5), such Loan (if outstanding as a LIBOR Loan) will be automatically Continued as an LIBOR-based Loan with an Interest Period of one (1) month on the last day of the current Interest Period for such Loan (based on a LIBOR-based Rate determined two (2) Business Days prior to the first day of the next Interest Period) or, if outstanding as an Base Rate Loan, will remain as a Base Rate Loan.

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

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

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

(7) Sharing of Payments, Etc.

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

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

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

(d) **Rights of Lenders; Bankruptcy.** Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 2.8(7) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 2.8(7) to share in the benefits of any recovery on such secured claim.

Section 2.9 Yield Protection; Etc.

(1) **Additional Costs.**

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

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

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

(b) **Costs Attributable to Regulatory Change or Risk-Based Capital Guidelines.** Without limiting the effect of the foregoing provisions of this Section 2.9(1) (but without duplication), Borrower shall pay directly to each Lender from time to time on request such amounts as such Lender may determine to be necessary to compensate such Lender (or, without duplication, the bank holding company of which such Lender is a subsidiary) for any costs that it determines are attributable to the maintenance by such Lender (or any Applicable

Lending Office or such bank holding company), pursuant to any law or regulation or any interpretation, directive or request (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) of any court or governmental or monetary authority (i) following any Regulatory Change or (ii) implementing any risk-based capital guideline or other requirement (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) hereafter issued by any government or governmental or supervisory authority implementing at the national level the Basel II Accord, of capital in respect of its Commitment or Loans (such compensation to include, without limitation, an amount equal to any reduction of the rate of return on assets or equity of such Lender (or any Applicable Lending Office or such bank holding company) to a level below that which such Lender (or any Applicable Lending Office or such bank holding company) could have achieved but for such law, regulation, interpretation, directive or request.

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

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

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

(b) Any Lender determines, which determination shall be conclusive, and notifies Administrative Agent that the relevant rates of interest referred to in the definition of LIBOR Rate upon the basis of which the rate of interest for LIBOR-based Loans for such

Interest Period is to be determined are not likely adequately to cover the cost to such Lenders of making or maintaining LIBOR-based Loans for such Interest Period;

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

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

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

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

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

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

and Interest Periods) in accordance with their respective Commitments.

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

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

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

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

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

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

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

received by it hereunder in respect of the Loans) or Form W-8ECI (relating to all interest to be received by such Lender hereunder in respect of the Loans), or

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

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

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

(7) **Replacement of Lenders.** If any Lender requests compensation pursuant to Section 2.9(1) or 2.9(6), or any Lender's obligation to Continue Loans of any Type, or to Convert Loans of any Type into the other Type of Loan, shall be suspended pursuant to Section 2.9(2) or 2.9(3) (any such Lender requesting such compensation, or whose obligations are so suspended, being herein called a "**Requesting Lender**"), Lead Borrower, upon three (3) Business Days notice, may require that such Requesting Lender transfer all of its right, title and interest under this Agreement and such Requesting Lender's Note to any bank or other financial institution (a "**Proposed Lender**") identified by Lead Borrower that is satisfactory to Administrative Agent (i) if such Proposed Lender agrees to assume all of the obligations of such Requesting Lender hereunder, and to purchase all of such Requesting Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Requesting Lender's Loans, together with interest thereon to the date of such purchase (to the extent not paid by Borrower), and satisfactory arrangements are made for payment to such Requesting Lender of all other amounts accrued and payable hereunder to such Requesting Lender as of the date of

such transfer (including any fees accrued hereunder and any amounts that would be payable under Section 2.9(5) as if all of such Requesting Lender's Loans were being prepaid in full on such date) and (ii) if such Requesting Lender has requested compensation pursuant to Section 2.9(1) or 2.9(6), such Proposed Lender's aggregate requested compensation, if any, pursuant to Section 2.9(1) or 2.9(6) with respect to such Requesting Lender's Loans is lower than that of the Requesting Lender. Subject to the provisions of Section 12.24(2), such Proposed Lender shall be a "Lender" for all purposes hereunder. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements of Borrower contained in Sections 2.9(1), 2.9(6) and 12.5 (without duplication of any payments made to such Requesting Lender by Borrower or the Proposed Lender) shall survive for the benefit of such Requesting Lender under this Section 2.9(7) with respect to the time prior to such replacement.

Section 2.10 Administrative Fee.

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

Section 2.11 Exit Fee.

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

ARTICLE 3

INSURANCE, CONDEMNATION, AND IMPOUNDS

Section 3.1 Insurance.

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

(a) comprehensive all-risk insurance on the Improvements and the personal property, in each case (i) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, (ii) containing an agreed amount endorsement with respect to the improvements and personal property waiving all co insurance provisions; (iii) providing for no deductible in excess of \$50,000; (iv) providing for repairs and alteration coverage; and (v) providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements together with an "Ordinance or Law Coverage" or "Enforcement"

endorsement if any of the Improvements or the use of the Project shall at any time constitute legal non-conforming structures or uses. The Full Replacement Cost shall be redetermined from time to time (but not more frequently than once in any twenty-four (24) calendar months) at the request of Administrative Agent by an appraiser or contractor designated by Borrower and reasonably approved by Administrative Agent, or by an engineer or appraiser in the regular employ of the insurer. The cost of such appraisal shall be paid by Administrative Agent unless an Event of Default shall have occurred and be continuing, in which case such cost shall be paid by Borrower. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Administrative Agent to request any such ascertainment shall relieve Borrower of any of its obligations under this Section 3.1(1)(a);

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

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

Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Notes and this Agreement except to the extent such amounts are actually paid out of the proceeds of such business income/loss of rents insurance;

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

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

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

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

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

only to customary deductibles under such Policies, and (B) the maximum limit of coverage available with respect to the Project, under Policies issued by private insurance carriers;

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

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

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

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

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

Project in Bronx, New York are generally requiring terrorism insurance as a condition of financing, or (c) Borrower or Sponsor or any Affiliate of Borrower or Sponsor, is obtaining terrorism insurance on any other properties in Bronx, New York of which any of the foregoing Persons own or operate. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Section 3.1(1) hereof, Lead Borrower shall deliver to Administrative Agent insurance certificates showing payment of all premiums (the "**Insurance Premiums**") for such Policies, which certificates shall be in form and substance reasonably satisfactory to Administrative Agent. Within sixty (60) days following the expiration dates of the Policies, Lead Borrower shall deliver to Administrative Agent certified copies of such Policies marked "premium paid" or accompanied by evidence satisfactory to Administrative Agent of payment of the Insurance Premiums.

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

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

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

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

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

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

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

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

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

Section 3.2 Use and Application of Net Proceeds.

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

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

satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement.

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

(a) The Net Proceeds shall be made available to Borrower for Restoration provided that each of the following conditions are met:

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

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

shall have been replaced with a replacement Property Management Agreement with a qualified Property Manager, prior to the opening or reopening of the Project or any portion thereof for business with the public.

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

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

(d) In no event shall Administrative Agent be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 3.2(2), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration (but shall not be duplicative of such amounts actually held back by Borrower). The Casualty Retainage shall not be released until the Casualty Consultant certifies to Administrative Agent that the Restoration has been completed in accordance with the provisions of this Section 3.2 and that all approvals

necessary for the re-occupancy and use of the Project have been obtained from all appropriate Governmental Authorities, and Administrative Agent receives evidence satisfactory to Administrative Agent that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Administrative Agent will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Administrative Agent that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Administrative Agent or by the title company issuing the title insurance policy for the Project, and receives an endorsement to such title insurance policy insuring the continued priority of the Lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Administrative Agent, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

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

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

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

(3) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Lead Borrower as excess Net Proceeds pursuant to Section 3.2(2)(g) hereof may be retained and applied by Administrative Agent toward the payment of the Loans (without any prepayment premium) whether or not then due and payable in such order, priority and proportions as Administrative Agent in its sole and absolute discretion shall deem proper, or,

at the sole and absolute discretion of Administrative Agent, the same may be paid, either in whole or in part, to Lead Borrower for such purposes as Administrative Agent shall approve, in its sole and absolute discretion. If Administrative Agent shall receive and retain Net Proceeds, the Lien of the Mortgage shall be reduced only by the amount thereof received and retained by Administrative Agent and actually applied by Administrative Agent in reduction of the Loans.

Section 3.3 Casualty and Condemnation.

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

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

RESERVES; COLLATERAL LETTERS OF CREDIT

Section 4.1 Real Estate Tax and Insurance Reserve Fund.

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

(2) Disbursements. Borrower shall furnish Administrative Agent with (i) bills for the charges for which such deposits are required and (ii) a disbursement request (in a form reasonably satisfactory to Administrative Agent), executed by an authorized officer of Borrower, at least thirty (30) days prior to the date on which the charges first become payable. Provided that no Event of Default exists, Administrative Agent will direct the Depository Bank to apply the Tax and Insurance Reserve Fund to payments of insurance premiums and real estate taxes required to be made by Borrower pursuant to Sections 3.1 and 9.2, respectively, and under the Mortgage but not, in any event, earlier than ten (10) days prior to the due dates thereof. In making any payment relating to the Tax and Insurance Reserve Fund, the Depository Bank may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to real estate taxes) or insurer or agent (with respect to insurance premiums),

without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof unless said bill, statement or estimate is obviously incorrect. If the amount of the Tax and Insurance Reserve Fund shall exceed the amounts due for real estate taxes and insurance premiums pursuant to Sections 3.1 and 9.2, respectively, Administrative Agent shall, in its sole and absolute discretion, return any excess to Lead Borrower or credit such excess against future payments to be made to the Tax and Insurance Reserve Fund. Provided that on the date that said real estate taxes are due and payable, no Event of Default exists and sufficient funds are on deposit in the Tax and Insurance Reserve Fund to pay real estate taxes, Borrower shall not be liable to pay and shall not be charged with any late charges, interest and/or penalties imposed by or payable to any Governmental Authority as a result of the Depository Bank's failure to pay real estate taxes prior to the date that same become delinquent.

Section 4.2 Tenant Improvement/Leasing Reserve Letter of Credit.

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

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

(2) Following a draw by Administrative Agent on the TI/LC Letter of Credit solely because of the failure to furnish Administrative Agent with a replacement or renewal of the TI/LC Letter of Credit, Administrative Agent will deposit such proceeds in the Additional Cash Collateral Account as security for the purposes for which such TI/LC Letter of Credit was delivered. Administrative Agent shall be entitled to draw upon such deposited proceeds to the same extent it would have been entitled to make a draw under the TI/LC Letter of Credit and such deposited proceeds shall be subject to disbursement to Borrower on the same basis as

reductions to the TI/LC Letter of Credit are calculated, as described above. Administrative Agent shall direct the Depository Bank to disburse the full remaining amount of such proceeds to Borrower provided (i) Borrower delivers to Administrative Agent a replacement TI/LC Letter of Credit acceptable to Administrative Agent in its sole discretion, (ii) there exists no Event of Default or Potential Default, and (iii) Borrower pays all of Administrative Agent's fees and expenses in connection with such draw and disbursement.

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

Section 4.3 Reserved.

Section 4.4 Reserve Funds and Security Accounts Generally.

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

(a) Borrower covenants and agrees:

(A) to do all acts that may be reasonably necessary to maintain, preserve and protect Reserved Account Collateral;

(B) to pay promptly when due all material taxes, assessments, charges, encumbrances and liens now or hereafter imposed upon or affecting any Reserved Account Collateral;

(C) to appear in and defend any action or proceeding which may materially and adversely affect Borrower's title to or Administrative Agent's interest in the Reserved Account Collateral;

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

hereunder;

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

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

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

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

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

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

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

(2) Administrative Agent shall be entitled, among other things, to draw upon each Collateral Letter of Credit, in whole, or in part from time to time, upon the occurrence and

during the continuance of any Event of Default or under the other circumstances under which a draw shall be permitted under the Loan Documents or the Collateral Letter of Credit;

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

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

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

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

ENVIRONMENTAL MATTERS

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

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

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

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

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

(5) “**Hazardous Materials**” means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (b) asbestos or asbestos-containing materials, (c) polychlorinated biphenyls (pcbs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based

paint, (h) Mold, or (i) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any Governmental Authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

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

Section 5.2 Representations and Warranties on Environmental Matters.

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

Section 5.3 Covenants on Environmental Matters.

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

(2) Borrower shall not cause, shall prohibit any other Person within the control of Borrower from causing, and shall use prudent, commercially reasonable efforts to prohibit other Persons (including tenants) from causing (a) any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Project or the transportation of any Hazardous Materials to or from the Project (except for cleaning and other products used in connection with the routine

maintenance or repair of the Project in full compliance with Environmental Laws), (b) any underground storage tanks to be installed at the Project, or (c) any activity that requires a permit or other authorization under Environmental Laws to be conducted at the Project.

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

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

(a) all Environmental Claims asserted or threatened against Borrower or any other party occupying the Project or any portion thereof or against the Project which become known to Borrower;

(b) the discovery by Borrower of any occurrence or condition on the Project or on any real property adjoining or in the vicinity of the Project which could reasonably be expected to lead to an Environmental Claim against Borrower, Administrative Agent or any of the Lenders;

(c) the commencement or completion of any environmental remediation at the Project; and

(d) any Lien or other encumbrance imposed pursuant to any Environmental Law "Environmental Liens".

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

Section 5.4 Allocation of Risks and Indemnity. As between Borrower, Administrative Agent and the Lenders, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Material at, upon, within, contiguous to or otherwise affecting the Project, shall lie solely with Borrower. Accordingly, Borrower shall bear all risks and costs associated with any Environmental Loss, damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required hereunder or by law. Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defense) arising out of or associated, in any way, with

the non-compliance with Environmental Laws, or the existence of Hazardous Materials in, on, or about the Project, or a breach of any representation, warranty or covenant contained in this Article 5, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent and the Lenders; provided, however, Borrower shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from Administrative Agent's or any Lender's gross negligence or willful misconduct. Borrower's obligations under this Section 5.4 shall arise upon the discovery of the presence of any Hazardous Material, whether or not any Governmental Authority has taken or threatened any action in connection with the presence of any Hazardous Material, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in the Site Assessment and shall continue notwithstanding the repayment of the Loans or any transfer or sale of any right, title and interest in the Project (by foreclosure, deed in lieu of foreclosure or otherwise).

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

ARTICLE 6

LEASING MATTERS

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

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

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

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

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

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

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

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

Section 7.3 Liabilities; Litigation.

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

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

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

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

Section 7.6 Compliance with Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7.21 Physical Condition. Except as disclosed in the building condition reports certified to Administrative Agent and delivered in connection with the initial advance of the Loans, the Project, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to Borrower's knowledge, there exists no structural or other material defects or damages in the Project, whether latent or otherwise, and Borrower has not received written

notice from any insurance company or bonding company of any defects or inadequacies in the Project, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

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

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

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

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

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

Section 7.27 Foreign Assets Control Regulations, Etc.

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

Order or (b) engages or will engage in any dealings or transactions or be otherwise associated with any such blocked person.

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

Section 7.28 Organizational Structure.

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

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

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

ARTICLE 8

FINANCIAL REPORTING

Section 8.1 Financial Statements.

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

(2) **Annual Reports.** Within ninety (90) days after the end of each calendar year of Borrower's operation of the Project, Lead Borrower will furnish to Administrative Agent

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

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

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

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

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

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

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

COVENANTS

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

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

(1) Borrower shall not allow any Change of Control to occur, or permit any Transfer to occur (whether of equity interests or through any pledge or encumbrance of equity interests, or of the economic or other benefits therefrom, whether voluntary, involuntary, by operation of law or otherwise) if any such Transfer would result in a Change of Control;

(2) neither Borrower nor any other Person having an ownership or beneficial interest in Borrower shall (a) allow, directly or indirectly, any Transfer (other than a Permitted Transfer), to occur; (b) further encumber, alienate, grant a Lien or grant any other interest in the Project or any part thereof (including any partnership, membership or other ownership interest in Borrower), whether voluntarily or involuntarily; or (c) enter into any easement or other agreement granting rights in or restricting the use or development of the Project;

(3) no new general partner, member, or limited partner having the ability to control the affairs of Borrower shall be admitted to or created in Borrower (nor shall any existing general partner or member or controlling limited partner withdraw from Borrower), and no change in Borrower's organizational documents relating to control over Borrower and/or the Project shall be effected.

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

Section 9.2 Taxes; Charges. Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that may become a Lien upon the Project or become payable during the term of the Loans (collectively, the "Taxes"), and will promptly furnish Administrative Agent with evidence of such payment; however, Borrower's compliance with Section 4.1 of this Agreement relating to impounds for taxes and assessments shall, with respect to payment of such taxes and assessments, be deemed compliance with this Section 9.2. Borrower shall not suffer or permit the joint assessment of the Project with any other real property constituting a separate tax lot or with any other real or personal property. Borrower shall pay when due all claims and demands of mechanics,

materialmen, laborers and others which, if unpaid, might result in a Lien on the Project; however, Borrower may contest the validity of such claims and demands or taxes so long as (1) Lead Borrower notifies Administrative Agent that Borrower intends to contest such claim or demand, (2) Borrower provides Administrative Agent with an indemnity, bond or other security satisfactory to Administrative Agent (including an endorsement to Administrative Agent's title insurance policy insuring against such claim or demand) assuring the discharge of Borrower's obligations for such claims and demands, including interest and penalties, (3) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of the Maturity Date or the date on which the Project is scheduled to be sold, forfeited, terminated, cancelled or lost for non payment, (4) such proceedings shall not subject Borrower, the Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (2) above), and (5) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interests and penalties.

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

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

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

instead of collecting such payment, Administrative Agent may (and on the request of the Majority Lenders shall) declare all amounts owing under the Loan Documents to be immediately due and payable.

Section 9.6 Legal Existence; Name, Etc. Borrower and each managing member in Borrower shall preserve and keep in full force and effect its existence as a Single Purpose Entity, entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Project. Neither Borrower nor any managing member of Borrower shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets, or acquire all or substantially all of the assets of the business of any Person, or permit any subsidiary or Affiliate of Borrower to do so. Borrower and each managing member in Borrower shall conduct business only in its own name and shall not change its name, identity, or organizational structure, or the location of its chief executive office or principal place of business unless Borrower (a) shall have obtained the prior written consent of Administrative Agent to such change, and (b) shall have taken all actions necessary or requested by Administrative Agent to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents.

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

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

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

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

Section 9.9 Further Assurances. Borrower shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, and (2) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Administrative

Agent may reasonably request to further evidence and more fully describe the collateral for the Loans, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

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

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

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

Section 9.13 Payment for Labor and Materials. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Project and never permit to exist beyond the due date thereof in respect of

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

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

Section 9.15 Hedge Agreements.

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

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

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

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

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

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

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

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

(c) all consents, authorizations and approvals required for the execution and delivery by the Third-Party Counterparty of the Third-Party Hedge Agreement, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly

complied with, and no other action by, and no notice to or filing with any Governmental Authority or regulatory body is required for such execution, delivery or performance; and

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

Section 9.16 Certain Financial Covenants.

(1) Debt Service Coverage Ratio.

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

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

pursuant to this subsection (b) and to draw on any Collateral Letters of Credit delivered pursuant to this subsection (b) and apply such amounts in reduction of the outstanding principal balance of the Loan.

Section 9.17 Handicapped Access.

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

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

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

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

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

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

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

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

Section 9.23 Covenants Regarding the Condominium Declaration.

Borrower covenants and agrees that:

(1) Borrower shall pay when due and before any fine, penalty, interest or cost may be added thereto for the late payment or non-payment thereof, all Unit Annual Assessments imposed on Borrower's Project Interest and all other charges mentioned in and payable by Borrower under the Condominium Declaration (including, without limitation, all insurance and taxes applicable to Borrower's Project Interest), and shall comply with all of its other obligations under the Condominium Declaration, and shall do all things necessary to preserve and to keep unimpaired Borrower's rights, powers and privileges (whether as the owner of the Units, as the

Declarant, as the holder of any special class of voting rights, or otherwise) thereunder. If Borrower shall fail to do so, the Lenders shall, if required by Administrative Agent, pay such Unit Annual Assessments or other charges. Lead Borrower shall deliver to Administrative Agent, upon request, copies of receipts or other proof satisfactory to Administrative Agent evidencing the timely payment of such Unit Annual Assessments and other charges.

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

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

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

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

(a) any partition of all or a part of the Project subject to the Condominium Declaration;

(b) the nature and amount of any insurance covering all or a part of the Project and the disposition of any proceeds thereof;

(c) the manner in which any condemnation or threat of condemnation of all or a part of the Project shall be defended or settled and the disposition of any award or settlement in connection therewith;

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

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

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

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

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

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

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

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

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

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

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

Section 9.24 Industrial and Commercial Incentive Program.

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

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

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

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

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

ARTICLE 10

EVENTS OF DEFAULT

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

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

Section 10.2 Insurance. Borrower's failure to maintain insurance as required under Section 3.1 of this Agreement.

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

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

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

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

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

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

Section 10.9 Reserved.

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

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

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

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

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

Section 10.15 Judgments. One or more (i) judgments for the payment of money (exclusive of judgment amounts fully covered by insurance where the insurer has admitted liability in respect of such judgment) aggregating with respect to any Borrower Party (other than Guarantor) in excess of \$1,000,000.00 shall be rendered against such party or parties or (ii) non-monetary judgments, orders or decrees shall be entered against any of the Borrower Parties which have or would reasonably be expected to have a Material Adverse Effect, and, in either case, the same shall remain undischarged for a period of thirty (30) consecutive days during

which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of such Borrower Party to enforce any such judgment.

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

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

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

Section 10.19 Reserved.

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

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

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

ARTICLE 11

REMEDIES

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

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

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

or any Lender's gross negligence or willful misconduct. All sums paid by Administrative Agent pursuant to this [Section 11.3](#), and all other sums expended by Administrative Agent or any Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loans, shall be secured by the Loan Documents and shall be paid by Borrower to Administrative Agent upon demand.

ARTICLE 12

MISCELLANEOUS

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

Section 12.2 Amendments, Waivers, Etc.

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

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

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

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

Section 12.5 Reimbursement of Expenses. Borrower shall pay or reimburse Administrative Agent and/or the Lenders within ten (10) Business Days of demand by the applicable party for: (1) all expenses incurred by Administrative Agent in connection with the

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

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

Section 12.7 Lenders and Administrative Agent Not in Control; No Partnership. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent or any Lender the right or power to exercise control over the affairs or management of Borrower, the powers of Administrative Agent and the Lenders being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Borrower and the Lenders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders, Lead Borrower and Borrower or to create an equity in the Project in Administrative Agent or any Lender. Administrative Agent and the

Lenders neither undertake nor assume any responsibility or duty to Borrower or to any other person with respect to the Project or the Loans, except as expressly provided in the Loan Documents; and notwithstanding any other provision of the Loan Documents: (1) neither Administrative Agent nor any Lender is, nor shall be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower or any Borrower Party or any of their respective stockholders, members, or partners and neither Administrative Agent nor any Lender intends to ever assume such status; (2) no Lender or Administrative Agent shall in any event be liable for any Debts, expenses or losses incurred or sustained by Borrower or any Borrower Party; and (3) no Lender or Administrative Agent shall be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or any Borrower Party or any of their respective stockholders, members, or partners. Administrative Agent, the Lenders and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders and Borrower, or to create an equity in the Project in Administrative Agent or any Lender, or any sharing of liabilities, losses, costs or expenses.

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

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

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

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

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

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

Documents shall apply to such words when used in the plural where the context so permits and vice versa.

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

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

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

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

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

Section 12.19 WAIVER OF JURY TRIAL. BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH

THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOANS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER THIS AGREEMENT.

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

Section 12.21 Governing Law.

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

LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTES, AND THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

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

Section 12.22 Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement and understanding between Administrative Agent, the Lenders and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be

contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between this Agreement and any of the other Loan Documents, the terms of this Agreement shall control.

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

Section 12.24 Assignments and Participations.

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

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

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

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

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

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

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

(3) Participations.

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

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

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

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

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

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

Section 12.26 Right of Set-off.

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

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

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

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

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

Section 12.29 Severance of Loan. Loan Components. The Administrative Agent shall have the right, at any time, with respect to all or any portion of the Loan, to (a) cause the Notes, the Mortgage and the other Security Documents to be severed and/or split into two or more separate notes, mortgages and other security agreements, so as to evidence and secure one or more senior and subordinate mortgage loans, (b) create one or more senior and subordinate notes (i.e., an A/B or A/B/C structure) secured by the Mortgage and the other Security Documents, (c) create multiple components of the Notes (and allocate or re-allocate the outstanding principal amount of the Loan among such components) or (d) otherwise sever the Loan into two or more loans secured by the Mortgage and the other Security Documents (each of clauses (a) through (d), a "Bifurcation"); in each such case, in whatever proportions and priorities as Administrative Agent may so direct in its discretion to Administrative Agent; provided, however, that in each such instance (i) the outstanding principal amount of all the Notes evidencing the Loan (or

components of such Notes) immediately following such Bifurcation shall be equal to the outstanding principal amount of the Loan immediately prior to such Bifurcation, and (ii) the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the new notes immediately after such Bifurcation and at all times prior to the occurrence of any Event of Default shall not exceed the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the initial Notes delivered hereunder (as such interest rates are subject to being adjusted from time to time in accordance herewith, including as a result of the accrual of interest at the Default Rate). If requested by Administrative Agent in writing, Borrower shall execute within ten (10) days after such request, a severance agreement, amendments to or amendments and restatements of any one or more Loan Documents, and such documentation as Administrative Agent may reasonably request to evidence and/or effectuate any such Bifurcation, all in form and substance reasonably satisfactory to Administrative Agent.

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

and, in the case of Borrower, information concerning the terms and conditions set forth in the Loan Documents.

Section 12.31 Designation of Lead Borrower as Agent for Borrower.

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

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

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

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

ARTICLE 13

RECOURSE LIABILITY

Section 13.1 Recourse Liability. No past, present or future member, or any past, present or future shareholder, partner, member, officer, employee, servant, executive, director, agent, authorized representative or Affiliate of Borrower or any member of Borrower, (each such Person, an "**Exculpated Party**") shall be personally liable for payments due hereunder or under any other Loan Document or for the performance of any obligation, or breach of any representation or warranty made by Borrower hereunder or thereunder. The sole recourse of the Lenders and Administrative Agent for satisfaction of the obligations of Borrower hereunder and under any other Loan Document shall be against Borrower and its assets and not against any

assets or property of any such Exculpated Party other than the direct or indirect ownership interest of such Exculpated Party in Borrower. In the event that a Potential Default or Event of Default occurs in connection with such obligations, no action shall be brought against any such Exculpated Party by virtue of its direct or indirect ownership interest in Borrower. In the event of foreclosure or other sale or disposition of the Project, no judgment for any deficiency upon the obligations hereunder or under any other Loan Document shall be obtainable by the Lenders or Administrative Agent against any such Exculpated Party. Notwithstanding the foregoing, nothing in this Section 13.1 shall affect or diminish the obligations of Borrower or Guarantor under or in respect of each Loan Document to which it is a party, including Guarantor Documents (including the right to name any Guarantor in any foreclosure action in connection with its obligations under the Guarantor Documents) and the Co-Borrower Documents. Notwithstanding the foregoing provisions of this Section 13.1, each Exculpated Party shall be personally (and on a full recourse basis) liable for and shall indemnify and defend Administrative Agent and the Lenders from and against, and shall hold Administrative Agent and the Lenders harmless of, from and against any deficiency, liability, loss, damage, costs, and expenses (including legal fees and disbursements) suffered by Administrative Agent and/or the Lenders and caused by, or arising out of or as a result of any of the following: (i) such Person's commission of a criminal act, (ii) such Person's failure to comply with the provisions of the Loan Documents prohibiting a transfer or Change of Control; (iii) such Person's misappropriation of any cash flow or other revenue derived from or in respect of the Project, including security deposits, insurance proceeds, condemnation awards, or any rental, sales or other income derived directly or indirectly from the Project, or the misapplication of any of the foregoing sums, in either event, in contravention of any provision of this Agreement or the other Loan Documents; (iv) such Person's fraud or misrepresentation or inaccurate certification made at any time in connection with the Loan Documents or the Loans; (v) such Person's intentional interference with Administrative Agent's (or the Lenders') exercise of its rights under any of the Loan Documents; (vi) such Person's intentional destruction or removal of fixtures or personal property securing the Loans unless replaced by items of equal value and utility; (vii) such Person's misapplication or misappropriation of funds disbursed from the Security Accounts or the Controlled Accounts; (viii) such Person's commissions of intentional waste to or of the Project or any portion thereof or failure to maintain the Project in the manner required by the Loan Documents; (ix) failure to maintain the insurance coverage required by the Loan Documents; (x) failure to pay taxes, assessments and any other charges, including, without limitation, charges for labor or materials, which could result in prior liens against any portion of the Project; (xi) willful misconduct; (xii) Borrower files a voluntary petition under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiii) such Person files or joins in the filing of, or solicits or acts in concert with, or colludes or conspires with petitioning creditors with respect to, an involuntary petition against Borrower under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiv) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xv) such Person consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Project; (xvi) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; or (xvii) Borrower violates any of provisions set forth in the definition of Single

Purpose Entity and such violation results in a substantive consolidation of the Borrower or its assets in the bankruptcy of an Affiliate.

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

ARTICLE 14

ADMINISTRATIVE AGENT

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

(a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a trustee for any Lender except to the extent that Administrative Agent acts as an agent with respect to the receipt or payment of funds, nor shall Administrative Agent have any fiduciary duty to Borrower nor shall any Lender have any fiduciary duty to Borrower or any other Lender;

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

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

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

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

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

Section 14.2 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including, without limitation, any thereof by telephone, telecopy, telegram or cable) reasonably believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Majority Lenders, and such instructions of the Majority Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

Section 14.3 Defaults.

(1) Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Potential Default or Event of Default, other than a payment Event of Default arising out of Section 10.1, unless Administrative Agent has received notice from a Lender, Lead Borrower or Borrower specifying such Potential Default or Event of Default and stating that such notice is a "Notice of Default". In the event that Administrative Agent receives such a notice of the occurrence of a Potential Default or Event of Default, Administrative Agent shall give

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

(2) All losses with respect to interest (including interest at the Default Rate) and other sums payable pursuant to the Notes or incurred in connection with the Loans shall be borne by the Lenders in accordance with their respective proportionate shares of the Loans. All losses incurred in connection with the Loans, the enforcement thereof or the realization of the security therefor, shall be borne by the Lenders in accordance with their respective proportionate shares of the Loan, and the Lenders shall promptly, upon request, remit to Administrative Agent

their respective proportionate shares of (i) any actual out of pocket expenses incurred by Administrative Agent in connection with any Default to the extent any expenses have not been paid by Borrower, (ii) any advances made to pay taxes or insurance or otherwise to preserve the Lien of the Security Documents or to preserve and protect the Project, whether or not the amount necessary to be advanced for such purposes exceeds the amount of the Mortgage, and (iii) any other actual out of pocket expenses incurred in connection with the enforcement of the Mortgage or other Loan Documents. To the extent any such advances are recovered in connection with the enforcement of the Mortgage or the other Loan Documents, each Lender shall be paid its proportionate share of such recovery after deduction of the expenses of Administrative Agent and the Lenders.

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

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

Agent is irrevocably authorized to accept such offer on behalf of all Lenders. The costs and expenses of foreclosure will be borne by the Lenders in accordance with their respective proportionate shares.

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

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

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

Section 14.5 Standard of Care; Indemnification. In performing its duties under the Loan Documents, Administrative Agent will exercise the same degree of care as it normally exercises in connection with real estate loans that it syndicates and administers and holds for its own account, but Administrative Agent shall have no further responsibility to any Lender except

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

Section 14.6 Non-Reliance on Administrative Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrower and its Affiliates and decision to enter into this Agreement and that it will, independently and without reliance upon Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or under any other Loan Document. Subject to the provisions of the first sentence of Section 14.5, Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the Project or the books of Borrower or any of its Affiliates. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by Administrative Agent hereunder or as otherwise agreed by Administrative Agent and the Lenders, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of Borrower or any of its Affiliates that may come into the possession of Administrative Agent or any of its Affiliates.

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

Section 14.8 Successor Administrative Agent. Administrative Agent may resign at any time by giving notice thereof to the Lenders and Lead Borrower. The Majority Lenders (including all Lenders exclusive of Administrative Agent, for the purposed of determining the Majority Lenders), on the basis of gross negligence or willful misconduct (as to which a final determination is made in a judicial proceeding in which Administrative Agent has had an opportunity to be heard, which determination includes a specific finding that Administrative Agent had acted in a grossly negligent manner or had engaged in willful misconduct), may remove Administrative Agent at any time by giving thirty (30) days' prior written notice to Administrative Agent, Borrower and the other Lenders. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint a successor Administrative Agent that shall be a Person that meets the qualifications of an Eligible Assignee. If no successor Administrative Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation or the Majority Lenders' giving notice of removal, as the case may be, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, that shall be an institutional lender that meets the requirements of the immediately preceding sentence. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and prospective obligations hereunder (if not already discharged therefrom as provided above in this Section 14.8). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provision of this Article 14 and Section 12.5 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

Section 14.9 Consents under Loan Documents. Administrative Agent may (without any Lender's consent) give or withhold its agreement to any amendments of the Loan Documents or any waivers or consents in respect thereof or exercise or refrain from exercising any other rights or remedies which Administrative Agent may have under the Loan Documents or otherwise provided that such actions do not, in Administrative Agent's reasonable judgment, materially adversely affect the value of any collateral, taken as a whole, or represent a departure from Administrative Agent's standard of care described in Section 14.5, except that, except as otherwise provided in any separate agreement entered into among Administrative Agent and the Lenders, Administrative Agent shall not agree to the following (provided that no Lender's consent shall be required for any of the following which are otherwise required or contemplated under the Loan Documents):

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

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

Notwithstanding anything to the contrary contained in this Agreement, (a) any modification or supplement of ARTICLE 14, or of any of the rights or duties of Administrative Agent hereunder, shall require the consent of Administrative Agent and (b) Administrative Agent is hereby authorized to enter into modifications or amendments to the Loan Documents

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

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

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

Section 14.12 Defaulting Lenders.

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

(2) In any case where a Lender becomes a Special Advance Lender (i) the Special Advance Lender shall be deemed to have purchased, and the Defaulting Lender shall be deemed to have sold, a senior participation in the Defaulting Lender's respective Loan to the

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

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

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

(5) Each Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all losses, damages, liabilities or expenses (including reasonable attorneys' fees and expenses and interest at the Default Rate) which they may sustain or incur by reason of the Defaulting Lender's failure or refusal to abide by its obligations under this Agreement or the other Loan Documents, except to the extent a Defaulting Lender became a Defaulting Lender due to the gross negligence or willful

misconduct of Administrative Agent and/or any Lender. Administrative Agent shall, after payment of any amounts due to any Special Advance Lender pursuant to the terms of subsection (3) above, set-off against any payments due to such Defaulting Lender for the claims of Administrative Agent and the other Lenders pursuant to this indemnity.

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

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

Section 14.14 Transfer of Agency Function. Without the consent of Borrower or any Lender, Administrative Agent may at any time or from time to time transfer its functions as Administrative Agent hereunder to any of its offices wherever located in the United States; provided that Administrative Agent shall promptly notify Lead Borrower and the Lenders thereof.

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

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

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

EXECUTED as of the date first written above.

LENDER:

EUROHYPO AG, NEW YORK BRANCH

By: _____

Name:

Title:

By: _____

Name:

Title:

Address for Notices to Eurohypo AG,
New York Branch:

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

With copies to:

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

- and -

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

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LENDER:

DEUTSCHE GENOSSENSCHAFTS -
HYPOTHEKENBANK AG

By: _____

Name:
Title:

By: _____

Name:
Title:

Applicable Lending Office

Address for Notices:

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

With copies to:

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

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

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

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

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LENDER:

AMALGAMATED BANK

By: _____

Name:

Title:

By: _____

Name:

Title:

Applicable Lending Office

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

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LENDER:

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

By: _____

Name:

Title:

Applicable Lending Office

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

With copies to:

1701 Route 70 East
Cherry Hill, New Jersey 08034

-and-

Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020
Attention: Arnold L. Bartfeld, Esq.
Telephone No.: (212) 278-1511
Telecopier No.: (212) 278-1733

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

BORROWER:

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

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

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

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

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

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

By: _____

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

Address for Notices:

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

BORROWER:

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

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

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

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

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

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

By: _____

Name: Robert Masters, Esq.
Title: Senior Vice President-
General Counsel

Address for Notices:

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

ADMINISTRATIVE AGENT:

EUROHYPO AG, NEW YORK BRANCH, as
Administrative Agent

By: _____

Name:
Title:

By: _____

Name:
Title:

Address for Notices to Eurohypo AG,
New York Branch:

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

With copies to:

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

- and -

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

Signature Page to Consolidated, Amended and Restated Term Loan Agreement

LEGAL DESCRIPTION OF PROJECT

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

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

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

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

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

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

Ex. A

INTENTIONALLY OMITTED

Ex. B

[Form of Note]
 PROMISSORY NOTE

\$ _____, 200_

[_____] [_____]

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

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

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

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

Ex. C

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

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

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

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

[Remainder of Page Intentionally Left Blank]

Ex. C

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

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

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

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

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

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

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

By:

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

Ex. C

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

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

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

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

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

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

By: _____

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

Ex. C

SCHEDULE OF LOANS

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

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

Ex. C

[Form of Assignment and Acceptance]
ASSIGNMENT AND ACCEPTANCE

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

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

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

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

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

Date of Assignment:

Legal Name of Assignor:

Legal Name of Assignee:

Assignee's Address for Notices:

Effective Date of Assignment

("Assignment Date")¹:

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

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

[NAME OF ASSIGNOR] , as Assignor

By: _____

Name:

Title:

[NAME OF ASSIGNEE] , as Assignee

By: _____

Name:

Title:

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

² Delete if no future advances are involved.

The undersigned hereby consent to the within assignment:³

[_____],
as Administrative Agent

By: _____

Name:

Title:

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

FORM OF HEDGE AGREEMENT PLEDGE

(See attached)

Ex. E-1

FORM OF NOTICE OF CONVERSION/CONTINUATION

_____, 200_

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

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

Ladies and Gentlemen:

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

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

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

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

[BORROWER],
a _____

By: _____

Name:
Title:



LOAN TO BE CONVERTED OR CONTINUED

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

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

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

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

Amount: \$
Requested Conversion Date:
(must be a Business Day at least three (3)
Business Days after date of notice)
Last day of current Interest Period:

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

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

Amount: \$
Requested Conversion Date:
(must be a Business Day at least three (3)
Business Days after date of notice)

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

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

Amount: \$
Last day of current Interest Period:
(must be a Business Day at least three (3)
Business Days after date of notice)

COMMITMENTS

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

LEASING GUIDELINES

(See attached)

PROPORTIONATE SHARES

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

PRECONDITIONS TO EFFECTIVENESS OF AGREEMENT

PART A. CONDITIONS TO EFFECTIVENESS OF AGREEMENT.

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

1. The Loan Documents, executed by Borrower and, as applicable, each Borrower Party.
2. Payment to Administrative Agent (on behalf of the Lenders) of the commitment fee as set forth in the Fee Letter.

3. An ALTA (or equivalent) mortgagee policy of title insurance in the maximum amount of the Loans, with reinsurance and endorsements as Administrative Agent may require, containing no exceptions to title (printed or otherwise) which are unacceptable to Administrative Agent, and insuring that the Mortgage is a first-priority Lien on the Project and related collateral. Without limitation, such policy shall (a) be on the 2006 ALTA (revised 6-17-06) form or, if not available, ALTA 1992 form (deleting arbitration and creditors' rights, if permissible) or, if not available, the form commonly used in the state where the property is located, insuring Administrative Agent (on behalf of the Lenders) or any and its successors and assigns; and (b) include the following endorsements and/or affirmative coverages to the extent available or applicable: (1) Comprehensive endorsement, (2) Survey, (3) Zoning (with additional coverage for number and type of parking spaces), (4) Usury, (5) Doing Business, (6) Access, (7) Separate Tax Lot, (8) Environmental Protection Lien, (9) Subdivision, (10) Contiguity, (11) Tax Deed, and (12) Mortgage Recording Tax, and such endorsements and/or affirmative coverages as Administrative Agent may require in its sole and absolute discretion.

4. All documents evidencing the formation, organization, valid existence, good standing, and due authorization of and for Borrower and each Borrower Party for the execution, delivery, and performance of the Loan Documents by Borrower and each Borrower Party, including an organizational chart for Borrower and Borrower Parties.

5. Legal opinions issued by counsel for Borrower and each Borrower Party, opining as to the due organization, valid existence and good standing of Borrower and each Borrower Party, and the due authorization, execution, delivery, enforceability and validity of the Loan Documents with respect to, Borrower and each Borrower Party; that the Loans, as reflected in the Loan Documents, are not usurious; to the extent that Administrative Agent is not otherwise satisfied, that the Project and its use is in full compliance with all legal requirements; and as to such other matters as Administrative Agent and Administrative Agent's counsel reasonably may specify.

6. Current Uniform Commercial Code searches, and litigation, bankruptcy, judgment and federal tax lien reports as requested by Administrative Agent, with respect to Borrower, Borrower's members, and Guarantor.

7. Evidence of insurance as required by this Agreement, and conforming in all respects to the requirements of Administrative Agent.

8. A current "as-built" survey of the Project, dated to the reasonable satisfaction of the Administrative Agent, certified to Administrative Agent (on behalf of the Lenders) and the issuer of the title insurance, prepared by a licensed surveyor acceptable to Administrative Agent and the issuer of the title insurance, and conforming to Administrative Agent's current standard survey requirements, which may include certification to additional participants, co-lenders and/or investors. Without limitation, the minimum requirements for the survey shall be as set forth in the 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, "Urban Survey" classification, with the following additional items from Table A, "Optional Survey Responsibilities and Specifications": "2" (vicinity map showing nearby highway or major intersection), "3" (flood zone designation), "4" (land area), "6" (setbacks, height and bulk restrictions), "8" (other visible improvements), "9" (parking areas), "10" (access to public way, driveway and curb cuts), "11(a)" (utilities).

9. A current engineering report or architect's certificate with respect to the Project, covering, among other matters, inspection of heating and cooling systems, roof and structural details, showing no failure of compliance with building plans and specifications, applicable legal requirements (including requirements of the Americans with Disabilities Act) and fire, safety and health standards and reviewing and approving, among other matters, soil tests, plans and specifications (including heating, ventilation and cooling systems, roof and structural details, mechanical and electrical systems), and compliance with local, state or federal laws, regulations, codes, etc., and containing a declaration satisfactory to Administrative Agent that there will be no asbestos in the Project. The engineer/architect preparing such report or certificate must be satisfied that the Project is in compliance with fire, safety and health standards which such engineer/architect deems reasonable, in addition to standards imposed by law, regulation or codes. As requested by Administrative Agent, such report shall also include an assessment of the Project's tolerance for earthquake and seismic activity.

10. A current Site Assessment.

11. All appraisals, environmental reports, building condition reports and Site Assessments delivered to Administrative Agent prior to the execution of this Agreement shall be certified to Administrative Agent (on behalf of the Lenders and their successors and assigns) without modification or change thereto in the form reasonably requested by Administrative Agent which may include certification to additional participants, co-lenders and/or investors.

12. A current rent roll of the Project, certified by Borrower or the current owner of the Project. Such rent roll shall include the following information: (a) tenant names; (b) unit/suite numbers; (c) area of each demised Project and total area of the Project (stated in net rentable square feet); (d) rental rate (including escalations) (stated in gross amount and in amount per net rentable square foot per year); (e) lease term (commencement, expiration and renewal options);

and (f) expense pass-throughs. In addition, Borrower shall provide Administrative Agent with a copy of the standard lease form to be used by Borrower in leasing space in the Project, and, at Administrative Agent's request, true and correct copies of all leases of the Project.

13. A copy of the Property Management Agreement for the Project, certified by Borrower as being true, correct and complete.

14. Borrower's deposit into the applicable Reserve Account of the amount required by Administrative Agent to impound for taxes and assessments under Article 4 and to fund any other required escrows or reserves.

15. Evidence that (a) the Project and the operation thereof comply with all legal requirements, including that all requisite certificates of occupancy, building permits, and other licenses, certificates, approvals or consents required by any Governmental Authority have been issued without variance or condition, (b) following any casualty, the improvements which form a part of the Project may be reconstructed and the current use thereof restored, and (c) that there is no litigation, action, citation, injunctive proceedings, or like matter pending or threatened with respect to the validity of such matters. At Administrative Agent's request, Borrower shall furnish Administrative Agent with a zoning endorsement to Administrative Agent's title insurance policy, zoning letters from applicable municipal agencies, and utility letters from applicable service providers.

16. No change shall have occurred in the financial condition of Borrower or any Borrower Party or in the Net Operating Income of the Project, or in the financial condition of any major or anchor tenant, which would have, in Administrative Agent's or any Lender's judgment, a Material Adverse Effect on the Project or on Borrower's or any Borrower Party's ability to repay the Loans or otherwise perform its obligations under the Loan Documents. Further, there shall not exist any material default by Borrower or any principal in Borrower (or any entity owned or controlled by any of them) under any loan, financing or similar arrangement with any lender.

17. No condemnation or adverse zoning or usage change proceeding shall have occurred or shall have been threatened against the Project; the Project shall not have suffered any significant damage by fire or other casualty which has not been repaired; no structural change to the Project shall have occurred or to any of the Improvements thereon; no law, regulation, ordinance, moratorium, injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any third party or Governmental Authority, which would have, in Administrative Agent's or any Lender's judgment, a Material Adverse Effect on Borrower, any Borrower Party or the Project.

18. All fees and commissions payable to real estate brokers, mortgage brokers, or any other brokers or agents in connection with the Loans or the acquisition of the Project have been paid, such evidence to be accompanied by any waivers or indemnifications deemed necessary by Administrative Agent.

19. Intentionally Omitted.

20. Payment of Administrative Agent's costs and expenses in underwriting, documenting, and closing the transaction, including fees and expenses of Administrative Agent's inspecting engineers, consultants, and outside counsel.

21. The Collateral Letter of Credit, if any, and the TI/LC Letter of Credit required under Article 4.

22. Estoppel certificates and subordination, non-disturbance and attornment agreements from tenants, as requested by Administrative Agent.

23. Service contracts, warranties, licenses and permits, applicable to the operation or use of the Project.

24. An Appraisal of the Project, which, among other things, verifies that the value of the Project is not less than \$123,900,000.00.

25. Prepayment of the Loans under the Original Loan Agreement such that the outstanding principal balance of the Loan as of of the Closing Date will be \$86,000,000.00.

26. Such other documents or items as Administrative Agent or its counsel reasonably may require.

27. The representations and warranties contained in this Loan Agreement and in all other Loan Documents are true and correct.

28. The title policy, survey, insurance policies, appraisal, environmental report, engineering report and other third party reports shall run in favor of Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon.

29. No Potential Default or Event of Default shall have occurred or exist.

Schedule 2.1 - 4

WIRE INSTRUCTIONS

Commerzbank AG, New York

Fed ABA No.: 026-008-044

For Account of: Eurohypo AG, New York

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

Ref: 400 E. Fordham Road

Schedule 2.4(1) - 1

AMORTIZATION SCHEDULE

Schedule 2.4(2) - 1

ORGANIZATIONAL CHART

Schedule 7.28 - 1

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

made by

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
and
FORDHAM PLACE OFFICE, LLC
a Delaware limited liability company,
(jointly and severally, individually and collectively, the "Mortgagor")

in favor of

EUROHYPO AG, NEW YORK BRANCH, AS ADMINISTRATIVE AGENT
(together with its successors in such capacity, "Mortgagee")

Dated: As of November ____, 2009

Section: 11
Block: 3033
Lots: 9 and 12 now known as Lots 1001 and 1002

2502 Webster Avenue, 2504 Webster Avenue, and 400-414 East Fordham Road, a/k/a 4747-
4763 Park Avenue, a/k/a 2506-2526 Webster Avenue, Bronx, New York
City of New York, Bronx County, State of New York

Mortgage Amount: \$86,000,000.00

RECORD AND RETURN TO:
RIEMER & BRAUNSTEIN LLP
7 Times Square, Suite 2506
New York, New York 10036
ATTENTION: Steven J. Weinstein, Esq.

THIS MORTGAGE DOES NOT COVER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX RESIDENTIAL DWELLING UNITS, EACH DWELLING UNIT HAVING ITS OWN SEPARATE COOKING FACILITIES.

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- Exhibit A - Description of Land
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MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the ___ day of November, 2009 by **ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC** ("Acquisitions") and **FORDHAM PLACE OFFICE LLC** ("Office"; together with Acquisitions, individually and collectively, jointly and severally, "Mortgagor"), each a limited liability company duly organized and validly existing under the laws of the State of Delaware and having an office at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, NY 10605, in favor of EUROHYPO AG, NEW YORK BRANCH, having an office at 1114 Avenue of the Americas, New York, New York 10036, as Administrative Agent for the lenders referred to below (in such capacity, together with its successors in such capacity, "Mortgagee").

W I T N E S S E T H:

WHEREAS, Acquisitions and the Office are the fee owners of that certain tract of land located in the County of Bronx, State of New York and being more fully described in Exhibit A attached hereto (the "Land"); and

WHEREAS, Mortgagor, certain lenders (collectively, the "Lenders") and Mortgagee are parties to a Loan Agreement dated as of the date hereof (said Loan Agreement, as modified and supplemented and in effect from time to time, being herein called the "Loan Agreement"; and except as otherwise herein expressly provided, all terms defined in the Loan Agreement are being used herein as defined therein), which Loan Agreement provides, among other things, for Loans to be made by the Lenders to Mortgagor in an aggregate principal amount not exceeding \$86,000,000.00 to be evidenced by, and repayable with interest thereon in accordance with, various Notes to be executed and delivered to the respective order of the Lenders (collectively, as such notes may be consolidated, severed, modified, amended, restated or extended, the "Notes"); and

WHEREAS, pursuant to that certain Declaration of Condominium for The 400 E. Fordham Road Condominium (hereinafter, the "Declaration") dated as of October 23, 2008 and recorded on December 18, 2008 in the New York County Office of the New York City Register as CRFN 2008000481411, together with all amendments thereto, if any, Acquisitions has established a condominium consisting of two (2) separate and distinct units, more specifically identified in the Declaration as the "Retail Unit" and the "Office/Community Unit"; and

WHEREAS, Acquisitions has transferred the Office/Community Unit to Fordham Office; and

WHEREAS, it is a condition to the obligation of the Lenders to extend credit to Mortgagor pursuant to the Loan Agreement that Mortgagor execute and deliver this Mortgage as the Mortgage under the Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Mortgage by this reference, and for other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged,

To secure the payment of an indebtedness in the principal sum of EIGHTY-SIX MILLION DOLLARS (\$86,000,000.00), lawful money of the United States of America to be paid with interest (including, without limitation, any Additional Interest under any Hedge Agreement to the extent provided in the Loan Agreement) according to the Notes, and the payment and performance of all other Obligations (defined below) of Mortgagor hereunder, Mortgagor has mortgaged, given, granted, bargained, sold, alienated, conveyed, confirmed, pledged, assigned and hypothecated and by these presents do mortgage, give, grant, bargain, sell, alienate, convey, confirm, pledge, assign and hypothecate unto Mortgagee all right, title, interest and estate of Mortgagor, now owned, or hereafter acquired, in and to the following property, rights and interests (such property, rights and interests being collectively referred to herein as the "Mortgaged Property"), subject only to the Permitted Encumbrances (as defined below):

(a) the Land;

(b) any and all buildings, constructions and improvements now or hereafter erected or located in or on the Land or any portion thereof, including all Equipment (defined below) and other articles now or hereafter attached or affixed thereto or located thereon and owned or ground leased by Mortgagor, together with all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof (collectively, the "Improvements"), all of which shall be deemed and construed to be part of the realty;

(c) all of the estate, rights, title, interest, claims or demands of any nature whatsoever of Mortgagor, whether in law or in equity, in possession or expectancy, in and to the Mortgaged Property or any part thereof;

(d) all easements, streets, rights-of-way, strips and gores of land, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including any and all development rights, air rights, signage rights, rights under trackage agreements, mineral, mining, oil and gas rights and rights to produce or share in the production of anything related thereto and similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Project or now or hereafter transferred to the Project) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Project to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy property, possessions, claims and demands whatsoever, both at law and in equity, of Mortgagor of, in and to the Project, and every part and parcel thereof, with the appurtenances thereto (collectively, the "Appurtenances"; the Land, the Improvements and the Appurtenances being referred to herein, collectively, as the "Premises");

(e) all machinery, apparatus, equipment, fittings, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned or leased by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property, or appurtenant thereto, or useable in connection with the present or future operation and occupancy of the Mortgaged Property and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located

upon the Mortgaged Property, including all such items that do not constitute personal property under the laws of the State of New York (herein collectively referred to as the "Equipment"), and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any security agreements (as defined in the Uniform Commercial Code of the State of New York (the "Uniform Commercial Code")), superior or inferior or pari passu in lien to the lien of this Mortgage;

(f) all awards or payments, including interest thereon, and the right to receive the same, which may heretofore or hereafter be made with respect to the whole or part of the Mortgaged Property, whether from the exercise of the right of eminent domain (including any proceeding or transfer in lieu of or in anticipation of the exercise of such right), or for any other injury to or decrease in the value of the Mortgaged Property, including any award resulting from a change of any streets (whether as to grade, access or otherwise) and any award for severance damages;

(g) all tax refunds, including interest thereon, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Mortgaged Property;

(h) all leasehold estates, leases, ground leases, subleases, licenses, concessionaire agreements, bailments or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property or any portion thereof now or hereafter existing or entered into (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Mortgaged Property (a "Tenant") and all extensions, amendments and modifications thereto heretofore or hereafter entered into (collectively, the "Leases"), and all right, title and interest of Mortgagor thereunder, including all guaranties thereof;

(i) all rents, issues, profits, royalties, use and occupancy charges (including all oil and gas or other mineral royalties and bonuses), income and other benefits now or hereafter derived from any portion of the Mortgaged Property or the use or occupancy thereof (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any Tenant of any portion of the Mortgaged Property and all claims as a creditor in connection with any of the foregoing) and all cash or security deposits, advance rentals, and all deposits or payments of a similar nature relating thereto (collectively, the "Rents");

(j) all proceeds of and any unearned premiums on any insurance policies that may now or hereafter cover the Mortgaged Property, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Mortgaged Property;

(k) all right, title and interest of Mortgagor in, to and under all plans, specifications, maps, surveys, studies, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind

or character, relating to the use, development, construction upon, occupancy, leasing, sale or operation of the Mortgaged Property;

(l) all the fixtures and, to the extent the same constitutes an interest in real property, all of the property described in Exhibit B attached hereto, now owned or hereafter acquired by Mortgagor, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof (collectively, the "Fixtures"); and, if the lien and security interest of this Mortgage is subject to any security interest in such property, all right, title and interest of Mortgagor now owned or hereafter arising in and to any and all such property is hereby assigned to Mortgagee, together with the benefits of all deposits and payments now or hereafter made thereon by or on behalf of Mortgagor;

(m) all right, title and interest now owned or hereafter acquired by Mortgagor in and to all options to purchase or ground lease the Mortgaged Property or any portion thereof or interest therein, and in and to any greater estate in the Premises or any other Mortgaged Property;

(n) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property, and to commence any action or proceeding to protect the interest of Mortgagee and the Lenders in the Mortgaged Property;

(o) all proceeds, products, substitutions, and accessions of the foregoing of every type; and

(p) all right, title and interest of Mortgagor in, to and under (including the benefits thereunder) the Declaration (as defined above).

As used herein, "Permitted Encumbrances" means the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Loan Documents.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED ALWAYS, that if the principal of and interest (including, without limitation, any Additional Interest) on the Notes and all of the other Obligations shall be paid in full according to the terms of the Notes, the Loan Agreement, any Hedge Agreement (but only if entered into with a Eurohypo Counterparty thereof pursuant to the terms of the Loan Agreement) and the other Loan Documents and Mortgagor shall abide by and comply with each and every covenant contained herein or therein, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES WITH MORTGAGEE AND THE LENDERS AS FOLLOWS:

OBLIGATIONS

Section 1.01 Obligations.

This Mortgage is executed, acknowledged and delivered by Mortgagor to secure and enforce the following obligations (collectively, the "Obligations"), subject to the limitations set forth in Section 1.02 hereof:

(a) Payment of the entire unpaid principal amount of the Notes, together with all interest (including, without limitation, any Additional Interest) accrued and unpaid thereon, any fees due under the Fee Letter and all other amounts that may or shall become due and owing under this Mortgage, the Notes, the Loan Agreement, the Hedge Agreement (but only if entered into with a Eurohypo Counterparty thereof pursuant to the terms of the Loan Agreement) and the other Loan Documents, including all sums advanced pursuant to the terms of this Mortgage to protect and preserve the Mortgaged Property and the lien and security interest hereby created therein at the time and in the manner provided therein for such payment;

(b) Full and prompt performance of every obligation, covenant and agreement of Mortgagor arising under or in connection with this Mortgage, the Notes, the Loan Agreement and all other Loan Documents at the time and in the manner provided therein for such performance;

(c) Payment of all other indebtedness and liabilities and performance of all other obligations of Mortgagor to Mortgagee and the Lenders arising pursuant to or in connection with this Mortgage or any other Loan Document (including, without limitation, as Additional Interest, any Hedge Agreement, but only if entered into with a Eurohypo Counterparty thereof pursuant to the terms of the Loan Agreement); and

(d) All renewals, extensions, amendments, modifications, consolidations and changes of, or substitutions or replacements for, all or any part of the items described under clauses (a) through (c) above.

Section 1.02 Maximum Secured Indebtedness.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE AT THE TIME OF EXECUTION OR WHICH UNDER ANY CONTINGENCY MAY HEREAFTER BECOME SECURED BY THIS MORTGAGE AT ANY TIME IS EIGHTY-SIX MILLION DOLLARS (\$86,000,000.00); TOGETHER WITH (A) INTEREST (INCLUDING, WITHOUT LIMITATION, ANY ADDITIONAL INTEREST) ON THE AFORESAID PRINCIPAL INDEBTEDNESS AT THE RATES SET FORTH IN THE NOTES AND (B) AMOUNTS EXPENDED BY MORTGAGEE AFTER DEFAULT OF SUMS ADVANCED OR PAID FOR HEREUNDER TO MAINTAIN THE LIEN OF THIS MORTGAGE OR TO PROTECT THE PREMISES SECURED BY THIS MORTGAGE, INCLUDING, WITHOUT LIMITATION, AMOUNTS IN RESPECT OF INSURANCE PREMIUMS, IMPOSITIONS (OR PAYMENTS IN LIEU OF IMPOSITIONS), LITIGATION

EXPENSES TO PROSECUTE OR DEFEND THE RIGHTS, REMEDIES AND LIEN OF THIS MORTGAGE OR TITLE TO THE PREMISES SECURED HEREBY, AND ANY COSTS, CHARGES OR AMOUNTS TO WHICH MORTGAGEE OR THE LENDERS BECOME SUBROGATED UPON PAYMENT, WHETHER UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY OR UNDER EXPRESS STATUTORY AUTHORITY.

ARTICLE 2

PARTICULAR COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.01 Payment of Secured Obligations.

Mortgagor shall pay and perform the Obligations in full in accordance with the terms of the Notes, the Loan Agreement and the other Loan Documents.

Section 2.02 Title, etc.

(a) Mortgagor represents and warrants that (i) Mortgagor is lawfully seized and possessed of good, marketable and insurable fee simple title to the Premises and good sufficient and legal title to all other portions of the Mortgaged Property, in each case subject to no Liens other than Permitted Encumbrances and (iii) it has the full power and lawful authority to grant, bargain, sell, release, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto Mortgagee the Mortgaged Property as hereinabove provided.

(b) Mortgagor shall, at Mortgagor's sole cost and expense, preserve Mortgagor's title to the Mortgaged Property and the validity, enforceability and first priority of the lien of this Mortgage (subject to the Permitted Encumbrances) and shall forever warrant and defend the same to Mortgagee against the claims of each and every Person claiming or threatening to claim the same or any part thereof.

(c) If the lien or security interest created by this Mortgage, or the validity, enforceability or priority thereof or of this Mortgage, or if title or any of the rights of Mortgagor or Mortgagee in or to the Mortgaged Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Mortgagor, Mortgagee or any Lender with respect thereto, Mortgagor will promptly notify Mortgagee thereof and will diligently take such action as may be required to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and (subject to Mortgagee's approval, not to be unreasonably withheld or delayed) the release or discharge of any and all adverse claims. Mortgagee shall have the right to appear in and defend any such actions or proceedings (whether or not originally named as a party to such actions or proceedings) and is hereby authorized and empowered (but shall not be obligated) to take such additional steps as it may deem necessary or proper, in the name and on behalf of Mortgagor, for the defense of any such action or proceeding or the protection of the lien, security interest, validity, enforceability or priority of this Mortgage or of such title or rights, including the employment of counsel, the institution, prosecution or defense of litigation, the compromise,

release or discharge of such adverse claims, the purchase of any tax title and the removal of such prior liens and security interests.

Section 2.03 Further Assurances; Filing; Re-Filing; etc.

(a) Mortgagor shall execute, acknowledge and deliver, from time to time, such further instruments as may be necessary, or that Mortgagee may reasonably require to accomplish the purposes of this Mortgage.

(b) Mortgagor, immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any security agreement or mortgage supplemental hereto and each instrument of further assurance to be executed, acknowledged, filed, registered or recorded and refiled, re-registered or re-recorded in such manner and in such places as may be required by Mortgagee or by any present or future law in order to publish notice of and perfect the lien and estate of this Mortgage upon, and security interest in, the Mortgaged Property.

(c) Mortgagor shall pay all filing, registration and recording fees, all refiling, re-registration and re-recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Mortgage, any security agreement or mortgage supplemental hereto and any instrument of further assurance, and all Federal, state, county and municipal stamp taxes, mortgage taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing and recording of the Notes, this Mortgage, the Loan Agreement or any of the other Loan Documents, any security agreement or mortgage supplemental hereto or any instruments of further assurance.

Section 2.04 Liens; Transfers.

Mortgagor shall not create or suffer to be created any Lien upon the Mortgaged Property prior to, on a parity with, or subordinate to the lien of this Mortgage or permit any transfers in violation of Section 9.1 of the Loan Agreement, other than Permitted Encumbrances.

Section 2.05 Insurance.

Mortgagor shall cause the Mortgaged Property to be insured in the manner and to the extent required by Section 3.1 of the Loan Agreement.

Section 2.06 Impositions.

Mortgagor shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all Impositions (as defined below) in accordance with Section 9.2 of the Loan Agreement, including, without limitation, all taxes, assessments, water and sewer rates, utility charges and all other governmental or nongovernmental charges or levies now or hereafter assessed or levied against any part of the Mortgaged Property (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property) or upon the lien or estate of Mortgagee therein, as well as all claims for labor, materials or supplies that, if unpaid, might by law become a prior lien thereon

(collectively, the “Impositions”), and within ten (10) days after request by Mortgagee will exhibit receipts showing payment of any of the foregoing; provided, however, that if by law any such Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Mortgagor may pay the same in installments (together with accrued interest on the unpaid balance thereof) as the same respectively become due, before any fine, penalty or cost attaches thereto.

Section 2.07 Maintenance of the Improvements and Equipment.

Mortgagor shall (i) not permit the Improvements or Fixtures to be removed or demolished; (ii) maintain the Mortgaged Property in good repair, working order and condition; and (iii) restore and repair the Improvements and Equipment or any part thereof now or hereafter affected by any Casualty Event or Taking in accordance with the Loan Agreement.

Section 2.08 Compliance With Laws.

Mortgagor covenants and agrees to (i) comply with all applicable laws, including, without limitation, Environmental Laws, in accordance with Article 5 of the Loan Agreement and the Environmental Indemnity and (ii) indemnify and hold Mortgagee and the Lenders harmless from and against any and all losses, liabilities, claims, damages or expenses arising from Mortgagor’s failure to so comply with applicable law, including, without limitation, Environmental Laws, in accordance with the Loan Agreement and the Environmental Indemnity.

Section 2.09 Limitations of Use.

Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Premises or any part thereof without the prior written consent of Mortgagee. Mortgagor shall comply with the provisions of all Governmental Approvals and all licenses, agreements and private covenants, conditions and restrictions that at any time are applicable to the Mortgaged Property.

Section 2.10 Actions to Protect Mortgaged Property.

If Mortgagor shall fail beyond any applicable notice and/or grace period to (i) effect the insurance required by Section 2.05 hereof, (ii) make the payments required by Section 2.06 hereof or (iii) perform or observe any of its other covenants or agreements hereunder, Mortgagee may, without obligation to do so, and upon notice to Mortgagor (except in an emergency) effect or pay the same; provided however, any such payment by the Mortgagee shall not affect whether such failure by the Mortgagor constitutes an Event of Default. To the maximum extent permitted by law, all sums, including reasonable attorneys’ fees and disbursements, so expended or expended to sustain the lien or estate of this Mortgage or its priority, or to protect or enforce any of the rights hereunder, or to recover any of the Obligations, shall be a lien on the Mortgaged Property, and shall, subject to the provisions of Section 1.02 hereof, be deemed to be added to the Obligations secured hereby, and shall be paid by Mortgagor within 10 days after demand therefor, together with interest thereon at the Post-Default Rate. For such purpose, Mortgagor expressly grants to Mortgagee, in addition to, and without prejudice to, any other rights and remedies hereunder, (1) the right to enter upon (and, in Mortgagee’s discretion, to take possession of) the Mortgaged Property to such extent

and as often as it may deem necessary or desirable to prevent or remedy any such default or to take any such action, and (2) the right to appear in, defend or bring any action or proceeding to protect Mortgagee's interest in the Mortgaged Property or, during the continuance of an Event of Default, to foreclose this Mortgage or collect the Obligations, and Mortgagor hereby irrevocably appoints and constitutes Mortgagee as Mortgagor's lawful attorney-in-fact, coupled with an interest and with full power of substitution, for such purposes and the taking of all acts incidental thereto. No such advance, performance or action or proceeding shall be deemed to have cured such Default or any Event of Default (as hereinafter defined) with respect thereto. In any action or proceeding to foreclose this Mortgage or recover or collect the Obligations, Mortgagee and the Lenders shall be entitled to recover the reasonable costs, expenses and attorneys' fees and disbursements incurred in foreclosing or attempting to collect upon the Obligations, which costs, expenses and attorneys' fees, to the extent permitted by applicable law, shall also be secured by this Mortgage.

Section 2.11 Insurance and Condemnation Proceeds.

Mortgagor assigns to Mortgagee on behalf of the Lenders, all of Mortgagor's right, title and interest in (i) all awards or payments, including interest thereon, and the right to receive the same, which may heretofore or hereafter be made with respect to the whole or part of the Mortgaged Property, whether from the exercise of the right of eminent domain (including any proceeding or transfer in lieu of or in anticipation of the exercise of such right), or for any other injury to or decrease in the value of the Mortgaged Property, including any award resulting from a change of any streets (whether as to grade, access or otherwise) and any award for severance damages and (ii) all proceeds of and any unearned premiums on any insurance policies that may now or hereafter cover the Mortgaged Property, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Mortgaged Property. Any Insurance Proceeds or Condemnation Awards shall be held and applied by Mortgagee in accordance with Article X of the Loan Agreement.

Section 2.12 Inspections.

Mortgagor shall permit Mortgagee and each Lender, and their agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require pursuant to the Environmental Indemnity, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

ARTICLE 3

ASSIGNMENT OF LEASES AND RENTS

Section 3.01 Assignment of Rents, Issues and Profits.

(a) Mortgagor hereby absolutely and unconditionally assigns to Mortgagee, as part of the consideration for the transactions contemplated by this Mortgage and the other Loan Documents, the Rents and Leases and other documents or instruments evidencing the Rents now or hereafter in effect and any and all deposits or letters of credit held as security under the Leases, it being intended by Mortgagor and Mortgagee that such assignment constitutes an absolute and

present assignment and not an assignment for additional security only. Nothing contained in the foregoing sentence shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or other document or otherwise to impose any obligation on Mortgagee (including any liability under the covenant of quiet enjoyment contained in any Lease), except that Mortgagee shall be accountable for any money or security actually received pursuant to such assignment. Such assignment and grant shall continue in effect until the Obligations have been indefeasibly paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Mortgagee and the exercise by Mortgagee of the rights and powers granted pursuant hereto, including, without limitation, those set forth in clauses (i) through (vii) below, regardless of whether foreclosure has been instituted and without applying for a receiver. Such assignment shall include, without limitation:

(i) the immediate and continuing right to receive and collect all amounts payable by all Tenants, including without limitation (A) all Rents, (B) all damages or other amounts payable in the event of any expiration or termination of any Lease pursuant to the terms thereof, by operation of law or otherwise, (C) any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by Mortgagor under any Lease or otherwise, (D) any award in the event of the bankruptcy of any Tenant or guarantor of a Lease, and (E) all security deposits, other security instruments, other deposits or prepayments with respect to any such Leases;

(ii) all claims, rights, powers, privileges and remedies of Mortgagor, whether provided for in any Lease or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of any Tenant to perform or comply with any term of any Lease;

(iii) all right to take all action upon the happening of a default under any Lease as shall be permitted by any Lease or by law, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity;

(iv) the full power and authority, in the name of Mortgagor, or otherwise, to enforce, collect, receive and make receipt for any and all of the foregoing and to do any and all other acts and things whatsoever which Mortgagor, or any landlord is or may be entitled to do under any Lease;

(v) the full power and authority, in the name of Mortgagor, or otherwise, to enforce any Lease;

(vi) the full power and authority, in the name of Mortgagor, or otherwise, to lease the Mortgaged Property; and

(vii) the right to apply the Rents to the payment of the Obligations in accordance with the Loan Agreement.

(b) During the term hereof, all rights, powers and privileges of Mortgagee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and Mortgagor will not take any action under any Lease or otherwise which is inconsistent with this

Mortgage or any of the terms hereof or thereof and any such action inconsistent herewith or therewith shall, to the fullest extent permitted by applicable law, be void. Any further assignment of any rents, issues, or profits from the Mortgaged Property shall to the fullest extent permitted by law be void. To the fullest extent permitted by applicable law, Mortgagor hereby waives any requirement that Mortgagee commence any foreclosure proceeding with respect to any or all of the Mortgaged Property prior to enforcement of any remedies pursuant to this Article 3, including the right to commence and prosecute an action to appoint a receiver for rents and all other amounts due under any Leases. Mortgagor will, from time to time, upon request of Mortgagee, execute all instruments and further assurances and all supplemental instruments and take all such action as Mortgagee from time to time may reasonably request in order to perfect, preserve and protect the interests intended to be assigned to Mortgagee hereby.

(c) Mortgagor hereby agrees that it will not, unilaterally or by agreement, (i) subordinate, amend, modify, extend, discharge, terminate, surrender, waive or otherwise change any term of any Lease in any manner which would violate this Mortgage, the Loan Agreement or the other Loan Documents or (ii) except for security deposits, accept a prepayment of Rent in excess of Rent for one month. If any Lease shall be amended as permitted hereby, such Lease shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto, subject to the provisions of any non-disturbance agreement which Mortgagee may have granted in accordance with the provisions of this Mortgage.

Section 3.02 Grant of License; Revocation.

Until the occurrence of an Event of Default, Mortgagee waives its rights under Section 3.01 above, and grants Mortgagor a license to collect the Rents and enforce any rights, remedies, entitlements, benefits and/or powers assigned hereunder or granted to Mortgagee, including, without limitation, those enumerated in clauses (i) through (vii) of Section 3.01(a). Such license to collect, receive and retain the Rents and enforce such rights, remedies, entitlements, benefits and/or powers shall be automatically revoked and the rights of Mortgagor thereunder shall automatically cease and terminate upon the occurrence of an Event of Default under this Mortgage. In such event, (i) Mortgagor hereby authorizes Mortgagee to receive and collect the Rents due under the terms of each Lease and to direct any Tenant, by written notice from Mortgagee or otherwise, to forward such Rents by mail or in person to Mortgagee and (ii) Mortgagor shall immediately pay to Mortgagee any Rents held by or under the control of Mortgagor. Mortgagor hereby irrevocably appoints and constitutes Mortgagee as Mortgagor's lawful attorney-in-fact, coupled with an interest and with full power of substitution, for the purpose of taking any of the actions described in the immediately preceding sentence and all acts incidental thereto. Following the revocation of the license herein granted, Mortgagee may retain and apply the Rents toward payment of the Obligations in such order, priority and proportions as Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, and irrespective of whether Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver with respect thereto.

Section 3.03 Direction to Tenants.

Mortgagor hereby irrevocably authorizes and directs each Tenant of the Mortgaged Property, upon receipt of notice from Mortgagee of an Event of Default, to pay all Rents due or to become due under its Lease directly to Mortgagee or to any appointed receiver of the Mortgaged Property. Each such Tenant shall have the right to rely upon any such notice of Mortgagee directing the payment of all Rents to Mortgagee, without any obligation to inquire as to the actual existence of the Event of Default, notwithstanding any claim of Mortgagor to the contrary and Mortgagor shall have no rights or claims against any Tenant for any Rents so paid to Mortgagee. Mortgagor shall facilitate, in all reasonable ways, the collection of the Rents by Mortgagee and will, upon request by Mortgagee, execute a written notice to each Tenant directing the Tenant to pay the Rents payable under such Tenant's respective Lease to Mortgagee. Each Tenant is hereby expressly authorized and directed, upon demand by Mortgagee and without the necessity of any further consent by, or notice from, Mortgagor, to attorn to Mortgagee as the owner of the Leases and to pay any and all Rents due to Mortgagor pursuant to such Tenant's Lease directly to Mortgagee or to any appointed receiver, and to observe and perform such Tenant's obligations under the Tenant's Lease to or for Mortgagee and to accept performance of the landlord's obligations under the Lease from Mortgagee. Each Tenant is hereby expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made. The payment of Rents to Mortgagee pursuant to Mortgagee's demand and the performance of obligations under any Lease to or for the benefit of Mortgagee shall not cause Mortgagee to assume or be bound by any of the provisions of any such Lease and shall not relieve Mortgagor of its obligations thereunder.

Section 3.04 Section 291-f Agreement.

(a) This Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby.

(b) Mortgagor shall (unless such notice is contained in such Tenant's Lease) deliver notice of this Mortgage, which notice shall be to all present and future holders of any interest in any Lease, by assignment or otherwise, and shall take such other action as may now or hereafter be reasonably required to afford Mortgagee the full protections and benefits of such Section 291-f; and

(c) Mortgagor shall request the recipient of any such notice to acknowledge the receipt thereof.

ARTICLE 4

SECURITY AGREEMENT; FIXTURE FILING

Section 4.01 Creation of Security Interest.

This Mortgage constitutes both a real property mortgage and a "security agreement", within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property whether now or hereafter existing.

Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Obligations, a security interest in (a) the Mortgaged Property, and (b) the personal property identified on Exhibit B attached hereto whether now or hereafter existing, in each case to the fullest extent that the same may be subject to the Uniform Commercial Code (all of such personal property so subject to the Uniform Commercial Code, the "Personal Property Collateral"). If an Event of Default shall exist, (i) Mortgagee, in addition to any other rights and remedies that it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including the right to take possession of the Personal Property Collateral, or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property Collateral and (ii) upon request or demand of Mortgagee, Mortgagor shall, at Mortgagor's sole expense, assemble the Personal Property Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys' fees, costs and disbursements, incurred or paid by Mortgagee in protecting its interest in the Personal Property Collateral and in enforcing its rights hereunder with respect to the Personal Property Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property Collateral sent to Mortgagor in accordance with the provisions of this Mortgage at least five (5) Business Days prior to such sale, disposition or other action, shall constitute reasonable notice to Mortgagor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to by Mortgagor within three (3) Business Days after such notice. The proceeds of any sale or disposition of the Personal Property Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper.

Section 4.02 Continuation Statements; Amendments.

Mortgagor hereby authorizes Mortgagee to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Personal Property Collateral without the signature of Mortgagor where permitted by applicable law.

Section 4.03 Fixture Filing.

This Mortgage shall also constitute a "fixture filing" filed as a fixture filing in the Official Records of the County Recorder of the county in which the Mortgaged Property is located for the purposes of the Uniform Commercial Code against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the address of Debtor (Mortgagor).

DEFAULTS; REMEDIESSection 5.01 Events of Default.

If any Event of Default (herein, an "Event of Default") under the Loan Agreement shall occur and be continuing then, as more particularly provided in the Loan Agreement, the unpaid principal of and accrued interest on the Notes and all other Obligations under the Loan Agreement may be declared, or may become, due and payable, without presentment, demand, protest or other formalities of any kind, all of which have been waived pursuant to the Loan Agreement.

Section 5.02 Remedies.

If an Event of Default shall have occurred and be continuing, this Mortgage may, to the maximum extent permitted by law, be enforced, and Mortgagee may exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or by law, and, without limiting the generality of the foregoing, Mortgagee may, personally or by its agents, exercise any of the following to the maximum extent permitted by law:

(a) Subject to any applicable provisions of the Notes, the Loan Agreement, the Hedge Agreement and the other Loan Documents, Mortgagee may declare all or any portion of the unpaid principal balance under the Notes, together with all accrued and unpaid interest (including, without limitation, any Additional Interest) thereon, and all other unpaid Obligations, to be immediately due and payable;

(b) Mortgagee may enter into or upon the Premises, personally or by its agents, nominees or attorneys, and may dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Mortgagee or in such other name as Mortgagee shall deem best; (ii) complete any construction with respect to the Mortgaged Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (v) apply the receipts of all such Rents to the payment of the Obligations as provided in the Loan Agreement, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the operating costs for the Mortgaged Property and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its agents, nominees and attorneys.

(c) With or without entry, personally or by its agents, nominees or attorneys, Mortgagee may sell all or any portion of the Mortgaged Property and all or any portion of

Mortgagor's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Mortgagee shall have the statutory power of sale if and to the extent provided by applicable law.

(d) Mortgagee may institute proceedings for the complete or partial foreclosure of this Mortgage against all or any portion of the Mortgaged Property, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.

(e) Mortgagee may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Notes, the Loan Agreement or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(f) Mortgagee may recover judgment on the Notes, either before, during or after any proceedings for the foreclosure (or partial foreclosure) or enforcement of this Mortgage.

(g) Mortgagee may, as a matter of right, secure the appointment of a receiver, trustee, liquidator or similar official of the Mortgaged Property or any portion thereof, and Mortgagor hereby consents and agrees to such appointment, without notice to Mortgagor and without regard to the adequacy of the security for the Obligations and without regard to the solvency of Mortgagor or any other Person liable for the payment of the Obligations, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Mortgagee to receive the Rents with respect to the Mortgaged Property pursuant to this Mortgage.

(h) In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor and may require Mortgagor to vacate and surrender possession to Mortgagee of the Mortgaged Property or to such receiver and, Mortgagor may be evicted by summary proceedings or otherwise.

(i) Mortgagee shall have all of the rights and remedies with respect to the Mortgaged Property and the Personal Property Collateral of a secured party under the Uniform Commercial Code (whether or not said Uniform Commercial Code is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the applicable laws, including, without limitation, the right, to the maximum extent permitted by law, to exercise all voting, consensual and other power of ownership pertaining to the Mortgaged Property or the Personal Property Collateral as if Mortgagee were the sole and absolute owner thereof (and Mortgagor agrees to take all such action as may be appropriate to give effect to such right).

(j) Mortgagee or the Lenders may pursue against Mortgagor, any other rights and remedies of Mortgagee permitted by law, equity or contract or as set forth herein or in the Loan Agreement, the Hedge Agreement or the other Loan Documents.

(k) Reference is made to Section 1401(1) of the New York Real Property Actions and Proceedings Law. Mortgagor agrees that, during the existence of any Event of Default hereunder or the Notes secured hereby, Mortgagee shall have the right to sell the Land and without limitation, that this Mortgage may be foreclosed in the manner prescribed in Article 14 of the New York Real Property Actions and Proceedings Law for a non-judicial proceeding for foreclosure by power of sale in accordance with the requirements of such Article 14 or any provision of New York law which may hereafter be enacted permitting foreclosure by sale, power of sale or similar procedure.

Section 5.03 Application of Proceeds.

The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Mortgage, or of any monies held by Mortgagee hereunder shall be applied in the following order:

(a) First, to payment of the costs and expenses of taking possession of the Mortgaged Property, and of the costs and expenses of the sale, including but not limited to Mortgagee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Mortgagee;

(b) Second, payment of all sums expended by Mortgagee under the terms of this Mortgage and not yet repaid, together with interest on such sums at the Post-Default Rate;

(c) Third, to payment of the secured indebtedness and all other Obligations secured by this Mortgage, including, without limitation, interest at the Post-Default Rate provided for under the Loan Documents, and any charge expressly required to be paid under the Notes in order to prepay principal, in any order that Mortgagee chooses in its sole discretion; and

(d) Finally, the remainder, if any, of such funds shall be disbursed to Mortgagor or to any other Person or Persons legally entitled thereto.

Section 5.04 Right to Sue.

Mortgagee shall have the right from time to time to sue for any sums required to be paid by Mortgagor under the terms of this Mortgage as the same become due, without regard to whether or not the Obligations shall be, or have become, due and without prejudice to the right of Mortgagee thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

Section 5.05 Powers of Mortgagee.

Mortgagee may at any time or from time to time renew or extend this Mortgage or (with the agreement of Mortgagor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release any portion of the

Mortgaged Property or any other security, and grant such extensions and indulgences in relation to the Obligations, or release any Person liable therefor as Mortgagee may determine without the consent of any junior lienor or encumbrancer, without in any manner affecting the priority of the Lien and estate of this Mortgage on or in any part of the Mortgaged Property, and without affecting the liability of any other Person liable for any of the Obligations.

Section 5.06 Remedies Cumulative.

(a) No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Mortgage and the other Loan Documents, or under applicable law, whether now or hereafter existing; the failure of Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) Mortgagee shall be entitled to enforce payment and performance of any of the Obligations and to exercise all rights and powers under this Mortgage or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being stipulated that Mortgagee shall be entitled to enforce this Mortgage, any of the Security Documents and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may determine; every power or remedy given by the Loan Agreement, this Mortgage or any of the other Loan Documents to Mortgagee, or to which Mortgagee is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

Section 5.07 General Provisions.

(a) Effect of Judgment. No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon any other property of Mortgagor shall adversely affect in any manner or to any extent the Lien of this Mortgage upon the Mortgaged Property, or any rights, powers or remedies of Mortgagee hereunder. Such Lien, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(b) Continuing Power of Sale. The power of sale conferred upon Mortgagee in this Mortgage shall not be exhausted by any one or more sales as to any portion of the Mortgaged Property or the Personal Property Collateral remaining unsold, but shall continue unimpaired, to the fullest extent permitted by law, until all of the Obligations are paid in full.

(c) Right to Purchase. At any sale of the Mortgaged Property or the Personal Property Collateral or any portion thereof pursuant to the provisions of this Mortgage, Mortgagee shall have the right to purchase the Mortgaged Property (or such portion thereof) being sold, and

in such case shall have the right to credit against the amount of the bid made therefor (to the extent necessary) all or any portion of the Obligations.

(d) Adjournment of Sale. Mortgagee may postpone or adjourn from time to time any sale of all or any part of the Mortgaged Property by it to be made hereunder or by virtue hereof by announcement at the time and place appointed for such sale or such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so postponed or adjourned, as the case may be.

(e) Right to Terminate Proceedings. Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Article 5 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(f) No Waiver or Release. Mortgagee may resort to any remedies and the security given by the Loan Documents, in whole or in part, and in such portions and in such order as determined in Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of an Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Obligations or any other indulgence given by Mortgagee to Mortgagor or any other Person, shall operate to release or in any manner affect the interest of Mortgagee in any remaining portion of the Mortgaged Property or the liability of Mortgagor to pay and perform the Obligations, except to the extent that such liability shall be reduced by net proceeds actually received by Mortgagee with respect to any portion of the Mortgaged Property. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated.

(g) No Impairment; No Release. The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Obligations; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any waiver, release or indulgence granted to any maker, endorser, guarantor or surety of any of the Obligations.

(h) Waivers and Agreements Regarding Remedies. To the fullest extent Mortgagor may legally do so, Mortgagor, for itself and for all persons hereunder claiming through or under it or who may at any time acquire a lien on all or any part of the Mortgaged Property or any interest therein:

(i) agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole or any portion of the Obligations;

(ii) waives all rights to a marshaling of the assets of Mortgagor and others with interests in Mortgagor, and of the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshaling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the Loan Documents to a sale of the Mortgaged Property for the collection of the Obligations without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the net proceeds from the Mortgaged Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff; provided, however, that if such counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damage (unless such claim is required by law or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Mortgagee), but such separate action shall not thereafter be consolidated with any foreclosure action of Mortgagee; and provided further that the bringing of such separate action for money damages shall not be deemed to afford any grounds for staying any such foreclosure action;

(iv) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties; and

(v) waives any right which it may have to require the Mortgaged Property (or any part thereof) to be sold as one or more units.

(i) Subrogation. If all or any portion of the proceeds of the Notes or any disbursement shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior Lien upon the Mortgaged Property or any portion thereof, then Mortgagee shall be subrogated to, and shall have the benefit of the priority of, such other Lien and any additional security held by the holder thereof.

Section 5.08 No Mortgagee-in-Possession.

None of the enforcement of any of the remedies under this Article 5, the assignment of the Leases and Rents under Article 3, the security interests under Article 4, nor any other remedies afforded to Mortgagee and/or the Lenders under the Loan Documents, at law or in equity shall cause Mortgagee or any Lender to be deemed or construed to be a mortgagee in

possession of the Mortgaged Property, to obligate Mortgagee or any Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 6

MISCELLANEOUS

Section 6.01 Release by Mortgagee.

Upon the termination of the Commitments under and as defined in the Loan Agreement and the payment in full of the Obligations, Mortgagee shall release the lien of this Mortgage, or upon the request of Mortgagor, and, provided that Mortgagor shall pay Mortgagee's reasonable expenses, assign, without recourse, representation or warranty of any kind, this Mortgage to Mortgagor's designee, or to the person or persons legally entitled thereto, by an instrument duly acknowledged in form for recording.

Section 6.02 Notices.

All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in the Loan Agreement.

Section 6.03 No Waiver.

Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of this Mortgage or the other Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 6.04 Amendments; etc.

This Mortgage cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by Mortgagor and Mortgagee and, to the extent provided in the Loan Agreement, the consent of the Lenders. For purposes hereof, a statement by the Mortgagee in any modification or supplement to this Mortgage to the effect that such modification or supplement has been consented to by the Lenders as provided in the Loan Agreement shall be conclusive evidence of such consent and it shall not be necessary for a copy of such consent to be recorded with such modification or supplement as a condition to such modification or supplement being recorded in the appropriate real estate records.

Section 6.05 Successors and Assigns.

This Mortgage applies to, inures to the benefit of and binds Mortgagor and Mortgagee and their respective successors and assigns, as permitted under the Loan Agreement, and shall run with the Premises.

Section 6.06 Captions.

The captions or headings at the beginning of each Article and Section hereof are for the convenience of reference and are not a part of this Mortgage.

Section 6.07 Severability.

If any term or provision of this Mortgage or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Mortgaged Property, then any payments made in respect of the Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Mortgage (except to the extent otherwise required by applicable law) be deemed to be made (i) first, in respect of the portion of the Obligations not secured by the lien of this Mortgage, (ii) second, in respect of the portion of the Obligations secured by the lien of this Mortgage, but which lien is on less than all of the Mortgaged Property, and (iii) last, to the portion of the Obligations secured by the lien of this Mortgage, and which lien is on all of the Mortgaged Property.

Section 6.08 Usury Savings Clause.

It is the intention of Mortgagor, Mortgagee and the Lenders to conform strictly to the usury and similar laws relating to interest payable on loans from time to time in force, and all agreements between Mortgagor, Mortgagee and the Lenders, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof otherwise, shall the amount paid or agreed to be paid in the aggregate to the Lenders as interest (whether or not designated as interest, and including any amount otherwise designated by deemed constitute interest by a court of competent jurisdiction) hereunder or under the other Loan Documents or in any other agreement given to secure the Obligations, or in any other document evidencing, securing or pertaining to the Obligations, exceed the maximum amount (the "Maximum Rate") permissible under applicable laws. If under any circumstances whatsoever fulfillment of any provision hereof, of the Loan Agreement or of the other Loan Documents, at the time performance of such provisions shall be due, shall involve exceeding the Maximum Rate, then, ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate. For purposes of calculating the actual amount of interest paid and/or payable hereunder in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the Lenders for the use, forbearance or detention of the Obligations evidenced hereby, outstanding from time to time shall, to the extent permitted by applicable law, be amortized, pro-rated, allocated and spread from the date of disbursement of the proceeds of the Notes until payment in full of all of such indebtedness, so that the actual rate of interest on account of such Obligations is uniform through the term hereof. If under any circumstances any Lender shall ever receive an amount which would exceed the Maximum Rate, such amount shall be deemed a payment in reduction of the principal amount of the Loans and shall be treated as a voluntary prepayment under the Loan Agreement and shall be so applied in accordance with the provisions of the Loan Agreement or if such excessive interest exceeds the Outstanding amount of the Loans and

any other Obligations, the excess shall be deemed to have been a payment made by mistake and shall be refunded to Mortgagor.

Section 6.09 CERTAIN WAIVERS.

MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY FORECLOSURE OR OTHER ACTION BROUGHT BY MORTGAGEE TO ENFORCE ITS RIGHTS AND REMEDIES UNDER THIS MORTGAGE, ANY AND EVERY RIGHT MORTGAGOR MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT THE BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST THE ADMINISTRATIVE AGENT OR THE LENDERS WITH RESPECT TO ANY ASSERTED CLAIM.

Section 6.10 GOVERNING LAW.

THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 6.11 SUBMISSION TO JURISDICTION.

THE PROVISIONS OF SECTION 12.21 OF THE LOAN AGREEMENT SHALL BE APPLICABLE TO THIS AGREEMENT.

Section 6.12 WAIVER OF JURY TRIAL.

EACH OF MORTGAGOR, MORTGAGEE AND THE LENDERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE, THE NOTES, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.13 Attorney-In-Fact.

Mortgagor hereby irrevocably appoints Mortgagee (on behalf of the Lenders) and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty and Fixtures in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect

or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagee hereunder; however: (i) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (ii) any sums advanced by Mortgagee in such performance shall be added to and included in the Obligations and shall bear interest at the Default Rate; (iii) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (iv) neither Mortgagee nor any Lender shall be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 6.14 New York Lien Law.

Pursuant to Section 13 of the Lien Law of the State of New York, Mortgagor shall receive the advances secured by this Mortgage and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Premises before using any part of the total of the same for any other purpose.

Section 6.15 Limitation on Liability.

The liability of each Mortgagor hereunder is joint and several. Notwithstanding the foregoing, Mortgagor's liability hereunder is subject to the limitation on liability provisions of Section 13.1 of the Loan Agreement.

[signature page follows]

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the day and year first above written.

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

By: _____

Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE, LLC,
a Delaware limited liability company

By: _____

Name: Robert Masters
Title: Senior Vice President

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

On the ____ day of _____, 2009, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument the individual or the person upon behalf of which the individual acted executed the instrument.

Signature and Office of individual
taking acknowledgement

EXHIBIT A
LEGAL DESCRIPTION OF LAND

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

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

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

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

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

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

PERSONAL PROPERTY COLLATERAL

As used in this Exhibit B, the term “Premises” means that certain real property, including all improvements thereon, more particularly described in Schedule 1 attached hereto. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated as of November __, 2009 by and from **ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC** and **FORDHAM PLACE OFFICE, LLC**, each a limited liability company duly organized and validly existing under the laws of the State of Delaware (“Debtor”), in favor of EUROHYPO AG, NEW YORK BRANCH, as Administrative Agent for the Lenders referred to therein (collectively, the “Secured Party.”) (as amended, modified, extended, split or consolidated, the “Mortgage”).

(a) All personal property in all of its forms, including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory (including, without limitation, inventory as such term is defined in the Uniform Commercial Code), raw materials, work in process and construction materials which Debtor now or hereafter owns or in which Debtor now or hereafter acquires an interest or right, including, without limitation, those in which Debtor has an interest or right of any kind, those which are now or hereafter located on or affixed to the Premises, and those in transit thereto or in any other location, or used or useful in the operation, use or occupancy of the Premises or the construction of any improvements thereon, including, without limitation, all documents of title with respect to such personal property, any interest of Debtor in and to personal property that is leased or subject to any superior security interest, all books, records, ledger cards, leases, other documents of whatever kind or character, relating to the Premises;

(b) All computer programs, tapes, disks, and related data processing software (owned by Debtor or in which it has an interest) that at any time evidence or contain information relating to the Premises or to Debtor’s business thereon;

(c) All fees, income, rents, issues, profits, earnings, receipts, royalties and revenues which, after the date hereof and while any portion of the indebtedness secured hereby remains unpaid, may accrue to Debtor from such goods, fixtures, furnishings, equipment and building materials or any part thereof located on the Premises, or which may be received or receivable by Debtor from any hiring, using, letting, leasing, subhiring, subletting, or subleasing of the Premises;

(d) All of Debtor’s present and future rights and claims to receive payments of money, utility deposits, services or property relating to the Premises, including, without limitation, rights to all deposits from tenants of the Premises, rights to receive payment with respect to media and advertising agreements and sponsorships, amounts payable on account of the sale of interests in Debtor, accounts receivable, deposit or other accounts (including, without limitation, deposit accounts maintained with Secured Party; and accounts as that term is defined in the Uniform Commercial Code), chattel paper, notes, drafts, contract rights, rights to performance, instruments (including, without limitation, instruments as such term is defined in the Uniform Commercial Code), general intangibles, principal, interest and payments due on

account of goods sold, services rendered, loans made or credit extended, guaranties, letters of credit, documents, drafts, acceptances, and tax refunds, together with title or interest in all documents evidencing or securing the same, and judgments taken on any rights or claims which now or hereafter relate to, are derived from or used in connection with the Premises or the ownership, construction, use, operation, maintenance, occupancy or enjoyment thereof or the conduct of business or activities therefrom;

(e) All of Debtor's rights and interests in all other general intangibles including all payment intangibles (as the foregoing terms are defined in the Uniform Commercial Code) and Debtor's rights and interest relating to the Premises or the construction, development, use or operation thereof, or used in connection therewith, including but not limited to all governmental permits relating to construction or other activities on the Premises, all names under or by which the Premises may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names, trademarks and franchises relating in any way to the Premises, all patents and copyrights of Debtor relating in any way to the Premises, all good will in any way relating to the Premises, all licenses and permits relating in any way to, or to the operation of, the Premises, all contract rights, all options, all purchase orders, all manufacturers' warranties with respect to improvements, all construction contracts, all maintenance contracts, and all of Debtor's claims and rights arising under or pursuant to Section 365 of the Bankruptcy Code, 11 U.S.C. § 365;

(f) All of Debtor's rights under all warranties, guaranties or insurance policies (whether or not Secured Party is the loss payee thereunder) covering the Premises or any of the aforesaid collateral, and all proceeds, loss payments and premium refunds payable regarding the same;

(g) All of Debtor's rights and interests in reserves, deferred payments, deposits, refunds, cost savings and payments of any kind relating to the construction of any improvements on the Premises;

(h) All of Debtor's rights and interests in all causes of action, claims compensation and recoveries for any damage to or condemnation or taking of the Premises or the aforesaid collateral, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises or the aforesaid collateral, or for any loss or diminution in value of the Premises or the aforesaid collateral;

(i) All architectural, structural, mechanical and engineering plans and specifications prepared for construction of improvements or extraction of minerals or gravel from the Premises and all studies, data and drawings related thereto; and also all contracts and agreements relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings or to the construction of improvements on or extraction of minerals or gravel from the Premises;

(j) All sums on deposit with the Secured Party for any reason whatsoever pursuant to the terms and provisions of the Mortgage to be recorded in the office of the County Recorder of New York County, State of New York simultaneously with the filing of financing statements with respect to the collateral described above; and

Exhibit B-2

(k) All proceeds, products, offspring, rents, profits, income, benefits, accessions, substitutions and replacements from sale, collection, exchange or other disposition of the aforesaid collateral, whether such disposition is voluntary or involuntary.

Exhibit B-3

SCHEDULE 1
LEGAL DESCRIPTION OF LAND

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

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4. Along said westerly side of Park Avenue, South 00 degrees 10 minutes 48 seconds East, a distance of 201.71 feet to a point, thence;
5. Along the common dividing line between lot 12, lot 8 and lot 4 (lands now or formerly of Automotive Realty Corporation), block 3033, North 85 degrees 39 minutes 56 seconds West, a distance of 164.24 feet to a point on the aforementioned easterly side of Webster Avenue; thence
6. Along said easterly side of Webster Avenue, North 08 degrees 26 minutes 11 seconds East, a distance of 279.09 feet to the point or place of BEGINNING.

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO AMALGAMATED BANK DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,778,734.12, (II) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO AMALGAMATED BANK DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$15,815,942.69 AND (III) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO AMALGAMATED BANK DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$405,323.19.

REPLACEMENT NOTE

\$18,051,400.00

November ____, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to AMALGAMATED BANK (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Eighteen Million Fifty-One Thousand Four Hundred and 00/100 Dollars (\$18,051,400.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

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

This Note is one of the Notes referred to in the Consolidated, Amended and Restated Term Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") between Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder, and is issued pursuant to that certain Note Consolidation, Severance and Modification Agreement between said parties dated as of the date hereof as one of the four replacement notes described therein. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as expressly permitted by Section 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

[Remainder of page intentionally left blank]

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware
limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a
Delaware limited liability company, its managing
member

By: Acadia Realty Acquisition II, LLC, a
Delaware limited liability company, its
managing member

By: Acadia Realty Limited Partnership, a
Delaware limited partnership, its sole
member

By: Acadia Realty Trust, a Maryland
real estate investment trust, its
general partner

By:

Name: Robert Masters
Title: Senior Vice President-
General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By:

Name: Robert Masters
Title: Senior Vice President-
General Counsel

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,251,075.89, (II) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$17,792,935.52 AND (III) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$455,988.59.

REPLACEMENT NOTE

\$20,313,200.00

November ____, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to DEUTSCHE GENOSSENSCHAFTS - HYPOTHEKENBANK AG (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Twenty Million Three Hundred Thirteen Thousand Two Hundred and 00/100 Dollars (\$20,313,200.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

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[Remainder of page intentionally left blank]

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Title: Senior Vice President-
General Counsel

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) AMENDED AND RESTATED ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$4,302,088.81, (II) AMENDED AND RESTATED BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$18,006,450.75, (III) AMENDED AND RESTATED PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$461,460.44, (IV) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$2,834,050.59, (V) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,861,957.02 AND (VI) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$303,992.39.

REPLACEMENT NOTE

\$34,099,000.00

November ____, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to EUROHYPO AG, NEW YORK BRANCH (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Thirty-Four Million Ninety-Nine Thousand and 00/100 Dollars (\$34,099,000.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Note is one of the Notes referred to in the Consolidated, Amended and Restated Term Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "Agreement") between Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder, and is issued pursuant to that certain Note Consolidation, Severance and Modification Agreement between said parties dated as of the date hereof as one of the four replacement notes described therein. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as expressly permitted by Section 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[Remainder of page intentionally left blank]

Executed as of the date first written above.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware
limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a
Delaware limited liability company, its managing
member

By: Acadia Realty Acquisition II, LLC, a
Delaware limited liability company, its
managing member

By: Acadia Realty Limited Partnership, a
Delaware limited partnership, its sole
member

By: Acadia Realty Trust, a Maryland
real estate investment trust, its
general partner

By:

Name: Robert Masters
Title: Senior Vice President-
General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware
limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a
Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a
Delaware limited liability company, its
managing member

By: Acadia Realty Limited Partnership, a
Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland
real estate investment trust, its
general partner

By:

Name: Robert Masters
Title: Senior Vice President-
General Counsel

THIS REPLACEMENT NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN (I) ACQUISITION LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$2,834,050.59, WITH AN ALLONGE ENDORSEMENT DATED NOVEMBER 20, 2009 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$2,834,050.59 MADE PAYABLE TO COMMERCE BANK, N.A. (II) BUILDING LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,861,957.02, WITH AN ALLONGE ENDORSEMENT DATED NOVEMBER 20, 2009 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$11,861,957.02 MADE PAYABLE TO COMMERCE BANK, N.A. AND (III) PROJECT LOAN NOTE FROM ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC AND FORDHAM PLACE OFFICE LLC TO EUROHYPO AG, NEW YORK BRANCH DATED NOVEMBER 16, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$303,992.39, WITH AN ALLONGE ENDORSEMENT DATED NOVEMBER 20, 2009 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$303,992.39 MADE PAYABLE TO COMMERCE BANK, N.A. .

REPLACEMENT NOTE

\$13,536,400.00

November ____, 2009
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC and FORDHAM PLACE OFFICE LLC, each a Delaware limited liability company ("**Borrower**"), hereby promises to pay to TD BANK, as successor-in-interest to Commerce Bank, N.A. (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of Eurohypo AG, New York Branch, at 1114 Avenue of the Americas, 2nd Floor, New York, New York 10036, the principal sum of Thirteen Million Five Hundred Thirty-Six Thousand Four Hundred and 00/100 Dollars (\$13,536,400.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Note is one of the Notes referred to in the Consolidated, Amended and Restated Term Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in

effect from time to time, the “**Agreement**”) between Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder, and is issued pursuant to that certain Note Consolidation, Severance and Modification Agreement between said parties dated as of the date hereof as one of the four replacement notes described therein. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as expressly permitted by Section 12.24 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

[Remainder of page intentionally left blank]

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware
limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a
Delaware limited liability company, its managing
member

By: Acadia Realty Acquisition II, LLC, a
Delaware limited liability company, its
managing member

By: Acadia Realty Limited Partnership, a
Delaware limited partnership, its sole
member

By: Acadia Realty Trust, a Maryland
real estate investment trust, its
general partner

By:

Name: Robert Masters
Title: Senior Vice President-
General Counsel

FORDHAM PLACE OFFICE LLC, a Delaware limited liability company

By: Acadia-P/A Holding Company, LLC, a Delaware limited liability company, its sole member

By: Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Acquisition II, LLC, a Delaware limited liability company, its managing member

By: Acadia Realty Limited Partnership, a Delaware limited partnership, its sole member

By: Acadia Realty Trust, a Maryland real estate investment trust, its general partner

By:

Name: Robert Masters
Title: Senior Vice President-
General Counsel

**LIST OF AFFILIATES OF
ACADIA REALTY TRUST**

Last Revised 03/01/2010

Acadia Realty Trust
Acadia Realty Limited Partnership

125 Main Street Associates LLC
239 Greenwich Associates Limited Partnership
ABR Amboy Road LLC
Acadia 239 Greenwich Avenue, LLC
Acadia 2914 Third Avenue LLC
Acadia 3319 Atlantic Avenue LLC
Acadia 5-7 East 17th Street LLC
Acadia Absecon LLC
Acadia Albertson's Add-on, LLC
Acadia Albertsons Investors LLC
Acadia Atlantic Avenue LLC
Acadia Bartow Avenue, LLC
Acadia Berlin LLC
Acadia Boonton LLC
Acadia Brandywine Condominium, LLC
Acadia Brandywine Holdings, LLC
Acadia Brandywine Subsidiary, LLC
Acadia Brandywine Town Center, LLC
Acadia Chestnut LLC
Acadia Clark-Diversey LLC
Acadia Cortlandt LLC
Acadia Crescent Plaza LLC
Acadia Crossroads, LLC
Acadia Cub Foods Investors LLC
Acadia D.R. Management LLC
Acadia Elmwood Park LLC
Acadia Georgetown LLC
Acadia Granville, LLC
Acadia Heathcote, LLC
Acadia Hendon Hitchcock Plaza, LLC
Acadia Hobson LLC
Acadia K-H, LLC
Acadia Mad River Property LLC
Acadia Mark Plaza LLC

Acadia Market Square, LLC
Acadia Marsh Investors, LLC
Acadia Merrillville Realty, Inc.
Acadia Merrillville Realty, L.P.
Acadia Mervyn I, LLC
Acadia Mervyn II, LLC
Acadia Mervyn Investors I, LLC
Acadia Mervyn Investors II, LLC
Acadia Mervyn Promote Member I, LLC
Acadia Mervyn Promote Member II, LLC
Acadia Naamans Road LLC
Acadia New Loudon, LLC
Acadia Oakbrook LLC
Acadia Pacesetter LLC
Acadia Property Holdings, LLC
Acadia Realty Acquisition I, LLC
Acadia Realty Acquisition II, LLC
Acadia Realty Acquisition III LLC
Acadia Rex LLC
Acadia Self Storage LLC
Acadia Sheepshead Bay LLC
Acadia Shopko Investors LLC
Acadia Shore Road LLC
Acadia SPE Boonton LLC
Acadia Sterling Heights, LLC
Acadia Storage Company LLC
Acadia Storage Post LLC
Acadia Storage Post Metropolitan Avenue LLC
Acadia Storage Post Portfolio Company LLC
Acadia Strategic Opportunity Fund II, LLC
Acadia Strategic Opportunity Fund III LLC
Acadia Strategic Opportunity Fund III Special Member LLC
Acadia Strategic Opportunity Fund, LP
Acadia Suffern LLC
Acadia Tarrytown, LLC
Acadia Town Line, LLC
Acadia Walnut Hill LLC
Acadia West 54th Street LLC
Acadia West Shore Expressway LLC
Acadia Westport LLC
Acadia-P/A 161st Street LLC
Acadia-P/A Albee LLC
Acadia-P/A Canarsie, LLC
Acadia-P/A GWB LLC
Acadia-P/A Holding Company, LLC
Acadia-P/A Liberty LLC

Acadia-P/A Sherman Avenue, LLC
Acadia-P/A/T Albee LLC
Acadia-PA East Fordham Acquisitions, LLC
ACRS, Inc.
Albee Development LLC
Albee Office Development LLC
Albee Retail Development LLC
AmCap Acadia 9th Addition, LLC
AmCap Acadia Agent, LLC
AmCap Acadia Batesville, LLC
AmCap Acadia Benton, LLC
AmCap Acadia Carthage GP, Inc.
AmCap Acadia Carthage LP
AmCap Acadia Cary, LLC
AmCap Acadia Cincinnati, LLC
AmCap Acadia Conroe GP, Inc.
AmCap Acadia Conroe LP
AmCap Acadia Indianapolis, LLC
AmCap Acadia Irving GP, Inc.
AmCap Acadia Irving LP
AmCap Acadia K-H Holding, LLC
AmCap Acadia K-H, LLC
AmCap Acadia Little Rock, LLC
AmCap Acadia Longview, LLC
AmCap Acadia Mustang, LLC
AmCap Acadia Roswell, LLC
AmCap Acadia Ruidoso, LLC
AmCap Acadia San Ramon, LLC
AmCap Acadia Springerville, LLC
AmCap Acadia Tucson, LLC
AmCap Acadia Tulsa, LLC
APA 216st Street LLC
Aspen Cove Apartments, LLC
Blackman Fifty L.P.
Blackman Fifty Realty Corp.
BTS Boonton, L.L.C.
Canarsie Plaza LLC
Crossroads II
Crossroads II, LLC
Crossroads Joint Venture
Crossroads Joint Venture, LLC
Fordham Place Office LLC
GDC Beechwood, LLC
GDC SMG, LLC
George Washington Bridge Bus Station Development Venture LLC
Heathcote Associates, L.P.

KLA/Mervyn's Add-on Associates
KLA/Mervyn's Realty Associates
KLA/Mervyn's Retail Associates
Mark Plaza Fifty L.P.
Mark Twelve Associates, L.P.
Mervyn Opportunities, LLC
P/A-Acadia Pelham Manor, LLC
Pacesetter/Ramapo Associates
RD Abington Associates Limited Partnership
RD Absecon Associates, L.P.
RD Bloomfield Associates Limited Partnership
RD Branch Associates L.P.
RD Elmwood Associates, L.P.
RD Hobson Associates, L.P.
RD Methuen Associates Limited Partnership
RD Smithtown, LLC
RD Woonsocket Associates Limited Partnership
SMG Celebration, LLC
Sterling Heights SC LLC

Consent of Independent Registered Public Accounting Firm

Acadia Realty Trust
White Plains, New York

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-157886, 333-31630, 333-139950, 333-114785 and 333-126712) and Form S-8 (Nos. 33-95966, 333-87993 and 333-106758) of Acadia Realty Trust of our reports dated March 1, 2010, relating to the consolidated financial statements and financial statement schedule, and the effectiveness of Acadia Realty Trust's internal control over financial reporting, which appear in this Form 10-K.

/s/ BDO Seidman, LLP

New York, NY

March 1, 2010

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULE 13a — 14(a) (SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)

I, Kenneth F. Bernstein, certify that:

1. I have reviewed this annual report on Form 10-K of Acadia Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Kenneth F. Bernstein

Kenneth F. Bernstein
President and Chief Executive Officer
March 1, 2010

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULE 13a — 14(a) (SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)

I, Michael Nelsen, certify that:

1. I have reviewed this annual report on Form 10-K of Acadia Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael Nelsen

Michael Nelsen
Senior Vice President and
Chief Financial Officer
March 1, 2010

EXHIBIT 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

In connection with the Annual Report of Acadia Realty Trust (the "Company") on Form 10-K for the year ended December 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

Kenneth F. Bernstein
President and Chief Executive Officer
March 1, 2010

EXHIBIT 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

In connection with the Annual Report of Acadia Realty Trust (the "Company") on Form 10-K for the year ended December 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

Michael Nelsen
Senior Vice President and
Chief Financial Officer
March 1, 2010
