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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

(Mark One)

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

For the fiscal year ended September 30, 2012

Or

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

Commission file number 001-07172

**BRT REALTY TRUST**

(Exact name of registrant as specified in its charter)

Massachusetts  
(State or other jurisdiction  
of incorporation or organization)

13-2755856  
(I.R.S. employer  
identification no.)

60 Cutter Mill Road, Great Neck, New York  
(Address of principal executive offices)

11021  
(Zip Code)

516-466-3100

Registrant's telephone number, including area code

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

Title of each class	Name of each exchange on which registered
Shares of Beneficial Interest, \$3.00 Par Value	New York Stock Exchange

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

NONE  
(Title of Class)

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 15(d) of the 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 (Section 229.405 of this chapter) 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, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether registrant is a shell company (as defined in Exchange Act Rule 12b-2). Yes ☐ No ☒

The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant was approximately \$58.2 million based on the last sale price of the common equity on March 31, 2012, which is the last business day of the registrant's most recently completed second quarter.

As of November 30, 2012, the registrant had 14,053,362 Shares of Beneficial Interest outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the proxy statement for the annual meeting of shareholders of BRT Realty Trust to be filed not later than January 28, 2013 are incorporated by reference into Part III of this Form 10-K.

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*We refer to certain mortgages as being “non-recourse (subject to standard carve-outs).” The term “standard carve-outs” refers to recourse items to an otherwise non-recourse mortgage and are customary to mortgage financing. While carve-outs vary from lender to lender and transaction to transaction, the carve-outs may include, among other things, environmental liabilities, the sale, financing or encumbrance of the property in violation of loan documents, damage to property as a result of intentional misconduct or gross negligence, failure to pay valid taxes and other claims which could create liens on property and the conversion of security deposits, insurance proceeds or condemnation awards.*

*In the narrative portion of this report, information with respect to our consolidated joint ventures is generally described as if such venture was our wholly owned subsidiary and information with respect to unconsolidated joint ventures is generally separately described.*

*Unless otherwise indicated or the context otherwise requires, all references to a year (e.g., 2012) refer to the applicable fiscal year ended September 30<sup>th</sup>.*

*References herein to the acquisition of multi-family properties includes the acquisition of equity interests in joint ventures or other entities that have a direct or indirect ownership interest in entities owning such properties.*

### **Forward-Looking Statements**

This Annual Report on Form 10-K, together with other statements and information publicly disseminated by us, contains certain forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and include this statement for purposes of complying with these safe harbor provisions. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends concerning matters that are not historical facts. Forward looking statements are generally identifiable by use of words such as “may,” “will,” “will likely result,” “shall,” “should,” “could,” “believe,” “expect,” “intend,” “anticipate,” “estimate,” “project” or similar expressions or variations thereof.

Forward-looking statements contained in this Annual Report on Form 10-K are based on our beliefs, assumptions and expectations of our future performance taking into account all information currently available to us. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us or within our control, and which could materially affect actual results, performance or achievements. Factors which may cause actual results to vary from our forward-looking statements include, but are not limited to:

- factors described in this Annual Report on Form 10-K, including those set forth under the captions “Risk Factors” and “Business”;
- availability of mortgage origination and multi-family property acquisition opportunities acceptable to us;
- national and local economic and business conditions;
- general and local real estate property conditions;
- defaults by borrowers in paying debt service on outstanding loans;
- limitation of credit by institutional lenders;
- impairment in the value of real estate property we own and real estate property securing our loans;
- changes in Federal government policies;
- changes in Federal, state and local governmental laws and regulations;
- increased competition from mortgage lenders;
- changes in interest rates; and
- the availability of and costs associated with sources of capital and liquidity.

We caution you not to place undue reliance on forward-looking statements, which speak only as of the date of this Annual Report on Form 10-K. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of the filing of this Annual Report on Form 10-K or to reflect the occurrence of unanticipated events.

## PART I

### Item 1. Business.

#### General

We originate and hold for investment senior mortgage loans secured by commercial and multi-family real estate property in the United States and beginning in 2012, expanded our business activities by acquiring, with joint venture partners, multi-family properties.

The loans we originate generally have relatively high yields and are short-term or bridge loans with a duration ranging from six months to one year, with up to a one year extension in certain cases. Our policy is to lend at a floating rate of interest based on a spread over the prime rate, with a stated minimum rate, though we originate fixed rate loans as circumstances dictate.

Through November 30, 2012, we had acquired eight multi-family properties with an aggregate of 2,335 units, including three properties with an aggregate of 884 units acquired after year end. Our equity investment in these properties was approximately \$42.6 million. We generally contributed 80% of the equity in each multi-family property acquisition. At September 30, 2012, the net book value of the five multi-properties acquired in 2012 was \$117.5 million.

We also own and operate various real estate assets, the most significant of which are development properties located in Newark, New Jersey. At September 30, 2012, the net book-value of such assets was \$72.8 million, inclusive of the net book value of \$61.8 million related to our Newark, New Jersey assets.

We conduct our operations to qualify as a real estate investment trust, or REIT, for federal income tax purposes.

Information regarding our loan origination and real estate segments is included in Note 15 to our consolidated financial statements and is incorporated herein by this reference.

We were organized as a business trust under the laws of the Commonwealth of Massachusetts in June 1972. Our address is 60 Cutter Mill Road, Suite 303, Great Neck, New York 11021, telephone number 516-466-3100. Our website can be accessed at [www.brtrealty.com](http://www.brtrealty.com), where copies of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings with the Securities and Exchange Commission, or SEC, can be obtained free of charge. These SEC filings are added to our website as soon as reasonably practicable.

#### Our Real Estate Lending Activities

The following table highlights certain information regarding our real estate lending activities for the periods indicated:

(Dollars in Thousands)	Year Ended September 30,		
	2012	2011	2010
Loans originated . . . . .	\$101,800	\$131,300	\$17,400
Loans repaid . . . . .	124,800	66,100	22,500
Loans sold and loan participations . . . . .	15,700	46,300	16,900
Mortgage lending revenues(1) . . . . .	9,530	10,328	3,877
Mortgage lending expenses(1) . . . . .	4,231	6,355	9,579

(1) See Note 15 to our consolidated financial statements.

We believe that our originations in fiscal 2012 were less than in fiscal 2011 due to increased competition and reduced demand for repurchase loans (*i.e.*, loans to borrowers purchasing their own or third party mortgage debt at a discount to the principal amount thereof). Our originations in fiscal 2011 were higher than in fiscal 2010 due to increased demand for our short-term bridge loans which we

believe was due to a more favorable economic climate in 2011 than 2010 and increased demand for repurchase loans.

### *Our Loan Portfolio*

The following summarizes certain characteristics of our loan portfolio as of the dates indicated:

(Dollars in Thousands)	September 30,	
	2012	2011
Number of loans outstanding . . . . .	8	13
Principal amount of loans earning interest . . . . .	\$37,096	\$67,266
Real estate loan held for sale(1) . . . . .	—	\$8,446
Percent of loans secured by New York area properties . . . . .	39%	71%
Weighted average contractual interest rate . . . . .	11.3%	11.5%
Weighted average term to maturity(2) . . . . .	5.72 months	4.75 months

(1) This loan, net of deferred fees, represented a 50% interest in a loan with a principal balance of approximately \$17 million. In October 2011, pursuant to a Federal Bankruptcy Court approved joint plan of reorganization, we and our loan participant sold our rights to the loan for net proceeds of approximately \$23.5 million. At the same time, we provided \$15 million of financing in connection with the sale, which financing was repaid in December 2011.

(2) Without giving effect to extension options.

Interest on our loans is payable monthly. Our loans frequently require that our borrowers pay monthly escrow amounts that are adequate to pay, when due, real estate tax installments on the properties securing our loans. We may also require and hold funds in escrow for the payment of casualty insurance premiums. At September 30, 2012, our three largest loans outstanding of approximately \$13.8 million, \$7.8 million and \$6.3 million represented approximately 6.3%, 4.6% and 2.1%, respectively, of our total assets. There were no other loans in our portfolio that, at such date, represented more than 1.0% of our total assets.

With respect to certain loans originated by us, the borrower funds an interest reserve out of the loan proceeds, from which all or a portion of the interest payments due to us are made for a specified period of time. It is our policy to lend at a floating rate of interest based on a spread over the prime rate, with a stated minimum interest rate, though we originate fixed rate loans as circumstances dictate. At September 30, 2012 and 2011, approximately 95% and 82%, respectively, of the principal amount of our outstanding loans had a floating rate of interest. The balance of the loans as of such dates were fixed rate mortgages.

The following table sets forth information regarding the types of properties securing our mortgage loans outstanding at September 30, 2012, all of which are earning interest:

(Dollars in thousands)	Number of Loans	Earning Interest	Percentage
Multi-family residential . . . . .	7	\$35,096	94.6%
Retail . . . . .	1	2,000	5.4%
Total . . . . .	8	\$37,096	100.0%

### *Our Investment Strategy*

We pursue lending opportunities with purchasers and prospective purchasers of commercial and multi-family real estate properties and property owners who require short-term financing for renovation

or repositioning of a real estate asset. We also originate repurchase loans—such loans are generally structured as a repurchase agreement pursuant to which we purchase the mortgage and our borrower is obligated to repurchase such mortgage within a specified period.

Our investment policy emphasizes the origination of short-term real estate loans secured by senior liens on real property. As of September 30, 2012, other than one mezzanine loan in principal amount of \$2 million, our loan portfolio only consisted of first mortgage loans or *pari passu* participations in first mortgage loans. Our lending activities focus on operating properties such as multi-family properties, residential properties being converted to condominium ownership, office buildings, retail properties, shopping centers, mixed use buildings, hotels/motels, and industrial buildings.

We also will, on a limited basis, provide senior loans secured by unimproved land, but generally require that the unimproved land collateralizing our loan has proper entitlements and that zoning is in place for the intended purpose. We also originate and hold for investment loans secured by improved commercial or multi-family residential property which is vacant, pending renovation or repositioning and sale or leasing of the property. We may sell senior, junior or *pari passu* participations in loans we originate and acquire senior, junior or *pari passu* participations in loans originated by others. We also invest in the securities of other REITs.

From time-to-time we originate junior commercial loans, invest in loans as a junior participant or sell senior participations in loans we originate. When we invest in junior loans or hold junior participations, the collateral securing our loan is subordinate to the liens of senior loans or senior participations. It is possible that the amount which may be recovered by us in cases in which we hold a junior position may be less, or significantly less, than our total investment.

#### *Our Origination Process and Underwriting Criteria*

In originating loans, we primarily rely on relationships developed by our officers and loan originators with real estate investors, commercial real estate brokers, mortgage brokers and bankers. We also advertise, use the internet and attend trade shows in order to develop relationships with potential borrowers and real estate brokers, mortgage brokers and bankers.

When underwriting a loan, the primary focus of our analysis is the value of a property, which we evaluate by considering a number of factors, including location, current use and potential for alternative use, current and potential net operating income, if any, the local market for condominium conversion, if conversion to condominium ownership is contemplated, comparable sales prices, existing zoning regulations and intended use, if the loan is to be secured by undeveloped land, and local demographics. We also examine the experience of our potential borrower's principals in real estate ownership and management and, if applicable, real estate development.

Loan approvals are based on a review of property information as well as other due diligence activities undertaken by us. Those activities may include a site visit to the property, an in-house property valuation, a review of the results of operations of the property (historical and projected, if any) or, in the case of an acquisition of the property by our prospective borrower, a review of projected results of operations for the property, and a review of the financial condition and a credit report and background check of the principals of the prospective borrower. We do not obtain independent property appraisals, but instead rely on our in-house activities described above. If management determines that an environmental assessment of the underlying property is necessary, then such an assessment is conducted by an experienced third-party service provider. Before a loan commitment is issued, the loan must be reviewed and approved by our loan committee. Loan approval occurs after the assent of not less than four of the seven members of our loan committee, all of whom are executive officers of ours. We generally obtain a non-refundable cash deposit for legal, travel, and other expenses from a prospective borrower prior to or at the time of issuing a loan commitment, and our loan commitments are generally issued subject to receipt by us of title documentation and title insurance, in a form satisfactory to us, for the underlying property. The approval of our board of trustees is required



for each loan which exceeds \$20 million in principal amount, and the approval of our board of trustees is also required where loans by us to one borrower exceed \$50 million, in the aggregate.

We require either a personal guarantee or a “walk-away guarantee” from the principal or principals of the borrower, in substantially all of the loans originated by us. A “walk-away guarantee” generally provides that the full guarantee of the principal or principals of the borrower terminates if the borrower conveys title to the property to us within a negotiated period of time after a loan default if the payment of mortgage interest to us, real estate taxes and other operating expenses are current. The “walk-away guarantee” is intended to provide an incentive to the principals of a borrower, in a situation where our borrower will or has defaulted, to have the collateral deeded to us in lieu of foreclosure, thereby reducing the cost of foreclosure proceedings. By complying with the terms of the “walk-away guarantee,” the principals of the borrower can avoid the risk of being personally responsible for any difference between the amount owed to us and the amount we recover in a foreclosure proceeding. If we make more than one loan to a borrower, we may require that all or some of the outstanding loans to that borrower be cross-collateralized. In our judgment, the “walk-away guarantees” we have secured upon the origination of certain loans have provided us with leverage in negotiating loan paydowns from “walk away guarantors” and assisted in expediting the foreclosure process.

Generally, our policy is to sell properties we acquire in foreclosure proceedings after completing necessary repairs and maintenance and engaging in leasing activities, if required. We may retain a property if we determine that holding it will result in a substantial increase in its market value. We may provide senior purchase money mortgage loans at competitive fixed interest rates, if necessary, in order to consummate a sale which we deem to be beneficial to us. In fiscal 2012 we provided \$15.0 million of such financing and in fiscal 2011 and 2010, we did not provide any senior purchase money mortgage financing.

#### *Loan Default*

In the event of a default by a borrower on a loan, we will, in substantially all cases, foreclose on the loan or other collateral held by us and may seek to protect our investment by, among other things, enforcing our rights against any guarantor(s) of such loan or through negotiations with the borrower or other interested parties. Once a loan becomes non-performing, we generally do not receive interest payments, thereby reducing our revenues, cash flow, net income and taxable income. Foreclosure proceedings in certain jurisdictions can take considerable time, and may extend for as long as two years. In addition, if a borrower files for protection under the United States bankruptcy laws during the foreclosure process, the delays may be longer. In a foreclosure proceeding, we will typically seek to have a receiver appointed by the court or an independent third party property manager appointed with the borrower’s consent in order to preserve the property’s income stream and provide for the maintenance of the property.

#### **Our Real Estate Assets**

At September 30, 2012, we owned real estate properties with a book value of \$190.3 million. These properties include:

- multi-family properties located in the southeastern United States, with a book value of \$117.8 million,
- development sites and additional properties (vacant land, vacant buildings, retail, office and parking) with a net book value of \$61.8 million located in downtown Newark, NJ, and
- a variety of other properties with a net book value of \$10.7 million, located in Daytona, Florida and the New York metropolitan area.

## Our Multi-Family Properties

Beginning in the second quarter of fiscal 2012, we, together with joint venture partners, began to acquire multi-family properties. Through November 30, 2012, we acquired eight multi-family properties with an aggregate of 2,335 units. These are garden apartment style properties that typically provide residents with amenities, such as a clubhouse, swimming pool, laundry facilities and cable television access. All of the units at these properties are market rate and none of these properties are subject to rent control or similar requirements. The weighted average annual interest rate of the mortgage debt on our eight multi-family properties is 3.96% and the weighted average maturity of such debt is approximately eight years.

Set forth below is selected information regarding our multi-family properties. Except as otherwise indicated, all of (i) these properties are owned by joint ventures in which we have an 80% equity interest and our joint venture partner has a 20% equity interest, (ii) these joint ventures are accounted for as consolidated subsidiaries beginning as of the investment date and (iii) the information provided is as of the investment date.

<b>(Dollars in Thousands)</b> <b>Property Name and Location</b>	<b>Number of Units</b>	<b>Age(1)</b>	<b>Investment Date</b>	<b>Occupancy(2)</b>	<b>BRT Equity Invested</b>	<b>Acquisition Mortgage Debt</b>
Ivy Ridge Apartments—Marietta, GA . . . . .	207	39	1/12/12(3)	92%	\$ 2,560	\$ 6,500
Water Vista Apartments—Lawrenceville, GA . . . . .	170	31	2/23/12(3)	94%	\$ 2,200	\$ 4,687
The Fountains Apartments—Palm Beach Gardens, FL . . . . .	542	42	3/22/12	93%	\$14,480	\$ 45,200
Waverly Place Apartments—Melbourne, FL . . . . .	208	25	3/30/12	92%	\$ 3,120	\$ 7,680
Madison at Schilling Farms—Collierville, TN . . . . .	324	12	6/20/12	92%	\$ 6,220	\$ 25,680
Silvana Oaks Apartments—N. Charleston, SC(4) . . . . .	208	2	10/4/12	91%	\$ 4,410	\$ 17,716
Grove at Trinity—Pointe, Cordova, TN . . . . .	464	26	11/15/12	93%	\$ 6,220	\$ 19,248
Avondale Station—Decatur, GA . . . . .	212	58	11/19/12	97%	\$ 3,396	\$ 8,046
<b>Total . . . . .</b>	<b>2,335</b>				<b>\$42,606</b>	<b>\$134,757</b>

- (1) Reflects the approximate age of the property based on the year original construction was completed. Ivy Ridge was renovated in 2008, The Fountain Apartments were renovated in 2003 and Waverly Place Apartments were renovated in 2006.
- (2) Calculated by dividing the number of units occupied at such property by the total number of units at such property. Such calculation is as of November 26, 2012 with respect to Ivy Ridge, as of November 1, 2012 with respect to Silvana Oaks Apartments, Water Vista, The Fountain Apartments and Waverly Place Apartments, as of November 19, 2012 with respect to Avondale Station, as of October 25, 2012 with respect to Madison at Schilling Farms, and as of November 15, 2012, with respect to Grove at Trinity Pointe.
- (3) This joint venture became a consolidated subsidiary as of August 1, 2012. See note 5 to our consolidated financial statements.
- (4) We have a 90% equity interest in the joint venture that owns this property.

## Joint Venture Arrangements

The joint venture arrangements with our venture partners are deal specific and vary from transaction to transaction. Generally, these arrangements provide for us and our partner to receive net cash flow available for distribution in the following order of priority:

- a preferred return of 9% to 10% on such party's unreturned capital contributions, until such preferred return has been paid in full,
- the return in full of each party's capital contribution,



- 30% to 35% to our partner, and the balance to us, until an internal rate of return ranging from 14% to 15% has been achieved by us, and thereafter
- shared equally between us and our venture partner.

In addition, these arrangements provide that under specified situations, either venture partner may require that the property be sold.

#### *Our Acquisition Process and Underwriting Criteria*

We identify multi-family property acquisition opportunities primarily through relationships developed over time by our officers with our borrowers, real estate investors and brokers.

Our goal is to acquire properties that will achieve stable risk adjusted total returns (*i.e.*, operating income plus capital appreciation). In identifying opportunities that will achieve such goal, we seek acquisitions that will achieve a minimum 10% annual return on invested cash and 12% internal rate of return. We have also focused, but will not limit ourselves, to acquiring properties located in the Southeast United States. Subject to the foregoing, we are opportunistic in pursuing multi-family property acquisitions and do not mandate any specific acquisition criteria, though we take all of the following into account in evaluating an acquisition opportunity: location, size of the target market, type of multi-family property (*e.g.* garden apartment, mid-rise or high rise), property quality, potential for capital appreciation or recurring income, extent and nature of contemplated capital improvements and property age. We generally prefer to acquire these properties with a joint venture partner with knowledge and experience in owning and operating multi-family properties in the target market as this enhances our understanding of such market and assists us in managing our risk with respect to a particular acquisition.

Approvals of the acquisition of multi-family property are based on a review of property information as well as other due diligence activities undertaken by us and our venture partner. Those activities include a site visit to the property and the surrounding area (*i.e.* the target market), consideration of economic, demographic and other factors with respect to the target market and sub-market (including the stability of its population and the potential for population growth, its economic and employment base, presence of, and barriers to entry of, alternative housing stock, the competitive positioning of the proposed acquisition and the regulatory environment (*i.e.* applicable rent regulation)), the potential for rent increases, the possibility of enhancing the property and the costs thereof, an inspection of a sample of units at the property, an analysis of the terms and conditions of the mortgage debt secured or to be secured by the property, a review of any independent third party appraisal and a Phase I environmental report with respect to the property, a review of historical and projected results of operations for the property prepared by us and, if applicable, our venture partner, and an assessment of our joint venture partner's, if any, knowledge and expertise with respect to the acquisition and operation of multi-family properties and the relevant market and sub-market. Before a property is acquired, the acquisition must be reviewed and approved by our investment committee. Approval occurs after the assent of not less than four of the seven members of our investment committee, all of whom are executive officers of ours. The approval of our board of trustees is required for acquisitions of any multi-family property in which our equity investment exceeds \$10 million.

Generally, the mortgage debt associated with our multi-family properties is non-recourse to (i) the joint venture that owns the property, subject to customary carve-outs and (ii) to us and our subsidiary acquiring the equity interest in such joint venture.

#### *Property Management*

The day-to-day management of our multi-family properties is overseen by property management companies operating in the market in which the property is located. Some of these management companies are owned by our joint venture partners or their affiliates. We can terminate these management companies with the approval of our joint venture partner and generally, if the property does not achieve specified financial returns, without such partner's approval. We believe that adequate replacements for these property managers are available, if required.

## *Insurance*

We generally carry all risk property insurance covering 100% of the replacement cost for each building and business interruption and rental loss insurance (covering up to 12 months of loss). On a case-by-case basis, based on an assessment of the likelihood of the risk, availability of insurance, cost of insurance and in accordance with standard market practice, we obtain earthquake, windstorm, flood, terrorism and boiler and machinery insurance. We carry comprehensive liability insurance and umbrella policies for each of our properties which provide no less than \$5 million of coverage per incident. We request certain extension of coverage, valuation clauses, and deductibles in accordance to standard market practice and availability.

Although we may carry insurance for potential losses associated with our multi-family properties, we may still incur losses due to uninsured risks, deductibles, co-payments or losses in excess of applicable insurance coverage and those losses may be material. In addition, certain insurance coverage is part of blanket policies in which a loss on an unrelated property could affect the coverage limits on a joint venture property.

## **Newark Joint Venture**

### *Background*

Two of our wholly-owned subsidiaries are members of a joint venture, which we refer to as the Newark Joint Venture, with two members that are not affiliated with us. The Newark Joint Venture owns several development sites (*e.g.*, Market Street and Teachers Village) and additional properties located in downtown Newark, NJ. The development sites are surrounded by a variety of governmental, educational, cultural and entertainment institutions and facilities. In close proximity to both development sites is Rutgers University, the New Jersey Institute of Technology, University of Medicine and Dentistry of New Jersey, Essex County College, Seton Hall Law School, the New Jersey Performing Arts Center, the Prudential Arena (home of the National Hockey League New Jersey Devils), the Essex County Court Complex, Newark's City Hall and a Federal Courthouse. These sites are within walking distance of Newark Penn Station, which provides access to Amtrak and New Jersey Transit trains and are accessible to local bus routes. The sites are served by various highways, including the Garden State Parkway, Interstate-95, Interstate-78 and Interstate-280.

In 2007, immediately prior to the formation of the Newark Joint Venture, we held loans aggregating approximately \$38 million, secured by substantially all of the properties conveyed to the Newark Joint Venture by our borrowers. We entered into loan work-out negotiations with our borrowers and, as a result of such negotiations, entered into the Newark Joint Venture. In connection with the work-out of our loans and the formation of the Newark Joint Venture, our loans were refinanced with a mortgage loan of \$27 million with the balance of our loans converted into a \$6.9 million preferred capital account interest and a 50.1% membership interest in the Newark Joint Venture, providing us with a separate capital account of \$3.9 million. The other members caused all the properties secured by our loans, and additional properties (unencumbered by our loans) and contract rights to acquire additional properties, all located in downtown Newark, NJ, to be contributed to the Newark Joint Venture for which the other members received a 49.9% membership interest in the Newark Joint Venture (with a separate capital account of \$3.9 million).

The Newark Joint Venture is in the process of redeveloping the Teachers Village site and intends to redevelop all or a portion of the remaining sites, particularly the Market Street site, with personnel hired by the Newark Joint Venture or with development partners or sell some of its sites to developers or end users. The assets, liabilities and results of operations of the Newark Joint Venture are consolidated with our financial statements. Accordingly, the assets of the Newark Joint Venture are included in our real estate properties, and at September 30, 2012, our two loans aggregating \$20.6 million to the Newark Joint Venture (which are secured by all of the real estate assets of the

Newark Joint Venture other than the Teachers Village properties), are eliminated in consolidation and are not included in our outstanding loans. We believe that the properties owned by the Newark Joint Venture have adequate insurance coverage for their current use.

### *Current Property Information*

The following table sets forth, as of September 30, 2012, information regarding the properties owned by the Newark Joint Venture (dollars in thousands):

<b>Assemblage or Property</b>	<b>Type of Property</b>	<b>Rentable Square Feet</b>	<b>Annual Real Estate Taxes</b>	<b>Number of Tenants</b>	<b>Percent Leased(1)</b>	<b>Mortgage Debt(4)</b>
Market Street(2) . . . . .	Office and retail	303,126	\$363,060	18	49%	\$ 900
Teachers Village(3) . . . . .	—	—	\$180,781	—	—	\$76,721
Beaver Street . . . . .	Retail	8,160	\$ 12,334	1	25%	—
Lincoln Park . . . . .	Parking	79,063	\$ 85,928	2	49%	—
Broad Street . . . . .	Retail and school	47,564	\$291,485	2	88%	\$ 6,314

- (1) Based on square footage.
- (2) Leases representing substantially all of the leased space of the Market Street development are month-to-month or have cancellation, relocation or demolition provisions. Many of these leases are at below market rentals.
- (3) After giving effect to in-progress construction and pre-construction activities, this site will be used for schools, retail and residential purposes and will consist of five buildings which aggregate approximately 252,000 square feet. The Newark Joint Venture has entered into leases with six tenants (three charter schools, one day-care center and two retail establishments) representing approximately 37% of the anticipated rentable square footage of such buildings and the obligation to pay rent generally commences at the time the applicable building is ready for occupancy. See “—Information and Activities Regarding Development Site.”
- (4) See note 10 of our consolidated financial statements. Does not include mortgage debt payable to us which is eliminated in consolidation.

The following table sets forth as of September 30, 2012, a schedule of the annual lease expirations of the Newark Joint Venture’s real estate assets (other than in-place leases at Teachers Village pursuant to which rent is not payable until the applicable space is ready for occupancy) and the contributions to

2013 contractual rental income provided by such leases (assumes that none of the tenants exercise renewal or cancellation options, if any):

<u>Lease Expiration</u>	<u>Number of Leases Expiring(1)</u>	<u>Square Footage of Leases Expiring</u>	<u>Percentage of Total Leased Square Feet</u>	<u>Projected 2013 Rental Income(2)</u>	<u>Projected % of 2013 Rental Income(2)</u>
Month-to-month . . . . .	12	132,518	57%	114,852	8%
2013 . . . . .	1	2,630	1%	11,457	1%
2014 . . . . .	1	11,988	5%	37,080	3%
2015 . . . . .	1	17,630	8%	105,548	8%
2016 . . . . .	2	10,839	5%	102,498	8%
2017 . . . . .	2	8,864	4%	191,753	14%
2018 . . . . .	1	5,260	2%	48,240	3%
2019 . . . . .	—	—	—	—	—
2020 . . . . .	—	—	—	—	—
2021 . . . . .	—	—	—	—	—
2022 and thereafter . . . . .	2	40,848	18%	745,810	55%
Total . . . . .	<u>22</u>	<u>230,577</u>	<u>100%</u>	<u>1,357,238</u>	<u>100%</u>

(1) There are twelve in-place leases which are month-to-month and eight leases which contain cancellation, relocation or demolition provisions across the various development sites. The leases for the new charter school facilities at Teachers Village are excluded from this table because the obligation to pay rent does not begin until the buildings are ready for occupancy.

(2) Assumes all month-to-month tenants remain in occupancy for the entire 2013 calendar year.

#### *Information and Activities Relating to Development Sites*

The Market Street site is an approximately 68,000 square foot site, currently representing approximately 303,400 rentable square feet. The site is bounded by Market Street, Campbell Street, Washington Street and University Avenue in downtown Newark, New Jersey. Potential redevelopment opportunities with respect to this site include an office complex with a retail component, a medical office complex containing offices, research laboratories and other medical related services, a retail center, corporate headquarters, university offices, classrooms and/or dormitories, or a combination of one or more of these uses. The Newark Joint Venture may redevelop this site for its own account, but will only do so if it has entered into long-term lease transactions with credit worthy lessees and has obtained satisfactory assurances that it will obtain necessary construction financing. Alternatively, the Newark Joint Venture may enter into a joint venture with a development partner or sell all or portions of the site. Although the Newark Joint Venture has conducted discussions and responded to requests for bid proposals with various parties concerning the development of portions of the site, which have included build to suit construction for potential users on a sale/leaseback or long-term lease basis and the sale of portions of the property to end users and/or developers, the Newark Joint Venture has not entered into any understandings or agreements concerning the redevelopment of all or any portion of the site and there is no assurance that it will be able to conclude any such arrangement or obtain the financing necessary to proceed with any arrangement which it may conclude.

The Teachers Village site encompasses an area bounded by Branford Street to the north, Treat Place to the east, Hill Street to the south and Washington Street to the west, and is adjacent to Halsey Street. In 2012, the Newark Joint Venture obtained, in two phases, financing of approximately \$68.5 million, which together with \$25.8 million of New Markets Tax Credit net proceeds is, after payment of transaction expenses and payment of approximately \$13.8 million of principal and accrued

interest on debt (inclusive of \$8 million of principal and accrued interest on debt owed to us which is eliminated in consolidation), being used to construct five buildings. These buildings will provide space for three charter schools, a day-care center, approximately 54,000 square feet of retail space and approximately 123 residential units.

Pre-construction and construction activities are underway on five buildings at the Teachers Village site. Steel framing has been completed on two buildings being constructed, in part, for use by charter schools and it is anticipated that the exterior facades of those buildings will be enclosed during the second quarter of fiscal 2013. With respect to the remaining three buildings containing residential and retail space, site work has commenced on one building and demolition activities are underway on the remaining two buildings. It is estimated that two buildings will be ready for occupancy in Spring or Summer of 2013 and that the balance of the buildings will be ready for occupancy in the Spring of 2014.

The \$68.5 million financing obtained by the Newark Joint Venture in the two financing phases completed in 2012 carries a weighted average effective interest rate (after giving effect to an annual subsidy of \$1.1 million from the United States Department of Treasury), of approximately 3.56%, a weighted average maturity of 14.66 years and is secured by the Teachers Village properties. In addition, the Newark Joint Venture guaranteed, among other things, up to \$31 million in principal amount of mortgage debt, which guarantees only expire after satisfaction of performance thresholds relating to the leasing and occupancy of these facilities within specified periods, losses incurred by the lenders by reason of the borrower's bad acts (e.g., fraud or misappropriation), the failure to complete construction of the five buildings to be constructed and the carrying costs with respect to certain properties. The Newark Joint Venture has also agreed to provide indemnity with respect to specified environmental matters and to indemnify the beneficiaries of the New Markets Tax Credits for losses sustained if such credits are disallowed. We estimate that the New Markets Tax Credit indemnity obligation would not exceed \$40 million (exclusive of interest and penalties) and is subject to reduction to the extent the credits are not disallowed.

A third financing phase contemplates obtaining an additional \$30 million from private and government sources (other than the Newark Joint Venture) for the construction of three buildings containing an aggregate of 82 residential units and 9,700 square feet of retail space at Teachers Village.

No assurance can be given that sufficient financing will be obtained to complete all three phases of the Teachers Village project, that if completed, that the Teachers Village will ever be profitable for us or that the Newark Joint Venture will ever be able to develop the other properties it owns.

#### *Terms of the Newark Joint Venture Operating Agreement*

The following is a summary of the material provisions of the amended and restated limited liability company operating agreement of the Newark Joint Venture:

*Membership Interests.* We own 50.1% of the membership interests in the Newark Joint Venture, and the other members (collectively, the "Other Member") own 49.9% of the membership interests in the Newark Joint Venture.

*Manager.* An affiliate of the other members is the manager of the Newark Joint Venture and is responsible for the day to day management activities of the Newark Joint Venture, but our consent is required for all major decisions affecting the Newark Joint Venture and its properties. We may remove the manager upon six months advance written notice or immediately upon the occurrence of certain significant events.

*Fees to the Manager.* The Newark Joint Venture is to pay to the current manager an asset management fee and a property management fee aggregating \$890,000 per annum, payable monthly in advance.

*Mandatory Capital Calls.* Members are required to make pro rata capital contributions to the Newark Joint Venture for any projected budget shortfalls.

*Buy-Sell.* Commencing on December 3, 2013 or, under specified circumstances, December 3, 2015, either member group may provide the other member group with written notice setting forth the amount they will pay to purchase all of the assets of the Newark Joint Venture. The member group which receives such notice has the option to (i) sell their membership interests in the Newark Joint Venture to the other members for their pro rata portion of the asset purchase price set forth in the written notice, or (ii) purchase the other members' membership interests in the Newark Joint Venture for their pro rata portion of the asset purchase price set forth in the written notice. If the acquirer is the Other Member, then the Other Member is required to, among other things, pay in full our mortgage and our preferred equity interest at closing.

*Right of First Refusal and Tag-along Rights.* At any time, either member group may provide the other member group with written notice setting forth the sale price at which it desires to sell all or a portion of its membership interests. The member group which received such notice may purchase the offered membership interests at the price set forth in the notice. If they do not elect to purchase the membership interest in accordance with the terms of the notice, the offering members may secure another person to purchase its offered membership interests within 180 days. The group of members which received the sale notice may tag-along in a sale to such other person and sell their pro rata portion of the membership interests.

*Distributions.* The Newark Joint Venture may not distribute any cash flow to its members until the \$20.6 million balance due on our loans (which have been eliminated in consolidation) has been fully repaid, including accrued interest. Once it has been fully repaid, the cash flow of the Newark Joint Venture will generally be distributed as follows: (i) first, to each member pro rata in an amount equal to their unreturned additional capital contributions, (ii) second, to our members until we receive a 10% return on our preferred capital contributions, (iii) third, to our members until we receive an amount equal to our preferred capital contributions, and (iv) fourth, to each member pro rata until such members receive a 10% return on their additional capital contributions, (v) fifth, to the members pro rata an amount equal to their common capital contributions, and (vi) the remainder shall be distributed as follows: (a) 10% to the managing member, and (b) 90% pro rata to the other members.

#### *Manager of the Newark Joint Venture*

The manager of the Newark Joint Venture is RBH Group LLC; its managing member and President is Ron Beit-Halachmy. Mr. Beit-Halachmy, 40 years of age, has over 18 years of experience in the real estate industry and has been involved for more than ten years in acquiring sites in Newark, New Jersey. He was the managing member of the entities which acquired all of the real property currently owned by the Newark Joint Venture. Mr. Beit-Halachmy earned a BA in Economics from the University of Wisconsin and a law degree from New York Law School.



## Financing Arrangements

### *Junior Subordinated Notes*

As of September 30, 2012, \$37.4 million in principal amount of these notes were outstanding. These notes mature in April 2036, are redeemable at any time at our option and bear interest at the rates set forth below:

<u>Interest Period</u>	<u>Interest Rate</u>
March 15, 2011 through July 31, 2012 . . . . .	3.00%
August 1, 2012 through April 29, 2016 . . . . .	4.90%
April 30, 2016 through April 30, 2036 . . . . .	LIBOR + 2.00%

### *Credit Facility*

A subsidiary of ours is able, pursuant to a senior secured revolving credit facility with Capital One, National Association, to borrow up to an aggregate of \$25 million to originate loans. The subsidiary may borrow (i) on an unsecured basis, \$10 million for up to 90 days and (ii) on a secured basis, up to the lesser of \$25 million and the borrowing base. The borrowing base is generally equal to 40% to 65% (depending on, among other things, the type of property secured by the mortgage receivables acceptable to the lender and the operating income of the related property) of such receivables. Interest accrues on the outstanding balance at the greater of (i) 4% plus LIBOR and (ii) 5.50%. The facility matures in June 2014 and, subject to the satisfaction of specified conditions, the outstanding balance may be converted at our option into an 18 month term loan. We have guaranteed our subsidiary's obligations under this facility. At September 30, 2012 and November 30, 2012, no amount was outstanding under the facility and the maximum amount we could borrow was \$10 million for 90 days.

## Competition

We compete for loan origination opportunities with other entities, including other mortgage REITs, specialty finance companies, public and private lending companies, pension and investment funds and others. Competitive factors in our lending activities include size of loans offered, rate, market visibility, fees, term and underwriting standards. To the extent a competitor offers a lower rate, is willing to risk more capital in a particular transaction, and/or employs more liberal underwriting standards, our origination volume and profit margins would be adversely impacted. We compete by offering rapid response time in terms of approval and closing and by offering "no prepayment penalty" loans.

We compete to acquire real estate assets and in particular, multi-family properties, with other owners and operators of such properties including other multi-family REITs, banks, pension and investment funds, real estate developers and private real estate investors. Competition to acquire such properties is based on price and ability to secure financing on a timely basis and complete the acquisition. To the extent that a potential joint venture partner introduces us to a multi-family acquisition opportunity, we compete with other sources of equity capital to participate in such joint venture based on the financial returns we are willing to offer such potential partner and the other terms and conditions of the joint venture arrangement. We also compete for tenants at our multi-family properties—such competition depends upon various factors, including alternative housing options available in the applicable sub-market, rent, amenities provided and proximity to employment and quality of life venues.

The Newark Joint Venture competes for funding, and in particular, tax credit allocations and financing provided by governmental and quasi-governmental sources with other real estate developers. It competes for commercial, retail, residential and educational tenants with landlords owning properties

in Newark, New Jersey and the surrounding area and developers interested in developing facilities in Newark or the surrounding area.

Many of our competitors possess greater financial and other resources than we possess.

### **Our Structure**

We share facilities, personnel and other resources with several affiliated entities including, among others, Gould Investors L.P., a master limited partnership involved primarily in the ownership and operation of a diversified portfolio of real estate assets, and One Liberty Properties, Inc., a publicly-traded equity REIT. Jeffrey A. Gould, our President and Chief Executive Officer, George Zweier, our Vice President and Chief Financial Officer, two other officers engaged in loan origination, underwriting and servicing activities, and three others engaged in underwriting and servicing activities devote substantially all of their business time to us, while our other personnel (including several officers) share their services on a part-time basis with us and other affiliated entities that share our executive offices. The allocation of expenses for the shared facilities, personnel and other resources is computed in accordance with a shared services agreement by and among us and the affiliated entities. The allocation is based on the estimated time devoted by executive, administrative and clerical personnel to the affairs of each entity that is a party to the Shared Services Agreement.

In addition, we are party to an Advisory Agreement, as amended, between us and REIT Management Corp., our advisor. REIT Management is wholly owned by the chairman of our Board of Trustees and he and certain of our executive officers, including our President and Chief Executive Officer, receive compensation from REIT Management Corp. Pursuant to this agreement, REIT Management furnishes advisory and administrative services with respect to our business, including, without limitation, arranging and negotiating credit facilities, participating in our loan analysis and approvals, providing investment advice, providing assistance with building inspections and litigation strategy and support. In addition, in connection with non-performing loans, REIT Management, among other activities, engages in negotiations with borrowers, guarantors, and their advisors related to workouts, participates in strategic decisions relating to workouts and foreclosures and may interface with receivers, managing agents and court appointed trustees with respect to specific collateral securing our loans.

Through December 31, 2011, REIT Management received, for the services it performed pursuant to the Advisory Agreement, an asset management fee equal to 0.6% of our invested assets and an incentive fee from borrowers of 0.5% of the total commitment amount. The Advisory Agreement was amended effective as of January 1, 2012, and as so amended, provides (i) for a stated termination date of June 30, 2014, (ii) that the minimum and maximum fees payable in a fiscal year to REIT Management are \$750,000 and \$4 million, respectively, subject to adjustment for any fiscal year of less than twelve months, and (iii) that we pay REIT Management the following annual fees, which are paid on a quarterly basis:

- 1.0% of the average principal amount of earning loans;
- 0.35% of the average amount of the fair market value of non-earning loans;
- 0.45% of the average book value of all real estate properties, excluding depreciation;
- 0.25% of the average amount of the fair market value of marketable securities;
- 0.15% of the average amount of cash and cash equivalents; and
- to the extent loans or real estate are held by joint ventures or other arrangements in which we have an interest, fees varying based on, among other things, the nature of the asset (*i.e.* real estate or loans), the nature of our involvement (*i.e.* active or passive) and the extent of our equity interests in such arrangement.

We believe that the Shared Services Agreement and the Advisory Agreement allow us to benefit from access to, and from the services of, a group of senior executives with significant real estate knowledge and experience.

We also engage affiliated entities in management activities with respect to properties acquired by us in foreclosure proceedings and some of the properties owned by joint ventures in which we are an equity participant. These management activities include, among other things, rent billing and collection, property repair, maintenance and improvement, contractor negotiation, construction management and sales and leasing activities. In management's judgment, the fees paid by us to these affiliated entities are competitive with fees that would be charged for comparable services by unrelated entities.

#### **Item 1A. Risk Factors.**

*Set forth below is a discussion of certain risks affecting our business. The categorization of risks set forth below is meant to help you better understand the risks facing our business and is not intended to limit your consideration of the possible effects of these risks to the listed categories. Any adverse effects arising from the realization of any of the risks discussed, including our financial condition and results of operation, may, and likely will, adversely affect many aspects of our business.*

##### **Risks Related to our Business**

***Our loan origination, property acquisition and Newark Joint Venture development activities are limited by available funds.***

At December 5, 2012, we had approximately \$44 million of cash and cash equivalents, net of deposits payable, available for loan originations, the acquisition of multi-family properties, capital contributions to the Newark Joint Venture and general operations. If we pursue the acquisition of additional multi-family properties or demand for our mortgage loans increases, as to which no assurances can be given, or if we are required to contribute capital to the Newark Joint Venture, our ability to engage in these activities or make these contributions will be limited by the funds available to us. Our ability to use the credit facility is limited by the obligation to pledge collateral acceptable to the lender (and its ability to make such decisions on a timely basis) and covenants that require us to maintain certain financial ratios, including net worth and debt service coverage ratios. At December 5, 2012, the maximum amount that we could borrow under our credit facility was \$10 million and such amount can only be borrowed for 90 days. Further, the credit facility may only be used for our loan origination activities—not for the Newark Joint Venture or multi-family property acquisition activities. Our loan origination, multi-family property acquisition and Newark Joint Venture development activities may be limited by the lack of available funds which will limit our revenues and operating results.

***It is highly unlikely that we will declare any dividends in the next few years.***

We have not declared or paid any dividends since fiscal 2010. In order to qualify as a REIT, we are required to distribute 90% of our taxable income. At December 31, 2011, we had a tax loss carry-forward of \$60.5 million. Under current tax laws, we can offset our future taxable income against our tax loss carry-forward until 2028 or until the tax loss carry-forward has been fully used, whichever occurs first. As a result, we do not expect to pay a dividend in calendar 2013 and it is unlikely that we will be required to pay a dividend for many years thereafter in order to maintain our REIT status. The non-payment of cash dividends may negatively impact the price of our common shares.

***We may not be able to compete with competitors many of which have greater financial and other resources than we possess.***

We compete with many third parties engaged in real estate lending and the ownership of multi-family properties, including other REITs, specialty finance companies, public and private lenders, investment and pension funds and other entities. The Newark Joint Venture also competes (i) with real estate developers for tax credit allocations and financing provided by governmental and quasi-governmental authorities, and (ii) for tenants, with landlords and developers with, or interested in developing, properties in Newark, New Jersey and the surrounding area. Many of these competitors have substantially greater financial and other resources than we do. Larger and more established competitors enjoy significant competitive advantages that result from, among other things, enhanced operating efficiencies and more extensive networks providing greater and more favorable access to capital, financing and tax credit allocations and more favorable lending and acquisition opportunities. Larger competitors in our multi-family activities have the ability to acquire a greater number of higher quality properties on more favorable terms and conditions and at more favorable locations. Larger competitors engaged in real estate lending are better able to diversify their loan portfolios thereby reducing the risk of loss from any one performing property or loan and are better equipped to fund larger loan requests, enhancing their appeal to prospective borrowers.

***We may incur loan loss provisions and impairment charges in fiscal 2013.***

We evaluate on a quarterly basis our loan and real estate portfolios for indicators of impairment. Loan loss provisions and impairment charges reflect management's judgment of the probability and severity of loan losses and the decline in the value of real estate assets. Loan loss provisions and impairment charges may be required in the future as a result of factors beyond our control, including, among other things, changes in the economic environment and market conditions affecting the value of loan collateral and real property assets. If we are required to take loan loss provisions or impairment charges, our results of operations would be adversely impacted.

***Our revenues and the value of our portfolio may be negatively affected by casualty events occurring on our properties or on properties securing our loans.***

We require our borrowers to obtain, for our benefit, all risk property insurance covering the property and any improvements to the property collateralizing our loan in an amount intended to be sufficient to provide for the cost of replacement in the event of casualty. In addition, joint ventures in which we are an equity participant carry all risk property insurance covering the property and any improvements to the property owned by the joint venture for the cost of replacement in the event of a casualty. Further, we carry insurance for such purpose on properties owned by us. However, the amount of insurance coverage maintained for any property may not be sufficient to pay the full replacement cost following a casualty event. In addition, the rent loss coverage under a policy may not extend for the full period of time that a tenant may be entitled to a rent abatement that is a result of, or that may be required to complete restoration following a casualty event. In addition, there are certain types of losses, such as those arising from earthquakes, floods, hurricanes and terrorist attacks, that may be uninsurable or that may not be economically feasible to insure. Changes in zoning, building codes and ordinances, environmental considerations and other factors may make it impossible for our borrower, a joint venture or us, as the case may be, to use insurance proceeds to replace damaged or destroyed improvements at a property. If any of these or similar events occur, the amount of coverage may not be sufficient to replace a damaged or destroyed property and/or to repay in full the amount due on loans collateralized by such property. As a result, our returns and the value of our investment may be reduced.

***In order for real estate properties to generate positive cash flow or to make real estate properties suitable for sale, we may need to make significant capital improvements and incur deferred maintenance costs to these properties.***

Some of the properties we acquire may face competition from newer, more updated properties. In order to remain competitive and increase occupancy at these properties and/or make them attractive to potential tenants or purchasers, we may have to make significant capital improvements and/or incur deferred maintenance costs with respect to these properties. The cost of these improvements and deferred maintenance items may impair our financial condition and liquidity.

***Our transactions with affiliated entities involve conflicts of interest.***

Entities affiliated with us and with certain of our executive officers provide services to us and on our behalf. Although our policy is to obtain terms in transactions with affiliates that are at least as favorable as those that we would receive if the transactions were entered into with unaffiliated entities, these transactions raise the potential that we may not receive terms as favorable as those that we would receive if the transactions were entered into with unaffiliated entities.

***Liability relating to environmental matters may impact the value of properties that we may acquire or the properties securing our loans.***

We may be subject to environmental liabilities arising from the ownership of properties we acquire. Under various federal, state and local laws, an owner or operator of real property may become liable for the costs of removal of certain hazardous substances released on its property. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release of such hazardous substances.

If we acquire properties, including properties acquired through foreclosure proceedings, the presence of hazardous substances on a property may adversely affect our ability to sell the property and we may incur substantial remediation costs. The discovery of material environmental liabilities attached to such properties could have a material adverse effect on our results of operations and financial condition.

The presence of hazardous substances may adversely affect an owner's ability to sell real estate or borrow using real estate as collateral. To the extent that an owner of a property underlying one of our loans becomes liable for removal costs, the ability of the owner to make payments to us may be reduced, which in turn may adversely affect the value of the relevant mortgage asset held by us.

***Senior management and other key personnel are critical to our business and our future success may depend on our ability to retain them.***

We depend on the services of Fredric H. Gould, chairman of our board of trustees, Jeffrey A. Gould, our president and chief executive officer, and other members of senior management to carry out our business and investment strategies. Although Jeffrey A. Gould devotes substantially all of his business time to our affairs, he devotes a limited amount of his business time to entities affiliated with us. In addition to Jeffrey A. Gould, only three other executive officers, Mitchell Gould, our executive vice president, Lonnie Halpern, a vice president, and George Zweier, our vice president and chief financial officer, devote all or substantially all of their business time to us. The remainder of our executive management personnel share their services on a part-time basis with entities affiliated with us and located in the same executive offices pursuant to a shared services agreement. We rely on part-time executive officers to provide certain services to us, including legal, accounting and computer services, since we do not employ full-time executive officers to handle these services. If the shared services agreement is terminated, we will have to obtain such services or hire employees to perform them. We may not be able to replace these services or hire such employees in a timely manner or on terms,

including cost and level of expertise, that are as favorable as those we receive under the shared services agreement.

In addition, in the future we may need to attract and retain qualified senior management and other key personnel, both on a full-time and part-time basis. The loss of the services of any of our senior management or other key personnel or our inability to recruit and retain qualified personnel in the future, could impair our ability to carry out our business and our investment strategies.

We do not carry key man life insurance on members of our senior management.

### **Risks Related to our Real Estate Lending Activities**

***Increased competition and decreased demand for repurchase loans may result in decreased loan originations adversely affecting our business.***

As a result of increased competition and decreased demand for repurchase loans, our loans originations decreased by 24.9% from \$131.3 million in 2011 to \$98.6 million in 2012. If loan originations continue at a reduced level, our revenues, net income and cash flow would be negatively affected.

***The geographic concentration of our loans may make our revenues and the value of the related mortgages vulnerable to adverse changes in economic conditions in the New York metropolitan and Georgia regions.***

At September 30, 2012, 39% and 37% of principal amount of our outstanding loans are secured by properties located in the New York City and Atlanta, Georgia metropolitan areas, respectively. A lack of geographical diversification makes our mortgage portfolio more sensitive to local or regional economic conditions. A significant decline in the economy of either of these regions could result in a greater risk of default compared with the default rate for loans secured by properties in other geographic locations. This could result in a reduction of our revenues and provision for loan loss allowances which might not be as acute if our loan portfolio were more geographically diverse.

***Defaults on our loans may cause declines in revenues and net income.***

Defaults by our borrowers on their loans result in a decrease in interest income and may require the establishment of, or an increase in, loan loss reserves. The decrease in interest income resulting from loan defaults may be for a prolonged period of time as we seek to recover, primarily through legal proceedings, the outstanding principal balance and accrued interest due on a defaulted loan, plus the legal costs incurred in pursuing our legal remedies. Legal proceedings, which may include foreclosure actions and bankruptcy proceedings, are expensive and time consuming. The decrease in interest income, and the costs involved in pursuing our legal remedies will reduce the amount of cash available to meet our expenses. In addition, the decrease in interest income, the costs incurred by us in a defaulted loan situation and increases in loan loss reserves will have an adverse impact on our net income, taxable income and cash flow.

***Financing with high loan-to-value ratios involves increased risk of loss and may adversely affect us.***

Our primary source of recovery in the event of a loan default is the real estate underlying a defaulted loan. Therefore, the value of our loan depends upon the value of the underlying real estate. The value of the underlying property is dependent on numerous factors outside of our control, including national, regional and local business and economic conditions, inflation, government economic policies and the availability of credit. A loan-to-value ratio is the ratio of the amount of our loan to the estimated market value of the property underlying a loan, as determined by our internal valuation process. The higher the loan to value ratio, the greater the risk that the amount obtainable from sale of a property will be insufficient to repay the loan in full upon default.



***We are subject to the risks associated with loan participations, such as lack of full control rights.***

Some of our investments are participating interests in loans in which we share the rights, obligations and benefits of the loan with participating lenders pursuant to a participation agreement. We may need the consent of these parties to exercise our rights under such loans, including rights with respect to amendment of loan documentation, the institution of, and control over, foreclosure actions, entering into forbearance agreements with borrowers, and sale of the underlying property upon acquisition in foreclosure. Our participant may have interests and goals that are different from ours and may desire an action or position which we oppose. As a result, we could become engaged in a dispute with a participant which may affect our ability to take action with respect to defaulted loans or disposition of the property, to our detriment.

**Risks Related to the Newark Joint Venture and Real Estate Operations.**

***The Newark Joint Venture may have an operating loss for the foreseeable future.***

Our real estate assets include the properties owned by the Newark Joint Venture, which properties at September 30, 2012, had an aggregate book value of \$61.8 million or 32% of the book value of all of our real estate assets. We anticipate that the Newark Joint Venture will operate at a loss in fiscal 2013 and for several years thereafter. If the Newark Joint Venture operates at a loss, we and our partners in the venture may be required to fund the operating losses and capital requirements by making additional capital contributions. No assurance can be given that we or our venture partners will have the resources or be willing to make such contribution and the failure to make the required contribution may have an adverse impact on us.

***If we are unable to pay debt service as it become due, we may be forced to sell properties at disadvantageous terms or relinquish our rights to such properties, which would result in the loss of revenues and in a decline in the value of our real property portfolio.***

At September 30, 2012, \$14.6 million in debt service (of which \$8.8 million and \$3.77 million relate to the Newark Joint Venture and our multi-family properties, respectively) is payable prior to the end of 2013 and \$31 million of debt service (of which \$12.6 million and \$15 million relate to the Newark Joint Venture and our multi-family properties, respectively) is payable from 2014 through 2015. The cash flow from the properties securing the mortgage debt may be insufficient to meet required debt service payments. In particular, with respect to the \$8.8 million of debt service for the Newark Joint Venture payable in 2013, the Newark Joint Venture contemplates the refinancing of approximately \$2.7 million of such debt—no assurance can be given that such refinancing will be effected. Further, the anticipated rental revenues from in-place leases for the Teachers Village project are insufficient to cover all of the Newark Joint Ventures debt service obligations payable in 2014 and 2015. If efforts to generate additional rental revenues from the Teachers Village site are unsuccessful, or if the in-place lessees do not fulfill their obligations under their lease agreements, the Newark Joint Venture may be unable to meet its debt service obligation with respect to the Teachers Village properties and such properties would require additional capital from the members of the venture or may be foreclosed on by the lenders.

***The Newark Joint Venture will be adversely effected if it is limited from using the facilities being constructed for purposes other than as contemplated by the applicable financing and tax credit transactions.***

The terms and conditions of the financings and tax credits provided to the Newark Joint Venture may limit the venture's ability to use the facilities being constructed in a manner other than as currently contemplated to be used. Among other things, the New Markets Tax Credits and related contractual obligations provide that if prior to the seven year recapture period, the facilities are used in a manner prohibited by such tax credit program, the credits may be disallowed. The qualified school construction

bonds in principal amount of approximately \$22.7 million at September 30, 2012 requires that the facilities (or certain portions thereof) be used for at least 19 years as public school facilities and the annual \$1.1 million interest reimbursement provided by the US Treasury is subject to recapture if the facilities or portions thereof are not used for educational purposes for minimum periods. The New Jersey Urban Transit Hub tax credits program requires that certain portions of the buildings must be used for residential purposes for at least ten years and that at least 20% of the residential units be allocated for lower/middle income housing. If as a result of market or other conditions, it is determined that the contemplated uses of the facilities are not financially viable, the Newark Joint Venture will be limited in its ability to use these facilities in an alternative manner which may adversely impact our financial condition and results of operations.

***We have limited experience in developing and operating development sites.***

The principal assets of our Newark Joint Venture are several development sites and two additional properties located in downtown Newark, NJ. Since we have not previously engaged in the real estate development business, we are subject to risks that differ from those to which we have been subject to historically. Although the principal of the managing member of the Newark Joint Venture (who is formerly the principal of our borrowers) is knowledgeable with respect to the local real estate market and has experience in the development of gut rehabilitation properties, this experience may not necessarily be relevant to a particular redevelopment project. As a result, to redevelop the assemblage sites, the Newark Joint Venture will have to hire personnel knowledgeable in real estate development to assist in its development, become involved with a development partner, or sell some or all of the sites to developers or potential users. There can be no assurance that the Newark Joint Venture will be successful in hiring experienced personnel, finding a development partner with skills needed to develop and/or manage the redevelopment of the sites, or that we will be able to sell some or all of the properties to developers or potential users.

***The success of our Newark Joint Venture depends, to a large extent, on the principal of the Newark Joint Venture's manager.***

The principal of the manager of the Newark Joint Venture was responsible for acquiring all the properties owned by the Newark Joint Venture. We believe that the principal's continued involvement is important to the success of the Newark Joint Venture. The diminution or loss of his services due to disability, death or for any other reasons could have a material adverse effect on the Newark Joint Venture's business, which would result in a material adverse effect on our business.

The Newark Joint Venture carries key man life insurance on the principal of the manager of the Newark Joint Venture in the amount of \$40 million. There can be no assurance that the proceeds from such life insurance would be sufficient to compensate the Newark Joint Venture for the loss of his services, and these policies do not provide any benefits if he becomes disabled or is otherwise unable to render services to the Newark Joint Venture.

***Our Newark Joint Venture is subject to risks particular to real estate development activities.***

Our Newark Joint Venture is subject to the risks associated with development activities. These risks include:

- The inability to complete the first two phases of the Teachers Village project because the requisite funds, due to cost overruns or under estimating the funds needed, are insufficient for such purpose.
- The inability to obtain the approximately \$30 million or more needed to fund the third phase of the Teachers Village development project;

- The failure to obtain governmental and other approvals on a timely basis;
- Construction, financing and other costs of developing the properties owned by the Newark Joint Venture and in particular, Teachers Village, may not be obtained or if obtained may exceed original estimates, possibly making such activities unprofitable;
- The time required to complete the construction of Teachers Village or to lease up the completed project may be greater than originally anticipated, thereby adversely affecting the Newark Joint Venture's cash flow and liquidity;
- Occupancy rates and rents of a completed project may be insufficient to make such project profitable; and
- Acquire all the properties needed to develop the project to its full potential.

***We may be unable to renew leases or relet space and are exposed to the risks of defaults by tenants.***

In 2012, approximately 22% of our rental revenue was generated from properties at the Newark Joint Venture. The leases at the properties owned by the Newark Joint Venture are generally short-term in nature. This has made it more difficult to find tenants for the venture's Market Street properties. If our tenants decide not to renew their leases upon their expiration, we may not be able to relet the space. Even if our tenants do renew or we are able to relet the space, the terms of renewal or reletting may be less favorable than current lease terms. If we are unable to lease vacant space, promptly renew leases or relet the space, or if the rental rates upon such initial leasing renewal or reletting are significantly lower than market or current rates, our income would be adversely affected.

Friends of Team Academy, a charter school located at the Teacher's Village site, and Petco Animal Supplies, Inc. and Calidad Furniture Corp. VII, both of which are located in Yonkers, New York, accounted for approximately 9%, 6% and 6%, respectively, of our rental revenue in 2012. The default, financial distress or bankruptcy of any of these tenants could cause interruptions in the receipt of, or the loss of, a significant amount of rental revenue and we could incur substantial costs in enforcing our rights as landlord. Our rental income could be adversely affected if these tenants do not meet their obligations to us.

***Failure of the Newark Joint Venture to comply with the requirements of the New Markets Tax Credit program may result in significant losses and impair our financial condition.***

The Newark Joint Venture entered into various arrangements to obtain funding under the New Markets Tax Credit program for the Teachers Village project and in connection therewith received approximately \$25.8 million of net tax credit proceeds. New Markets Tax Credits are subject to recapture for a period of seven years as provided in the Internal Revenue Code. The Newark Joint Venture is required to comply with various regulations and contractual provisions that apply to the these credits and has indemnified the beneficiaries thereof for any loss or recapture of the benefits of such credits until the obligation to deliver tax benefits is relieved. We estimate that such indemnity obligation would not exceed approximately \$40 million (exclusive of interest and penalties) and is subject to reduction to the extent the credits are not disallowed. Non-compliance with applicable requirements could result in the tax benefits not being realized by the beneficiaries which would have an adverse effect on our financial position and results of operations.

## **Risks Related to our Multi-Family Property Activities**

***Unfavorable changes in market and economic conditions could adversely affect occupancy, rental rates, operating expenses, and the overall market value of multi-family properties we acquire.***

Conditions in markets in which we acquire multi-family properties may significantly affect occupancy, rental rates and the operating performance of such assets. The risks that may adversely affect conditions in those markets include the following:

- industry slowdowns, plant closings and other factors that adversely affect the local economy;
- an oversupply of, or a reduced demand for, multi-family units;
- a decline in household formation or employment or lack of employment growth;
- the inability or unwillingness of residents to pay rent increases;
- rent control or rent stabilization laws, or other laws regulating housing, that could prevent us from raising rents to offset increases in operating costs; and
- economic conditions that could cause an increase in our operating expenses, such as increases in property taxes, utilities, and routine maintenance.

***We could be negatively impacted by the condition of Fannie Mae or Freddie Mac and by changes in government support for multi-family housing.***

Fannie Mae and Freddie Mac have been a major source of financing for multi-family real estate in the United States and we have used loan programs sponsored by one or more of these entities to finance certain acquisitions. Should these entities have their mandates changed or reduced, lose key personnel, be disbanded or reorganized by the government or otherwise discontinue providing liquidity for the multi-family sector, it would significantly reduce our access to debt capital and/or increase borrowing costs and could significantly limit our ability to acquire properties on acceptable terms and reduce the values realized upon property sales.

***Most of our multi-family properties are located in the southeast United States, which makes us susceptible to adverse economic developments in such markets.***

In addition to general, regional and national economic conditions, the operating performance of our multi-family residential properties is impacted by the economic conditions of the specific markets in which our properties are concentrated. All of our multi-family units are located in the southeast United States—accordingly, adverse economic developments in such market could adversely impact the operations of these properties and therefore our operating results and cash flow. The concentration of properties in a limited number of markets may expose us to risks of adverse economic developments which are greater than the risks of owning properties with a more geographically diverse portfolio.

***Increased competition and increased affordability of residential homes could limit our ability to retain our tenants or increase or maintain rents.***

Our multi-family properties compete with numerous housing alternatives in attracting residents, including other multi-family and single-family rental homes, as well as owner occupied single and multi-family homes. Our ability to retain tenants and increase or maintain rents could be adversely affected by the alternative housing in a particular area and, due to declining housing prices, mortgage interest rates and government programs to promote home ownership, the increasing affordability of owner occupied single and multi-family homes.

***Risks involved in conducting real estate activity through joint ventures.***

We have in the past and may in the future acquire properties in joint ventures with other persons or entities when we believe that circumstances warrant the use of such structure. Joint venture investments involve risks, including the possibility that our partner might become insolvent or otherwise refuse to make capital contributions or distributions when due; that we may be responsible to our partner for indemnifiable losses; that our partner might at any time have business goals which are inconsistent with ours; and that our partner may be in a position to take action or withhold consent contrary to our instructions or requests. Frequently, we and our partner may each have the right to trigger a buy-sell arrangement, which could cause us to sell our interest, or acquire our partner's interest, at a time when we otherwise would not have initiated such a transaction.

In some instances, joint venture partners may have competing interests in our markets that could create conflicts of interest. Further, the Company's joint venture partners may experience financial distress, including bankruptcy, and to the extent they do not meet their obligations to us or our joint ventures with them, we may be adversely affected.

**Risks Related to our Industry**

***Compliance with REIT requirements may hinder our ability to maximize profits.***

In order to qualify as a REIT for Federal income tax purposes, we must continually satisfy tests concerning among other things, our sources of income, the amounts we distribute to our shareholders and the ownership of securities. We may also be required to make distributions to shareholders at disadvantageous times or when we do not have funds readily available for distribution. Accordingly, compliance with REIT requirements may hinder our ability to operate solely on the basis of maximizing profits.

In order to qualify as a REIT, we must also ensure that at the end of each calendar quarter at least 75% of the value of our assets consists of cash, cash items, government securities and qualified REIT real estate assets. The remainder of our investment in securities cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of such issuer. In addition, no more than 5% of the value of our assets can consist of the securities of any one issuer, other than a qualified REIT security. If we fail to comply with these requirements, we must dispose of the portion of our assets in excess of such amounts within 30 days after the end of the calendar quarter in order to avoid losing our REIT status and suffering adverse tax consequences. This requirement could cause us to dispose of assets for consideration of less than their true value and could lead to a material adverse impact on our results of operations and financial condition.

***Because Real Estate Investments Are Illiquid, We May Not Be Able to Sell Properties When Appropriate.***

Real estate investments generally cannot be sold quickly. We may not be able to reconfigure our portfolio promptly in response to economic or other conditions. This inability to reallocate our capital promptly could adversely affect our financial condition and results of operations.

**Item 1B. Unresolved Staff Comments.**

None.

## Executive Officers of Registrant

Set forth below is a list of our executive officers whose terms will expire at our 2013 annual Board of Trustees' meeting. The business history of officers who are also Trustees will be provided in our proxy statement to be filed pursuant to Regulation 14A not later than January 28, 2013.

Name	Office
Fredric H. Gould* . . . . .	Chairman of the Board of Trustees
Israel Rosenzweig . . . . .	Vice Chairman of the Board of Trustees and Senior Vice President
Jeffrey A. Gould* . . . . .	President and Chief Executive Officer; Trustee
Mitchell K. Gould . . . . .	Executive Vice President
Matthew J. Gould* . . . . .	Senior Vice President; Trustee
Simeon Brinberg** . . . . .	Senior Vice President; Senior Counsel; and Secretary
David W. Kalish*** . . . . .	Senior Vice President, Finance
Mark H. Lundy** . . . . .	Senior Vice President and General Counsel
George E. Zweier . . . . .	Vice President, Chief Financial Officer
Lonnie Halpern . . . . .	Vice President
Isaac Kalish*** . . . . .	Assistant Treasurer

\* Fredric H. Gould is the father of Jeffrey A. and Matthew J. Gould.

\*\* Simeon Brinberg is the father-in-law of Mark H. Lundy.

\*\*\* David W. Kalish is the father of Isaac Kalish.

Israel Rosenzweig (age 65) has been Vice Chairman of our Board of Trustees since September 2012, a Senior Vice President since April 1998. Mr. Rosenzweig has been a Vice President of Georgetown Partners, Inc., the managing general partner of Gould Investors, L.P., since May 1997. Gould Investors L.P. is primarily engaged in the ownership and operation of real estate properties held for investment. From 2000 to March 2009, he was President of GP Partners, Inc., an affiliate of Gould Investors L.P., which provided advisory services in the real estate and financial services industries to an investment advisor. He also has been a Senior Vice President of One Liberty Properties, Inc. since May 1997.

Mitchell K. Gould (age 40), employed by us since May 1998, has been a Vice President since March 1999 and Executive Vice President since March 2007. From January 1998 until May 1998, Mr. Gould was employed by Bear Stearns Companies, Inc. where he was engaged in originating and underwriting commercial real estate loans for securitization.

Simeon Brinberg (age 78) has been our Secretary since 1983, a Senior Vice President since 1988, and Senior Counsel since March 2006. Mr. Brinberg has been a Vice President of Georgetown Partners, Inc., the managing general partner of Gould Investors L.P., since October 1988. Since June 1989, Mr. Brinberg has been a Vice President or Senior Vice President of One Liberty Properties, Inc., a REIT engaged in the ownership of income producing real properties net leased to tenants under long term leases. Mr. Brinberg is a member of the New York Bar and was engaged in the private practice of law for approximately 30 years prior to 1988.

David W. Kalish (age 65) has been our Senior Vice President, Finance since August 1998. Mr. Kalish was our Vice President and Chief Financial Officer from June 1990 until August 1998. He has been Chief Financial Officer of One Liberty Properties, Inc. and Georgetown Partners, Inc. since June 1990. For more than five years prior to June 1990, Mr. Kalish, a certified public accountant, was a partner of Buchbinder Tunick & Company LLP and its predecessors.



Mark H. Lundy (age 50) has been our General Counsel since March 2007 and a Senior Vice President since March 2005. From 1993 to March 2005 he was a Vice President. He has been the Secretary of One Liberty Properties, Inc. since June 1993 and he also serves as a Senior Vice President of One Liberty Properties, Inc. Mr. Lundy has been a Vice President of Georgetown Partners, Inc. (currently Senior Vice President) since July 1990. He is a member of the bars of New York and Washington, D.C.

George E. Zweier (age 48) has been employed by us since June 1998 and was elected Vice President, Chief Financial Officer in August 1998. For approximately five years prior to joining us, Mr. Zweier, a certified public accountant, was an accounting officer with the Bank of Tokyo-Mitsubishi Limited in its New York office.

Lonnie Halpern (age 37) has been employed by us since August 2005 and was elected a Vice President in March 2007. Mr. Halpern is a member of the bars of New York and Massachusetts, and was an associate at Goodwin Procter LLP, New York, N.Y. from September 2001 to March 2004 and Hogan & Hartson LLP, New York, N.Y. from April 2004 to July 2005.

Isaac Kalish (age 37) has worked with us since 2004 and was elected our Assistant Treasurer in June 2007. In 2003 and 2004, Mr. Kalish, a certified public accountant, was employed as an accountant by Buchbinder Tunick & Co, LLP.

## **Item 2. Properties.**

Our executive office is located at 60 Cutter Mill Road, Suite 303, Great Neck, New York. This office is located in a building owned by a subsidiary of Gould Investors L.P. In 2012, we paid \$125,000 for the use of this space. We believe that such facilities are satisfactory for our current and projected needs.

The information set forth under “Item 1—Business” is incorporated herein by this reference to the extent responsive to the information called for by this item.

## **Item 3. Legal Proceedings.**

None.

## **Item 4. Mine Safety Disclosures.**

Not applicable.

# **PART II**

## **Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

Our common shares of beneficial interest, or Common Shares, are listed on the New York Stock Exchange, or the NYSE, under the symbol “BRT.” The following table shows for the periods indicated, the high and low sales prices of the Common Shares as reported in the consolidated transaction reporting system.

<u>Quarter Ended</u>	<u>Fiscal 2012</u>		<u>Fiscal 2011</u>	
	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>
December 31 . . . . .	\$6.46	\$5.85	\$7.40	\$6.28
March 31 . . . . .	7.00	6.10	7.46	6.25
June 30 . . . . .	8.65	6.35	6.67	6.23
September 30 . . . . .	6.85	6.23	6.48	5.90

On November 30, 2012, the high and low sales prices of our Common Shares was \$6.35 and \$6.20, respectively.

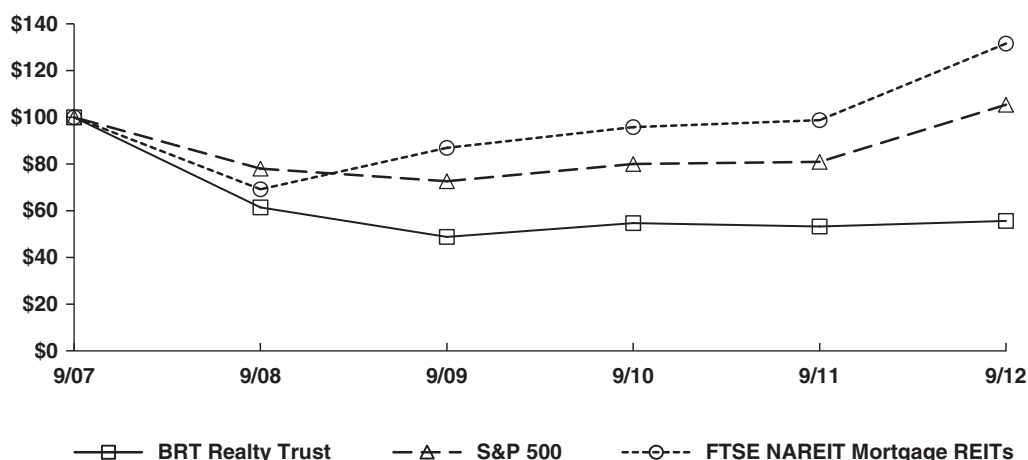
As of November 30, 2012, there were approximately 1,044 holders of record of our Common Shares.

We did not pay any cash dividends in fiscal 2012 or 2011. Our tax loss carry forward at December 31, 2011, was approximately \$60.5 million; therefore, we do not anticipate paying cash dividends in the near future.

### Stock Performance Graph

This graph compares the performance of our shares with the Standard & Poor's 500 Stock Index and a peer group index consisting of publicly traded mortgage REITs. The graph assumes \$100 invested on September 30, 2007 and assumes the reinvestment of dividends.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\***  
Among BRT Realty Trust, the S&P 500 Index, the FTSE NAREIT Mortgage REITs Index, and the FTSE NAREIT All REITs Index



\* \$100 invested on 9/30/07 in stock or index, including reinvestment of dividends.  
Fiscal year ending September 30.

	9/07	9/08	9/09	9/10	9/11	9/12
<b>BRT Realty Trust</b> . . . . .	<b>100.00</b>	<b>61.42</b>	<b>48.80</b>	<b>54.70</b>	<b>53.25</b>	<b>55.64</b>
<b>S&amp;P 500</b> . . . . .	<b>100.00</b>	<b>78.02</b>	<b>72.63</b>	<b>80.01</b>	<b>80.93</b>	<b>105.37</b>
<b>FTSE NAREIT Mortgage REITs</b> . . . . .	<b>100.00</b>	<b>69.18</b>	<b>86.91</b>	<b>95.79</b>	<b>98.77</b>	<b>131.55</b>

### Issuer Purchases of Equity Securities

In September 2011, we announced that our Board of Trustees had authorized a share buyback plan pursuant to which we may, through September 30, 2013, expend up to \$2 million to repurchase our common shares. Through September 2012, we had acquired 139,507 common shares for an aggregate purchase price of \$880,000. We did not repurchase any shares during the quarter ended September 30, 2012.

## Item 6. Selected Financial Data.

The following table, not covered by the report of the independent registered public accounting firm, sets forth selected historical financial data for each of the fiscal years indicated. This table should be read in conjunction with the detailed information and financial statements appearing elsewhere herein.

(Dollars in thousands, except per share amounts)	2012	2011	2010	2009	2008
<i>Operating statement data:</i>					
Total revenues . . . . .	\$ 19,579	\$ 17,881	\$ 8,135	\$ 12,154	\$ 21,990
Total expenses(1)(2) . . . . .	23,447	13,834	19,844	36,329	35,554
Gain on sale of loan . . . . .	3,192	—	—	—	—
Gain on sale of available-for-sale securities . . .	605	1,319	1,586	1,016	19,940
(Loss) gain on extinguishment of debt . . . . .	—	(2,138)	—	6,443	—
Income (loss) from continuing operations . . . .	758	3,578	(9,927)	(19,236)	7,734
Income (loss) from discontinued operations(3) .	792	1,346	590	(29,124)	(7,855)
Net income (loss) attributable to common shareholders . . . . .	4,430	6,374	(8,015)	(47,755)	(260)
<i>Earnings (loss) per beneficial share:</i>					
Income (loss) from continuing operations . . . .	\$ .26	\$ .35	\$ (.62)	\$ (2.50)	\$ .65
Income (loss) from discontinued operations . . .	.06	.10	.04	(1.60)	(.67)
Basic and diluted earnings (loss) per share . .	\$ .32	\$ .45	\$ (.58)	\$ (4.10)	\$ (.02)
Distribution per common share(4) . . . . .	—	—	—	\$ 1.15	\$ 3.19
<i>Balance sheet data:</i>					
Total assets(5) . . . . .	\$385,956	\$191,012	\$186,266	\$193,333	\$270,020
Earning real estate loans(6) . . . . .	37,096	67,266	17,263	44,677	95,228
Non-earning real estate loans(6) . . . . .	—	—	35,143	2,836	18,407
Real estate loans held for sale . . . . .	—	8,446	—	16,915	—
Real estate properties, net . . . . .	190,317	59,277	55,843	55,544	14,154
Cash and cash equivalents . . . . .	78,245	44,025	58,497	25,708	35,765
Restricted cash-construction holdbacks . . . . .	55,252	—	—	—	—
Available-for-sale securities at market . . . . .	1,249	2,766	10,270	8,963	10,482
Junior subordinated notes . . . . .	37,400	37,400	40,815	40,234	56,702
Mortgages payable(7) . . . . .	169,284	14,417	12,557	9,460	2,315
Total BRT Realty Trust shareholders' equity . . .	133,449	129,063	124,554	121,227	186,772

- (1) Total expenses increased in 2012 from 2011 as a result of, among other things, expenses associated with the acquisition, ownership and operation of multi-family properties and interest expense associated with the Newark Joint Venture financings.
- (2) Includes \$3,165, \$17,110 and \$15,260 of loan loss provisions for 2010, 2009 and 2008, respectively, and \$2,625, \$1,272 and \$1,050 of impairment charges in 2010, 2009 and 2008, respectively.
- (3) Includes \$745, \$29,774 and \$8,165 of impairment charges for 2010, 2009 and 2008, respectively.
- (4) The distribution in fiscal 2008 was paid wholly in cash. In September 2009, a distribution of \$1.15 per share was declared and in October 2009 was paid in a combination of an aggregate of \$13,308 in cash, representing 10% of this distribution, and the balance in our common shares. The cash amount was allocated pro rata among all shareholders who elected to receive cash. Since any shareholder electing to receive cash could not receive the entire dividend in cash, the remainder of the dividend was paid to shareholders electing to receive cash in our common shares. Shareholders who did not elect cash received the entire dividend in our common shares.

- (5) The increase in 2012 from 2011 is due primarily to the acquisition of interests in joint ventures that acquired multi-family properties and the proceeds from the Newark Joint Venture financings and New Markets Tax Credits transactions.
- (6) Earning and non-earning loans, which exclude loans held for sale, are presented without deduction of the related allowance for possible losses and deferred fee income.
- (7) The increase in 2012 from 2011 is due primarily to the mortgage debt incurred in the multi-family property acquisitions and the Newark Joint Venture's financings.

*Funds from Operations; Adjusted Funds from Operations.*

In view of our equity investments in joint ventures which have acquired multi-family properties, we disclose below funds from operations ("FFO") and adjusted funds from operations ("AFFO") because we believe that such metrics are a widely recognized and appropriate measure of the performance of an equity REIT.

We compute FFO in accordance with the "White Paper on Funds From Operations" issued by the National Association of Real Estate Investment Trusts ("NAREIT") and NAREIT's related guidance. FFO is defined in the White Paper as net income (computed in accordance with generally accepting accounting principles), excluding gains (or losses) from sales of property, plus depreciation and amortization, plus impairment write-downs of depreciable real estate and after adjustments for unconsolidated partnerships and joint ventures. Adjustments for unconsolidated partnerships and joint ventures will be calculated to reflect funds from operations on the same basis. In computing FFO, we do not add back to net income the amortization of costs in connection with our financing activities or depreciation of non-real estate assets. Since the NAREIT White Paper only provides guidelines for computing FFO, the computation of FFO may vary from one REIT to another. We compute AFFO by deducting from FFO our straightline rent accruals and amortization of lease intangibles (including our share of our unconsolidated joint ventures).

We believe that FFO and AFFO are useful and standard supplemental measures of the operating performance for equity REITs and are used frequently by securities analysts, investors and other interested parties in evaluating equity REITs, many of which present FFO and AFFO when reporting their operating results. FFO and AFFO are intended to exclude GAAP historical cost depreciation and amortization of real estate assets, which assures that the value of real estate assets diminish predictability over time. In fact, real estate values have historically risen and fallen with market conditions. As a result, we believe that FFO and AFFO provide a performance measure that when compared year over year, should reflect the impact to operations from trends in occupancy rates, rental rates, operating costs, interest costs and other matters without the inclusion of depreciation and amortization, providing a perspective that may not be necessarily apparent from net income. We also consider FFO and AFFO to be useful to us in evaluating potential property acquisitions.

FFO and AFFO do not represent net income or cash flows from operations as defined by GAAP. FFO and AFFO should not be considered to be an alternative to net income as a reliable measure of our operating performance; nor should FFO and AFFO be considered an alternative to cash flows from operating, investing or financing activities (as defined by GAAP) as measures of liquidity.

FFO and AFFO do not measure whether cash flow is sufficient to fund all of our cash needs, including principal amortization, capital improvements and distributions to stockholders. FFO and AFFO do not represent cash flows from operating, investing or financing activities as defined by GAAP.

Management recognizes that there are limitations in the use of FFO and AFFO. In evaluating our performance, management is careful to examine GAAP measures such as net income and cash flows from operating, investing and financing activities. Management also reviews the reconciliation of net income to FFO and AFFO.

The table below provides a reconciliation of net income determined in accordance with GAAP to FFO and AFFO for each of the indicated years (amounts in thousands):

	2012	2011	2010	2009	2008
Net income (loss) attributable to common					
shareholders . . . . .	\$4,430	\$ 6,374	\$(8,015)	\$(47,755)	\$ (260)
Add: depreciation of properties . . . . .	1,992	705	662	250	113
Add: our share of depreciation in unconsolidated					
joint ventures . . . . .	270	39	39	38	38
Add: impairment charges . . . . .	—	—	3,370	31,046	9,215
Add: amortization of deferred leasing costs . . . . .	59	48	48	15	13
Deduct: gain on sales of real estate . . . . .	(792)	(1,346)	(1,937)	(2,199)	(1,517)
Funds from operations . . . . .	5,959	5,820	(5,833)	(18,605)	7,602
Deduct: straight line rent accruals . . . . .	(23)	78	323	23	16
Adjusted funds from operations . . . . .	\$5,936	\$ 5,898	\$(5,510)	\$(18,582)	\$ 7,618

The table below provides a reconciliation of net income per common share (on a diluted basis) determined in accordance with GAAP to FFO and AFFO.

	2012	2011	2010	2009	2008
Net income (loss) attributable to common shareholders . . . . .	\$ .32	\$ .45	\$(.58)	\$(4.10)	\$(.02)
Add: depreciation of properties . . . . .	.14	.05	.05	.02	.01
Add: our share of depreciation in unconsolidated joint ventures . . . . .	.02	—	—	—	—
Add: impairment charge . . . . .	—	—	.24	2.67	.78
Add: amortization of deferred leasing costs . . . . .	—	—	—	—	—
Deduct: gain on sales of real estate . . . . .	(.06)	(.10)	(.14)	(.19)	(.13)
Funds from operations . . . . .	.42	.40	(.43)	(1.60)	.64
Deduct: straight line rent accruals . . . . .	—	.01	.02	—	—
Adjusted funds from operations . . . . .	\$ .42	\$ .41	\$(.41)	\$(1.60)	\$ .64

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

### Overview

We are a real estate investment trust, also known as a REIT. We operate in three lines of business: real estate lending, ownership and operation of multi-family properties, and ownership and operation of other real estate assets.

Our lending activities involves originating and holding for investment senior mortgage loans secured by commercial and multi-family real estate property in the United States. Revenues are generated from the interest income (*i.e.*, the interest borrowers pay on our loans) and to a lesser extent, loan fee income generated on the origination and extension of loans and investment income from securities transactions.

Our multi-family activities derive revenues primarily from tenant rental payments. We commenced these activities in 2012 as we identified a demand for equity capital in this sector. Generally, these activities involve our investment of 80% of the equity in a joint venture that acquires a multi-family property. Our multi-family property activities are complementary to our loan origination activities in that we address the funding needs of multi-family real estate investors by providing them with access to both equity capital and debt financing.

Our ownership and operation of other real estate assets is comprised principally of the activities of the Newark Joint Venture and to a lesser extent, the ownership and operations of various real estate assets located in New York and Florida. The Newark Joint Venture is engaged in the development of properties in downtown Newark, NJ. The properties are to be developed for educational, commercial, retail and residential use. The Newark Joint Venture is currently developing a project known as “Teachers Village”—the project currently involves five buildings, in various stages of construction and pre-construction, which are to be used for charter schools, retail space and residential units. The venture is currently unprofitable and it is anticipated that the activities will continue to be unprofitable at least until the Teacher’s Village is constructed and reasonable occupancy levels achieved. The venture requires substantial third party funding (including tax credits and financing provided by governmental authorities) for its development activities—no assurance can be given that sufficient funding will be available and even if sufficient funding is obtained and construction completed, that such development activities will ever be profitable to us.

The following table sets forth (i) the impact of these lines of business on our total revenues and net income attributable to common shareholders for the periods indicated and (ii) our total assets applicable to each segment as of the dates indicated (dollars in thousands):

	Fiscal 2012		Fiscal 2011		Segment Assets at September 30,	
	Total Revenues	Net Income (Loss) Attributable to Common Shareholders	Total Revenues	Net Income (Loss) Attributable to Common Shareholders	2012	
					2012	2011
Loan and investment . . . . .	\$10,026	\$ 9,456	\$14,425	\$ 8,068	\$113,383	\$126,916
Multi-family real estate . . . . .	5,464	(4,248)	—	—	121,153	—
Other real estate . . . . .	4,089	(778)	3,456	(1,694)	151,420	64,096

Net income attributable to common shareholders decreased by \$2 million or 31.3% from \$6.4 million in 2011 to \$4.4 million in 2012. The decrease is primarily due to the net losses sustained in our multi-family property activities and to a lesser extent, net losses from the activities of our other real estate assets. These losses were partially offset by the increase in net income attributable to our loan and investment activities.

Contributing to the net loss attributable to common shareholders of our multi-family activities were, among other things, property acquisition costs of \$2.4 million with respect to the five multi-family properties acquired in 2012 (and in particular, costs of \$1.6 million with respect to the acquisition of the Palm Beach Gardens, Florida property) and \$1.3 million of non-cash depreciation and amortization expense. Depreciation and amortization expense will continue to negatively impact income—but not funds from operations—from our multi-family property segment.

Historically, our primary source of revenue and income has been derived from our loan origination activities. We anticipate that as a result of our multi-family property acquisitions, our primary sources of revenues and operating cash will, in the future, be generated by a combination of our multi-family and loan origination activities.

The following highlights certain of our activities in 2012 and our financial condition at year-end:

- we originated \$98.6 million of mortgage loans in 2012 (\$25.5 million, \$40.6 million, \$20.1 million and \$12.4 million in the first, second, third and fourth fiscal quarters, respectively), and \$131.3 million of mortgage loans in 2011 (\$28.3 million, \$60.5 million, \$23.6 million and \$18.9 million in the first, second, third and fourth fiscal quarters, respectively);
- we acquired five multi-family properties with an aggregate of 1,451 units and invested equity of approximately \$28.6 million in the joint ventures that acquired these properties;



- we have cash and cash equivalents, net of deposits payable, of approximately \$76.1 million and \$44 million, at September 30, 2012 and December 5, 2012, respectively;
- interest on loans and loan fee income in 2012 declined \$798,000 or 7.7% from 2011; and
- the Newark Joint Venture obtained \$68.5 million in financing, which together with New Markets Tax Credits net proceeds of approximately \$25.8 million, is being used to construct five buildings at the Teacher's Village site.

From October 1, 2012, through December 5, 2012 we (i) had loan originations, net of repayments, of approximately \$20 million and (ii) invested equity of approximately \$14 million in joint ventures that acquired three additional multi-family properties with an aggregate of 884 units.

*Year Ended September 30, 2012 Compared to Year Ended September 30, 2011*

**Revenues**

The following table compares our revenues for the years indicated:

	Fiscal		Increase (Decrease)	% Change
	2012	2011		
(Dollars in thousands):				
Interest on real estate loans . . . . .	\$ 7,257	\$ 8,500	\$(1,243)	(14.6)%
Loan fee income . . . . .	2,273	1,828	445	24.3%
Rental and other revenue from real estate properties . . . . .	8,675	3,456	5,219	151.0%
Recovery of previously provided allowances . . . . .	156	3,595	(3,439)	*
Other income . . . . .	1,218	502	716	142.6%
Total revenues . . . . .	\$19,579	\$17,881	\$ 1,698	9.5%

\* Not meaningful.

*Interest on real estate loans.* The decrease is attributable to the following factors: (i) \$797,000 is due to the inclusion, during fiscal 2011, of cash basis income received primarily from non-performing loans and purchase money mortgages; and (ii) \$425,000 is due to the \$3.5 million decrease in the average balance of earning loans outstanding. This average balance decreased due to lower loan originations and accelerated repayments by borrowers. We believe that loan originations decreased due to competitive pressures and reduced demand for repurchase loans and that the accelerated repayments by borrowers were due to the increased availability of credit on more favorable terms. The weighted average interest rate on performing loans was 11.85% and 11.82% in 2012 and 2011, respectively.

*Loan fee income.* The increase is primarily due to higher amortization of loan fees and extension fees and accelerated amortization of loans that paid off prior to maturity.

*Rental and other revenue from real estate properties.* The increase is due to the inclusion of \$5.46 million of rental income from five multi-family properties acquired in fiscal 2012. We anticipate that rental revenue will increase in fiscal 2013 as the 2012 results only includes rental revenue for a portion of such year due to the timing of these acquisitions and three multi-family properties were acquired after year end. Assuming, among other things, that rental and occupancy rates remain stable, we estimate that rental revenues in 2013 from our eight multi-family properties will increase to approximately \$21.6 million. Partially offsetting the increase was the inclusion in 2011 of \$77,000 of rebill income at a Newark Joint Venture property and a \$188,000 decrease due to the loss of several commercial tenants at its Market Street properties. This is a development site and accordingly, leasing space at this property, which leases are short-term in nature, is difficult.

*Recovery of previously provided allowances.* The decline is due to the inclusion in 2011 of \$2.5 million from the reversal of a previously provided loan loss allowance and a \$1 million recovery on a loan charged off in a prior year.

*Other income.* The increase is the result of a U.S. Treasury subsidy of \$876,000 which covers approximately 90% of the interest payments with respect to qualified school construction bonds in principal amount of \$22.7 million issued by the Newark Joint Venture at the end of the second quarter of 2012. We anticipate that this subsidy, in the annual amount of approximately \$1.2 million, will continue until at least 2018. Partially offsetting the increase was a \$160,000 decrease in investment income resulting from the sale of securities that had generated such income in 2011.

## Expenses

The following table compares our expenses for the periods indicated:

(Dollars in thousands)	Fiscal		Increase (Decrease)	% Change
	2012	2011		
Interest expense . . . . .	\$ 4,729	\$ 2,112	\$2,617	123.9%
Advisor's fee, related party . . . . .	1,104	916	188	20.5%
Foreclosure related professional fees . . . . .	—	579	(579)	(100)%
Property acquisition costs . . . . .	2,407	—	2,407	*
General and administrative . . . . .	7,161	6,149	1,012	16.5%
Operating expenses related to real estate properties . . . . .	6,042	3,340	2,702	80.9%
Depreciation and amortization . . . . .	2,004	738	1,266	171.4%
Total expenses . . . . .	<u>\$23,447</u>	<u>\$13,834</u>	<u>\$9,613</u>	69.5%

\* Not meaningful.

*Interest expense.* The increase is attributable to the following factors: (i) \$1.39 million is due to interest expense related to \$68.5 million of mortgage debt incurred in connection with the Newark Joint Venture's 2012 financings; (ii) \$1.44 million is due to the mortgage debt of \$89.7 million incurred in connection with the multi-family properties acquired in 2012; and (iii) \$144,000 is related to interest expense and amortization of fees associated with our credit line. The increase was partially offset by a \$330,000 interest expense decrease resulting from the March 2011 restructuring of our junior subordinated notes. As: (i) 2012 only includes interest expense for a portion of such year with respect to the aggregate mortgage debt of \$158.2 million incurred in connection with the acquisitions of multi-family properties and the Newark Joint Venture financings; and (ii) the interest rate on the junior subordinated notes increased from 3% to 4.9% in August 2012, we estimate that interest expense in 2013 attributable to our eight multi-family properties, the Newark Joint Venture's 2012 financings and the junior subordinated notes, will increase to approximately \$5.3 million, \$1.8 million and \$3.9 million, respectively, for an aggregate increase of approximately \$11 million. Capitalized interest was \$1.66 million and \$775,000 in 2012 and 2011, respectively.

*Advisor's fee, related party.* The fee is calculated based on invested assets which increased because of the purchase of five multi-family properties in 2012.

*Foreclosure related professional fees.* Fees decreased due to the resolution of the foreclosure, bankruptcy and related proceedings in which we had been involved.

*Property acquisition costs.* These costs were incurred in connection with our purchase of multi-family properties. Such costs included acquisition fees, brokerage fees, and legal, due diligence and other transactional costs and expenses. There was no corresponding expense in 2011.

*General and administrative expense.* The increase is attributable primarily to the following factors: (i) a net increase of \$320,000 is due to increased professional fees resulting from, among other things, our multi-family joint venture activities; (ii) \$205,000 is due to the payment of Federal alternative minimum tax resulting from our use of net operating loss carryforwards to reduce 2011 taxable income; (iii) a net increase of \$186,000 is due to higher rates of employee compensation; (iv) \$150,000 is due to the fees of \$50,000 per quarter payable to the chairman of our board of trustees, which payment commenced January 2012; (v) \$115,000 is due to the inclusion in the prior year of reversals of over-accruals relating to state franchise taxes; and (v) \$70,000 is due to increased travel and related expenses. General and administrative expense is allocated among our three segments in proportion to the assets allocated to each segment as of the end of each quarter.

*Operating expenses related to real estate properties.* The increase is due to the inclusion, for a portion of 2012, of expenses related to the multi-family properties acquired in such year. We estimate that in 2013 the expense related to our eight multi-family properties will increase by approximately \$8.1 million to \$10.8 million.

*Depreciation and amortization.* The increase is due to the inclusion of such expense, for a portion of 2012, of the five multi-family properties we acquired in such year. We estimate that the expense for 2013 related to our eight multi-family properties will be approximately \$4.6 million.

#### *Other revenue and expense items*

The following table compares other revenue and expense items for the years indicated:

(Dollars in thousands)	Fiscal		Increase (Decrease)	% Change
	2012	2011		
Equity in earnings of unconsolidated ventures . . . . .	\$ 829	\$ 350	\$ 479	136.8%
Gain on sale of available-for-sale securities . . . . .	605	1,319	(714)	(54.2)%
Gain on sale of loan . . . . .	3,192	—	3,192	*
Loss on extinguishment of debt . . . . .	—	(2,138)	(2,138)	*

\* Not meaningful.

*Equity in earnings of unconsolidated joint ventures.* The increase, reflected in our other real estate asset segment, is related to a distribution from a joint venture of \$864,000 in excess of its basis resulting from the refinancing of a mortgage which was recorded as income. Partially offsetting the increase was: (i) \$125,000 loss from a joint venture entered into in the March 2012 quarter which is primarily the result of \$193,000 of acquisition costs related to multi-family properties acquired by joint ventures that were, in the fourth quarter of 2012, included in our consolidated results of operations; and (ii) \$235,000 (which reflects the write-off of \$297,000 of capitalized costs) related to a joint venture that ceased loan purchasing activities in November 2011, which activities are reflected in our loan and investment segment.

*Gain on sale of available-for-sale securities.* In 2012, we sold available-for-sale equity securities with a cost basis of \$3,334,000 and recognized a gain of \$605,000. In 2011, we sold available-for-sale debt and equity securities with a cost basis of \$6,270,000 and recognized a gain of approximately \$1,319,000.

*Gain on sale of loan.* In October 2011, pursuant to a Federal Bankruptcy Court approved joint plan of reorganization, we and our loan participant sold the rights to a loan for net proceeds of approximately \$23.5 million. We recognized a \$3.2 million gain on the sale, representing our 50% interest in this loan. There was no corresponding gain in 2011.

*Loss on extinguishment of debt.* In 2011, we restructured our outstanding junior subordinated notes. Pursuant to the restructuring, we repaid \$5.0 million of the notes at par and reduced the interest rate on the remaining outstanding notes through the April 2036 maturity date. For financial statement purposes, this restructuring was treated as an extinguishment of debt, and accordingly, we recognized a loss of \$2,138,000 which represented the unaccreted principal balance of the notes and the related unamortized costs. There was no corresponding debt extinguishment in 2012.

### ***Discontinued operations***

In 2012, discontinued operations consisted of the gain of \$792,000 on the sale of two vacant cooperative apartments. In 2011, discontinued operations consisted of the sale of two vacant cooperative apartments for a gain of \$1,001,000 and a gain of \$289,000 from the payoff of a loan which was accounted for as real estate for financial statement purposes. All of these properties were located in Manhattan, New York. These activities are reflected in our other real estate assets segment.

*Year Ended September 30, 2011 Compared to Year Ended September 30, 2010*

### ***Revenues***

The following table compares our revenues for the years indicated:

	Fiscal		Increase (Decrease)	% Change
	2011	2010		
(Dollars in thousands):				
Interest on real estate loans . . . . .	\$ 8,500	\$3,624	\$4,876	135%
Loan fee income . . . . .	1,828	253	1,575	623%
Rental and other revenue from real estate properties . . . . .	3,456	3,422	34	1%
Recovery of previously provided allowance . . . . .	3,595	365	3,230	885%
Other income . . . . .	502	471	31	7%
Total revenues . . . . .	\$17,881	\$8,135	\$9,746	120%

*Interest on real estate loans.* The increase is primarily due to a \$37.1 million increase in the average balance of earning loans outstanding attributable to additional loan originations, which we believe was the result of improved economic conditions. This average balance excludes \$11.2 million of purchase money mortgages that were provided in prior years to facilitate the sale of our owned real estate. The interest rate on our portfolio increased from 9.83% in 2010 to 11.85% in 2011 as the result of the payoffs of the lower rate purchase money mortgages.

*Loan fee income.* The increase is due to the amortization of loan fees received on the increase in loans originated during 2011.

*Recovery of previously provided allowance.* The increase reflects the reversal of a previously provided loan loss allowance of \$2.5 million allocated to a non-performing loan that was sold in the quarter ended March 31, 2011 and the recovery of \$1 million on a loan charged off in a prior year.

## Expenses

The following table compares our expenses for the years indicated:

(Dollars in thousands)	Fiscal		Increase (Decrease)	% Change
	2011	2010		
Interest expense . . . . .	\$ 2,112	\$ 2,584	\$ (472)	(18.3)%
Advisor's fee, related party . . . . .	916	785	131	16.7%
Provision for loan losses . . . . .	—	3,165	(3,165)	*
Impairment charges . . . . .	—	2,625	(2,625)	*
Foreclosure related professional fees . . . . .	579	673	(94)	(13.9)%
General and administrative . . . . .	6,149	6,063	86	1.4%
Operating expenses related to real estate properties . . . . .	3,340	3,216	124	3.9%
Amortization and depreciation . . . . .	738	733	5	1%
Total expenses . . . . .	<u>\$13,834</u>	<u>\$19,844</u>	<u>\$(6,010)</u>	<u>(30.3)%</u>

\* Not meaningful.

*Interest expense.* Approximately \$508,000 of the decrease is attributable to the restructuring of the junior subordinated notes in March 2011 (of which \$433,000 is due to the reduction of the interest rate and \$75,000 is due to the decrease in the principal amount outstanding) and approximately \$449,000 is due to the capitalization of interest with respect to a Newark, NJ development site. The decrease was partially offset by a \$448,000 increase in mortgage interest due to the aggregate net increase of \$1.86 million in mortgage debt outstanding. This debt increased due to the borrowing pursuant to an \$8.6 million financing facility for the Newark Joint Venture. The \$4 million outstanding at September 30, 2011 under this facility carried interest at the rate of 17% per year.

*Advisor's fee, related party.* The fee is calculated based on invested assets and increased because of the increase in our portfolio of loans and real estate assets.

*Provision for loan losses.* In 2010, we recorded \$3,165,000 of loan loss provisions. There were no such provisions in 2011.

*Impairment charges.* In 2010, we recorded \$2,625,000 of impairment charges. There were no such charges in 2011.

*Foreclosure related professional fees.* Fees decreased primarily due to the resolution in 2011 of substantially all of the foreclosure, bankruptcy and related proceedings in which we were involved.

*General and administrative expense.* The increase is attributable primarily to an increase of \$440,000 in payroll related costs reflecting higher salaries, commissions, pension and medical expenses, partially offset by an approximately \$412,000 decline in professional fees, travel related, public company and other miscellaneous expenses.

*Operating expenses related to real estate owned.* The increase is attributable primarily to increases in maintenance, insurance and professional fees on properties owned by the Newark Joint Venture, partially offset by a \$134,000 decline in real estate tax expense on a land parcel we own in Daytona, FL.

### ***Other revenue and expense items***

The following table compares other revenue and expense items for the years indicated:

(Dollars in thousands)	Fiscal		Increase (Decrease)	% Change
	2011	2010		
Equity in earnings of unconsolidated ventures . . . . .	\$ 350	\$ 196	\$ 154	78.4%
Gain on sale of available-for-sale securities . . . . .	1,319	1,586	(267)	(16.8)%
Loss on extinguishment of debt . . . . .	(2,138)	—	(2,138)	*

\* Not meaningful.

*Equity in earnings of unconsolidated ventures.* The increase is attributable to \$99,000 of income generated with respect to the activities of a joint venture engaged in loan purchasing activities and \$54,000 attributable to increased rental income at one of our other ventures properties.

*Gain on sale of available-for-sale securities.* During fiscal 2011, we sold available-for-sale securities with a cost basis of \$6.3 million for \$7.6 million, recognizing a gain of \$1.3 million. During fiscal 2010, we sold available-for-sale securities with a cost basis of \$1.8 million for \$3.4 million recognizing a gain of \$1.6 million.

### ***Discontinued operations***

In fiscal 2011, we had income from discontinued operations of \$1.3 million due to the sale of two cooperative apartment units in New York and the payoff of a loan which was classified as real estate for financial statement purposes. In fiscal 2010, discontinued operations represented the loss from operations of \$602,000 primarily from the sale of two multi-family garden apartment properties and a hotel property, an impairment charge of \$745,000 which related to a multi-family garden apartment property and gains of \$1,937,000 from the sale of two multi-family properties, a hotel property and coop and condominium units.

### ***Credit Facility***

A subsidiary of ours is able, pursuant to a senior secured revolving credit facility, to borrow up to an aggregate of \$25 million to originate loans. The subsidiary may borrow (i) on an unsecured basis, \$10 million for up to 90 days and (ii) on a secured basis, up to the lesser of \$25 million and the borrowing base. The borrowing base is generally equal to 40% to 65% (depending on, among other things, the type of property secured by eligible mortgage receivables acceptable to the lender as collateral and the operating income of the related property) of such receivables. Interest accrues on the outstanding balance at the greater of (i) 4% plus LIBOR and (ii) 5.50%. The facility matures June 21, 2014 and, subject to the satisfaction of specified conditions, the outstanding balance may be converted at our option into an 18 month term loan. We have guaranteed the payment and performance of our subsidiary's obligations under the facility. The credit facility, among other things, requires us to maintain specified net worth and liquidity levels, requires the subsidiary to maintain specified debt service coverage and collateral coverage ratios, and limits our and our subsidiary's ability to incur debt.

At each of September 30, 2012 and November 30, 2012, no amount was outstanding under the facility and the maximum amount we could borrow was \$10 million for 90 days.



## Disclosure of Contractual Obligations

The following table sets forth as of September 30, 2012 our known contractual obligations:

(Dollars in thousands)	Payment due by Period				Total
	Less than 1 Year	1 - 3 Years	3 - 5 Years	More than 5 Years	
Long-Term Debt Obligations(1) . . . . .	\$14,601	\$31,702	\$24,755	\$233,989	\$305,047
Capital Lease Obligations . . . . .	—	—	—	—	—
Operating Lease Obligation . . . . .	190	393	297	406	1,286
Purchase Obligations(2) . . . . .	1,428	1,919	1,356	—	4,703
Other Long-Term Liabilities Reflected on the Trust's Balance Sheet Under GAAP . . . . .	—	—	—	—	—
Total . . . . .	<u>\$16,219</u>	<u>\$34,014</u>	<u>\$26,408</u>	<u>\$234,395</u>	<u>\$311,036</u>

- (1) Includes payments of principal (including amortization payments) and interest. Assumes that the qualified school construction bonds (\$22.7 million as of September 30, 2012) issued in connection with the Newark Joint Venture financing transactions will be refinanced in 2018 on the terms currently in effect and that the interest rate after April 30, 2016 on the junior subordinated notes will be 2.42% per annum. See note 10 to our consolidated financial statements. Does not include property management fees to be paid to the managers of our multi-family properties, which we contemplate will be paid from the cash flow generated by such properties or the \$45 million in principal amount of mortgage debt incurred after 2012 in the acquisition of three multi-family properties. Such debt has a weighted average interest rate of 3.75% per annum and a weighted average maturity of ten years. The following table sets forth as of September 30, 2012 information regarding our long-term debt obligations:

(Dollars in thousands)	Payment due by Period				Total
	Less than 1 Year	1 - 3 Years	3 - 5 Years	More than 5 Years	
Multi-family properties . . . . .	\$ 3,767	\$15,004	\$ 9,400	\$ 86,281	\$114,452
Newark Joint Venture . . . . .	8,809	12,647	12,619	91,775	125,850
Junior subordinated notes . . . . .	1,833	3,665	2,350	54,207	62,055
Other . . . . .	192	386	386	1,726	2,690
Total . . . . .	<u>\$14,601</u>	<u>\$31,702</u>	<u>\$24,755</u>	<u>\$233,989</u>	<u>\$305,047</u>

- (2) Includes the minimum payment of \$750,000 payable commencing January 1, 2012 for every twelve month period pursuant to our Advisory Agreement, as amended, with REIT Management, an entity owned by the chairman of our board of trustees. As this agreement terminates June 30, 2014 and amounts payable thereafter are not determinable, no further obligations with respect thereto are reflected thereafter. Also includes an estimated \$678,000 payable annually pursuant to the Shared Services Agreement. This estimate reflects the amount paid in fiscal 2012 pursuant to such agreement. No amount has been reflected as payable pursuant thereto after five years as such amount is not determinable. See "Business—Our Structure." Does not include purchase obligations of the Newark Joint Venture relating to the construction of five buildings at the Teachers Village site. It is anticipated that such costs will be covered by the application of the \$55.3 million reflected on our consolidated balance sheet as restricted cash-construction holdbacks.

## Liquidity and Capital Resources

We require funds to acquire properties (including investments in joint ventures that acquire properties), fund loan originations, repay borrowings and pay operating expenses. In 2012, our primary sources of capital and liquidity were our available cash, mortgage debt financing (an aggregate of \$158.2 million, of which \$68.5 million and \$89.7 million was used in connection with the Newark Joint Venture and multi-family property acquisitions, respectively), the sale of loan participations and New Markets Tax Credit proceeds. Our available liquidity at September 30, 2012 and December 5, 2012, excluding our deposits payable, available for sale securities and the \$10 million available on an unsecured basis from our credit facility, was approximately \$76.1 million and \$44 million, respectively.

We anticipate that the debt service that becomes payable during 2013 through 2015 for the eight multi-family properties acquired through December 5, 2012 (\$18.8 million of which relates to the debt service payments with respect to the five multi-family properties acquired in 2012) and the operating expenses of these eight properties will be funded from the rental revenues generated by these properties. The mortgage debt with respect to these properties is non-recourse to us and our subsidiary holding our interest in the joint venture.

The Newark Joint's Venture's capital resource and liquidity requirements for the three years ending September 30, 2015 are primarily construction and related costs and debt service associated with the Teacher's Village project. We anticipate that the construction and associated costs will be funded by the \$55.3 million reflected as restricted cash-construction holdback on our consolidated balance sheet, which funds are to be released to the venture from time to time upon satisfaction of specified construction and permitting related conditions.

We anticipate that the \$8.8 million in debt service payable during 2013 with respect to the Teachers Village project, will be paid as follows:

- \$2.9 million will be paid from an interest reserve,
- \$1.1 million will be paid from the US Treasury interest subsidy on the qualified school construction bonds,
- \$1.5 million will be paid from New Jersey tax credits,
- \$600,000 will be paid from a combination of cash flow from the properties and capital contributions from the members of the Newark Joint Venture, and
- \$2.7 million of short-term debt will be refinanced.

We anticipate that approximately \$12.6 million debt service payable in 2014 and 2015 and the estimated operating expenses for such years for the Teachers Village project will be paid as follows:

- \$900,000 will be paid from an interest reserve,
- \$2.2 million will be paid from the US Treasury interest subsidy on the qualified school construction bonds,
- \$3.4 million will be paid from New Jersey tax credits,
- \$900,000 of short-term debt will be refinanced, and
- the \$5.2 million balance will be paid from funds generated from the operations of such properties (*i.e.*, rental revenues).

After giving effect to the approximately \$2.4 million of annual rental revenues to be generated from the in-place lease agreements with the three charter schools and a day-care center, the Newark Joint Venture estimates that it will require at least an additional \$3 million in rental payments from retail tenants and \$4 million in rental payments from residential tenants at the Teachers Village

buildings to cover debt service and operating expenses for 2014 and 2015. While the Newark Joint Venture has commenced marketing the retail space at these buildings, there is no assurance that the venture will be able to lease such space and that if leased, the rental payments therefrom and from rental revenues from the residential units (for which marketing has not commenced) will be sufficient to cover debt service and operating expenses.

The Newark Joint Venture is currently seeking up to \$30 million in financing from public and private sources to fund the third phase of the Teachers Village project. No assurance can be given that the Newark Joint Venture will obtain the necessary financing on acceptable terms or if such financing is obtained, that such project will be profitable for us.

We believe we have sufficient funds to meet our operating expenses in 2013 and to fund any capital contributions required by the general operations of Newark Joint Venture and our other joint ventures. We also have funds available to engage in our lending business and to make property acquisitions. The extent of our ability to engage such activities is limited by our available cash and, in the case of loan origination activities, by our (i) ability to sell participating interests in such loans and (ii) ability or willingness to use our credit facility, and in the case of multi-family property acquisitions, the availability of mortgage debt to finance such acquisitions.

#### **Off Balance Sheet Arrangements**

Not applicable.

#### **Significant Accounting Estimates and Critical Accounting Policies**

Our significant accounting policies are more fully described in Note 1 to our consolidated financial statements. The preparation of financial statements and related disclosure in conformity with accounting principles generally accepted in the United States requires management to make certain judgments and estimates that affect the amounts reported in the consolidated financial statements and accompanying notes. Certain of our accounting policies are particularly important to understand our financial position and results of operations and require the application of significant judgments and estimates by our management; as a result they are subject to a degree of uncertainty. These significant accounting policies include the following:

##### *Principles of Consolidation*

We have entered into, and may continue to enter into, various joint venture agreements with unrelated third parties to hold or develop real estate assets. We must determine for each of these joint ventures whether to consolidate the entity or account for our investment under the equity or cost basis of accounting. Investments acquired or created are continually evaluated based on the accounting guidance relating to variable interest entities (“VIEs”), which requires the consolidation of VIEs in which we are considered to be the primary beneficiary. If the investment is determined not to be a VIE, then the investment is evaluated for consolidation (primarily using a voting interest model) under the remaining consolidation guidance relating to real estate entities. If we are the general partner in a limited partnership, or manager of a limited liability company, we also consider the consolidation guidance relating to the rights of limited partners (non-managing members) to assess whether any rights held by the limited partners overcome the presumption of control by us. We evaluate our accounting for investments on a quarterly basis or when a reconsideration event (as defined in GAAP) with respect to our investments occurs. The analysis required to identify VIEs and primary beneficiaries is complex and requires substantial management judgment.

### *Allowance for Possible Losses and Impairment Charges*

We conduct a quarterly review of (i) each loan in our mortgage portfolio, including the real estate securing each loan, (ii) each of our real estate assets, and (iii) each real estate asset owned by our joint ventures. This review is conducted in order to determine if there is uncertainty that our borrower has sufficient funds to repay the loan or if indicators of impairment are present on the real estate.

In reviewing the value of the collateral underlying a loan and the real estate assets owned, whether by us or our joint ventures, if there is an indicator of impairment, we seek to arrive at the fair value of each piece of collateral and each real estate asset by using one or more valuation techniques, such as comparable sales, discounted cash flow analysis or replacement cost analysis. Determination of the fair value of the collateral securing a loan requires significant judgment, estimates and discretion by management. Our real estate assets (other than real estate held for sale) and our joint ventures' real estate assets are evaluated for indicators of impairment using an undiscounted cash flow analysis. If the analysis suggests that the undiscounted cash flows to be generated by the property will be insufficient to recover the investment made by us or any joint venture, as the case may be, an impairment provision will be calculated based upon the excess of the carrying amount of the property over its fair value using a discounted cash flow model. Real estate assets are valued at the lower of the recorded cost or estimated fair value. We do not obtain any third party appraisals regarding the value of the property securing loans made by us or our joint ventures, or the real estate assets owned by us or our joint ventures. Instead, we rely on our own "in-house" valuations. Any valuation allowances taken with respect to our loan portfolio or real estate assets reduces our net income, assets and shareholders' equity to the extent of the amount of the valuation allowance, but it will not affect our cash flow until such time as the property is sold. For fiscal 2010, \$3.17 million of loan loss provisions were recorded against our mortgage portfolio and \$3.37 million of impairment charges were taken with respect to our real estate assets (including real estate properties held for sale). In fiscal 2011 and fiscal 2012, no such provisions or changes were taken.

### *Revenue Recognition*

We recognize interest income and rental income on an accrual basis, unless we make a judgment that impairment of a loan or of real estate owned renders doubtful collection of interest or rent in accordance with the applicable loan documents or lease. In making a judgment as to the collectability of interest or rent, we consider, among other factors, the status of the loan or property, the borrower's or tenant's financial condition, payment history and anticipated events in the future. Income recognition is suspended for loans when, in the opinion of management, a full recovery of income and principal becomes doubtful. Income recognition is resumed when the loan becomes contractually current and continued performance is demonstrated. Accordingly, management must make a significant judgment as to whether to treat a loan or real estate owned as impaired. If we make a decision to treat a "problem" loan or real estate asset as not impaired and therefore continue to recognize the interest and rent as income on an accrual basis, we could overstate income by recognizing income that will not be collected and the uncollectible amount will ultimately have to be written off. The period in which the uncollectible amount is written off could adversely affect taxable income for a specific year.

### **Cash Distribution Policy**

We have elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, since our organization. To qualify as a REIT, we must meet a number of organizational and operational requirements, including a requirement that we distribute currently (within the time frames prescribed by the Code and the applicable regulations) to our shareholders at least 90% of our adjusted ordinary taxable income. It is the current intention of our management to maintain our REIT status. As a REIT, we generally will not be subject to corporate Federal income tax on taxable income we distribute currently in accordance with the Code and applicable regulations to shareholders. If we fail to qualify

as a REIT in any taxable year, we will be subject to Federal income taxes at regular corporate rates and may not be able to qualify as a REIT for four subsequent tax years. Even if we qualify for Federal taxation as a REIT, we may be subject to certain state and local taxes on our income and to Federal income and excise taxes on undistributed taxable income, i.e., taxable income not distributed in the amounts and in the time frames prescribed by the Code and applicable regulations thereunder.

We did not pay dividends in fiscal 2010 through fiscal 2012. At December 31, 2011, we had a net operating loss carry-forward of approximately \$60.5 million. Since we can offset our future taxable income, if any, against our tax loss carry-forward until the earlier of 2028 or the tax loss carry-forward has been fully used, we do not expect to pay a dividend in calendar 2013 and it is unlikely that we will be required to pay a dividend for several years thereafter to maintain our REIT status. Although our board of trustees reviews the payment of dividends periodically, there is no expectation that a dividend will be paid in the 2013 calendar year and for several years thereafter.

#### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

Our primary component of market risk is interest rate sensitivity. Our interest income is subject to changes in interest rates. We seek to minimize these risks by originating loans that are indexed to the prime rate, with a stated minimum interest rate. At September 30, 2012, approximately 95% of the principal amount of our outstanding mortgage loans were comprised of variable rate loans tied to the prime rate and with a stated minimum rate. When determining interest rate sensitivity, we assume that any change in interest rates is immediate and that the interest rate sensitive assets and liabilities existing at the beginning of the period remain constant over the period being measured. We assessed the market risk for our variable rate mortgage receivables as of September 30, 2012 and believe that a one percent increase in interest rates would cause an increase in income before taxes of \$328,000 and a one percent decline in interest rates would not cause a decrease in income before taxes because all of our variable rate loans have a stated minimum rate.

As of September 30, 2012, we had one interest rate swap agreement outstanding. The fair value of our interest rate swap is dependent upon existing market interest rates and swap spreads, which change over time. At September 30, 2012, if there had been a 1% increase in forward interest rates, the fair market value of the interest rate swap and net unrealized loss on derivative instrument would have increased by approximately \$128,000. If there had been a 1% decrease in forward interest rates, the fair market value of the interest rate swap and net unrealized loss on derivative instrument would have decreased by approximately \$123,000. These changes would not have any impact on our net income or cash.

Our mortgage debt (excluding a mortgage subject to an interest rate swap agreement), and junior subordinated notes currently bears interest at fixed rates and accordingly, changes in interest rates would not impact the amount of interest expense that we incur under such indebtedness.

As of September 30, 2012, 39% and 37% of our loan portfolio was secured by properties located in the New York City and Atlanta, Georgia metropolitan areas, respectively, and therefore subject to risks associated with the economies in such areas.

#### **Item 8. Financial Statements and Supplementary Data.**

The information required by this item appears in a separate section of this Report following Part IV.

#### **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

Not applicable.

**Item 9A. Controls and Procedures.**

A review and evaluation was performed by our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. Based on that review and evaluation, the CEO and CFO have concluded that our current disclosure controls and procedures, as designed and implemented, were effective. There have been no significant changes in our internal controls or in other factors that could significantly affect our internal controls subsequent to the date of their evaluation. There were no material weaknesses identified in the course of such review and evaluation and, therefore, we took no corrective measures.

**Management Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Securities Exchange Act of 1934, as amended, as a process designed by, or under the supervision of, a company's principal executive and principal financial officers and effected by a company's board, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of a company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of a company are being made only in accordance with authorizations of management and directors of a company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of a company's assets that could have a material effect on the financial transactions.

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

Our management assessed the effectiveness of our internal control over financial reporting as of September 30, 2012. In making this assessment, our management used criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework.

Based on its assessment, our management believes that, as of September 30, 2012, our internal control over financial reporting was effective based on those criteria.

Our independent auditors, BDO USA, LLP, have issued an audit report on the effectiveness of internal control over financial reporting. This report appears on page F-1 of this Annual Report on Form 10-K.

**Item 9B. Other Information.**

Not applicable.



## PART III

### Item 10. Directors, Executive Officers and Corporate Governance.

Apart from certain information concerning our executive officers which is set forth in Part I of this report, the other information required by Item 10 is incorporated herein by reference to the applicable information to be in the proxy statement to be filed for our 2013 Annual Meeting of Shareholders.

### Item 11. Executive Compensation.

The information concerning our executive compensation required by Item 11 will be included in the proxy statement to be filed relating to our 2013 Annual Meeting of Shareholders and is incorporated herein by reference.

### Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Except as set forth below, the information required by Item 12 will be included in the proxy statement to be filed relating to our 2013 Annual Meeting of Shareholders and is incorporated herein by reference.

#### Equity Compensation Plan Information

The table below provides information as of September 30, 2012 with respect to our Common Shares that may be issued upon exercise of outstanding options, warrants and rights:

	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available-for future issuance under equity compensation plans— excluding securities reflected in column (a)
Equity compensation plans approved by security holders(1) . . . . .	—	—	600,000
Equity compensation plans not approved by security holders . . . . .	—	—	—
Total . . . . .	—	—	600,000

(1) Excludes 580,180 outstanding shares of restricted stock issued to officers, directors, employees and consultants. These restricted shares generally vest five years from the effective date of the award, subject to acceleration as provided in the agreement and incentive plan governing same. These shares vest as follows: 62,030 shares in 2013; 123,950 shares in 2014; 123,150 shares in 2015; 136,500 shares in 2016; and 134,550 shares in 2017.

### Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information concerning relationships and certain transactions required by Item 13 will be included in the proxy statement to be filed relating to our 2013 Annual Meeting of Shareholders and is incorporated herein by reference.

**Item 14. Principal Accounting Fees and Services.**

The information concerning our principal accounting fees required by Item 14 will be included in the proxy statement to be filed relating to our 2013 Annual Meeting of Shareholders and is incorporated herein by reference.

**PART IV****Item 15. Exhibits, Financial Statement Schedules.**

(a)

1. All Financial Statements.

The response is submitted in a separate section of this report following Part IV.

2. Financial Statement Schedules.

The response is submitted in a separate section of this report following Part IV.

3. Exhibits:

In reviewing the agreements included as exhibits to this Annual Report on Form10-K, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about us or the other parties to the agreements. The agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments. Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time.

Exhibit No.	Title of Exhibits
3.1	Third Amended and Restated Declaration of Trust (incorporated by reference to Exhibit 3.1 to our Form 10-K for the year ended September 30, 2005).
3.2	By-laws (incorporated by reference to Exhibit 3.2 to our Form 10-K for the year ended September 30, 2005).
3.3	Amendment to By-laws, dated December 10, 2007 (incorporated by reference to Exhibit 3.1 to our Form 8-K filed December 11, 2007).
4.1	Junior Subordinated Supplemental Indenture, dated as of March 15, 2011, between us and the Bank of New York Mellon (incorporated by reference to Exhibit 4.1 to our Form 8-K filed March 18, 2011).
10.1*	Amended and Restated Advisory Agreement, effective as of January 1, 2007, between us and REIT Management Corp. (incorporated by reference to Exhibit 10.1 to our Form 8-K filed November 27, 2006).
10.2*	Amendment No. 1 dated as of December 8, 2011 to Amended and Restated Advisory Agreement between us and REIT Management (incorporated by reference to exhibit 10.2 to our Form 10-Q for the period ended December 31, 2011).
10.3*	Shared Services Agreement, dated as of January 1, 2002, by and among Gould Investors L.P., us, One Liberty Properties, Inc., Majestic Property Management Corp., Majestic Property Affiliates, Inc. and REIT Management Corp. (incorporated by reference to Exhibit 10.2 to our Form 10-K filed December 11, 2008).
10.4	Amended and Restated Limited Liability Company Operating Agreement by and among TRB Newark Assemblage LLC, TRB Newark TRS, LLC, RBH Capital, LLC and RBH Partners LLC (incorporated by reference to Exhibit 10.1 to our Form 8-K filed June 9, 2009).
10.5*	Form of Restricted Stock Award Agreement (incorporated by reference to Exhibit 10.5 to our Form 10-K for the year ended September 30, 2010).
10.6	Loan and Security Agreement, dated as of June 22, 2011, among BRT RLOC LLC, as borrower, BRT Realty Trust, as guarantor, BRT Realty Trust, as servicer, Capital One, National Association, as agent, Capital One, National Association, as custodian, and the lenders from time-to-time party thereto (incorporated by reference to Exhibit 10.1 to our Form 8-K filed on June 23, 2011).
10.7	Amendment No. 1 to Loan and Security Agreement entered into as of April 17, 2012 by and among BRT RLOC LLC, BRT Realty Trust and Capital One, National Association (incorporated by reference to exhibit 10.3 to our Form 10-Q for the period ended March 31, 2012).
10.8	Guaranty dated as of June 22, 2011 by us in favor of Capital One, National Association (incorporated by reference to Exhibit 10.2 to our Form 8-K filed on June 23, 2011).
10.9	Account Control Agreement dated as of June 22, 2011 among Capital One, National Association, BRT RLOC LLC, and Capital One, National Association, as Agent (incorporated by reference to Exhibit 10.3 to our Form 8-K filed on June 23, 2011).
10.10	Revolving Loan Note dated as of June 22, 2011 in favor of Capital One, National Association (incorporated by reference to Exhibit 10.4 to our Form 8-K filed on June 23, 2011).

Exhibit No.	Title of Exhibits
10.11	Servicing and Asset Management Agreement between us and BRT RLOC, LLC. (incorporated by reference to Exhibit 10.5 to our Form 8-K filed on June 23, 2011).
10.12	Custodial Agreement, dated as of June 22, 2011, among Capital One, National Association, as custodian, BRT RLOC LLC, us, as servicer and Capital One, National Association, as agent (incorporated by reference to Exhibit 10.6 to our Form 8-K filed on June 23, 2011).
10.13	Limited Liability Company Agreement of BRTL LLC dated as of June 2, 2011 by and among BRTL LLC, Debt Opportunity Fund III, LLC and BRT Torch Member LLC (incorporated by reference to exhibit 10.1 to our Form 8-K filed on June 7, 2011).
10.14	Servicing and Asset Management Agreement made as of June 2, 2011 between BRT Realty Trust and BRTL LLC (incorporated by reference to exhibit 10.2 to our Form 8-K filed on June 7, 2011).
10.15	Pledge and Security Agreement dated as of June 2, 2011 made by BRT Torch Member LLC in favor of Debt Opportunity Fund III, LLC (incorporated by reference to exhibit 10.3 to our Form 8-K filed on June 7, 2011).
10.16*	2009 Incentive Plan, as amended (incorporated by reference to exhibit 10.1 to our Quarterly Report on Form 10-Q for the period ended December 31, 2011).
10.17*	2012 Incentive Plan (incorporated by reference to exhibit 99.1 to our Registration Statement on Form S-8 filed on June 11, 2012 (File No. 333-182044)).
10.18	Bond agreement dated as of December 1, 2011 by and among the New Jersey Economic Development Authority, RBH-TRB East Mezz Urban Renewal Entity, LLC and TD Bank, N.A. (incorporated by reference to exhibit 10.3 to our Form 10-Q for the period ended December 31, 2011).
10.19	Note dated December 29, 2011 issued by RBH-TRB East Mezz Urban Renewal Entity LLC in favor of New Jersey Economic Development Authority (incorporated by reference to exhibit 10.4 to our Form 10-Q for the period ended December 31, 2011).
10.20	Multi-Family Loan and Security Agreement (Non-Recourse) by and between Landmark at Garden Square, LLC, and Berkadia Commercial Mortgage LLC, dated as of March 22, 2012 (incorporated by reference to exhibit 10.1 to our Form 10-Q for the period ended March 31, 2012).
10.21	Consolidated, Amended and Restated Multi-family Note entered into as of March 22, 2012, by and between Landmark at Garden Square, LLC and Berkadia Commercial Mortgage LLC. (incorporated by reference to exhibit 10.2 to our Form 10-Q for the period ended March 31, 2012).
10.22	Mortgage and Security Agreement made as of February 3, 2012, given by RBH-TRB East Mezz Urban Renewal Entity, LLC, in favor of New Jersey Economic Development Authority (incorporated by reference to exhibit 10.4 to our Form 10-Q for the period ended March 31, 2012).
10.23	Guaranty of Completion made as of the 3rd day of February, 2012, by RBH-TRB Newark Holdings, LLC, and RBH-TRB East Mezz Urban Renewal Entity, LLC, in favor of TD Bank, N.A. (incorporated by reference to exhibit 10.5 to our Form 10-Q for the period ended March 31, 2012).

Exhibit No.	Title of Exhibits
10.24	Security Agreement dated as of February 3, 2012, by and between RBH-TRB East Mezz Urban Renewal Entity, LLC and TD Bank, N.A. (incorporated by reference to exhibit 10.6 to our Form 10-Q for the period ended March 31, 2012).
10.25	Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated February 3, 2012 in the amount of \$32,700,000 from Teachers Village School QALICB Urban Renewal, LLC to NJCC CDE Essex LLC, and Gateway SUB-CDE I, LLC. (incorporated by reference to exhibit 10.7 to our Form 10-Q for the period ended March 31, 2012).
10.26	Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated February 3, 2012 in the amount of \$27,000,000 from Teachers Village School QALICB Urban Renewal, LLC to NJCC CDE Essex LLC, and Gateway SUB-CDE I, LLC. (incorporated by reference to exhibit 10.8 to our Form 10-Q for the period ended March 31, 2012).
10.27	Joint and Several Completion Guaranty dated as of February 3, 2012, by Teachers Village School QALICB Urban Renewal, LLC, and RBH-TRB Newark Holdings, LLC, to TD Bank, N.A. Gateway SUB-CDE I, LLC, and NJCC CDE Essex LLC. (incorporated by reference to exhibit 10.9 to our Form 10-Q for the period ended March 31, 2012).
10.28	Guaranty of New Markets Tax Credits made as of February 3, 2012, by Teachers Village School QALICB Urban Renewal, LLC, and RBH-TRB Newark Holdings, LLC, for the benefit of GSB NMTC Investor LLC. (incorporated by reference to exhibit 10.10 to our Form 10-Q for the period ended March 31 2012).
10.29	Multi-Family Loan and Security Agreement dated as of the June 20, 2012 by and between Madison 324, LLC and CWCcapital LLC. (incorporated by reference to exhibit 10.1 to our Form 10-Q for the period ended June 30, 2012)
10.30	Multi-Family Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the 20th day of June, 2012, executed by Madison 324, LLC to Joseph B. Pitt, JR, as trustee for the benefit of CWCcapital LLC. (incorporated by reference to exhibit 10.2 to our Form 10-Q for the period ended June 30, 2012).
10.31	Multi-Family Note dated as of June 20, 2012 in face amount of \$25,680,000 issued by Madison 324, LLC in favor of CWCcapital LLC. (incorporated by reference to exhibit 10.3 to our Form 10-Q for the period ended June 30, 2012).
10.32	Guaranty of New Markets Tax Credits made as of September 11, 2012, by Teachers Village Project A QALICB Urban Renewal Entity, LLC, and RBH-TRB Newark Holdings, LLC for the benefit of GSB NMTC Investor LLC, its successors and assigns.
10.33	Guaranty of Payment and Recourse Carveouts made as of the 11 <sup>th</sup> day of September, 2012, by RBH-TRB Newark Holdings, LLC and Ron Beit-Halachmy, in favor of Goldman Sachs Bank USA.
10.34	Joint and Several Completion Guaranty dated as of September 11, 2012, made on a joint and several basis by Teachers Village Project A QALICB Urban Renewal Entity, LLC and RBH-TRB Newark Holdings LLC, to Goldman Sachs Bank USA.
10.35	Environmental Indemnity Agreement dated as of September 11, 2012, made by Teachers Village Project A QALICB Urban Renewal Entity, LLC, to Goldman Sachs Bank USA.

Exhibit No.	Title of Exhibits
10.36	Environmental Indemnity Agreement dated as of September 11, 2012, made by Teachers Village Project A QALICB Urban Renewal Entity, LLC, to GSB NMTC Investor LLC; Carver CDC-Subsidiary CDE 21, LLC; NCIF New Markets Capital Fund IX CDE, LLC; GSNMF Sub-CDE 2 LLC; and BACDE NMTC Fund 4, LLC.
10.37	Building Loan Agreement dated as of September 11, 2012 by and among GSB NMTC Investor LLC, and NCIF New Markets Capital Fund IX CDE, LLC; NCIF New Markets Capital Fund IX CDE LLC, Carver CDC-Subsidiary CDE-21, LLC, BACDE NMTC Fund 4 LLC, GSNMF Sub-CDE 2 LLC and Teachers Village Project A QALICB Urban Renewal Entity, LLC.
10.38	Mortgage, Assignment of Leases and Rents and Security Agreement dated September 2012 in the amount of \$15,699,999 from Teachers Village Project A QALICB Urban Renewal Entity, LLC to NCIF New Markets Capital Fund IX CDE, LLC, Carver CDC-Subsidiary CDE 21, LLC, BACDE NMTC Fund 4, LLC and GSNMF Sub-CDE 2, LLC.
10.39	Mortgage, Assignment of Leases and Rents and Security Agreement dated September 2012 in the amount of \$9,000,000 from Teachers Village Project A QALICB Urban Renewal Entity, LLC, to Goldman Sachs Bank USA.
10.40	Loan Agreement dated as of September 11, 2012 between Goldman Sachs Bank USA, and RBH-TRB Newark Holdings, LLC.
10.41	Building Loan Agreement dated as of September 11, 2012 by and between Goldman Sachs Bank USA, and Teachers Village Project A QALICB Urban Renewal Entity, LLC.
10.42	Loan Agreement made as of the 11th day of September, 2012, by and between RBH-TRB-West I Mezz Urban Renewal Entity, LLC, and Goldman Sachs Bank USA, Carver CDC-Subsidiary CDE 21, LLC, and BACDE NMTC Fund 4, LLC, and GSNMF Sub-CDE 2 LLC, and Teachers Village Project A QALICB Urban Renewal Entity, LLC.
12.1	Schedule of Computation of Ratio of Earnings to Fixed Charges
14.1	Revised Code of Business Conduct and Ethics of BRT Realty Trust, adopted June 12, 2006 (incorporated by reference to Exhibit 14.1 to the Form 8-K of BRT Realty Trust filed June 14, 2006).
21.1	Subsidiaries of the Registrant
23.1	Consent of BDO USA LLP
23.2	Consent of Ernst & Young, LLP
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (the "Act")
31.2	Certification of Senior Vice President—Finance pursuant to Section 302 of the Act.
31.3	Certification of Chief Financial Officer pursuant to Section 302 of the Act
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Act
32.2	Certification of Senior Vice President—Finance pursuant to Section 906 of the Act
32.3	Certification of Chief Financial Officer pursuant to Section 906 of the Act
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document



<b>Exhibit No.</b>	<b>Title of Exhibits</b>
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Definition Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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\* Indicates management contract or compensatory plan or arrangement.

(b) Exhibits.

See Item 15(a)(3) above. Except as otherwise indicated with respect to a specific exhibit, the file number for all of the exhibits incorporated by reference is: 001-07172.

(c) Financial Statements.

See Item 15(a)(2) above.

## 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 thereunto duly authorized.

### BRT REALTY TRUST

Date: December 13, 2012

By: /s/ JEFFREY A. GOULD  
Jeffrey A. Gould  
*Chief Executive Officer and President*

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 capacity and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ FREDRIC H. GOULD</u> Fredric H. Gould	Chairman of the Board	December 13, 2012
<u>/s/ JEFFREY A. GOULD</u> Jeffrey A. Gould	Chief Executive Officer, President and Trustee (Principal Executive Officer)	December 13, 2012
<u>/s/ KENNETH BERNSTEIN</u> Kenneth Bernstein	Trustee	December 13, 2012
<u>/s/ ALAN GINSBURG</u> Alan Ginsburg	Trustee	December 13, 2012
<u>/s/ MATTHEW J. GOULD</u> Matthew J. Gould	Trustee	December 13, 2012
<u>/s/ LOUIS C. GRASSI</u> Louis C. Grassi	Trustee	December 13, 2012
<u>/s/ GARY HURAND</u> Gary Hurand	Trustee	December 13, 2012

<u>Signature</u>	<u>Title</u>	<u>Date</u>
_____ /s/ ISRAEL ROSENZWEIG Israel Rosenzweig	Trustee	December 13, 2012
_____ /s/ JEFFREY RUBIN Jeffrey Rubin	Trustee	December 13, 2012
_____ /s/ JONATHAN SIMON Jonathan Simon	Trustee	December 13, 2012
_____ /s/ ELIE WEISS Elie Weiss	Trustee	December 13, 2012
_____ /s/ GEORGE E. ZWEIER George E. Zweier	Chief Financial Officer, Vice President (Principal Financial and Accounting Officer)	December 13, 2012

**Item 8, Item 15(a)(1) and (2)**

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All other schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or the notes thereto.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Trustees and Shareholders of  
BRT Realty Trust and Subsidiaries  
Great Neck, New York

We have audited BRT Realty Trust and Subsidiaries' (the "Trust") internal control over financial reporting as of September 30, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The Trust's 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 Item 9A. Controls and Procedures—Management Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Trust'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, BRT Realty Trust and Subsidiaries maintained, in all material respects, effective internal control over financial reporting as of September 30, 2012, 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 BRT Realty Trust and Subsidiaries as of September 30, 2012 and 2011, and the related consolidated statements of operations, comprehensive income (loss), equity, and cash flows for the years then ended and our report dated December 13, 2012 expressed an unqualified opinion thereon.

/s/ BDO USA LLP

New York, New York  
December 13, 2012

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Trustees and Shareholders of  
BRT Realty Trust and Subsidiaries  
Great Neck, New York

We have audited the accompanying consolidated balance sheets of BRT Realty Trust and Subsidiaries (the “Trust”) as of September 30, 2012 and 2011 and the related consolidated statements of operations, comprehensive income (loss), shareholders’ equity, and cash flows for the years then ended. In connection with our audits of the financial statements, we have also audited the financial statement schedules listed in the Index at Item 15(a). These financial statements and schedules are the responsibility of the Trust’s management. Our responsibility is to express an opinion on these financial statements and schedules 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 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 provides 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 BRT Realty Trust and Subsidiaries at September 30, 2012, and 2011 and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

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

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), BRT Realty Trust and Subsidiaries’ internal control over financial reporting as of September 30, 2012, 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 December 13, 2012 expressed an unqualified opinion thereon.

/s/ BDO USA LLP

New York, New York  
December 13, 2012



## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Trustees and Shareholders of  
BRT Realty Trust and Subsidiaries

We have audited the accompanying consolidated statements of operations, comprehensive income, equity and cash flows of BRT Realty Trust and Subsidiaries (the “Trust”) for the year ended September 30, 2010. These financial statements are the responsibility of the Trust’s management. Our responsibility is to express an opinion on these financial statements 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 the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated results of operations of BRT Realty Trust and Subsidiaries and their cash flows for the year ended September 30, 2010, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

New York, New York  
December 13, 2010

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**

(Amounts in thousands, except per share data)

	September 30,	
	2012	2011
<b>ASSETS</b>		
Real estate loans, all earning interest . . . . .	\$ 37,096	\$ 67,266
Deferred fee income . . . . .	(512)	(576)
	36,584	66,690
Real estate loan held-for-sale . . . . .	—	8,446
Real estate properties net of accumulated depreciation of \$4,787 and \$2,511 . . . .	190,317	59,277
Investment in unconsolidated ventures . . . . .	291	4,247
Cash and cash equivalents . . . . .	78,245	44,025
Restricted cash—construction holdbacks . . . . .	55,252	—
Available-for-sale securities at fair value . . . . .	1,249	2,766
Deferred costs . . . . .	12,337	1,692
Prepaid expenses . . . . .	5,978	1,733
Other assets . . . . .	5,703	2,136
Total Assets . . . . .	<u>\$385,956</u>	<u>\$191,012</u>
<b>LIABILITIES AND EQUITY</b>		
Liabilities:		
Mortgages payable . . . . .	\$169,284	\$ 14,417
Junior subordinated notes . . . . .	37,400	37,400
Accounts payable and accrued liabilities . . . . .	4,298	948
Deposits payable . . . . .	2,108	2,518
Deferred Income . . . . .	25,848	—
Total Liabilities . . . . .	238,938	55,283
Commitments and contingencies . . . . .	—	—
Equity:		
BRT Realty Trust shareholders' equity:		
Preferred shares, \$1 par value:		
Authorized 10,000 shares, none issued . . . . .	—	—
Shares of beneficial interest, \$3 par value:		
Authorized number of shares, unlimited, 13,473 and 14,994 issued . . . . .	40,420	44,981
Additional paid-in capital . . . . .	165,258	171,889
Accumulated other comprehensive income—net unrealized gain on available-for-sale securities . . . . .	356	278
Accumulated deficit . . . . .	(72,585)	(77,015)
Cost of 1,422 treasury shares of beneficial interest at September 30, 2011 . . . .	—	(11,070)
Total BRT Realty Trust shareholders' equity . . . . .	133,449	129,063
Non-controlling interests . . . . .	13,569	6,666
Total Equity . . . . .	<u>147,018</u>	<u>135,729</u>
Total Liabilities and Equity . . . . .	<u>\$385,956</u>	<u>\$191,012</u>

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Dollars in thousands, except share data)

	Year Ended September 30,		
	2012	2011	2010
Revenues:			
Interest on real estate loans . . . . .	\$ 7,257	\$ 8,500	\$ 3,624
Loan fee income . . . . .	2,273	1,828	253
Rental and other revenue from real estate properties . . . . .	8,675	3,456	3,422
Recovery of previously provided allowances . . . . .	156	3,595	365
Other income . . . . .	1,218	502	471
Total revenues . . . . .	<u>19,579</u>	<u>17,881</u>	<u>8,135</u>
Expenses:			
Interest expense . . . . .	4,729	2,112	2,584
Advisor's fees, related party . . . . .	1,104	916	785
Provision for loan losses . . . . .	—	—	3,165
Impairment charges . . . . .	—	—	2,625
Foreclosure related professional fees . . . . .	—	579	673
Property acquisition costs . . . . .	2,407	—	—
General and administrative—including \$705, \$847 and \$822 to related party . . . . .	7,161	6,149	6,063
Operating expenses relating to real estate properties . . . . .	6,042	3,340	3,216
Depreciation and amortization . . . . .	2,004	738	733
Total expenses . . . . .	<u>23,447</u>	<u>13,834</u>	<u>19,844</u>
Total revenues less total expenses . . . . .	(3,868)	4,047	(11,709)
Equity in earnings of unconsolidated ventures . . . . .	829	350	196
Gain on sale of available-for-sale securities . . . . .	605	1,319	1,586
Gain on sale of loan . . . . .	3,192	—	—
Loss on extinguishment of debt . . . . .	—	(2,138)	—
Income (loss) from continuing operations . . . . .	<u>758</u>	<u>3,578</u>	<u>(9,927)</u>
Discontinued operations:			
Loss from operations . . . . .	—	—	(602)
Impairment charges . . . . .	—	—	(745)
Gain on sale of real estate assets . . . . .	792	1,346	1,937
Income from discontinued operations . . . . .	<u>792</u>	<u>1,346</u>	<u>590</u>
Net income (loss) . . . . .	1,550	4,924	(9,337)
Plus: net loss attributable to non-controlling interests . . . . .	2,880	1,450	1,322
Net income (loss) attributable to common shareholders . . . . .	<u>\$ 4,430</u>	<u>\$ 6,374</u>	<u>\$ (8,015)</u>
Basic and diluted per share amounts attributable to common shareholders:			
Income (loss) from continuing operations . . . . .	\$ .26	\$ .35	\$ (.62)
Income from discontinued operations . . . . .	.06	.10	.04
Basic and diluted earnings (loss) per share . . . . .	<u>\$ .32</u>	<u>\$ .45</u>	<u>\$ (.58)</u>
Amounts attributable to BRT Realty Trust:			
Income (loss) from continuing operations . . . . .	\$ 3,638	\$ 5,028	\$ (8,605)
Income from discontinued operations . . . . .	792	1,346	590
Net income (loss) . . . . .	<u>\$ 4,430</u>	<u>\$ 6,374</u>	<u>\$ (8,015)</u>
Weighted average number of common shares outstanding:			
Basic and diluted . . . . .	<u>14,035,972</u>	<u>14,041,569</u>	<u>13,871,668</u>

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(Unaudited)**  
**(Dollars in thousands)**

	<b>Year Ended September 30,</b>		
	<b>2012</b>	<b>2011</b>	<b>2010</b>
Net income (loss) . . . . .	\$ 1,550	\$ 4,924	\$ (9,337)
Other comprehensive income (loss):			
Net unrealized gain (loss) on available-for-sale securities . . . . .	182	(1,316)	(1,117)
Unrealized loss on derivative instruments . . . . .	(104)	—	—
Other comprehensive income (loss) . . . . .	78	(1,316)	(1,117)
Comprehensive income (loss) . . . . .	1,628	3,608	(10,454)
Comprehensive loss attributable to non-controlling interests . . . . .	(2,896)	(1,450)	(1,322)
Comprehensive income (loss) attributable to common shareholders . . . .	<u>\$ 4,524</u>	<u>\$ 5,058</u>	<u>\$ (9,132)</u>

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**  
**Years Ended September 30, 2012, 2011 and 2010**  
**(Dollars in thousands, except share data)**

	Shares of Beneficial Interest	Additional Paid-In Capital	Accumulated Other Comprehensive Income	(Accumulated Deficit)	Treasury Shares	Non Controlling Interests	Total
Balances, September 30, 2009 . . . . .	\$38,133	\$167,073	\$ 2,711	\$(75,374)	\$(11,316)	\$ 4,990	\$126,217
Shares issued—stock dividend (2,437,352 shares) . . . . .	7,312	4,604	—	—	—	—	11,916
Restricted stock vesting . . . . .	—	(242)	—	—	242	—	—
Compensation expense—restricted stock . . . . .	—	833	—	—	—	—	833
Contributions from non-controlling interests . . . . .	—	—	—	—	—	1,846	1,846
Distributions to non-controlling interests . . . . .	—	—	—	—	—	(229)	(229)
Shares repurchased (52,403 shares) . . . . .	—	—	—	—	(290)	—	(290)
Net loss . . . . .	—	—	—	(8,015)	—	(1,322)	(9,337)
Other comprehensive loss . . . . .	—	—	(1,117)	—	—	—	(1,117)
Comprehensive loss . . . . .	—	—	—	—	—	—	(10,454)
Balances, September 30, 2010 . . . . .	\$45,445	\$172,268	\$ 1,594	\$(83,389)	\$(11,364)	\$ 5,285	\$129,839
Restricted stock vesting . . . . .	—	(294)	—	—	294	—	—
Compensation expense—restricted stock . . . . .	—	845	—	—	—	—	845
Issuance of warrants in connection with joint venture agreement . . . . .	—	259	—	—	—	—	259
Contributions from non-controlling interests . . . . .	—	—	—	—	—	3,181	3,181
Distributions to non-controlling interests . . . . .	—	—	—	—	—	(66)	(66)
Purchase of minority interest . . . . .	—	(429)	—	—	—	(284)	(713)
Shares repurchased (154,692 shares) . . . . .	(464)	(760)	—	—	—	—	(1,224)
Net income (loss) . . . . .	—	—	—	6,374	—	(1,450)	4,924
Other comprehensive loss . . . . .	—	—	(1,316)	—	—	—	(1,316)
Comprehensive income . . . . .	—	—	—	—	—	—	3,608
Balances, September 30, 2011 . . . . .	\$44,981	\$171,889	\$ 278	\$(77,015)	\$(11,070)	\$ 6,666	\$135,729
Restricted stock vesting . . . . .	—	(319)	—	—	319	—	—
Compensation expense—restricted stock . . . . .	—	758	—	—	—	—	758
Contributions from non-controlling interests . . . . .	—	—	—	—	—	11,243	11,243
Distributions to non-controlling interests . . . . .	—	—	—	—	—	(1,460)	(1,460)
Shares repurchased (139,507 shares) . . . . .	(419)	(461)	—	—	—	—	(880)
Retirement of treasury shares (1,380,978 shares) . . . . .	(4,142)	(6,609)	—	—	10,751	—	—
Net income (loss) . . . . .	—	—	—	4,430	—	(2,880)	1,550
Other comprehensive income . . . . .	—	—	78	—	—	—	78
Comprehensive income . . . . .	—	—	—	—	—	—	1,628
Balances, September 30, 2012 . . . . .	\$40,420	\$165,258	\$ 356	\$(72,585)	—	\$13,569	\$147,018

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Dollars in Thousands)

	Year Ended September 30,		
	2012	2011	2010
Cash flows from operating activities:			
Net income (loss)	\$ 1,550	\$ 4,924	\$ (9,337)
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:			
Provision for loan loss	—	—	3,165
Recovery of previously provided allowances	(156)	(3,595)	(365)
Impairment charges	—	—	3,370
Depreciation and amortization	2,753	963	927
Amortization of deferred fee income	(2,249)	(1,777)	(219)
Accretion of junior subordinated notes principal	—	277	581
Amortization of securities discount	—	(28)	(69)
Amortization of restricted stock	758	845	833
Gain on sale of real estate assets from discontinued operations	(792)	(1,346)	(1,937)
Gain on sale of available-for-sale securities	(605)	(1,319)	(1,586)
Loss on extinguishment of debt	—	2,138	—
Gain on sale of loan	(3,192)	—	—
Equity in (earnings) of unconsolidated joint ventures	(829)	(350)	(196)
Distribution of earnings of unconsolidated joint ventures	578	210	193
Decrease (increase) in straight line rent	33	(54)	(330)
Increases and decreases from changes in other assets and liabilities:			
Decrease (increase) in interest and dividends receivable	174	(410)	398
(Increase) decrease in prepaid expenses	(266)	240	115
(Increase) decrease in prepaid interest	(3,979)	211	—
Increase (decrease) in accounts payable and accrued liabilities	2,835	375	(960)
Increase in deferred costs	(308)	(142)	—
(Increase) decrease in security deposits and other receivable	(3,436)	153	(270)
Other	(353)	127	(27)
Net cash (used in) provided by operating activities	(7,484)	1,442	(5,714)
Cash flows from investing activities:			
Collections from real estate loans	124,758	66,072	22,475
Additions to real estate loans	(98,607)	(131,255)	(17,384)
Proceeds from the sale of loans and loan participations	15,657	46,147	16,815
Loan loss recoveries	156	1,039	227
Additions to real estate properties	(118,382)	(2,421)	—
Net costs capitalized to real estate owned	(14,500)	(3,605)	(4,120)
Net change in restricted cash—construction holdbacks	(55,252)	—	—
Collection of loan fees	2,186	2,465	419
Proceeds from sale of real estate owned	859	4,035	15,930
Proceeds from sale of available-for-sale securities	3,939	7,590	3,425
Purchase of available-for-sale securities	(1,634)	(55)	(4,194)
Proceeds from maturity of held-to-maturity security	—	—	1,000
Distributions of capital from unconsolidated joint ventures	4,481	1,010	1,701
Contributions to unconsolidated joint ventures	(275)	(4,045)	—
Purchase of interest from non-controlling partner	—	(713)	—
Net cash (used in) provided by investing activities	(136,614)	(13,736)	36,294
Cash flows from financing activities:			
Proceeds from borrowed funds	3,500	—	—
Repayment of borrowed funds	(3,500)	—	—
Repayment of junior subordinated notes	—	(5,000)	—
Proceeds from mortgages payable	162,508	2,130	3,202
Mortgage principal payments	(7,641)	(270)	(105)
Increase in deferred borrowing costs	(11,300)	(926)	(821)
Cash distribution—common shares	—	—	(1,334)
Expenses associated with stock issuance	—	—	(60)
Capital contributions from non-controlling interests	11,243	3,181	1,846
Capital distributions to non-controlling interests	(1,460)	(68)	(229)
Proceeds from sale of new market tax credits	25,848	—	—
Repurchase of shares of beneficial interest	(880)	(1,225)	(290)
Net cash provided by (used in) financing activities	178,318	(2,178)	2,209
Net increase (decrease) in cash and cash equivalents	34,220	(14,472)	32,789
Cash and cash equivalents at beginning of year	44,025	58,497	25,708
Cash and cash equivalents at end of year	\$ 78,245	\$ 44,025	\$ 58,497
Supplemental disclosures of cash flow information:			
Cash paid during the year for interest expense, including capitalized interest of \$1,373, \$775 and \$328 in 2012, 2011 and 2010	\$ 6,764	\$ 1,791	\$ 2,120
Cash paid during the year for income and excise taxes	\$ 220	\$ 8	\$ 17
Non cash investing and financing activities:			
Common stock dividend—portion paid in the Trust's common shares	—	—	\$ 11,916

See accompanying notes to consolidated financial statements.



**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements**  
**September 30, 2012**

**NOTE 1—ORGANIZATION, BACKGROUND AND SIGNIFICANT ACCOUNTING POLICIES**

**Organization and Background**

BRT Realty Trust (“BRT” or the “Trust”) is a business trust organized in Massachusetts. BRT originates and holds for investment senior mortgage loans secured by commercial and multi-family real estate property in the United States. Additionally, BRT participates as an equity investor in the purchase of multi-family properties.

The loans BRT originate generally have relatively high yields and are short-term or bridge loans with a duration ranging from six months to one year. BRT’s policy is to lend at a floating rate of interest based on a spread over the prime rate, with a stated minimum rate, though BRT originates fixed rate loans as circumstances dictate. BRT receives an origination fee for the loans it originates.

The multi-family properties are generally acquired with venture partners where the Trust contributes 80% to 90% of the equity in each transaction.

BRT conducts its operations to qualify as a real estate investment trust, or REIT, for Federal income tax purposes.

**Principles of Consolidation; Basis of Preparation**

Certain items on the consolidated financial statements for the preceding period have been reclassified to conform with the current year’s presentation.

The consolidated financial statements include the accounts and operations of BRT Realty Trust, its wholly owned subsidiaries, and its majority owned or controlled real estate entities and its interests in variable interest entities in which the Trust is determined to be the primary beneficiary. Material intercompany balances and transactions have been eliminated.

RBH-TRB Newark Holdings LLC, referred to herein as the Newark Joint Venture, was determined to be a Variable Interest Entity (“VIE”) because the total equity investment at risk is not sufficient to permit it to finance its activities without additional subordinated financial support by its equity holders. The Trust was determined to be the primary beneficiary of this joint venture because it has a controlling interest in that it has the power to direct the activities of the VIE that most significantly impact the entity’s economic performance and it has the obligation to absorb losses of the entity and the right to receive benefits from the entity that could potentially be significant to the VIE.

The Trust’s consolidated joint ventures that own multi-family properties were determined to be VIE’s because the voting rights of some equity investors are not proportional to their obligations to absorb the expected losses of the entity and their right to receive the expected residual returns. In addition, substantially all of the entity’s activities either involve or are conducted on behalf of the investor that has disproportionately few voting rights.

The Trust was determined to be the primary beneficiary of these joint ventures because it has a controlling interest in that it has the power to direct the activities of the VIE that most significantly impact the entity’s economic performance and it has the obligation to absorb losses of the entity and the right to receive benefits from the entity that could potentially be significant to the VIE.

With respect to its unconsolidated joint ventures, as (i) the Trust is primarily the managing member but does not exercise substantial operating control over these entities or the Trust is not the

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 1—ORGANIZATION, BACKGROUND AND SIGNIFICANT ACCOUNTING POLICIES**  
**(Continued)**

managing member and (ii) such entities are not VIE's. The Trust has determined that such joint ventures should be accounted for under the equity method of accounting for financial statement purposes.

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements. Actual results could differ from those estimates.

**Income Tax Status**

The Trust qualifies as a real estate investment trust under sections 856-860 of the Internal Revenue Code of 1986, as amended. The Trustees may, at their option, elect to operate the Trust as a business trust not qualifying as a real estate investment trust.

**Income Recognition**

Income and expenses are recorded on the accrual basis of accounting for financial reporting purposes. The Trust does not accrue interest on impaired loans where, in the judgment of management, collection of interest according to the contractual terms of the loan documents is considered doubtful. Among the factors the Trust considers in making an evaluation of the amount of interest that is collectable, are the financial condition of the borrower, the status of the underlying collateral and anticipated future events. The Trust accrues interest on performing impaired loans and records cash receipts as a reduction of interest receivable. For impaired non-accrual loans, interest is recognized on a cash basis. The Trust will resume the accrual of interest if it determines the collection of interest according to the contractual terms of the loan is probable.

Loan commitment, origination and extension fee income on loans held in our portfolio is deferred and recorded as loan fee income over the life of the commitment and loan. Commitment fees are generally non-refundable. When a commitment expires or the Trust no longer has any other obligation to perform, the remaining fee is recognized in income.

Rental revenue from commercial real estate properties includes the base rent that each tenant is required to pay in accordance with the terms of their respective leases reported on a straight-line basis over the initial term of the lease.

Rental revenue from residential properties is recorded when due from residents and is recognized monthly as it is earned. Rental payments are due in advance. Leases on residential properties are generally for terms that do not exceed one year.

The basis on which cost was determined in computing the realized gain or loss on sales of available-for-sale securities is specific cost.

**Allowance for Possible Losses**

A loan is deemed to be impaired when based on current information and events, it is probable, in the judgment of management, that the Trust will not be able to collect all amounts due according to

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 1—ORGANIZATION, BACKGROUND AND SIGNIFICANT ACCOUNTING POLICIES**  
**(Continued)**

the contractual terms of the loan documents. When making this evaluation various factors are considered, as appropriate, including, market evaluations of the underlying collateral, estimated operating cash flow from the property during the projected holding period, and estimated sales value which is computed by applying an estimated capitalization rate to the projected stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. If upon completion of the evaluation, the value of the collateral securing the loan is less than the recorded investment in the loan, an allowance is created with a corresponding charge to expense. The fair values related to the collateral securing impaired loans based on discounted cash flow models are considered to be level 3 valuations within the fair value hierarchy. When the Trust acquires title to the property, the loan loss allowance is adjusted by charging off all amounts related to the loan and recording the property at its fair value.

**Real Estate Properties, Real Estate Properties Held-For-Sale and Loan Held-For-Sale**

Real estate properties are shown net of accumulated depreciation and include real property acquired through acquisition and foreclosure and similar proceedings.

The Trust assesses the fair value of real estate acquired (including land, buildings and improvements, and identified intangibles such as above and below market leases and acquired in-place leases, if any) and acquired liabilities in accordance with Accounting Standards Codification (“ASC”) Topic 805, “Business Combinations,” and ASC Topic 350, “Intangibles—Goodwill and Other,” and allocates the acquisition price based on these assessments. Fixed-rate renewal options have been included in the calculation of the fair value of acquired leases where applicable. Depreciation is computed on a straight-line basis over estimated useful lives of the tangible asset. Intangible assets (and liabilities) are amortized over the remaining life of the related lease at the time of acquisition. There was no unamortized value of in-place leases at September 30, 2012. Expenditures for maintenance and repairs are charged to operations as incurred.

When real estate is acquired by foreclosure proceedings, it is recorded at the lower of the recorded investment of the loan or estimated fair value of the property at the time of foreclosure or delivery of a deed in lieu of foreclosure. The recorded investment is the face amount of the loan that has been decreased by any deferred fees, loan loss allowances and any valuation adjustments. Costs incurred in connection with the foreclosure of the properties collateralizing the real estate loans are expensed as incurred.

Real estate and real estate loans are classified as held for sale when management has determined that it has met the appropriate criteria in ASC Topic 360, “Property, Plant and Equipment”. Real estate properties which are held for sale are not depreciated and their operations are shown in discontinued operations. Real estate assets and loans that are expected to be disposed of are valued at the lower of their carrying amount or their fair value less costs to sell on an individual asset basis.

The Trust accounts for the sale of real estate when title passes to the buyer, sufficient equity payments have been received, there is no continuing involvement by the Trust and there is reasonable assurance that the remaining receivable, if any, will be collected.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 1—ORGANIZATION, BACKGROUND AND SIGNIFICANT ACCOUNTING POLICIES**  
**(Continued)**

**Real Estate Asset Impairments**

The Trust reviews each real estate asset owned, including investments in real estate ventures, to determine if there are indicators of impairment. If such indicators are present, the Trust determines whether the carrying amount of the asset can be recovered. Recognition of impairment is required if the undiscounted cash flows estimated to be generated by the assets are less than the assets' carrying amount. Measurement of impairment is based upon the estimated fair value of the asset. In evaluating a property for impairment, various factors are considered, including estimated current and expected operating cash flow from the property during the projected holding period, costs necessary to extend the life or improve the asset, expected capitalization rates, projected stabilized net operating income, selling costs, and the ability to hold and dispose of such real estate in the ordinary course of business. Valuation adjustments may be necessary in the event that effective interest rates, rent-up periods, future economic conditions, and other relevant factors vary significantly from those assumed in valuing the property. If future evaluations result in a diminution in the value of the property, the reduction will be recognized as an impairment charge. The fair values related to the impaired real estate are considered to be a level 3 valuation within the fair value hierarchy.

**Fixed Asset Capitalization**

A variety of costs may be incurred in the development of the Trust's properties. After a determination is made to capitalize a cost, it is allocated to the specific project that is benefited. The costs of land and building under development include specifically identifiable costs. The capitalized costs include pre-construction costs essential to the development of the property, development costs, construction costs, interest costs, real estate taxes, and other costs incurred during the period of development. We consider a construction project as substantially completed when it is available for occupancy, but no later than one year from cessation of major construction activity. We cease capitalization when the project is available for occupancy.

**Equity Based Compensation**

The Trust's compensation expense for restricted stock awards is amortized over the vesting period of such awards, based upon the estimated fair value of such restricted stock at the grant date. For accounting purposes, the restricted shares are not included in the outstanding shares shown on the consolidated balance sheets until they vest; however, they are included in the calculation of both basic and diluted earnings per share as they participate in the earnings of the Trust.

**Derivatives and Hedging Activities**

The Trust's objective in using derivative financial instruments is to manage interest rate risk. The Trust does not use derivatives for trading or speculative purposes. The Trust 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, whether the Trust has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows are considered cash flow hedges. For derivatives designated

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 1—ORGANIZATION, BACKGROUND AND SIGNIFICANT ACCOUNTING POLICIES**  
**(Continued)**

as cash flow hedges, the effective portion of changes in the fair value of the derivative is initially reported in accumulated other comprehensive income and subsequently reclassified to earnings in the period in which the hedge transaction affects earnings. The ineffective portion of changes in the fair value of the derivative is recognized directly in earnings. For derivatives not designated as cash flow hedges, changes in the fair value of the derivative are recognized directly in earnings in the period in which they occur.

**Per Share Data**

Basic earnings (loss) per share was determined by dividing net income (loss) applicable to common shareholders for the applicable year by the weighted average number of shares of beneficial interest outstanding during such year. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue shares of beneficial interest were exercised or converted into shares of beneficial interest or resulted in the issuance of shares of beneficial interest that share in the earnings of the Trust. Diluted earnings per share was determined by dividing net income applicable to common shareholders for the applicable year by the total of the weighted average number of shares of beneficial interest outstanding plus the dilutive effect of the Trust's unvested restricted stock and outstanding options and warrants using the treasury stock method.

**Cash Equivalents**

Cash equivalents consist of highly liquid investments, primarily direct United States treasury obligations with maturities of three months or less when purchased.

**Use of Estimates**

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

**Segment Reporting**

Management has determined that it operates in three reportable segments: a loan and investment segment, a multi-family real estate segment and another real estate segment. The loan and investment segment includes all activities related to the origination and servicing of the Trusts loan portfolio and other investments, the multi-family real estate segment includes the ownership and operation of its multi-family properties and the other real estate segment includes all activities related to the development, operation and disposition of the Trust's real estate assets. These three lines of business require different support infrastructures.

**New Accounting Pronouncements**

In May 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASC") No. 2011-04, "Fair Value Measurements (Topic 820): Amendments to Achieve

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 1—ORGANIZATION, BACKGROUND AND SIGNIFICANT ACCOUNTING POLICIES**  
**(Continued)**

Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS.” This update provides a uniform framework for fair value measurements and related disclosures between GAAP and International Financial Reporting Standards (“IFRS”) and requires additional disclosures, including: (i) quantitative information about unobservable inputs used, a description of the valuation processes used, and a qualitative discussion about the sensitivity of the measurements to changes in the unobservable inputs, for Level 3 fair value measurements; (ii) fair value of financial instruments not measured at fair value but for which disclosure of fair value is required, based on their levels in the fair value hierarchy; and (iii) transfers between Level 1 and Level 2 of the fair value hierarchy. This update was effective for the Trust’s interim and annual reporting beginning January 1 2012 and did not have a material impact on its financial condition, results of operations, or disclosures.

In June 2011, the FASB issued ASC No. 2011-05, “Comprehensive Income (Topic 220): Presentation of Comprehensive Income.” This update requires the presentation of net income and other comprehensive income in one continuous statement or in two separate but consecutive statements. This update was effective for the Trust’s interim and annual reporting beginning on January 1, 2012, and did not have a material impact on its financial condition, results of operations, or disclosures.

**NOTE 2—REAL ESTATE LOANS**

At September 30, 2012 and 2011, information as to real estate loans, all of which are earning interest, is summarized as follows (dollars in thousands):

	<u>September 30, 2012</u>		<u>September 30, 2011</u>	
	<u>Real Estate Loans</u>	<u>Percent</u>	<u>Real Estate Loans</u>	<u>Percent</u>
Multi-family residential . . . . .	\$35,096	95%	\$26,300	39.2%
Retail . . . . .	2,000	5%	4,117	6.1%
Office . . . . .	—	—	24,975	37.1%
Industrial . . . . .	—	—	11,874	17.6%
	<u>37,096</u>	<u>100%</u>	<u>67,266</u>	<u>100%</u>
Deferred fee income . . . . .	<u>(512)</u>		<u>(576)</u>	
Real estate loans, net . . . . .	<u>\$36,584</u>		<u>\$66,690</u>	

There were no non-earning loans and no allowance for possible losses at September 30, 2012 and 2011.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 2—REAL ESTATE LOANS (Continued)**

A summary of the changes in non-earning loans before allowance for possible losses of \$3,165,000 (as of September 30, 2010) for the years ended September 30, 2011 and 2010, is as follows (dollars in thousands):

	<u>2011</u>	<u>2010</u>
Beginning principal balance . . . . .	\$ 35,143	\$ 2,836
Additions . . . . .	—	34,563
Total additions . . . . .	—	34,563
Payoffs and paydowns . . . . .	—	(2,256)
Sale of loan . . . . .	(26,655)	—
Reclassified to real estate loan held for sale . . . . .	(8,488)	—
Total reductions . . . . .	<u>(35,143)</u>	<u>(2,256)</u>
Ending principal balance . . . . .	<u>\$ —</u>	<u>\$35,143</u>

At September 30, 2012, 2011 and 2010, no earning loans were deemed impaired and accordingly no loan loss allowances have been established against our earning portfolio. During the years ended September 30, 2012, 2011 and 2010, respectively, an average of \$0, \$7,758,000 and \$23,526,000, respectively, of real estate loans were deemed impaired, and no interest income was recognized in any period relating to these loans.

The Trust recognized cash basis interest of \$0, \$621,000 and \$571,000 on non-earning loans in the years ended September 30, 2012, 2011 and 2010, respectively.

Loans originated by the Trust generally provide for interest rates indexed to the prime rate with a stated minimum. However in 2011, the Trust also originated loans where the interest rate is fixed for the initial term, and converts to a floating rate loan if the extension option, if any, is exercised.

At September 30, 2012, the Trust's portfolio consists primarily of senior mortgage loans, secured by residential or commercial property, 39% of which are located in New York, 37% in Georgia, 17% in Michigan, and 7% in Florida. All real estate loans in the portfolio at September 30, 2012 mature in fiscal 2013.

If a loan is not repaid at maturity, the Trust may either extend the loan or commence foreclosure proceedings. The Trust analyzes each loan separately to determine the appropriate course of action. In analyzing each situation, management examines various aspects of the loan receivable, including the value of the collateral, the financial condition of the borrower, past payment history and plans of the owner of the property. Of the \$55,393,000 of real estate loans receivable scheduled to mature in fiscal 2012, \$2,556,000 were extended, and \$52,837,000 were paid off.

At September 30, 2012, no single borrower had loans outstanding in excess of 5% of the Trust's total assets.



**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 2—REAL ESTATE LOANS (Continued)**

At September 30, 2012, the three largest real estate loans had principal balances outstanding of approximately \$13,753,000, \$7,812,000 and \$6,295,000. These three loans accounted for 16.1%, 7.8% and 1.3% of the total interest and fees earned on our loan portfolio in the year ended September 30, 2012.

On December 5, 2012, the Trust originated a first mortgage loan in the gross amount of \$23,000,000. Gould Investors, a related party, purchased a \$7,500,000 pari passu participation in this loan.

**NOTE 3—REAL ESTATE LOAN HELD-FOR-SALE**

At September 30, 2011, the Trust had one loan which was classified as held-for-sale. The loan, which represented a pari passu interest in a loan with a principal balance of approximately \$17 million, had a carrying value of approximately \$8.5 million, and represented 11.2% of total real estate loans and 4.4% of total assets at September 30, 2011. In October 2011, pursuant to a Federal Bankruptcy Court approved joint plan of reorganization, the Trust and its loan participant sold the rights to the loan for net proceeds of approximately \$23.5 million. The Trust provided \$15 million of financing for the purchase which was repaid in full on December 5, 2011.

**NOTE 4—ALLOWANCE FOR POSSIBLE LOAN LOSSES**

There was no allowance for possible loan losses at September 30, 2012 or 2011. The following is an analysis of the allowance for possible loan losses for the years indicated (dollars in thousands):

	<b>Year Ended September 30,</b>	
	<b>2011</b>	<b>2010</b>
Balance at beginning of year . . . . .	\$ 3,165	\$ 1,618
Provision for loan loss . . . . .	—	3,165
Recovery of previously provided allowance . . . . .	(3,595)	(365)
Charge-offs . . . . .	(609)	(1,480)
Recoveries . . . . .	1,039	227
Balance at end of year . . . . .	<u>\$ —</u>	<u>\$ 3,165</u>

The allowance for possible losses at September 30, 2010 applies to two loans aggregating \$26,655,000.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 5—REAL ESTATE PROPERTIES**

A summary of activity in real estate properties for the year ended September 30, 2012 is as follows (dollars in thousands):

	September 30, 2011 Balance	Additions	Capitalized Costs and Improvements	Depreciation, Amortization and other Reductions	September 30, 2012 Balance
Shopping centers/retail(a) . . . . .	\$ 2,853	—	—	\$ (104)	\$ 2,749
Co-op/Condo Apts . . . . .	315	—	\$ 2	(67)	250
Commercial/mixed use(b) . . . . .	48,137	\$ 1,659	12,622	(610)	61,808
Multi-family(c) . . . . .		115,100	3,714	(1,276)	117,538
Land(d) . . . . .	7,972	—	—	—	7,972
Total real estate properties . . . . .	<u>\$59,277</u>	<u>\$116,759</u>	<u>\$16,338</u>	<u>\$(2,057)</u>	<u>\$190,317</u>

- (a) The Trust holds, with a minority partner, a leasehold interest in a portion of a retail shopping center located in Yonkers, New York. The leasehold interest is for approximately 28,500 square feet and, including all option periods, expires in 2045. The Trust has an 85% interest in this joint venture.
- (b) Represents the real estate assets of RBH-TRB Newark Holdings LLC, a consolidated VIE which owns operating and development properties in Newark, New Jersey. These properties contain a mix of office, retail space, charter schools and surface parking totaling approximately 690,000 square feet, which includes 252,000 square feet currently under construction. Certain of these assets are subject to mortgages in the aggregate principal balance of \$20,100,000 held by the Trust, which are eliminated in consolidation. Several of the assets are also encumbered by other mortgages which are discussed in Note 10—Debt Obligations—Mortgages Payable.

The Trust made capital contributions of \$4,157,000 and \$3,194,000 to this venture in the years ended September 30, 2012 and 2011, respectively, representing its proportionate share of capital required to fund the operations of the venture for its next fiscal year and to purchase additional land parcels. The Trust received a distribution of \$1,170,000 from the venture in the year ended September 30, 2012.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 5—REAL ESTATE PROPERTIES (Continued)**

- (c) Set forth below is certain information regarding the Trust's purchases, through joint ventures in each of which the Trust has an 80% equity interest, of the following multi-family properties (dollars in thousands):

<u>Location</u>	<u>Purchase Date</u>	<u>No. of Units</u>	<u>Contract Purchase Price</u>	<u>Acquisition Mortgage Debt</u>	<u>BRT Equity</u>	<u>Acquisition Costs</u>
Marietta, GA*	1/12/2012	207	\$ 8,100	\$ 6,500	\$ 2,560	—
Lawrenceville, GA*	2/23/2012	170	6,250	4,687	2,200	—
Palm Beach Gardens, FL	3/22/2012	542	59,400	45,200	14,480	\$1,561
Melbourne, FL	3/30/2012	208	9,250	7,680	3,120	231
Collierville, TN	6/20/2012	325	32,100	25,680	6,220	615
		<u>1,452</u>	<u>\$115,100</u>	<u>\$89,747</u>	<u>\$28,580</u>	<u>\$2,407</u>

\* As a result of amendments to the operating agreement of the joint venture which owns this property, this joint venture was treated as a consolidated subsidiary of the Trust effective August 1, 2012. The Trust was determined to be the primary beneficiary of this venture because it has a controlling interest in that it now has the power to direct the activities of the VIE that most significantly impact the entity's economic performance and it has the obligation to absorb losses of the entity and the right to receive benefits from the entity that could potentially be significant to the VIE.

- (d) Represents an 8.9 acre development parcel located in Daytona Beach, Florida which was acquired in foreclosure.

Future minimum rentals to be received by the Trust pursuant to non-cancellable operating leases with terms in excess of one year, from properties owned by the Trust or a consolidated subsidiary at September 30, 2012, are as follows (dollars in thousands):

<u>Year Ending September 30,</u>	<u>Amount</u>
2013	\$ 2,225
2014	2,227
2015	2,186
2016	2,057
2017	1,113
Thereafter	10,361
Total	<u>\$20,169</u>

Leases at the Trust's multi-family properties are generally for a term of one year or less and are not reflected in the above table.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 5—REAL ESTATE PROPERTIES (Continued)**

Subsequent to September 30, 2012, the Trust purchased through consolidated joint ventures in which the Trust has an 80% to 90% equity interest, the following multi-family properties:

<u>Location</u>	<u>Purchase Date</u>	<u>No of Units</u>	<u>Contract Purchase Price</u>	<u>Acquisition Mortgage Debt</u>	<u>BRT Equity</u>	<u>Estimated Acquisition Costs</u>
North Charleston, SC . . . . .	10/4/12	208	\$21,500	\$17,716	\$ 4,410	\$213
Cordova, TN . . . . .	11/15/12	464	25,500	19,250	6,220	388
Decatur, GA . . . . .	11/19/12	212	10,450	8,560	3,396	192
		<u>884</u>	<u>\$57,450</u>	<u>\$45,526</u>	<u>\$14,026</u>	<u>\$793</u>

**NOTE 6—IMPAIRMENT CHARGES**

The Trust reviews each real estate asset owned, including investments in unconsolidated joint ventures, for which indicators of impairment are present to determine whether the carrying amount of the asset can be recovered. If indicators of impairment are present, measurement is then based upon the fair value of the asset. Real estate assets held-for-sale are valued at the lower of cost or fair value, less costs to sell on an individual asset basis. The Trust incurred impairment charges of \$3,370,000 for the fiscal year ended September 30, 2010. There were no impairment charges taken in fiscal 2012 or 2011.

**NOTE 7—INVESTMENT IN UNCONSOLIDATED VENTURES**

The Trust is a partner in unconsolidated ventures which own and operate in the aggregate two properties. The Trust's share of earnings in its unconsolidated joint ventures, including a joint venture engaged in purchasing loans that ceased investment activities in November 2011, was \$829,000, \$350,000 and \$196,000 for the years ended September 30, 2012, 2011 and 2010, respectively. The 2012 earnings include a distribution of \$846,000 that was in excess of the book basis. Included in 2012 are the results of two previously unconsolidated joint ventures that, effective August 1, 2012, were treated as consolidated subsidiaries of the Trust due to amendments to the operating agreements of the ventures. The Trust's equity in its unconsolidated ventures totaled \$291,000 and \$4,247,000 at September 30, 2012 and September 30, 2011, respectively.

**NOTE 8—RESTRICTED CASH**

Restricted cash-construction holdbacks represents the remaining net proceeds from mortgage financings completed in February and September 2012. These funds are to be used for construction of five buildings at the Teachers Village site in Newark, NJ. Restricted cash was \$55,252,000 at September 30, 2012.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 9—AVAILABLE-FOR-SALE SECURITIES**

Information regarding our available-for-sale securities is set forth in the table below (dollars in thousands):

	September 30, 2012	September 30, 2011
Cost basis . . . . .	\$ 789	\$2,488
Unrealized gains . . . . .	499	406
Unrealized losses . . . . .	(39)	(128)
Market value . . . . .	<u>\$1,249</u>	<u>\$2,766</u>

Unrealized gains and losses are reflected as a component of accumulated other comprehensive income in the accompanying consolidated balance sheets.

The Trust's available-for-sale equity securities were determined to be Level 1 financial assets within the valuation hierarchy established by current accounting guidance, and the valuation is based on current market quotes received from financial sources that trade such securities. All of the available-for-sale securities in an unrealized loss position are not considered impaired on an other than temporary basis because the Trust expects the value of these securities to recover and plans on holding them until at least such recovery.

Information regarding the sales of available-for-sale debt and equity securities is presented in the table below (dollars in thousands):

	Year ended September 30,		
	2012	2011	2010
Proceeds from sale . . . . .	\$3,939	\$7,590	\$3,425
less cost basis . . . . .	3,334	6,271	1,839
Gain on sale . . . . .	<u>\$ 605</u>	<u>\$1,319</u>	<u>\$1,586</u>

For the year ended September 30, 2012, the gain or loss on sale was determined using specific identification. For the years ended September 30, 2011 and 2010 the calculation of gain or loss on sale was determined using an average cost.

**NOTE 10—DEBT OBLIGATIONS**

Debt obligations consist of the following (dollars in thousands):

	Year ended September 30,	
	2012	2011
Line of credit . . . . .	—	—
Junior subordinated notes . . . . .	\$ 37,400	\$37,400
Mortgages payable . . . . .	169,284	14,417
Total debt obligations . . . . .	<u>\$206,684</u>	<u>\$51,817</u>

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 10—DEBT OBLIGATIONS (Continued)**

Line of credit

On June 22, 2011, the Trust, through a wholly owned subsidiary, entered into a senior secured revolving credit facility with Capital One, National Association. The maximum amount that may be borrowed under the facility is the lesser of \$25 million and the borrowing base. The borrowing base is generally equal to 40% to 65% (depending, among other things, on the type of property secured by the eligible mortgage receivables pledged to the lender and the operating income of the related property) of eligible mortgage receivables. Interest accrues on the outstanding balance at the greater of (i) 4% plus LIBOR and (ii) 5.50%. The facility matures June 21, 2014 and, subject to the satisfaction of specified conditions, the outstanding balance may be converted at the Trust's option into an 18 month term loan. The Trust has guaranteed the payment and performance of its subsidiary's obligations under the facility.

On April 17, 2012, the facility was amended to allow the subsidiary to borrow for up to 90 days on an unsecured basis, a maximum of \$10,000,000.

The facility requires the Trust and the subsidiary to maintain or comply with, among other things, net worth and liquidity covenants, debt service and collateral coverage ratios and limits, with specified exceptions, the ability to incur debt.

For the years ended September 30, 2012 and 2011 interest expense, which includes fee amortization with respect to the facility, was \$182,000 and \$37,000, respectively.

At September 30, 2012 and 2011 there was no outstanding balance on the facility.

Junior Subordinated Notes

At September 30, 2012 and 2011 the Trust's junior subordinated notes had an outstanding principal balance of \$37,400,000. The interest rates on the outstanding notes is set forth in the table below:

<u>Interest period</u>	<u>Interest Rate</u>
March 15, 2011 through July 31, 2012 .....	3.00%
August 1, 2012 through April 29, 2016 .....	4.90%
April 30, 2016 through April 30, 2036 .....	LIBOR + 2.00%

On March 15, 2011, the Trust restructured its existing junior subordinated notes resulting in a repayment of \$5,000,000 and a reduction in the interest rate for the remaining term. The Trust accounted for the restructuring of this debt as an extinguishment of debt. For the year ended September 30, 2011, the Trust recognized a loss on the extinguishment of the debt of \$2,138,000, which represented the unamortized principal of \$1,308,000 and unamortized costs of \$830,000. The Trust also incurred third party costs of \$512,000 which were deferred and will be amortized over the remaining life of the notes.

Interest expense, which includes amortization of deferred costs relating to the junior subordinated notes for the years ended September 30, 2012, 2011 and 2010, was \$1,260,000, \$1,590,000 and \$2,098,000, respectively.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 10—DEBT OBLIGATIONS (Continued)**

*Mortgages Payable*

The Trust had the following obligations outstanding as of the dates indicated all of which are secured by the underlying real property (dollars in thousands):

Property	September 30,		Rate	Maturity
	2012	2011		
Yonkers, NY(1) . . . . .	\$ 1,954	\$ 2,041	5.25%	April 2022
Palm Beach Gardens, FL . . . . .	45,200	—	3.78%	April 2019
Melbourne, FL . . . . .	7,680	—	3.98%	April 2019
Marietta, GA . . . . .	6,462	—	6.50%	February 2015
Lawrenceville, GA . . . . .	4,687	—	4.49%	March 2022
Collierville, TN . . . . .	25,680	—	3.91%	July 2022
65 Market St—Newark, NJ . . . . .	900	900	7.00%	January 2015
69 Market St—Newark, NJ . . . . .	—	1,200	7.00%	N/A
909 Broad St—Newark, NJ . . . . .	6,132	6,314	6.00%	August 2030
Teachers Village—Newark, NJ(2) . . . . .	2,738	3,962	17%	March 2013
Teachers Village—Newark, NJ(3) . . . . .	22,748	—	5.50%	December 2030
Teachers Village—Newark, NJ . . . . .	4,250	—	3.46%	February 2032
Teachers Village—Newark, NJ . . . . .	988	—	2.00%	February 2022
Teachers Village—Newark, NJ . . . . .	1,380	—	2.50%	February 2014
Teachers Village—Newark, NJ . . . . .	1,832	—	(4)	February 2034
Teachers Village—Newark, NJ . . . . .	15,700	—	Libor + 3.00%	August 2019
Teachers Village—Newark, NJ . . . . .	5,250	—	3.28%	September 2042
Teachers Village—Newark, NJ . . . . .	13,491	—	8.65%	December 2023
Teachers Village—Newark, NJ . . . . .	2,212	—	(5)	August 2034
	<u>\$169,284</u>	<u>\$14,417</u>		

- (1) On March 29, 2012, the consolidated joint venture which owns a property in Yonkers, NY, refinanced an existing mortgage in the amount of \$ 1,990,000 with the current lender. The new mortgage bears interest at one-month LIBOR plus 3.15%. In connection with the transaction, the venture entered into an interest rate swap agreement which effectively fixes the interest rate at 5.25%.
- (2) As of September 30, 2012 and 2011, respectively, the Trust had guaranteed \$685,000 and \$991,000 of this mortgage obligation.
- (3) TD Bank has the right, in 2018, to require subsidiaries of the Newark Joint Venture to repurchase such debt. If such right is exercised, such subsidiaries will be required to refinance such debt. The stated interest rate is 5.5% per year; however, the United States Treasury Department is reimbursing the interest at the rate of 4.99% per year under the Qualified School Construction Bond program and accordingly, the effective rate of interest thereon until 2018 is 0.51% per year.



**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 10—DEBT OBLIGATIONS (Continued)**

- (4) The debt is to be serviced in full by annual payment-in-lieu of taxes (“PILOT”) of \$256,000 in 2013 increasing to approximately \$281,000 at maturity. This obligation is not secured by real property.
- (5) The debt is to be serviced in full by PILOT payments of \$311,000 in 2013 increasing to approximately \$344,000 at maturity.

Scheduled principal repayments on these debt obligations are as follows (dollars in thousands):

<u>Years Ending September 30,</u>	<u>Amount</u>
2013 .....	\$ 4,287
2014 .....	1,656
2015 .....	10,389
2016 .....	3,651
2017 .....	3,663
Thereafter .....	145,638
	<u>\$169,284</u>

**NOTE 11—DEFERRED INCOME (NEW MARKETS TAX CREDIT TRANSACTION “NMTC”)**

On September 11, 2012 and February 3, 2012 special purpose subsidiaries of the Newark Joint Venture entered into transactions with affiliates of Goldman Sachs (“Goldman”) related to the Teacher’s Village project and received proceeds related to NMTC’s the project qualified for. The NMTC program was enacted by Congress to serve low-income and distressed communities by providing investors with tax credit incentives to make capital investments in those communities. The program permits taxpayers to claim credits against their Federal income tax for up to 39% of qualified investments.

Goldman contributed \$16,400,000 and \$11,200,000 to the projects through special-purpose entities created to effect the financing transaction and is entitled to receive tax credits against its qualified investment in the project over the next seven years. At the end of the seven years, the Newark Joint Venture subsidiaries have the option to acquire the special purpose entities for a nominal fee and it is anticipated that they will exercise this option.

Included in deferred income on the Trust’s consolidated balance sheet at September 30, 2012 is \$25,848,000 of the Goldman contribution, which is net of fees. This amount will be recognized into income when the obligation to comply with the requirements of the NMTC program as set forth in the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), is eliminated. Risks of non-compliance include recapture (*i.e.* reversal of the benefit of the tax credit and the related indemnity obligation of the Newark Joint Venture). The tax credits are subject to recapture for a seven year period as provided in the Code.

Costs incurred in structuring these transactions are deferred and will be recognized as an expense based on the maturities of the various mortgage financings related to the NMTC transaction. At September 30, 2012, these costs totaled \$10.2 million and are included in deferred costs on the consolidated balance sheet.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 11—DEFERRED INCOME (NEW MARKETS TAX CREDIT TRANSACTION “NMTC”)**  
**(Continued)**

The Trust determined that these special purpose entities are VIE's. The VIE's ongoing activities, which include collecting and remitting interest and fees and NMTC compliance, were all considered in the design of the special purpose entities and are not anticipated to affect the economic performance during the life of the VIE's.

Management considered the obligation to deliver tax benefits and provide guarantees to Goldman and the Trust's obligations to absorb the losses of the VIE. Management also considered Goldman's lack of a material interest in the underlying economics of the project. Management concluded that the Trust is the primary beneficiary and has therefore consolidated the VIE's.

**NOTE 12—INCOME TAXES**

The Trust elected to be taxed as a real estate investment trust (“REIT”), as defined under the Internal Revenue Code of 1986, as amended. As a REIT, the Trust will generally not be subject to Federal income taxes at the corporate level if it distributes 100% of its REIT taxable income, as defined, to its shareholders. To maintain its REIT status, the Trust must distribute at least 90% of its taxable income; however if it does not distribute 100% of its taxable income, it will be taxed on undistributed income. There are a number of organizational and operational requirements the Trust must meet to remain a REIT. If the Trust fails to qualify as a REIT in any taxable year, its taxable income will be subject to Federal income tax at regular corporate tax rates and it may not be able to qualify as a REIT for four subsequent tax years. Even if it is qualified as a REIT, the Trust is subject to certain state and local income taxes and to Federal income and excise taxes on the undistributed taxable income. For income tax purposes the Trust reports on a calendar year.

During the years ended September 30, 2012, 2011 and 2010, the Trust recorded \$16,000, \$20,000 and \$6,000, respectively, of state franchise tax expense, net of refunds, relating to the 2012, 2011 and 2010 tax years.

In 2012, the Trust also paid \$205,000 in alternative minimum tax which resulted from the use of net operating loss carryforwards in tax year 2011.

Earnings and profits, which determine the taxability of dividends to shareholders, differs from net income reported for financial statement purposes due to various items including timing differences related to loan loss provision, impairment charges, depreciation methods and carrying values.

The financial statement income is expected to be approximately \$3 million (lower) than the income for tax purposes for calendar 2012, primarily due to the acquisition costs recorded for book purposes in the current calendar year that is not expensed for tax purposes in the current tax year.

At December 31, 2011, the Trust had a tax loss carry forward of \$60,468,000. These net operating losses can be used in future years to reduce taxable income when it is generated. These tax loss carry forwards begin to expire in 2028.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 13—SHAREHOLDERS' EQUITY**

***Distributions***

During the year ended September 30, 2012, the Trust did not declare or pay any dividends.

***Restricted Shares***

The Trust's 2012 Incentive Plan, approved by its shareholders in January 2012, permits the Trust to grant stock options, restricted stock, restricted stock units, performance shares awards and any one or more of the foregoing, up to a maximum of 600,000 shares. No awards have been granted under this plan. An aggregate of 580,180 shares of restricted stock have been granted pursuant to the Trust's 2003 and 2009 equity incentive plans (collectively, the "Prior Plans") and have not yet vested. No additional awards may be granted under the Prior Plans. The restricted shares that have been granted under the Prior Plans vest five years from the date of grant and under specified circumstances, including a change in control, may vest earlier. For accounting purposes, the restricted shares are not included in the outstanding shares shown on the consolidated balance sheet until they vest, but are included in the earnings per share computation.

During the fiscal years ended September 30, 2012, 2011 and 2010, the Trust issued 136,650, 138,150 and 125,150 restricted shares, respectively, under the Trust's 2009 equity incentive plan. The estimated fair value of restricted stock at the date of grant is being amortized ratably into expense over the applicable vesting period. For the years ended September 30, 2012, 2011 and 2010, the Trust recognized \$758,000, \$845,000, and \$833,000 of compensation expense, respectively. At September 30, 2012, \$1,870,000 has been deferred as unearned compensation and will be charged to expense over the remaining vesting periods. The weighted average vesting period is 2.6 years.

Changes in number of shares outstanding under the Prior Plans are shown below:

	Years Ended September 30,		
	2012	2011	2010
Outstanding at beginning of the year . . . . .	491,705	391,580	299,280
Issued . . . . .	136,650	138,150	125,150
Cancelled . . . . .	(7,250)	(175)	(2,050)
Vested . . . . .	(40,925)	(37,850)	(30,800)
Outstanding at the end of the year . . . . .	<u>580,180</u>	<u>491,705</u>	<u>391,580</u>

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 13—SHAREHOLDERS' EQUITY (Continued)**

***Earnings (Loss) Per Share***

The following table sets forth the computation of basic and diluted earnings (loss) per share (dollars in thousands):

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Numerator for basic and diluted earnings (loss) per share attributable to common shareholders:			
Net income (loss) attributable to common shareholders . . . .	\$ 4,430	\$ 6,374	\$ (8,015)
Denominator:			
Denominator for basic earnings (loss) per share—weighted average shares(1) . . . . .	14,035,972	14,041,569	13,871,668
Effect of dilutive securities:			
Employee stock options . . . . .	—	—	298
Denominator for diluted earnings (loss) per share—adjusted weighted average shares and assumed conversions(1) . . . . .	<u>14,035,972</u>	<u>14,041,569</u>	<u>13,871,668</u>
Basic earnings (loss) per share . . . . .	\$ .32	\$ .45	\$ (.58)
Diluted earnings (loss) per share . . . . .	\$ .32	\$ .45	\$ (.58)

(1) Outstanding shares for 2010 are the same for basic and diluted as the effect of dilutive shares in the computation of earnings per share would have been antidilutive.

***Share Buyback and Treasury Shares***

In September 2011, the Board of Trustees approved a share repurchase program pursuant to which the Trust may spend up to \$2,000,000 to repurchase its shares of beneficial interest. Shares repurchased under this program will be retired. As of September 30, 2012, the Trust had repurchased 146,812 shares at an average cost of \$6.31 per share. During the fiscal years ended September 30, 2012, 2011 and 2010 the Trust repurchased 139,507, 154,692 and 52,403 shares, respectively, at an average cost of \$6.30, \$6.35 and \$5.55 per share, respectively.

During the years ended September 30, 2012, 2011 and 2010, 40,925, 37,850 and 30,800 treasury shares, respectively, were issued in connection with the vesting of restricted stock under the Trust's incentive plans. In fiscal 2012, the Trust cancelled, and restored to the status of authorized and unissued shares, its remaining 1,380,978 treasury shares.

***Tender Offer***

On October 27, 2010, 147,388 shares of beneficial interest were tendered pursuant to a previously announced tender offer. The total purchase price of these shares was \$6.30 per share, aggregating \$929,000.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 14—ADVISOR'S COMPENSATION AND RELATED PARTY TRANSACTIONS**

Certain of the Trust's officers and trustees are also officers and directors of REIT Management Corp. ("REIT Management") to which the Trust, pursuant to an amended and restated advisory agreement, paid advisory fees for administrative services and investment advice. Fredric H. Gould, chairman of the board, is the sole shareholder of REIT Management. Advisory fees were charged to operations at a rate of 0.6% on invested assets which consist primarily of real estate loans, real estate assets and investment securities.

Effective January 1, 2012, the parties entered into an amendment to the amended and restated advisory agreement pursuant to which (i) the stated expiration date was extended to June 30, 2014, (ii) the minimum and maximum fees payable in a twelve month period to REIT Management were set at \$750,000 and \$4 million, respectively, subject to adjustment for any period of less than twelve months and (iii) the Trust is to pay REIT Management the following annual fees which are to be paid on a quarterly basis:

- 1.0% of the average principal amount of earning loans;
- .35% of the average amount of the fair market value of non-earning loans;
- .45% of the average book value of all real estate properties, excluding depreciation;
- .25% of the average amount of the fair market value of marketable securities;
- .15% of the average amount of cash and cash equivalents; and

To the extent loans or real estate are held by joint ventures or other arrangements in which the Trust has an interest, fees vary based on, among other things, the nature of the asset (*i.e.* real estate or loans), the nature of the Trust's involvement (*i.e.* active or passive) and the extent of the Trust's equity interests in such arrangements.

Advisory fees amounted to \$1,104,000, \$916,000 and \$785,000 for the years ended September 30, 2012, 2011 and 2010, respectively.

The Trust's borrowers also paid fees directly to REIT Management based on loan originations, which generally are one-time fees payable upon funding of a loan, in the amount of ½ of 1% of the total loan. These fees were \$145,000, \$750,000 and \$89,000 for the years ended September 30, 2012, 2011 and 2010, respectively. Effective January 1, 2012, all loan origination fees paid by borrowers were paid directly to the Trust.

Management of certain properties owned by the Trust is provided by Majestic Property Management Corp., a corporation in which the chairman of the board is the sole shareholder, under renewable year-to-year agreements. Certain of the Trust's officers and Trustees are also officers and directors of Majestic Property Management Corp. Majestic Property Management Corp. provides real property management, real estate brokerage and construction supervision services to the Trust and these certain joint venture properties. For the years ended September 30, 2012, 2011 and 2010, fees for these services aggregated \$74,000, \$83,000 and \$66,000, respectively.

The chairman of the board of the Trust is also chairman of the board of One Liberty Properties, Inc., a related party, and certain of the Trust's officers and Trustees are also officers and directors of One Liberty Properties, Inc. In addition, the Chairman of the Board is an executive officer

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 14—ADVISOR’S COMPENSATION AND RELATED PARTY TRANSACTIONS (Continued)**

and sole shareholder of Georgetown Partners, Inc., the managing general partner of Gould Investors L.P. and the sole member of Gould General LLC, a general partner of Gould Investors L.P., a related party. Certain of the Trust’s officers and Trustees are also officers and directors of Georgetown Partners, Inc. The allocation of expenses for the shared facilities, personnel and other resources is computed in accordance with a shared services agreement by and among the Trust and the affiliated entities and is included in general and administrative expense on the statement of operations. During the years ended September 30, 2012, 2011 and 2010, allocated general and administrative expenses reimbursed by the Trust to Gould Investors L.P. pursuant to the shared services agreement, aggregated \$705,000, \$847,000 and \$822,000, respectively. At September 30, 2012, \$44,000 remains unpaid and is included in accounts payable and accrued liabilities on the consolidated balance sheet.

**NOTE 15—SEGMENT REPORTING**

Management has determined that the Trust now operates in three reportable segments, a loan and investment segment which include the origination and servicing of its loan portfolio and its investments, a multi-family real estate segment which includes the ownership and operation of its multi-family properties and another real estate segment which includes the operation and disposition of its other real estate assets and in particular the Newark Joint Venture. In prior years the Trust operated in two reportable segments.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 15—SEGMENT REPORTING (Continued)**

The following table summarizes the Trust's segment reporting for the year ended September 30, 2012 (dollars in thousands):

	<u>Loan and Investment</u>	<u>Multi-Family Real Estate</u>	<u>Other Real Estate</u>	<u>Total</u>
Revenues:				
Interest and loan fee income . . . . .	\$ 9,530	—	—	\$ 9,530
Rental and other revenues from real estate properties . .	—	\$ 5,464	\$ 3,211	8,675
Other income . . . . .	496	—	878	1,374
Total revenues . . . . .	10,026	5,464	4,089	19,579
Expenses:				
Interest expense . . . . .	646	1,758	2,325	4,729
Advisor's fee, related party . . . . .	692	230	182	1,104
Operating expenses relating to real estate properties . .	—	2,644	3,398	6,042
General and administrative and other expenses . . . . .	2,893	1,719	2,549	7,161
Property acquisition costs . . . . .	—	2,407	—	2,407
Depreciation and amortization . . . . .	—	1,276	728	2,004
Total expenses . . . . .	4,231	10,034	9,182	23,447
Total revenues less total expenses . . . . .	5,795	(4,570)	(5,093)	(3,868)
Equity in (loss) earnings of unconsolidated ventures . .	(136)	(139)	1,104	829
Gain on sale of available-for-sale securities . . . . .	605	—	—	605
Gain on sale of loan . . . . .	3,192	—	—	3,192
Income (loss) from continuing operations . . . . .	9,456	(4,709)	(3,989)	758
Discontinued operations:				
Gain on sale of real estate assets . . . . .	—	—	792	792
Income from discontinued operations . . . . .	—	—	792	792
Net income (loss) . . . . .	9,456	(4,709)	(3,197)	1,550
Plus: net loss attributable to non-controlling interests . .	—	461	2,419	2,880
Net income (loss) attributable to common shareholders .	\$ 9,456	\$ (4,248)	\$ (778)	\$ 4,430
Segment assets at September 30, 2012 . . . . .	\$113,383	\$121,153	\$151,420	\$385,956



**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 15—SEGMENT REPORTING (Continued)**

The following table summarizes the Trust's segment reporting for the year ended September 30, 2011 (dollars in thousands):

	<u>Loan and Investment</u>	<u>Real Estate</u>	<u>Total</u>
Revenues:			
Interest and loan fee income . . . . .	\$ 10,328	—	\$ 10,328
Rental and other revenues from real estate properties . . . . .	—	\$ 3,456	3,456
Other income . . . . .	4,097	—	4,097
Total revenues . . . . .	14,425	3,456	17,881
Expenses:			
Interest expense . . . . .	1,082	1,030	2,112
Advisor's fee, related party . . . . .	608	308	916
Operating expenses related to real estate properties . . . . .	—	3,340	3,340
General and administrative and other expenses . . . . .	4,665	2,063	6,728
Depreciation and amortization . . . . .	—	738	738
Total expenses . . . . .	6,355	7,479	13,834
Total revenues less total expenses . . . . .	8,070	(4,023)	4,047
Equity in earnings of unconsolidated ventures . . . . .	99	251	350
Gain on sale of available-for-sale securities . . . . .	1,319	—	1,319
Loss on extinguishment of debt . . . . .	(1,420)	(718)	(2,138)
Income (loss) from continuing operations . . . . .	8,068	(4,490)	3,578
Discontinued operations:			
Gain on sale of real estate assets . . . . .	—	1,346	1,346
Income from discontinued operations . . . . .	—	1,346	1,346
Net income (loss) . . . . .	8,068	(3,144)	4,924
Plus: net loss attributable to non-controlling interests . . . . .	—	1,450	1,450
Net income (loss) attributable to common shareholders . . . . .	\$ 8,068	\$ (1,694)	\$ 6,374
Segment assets at September 30, 2011 . . . . .	<u>\$126,916</u>	<u>\$64,096</u>	<u>\$191,012</u>

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 15—SEGMENT REPORTING (Continued)**

The following table summarizes the Trust's segment reporting for the year ended September 30, 2010 (dollars in thousands):

	<u>Loan and Investment</u>	<u>Real Estate</u>	<u>Total</u>
Revenues:			
Interest and loan fee income . . . . .	\$ 3,877	—	\$ 3,877
Rental and other revenues from real estate properties . . . . .	—	\$ 3,422	3,422
Other income . . . . .	836	—	836
Total revenue . . . . .	4,713	3,422	8,135
Expenses:			
Interest expense . . . . .	1,181	1,403	2,584
Advisor's fee, related party . . . . .	523	262	785
Operating expenses related to real estate properties . . . . .	—	3,216	3,216
Provision for loan loss . . . . .	3,165	—	3,165
Impairment charges . . . . .	—	2,625	2,625
General and administrative and other expenses . . . . .	4,710	2,026	6,736
Depreciation and amortization . . . . .	—	733	733
Total expenses . . . . .	9,579	10,265	19,844
Total revenues less total expenses . . . . .	(4,866)	(6,843)	(11,709)
Equity in earnings of unconsolidated ventures . . . . .	28	168	196
Gain on sale of available-for-sale securities . . . . .	1,586	—	1,586
Loss from continuing operations . . . . .	(3,252)	(6,675)	(9,927)
Discontinued operations:			
Loss from operations . . . . .	—	(602)	(602)
Impairment charges . . . . .	—	(745)	(745)
Gain on sale of real estate assets . . . . .	—	1,937	1,937
Income from discontinued operations . . . . .	—	590	590
Net loss . . . . .	(3,252)	(6,085)	(9,337)
Plus: net loss attributable to non-controlling interests . . . . .	—	1,322	1,322
Net loss attributable to common shareholders . . . . .	\$ (3,252)	\$ (4,763)	\$ (8,015)
Segment assets at September 30, 2010 . . . . .	<u>\$124,928</u>	<u>\$61,338</u>	<u>\$186,266</u>

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 16—FAIR VALUE OF FINANCIAL INSTRUMENTS**

*Financial Instruments Not Measured at Fair Value*

The following methods and assumptions were used to estimate the fair value of each class of financial instruments that are not reported at fair value on the consolidated balance sheets:

*Cash and cash equivalents, restricted cash—construction holdbacks, accounts receivable (included in other assets), accounts payable and accrued liabilities:* The carrying amounts reported in the balance sheets for these instruments approximate their fair value due to the short term nature of these accounts.

*Real estate loans:* The earning mortgage loans of the Trust, which have variable rate provisions based upon a spread over prime rate, have an estimated fair value equal to their carrying value, assuming market rates of interest between 10% and 12%. The earning mortgage loans of the Trust, which have fixed rate provisions, have an estimated fair value approximately \$5,000 greater than their carrying value assuming a market rate of interest of 11% which reflects institutional lender yield requirement.

*Junior subordinated notes:* At September 30, 2012, the estimated fair value of the Trust's junior subordinated notes is less than their carrying value by approximately \$387,000, based on a market interest rate of 2.92%.

*Mortgages payable:* At September 30, 2012, the estimated fair value of the Trust's mortgages payable is greater than their carrying value by approximately \$4,393,000 assuming market interest rates between 3.28% and 17%. Market interest rates were determined using current financing transactions provided by third party institutions.

Considerable judgment is necessary to interpret market data and develop estimated fair value. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value assumptions.

*Financial Instruments Measured at Fair Value*

The Trust's fair value measurements are based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, there is a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity and the reporting entity's own assumptions about market participant assumptions. Level 1 assets/liabilities are valued based on quoted prices for identical instruments in active markets, Level 2 assets/liabilities are valued based on quoted prices in active markets for similar instruments, on quoted prices in less active or inactive markets, or on other "observable" market inputs and Level 3 assets/liabilities are valued based significantly on "unobservable" market inputs. The Trust does not currently own any financial

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 16—FAIR VALUE OF FINANCIAL INSTRUMENTS (Continued)**

instruments that are classified as Level 3. Set forth below is information regarding the Trust's financial assets and liabilities measured at fair value as of September 30, 2012 (dollars in thousands):

	Carrying and Fair Value	Fair Value Measurements Using Fair Value Hierarchy	
		Level 1	Level 2
Financial assets:			
Available-for-sale equity securities: . . . . .	\$1,249	\$1,249	
Interest rate cap . . . . .	\$ 10		\$ 10
Financial Liabilities:			
Interest rate swap . . . . .	\$ 104		\$104

*Available-for-sale securities:* Fair values are approximated based on current market quotes from financial sources that track such securities. All of the available-for-sale securities in an unrealized loss position are equity securities and amounts are not considered to be impaired on an other than temporary basis because the Trust expects the value of these securities to recover and plans on holding them until at least such recovery occurs.

*Derivative financial instruments:* Fair values are approximated using widely accepted valuation techniques including discounted cash flow analysis on the expected cash flows of the derivatives. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves, foreign exchange rates, and implied volatilities. At September 30, 2012, these derivatives are included in other assets and accounts payable and accrued liabilities on the consolidated balance sheet.

Although the Trust has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with it utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by itself and its counterparty. As of September 30, 2012, the Trust assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and determined that the credit valuation adjustments are not significant to the overall valuation of its derivatives. As a result, the Trust determined that its derivative valuation is classified in Level 2 of the fair value hierarchy.

**NOTE 17—COMMITMENT**

The Trust maintains a non-contributory defined contribution pension plan covering eligible employees and officers. Contributions by the Trust are made through a money purchase plan, based upon a percent of qualified employees' total salary as defined therein. Pension expense approximated \$338,000, \$315,000 and \$287,000 during the years ended September 30, 2012, 2011 and 2010, respectively. At September 30, 2012, \$62,000 remains unpaid and is included in accounts payable and accrued liabilities on the consolidated balance sheet.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 18—DERIVATIVE FINANCIAL INSTRUMENTS**

*Cash Flow Hedges of Interest Rate Risk*

The Trust's objectives in using interest rate derivatives are to add stability to interest expense and to manage its exposure to interest rate movements. To accomplish this objective, the Trust primarily uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable amounts from a counterparty in exchange for the Trust making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount.

The effective portion of changes in the fair value of derivatives, designated and that qualify as cash flow hedges, is recorded in accumulated other comprehensive income on our consolidated balance sheet and is subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. In March 2012, the Trust entered into an interest rate swap agreement used to hedge the variable cash flows associated with existing variable-rate debt.

Amounts reported in accumulated other comprehensive income related to derivatives will be reclassified to interest expense as interest payments are made on the Trust's variable-rate debt.

As of September 30, 2012, the Trust had the following outstanding interest rate derivative that was designated as a cash flow hedge of interest rate risk (dollars in thousands):

<u>Interest Rate Derivative</u>	<u>Notional</u>	<u>Rate</u>	<u>Maturity</u>
Interest Rate Swap . . . . .	\$1,954	5.25%	April 1, 2022

The table below presents the fair value of the Trust's derivative financial instrument as well as its classification on the consolidated balance sheets as of the dates indicated (amounts in thousands):

<b>Derivatives as of:</b>			
<b>September 30, 2012</b>		<b>September 30, 2011</b>	
<u>Balance Sheet Location</u>	<u>Fair Value</u>	<u>Balance Sheet Location</u>	<u>Fair Value</u>
Other Assets	\$ 10		\$—
Accounts payable and accrued liabilities	\$104	Accounts payable and accrued liabilities	\$—

The following table presents the effect of the Trust's derivative financial instrument on the consolidated statements of comprehensive income (loss) for the year ended September 30, 2012 (dollars in thousands):

	<u>Year ended September 30, 2012</u>
Amount of loss recognized on derivative in Other Comprehensive Income . . . . .	\$123
Amount of loss reclassified from Accumulated Other Comprehensive Income into Interest Expense . . . . .	\$ 19

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 18—DERIVATIVE FINANCIAL INSTRUMENTS (Continued)**

No gain or loss was recognized related to hedge ineffectiveness or to amounts excluded from effectiveness testing on the Trust's cash flow hedges during the years ended September 30, 2012, 2011 or 2010. During the twelve months ending September 30, 2013, the Trust estimates an additional \$36,000 will be reclassified from other comprehensive income as an increase to interest expense.

**Credit-risk-related Contingent Features**

The agreement between the Trust and its derivatives counterparty provides that if the Trust defaults on any of its indebtedness, including default where repayment of the indebtedness has not been accelerated by the lender, the Trust could be declared in default on its derivative obligation.

As of September 30, 2012, the fair value of the derivative in a net liability position, which includes accrued interest, but excludes any adjustment for nonperformance risk related to this agreement, was \$110,000. As of September 30, 2012, the Trust has not posted any collateral related to this agreement. If the Trust had been in breach of this agreement at September 30, 2012, it could have been required to settle its obligations thereunder at its termination value of \$110,000.

**NOTE 19—QUARTERLY FINANCIAL DATA (Unaudited)**

	2012				
	1 <sup>st</sup> Quarter Oct. - Dec	2 <sup>nd</sup> Quarter Jan. - March	3 <sup>rd</sup> Quarter April - June	4 <sup>th</sup> Quarter July - Sept.	Total For Year
Revenues . . . . .	\$3,154	\$ 3,687	\$ 5,555	\$7,183	\$19,579
(Loss) gain on sale of available- for-sale securities . . . . .	(18)	342	96	185	605
Gain on sale of loan . . . . .	3,192	—	—	—	3,192
Income (loss) from continuing operations . .	2,971	(2,097)	(1,093)	977	758
Discontinued operations . . . . .	490	—	302	—	792
Net income (loss) . . . . .	3,461	(2,097)	(791)	977	1,550
Plus: net loss attributable to non-controlling interests . . . . .	413	1,069	649	749	2,880
Net income (loss) attributable to common shareholders . . . . .	3,874	(1,028)	(142)	1,726	4,430
Income (loss) per beneficial share					
Continuing operations . . . . .	\$ .24	\$ (.07)	\$ (.03)	\$ .12	\$ .26
Discontinued operations . . . . .	.04	—	.02	—	.06
Basic earnings per share . . . . .	<u>\$ .28</u>	<u>\$ (.07)</u>	<u>\$ (.01)</u>	<u>\$ .12</u>	<u>\$ .32</u>

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**  
**September 30, 2012**

**NOTE 19—QUARTERLY FINANCIAL DATA (Unaudited) (Continued)**

	<b>2011</b>				
	<b>1<sup>st</sup> Quarter Oct. - Dec</b>	<b>2<sup>nd</sup> Quarter Jan. - March</b>	<b>3<sup>rd</sup> Quarter April - June</b>	<b>4<sup>th</sup> Quarter July - Sept.</b>	<b>Total For Year</b>
Revenues . . . . .	\$2,452	\$ 5,697	\$5,344	\$4,388	\$17,881
Gain on sale of available-for-sale securities .	421	593	176	129	1,319
Loss on extinguishment of debt . . . . .	—	(2,138)	—	—	(2,138)
(Loss) income from continuing operations .	(681)	625	2,072	1,562	3,578
Discontinued operations . . . . .	—	697	645	4	1,346
Net (loss) income . . . . .	(681)	1,322	2,717	1,566	4,924
Plus: net loss attributable to non- controlling interests . . . . .	173	525	455	297	1,450
Net (loss) income attributable to common shareholders . . . . .	(508)	1,847	3,172	1,863	6,374
(Loss) income per beneficial share					
Continuing operations . . . . .	\$ (.04)	\$ .08	\$ .18	\$ .13	\$ .35
Discontinued operations . . . . .	—	.05	.05	—	.10
Basic earnings (loss) per share . . . . .	<u>\$ (.04)</u>	<u>\$ .13</u>	<u>\$ .23</u>	<u>\$ .13</u>	<u>\$ .45</u>

**NOTE 20—SUBSEQUENT EVENTS**

Subsequent events have been evaluated and any significant events, relative to our consolidated financial statements as of September 30, 2012 that warrant additional disclosure have been included in the notes to the consolidated financial statements.



**BRT REALTY TRUST AND SUBSIDIARIES**  
**SCHEDULE III—REAL ESTATE PROPERTIES AND ACCUMULATED DEPRECIATION**  
**SEPTEMBER 30, 2012**  
**(Dollars in thousands)**

Description	Encumbrances	Initial Cost to Company		Costs Capitalized Subsequent to Acquisition			Gross Amount At Which Carried at September 30, 2012			Accumulated Amortization	Date of Construction	Date Acquired	Depreciation Life For Latest Income Statement
		Land	Buildings and Improvements	Land	Improvements	Carrying Costs	Land	Buildings and Improvements	Total				
<i>Commercial</i>													
Yonkers, NY. . . . .	\$ 1,954	—	\$ 4,000	—	\$ 53	—	—	\$ 4,053	\$ 4,053	\$1,304	(c)	Aug-2000	39 years
South Daytona, FL. . . . .	—	\$10,437	—	—	—	—	\$ 7,972	—	7,972	—	N/A	Feb-2008	N/A
Newark, NJ . . . . .	77,621	17,088	19,033	\$4,468	19,177	\$3,962	21,556	42,172	63,728	1,920	(c)	June-2008	39 years
<i>Multi-Family Residential</i>													
Marietta, GA . . . . .	6,462	486	7,614	—	1,065	—	486	8,679	9,165	251	1972	Jan-2012	30 years
Lawrenceville, GA . . . . .	4,687	1,450	4,800	—	844	—	1,450	5,644	7,094	114	1981	Feb-2012	30 years
Palm Beach Gardens, FL . .	45,200	16,260	43,140	—	741	—	16,260	43,881	60,141	827	1970	Mar-2012	30 years
Melbourne, FL . . . . .	7,680	1,150	8,100	—	1,351	—	1,150	9,451	10,601	155	1987	Mar-2012	30 years
Collierville, TN . . . . .	25,680	6,420	25,680	—	—	—	6,420	25,680	32,100	216	2000	June-2012	30 years
Misc.(1) . . . . .	—	—	—	—	—	—	—	250	250	—	N/A		
Total . . . . .	<u>\$169,284</u>	<u>\$53,291</u>	<u>\$112,367</u>	<u>\$4,468</u>	<u>\$23,231</u>	<u>\$3,962</u>	<u>\$55,294</u>	<u>\$139,810</u>	<u>\$195,104</u>	<u>\$4,787</u>	—		
							(a)			(b)			

(1) Represents loans which are reported as real estate because they do not qualify for sale treatment under current accounting guidance.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**SCHEDULE III—REAL ESTATE PROPERTIES**  
**AND ACCUMULATED DEPRECIATION (Continued)**

**SEPTEMBER 30, 2012**

**(Dollars in thousands)**

Notes to the schedule:

- (a) Total real estate properties . . . . . \$195,104  
Less: Accumulated depreciation and amortization . . . . . 4,787  
Net real estate properties . . . . . \$190,317
- (b) Amortization of the Trust's leasehold interests is over the shorter of estimated useful life or the term of the respective land lease.
- (c) Information not readily obtainable.

A reconciliation of real estate properties is as follows:

	Year Ended September 30,		
	2012	2011	2010
Balance at beginning of year . . . . .	\$ 59,277	\$55,843	\$69,748
Additions:			
Acquisitions . . . . .	116,759	2,315	—
Capital improvements . . . . .	3,716	141	1,741
Capitalized development expenses and carrying costs . . . . .	<u>12,622</u>	<u>4,371</u>	<u>2,379</u>
	<u>133,097</u>	<u>6,827</u>	<u>4,120</u>
Deductions:			
Sales . . . . .	37	2,561	13,775
Depreciation/amortization/paydowns . . . . .	2,020	832	880
Impairment charges . . . . .	<u>—</u>	<u>—</u>	<u>3,370</u>
	<u>2,057</u>	<u>3,393</u>	<u>18,025</u>
Balance at end of year . . . . .	<u><u>\$190,317</u></u>	<u><u>\$59,277</u></u>	<u><u>\$55,843</u></u>

The aggregate cost of investments in real estate assets for Federal income tax purposes is approximately \$2,625 higher than book value.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**SCHEDULE IV—MORTGAGE LOANS ON REAL ESTATE**  
**SEPTEMBER 30, 2012**  
**(Dollars in thousands)**

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Description	# of Loans	Interest Rate	Interest Rate Floor	Final Maturity Date	Periodic Payment Terms	Prior Liens	Face Amount of Mortgage	Carrying Value Of Mortgage(a)	Principal Amount of Loans subject to delinquent principal or interest
<b>First Mortgage Loans</b>									
Multi-family, Atlanta, GA . . .	1	Prime + 6.75%	10.00%	Mar.2013	Interest monthly, principal at maturity	—	\$13,753	\$13,556	—
Multi-family, New York, NY .	1	Prime + 8.75%	12.00%	Jan. 2013	Interest monthly, principal at maturity	—	7,811	7,775	—
Multi-family, Southfield, MI .	1	Prime + 8.75%	12.00%	Aug. 2013	Interest monthly, principal at maturity	—	6,295	6,145	—
Multi-family, Jacksonville, FL .	1	Prime + 8.75%	12.00%	July 2013	Interest monthly, principal at maturity	—	2,450	2,413	—
Multi-family, Brooklyn, NY . .	1	Prime + 4.25%	12.50%	Dec. 2012	Interest monthly, principal at maturity	—	2,341	2,329	—
Multi-family, New York, NY .	1	Prime + 8.75%	12.00%	July 2013	Interest monthly, principal at maturity	—	2,008	1,935	—
Multi-family, New York, NY .	1	Prime + 8.75%	12.00%	Dec. 2012	Interest monthly, principal at maturity	—	438	433	—
<b>Mezzanine Loan</b>									
Retail, New York, NY . . . . .	1	12%		Nov. 2012	Interest monthly, principal at maturity	\$13,607	2,000	1,998	—
Total . . . . .	8					<u>\$13,607</u>	<u>\$37,096</u>	<u>\$36,584</u>	<u>\$—</u>

**BRT REALTY TRUST AND SUBSIDIARIES**  
**SCHEDULE IV—MORTGAGE LOANS ON REAL ESTATE**  
**(INCLUDING REAL ESTATE LOAN HELD FOR SALE) (Continued)**  
**SEPTEMBER 30, 2012**  
**(Dollars in thousands)**

Notes to the schedule:

(a) The following summary reconciles mortgage loans at their carrying values:

	<b>Year Ended September 30,</b>		
	<b>2012</b>	<b>2011</b>	<b>2010</b>
Balance at beginning of year . . . . .	\$ 75,136	\$ 54,336	\$79,570
Additions:			
Advances under real estate loans . . . . .	101,800	131,255	17,384
Amortization of deferred fee income . . . . .	2,249	1,777	219
Recovery of previously provided allowances . . . . .	156	3,595	365
	<u>104,205</u>	<u>136,627</u>	<u>17,968</u>
Deductions:			
Collections of principal . . . . .	124,758	66,072	22,475
Sale of loans . . . . .	15,657	46,251	16,916
Provision for loan loss . . . . .	—	—	3,165
Collection of loan fees . . . . .	2,186	2,465	419
Loan loss recoveries . . . . .	156	1,039	227
	<u>142,757</u>	<u>115,827</u>	<u>43,202</u>
Balance at end of year . . . . .	<u>\$ 36,584</u>	<u>\$ 75,136</u>	<u>\$54,336</u>

- Carrying value of mortgage loans is net of allowances for loan losses in the amount of \$3,165 in 2010.
- Carrying value of mortgage loans is net of deferred fee income in the amount of \$512, \$618 and \$245 in 2012, 2011 and 2010, respectively.
- The aggregate cost of investments in mortgage loans is the same for financial reporting purposes and Federal income tax purposes.



**GUARANTY OF  
NEW MARKETS TAX CREDITS**

**THIS GUARANTY OF NEW MARKETS TAX CREDITS** (this “Guaranty”), is made as of September 11, 2012, by **TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC**, a New Jersey Urban Renewal limited liability company, and **RBH-TRB NEWARK HOLDINGS, LLC**, a New York limited liability company (each a “Guarantor” and collectively, the “Guarantors”, jointly and severally) for the benefit of **GSB NMTC INVESTOR LLC**, a Delaware limited liability company, its successors and assigns and any transferees of its interest in the Fund (as hereinafter defined) (collectively, the “Investor”).

**RECITALS**

**WHEREAS**, Carver Community Development Corporation, a Delaware corporation (“Carver Allocatee”), has received an allocation of NMTCs (as hereinafter defined) under Section 45D of the Code (as hereinafter defined), in the amount of \$25,000,000 (the “Carver Allocation”); and

**WHEREAS**, on the date hereof, Carver Allocatee will make a sub-allocation of the Carver Allocation to Carver CDC — Subsidiary CDE 21, LLC, a Delaware limited liability company (the “Carver Sub-CDE”), in the amount of \$12,500,000 (the “Carver Sub-Allocation”); and

**WHEREAS**, National Community Investment Fund, an Illinois charitable trust (“NCIF Allocatee”), has received an allocation of NMTCs (as hereinafter defined) under Section 45D of the Code (as hereinafter defined), in the amount of \$60,000,000 (the “NCIF Allocation”); and

**WHEREAS**, on the date hereof, NCIF Allocatee will make a sub-allocation of the Carver Allocation to NCIF New Markets Capital Fund IX CDE, LLC, a Delaware limited liability company (the “NCIF Sub-CDE”), in the amount of \$10,000,000 (the “NCIF Sub-Allocation”); and

**WHEREAS**, GS New Markets Fund, LLC, a Delaware limited liability company (“GS Allocatee”), has received an allocation of NMTCs (as hereinafter defined) under Section 45D of the Code (as hereinafter defined), in the amount of \$75,000,000 (the “GS Allocation”); and

**WHEREAS**, on the date hereof, GS Allocatee will make a sub-allocation of the Carver Allocation to GS Sub-CDE 4 LLC, a Delaware limited liability company (the “GS Sub-CDE”), in the amount of \$7,300,000 (the “GS Sub-Allocation”); and

**WHEREAS**, Building America CDE Inc., a Delaware corporation (“BA Allocatee” and together with Carver Allocatee, the NCIF Allocatee and the GS Allocatee, collectively, the “Allocatee”), has received an allocation of NMTCs under Section 45D of the Code, in the amount of \$50,000,000 (the “BA Allocation” and together with the

Carver Allocation, the NCIF Allocation and the GS Allocation, collectively, the “Allocation”); and

**WHEREAS**, BA Allocatee will make a sub-allocation of the BA Allocation to BACDE NMTC Fund 4, LLC, a Delaware limited liability company (the “BA Sub-CDE” and together with the Carver Sub-CDE, the NCIF Sub-CDE and the GS Sub-CDE collectively, the “Sub-CDEs”), in the amount of \$10,000,000 (the “BA Sub-Allocation” and together with the Carver Sub-Allocation, the NCIF Sub-Allocation and the GS Sub-Allocation, collectively, the “Sub-Allocation”); and

**WHEREAS**, the Investor will make an equity investment in GS Halsey 2 NMTC Investment Fund LLC, a Delaware limited liability company (the “Fund”), in the amount of \$11,193,000 (the “Fund Capital Contribution”) in exchange for a 100.00% ownership interest in the Fund; and

**WHEREAS**, the Fund will obtain a loan from RBH-TRB West I Mezz Urban Renewal Entity, LLC, a New Jersey urban renewal limited liability company (the “Leverage Lender”), in the amount of \$29,134,600 (the “Leverage Loan”); and

**WHEREAS**, the Fund will use the proceeds of the Fund Capital Contribution and Leverage Loan to make capital contributions to the Carver Sub-CDE in the amount of \$10,000,000, to the NCIF Sub-CDE in the amount of \$12,500,000, to the GS Sub-CDE in the aggregate amount of \$7,300,000 and to the BA Sub-CDE in the amount of \$10,000,000 (each such capital contribution, a “QEI” and collectively the capital contributions shall be referred to as the “QEIs”) in exchange for a 99.99% equity interest in the Carver Sub-CDE, the NCIF Sub-CDE and the BA Sub-CDE and for a 100% equity interest in the GS Sub-CDE; and

**WHEREAS**, the Sub-CDE is expected to designate any QEI which it receives as a “qualified equity investment” as defined under Section 45D of the Code; and

**WHEREAS**, the Sub-CDE will use substantially all of the proceeds of the QEIs to make certain loans (collectively, the “Project Loan”) to Teachers Village Project A QALICB Urban Renewal Entity, LLC, a New Jersey urban renewal limited liability company (in such capacity, the “Borrower”); and

**WHEREAS**, Borrower is a QALICB (as defined herein); and

**WHEREAS**, the Project Loan is expected to constitute a QLICI (as defined herein); and

**WHEREAS**, as a result of the transactions described in these recitals the Investor’s investment in the Fund is expected to generate NMTCs pursuant to Section 45D of the Code; and

**WHEREAS**, the Guarantors will receive certain benefits in connection with the QEIs, the Leverage Loan, and the Project Loan; and



**WHEREAS**, the parties hereto now desire to enter into this Guaranty as hereinafter provided.

**NOW, THEREFORE**, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors hereby covenant and agree as follows:

**1. Definitions.**

“Accountants” means The Reznick Group, P.C., or such other firm of independent certified public accountants as may be engaged by the Fund with the consent of the Investor.

“Affiliate” means, when used with reference to a specified Person; (a) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person, including by means of a non-member manager; (b) any Person that is an officer or director of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, director, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (c) any Person that, directly or indirectly, is the beneficial owner of, or controls, ten percent (10%) or more of any class of equity securities of, or otherwise has a substantial beneficial interest (ten percent (10%) or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of ten percent (10%) or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (ten percent (10%) or more); and (d) any relative or spouse of the specified Person.

“After-Tax Basis” means, with respect to any payment to be received by the Investor, the amount of such initial payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all income taxes imposed on the Investor by any governmental authority with respect to such payments, the remaining balance of such payments shall be equal to the amount of the initial payment.

“Allocatee” has the meaning set forth in the Recitals.

“Allocation” has the meaning set forth in the Recitals.

“Allocation Agreement” means, collectively, the Carver Allocation Agreement, the NCIF Allocation Agreement, the GS Allocation Agreement and the BA Allocation Agreement.

“BA Allocation Agreement” means, collectively, that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 11NMA004758), with a Notice of Allocation date of February 23, 2012, by and among the BA Allocatee, the BA Sub-CDE, other Subsidiary Allocatees of the BA Allocatee, and the CDFI Fund, governing

the Allocation and Sub-Allocation, as such agreement may be further amended from time to time.

“BA Sub-CDE Agreement” means that certain Amended and Restated Operating Agreement of the BA Sub-CDE, effective as of the date hereof, by and between BA Allocatee, as manager, and the Fund, as investor member, as amended from time to time.

“Borrower” has the meaning set forth in the Recitals.

“Carver Allocation Agreement” means, collectively, that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 10NMA002326), by and among the Carver Allocatee, the Carver Sub-CDE, other Subsidiary Allocatees of the Carver Allocatee, and the CDFI Fund, governing the Allocation and Sub-Allocation, dated February 23, 2012, as such agreement may be further amended from time to time.

“Carver Sub-CDE Agreement” means that certain Amended and Restated Operating Agreement of the Carver Sub-CDE, effective as of the date hereof, by and between Carver Allocatee, as manager, and the Fund, as investor member, as amended from time to time.

“CDFI Fund” means the Community Development Financial Institutions Fund of the United States Department of Treasury, or any successor agency charged with oversight responsibility for the NMTC program.

“Certification Application” means the Community Development Entity Certification Application of the CDE, as the same may have been supplemented or amended, together with the notice issued by the CDFI Fund of the certification of the CDE as a “qualified community development entity” as such term is defined in Section 45D of the Code and the Treasury Regulations and Guidance thereunder.

“Code” means the Internal Revenue Code of 1986, as amended.

“Entity” means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

“Financial Projections” means those certain financial projections prepared by the Accountants dated on or about the date hereof and attached hereto as ***Exhibit A***.

“Fund” has the meaning set forth in the Recitals.

“Fund Agreement” means the Operating Agreement of the Fund, dated as of even date herewith, by and between the Investor, as investor member, and Carver Community Development Corporation, as non-member manager, as amended from time to time.

“Fund Capital Contribution” has the meaning set forth in the Recitals.

“GS Allocation Agreement” means, collectively, that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 11NMA000938), with a Notice of Allocation date of February 23, 2012, by and among the GS Allocatee, the GS Sub-CDE, other Subsidiary Allocatees of the GS Allocatee, and the CDFI Fund, governing the Allocation and Sub-Allocation, as such agreement may be further amended from time to time.

“GS Sub-CDE Agreement” means that certain Amended and Restated Operating Agreement of the GS Sub-CDE, effective as of the date hereof, by and between GS Allocatee, as manager, and the Fund, as investor member, as amended from time to time.

“Guarantor” and “Guarantors” each has the meaning set forth in the preamble.

“Guaranty” has the meaning set forth in the preamble.

“Indemnified Matters” has the meaning set forth in Section 2(a).

“Internal Rate of Return” or “IRR” means, with respect to the Investor’s Fund Capital Contribution, the discount rate that causes the sum of net present value of all cash inflows from the Investor (i.e., Capital Contributions) and the net present value of all cash distributions and other cash outflows to the Investor resulting from the investment (including, on an After-Tax Basis (as applicable), the tax credits, the tax liabilities allocated to the Investor by the Fund and distributions from the Fund to the Investor, whether from operating cash flow or capital transaction proceeds) to equal zero dollars (\$0). The Investor will be deemed to receive a specified Internal Rate of Return, with respect to any Capital Contributions, when the Investor has received net After Tax benefits equal to a return of all those Capital Contributions plus a cumulative, annually compounded, return on those Capital Contributions at the specified annual rate, calculated commencing on the date or dates those Capital Contributions are made and compounded annually to the extent the return is not paid on a current basis, taking into account the timing and amounts of all previous distributions, benefits and detriments made (or deemed made) or allocated to the Investor by the Fund. For purposes of computing the Internal Rate of Return, (i) all cash in-flows, cash out-flows, benefits and detriments will be discounted to present value using monthly measuring periods and (ii) the calculation of Internal Rate of Return will be made using Microsoft Excel XIRR or similar calculation.

“Investor” has the meaning set forth in the preamble.

“IRS” means the United States Internal Revenue Service.

“Leverage Lender” has the meaning set forth in the Recitals.

“Leverage Loan” has the meaning set forth in the Recitals.

“Leverage Loan Documents” means, collectively, the documents evidencing and/or securing the Leverage Loan.

“Loan Agreement” means that certain Loan Agreement by and among Carver Sub-CDE, NCIF Sub-CDE, GS Sub-CDE, BA Sub-CDE and Teachers Village Project A QALICB Urban Renewal Entity, LLC, a New Jersey urban renewal limited liability company, dated as of the date hereof.

“NCIF Allocation Agreement” means, collectively, that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 09NMA000042), with a Notice of Allocation date of October 30, 2009, by and among the NCIF Allocatee, the NCIF Sub-CDE, other Subsidiary Allocatees of the NCIF Allocatee, and the CDFI Fund, governing the Allocation and Sub-Allocation, as such agreement may be further amended from time to time.

“NCIF Sub-CDE Agreement” means that certain Amended and Restated Operating Agreement of the NCIF Sub-CDE, effective as of the date hereof, by and between NCIF Allocatee, as manager, and the Fund, as investor member, as amended from time to time.

“NMTCs” means New Market Tax Credits as provided in Section 45D of the Code.

“NMTC Program Requirements” means, collectively, the provisions of Section 45D of the Code, the Treasury Regulations and Guidance, and the Allocation Agreements.

“NMTC Recapture Amount” means the amount equal, on an After-Tax Basis, to the sum, as determined by the Accountants, necessary to be paid to the Investor to cause the Internal Rate of Return to the Investor on its Fund Capital Contribution through and including the date of the notice of the applicable NMTC Recapture Event to equal the Target Rate of Return. For purposes of determining the NMTC Recapture Amount, all assumptions and methods (including but not limited to, timing of tax credit recognition and IRR) will conform to those used in the Financial Projections. All tax benefits and obligations, as determined by the Accountants, realized by the Investor as a result of its Fund Capital Contribution plus any interest and penalties resulting from the NMTC Recapture Event will be considered in the determination of the NMTC Recapture Amounts.

“NMTC Recapture Event” means a recapture or disallowance of any Tax Credits attributable to the QEIs made by the Fund in the Sub-CDE to the extent that is caused by or results from, in whole or in part, (a) any failure of the Borrower to satisfy the requirements for being and continuing to be a qualified active low income business under Section 45D(d)(2) of the Code and Treasury Regulation 1.45D-1(d)(4), unless such failure is a result of the change in the Code or Treasury Regulations with which the Borrower is unable to comply without unreasonable effort or expense, (b) prepayment of any principal on the Project Loan caused by a breach by Borrower under the Project Loan

Documents, whether voluntarily, involuntarily, through foreclosure or other exercise of remedies by the Sub-CDE or otherwise, (c) the failure of any of Borrower’s tenants or subtenants under any lease or sublease, if any, to comply with the requirements for lessees under Section 1.45D-1(d)(5)(ii) of the Treasury Regulations, (d) failure of the Borrower to meet the non-qualified financial property test under Section 1.45D-1(d)(4)(i)(E) of the Treasury Regulations, (e) any other recapture or disallowance of Tax Credits arising from the fraud, gross negligence, willful misconduct, malfeasance, misrepresentation, or violation of law of the Borrower or its Affiliates or any breach of any provision of the Transaction Documents that the Borrower or any Guarantor is a party to by the Borrower or its Affiliates or any breach by the Borrower or its Affiliates of any of the representations or warranties of the Borrower in the Transaction Documents that the Borrower or any Guarantor is a party to, or (f) any other act by or failure to act when action is required by or within the control of any of the Guarantors or any of their Affiliates.

“Payment Date” means, with respect to any NMTC Recapture Amount or NMTC Recapture Event, (i) the date of filing of a federal income tax return with respect to Investor’s activities that reflects an amount payable by reason of recapture or disallowance of Tax Credits; (ii) the date of entry into a closing agreement or other settlement with the IRS which reflects a disallowance or recapture of Tax Credits; (iii) the expiration of ninety days from the date of the issuance of a statutory notice or similar demand of payment from the Internal Revenue Service that asserts a disallowance or recapture of Tax Credits, unless the Investor determines (in its sole discretion) to seek review through the IRS Appeals Division or a determination by a court of competent jurisdiction; (iv) the expiration of thirty days after a decision by the IRS Appeals Division that upholds a disallowance or recapture of Tax Credits, unless the Investor determines (in its sole discretion) to seek review by a court of competent jurisdiction; or (v) the date of entry of judgment by a court of competent jurisdiction upholding a disallowance of recapture of Tax Credits, whether or not such decision is subject to appeal.

“Person(s)” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

“Project Loan” has the meaning set forth in the Recitals.

“Project Loan Documents” means, collectively, the documents evidencing and/or securing the Project Loan.

“QALICB” means a “qualified active low-income community business” as such term is defined in Section 45D(d)(4) of the Code and the Treasury Regulations and Guidance.

“QEI” and “QEIs” each has the meaning set forth in the Recitals.

“QLICI” means a “qualified low income community investment” as such term is defined in Section 45D(d)(1) of the Code and the Treasury Regulations and Guidance.

“Refunded Credit Amount” has the meaning set forth in Section 2(b).

“Rights and Obligations” has the meaning set forth in Section 23.

“Satisfied Obligations” has the meaning set forth in Section 2(b).

“Sub-Allocation” has the meaning set forth in the Recitals.

“Sub-CDE” has the meaning set forth in the Recitals.

“Sub-CDE Agreement” means, collectively, the Carver Sub-CDE Agreement, the NCIF Sub-CDE Agreement, the GS Sub-CDE Agreement and the BA Sub-CDE Agreement.

“Target Rate of Return” means a projected, after-tax Internal Rate of Return to the Investor on account of its Fund Capital Contribution (and the Fund’s QEI in the Sub-CDE) equal to 15.57%, taking into account the dates and amount of such Fund Capital Contribution, all cash distributions, Tax Credits and other tax benefits, and any offsetting tax detriments, as shall be determined under the Financial Projections, and utilizing the methodology contained in the Financial Projections.

“Tax Credits” means New Market Tax Credits.

“Transaction Documents” means the Fund Agreement, the Sub-CDE Agreement, the Leverage Loan Documents, the Project Loan Documents, and all related documents executed and delivered in connection therewith.

“Treasury Regulations” or “Treas. Reg.” means any temporary or final regulations promulgated from time to time under the Code.

“Treasury Regulations and Guidance” means the Treasury Regulations and any guidance, rule, or procedure published by the CDFI Fund or the U.S. Department of Treasury, including without limitation the Certification Application and the Allocation Agreements.

## **2. Indemnification and Payment.**

(a) In the event a NMTC Recapture Event shall occur and the Guarantors have received written notice thereof from Investor indicating that a Payment Date has occurred, the Guarantors hereby absolutely and unconditionally agree, notwithstanding any standstill provisions that may exist with respect to any other Loan Documents (as such term is defined in the Loan Agreement), to pay to the Investor the NMTC Recapture Amount within ten (10) days after receipt of said written notice from Investor, and to indemnify and hold harmless the Investor, from and against any costs,

expenses, claims, demands, penalties, fines, liabilities, settlements, losses or damages of whatever kind or nature (including reasonable counsel and attorney's fees), known or unknown, contingent or otherwise, arising out of or in any way related to any costs, expenses, claims, demands, penalties, fines, liabilities, settlements, losses or damages of whatever kind or nature that shall be incurred by the Investor as a result of the failure of the Guarantor to perform its obligations hereunder (collectively, the "Indemnified Matters"). If Guarantor has paid the NMTC Recapture Amount with respect to a notice under this Section 2(a) hereof, and there is a subsequent appeal of any court decision leading to such notice in which the Investor or its affiliates recovers all or part of such amounts, the Investor will promptly repay a corresponding portion of the amount paid by Guarantor to Guarantor. In addition, to prevent a double recovery, if the Investor has been paid by Guarantors the maximum amount that could be due to Investors hereunder (reflecting a full disallowance of all Tax Credits contemplated for the QEIs for all years and all amounts payable with respect to such Tax Credits), and Investor later receives any cash amounts with respect to its capital contributions to the Fund (whether from distributions or upon sale of its interest), Investor shall return such amounts to the Guarantors in proportion to and to the extent of the amounts previously paid to Investor by such Guarantors.

(b) If the Borrower has fully satisfied its obligation to pay a NMTC Recapture Amount pursuant to Section 2(a) hereof (the "Satisfied Obligations"), and the Investor shall have been allowed tax credits attributable to any Recaptured Credits or Disallowed Credits (a "Refunded Credit Amount"), whether due to changes in the Code or Treasury Regulations, or otherwise, the Investor shall pay to the Guarantors within thirty (30) days after Investor has recognized the Refunded Credit Amount for tax purposes an amount equal to the lesser of: (i) the Refunded Credit Amount, or (ii) the Satisfied Obligations.

(c) In addition to the foregoing, the Guarantors shall also be obligated to pay, notwithstanding any standstill provisions that may exist with respect to any other Loan Documents (as such term is defined in the Loan Agreement): (i) all reasonable legal, accounting, and other fees and costs incurred by the Investor in connection with any tax audit, litigation or other proceedings challenging the Investor's entitlement to the Tax Credits as a result of an actual or alleged NMTC Recapture Event; (ii) interest and any penalties on the NMTC Recapture Amount unpaid from time to time, if any, at the rate of two percent (2%) over the long-term applicable federal rate (as prescribed under Section 1274(d) of the Code) at the end of the calendar month preceding the date on which the specified NMTC Recapture Event occurs (payable on the later of (A) the tenth (10th) calendar day following the receipt of notice from the Lender of the amount of any such interest and penalties, or (B) the date on which the NMTC Recapture Amount is required to be paid), until paid in full; and (iii) all reasonable legal, accounting, and other fees and costs incurred by the Investor in connection with the enforcement of its rights under this Agreement.



### 3. **Representations.**

(a) Execution of this Guaranty has been duly authorized by each Guarantor. The consummation of all transactions contemplated herein and in any agreement incident to the transactions described above to be performed by the Guarantors does not and will not result in any breach or violation of, or default under any agreements by which the Guarantors or any of their respective property is bound, or under any applicable law, administrative regulation, or court decree, the effect of which will impair performance by such Guarantor of its obligations hereunder. This Guaranty is enforceable against the Guarantors in accordance with its terms.

(b) Each Guarantor further covenants, represents and warrants to and for the benefit of the Investor as follows:

(i) there are no facts or circumstances of any kind or nature whatsoever of which it is aware that could in any way impair or prevent it from performing its obligations under this Guaranty;

(ii) any and all financial information with respect to it that it has given to the Investor in connection with the transactions contemplated by this Guaranty fairly and accurately presents its financial condition as of the respective dates thereof and for the respective dates indicated therein, and, since the respective dates thereof, there has been no adverse change in its financial condition;

(iii) with the assistance of counsel of its choice, it has read and reviewed this Guaranty and such other documents as it and its counsel deemed necessary or desirable to read;

(iv) each representation made by it or in any of the documents evidencing or securing any QLICI to which it is a party is true and correct in all respects and the Investor may rely thereon;

(v) each Guarantor covenants and agrees to provide to the Investor (i) within 120 days of the end of the calendar year its audited financial statements prepared by a certified public accountant in accordance with generally accepted accounting practice, (ii) within 10 days of filing the same, its Federal tax returns prepared by a certified public accountant in accordance with generally accepted accounting practice, (iii) within 60 days of the end of each fiscal quarter, quarterly unaudited financial statements (including a balance sheet, income statement and operating statement for such fiscal quarter) and (iv) such other financial information as the Investor shall reasonably request within twenty (20) days of any such request; and

(vi) it acknowledges receipt of valid and sufficient consideration for providing this Guaranty.

(c) Each Guarantor further covenants and agrees to immediately notify the Investor of any change in its financial condition that adversely affects its ability to perform hereunder.

4. **Intended Beneficiary.** The parties intend that the Investor, and its successors and assigns (including, without limitation, successors, assigns and transferees of the Investor's interest in the Fund), is a direct beneficiary of this Guaranty and that the Investor, and its successors, assigns and transferees of the Investor's interest in the Fund, shall have the right to directly enforce the Guarantors' obligations hereunder. No person other than the Investor (and its successors, assigns and transferees of the Investor's interest in the Fund), may directly or indirectly rely upon or enforce the provisions of this Guaranty, whether as a third party beneficiary or otherwise.

5. **Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding on, and the term "Guarantor" or "Guarantors", as used herein, shall include the heirs, personal representatives, successors, assigns, legal representatives and other transferees of the Guarantors, including, without limitation, successors by consolidation. This Guaranty shall inure to the benefit of the Investor and its respective successors and assigns. The Guarantors shall not have the right to assign their respective obligations hereunder without the prior written consent of the Investor.

6. **Severability of Provisions.** Each provision of this Guaranty shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Guaranty is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Guaranty that are valid.

7. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.

8. **Governing Law.** This Guaranty shall be construed and enforced in accordance with the laws of the State of New York without regard to principles of conflicts of laws, and cannot be modified, amended or terminated orally.

9. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

10. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

11. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

12. **Payment and Performance Guaranty.** Guarantors hereby agree that this is a guaranty of payment and performance, not collection, and that this Guaranty is an unconditional, irrevocable primary guaranty and may be enforced by the Investor directly against Guarantors without first resorting to or exhausting any other right or remedy.

Guarantors further covenant that this Guaranty shall remain and continue in full force and effect, notwithstanding any assignment, modification, extension, compromise or renewal of the Project Loan Documents, the Sub-CDE Agreement, the Fund Agreement, or any other document associated with the transactions contemplated herein, or the release or exchange of any real or personal property or other collateral security for any of the obligations of the QLICs, and notwithstanding any amendment or modification of the Project Loan Documents, the Sub-CDE Agreement, the Fund Agreement, or any other document associated with the transactions contemplated herein, and notwithstanding that indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done, or suffered without notice to or further consent of the Guarantors. Guarantors agree and confirm that their liability hereunder shall not be affected, impaired, or reduced in any way by any action taken under the foregoing provisions, or any other provisions hereof, or by any delay, failure or refusal of the Investor to exercise any right or remedy it may have against any other Guarantor. Guarantors agree that this Guaranty, and such Guarantor's liability hereunder, shall not be affected or impaired by reason of the existence of any indemnity or guaranty of any other party covering the same or similar obligations or by reason of the Investor exercising any rights or remedies against any such other party. Each Guarantor acknowledges that it is capable of informing itself with respect to NMTC Recapture Events. It shall not be a condition of the obligations of the Guarantors under this Guaranty that Guarantors have notice of any NMTC Recapture Event.

13. **Joint and Several.** The obligations under the term of this Guaranty are joint and several obligations of the Guarantors.

14. **JURY TRIAL.** THE GUARANTORS HEREBY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY, OR ANY OTHER DOCUMENT DELIVERED HEREUNDER OR IN CONNECTION HERewith, OR ANY TRANSACTION ARISING FROM OR CONNECTED TO ANY OF THE FOREGOING. THE GUARANTORS REPRESENT THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

15. **ENTIRETY.** THIS GUARANTY EMBODIES THE FINAL, ENTIRE AGREEMENT OF THE GUARANTORS AND THE INVESTOR WITH RESPECT TO THE GUARANTORS' GUARANTY OF THE INDEMNIFIED MATTERS AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF. THIS GUARANTY IS INTENDED BY THE GUARANTORS AND THE INVESTOR AS A FINAL AND COMPLETE EXPRESSION OF THE TERMS OF THE GUARANTY, AND NO COURSE OF DEALING BETWEEN ANY GUARANTOR AND THE INVESTOR, NO COURSE OF PERFORMANCE, NO TRADE PRACTICES, AND NO EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OR OTHER EXTRINSIC EVIDENCE OF ANY NATURE SHALL BE USED TO CONTRADICT, VARY, SUPPLEMENT OR MODIFY ANY TERM OF THIS

**GUARANTY. THERE ARE NO ORAL AGREEMENTS BETWEEN THE GUARANTORS AND THE INVESTOR.**

**16. No Discharge; Successive Actions.** The Guarantors acknowledge that all of their obligations under this Guaranty are primary, absolute, irrevocable and unconditional and that their liability shall not be limited or affected by any release or discharge of any other Guarantor, whether by operation of law or otherwise, or by any other legal or factual matter, unless and until all guaranteed obligations have been paid and performed in full, regardless of whether or not notice has then been given to the Guarantors. The Investor may maintain successive actions for defaults hereunder. The Investor's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations guaranteed hereunder have been irrevocably paid in full. In amplification, and not in limitation, of the provisions set forth above, the Guarantors hereby waive and agree not to assert or take advantage of:

- (a) any right to require the Investor to proceed against any other person;
- (b) the defense of the statute of limitations in any action hereunder or in any action for the collection or the performance of any obligations guaranteed hereby;
- (c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of the Investor to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;
- (d) any defense based upon an election of remedies by the Investor, or the right of Guarantors to proceed against the Investor;
- (e) any duty or obligation on the part of the Investor to protect, not impair, retain or enforce any security for the payment of the obligations guaranteed hereby; and
- (f) any defense related to receipt or sufficiency of consideration for the Guarantors guaranteeing the obligations under this Guaranty.

**17. Notice.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same with FedEx or another nationally recognized courier service for next Business Day delivery, addressed as follows:

If to the Investor:           c/o Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282  
Attn: Margaret Anadu

With a copy to: Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282  
Attn: Andrea Gift

With a copy to: gs-uig-docs@gs.com

and another copy to: Jones Day  
222 East 41st Street  
New York, New York 10017  
Attn: Steven C. Koppel, Esq.

If to Guarantors: c/o RBH Group  
89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102  
Attn: Ron Beit-Halachmy

with a copy to: McManimon, Scotland & Baumann, L.L.C.  
75 Livingston Avenue, 2<sup>nd</sup> Floor  
Roseland, New Jersey 07068  
Attn: Leah Sandbank, Esq.

**18. Fees and Costs.** Guarantors agree that, in the event this Guaranty is placed in the hands of an attorney for enforcement following notice of demand for payment as required herein, Guarantors will reimburse the Investor seeking such enforcement for all expenses incurred in enforcing this Guaranty, including, without limitation, reasonable attorneys' fees and expenses (whether or not suit is brought hereon) and all such expenses incurred in connection with any trial, appeal, arbitration or bankruptcy proceedings.

**19. Interest.** All amounts due under this Guaranty which are not timely paid by Guarantors shall bear interest from and after the date due until paid in full, at an annual rate equal to the Target Rate of Return.

**20. Defenses Not Valid; No Offset.** The Guarantors further agree that the validity of this Guaranty and the obligations of the Guarantors hereunder shall in no way be terminated, affected, or impaired (a) by reason of the assertion by the Investor of any rights or remedies under or with respect to the Transaction Documents, or any other instruments executed in connection therewith, against any Person obligated thereunder, (b) by reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty, or (c) by reason of the adjudication in bankruptcy of this Guaranty or any Guarantor or any Person obligated under the Project Loan Documents, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any Guarantor or any such Person. No Guarantor shall have the right to offset any of the obligations guaranteed hereunder against any amount otherwise owed or alleged to be owed by the Investor to such Guarantor.

**21. Continuing Guaranty.** It is expressly understood and agreed that this is a primary, continuing guaranty and that the obligations of Guarantors hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Project Loan Documents, the Fund Agreement, the Sub-CDE Agreement, or any other instruments executed in connection therewith or otherwise in connection with the transactions contemplated herein. Notwithstanding the foregoing, however, this guaranty shall automatically terminate upon the expiration of the relevant income tax statutes of limitation applicable with respect to the Investor for all taxable years for which NMTCs with respect to the QEIs could be disallowed or recaptured.

**22. Certain Waivers.** Guarantors hereby waive notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest and any and all notices of nonpayment, non-performance, non-observance, and all other notices of any kind, and other proof, and notice of demand, and Guarantors hereby waive all suretyship defenses and defenses in the nature thereof.

**23. Assignment.** If any or all of the rights and obligations with respect to the Investor’s interest in the Fund (the “Rights and Obligations”) are assigned by the Investor in connection with any assignment of its interest, this Guaranty shall automatically be assigned therewith in whole or in part, as applicable, without the need of any express assignment and when so assigned, the Guarantors shall be bound as set forth herein to each assignee without in any manner affecting the Guarantors’ liability hereunder for any part of the Rights and Obligations retained by the Investor.

**24. Section 3213.** Each Guarantor acknowledges and agrees that this Guaranty is and is intended to be, an instrument for the payment of money only, as such phrase is used in Section 3213 of the Civil Practice Law and Rules of the State of New York, and each Guarantor has been fully advised by their counsel of its rights and remedies pursuant to said Section 3213.

**25. Amendments.** This Guaranty may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced.

**26. Recitals.** The recital and introductory paragraphs hereof are a part hereof, form a basis for this Guaranty and shall be considered prima facie evidence of the facts and documents referred to therein.

[Signatures contained on following page]

**SIGNATURE PAGE**  
**GUARANTY OF NEW MARKETS TAX CREDITS**

**IN WITNESS WHEREOF**, the Guarantors have caused this Guaranty of New Markets Tax Credits to be duly executed as of the date first above written.

**TEACHERS VILLAGE PROJECT A SCHOOL**  
**QALICB URBAN RENEWAL, LLC,**  
a New Jersey Urban Renewal limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

**RBH-TRB NEWARK HOLDINGS, LLC,**  
a New York limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

\_\_\_\_\_



**EXHIBIT A**  
**FINANCIAL PROJECTIONS**

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**GUARANTY OF PAYMENT AND RECOURSE CARVEOUTS**

**THIS GUARANTY OF PAYMENT AND RECOURSE CARVEOUTS** (this “**Guaranty**”) is made as of the 11<sup>th</sup> day of September, 2012, by **RBH-TRB NEWARK HOLDINGS, LLC**, a New York limited liability company having an office c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (“**RBH-TRB**”), and **RON BEIT-HALACHMY**, an individual having an office c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (“**Ron**”), and together with RBH-TRB, collectively, jointly and severally, “**Guarantors**” and individually, each a “**Guarantor**”) in favor of **GOLDMAN SACHS BANK USA**, a New York banking corporation, having an office at 200 West Street, New York, New York 10282 (the “**Bank**”).

**R E C I T A L S :**

**WHEREAS**, pursuant to that certain Building Loan Agreement, dated as of the date hereof (as the same may be amended, modified, supplemented or replaced from time to time, the “**Loan Agreement**”), between Teachers Village Project A QALICB Urban Renewal Entity, LLC, a New Jersey limited liability company (“**Borrower**”) and Bank, Bank has agreed to make a loan (the “**Loan**”) to Borrower in the aggregate principal amount of up to \$9,000,000, as more particularly described and subject to the terms and conditions of the Loan Agreement; and

**WHEREAS**, the Loan is evidenced by that certain Mortgage Note, dated as of the date hereof (as the same may be amended, modified, supplemented or replaced from time to time, the “**Note**”), in the amount of the Loan, and is secured by, among other things, that certain Mortgage, Assignment of Leases and Rents and Security Agreement (together with all extensions, renewals, modifications, substitutions and amendments thereof, the “**Mortgage**”) dated of even date herewith, made by Borrower in favor of the Bank; and

**WHEREAS**, as additional security for the full, timely and faithful repayment of the Loan and the performance by Borrower of all of its obligations under the Loan Agreement and the Loan Documents (as defined in the Loan Agreement), Bank requires as a condition to entering into the Loan Agreement and making the Loan that Guarantors execute and deliver to the Bank this Guaranty for the benefit of the Bank; and

**WHEREAS**, all capitalized terms used herein and not otherwise defined herein shall have the same meanings assigned to such terms in the Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce Bank to enter into the Loan Agreement and make the Loan, each Guarantor hereby represents, warrants and covenants to Bank as follows:

1. Formation and Existence; Power and Authority. RBH-TRB is a limited liability company, duly organized, validly existing and in good standing under the laws of the state of its formation and has full power and authority to execute, deliver and perform this

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Guaranty and any Loan Document to which it is a party. Such Guarantor will preserve and maintain such legal existence and good standing.

2. Obligations Guaranteed.

(a) RBH-TRB absolutely, irrevocably and unconditionally guarantees to Bank:

(i) the payment of all sums due and owing under the Loan Documents (including, but not limited to, principal and interest with respect to the Loan and all other fees owed to the Bank under the Loan Documents and any and all fees and/or amounts due and payable and owed to the Bank in connection with the Loan), and all extensions, renewals, replacements and amendments thereof; provided, however, that the Guarantors shall guaranty the payment of the interest component of the foregoing obligation until the earlier of a sale of the Premises pursuant to a foreclosure of the Mortgage or conveyance of the Premises by deed-in-lieu thereof;

(ii) the payment of all policies of insurance required to be furnished by Borrower pursuant to the Loan Agreement and/or Mortgage (i.e., prior to the Maturity Date) or until the earlier of a sale of the Premises pursuant to a foreclosure of the Mortgage or conveyance of the Premises by deed-in-lieu thereof, if not paid when due by Borrower; and

(iii) the payment of all operating expenses incurred in connection with the day-to-day operation of Premises during the term of the Loan (i.e., prior to the Maturity Date) or until the earlier of a sale of the Premises pursuant to a foreclosure of the Mortgage or conveyance of the Premises by deed-in-lieu thereof, if not paid when due by Borrower.

(b) Guarantors, jointly and severally, absolutely, irrevocably and unconditionally guaranty to Bank the obligations or liabilities of Borrower to Bank for any loss, damage (excluding consequential damages), cost, expense, liability, claim or other obligation incurred by Bank (including attorneys' fees and costs reasonably incurred), as well as the payment of all Enforcement Costs (as hereafter defined) arising out of or in connection with the following:

(i) fraud or material intentional misrepresentation by or on behalf of Borrower or Guarantor, or any of their respective agents, representatives, principals, officers or managers, in connection with the Loan Documents;

(ii) the gross negligence or willful misconduct of Borrower or any Guarantor, or any of their respective agents, representatives, principals, officers or managers, in connection with the Loan Documents; provided, however, that an Event of Default under the Loan Documents does not in and of itself constitute gross negligence or willful misconduct;

(iii) intentionally omitted;

(iv) intentional physical waste to new improvements constructed on the Premises (as such term is defined in the Mortgage) at any time after the commencement of construction of new improvements on the Premises (and expressly not including any demolition of improvements existing on the Premises as of the date hereof) by Borrower or any Affiliate of Borrower or any of their respective principals, officers, managers or employees (to the extent it is within the scope of the employee's employment relating to the Projects);

(v) the sale or transfer of any portion of the Premises or the Projects in violation of the Loan Documents by the Borrower or any Affiliate of Borrower;

(vi) except to pay interest on the Loan and/or other costs in connection with the Premises, the distribution to Borrower or any Affiliate of Borrower of any proceeds or cash flow from the Premises or the Projects other than as expressly permitted in the Loan Agreement;

(vii) the misappropriation or conversion by Borrower or any Affiliate of Borrower or any of their respective agents, representatives, principals, officers or managers of (A) any insurance proceeds paid by reason of any loss, damage or destruction to all or any part of the Premises, (B) any awards or other amounts received in connection with the condemnation of all or any part of the Premises, or (C) any proceeds or cash flow pertaining to the Projects;

(viii) the failure to use Loan proceeds in accordance with the provisions of the Loan Documents to pay charges for labor or materials or other charges procured by Borrower that create Liens on all or any part of the Premises unless (a) such charge is diligently contested in good faith by appropriate proceedings timely instituted, (b) reasonable reserves or bonds in substitution thereof that are established or delivered with respect to the contested item, and (c) during the period of such contest, the enforcement of any contested item is effectively stayed;

(ix) any security deposits, advance deposits, down payments or any other deposits collected by Borrower or any Affiliate of Borrower with respect to the Premises which are not delivered to Bank, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the agreements pursuant to which such deposits were received; or

(x) Borrower's failure to obtain Bank's prior written consent to any subordinate financing encumbering the Premises, and such failure continues for ten (10) days after notice from Bank to the Guarantors.

(c) Guarantors, jointly and severally, absolutely, irrevocably and unconditionally guaranty to Bank the payment of the full amount of the Loan, including, without limitation, all outstanding principal due on the Loan, all accrued interest thereon, and all other amounts, obligations or liabilities of Borrower to Bank in respect of the Loan under the Loan Agreement, the Mortgage and the other Loan Documents, as well as the payment of all Enforcement Costs, upon the occurrence of any of the following events:

(i) If the Borrower fails to obtain the Bank's prior written consent to any subordinate financing encumbering the Premises that is not otherwise permitted pursuant to the terms of the Loan Documents;

(ii) If Borrower shall (A) voluntarily commence a petition under any applicable bankruptcy, insolvency, creditors rights or other similar law now or hereafter in effect (collectively, the "**Insolvency Laws**"), (B) voluntarily make any assignment for the benefit of creditors under any Insolvency Law, or (C) become the debtor in or subject of any involuntary case or proceeding under any Insolvency Law if the creditors in such proceeding shall have colluded with Borrower or any Guarantor and/or in any such involuntary case or proceeding involving Borrower, Borrower shall consent to the entry of an order for relief or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Borrower or of any substantial part of Borrower's property;

(iii) If any Guarantor shall (A) voluntarily commence a petition under any applicable Insolvency Laws, (B) voluntarily make any assignment for the benefit of creditors under any Insolvency Law, or (C) become the debtor in or subject of any involuntary case or proceeding under any Insolvency Law if the creditors in such case or proceeding shall have colluded with such Guarantor or Borrower and/or in any such involuntary case or proceeding involving such Guarantor, such Guarantor shall consent to the entry of an order for relief or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of such Guarantor or of any substantial part of such Guarantor's property; or

(iv) If any Guarantor, Borrower or any party having a direct or indirect ownership interest in Borrower or any party acting through, under or on behalf of any of the foregoing, acts in a manner so as to in bad faith impede or delay the Bank's rights to exercise remedies under this Guaranty or any of the other Loan Documents (including, without limitation, raising defenses, offsets or counterclaims with respect to the Bank exercising such remedies, which defenses, offsets and/or counterclaims are adjudicated to have been undertaken in bad faith by final order of a court of competent jurisdiction).

(d) For purposes hereof, "**Enforcement Costs**" shall mean any and all expenses actually paid or incurred by the Bank in the collection of all or any portion of the Guarantors' obligations hereunder or the exercise or enforcement of any other rights, powers, privileges, remedies and interests of the Bank hereunder, including, without limitation, reasonable attorneys' fees, irrespective of the manner or success of any such collection, exercise or enforcement, and whether or not such expenses constitute part of the Borrower's obligations. As used herein, "**Person**" shall mean any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other entity, any federal, state, county or municipal government or any bureau, department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

(e) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Bank shall not be deemed to have waived any right which Bank may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy

Code to file a claim for the full amount of the Loan or to require that all collateral shall continue to secure all of the Loan in accordance with the Loan Documents.

3. Unconditional Guaranty. This Guaranty is an absolute, unconditional, present and continuing guaranty of payment and performance and not of collection and is in no way conditioned or contingent upon any attempt to enforce Bank's rights against Borrower or to collect from the Borrower or upon any other condition or contingency; accordingly, Bank shall have the right to proceed against Guarantors immediately upon any Event of Default beyond applicable notice and cure periods without taking any prior action or proceeding to enforce the Loan Documents or any of them or for the liquidation or foreclosure of any security Bank may at any time hold pursuant thereto. Each Guarantor hereby waives and releases any claim (within the meaning of 11 U.S.C. § 101) which such Guarantor may have against Borrower arising from a payment made by such Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of such Guarantor or any right of such Guarantor to proceed against Borrower for reimbursement. It is expressly understood that the waivers and agreements of Guarantors constitute additional and cumulative benefits given to Bank for its security and as an inducement for the making of the Loan. Bank may at any time and from time to time take any and/or all actions and enforce all rights and remedies available to it hereunder or under applicable law to collect from Guarantors any amounts then due and payable hereunder by Guarantors and/or to cause Guarantors to fulfill his, her or its obligations hereunder. Bank may at any time and from time to time take any and/or all actions and enforce all rights and remedies available to it hereunder or under applicable law to collect from Guarantors any amounts then due and payable hereunder by Guarantors and/or to cause Guarantors to fulfill his, her or its obligations hereunder.

4. Liability Unimpaired. Until such time as this Guaranty shall terminate pursuant to Section 29 hereof or as otherwise expressly set forth herein, Guarantors' liability hereunder shall in no way be limited or impaired by, and Guarantors hereby consent to and agree to be bound by, any amendment or modification of the provisions of any of the Loan Documents or any other instrument made to or with Bank by Borrower or any Guarantor, or any Person who succeeds Borrower as owner of all or part of the Premises prior to foreclosure of the Mortgage or exercise of any power of sale contained therein. In addition, until such time as this Guaranty shall terminate pursuant to Section 29 hereof, Guarantors' liability hereunder shall in no way be limited or impaired by (i) any extensions of time for performance required by any of said documents, (ii) any sale, assignment or foreclosure of the Mortgage or any sale or transfer of all or part of the property secured by the Mortgage, (iii) any exculpatory provision in any of said instruments limiting Bank's recourse to the Premises or to any other security, or limiting Bank's rights to a deficiency judgment against Borrower, (iv) the release of Borrower or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of said instruments by operation of law or otherwise, (v) the release or substitution in whole or in part of any security for the Loan, (vi) Bank's failure to record the Mortgage or file any UCC financing statements (or Bank's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loan, (vii) the invalidity, irregularity or unenforceability, in whole or in part, of any of the Loan Documents, this Guaranty or any other instrument or agreement executed or delivered to Bank in connection with the Loan, except to the extent that there is a final adjudication by a court of competent jurisdiction of a valid defense to Borrower's obligations

under the Loan Documents to payment of the Indebtedness (as defined in the Mortgage), (viii) any amendment, modification or supplement to the Project Cost Statement, Hard Cost Statement, Loan Budget Amounts, the General Contract, any Major Subcontract (each as defined in the Loan Agreement), any construction management agreement or any other construction documents relating to the Improvements, or any extensions or changes of the Completion Date (as defined in the Loan Agreement) or any schedule with respect to the construction of the Improvements, (ix) the material inaccuracy of any of the representations and warranties made by Borrower in the Loan Agreement, the Mortgage or the other Loan Documents or any disbursement certificates or requests for disbursements made under the Loan Agreement, or (x) any other action or circumstance whatsoever that constitutes, or might be construed to constitute, a legal or equitable discharge or defense (except full payment and satisfaction) of Borrower for its obligations under any of the Loan Documents or of Guarantors under this Guaranty; and, in any such case, whether with or without notice to Guarantors and with or without consideration.

5. Preservation of Loan Documents. Guarantors will cause Borrower to maintain and preserve the enforceability of the Loan Documents as the same may be modified and will not permit Borrower to take or to fail to take actions of any kind which might be the basis for a claim that Guarantors have a defense to Guarantors' obligations hereunder.

6. RESERVED.

7. Indemnification; Payments; Certain Waivers. Each Guarantor (i) waives any right or claim of right to cause a marshalling of Borrower's assets or to cause Bank to proceed against any of the security for the Loan or for the obligations guaranteed hereby before proceeding against any Guarantor, (ii) agrees that any payments required to be made by Guarantor hereunder shall become due on demand in accordance with the terms of Paragraph 2 hereof and without presentment to Borrower, demand for payment or protest, or notice of non-payment or protest, and (iii) except as hereinafter provided, expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors. Without limiting the generality of the foregoing, each Guarantor hereby waives all rights (x) to participate in any claim or remedy Bank may now or hereafter have against Borrower or in any collateral which Bank now has or hereafter may acquire for the obligations guaranteed hereby and (y) except as provided below, to contribution, indemnification, set-off, exoneration or reimbursement, whether from Borrower, any Guarantor, or any other person now or hereafter primarily or secondarily liable for any of Borrower's obligations to Bank, and whether arising by contract or operation of law or otherwise by reason of Guarantor's execution, delivery or performance of this Guaranty. Each Guarantor does not waive and hereby retains all rights of subrogation, contribution, indemnification, set-off or reimbursement against Borrower or any other Guarantor that such Guarantor may have (the "**Undersigned's Rights**"); provided, however, that (i) this Guaranty shall neither be contingent upon the existence of the Undersigned's Rights nor subject to any claims or defenses whatsoever which may be asserted in connection with the enforcement or attempted enforcement of the Undersigned's Rights including, without limitation, any claim that the Undersigned's Rights were abrogated by any of Bank's acts unless such acts constitute gross negligence or willful misconduct of the Bank, and (ii) until the Loan shall have been paid in full, each Guarantor hereby postpones and subordinates (A) the exercise of any and all of the Undersigned's Rights to



Bank’s rights against each Guarantor under this Guaranty or against Borrower under any of the Loan Documents, and (B) any of the Undersigned’s Rights to any collateral securing the Loan.

8. Reinstatement. This Guaranty shall continue to be effective, or be reinstated automatically, as the case may be, if at any time payment, in whole or in part, of any of the obligations guaranteed hereby is rescinded or otherwise must be restored or returned by Bank (whether as a preference, fraudulent conveyance or otherwise) upon or in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, any Guarantor or any other person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, any Guarantor or any other person or for a substantial part of Borrower’s, any Guarantor’s or any of such other person’s property, as the case may be, or otherwise, all as though such payment had not been made. Guarantors further agree that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including, without limitation, reasonable legal fees and expenses) incurred by or on behalf of Bank in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, the payment of which is guaranteed by Guarantors pursuant to Paragraph 2 above and covered by Guarantors’ indemnity pursuant to Paragraph 7 above.

9. Litigation, Compliance with Judgments. Each Guarantor represents and warrants that as of the date hereof, there are no actions, suits or proceedings pending or, to the best of such Guarantor’s knowledge, threatened in writing against or affecting such Guarantor, at law, in equity or before or by any governmental authorities which would have a material effect on such Guarantor’s ability to perform his/its obligations hereunder; to the best of such Guarantor’s knowledge, such Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or governmental authorities.

10. Authorization and Enforceability; No Conflicts. As of the date hereof, each Guarantor has the full power and authority to enter into and perform his/its obligations under this Guaranty and this Guaranty is a legal, valid and binding instrument, enforceable against such Guarantor in accordance with its terms. The execution, delivery and performance of this Guaranty has been authorized by all proper and necessary actions of each Guarantor. Each Guarantor represents and warrants with respect to itself and to its knowledge that the consummation of the transactions contemplated hereby and the performance of this Guaranty and the other Loan Documents to which such Guarantor is a party have not resulted and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, by-laws, partnership agreement or other instrument to which such Guarantor is a party or by which such Guarantor may be bound or affected.

11. Compliance with Laws. As of the date hereof, each Guarantor represents and warrants with respect to itself and to its knowledge that such Guarantor is in compliance with, and the transactions contemplated by the Loan Documents and this Guaranty does not and will not violate any provision of, or require any filing, registration, consent or approval under, any federal, state or local law, rule, regulation, ordinance, order, writ, judgment, injunction, decree, determination or award (hereinafter, “**Laws**”) presently in effect having applicability to such Guarantor. Each Guarantor agrees that it will comply promptly with all Laws now or hereafter in effect having applicability to such Guarantor.

12. Accuracy of Information; Full Disclosure. As of the date hereof, each Guarantor represents and warrants that neither this Guaranty nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of such Guarantor to Bank in connection with the negotiation of the Loan Documents or the consummation of the transactions contemplated thereby, or required herein or by the other Loan Documents to be furnished by or on behalf of such Guarantor, contains any untrue or misleading statement of a material fact; there is no fact which such Guarantor has not disclosed to Bank in writing which materially affects adversely any of the property covered by the Mortgage or the business affairs or financial condition of such Guarantor, or the ability of such Guarantor to perform this Guaranty and the other Loan Documents to which such Guarantor is a party.

13. Financial Statements. Each Guarantor represents, warrants and covenants with respect to itself as follows:

(a) The most recent financial statements heretofore delivered by Guarantor to Bank are true and correct in all respects, have been prepared in accordance with sound accounting principles consistently applied and fairly present Guarantor's financial condition as of the date thereof including detailed information on all real estate holdings of the Guarantor and its subsidiaries, and no material adverse change has occurred in the financial condition reflected therein since the date thereof.

(b) Guarantor shall deliver to Bank annually, as soon as available, but in any event within one hundred twenty (120) days after the last day of its fiscal year, a balance sheet of the Guarantor and its subsidiaries, as of such last day of the fiscal year, and statements of income and retained earnings and cash flow for such fiscal year, each prepared in accordance with sound accounting principles consistently applied, in reasonable detail, including detailed information on all real estate holdings of the Guarantor and its subsidiaries.

(c) Guarantor shall deliver to Bank each tax return of the Guarantor within forty-five (45) days after the submission thereof to the applicable taxing authority.

(d) Promptly after a written request therefor, Guarantor shall deliver to Bank such other financial data or information as the Bank may reasonably request from time to time.

14. Non-Waiver Remedies Cumulative. No failure or delay on Bank's part in exercising any right, power or privilege under any of the Loan Documents, this Guaranty or any other document made to or with Bank in connection with the Loan shall operate as a waiver of any such privilege, power or right or shall be deemed to constitute Bank's acquiescence in any default by Borrower or Guarantors under any of said documents. A waiver by Bank of any right or remedy under any of the Loan Documents, this Guaranty or any other document made to or with Bank in connection with the Loan on any one occasion shall not be construed as a bar to any right or remedy which Bank otherwise would have on any future occasion. The rights and remedies provided in said documents are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

15. Transfers of Interests in the Loan. Subject to the terms and conditions with respect thereto set forth in the Loan Documents, Guarantors acknowledge that Bank, at Bank's sole discretion, may sell, assign or transfer interests in the Loan, this Guaranty and the other Loan Documents to one or more purchasers and/or assignees and agrees in connection therewith, all Loan Documents and other documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower, Guarantors, the Premises or the Projects, may be provided to and retained by any such purchaser or assignee or prospective purchaser or assignee. Guarantors agree that Bank shall have no obligation to give Guarantors written notice of any sale, assignment or transfer of any interest in the Loan or any part thereof.

16. Separate Indemnity. Guarantors acknowledge and agree that Bank's rights (and Guarantors' obligations) under this Guaranty shall be in addition to all of Bank's rights (and all of Guarantors' obligations) under any indemnity agreement executed and delivered to Bank by Borrower and/or Guarantors in connection with the Loan, and payments by Guarantors under this Guaranty shall not reduce any of Guarantors' obligations and liabilities under any such indemnity agreement.

17. Severability. Any provision of this Guaranty, or the application thereof to any person or circumstance, which, for any reason, in whole or in part, is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Guaranty (or the remaining portions of such provision) or the application thereof to any other person or circumstance, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision (or portion thereof) or the application thereof to any person or circumstance in any other jurisdiction.

18. Entire Agreement; Amendments. This Guaranty contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter, and none of the terms and provisions hereof may be waived, amended or terminated except by a written instrument signed by the Person against whom enforcement of the waiver, amendment or termination is sought.

19. Successors and Assigns. This Guaranty shall be binding upon and shall inure to the benefit of Bank and Guarantors and their respective heirs, personal representatives, successors and assigns. This Guaranty may be assigned by Bank with respect to all or any portion of the obligations guaranteed hereby, and when so assigned Guarantors shall be liable under this Guaranty to the assignee(s) of the portion(s) of the obligations guaranteed hereby so assigned without in any manner affecting the liability of Guarantors hereunder to Bank with respect to any portion of the obligations guaranteed hereby retained by Bank.

20. WAIVER OF TRIAL BY JURY. GUARANTORS, AND BY ITS ACCEPTANCE HEREOF, BANK, EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY

BY EACH GUARANTOR AND BANK, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH GUARANTOR AND BANK ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

21. ADDITIONAL WAIVERS IN THE EVENT OF ENFORCEMENT. EACH GUARANTOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF BANK ON THIS GUARANTY, ANY AND EVERY RIGHT SUCH GUARANTOR MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT ANY GUARANTOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST BANK WITH RESPECT TO ANY ASSERTED CLAIM.

22. Governing Law; Submission To Jurisdiction. This Guaranty and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey (without giving effect to New Jersey's principles of conflicts of law). Guarantor hereby irrevocably submits to the nonexclusive jurisdiction of any New Jersey State or Federal court sitting in the County of Essex over any suit, action or proceeding arising out of or relating to this Guaranty, and Guarantors hereby agree and consent that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any New Jersey State or Federal court sitting in the County of Essex may be made by certified or registered mail, return receipt requested, directed to the Guarantors at the addresses indicated above, with a copy to its counsel at the address set forth herein, and service so made shall be complete five (5) days after the same shall have been so mailed.

23. Paragraph Headings. Any paragraph headings and captions in this Guaranty are for convenience only and shall not affect the interpretation or construction hereof.

24. Liability Unaffected by Release. Any other Person liable upon or in respect of any obligation hereby guaranteed, may be released without affecting the liability of Guarantors hereunder.

25. Guarantors' Financial Condition. As of the date hereof, and after giving effect to this Guaranty and the obligations evidenced hereby, each Guarantor is and will be solvent and has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and has and will have property and assets sufficient to satisfy and repay its obligations and liabilities.

26. Notices. Notices shall be given in the manner provided in the Loan Agreement and with respect to Guarantors at the addresses set forth above, with a copy of any such Notice to be given to Hunton & Williams LLP, 200 Park Avenue, 52<sup>nd</sup> Floor, New York, New York 10166, Attention: Laurie A. Grasso, Esq., with a copy to McManimon, Scotland &

Baumann, LLC, 75 Livingston Avenue, 2<sup>nd</sup> Floor, Roseland, New Jersey 07068, Attention: Leah Sandbank, Esq.

27. Principles of Construction. All references to sections, paragraphs, schedules and exhibits are to sections, paragraphs, schedules and exhibits in or to this Guaranty unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty. The recitals to this Guaranty shall be deemed a part hereof and all exhibits and schedules attached hereto, if any, are incorporated herein by reference for all purposes. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined and “including” means including without limitation. Whenever the context requires, each gender shall include all other genders.

28. Counterparts. This Guaranty may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement.

29. Termination of Guaranty.

(a) Notwithstanding anything set forth in this Guaranty to the contrary (except as set forth in Section 7 hereof, which shall survive any termination of this Guaranty), Guarantors shall at all times remain liable for the obligations guaranteed as set forth in this Guaranty until ninety (90) days following the earlier of (x) the irrevocable payment in full of the Loan and (y) the payment of all other amounts payable hereunder; provided, however, that in the event that after the Completion Date (as defined in the Loan Agreement):

(i) the Borrower shall have caused the Premises to achieve a Debt Service Coverage Ratio of 1.20 to 1.00 for six (6) consecutive months, and shall have certified to the Bank in writing that such minimum Debt Service Coverage Ratio has been so achieved;

(ii) the Bank shall have notified the Borrower and the Guarantors in writing (which notification shall not be unreasonably withheld or delayed) that based upon information available to the Bank, the Bank is in agreement that such minimum Debt Service Coverage Ratio been achieved; then Section 2(a) of this Guaranty shall automatically terminate.

For purposes of the foregoing, “Debt Service Coverage Ratio” means current gross income (based on an annualized determination by the Bank of the prior six (6) month rent roll for the Premises) for the Premises less (i) a 5% vacancy allowance and (ii) the then current operating expenses of the Premises including a minimum management fee of 3% of gross revenues (based on the greater of (x) an annualized determination by the Bank of the prior six (6) months of operating expenses of the Premises or (y) the pro forma operating expenses for such period) divided by the then outstanding aggregate principal balance of the Loan (including any amounts remaining to be advanced thereunder)) the Loan and that certain loan in the aggregate amount of \$15,700,000 from the Bank to RBH-TRB West I Mezz Urban Renewal

Entity, LLC, dated as of the date hereof, together with any accrued and unpaid interest thereon, all measured by the Bank in its reasonable discretion.

(b) In the event the conditions set forth in Section 29(a)(i) and (ii) above are not satisfied and the Loan has not been repaid, the liability of Guarantors under this Guaranty shall not terminate, and Guarantors shall continue to be fully obligated to the Bank for the obligations guaranteed as set forth in this Guaranty; it being expressly understood that nothing contained in this Section 29 shall be construed so as to limit or impair such full guaranty by Guarantors in the event the conditions set forth in subparagraph (a) above are not satisfied.

30. Survival. All representations and warranties made by each Guarantor herein shall survive the execution hereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**[SIGNATURE PAGE TO GUARANTY OF PAYMENT AND RECOURSE CARVEOUTS]**

**IN WITNESS WHEREOF**, Guarantors have caused this Guaranty to be duly executed and delivered by its duly authorized official as of the date first above stated.

**RBH-TRB NEWARK HOLDINGS, LLC**,  
a New York limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

\_\_\_\_\_  
**RON BEIT-HALACHMY**,  
an individual

\_\_\_\_\_

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

On the       day of September in the year 2012 before me, the undersigned, a notary public in and for said state, personally appeared Ron Beit-Halachmy, 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 s/he executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public





**JOINT AND SEVERAL COMPLETION GUARANTY**

**THIS JOINT AND SEVERAL COMPLETION GUARANTY** (this “**Guaranty**”), dated as of September 11, 2012, is made on a joint and several basis by **TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC**, a New Jersey limited liability company having an address c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (the “**Borrower**”) and **RBH-TRB NEWARK HOLDINGS, LLC**, a New York limited liability company, having an address c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (“**RBH-TRB**,” and together with the Borrower, collectively, jointly and severally, “**Guarantors**” and individually, each a “**Guarantor**”), to **GOLDMAN SACHS BANK USA**, a New York banking corporation, having an address at 200 West Street, New York, New York 10282 (the “**Lender**”).

**WHEREAS**, Lender has agreed to make a loan in the original principal amount of up to Nine Million Dollars (\$9,000,000) (the “**Loan**”) to Borrower, which Loan will be evidenced by the Note and secured by the Mortgage and shall be advanced pursuant to the terms and provisions of the Loan Agreement (all as defined in Exhibit A attached hereto), and will be used to finance the costs of Borrower’s acquisition of its fee interest in the Premises and the construction of the Improvements (all as described and defined in Exhibit A attached hereto);

**WHEREAS**, the Lender is willing to make the Loan to the Borrower only if the Guarantors execute and deliver this Guaranty; and

**WHEREAS**, the Guarantors will derive benefit from the making of the Loan;

**NOW, THEREFORE**, in consideration of the recitals set forth above and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and to induce the Lender to make the Loan, the Guarantors hereby acknowledge, agree and confirm that all of the above recitals are true, correct and complete and hereby agree with the Lender as follows:

1. The provisions of the Loan Agreement and the other documents executed in connection with the Loan (collectively, the “**Loan Documents**”) are hereby incorporated herein and made a part of this Guaranty with the same force and effect as if fully set forth herein; provided, however, that the exculpation provisions relieving the Borrower from personal liability for payment of the Loan or any other obligations under the Loan Documents shall not in any manner affect or limit the liability of the Guarantors arising hereunder. All terms not defined herein but defined in the Loan Agreement and used herein shall have the meanings assigned to them therein.

2. The Guarantors, jointly and severally, absolutely, irrevocably and unconditionally guaranty to the Lender, together and individually, that:

(a) the Borrower shall construct, equip and complete the construction of the Improvements pursuant to the terms of the General Contracts, as the same may be modified in accordance with the provisions of the Loan Agreement and with payment and disbursements therefor made in accordance with the provisions of the Loan Agreement and shall pay all costs

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and expenses incurred in connection therewith, including, but not limited to, any Shortfall Amount;

(b) the Borrower shall cause the completion of the construction of alterations, fixtures or other work to meet the requirements of any tenant, subtenant or other occupant of the Improvements, in accordance with the Plans, and shall pay all costs and expenses incurred in connection therewith, limited, however, to alterations, fixtures and other work agreed to be done by the Borrower at the Borrower's sole cost and expense pursuant to the provisions of any lease, sublease or other occupancy agreement now or hereafter entered into by the Borrower with respect to Improvements to be occupied by such tenant, subtenant or other occupant; and

(c) the Guarantors shall remove within thirty (30) days (by bonding or as otherwise approved by the Lender) any lien caused by the Borrower's failure to comply with the provisions of the Loan Agreement or arising from the completion of the construction of the Improvements (including, without limitation, alterations, fixtures or work referred to in clause (b) of this section) whether equal or prior in lien or other priority or subordinate to the lien of the Mortgage and irrespective of whether the validity, priority or enforceability thereof has been adjudicated by a court of competent jurisdiction or otherwise.

The Guarantors covenant and agree that if the Borrower shall fail to perform any of the above, the Guarantors shall, at the request of the Lender, do any and all of the foregoing.

3. If the Borrower and/or the Guarantors do not take and complete the actions specified in clauses (a), (b) and (c) of Section 2 of this Guaranty (collectively, the "**Work**") on or before the time such matters are to be done by the Borrower in accordance with the provisions of the Loan Agreement after any applicable grace and cure periods under the Loan Agreement, and written notice thereof is sent by the Lender to the Guarantors, the Guarantors shall reimburse the Lender, as may be applicable, within ten (10) days upon demand, for all costs and expenses (including, but not limited to, attorneys' fees and disbursements of Lender's counsel, whether in-house staff, retained firms or otherwise (collectively, "**Legal Fees**")), to the extent not otherwise reimbursed to the Lender by the Borrower, in connection with and shall cause the following to occur:

(a) completing the construction of the Improvements substantially in accordance with the Plans, as set forth in the Loan Documents;

(b) completing the construction of alterations, fixtures or other work to comply with the Plans; and

(c) the removal of any lien (by bonding or otherwise) caused by the Borrower's failure to comply with the provisions of the Loan Documents or arising from the construction and equipping of the Improvements, as the case may be, whether equal or prior in lien or other priority or subordinate to the lien of the Mortgage and irrespective of whether the validity, priority or enforceability thereof has been adjudicated by a court of competent jurisdiction or otherwise.

Such reimbursement shall be made to the Lender by the Guarantors as hereinabove set forth, for such costs and expenses incurred by the Lender regardless of whether they are incurred prior or

subsequent to the Debt (as such term is defined in Exhibit A attached hereto) being declared immediately due and payable or the occurrence of any other event described in Section 10 below and even though the Lender may not have an allowed claim for any of the same against the Borrower as a result of any bankruptcy or insolvency proceeding.

4. The Guarantors agree that they shall indemnify, defend and hold harmless the Lender at each Guarantor's sole cost and expense against any damage, loss, liability, cost or expense (including, but not limited to, all Legal Fees), and all claims, actions, procedures and suits arising out of or in connection with:

(a) the failure of the Borrower to take and complete the actions specified in clauses (a), (b) and (c) of Section 2 of this Guaranty in accordance with the provisions of the Loan Documents and within the time periods set forth therein;

(b) any matters arising out of this Guaranty and any document or instrument now or hereafter executed and/or delivered by the Guarantors in connection herewith, including, but not limited to, any amendment to, or restructuring of, this Guaranty or the obligations of the Guarantors hereunder (the "**Guaranty Documents**"); and

(c) any and all lawful action that may be taken by the Lender in connection with the enforcement of the provisions of this Guaranty after one or more of the events described in Section 10 below occur, or of any of the other Guaranty Documents and the obligations of the Guarantors thereunder, whether or not suit is filed in connection with the same, or in connection with the Borrower, any of the Guarantors and/or any partner, member, joint venture or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding.

All sums expended by the Lender shall be payable within ten (10) days after demand and, until reimbursed by the Guarantors pursuant hereto, shall bear interest at the Involuntary Rate (as defined in the Mortgage).

5. The Guarantors acknowledge and agree that it will be impossible to accurately measure the damages to the Lender resulting from a breach of the covenants to complete or to cause the completion of the construction and equipping of the Improvements, as set forth in Sections 2 and 3 hereof, that such a breach will cause irreparable injury to the Lender and that the Lender has no adequate remedy at law in respect of such breach and, as a consequence, agrees that such covenant shall be specifically enforceable against the Guarantors, and the Guarantors hereby waive and agree not to assert any defense based on the denial of any of the foregoing in an action for specific performance of such covenant.

6. The Guarantors each hereby represent and warrant that all financial statements of the Guarantors heretofore delivered to the Lender by or on behalf of the Guarantors are true and correct in all material respects and fairly present the financial condition of the Guarantors as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. In addition, the Guarantors covenant that so long as the Loan remains outstanding and unpaid, the Guarantors will, unless otherwise consented to in writing by the Lender:

(a) furnish to the Lender, as soon as available, but in any event within ninety (90) days next following the end of each fiscal year of the Guarantors, annual audited financial statements in the same form of financial statements delivered to Lender prior to the date hereof, for such fiscal year, containing a fully itemized statement of profit and loss and of surplus and an audited balance sheet, and otherwise in form and substance satisfactory to Lender, such statement accompanied by a certificate signed by the Guarantors certifying on the date thereof that: (i) such financial statement is true, correct and complete in all material respects and (ii) either that no default nor event which upon notice or lapse of time or both would constitute a default under the Loan Documents has occurred hereunder or, if such default exists, the nature thereof and the period of time it has existed (a “**Certification**”); and

(b) furnish to the Lender, within fifteen (15) days after request, such further detailed financial and other information (including, but not limited to, financial statements) as may be reasonably requested by the Lender with respect to the Guarantors, or any affiliate of, or entity controlled by any or all of the Guarantors which are involved in the Project, as of a date not earlier than that specified by Lender in such request, together with a Certification with respect thereto.

7. In addition to any right available to the Lender under applicable law or any other agreement, the Guarantors hereby give to the Lender continuing liens on, security interest in and right of set-off against all moneys, securities and other property of the Guarantors and the proceeds thereof, now on deposit or now or hereafter delivered, remaining with or in transit in any manner to the Lender, its correspondents, participants or agents from or for the Guarantors, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of the Lender in any way, and also, any balance of any deposit account and credits of the Guarantors with, and any and all claims of the Guarantors against the Lender at any time existing, as collateral security for all of the obligations of the Guarantors under this Guaranty, including fees, contracted with or acquired by the Lender, whether joint, several, absolute, contingent, secured, matured or unmatured (collectively, the “**Liabilities**”), hereby authorizing the Lender at any time or times upon the occurrence and continuance of an Event of Default, without prior notice, to apply such balances, credits or claims, or any part thereof, to the obligations of the Guarantors hereunder in such amounts as it may select, whether contingent, unmatured or otherwise and whether any collateral security therefor is deemed adequate or not. The collateral security described herein shall be in addition to any collateral security described in any separate agreement executed by any or all of the Guarantors. The Lender, in addition to any right available to the Lender under applicable law or any other agreement, shall have the right, upon the occurrence and during the continuance of an Event of Default, at its option, to immediately set off against any obligations of the Guarantors hereunder all monies owed by the Lender in any capacity to any or all of the Guarantors, whether or not due, and the Lender shall, at the option of the Lender be deemed to have exercised such right to set off and to have made a charge against any such money immediately upon the occurrence of any events of default set forth below, even though such charge is made or entered on the books of the Lender subsequent to those events.

8. The Guarantors hereby expressly agree that this Guaranty is independent of, and in addition to, all collateral granted, pledged or assigned under the Loan Documents, and the Guarantors hereby consent that from time to time, before or after any default by the Borrower or

the maturity of the Loan, with or without further notice to or assent from any of the Guarantors, the Lender may:

- (a) accelerate (only after any Event of Default by the Borrower), settle, exchange, surrender or release any security at any time held by or available to the Lender for any obligation of the Borrower, or any security at any time held by or available to the Lender for any obligation of any other person or party primarily, secondarily or otherwise liable for all or any portion of the Debt, any other Liabilities and/or any other obligation or any other person or party under any of the Loan Documents (“**Other Obligations**”), including any guarantor of the Debt, the Liabilities and/or any of such Other Obligations;
- (b) amend, by written agreement or otherwise with the Borrower or any guarantor of the Debt and/or the Borrower’s obligations under the Loan Documents (an “**Other Guarantor**”), any provision of the Plans or the Loan Documents, including any change in the interest rate therein or any change in the time or manner of payment thereunder;
- (c) make any agreement with the Borrower or any Other Guarantor for the extension, payment, compounding, modification, compromise, discharge or release of any provision of the Loan Documents or for the modification of the terms thereof; and/or
- (d) extend further credit in any manner whatsoever to the Borrower or any Other Guarantor, and generally deal with the Borrower or any Other Guarantor or any of the security, deposit account or credit on its books or any other person or party as the Lender may see fit;

and the Guarantors shall remain bound in all respects under this Guaranty without any loss of any rights by the Lender and without affecting the liability of the Guarantors. Without limiting the generality of the foregoing, the Lender is expressly authorized to surrender to the Borrower or any Other Guarantor, or to deal with, realize or not realize upon, or modify the form of, any security which the Lender may at any time hold to secure the performance of any obligation hereby guaranteed, and the guaranties herein made by the Guarantor shall not be impaired or affected by any of the foregoing. In addition, all moneys available to the Lender for application in payment or reduction of the Debt, the Liabilities and/or the Other Obligations may be applied by the Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as the Lender, as may be applicable, may see fit.

9. Each of the Guarantors hereby waives:

- (a) notice of acceptance of this Guaranty;
- (b) protest and notice of dishonor or default to any or all of the Guarantors or to any other person or party with respect to any obligations hereby guaranteed;
- (c) all other notices to which any or all of the Guarantors might otherwise be entitled;
- (d) any demand under this Guaranty except under Section 3 hereof;

- (e) any requirement of diligence on the part of any person or entity;
- (f) the benefits of any statutory provision limiting the liability of a surety; and
- (g) any requirement to exhaust any remedies or mitigate the damages resulting from any default.

10. If any of the following events should occur:

- (a) default under any of the Loan Documents occasioned, either directly or indirectly, by any of the Guarantors, and its continuance beyond any applicable notice and/or grace periods therein contained;
- (b) any or all of the Guarantors violate any provision of this Guaranty and such violation continues and remains uncured for a period of ten (10) days after written notice thereof is sent to the Guarantors;
- (c) any or all of the Guarantors commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeks to have an order for relief entered with respect to it, or seeks to be adjudicated a bankrupt or insolvent, or seeks reorganization, arrangement, adjustment, liquidation, dissolution, composition or other relief with respect to it or its debts, or seeks the appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of their property;
- (d) any or all of the Guarantors make a general assignment for the benefit of creditors;
- (e) there is commenced against any or all of the Guarantors, any case, proceeding or other action of a nature referred to in subsection (c) above or seeking the issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of their property, which case, proceeding or other action results in the entry of an order for relief or remains undismissed, undischarged or unbonded for a period of thirty (30) days;
- (f) any or all of the Guarantors take any action indicating its consent to, approval of, or acquiescence in, or in furtherance of, any of the acts set forth in subsections (c) and (e) above;
- (g) any or all of the Guarantors admit in writing their inability to pay its debts as they mature;
- (h) any or all of the Guarantors terminate or dissolve or suspend their usual business activities or convey, sell, lease, transfer or otherwise dispose of all or a substantial part of their property, business or assets other than in the ordinary course of business; or
- (i) any or all of the Guarantors attempts to repudiate its obligations under this Guaranty;

then, and in such event, the Lender may declare the Liabilities to be, and the same shall become, immediately due and payable.

11. Each reference herein to the Lender shall be deemed to include the Lender’s successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the Guarantors shall be deemed to include the heirs, executors, administrators, legal representatives, successors and assigns of the Guarantors, all of whom shall be bound by the provisions of this Guaranty; provided, however, that the Guarantors shall in no event nor under any circumstance have the right, without obtaining the prior written consent of the Lender, to assign or transfer the Guarantors’ obligations and liabilities under this Guaranty, in whole or in part, to any other person, party or entity.

12. The term “**Guarantors**” as used herein shall, if this Guaranty is signed by more than one party, unless otherwise stated herein, mean the “**Guarantors and each of them**” and each undertaking herein contained shall be their joint and several undertaking. The Lender may proceed against none, one or more of the Guarantor at one time or from time to time as it sees fit in its sole and absolute discretion. If any party hereto shall be a partnership, the agreements and obligations on the part of the Guarantors herein contained shall remain in force and application notwithstanding any changes in the individuals composing the partnership and the term “**Guarantors**” shall include any altered or successive partnerships, but the predecessor partnerships and their partners shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a limited liability company, the agreements and obligations on the part of the Guarantors herein contained shall remain in force and application notwithstanding any changes in the individuals composing the limited liability company and the term “**Guarantors**” shall include any altered or successive limited liability companies, but the predecessor limited liability companies and their members shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a corporation, the agreements and obligations on the part of the Guarantors herein contained shall remain in force and application notwithstanding the merger, consolidation, reorganization or absorption thereof, and the term “**Guarantors**” shall include such new entity, but the old entity shall not thereby be released from any obligations or liabilities hereunder.

13. No delay on the part of the Lender in exercising any right or remedy under this Guaranty or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on any or all of the Guarantors shall be deemed to be a waiver of the obligations of any or all of the Guarantors or of the right of the Lender to take further action without notice or demand as provided in this Guaranty. No course of dealing between any of the Guarantors the Lender shall change, modify or discharge, in whole or in part, this Guaranty or any obligations of the Guarantor hereunder.

14. This Guaranty may only be modified, amended and/or changed by an agreement in writing signed by the Lender and the Guarantors. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by Lender and if so given by Lender shall only be effective in the specific instance in which given. The execution and delivery hereafter to the Lender by any or all of the Guarantors of a new instrument of guaranty or any reaffirmation of guaranty, of whatever nature, shall not terminate, supersede or cancel this instrument, unless expressly so provided therein, and all rights and remedies of the Lender



hereunder or under any instrument of guaranty hereafter executed and delivered to the Lender by any or all of the Guarantors shall be cumulative and may be exercised singly or concurrently.

15. Each of the Guarantors acknowledge that this Guaranty and the Guarantors' obligations under this Guaranty are and shall at all times continue to be absolute, irrevocable and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Guaranty and the obligations of any or all of the Guarantors under this Guaranty or the obligations of any other person or party (including, without limitation, the Borrower) relating to this Guaranty or the obligations of any or all of the Guarantors hereunder or otherwise with respect to the Debt, including, but not limited to, a foreclosure of the Mortgage or the realization upon any other collateral given, pledged or assigned as security for all or any portion of the Debt, or the filing of a petition under Title 11 of the United States Code with regard to the Borrower or any or all of the Guarantors, or the commencement of an action or proceeding for the benefit of the creditors of the Borrower or the Guarantors, or the obtaining by the Lender of title to, respectively, the premises encumbered by the Mortgage or any other collateral given, pledged or assigned as security for the Debt by reason of the foreclosure or enforcement of the Mortgage or any other pledge or security agreement, the acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise. This Guaranty sets forth the entire agreement and understanding of the Lender and the Guarantors with respect to the matters covered by this Guaranty and the Guarantors acknowledge that no oral or other agreements, understandings, representations or warranties exist with respect to this Guaranty or with respect to the obligations of the Guarantors under this Guaranty, except those specifically set forth in this Guaranty.

16. This Guaranty has been validly authorized, executed and delivered by the Guarantors. The Guarantors each represent and warrant to the Lender that they have the power to do so and to perform their obligations under this Guaranty and this Guaranty constitutes the legally binding obligation of the Guarantors fully enforceable against each of the Guarantors in accordance with the terms hereof. The Guarantors each further represent and warrant to the Lender that, to the best of their knowledge:

(a) neither the execution and delivery of this Guaranty nor the consummation of the transactions contemplated hereby nor compliance with the terms and provisions hereof will violate any applicable provision of law or any applicable regulation or other manifestation of governmental action; and

(b) all necessary approvals, consents, licenses, registrations and validations of any governmental regulatory body, including, without limitation, approvals required to permit the Guarantors to execute and carry out the provisions of this Guaranty, for the validity of the obligations of the Guarantors hereunder and for the making of any payment or remittance of any funds required to be made by the Guarantors under this Guaranty, have been obtained and are in full force and effect.

17. Notwithstanding any payments made by any or all of the Guarantors pursuant to the provisions of this Guaranty, the Guarantors irrevocably waive all rights to enforce or collect upon any rights which they now have or may acquire against the Borrower either by way of subrogation, indemnity, reimbursement or contribution for any amount paid under this Guaranty

or by way of any other obligations whatsoever of the Borrower to any or all of the Guarantors while the Loan is outstanding, nor shall any or all of the Guarantors file, assert or receive payment on any claim, whether now existing or hereafter arising, against the Borrower in the event of the commencement of a case by or against the Borrower under Title 11 of the United States Code. In the event either a petition is filed under said Title 11 of the United States Code with regard to the Borrower or the commencement of an action or proceeding for the benefit of the creditors of the Borrower, this Guaranty shall at all times thereafter remain effective in regard to any payments or other transfers of assets the Lender received from or on behalf of the Borrower prior to termination or notice of termination of this Guaranty and which are or may be held voidable on the grounds of preference or fraud, whether or not the Debt has been paid in full or the expansion and renovation of the Premises and construction and equipping of the Improvements has been completed in accordance with the Loan Agreement and the Plans. Any payment on account of or reacknowledgment of the Debt by the Borrower, or any other party liable therefor, or action taken, or payment or reacknowledgment made, of any of the obligations of the Borrower to take and complete the actions specified in clauses (a), (b) and (c) of Section 2 of this Guaranty shall be deemed to be taken or made on behalf of the Guarantors and shall serve to start anew the statutory period of limitations applicable to the Borrower with respect to said clauses (a), (b) and (c) of Section 2 hereof or the Guarantors hereunder. The provisions of this Section 17 shall survive the term of this Guaranty and the payment in full of the Debt any other Liabilities and/or any Other Obligations.

18. All notices required or permitted hereunder shall be given to the addresses set forth below in the manner as provided in the Loan Agreement:

If to Lender:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Margaret Anadu
with a copy to:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Andrea Gift
with a copy to:	gs-uig-docs@gs.com
with a copy to:	Jones Day 222 East 41 <sup>st</sup> Street New York, New York 10017 Attention: Aviva Yakren, Esq.
If to any of the Guarantors:	c/o RBH Group 89 Market Street, 8 <sup>th</sup> Floor Newark, New Jersey 07102 Attention: Ron Beit

And: McManimon, Scotland & Baumann, L.L.C.  
75 Livingston Avenue, 2<sup>nd</sup> Floor  
Roseland, New Jersey 07068  
Attention: Glenn F. Scotland, Esq.

it being understood and agreed that each party will use reasonable efforts to send copies of any notices to the addresses marked "With a copy to" hereinabove set forth; provided, however, that failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to any of the Guarantors or the Lender. Each party to this Guaranty may designate a change of address by notice given, as herein provided, to the other party fifteen (15) days prior to the date such change of address is to become effective.

19. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New Jersey and shall be in all respects governed, construed, applied and enforced in accordance with the laws of the State of New Jersey without regard to principles of conflicts of laws.

20. The Guarantors agree to submit to personal jurisdiction in the State of New Jersey in any action or proceeding arising out of this Guaranty. In furtherance of such agreement, the Guarantors hereby agree and consent that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the Guarantors in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the Guarantors by registered or certified mail to, or by personal service at, the last known address of the Guarantors, whether such address be within or without the jurisdiction of any such court. The Guarantors hereby further agree that the venue of any litigation arising in connection with the Debt or in respect of any of the obligations of the Guarantors under this Guaranty, shall, to the extent permitted by law, be in the City of Newark, New Jersey.

21. The Guarantors absolutely, unconditionally and irrevocably waive any and all right to assert or interpose any defense except the defense that payment and performance was actually made hereunder, setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Guaranty or the obligations of the Guarantors under this Guaranty, other than a compulsory counterclaim, or the obligations of any other person or party (including without limitation, the Borrower) relating to this Guaranty, or the obligations of the Guarantors hereunder or otherwise with respect to the Loan in any action or proceeding brought by the Lender to collect on the Debt, or any portion thereof, or to enforce the obligations of the Borrower or any other party under the Loan Agreement or any of the other Loan Documents, including those of the Guarantors under this Guaranty (provided, however, that the foregoing shall not be deemed a waiver of the right of the Guarantors to assert any compulsory counterclaim maintained in a court of the United States, or of the State of New Jersey if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the right of the Guarantors to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Lender in any separate action or proceeding). The Guarantors hereby undertake and agree that this Guaranty shall remain in full force and effect for all of the obligations and liabilities of the Guarantors

hereunder, notwithstanding the maturity of the Loan, whether by acceleration, scheduled maturity or otherwise.

22. No exculpatory provisions contained in any of the Loan Documents shall in any event or under any circumstances be deemed or construed to modify, qualify, or affect in any manner whatsoever the obligations and liabilities of the Guarantors under this Guaranty.

23. The obligations and liabilities of the Guarantors under this Guaranty are in addition to the obligations and liabilities of the Guarantors under the Other Guaranties (as hereinafter defined). The discharge of any or all of the Guarantors' obligations and liabilities under any one or more of the Other Guaranties by the Guarantors or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the Guarantors' obligations and liabilities under this Guaranty. Conversely, the discharge of any or all of the Guarantors' obligations and liabilities under this Guaranty by the Guarantors or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the Guarantors' obligations and liabilities under any of the Other Guaranties. The term "**Other Guaranties**" as used herein shall mean any other guaranty of payment, guaranty of performance, completion guaranty, indemnification agreement or other guaranty or instrument creating any obligation or undertaking of any nature whatsoever (other than this Guaranty) now or hereafter executed and delivered by any or all of the Guarantors to the Lender in connection with the Loan.

24. This Guaranty may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of guaranty. The failure of any party listed below to execute this Guaranty, or any counterpart hereof, or the ineffectiveness for any reason of any such execution, shall not relieve the other signatories from their obligations hereunder nor shall any implication arise from the failure of any of the original guarantors to sign this Guaranty that such non-signing guarantor, or any other guarantor, is released from any of his/her/its respective obligations under the original guaranty.

25. **The Guarantors hereby irrevocably and unconditionally waive, and the Lender by its acceptance of this Guaranty irrevocably and unconditionally waives, any and all right to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Guaranty.**

26. In no event shall this Guaranty be deemed to constitute a guaranty of the payment of the principal or the interest evidenced by each Note and secured by the Mortgage. The foregoing is not intended, and shall not be deemed, to impair or affect any guaranties herein made by the Guarantors.

27. This Guaranty shall automatically terminate upon completion of the expansion and renovation of the Premises and the construction and equipping of the Improvements and receipt of a permanent certificate of occupancy for the Premises and all of the Improvements.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the undersigned have duly executed this Joint and Several Completion Guaranty the day and year first above set forth.

**GUARANTORS:**

**TEACHERS VILLAGE PROJECT A QALICB URBAN  
RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

**RBH-TRB NEWARK HOLDINGS, LLC,**  
a New York limited liability company

By: RBH Capital LLC,  
its manager

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory



$$\begin{array}{c} ) \\ \text{SS.:} \\ ) \end{array}$$

SS.:  
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Notary Public

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## **EXHIBIT A**

**Debt:** The term “**Debt**” as used in this Guaranty shall mean an amount equal to the aggregate of all outstanding principal, interest, additional interest (including specifically all interest accruing from and after the commencement of any case, proceeding or action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to the Borrower), Loan fees and other sums of any nature whatsoever which may or shall become due and payable pursuant to the provisions of the Loan Documents (all of the above unaffected by modification thereof in any bankruptcy or insolvency proceeding), and even though the Lender may not have an allowed claim for the same against the Borrower as a result of any bankruptcy or insolvency proceeding.

**Improvements:** The term “**Improvements**” as used in this Guaranty shall mean the expansion and construction of the development located on the Premises.

**Loan Agreement:** The term “**Loan Agreement**” as used in this Guaranty shall mean that certain Building Loan Agreement dated as of the date hereof, entered into among the Borrower and the Lender.

**Mortgage:** The term “**Mortgage**” as used in this Guaranty shall mean that certain Mortgage, Assignments of Leases and Rents and Security Agreements in the principal amount of \$9,000,000.00, dated as of the date hereof, given by the Borrower to Lender, constituting a lien on the fee simple interest of the Borrower in the Premises, the Improvements and intended to be duly recorded in Essex County, Newark, New Jersey

**Note:** The term “**Note**” as used in this Guaranty shall mean that certain GS Building Loan Note in the principal amount of \$9,000,000.00, dated as of the date hereof, given by the Borrower to Lender.

**Premises:** The term “**Premises**” as used in this Guaranty shall mean the real property located in County of Essex, City of Newark, State of New Jersey, as more particularly defined in the Mortgage.

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**ENVIRONMENTAL INDEMNITY AGREEMENT**

**THIS ENVIRONMENTAL INDEMNITY AGREEMENT** (this “**Agreement**”), dated as of September 11, 2012, is made by **TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC**, a New Jersey limited liability company having an address c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (the “**Indemnitor**”), to **GOLDMAN SACHS BANK USA**, a New York corporation, having an address at 200 West Street, New York, New York 10282 (the “**Lender**”).

**RECITALS:**

**WHEREAS**, pursuant to that certain Building Loan Agreement dated of even date herewith (the “**Loan Agreement**”) made by and between the Indemnitor and the Lender, the Lender has made to the Indemnitor a certain mortgage loan in the original principal amount of Nine Million and No/100 Dollars (\$9,000,000.00) (collectively, the “**Loan**”).

**WHEREAS**, the Loan is evidenced by the promissory note dated the date hereof, as specified in the Loan Agreement (the “**Note**”), which Note is secured by that certain Mortgage, Assignment of Leases and Rents and Security Agreement, dated of even date herewith (the “**Mortgage**”) encumbering the real property located in Newark, New Jersey, as described in such Mortgage (the “**Premises**”).

**WHEREAS**, Indemnitor will derive material financial benefit from the Loan evidenced and secured by the Note, the Mortgage and the other Loan Documents (as defined in the Loan Agreement).

**WHEREAS**, Lender have relied on the statements and agreements contained herein in agreeing to make the Loan. The execution and delivery of this Agreement by Indemnitor is a condition precedent to the making of the Loan by the Lender.

**AGREEMENTS:**

In consideration of the Recitals set forth above and hereby incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Indemnitor hereby agrees as follows:

1. Definitions.
    - (a) All capitalized terms used but not defined herein shall have the meaning given such terms in the Loan Agreement.
    - (b) The term “**Environmental Law**” means, collectively, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Liability Act, 42 U.S.C. §9601 et seq., the Toxic Substance Control
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Act, 15 U.S.C. §2601 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Clean Water Act, 33 U.S.C §1251 et seq., all municipal, county, and state analogues to any of the foregoing, all amendments to any of the foregoing, any other municipal, county, state or federal law, rule, regulation, ordinance or directive regulating Hazardous Materials, and all enforceable orders, regulations and requirements under any of the foregoing.

(c) The term “**Hazardous Material**” means, collectively (A) any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto and replacements therefor; (B) such substances, materials or wastes as are regulated by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et. seq. (“RCRA”), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Liability Act, 42 U.S.C. §9601 et. seq. (“CERCLA”), the Toxic Substance Control Act, 15 U.S.C. §2601 et seq. (“TSCA”), the Clean Air Act, 42 U.S.C. §7401 et seq. (“CAA”), the Clean Water Act, 33 U.S.C §1251 et. seq. (“CWA”), or any substance that is a “hazardous substance” or “hazardous waste” under the New Jersey Spill Compensation and Control Act, the New Jersey Industrial Site Recovery Act or the New Jersey Solid Waste Management Act or N.J.A.C. 7:26C-1.3, and all amendments to any of the foregoing laws, and all orders, regulations, directions and requirements thereunder; (C) asbestos; (D) such toxic or hazardous substances, materials or wastes that are or may become regulated under any other applicable municipal, county, state or federal law, rule, ordinance, direction, or regulation; and (E) any other substance or material regulated under any applicable municipal, county, state or federal law, rule, ordinance, direction, or regulation because of its dangerous or deleterious effects on human health or the environment.

(d) The term “**Operating Supplies**” means such materials which may be Hazardous Material such as cleaning materials, medical supplies and fuel oil used in the ordinary course in the operation and maintenance of the Premises or the conduct of any tenant’s business therein or the conduct of any tenant’s business at the Premises, and legally permissible construction items incorporated into the Premises during the construction thereof, in each case only to the extent in compliance with all Environmental Laws and other federal, state and local laws, rules and regulations, and only in such quantities as shall be used in the ordinary course for the operation and maintenance of the Premises, and legally permissible construction items incorporated into the Premises during the construction thereof.

(e) The term “**Report**” means, collectively, the environmental reports listed on Exhibit A hereto.

2. Indemnity. Indemnitor hereby agrees to pay, protect, defend (at trial and appellate levels) with attorneys, consultants and experts acceptable to the Lender, and save the Lender and its officers, directors, employees, agents, participants, members, partners, successors and assigns, and any parent or affiliate of the Lender (collectively, the “**Beneficiaries**”) harmless from and against, and hereby indemnify the Beneficiaries from and against any and all present or future liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements and expenses of any kind or of any nature whatsoever (including, without

limitation, attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding or enforcing the obligations of any Indemnitor hereunder) (collectively "Costs") which may at any time be actually imposed upon, incurred by or asserted or awarded against any Beneficiary with respect to the Premises, and arising directly or indirectly from or out of: (i) the violation of any Environmental Law; (ii) the actual or alleged presence, release or threat of release of any Hazardous Material now or hereafter on, in, under or affecting all or any portion of the Premises or any surrounding areas, regardless of whether or not caused by or within the control of Indemnitor, or at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of Indemnitor; (iii) the failure by Indemnitor to comply fully with the terms and conditions of this Agreement; (iv) the breach of any representation or warranty by Indemnitor contained in this Agreement; or (v) the enforcement of this Agreement, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Premises or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Materials on, in, under or affecting any portion of the Premises or any surrounding areas. "Costs" as used in this Agreement shall include any diminution in the value of the Premises or any future reduction of the sales or rental price of the Premises by reason of any matter set forth in this Paragraph 2, but "Costs" shall not include any other punitive or consequential damages.

3. Representations Regarding Hazardous Materials. Indemnitor hereby represents and warrants to and covenants and agrees with the Beneficiaries as follows:

- (a) Except as set forth in the Report, the Premises are not in violation of any Environmental Law;
- (b) Except as set forth in the Report, no Hazardous Materials (other than Operating Supplies) are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Premises (including underground contamination);
- (c) Except as set forth in the Report, the Indemnitor has not received notice that the Premises is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Materials;
- (d) Except as set forth in the Report, there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Materials on the Premises; and
- (e) Except as set forth in the Report, the Indemnitor has not received notice of, and there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could reasonably be expected to result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Premises.

4. Covenants of Indemnitor.

(a) The Indemnitor shall, for so long as the Premises is owned by the Indemnitor, exercise the same degree of care as a reasonable, prudent developer or owner of like properties would exercise to keep or cause the Premises to be kept free from Hazardous Materials (other than Operating Supplies) and in compliance with all applicable Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use (other than Operating Supplies), generation, handling, storage, production, processing and disposal of Hazardous Materials by all occupants of space in the improvements at the Premises, and, without limiting the generality of the foregoing shall not install in the improvements at the Premises or permit to be installed in the improvements at the Premises asbestos or any substance containing asbestos. The Indemnitor acknowledges and agrees that the Beneficiaries have no duty to provide Indemnitor with any information regarding the Environmental Laws or any interpretation thereof.

(b) (i) Indemnitor shall immediately notify the Beneficiaries should Indemnitor become aware of (A) any Hazardous Materials (other than Operating Supplies), or other potential environmental problem or liability, with respect to the Premises, (B) any lien, regulatory or enforcement action or notice affecting the Premises or the Indemnitor resulting from any violation or alleged violation of the Environmental Laws, (C) the institution of any investigation, inquiry or proceeding by any applicable governmental authority concerning the Indemnitor or the Premises pursuant to any Environmental Law or otherwise relating to Hazardous Materials, or (D) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Agreement incorrect in any material respect if made at the time of such discovery.

(ii) The Indemnitor shall, promptly and when and as required and regardless of the source of the contamination, at its own expense, take all actions as shall be required pursuant to any applicable Environmental Laws, consistent with the use of the Premises, for the remediation of any and all portions of the Premises or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all Environmental Laws that are applicable to the Premises, and shall further pay or cause to be paid, at no expense to the Beneficiaries, all remediation, administrative and enforcement costs imposed by applicable governmental agencies and which may be asserted against the Premises. In the event Indemnitor fails to do so, any or all Beneficiaries may, in their sole discretion (but shall have no obligation to), cause the Premises or other affected property to be so freed from any Hazardous Materials or otherwise brought into compliance with Environmental Laws consistent with the use of the Premises and any actual out-of-pocket cost incurred in connection therewith shall be included in Costs and shall be paid by Indemnitor; provided, however, that the Beneficiaries shall not take such action unless either (i) Indemnitor fails to commence such required actions within thirty (30) days after written notice by any Beneficiary, and/or Indemnitor thereafter fails to diligently and/or continuously prosecute to completion all required work and actions, and/or Indemnitor fails to complete the required work and actions within the time frames required under any applicable Environmental Laws and/or under the requirements of any governmental agency or body or (ii) any Beneficiary determines in its discretion that Indemnitor's failure to take the required actions is likely to have a material and adverse effect on the operation of the Premises as a whole or any Beneficiary's interests in the Premises and such Beneficiary gives notice to Indemnitor of such determination. In furtherance of the foregoing, the Indemnitor hereby grants to the Beneficiaries access to the Premises upon

written notice to Indemnitor and an irrevocable license to remove any items deemed by the Beneficiaries to be Hazardous Materials in violation of Environmental Laws and to do all things any Beneficiary shall deem necessary to bring the Premises, upon written notice to the Indemnitor, into compliance with Environmental Laws.

(c) Upon the request of any Beneficiary, at any time and from time to time after the occurrence of a default by Indemnitor under this Agreement or at such other time as any Beneficiary has grounds to believe or suspect that Hazardous Materials are or have been released, stored or disposed of on or around the Premises (other than in accordance with applicable Environmental Laws) or that the Premises may be in violation of the Environmental Laws, Indemnitor shall provide, at its sole expense, an inspection or audit of the Premises prepared by a hydrogeologist or environmental engineer or other appropriate consultant selected by Indemnitor and approved by the Beneficiaries assessing the presence or absence of Hazardous Materials on the Premises. If Indemnitor fails to commence such inspection or audit within fifteen (15) days after such request, any Beneficiary may order the same, and the Indemnitor hereby grants to the Beneficiaries access to the Premises, upon written notice to the Indemnitor, and an irrevocable license to undertake such inspection or audit. The cost of such inspection or audit shall be included in Costs and shall be paid by Indemnitor.

#### 5. Indemnification Procedures.

(a) If any action shall be brought against any Beneficiary based upon any of the matters for which such Beneficiary is indemnified hereunder, such Beneficiary shall notify Indemnitor in writing thereof, which notice shall include a copy of all pleadings and summons in the possession of such Beneficiary relating to such action and shall specifically state that indemnification for such action is being sought under this Agreement, and Indemnitor shall promptly assume the defense thereof, including, without limitation, the employment of counsel selected by Indemnitor and acceptable to the applicable Beneficiary or Beneficiaries and the negotiation of any settlement; provided, however, that any failure of such Beneficiary to notify Indemnitor of such matter shall not impair or reduce the obligations of Indemnitor hereunder. The Beneficiaries shall reasonably cooperate with Indemnitor, at Indemnitor's sole cost and expense, in connection with the defense or settlement of any such claim or action in accordance with the terms of this Agreement. If (i) any Beneficiary determines, based on the advice of counsel, that the conduct of its defense by Indemnitor would present a conflict of interest or otherwise be materially prejudicial to its interests, (ii) Indemnitor refuses to defend or (iii) Indemnitor shall have failed, in any Beneficiary's judgment, to defend the action in good faith, then the Beneficiaries shall have the right, at the expense of Indemnitor (which expense shall be included in Costs), to employ separate counsel in any such action and to participate in the defense thereof. In the event Indemnitor shall fail to undertake to defend the Beneficiaries against any claim, loss or liability for which the Beneficiaries are indemnified hereunder, the Beneficiaries may, at their sole option and election, defend or settle such claim, loss or liability (provided that the Beneficiaries shall give notice of any such settlement to Indemnitor). The liability of Indemnitor to the Beneficiaries hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the costs and expenses, including, without limitation, attorneys' fees and disbursements, incurred by the Beneficiaries in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in

Costs and Indemnitor shall pay the same as hereinafter provided. The Beneficiaries' good faith in any such settlement shall be conclusively established if the settlement is made on the advice of independent legal counsel for any Beneficiary.

(b) Indemnitor shall not, without the prior written consent of the Beneficiaries: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment with respect to any matter for which any Beneficiary is entitled to be indemnified hereunder and that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to the Beneficiaries of a full and complete written release of the Beneficiaries (in form, scope and substance satisfactory to the Beneficiaries) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that is reasonably likely to adversely affect the Beneficiaries or to obligate the Beneficiaries to pay any sum or perform any obligation.

(c) All Costs shall be immediately reimbursable to the Beneficiaries when and as incurred and, in the event of any litigation, claim or other proceedings without any requirement of waiting for the ultimate outcome of such litigation, claim or other proceedings and Indemnitor shall pay to the Beneficiaries any and all Costs within thirty (30) days after written notice from a Beneficiary itemizing in reasonable detail the amounts thereof incurred to the date of such notice. In addition to any other remedy available for the failure of Indemnitor to periodically pay such Costs, such Costs, if not paid by the twentieth (20<sup>th</sup>) day after such notice shall accrue interest at the Default Rate (as defined in the Note).

6. Reinstatement of Obligations. If at any time all or any part of any payment made by Indemnitor or received by the Beneficiaries from Indemnitor under or with respect to this Agreement is or must be rescinded or returned for any reason whatsoever (including, but not limited to, the insolvency, bankruptcy or reorganization of Indemnitor), then the obligations of Indemnitor hereunder shall, to the extent of the payment rescinded and returned, be deemed to have continued in existence, notwithstanding such previous payment made by Indemnitor, or receipt of payment by the Beneficiaries, and the obligations of Indemnitor hereunder shall continue to be effective or be reinstated, as the case may be, as to such payment, all as though such previous payment by Indemnitor had never been made,

7. Waivers by Indemnitor. To the extent permitted by law, Indemnitor hereby waives and agrees not to assert or take advantage of:

(a) Any right to require the Beneficiaries to proceed against any other Person or to proceed against or exhaust any security held by the Beneficiaries at any time or to pursue any other remedy in the Beneficiaries' power or under any other agreement before proceeding against Indemnitor hereunder;

(b) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of the Beneficiaries to file or enforce a claim against the estate (in administration, bankruptcy or any other proceedings) of any other Person or Persons;

(c) Any defense based upon an election of remedies by the Beneficiaries;

(d) Any right or claim of right to cause a marshalling of the assets of Indemnitor;

(e) Any duty on the part of the Beneficiaries to disclose to Indemnitor any facts the Beneficiaries may now or hereafter know about the Premises of which Indemnitor also had or has knowledge at the operative time, regardless of whether the Beneficiaries has reason to believe that any such facts materially increase the risk beyond that which Indemnitor intends to assume or has reason to believe that such facts are unknown to Indemnitor or has a reasonable opportunity to communicate such facts to Indemnitor, it being understood and agreed that Indemnitor is fully responsible for being and keeping informed of the condition of the Premises and of any and all circumstances bearing on the risk that liability may be incurred by Indemnitor hereunder;

(f) Any invalidity, irregularity or unenforceability, or any amendment, in whole or in part, of any one or more of this Agreement, the Loan Agreement or the other Loan Documents;

(g) Any deficiency in the ability of the Beneficiaries to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereunder;

(h) An assertion or claim that the automatic stay provided by 11 U.S.C. §362 (arising upon the voluntary or involuntary bankruptcy proceeding of any Indemnitor) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of the Beneficiaries to enforce any of its rights, whether now or hereafter required, which the Beneficiaries may have against Indemnitor;

(i) Any modifications of the Loan Agreement or other Loan Documents or any obligation of Indemnitor relating to the Loan Agreement or other Loan Documents by operation of law or by action of any court, whether pursuant to the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise; and

(j) Any sale or transfer of all or part of the Premises.

8. General Provisions.

(a) Fully Recourse. All of the terms and provisions of this Agreement are recourse obligations of Indemnitor and not restricted by any limitation on personal liability contained in any of the Loan Documents.

(b) Separate Obligations. Indemnitor hereby acknowledges that even though the representations, warranties, covenants or agreements of Indemnitor contained herein may be identical or substantially similar to representations, warranties, covenants or agreements of

Indemnitor under other agreements, the obligations of Indemnitor under this Agreement are separate obligations of Indemnitor hereunder which can be enforced against Indemnitor without regard to the existence of any other agreement.

(c) Survival. This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the payment in full of all amounts owed to the Lender under the Loan Agreement or the other Loan Documents and the exercise of any remedy by the Lender under the Loan Agreement or the other Loan Documents. Anything to the contrary herein notwithstanding, it is agreed and intended by Indemnitor and the Beneficiaries that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by the Beneficiaries to any of their assignees with respect to the Loan and the Lender.

(d) No Recourse Against Beneficiaries. Indemnitor shall not have any right of recourse against the Beneficiaries by reason of any action the Beneficiaries may take or omit to take under the provisions of this Agreement provided that such Beneficiary has given notice of any action as required hereby and has not acted in bad faith or committed willful misconduct.

(e) Reservation of Rights. Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which the Beneficiaries may have against Indemnitor or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. §9601 *et seq.*), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(f) Rights Cumulative; Payments. The Beneficiaries' rights under this Agreement shall be in addition to all rights of the Beneficiaries under the Loan Agreement, the other Loan Documents and any agreements executed and delivered in connection therewith.

(g) No Limitation on Liability. Indemnitor hereby consents and agrees that each Beneficiary may at any time and from time to time without further consent from Indemnitor do any of the following and the liability of Indemnitor under this Agreement shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Indemnitor or with or without consideration: (i) any extensions of time for performance required by the Loan Agreement or the other Loan Documents; (ii) any sale or transfer of the Premises; (iii) any change in the composition of Indemnitor or any affiliate thereof, including, without limitation, the withdrawal or removal of Indemnitor from any current or future position of ownership, management or control of Indemnitor; (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitor herein or in the Loan Agreement or the other Loan Documents; (v) the release of any Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Agreement or the other Loan Documents by operation of law, the Beneficiaries' voluntary act or otherwise; (vi) the modification of the terms of any one or more of the Loan Agreement or the other Loan Documents; or (vii) the taking or failure to take any action of any type whatsoever. No such action which any Beneficiary shall take or fail to take in connection with the Loan Agreement and the other Loan Documents, nor any course of dealing with Indemnitor or any other Person, shall limit, impair or release Indemnitor's obligations hereunder, affect this Agreement in any way or afford Indemnitor any recourse against the



Beneficiaries. Nothing contained in this Paragraph shall be construed to require the Beneficiaries to take or refrain from taking any action referred to herein.

(h) Entire Agreement; Amendment; Severability. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(i) Governing Law; Binding Effect; Waiver of Acceptance. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises is located, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling. This Agreement shall bind Indemnitor and the heirs, personal representatives, successors and assigns of Indemnitor and shall inure to the benefit of the Beneficiaries and the officers, directors, shareholders, agents and employees of the Beneficiaries and their respective heirs, successors and assigns. Notwithstanding the foregoing, Indemnitor shall not assign any of its respective rights or obligations under this Agreement without the prior written consent of the Beneficiaries, which consent may be withheld by the Beneficiaries in their sole discretion. Indemnitor hereby waives any acceptance of this Agreement by the Beneficiaries, and this Agreement shall immediately be binding upon Indemnitor.

(j) Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the others). Notices or other communications given by FedEx or another nationally recognized overnight courier service shall be deemed to be given on the following Business Day. Notices or other communications sent in any other manner shall be deemed given only when actually received.

If to Lender:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Margaret Anadu
with a copy to:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Andrea Gift
with a copy to:	gs-uig-docs@gs.com
with a copy to:	Jones Day

222 East 41<sup>st</sup> Street  
New York, New York 10017  
Attention: Aviva Yakren, Esq.

If to the Indemnitor: Teachers Village Project A QALICB Urban Renewal Entity, LLC  
c/o RBH Group  
89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102  
Attention: Ron Beit

with a copy to: McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, New Jersey 07068  
Attention: Leah Sandbank, Esq.

(k) No Waiver: Time of Essence; Business Days. The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof. The term “**business day**” as used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in the State are authorized by law to be closed.

(l) Captions for Convenience. The captions and headings of the sections and paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

(m) Successive Actions. A separate right of action hereunder shall arise each time the Beneficiaries acquire knowledge of any matter indemnified by Indemnitor under this Agreement. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No legal proceeding hereunder shall preclude any subsequent legal proceeding, and Indemnitor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

(n) Reliance. The Lender would not make the Loan to Indemnitor without this Agreement. Accordingly, Indemnitor intentionally and unconditionally enters into the covenants and agreements as set forth above and understand that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

(o) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

(p) SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(1) INDEMNITOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON TO ENFORCE ANY ARBITRAL AWARD ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OVER THE COUNTY IN WHICH THE PROPERTY IS LOCATED, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT NONE OF THEM WILL BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE BENEFICIARIES TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). INDEMNITOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO INDEMNITOR AT THE ADDRESS FOR NOTICES DESCRIBED IN PARAGRAPH 8(j) HEREOF, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(2) **THE BENEFICIARIES AND INDEMNITOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FOREGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF THE BENEFICIARIES OR ANY INDEMNITOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH THE BENEFICIARIES OR ANY INDEMNITOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

(q) Waiver by Indemnitor. Indemnitor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against any Indemnitor, no Indemnitor shall seek a supplemental stay or otherwise pursuant to 11 U.S.C.

§105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of the Beneficiaries to enforce any rights of the Beneficiaries against Indemnitor by virtue of this Agreement or otherwise.

(r) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to the Beneficiaries all documents, and take all actions, reasonably required by the Beneficiaries from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

***[SIGNATURE PAGES IMMEDIATELY FOLLOW]***

IN WITNESS WHEREOF, the undersigned have executed this Environmental Indemnity Agreement as of the day and year first above written.

**INDEMNITOR:**

**TEACHERS VILLAGE PROJECT A URBAN  
RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

By: \_\_\_\_\_  
Ron Beit-Halachmy  
Authorized Signatory

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QLICI Environmental Indemnity

\_\_\_\_\_

**EXHIBIT A**

**Environmental Reports**

31 William PA Form — June 2011 — JMZ  
31 William PA Appendices — June 2011 — JMZ  
33 William Draft PA — December 2011 — JMZ  
46 William Draft PA — June 2011 — JMZ

**Duplicated Report**

Revised Phase 1 March 2012 — Ecosystems  
222 Halsey PA/SIR — June 2007 — JMZ  
222 Halsey Receptor Evaluation Form — JMZ  
222 Halsey Recorded Deed Notice  
222 Remedial Action Report — August 2008  
January 2011 — 222 Remedial Action Soil Permit (JMZ)  
222 Remedial Investigation Report — Jan 2010 — JMZ  
229 Halsey Classification Exception  
Area/Well Restriction Area Permit Fact Sheet — November 2011 — Viridian  
229 Halsey Classification Exception Area - November 2011 — NJDEP  
229 Halsey — PA/SIR — December 2007 — JMZ  
229 Halsey — Remaining Remediation Schedule — June 2012 — Viridian  
229 Halsey RAR — 1500 UST — November 2008 — Viridian  
229 Halsey RAR — November 2011 — Viridian  
229 Halsey Remedial Action Soil Permit - August 2011 — NJDEP  
229 Halsey — Response Action Outcome November 2011 — Viridian  
229 Halsey — RAR — August 2009 - Viridian

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229 Halsey — Summary of Investigative Results — June 2012 — Viridian  
229 Halsey — Groundwater Remedial Investigation Report — March 2008 — JMZ  
229 Halsey & 222 Halsey — Revised Phase I

March 2012 — Ecosystems (Bldg 1 & 6)  
Phase I — March 2012 — Bldg 7 — Ecosystems  
318 Washington — PA/SIR — March 2009 — JMZ  
318 Washington — RIR — August — 2009 — JMZ  
318 Washington — Estimated Cleanup Costs  
JMZ — September 2011

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QLICI Environmental Indemnity

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**ENVIRONMENTAL INDEMNITY AGREEMENT**

**THIS ENVIRONMENTAL INDEMNITY AGREEMENT** (this “**Agreement**”), dated as of September 11, 2012, is made by **TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC**, a New Jersey limited liability company having an address c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (the “**Indemnitor**”), to **GSB NMTC INVESTOR LLC**, a Delaware limited liability company, having an address at 200 West Street, New York, New York 10282, acting in its capacity as administrative agent (the “**Administrative Agent**”); **CARVER CDC — SUBSIDIARY CDE 21, LLC**, a Delaware limited liability company, having an address c/o Carver Community Development Corporation, 75 West 125<sup>th</sup> Street, New York, New York 10027 (“**Carver Lender**”); **NCIF NEW MARKETS CAPITAL FUND IX CDE, LLC**, a Delaware limited liability company, having an address c/o NCIF Capital, LLC, 135 S. LaSalle Street, Suite 2040, Chicago, Illinois 60603 (“**NCIF Lender**”); **GSNMF SUB-CDE 2 LLC**, a Delaware limited liability company, having an address c/o Goldman Sachs Bank USA, 200 West Street, New York, New York 10282 (“**GS Lender**”); and **BACDE NMTC FUND 4, LLC**, a Delaware limited liability company, having an address c/o AFL-CIO Housing Investment Trust, 1270 Avenue of the Americas, Suite 210, New York, New York 10020 (“**BA Lender**”, and together with Carver Lender, NCIF Lender and GS Lender, individually a “**Lender**” and collectively the “**Lenders**”).

**RECITALS:**

**WHEREAS**, pursuant to that certain Building Loan Agreement dated of even date herewith (the “**Loan Agreement**”) made by and among the Indemnitor, the Administrative Agent, and the Lenders, the Lenders have made to the Indemnitor certain mortgage loans in the aggregate original principal amount of Thirty-Nine Million Seven Hundred Seventy-Five Thousand and No/100 Dollars (\$39,775,000.00) (collectively, the “**Loans**”).

**WHEREAS**, the Loans are evidenced by the promissory notes dated the date hereof, as specified in the Loan Agreement (the “**Notes**”), which Notes are secured by those certain Mortgages, Assignments of Leases and Rents and Security Agreements, each dated of even date herewith, as specified in the Loan Agreement (collectively, the “**Mortgage**”) encumbering the real property located in Newark, New Jersey, as described in such Mortgage (the “**Premises**”).

**WHEREAS**, Indemnitor will derive material financial benefit from the Loans evidenced and secured by the Notes, the Mortgage and the other Loan Documents (as defined in the Loan Agreement).

**WHEREAS**, Lenders have relied on the statements and agreements contained herein in agreeing to make the Loans. The execution and delivery of this Agreement by Indemnitor is a condition precedent to the making of the Loans by the Lenders.

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## AGREEMENTS:

In consideration of the Recitals set forth above and hereby incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Indemnitor hereby agrees as follows:

1. Definitions.

(a) All capitalized terms used but not defined herein shall have the meaning given such terms in the Loan Agreement.

(b) The term “**Environmental Law**” means, collectively, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Liability Act, 42 U.S.C. §9601 et seq., the Toxic Substance Control Act, 15 U.S.C. §2601 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Clean Water Act, 33 U.S.C §1251 et seq., all municipal, county, and state analogues to any of the foregoing, all amendments to any of the foregoing, any other municipal, county, state or federal law, rule, regulation, ordinance or directive regulating Hazardous Materials, and all enforceable orders, regulations and requirements under any of the foregoing.

(c) The term “**Hazardous Material**” means, collectively (A) any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto and replacements therefor; (B) such substances, materials or wastes as are regulated by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et. seq. (“RCRA”), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Liability Act, 42 U.S.C. §9601 et. seq. (“CERCLA”), the Toxic Substance Control Act, 15 U.S.C. §2601 et seq. (“TSCA”), the Clean Air Act, 42 U.S.C. §7401 et seq. (“CAA”), the Clean Water Act, 33 U.S.C §1251 et. seq. (“CWA”), or any substance that is a “hazardous substance” or “hazardous waste” under the New Jersey Spill Compensation and Control Act, the New Jersey Industrial Site Recovery Act or the New Jersey Solid Waste Management Act or N.J.A.C. 7:26C-1.3, and all amendments to any of the foregoing laws, and all orders, regulations, directions and requirements thereunder; (C) asbestos; (D) such toxic or hazardous substances, materials or wastes that are or may become regulated under any other applicable municipal, county, state or federal law, rule, ordinance, direction, or regulation; and (E) any other substance or material regulated under any applicable municipal, county, state or federal law, rule, ordinance, direction, or regulation because of its dangerous or deleterious effects on human health or the environment.

(d) The term “**Operating Supplies**” means such materials which may be Hazardous Material such as cleaning materials, medical supplies and fuel oil used in the ordinary course in the operation and maintenance of the Premises or the conduct of any tenant’s business therein or the conduct of any tenant’s business at the Premises, and legally permissible construction items incorporated into the Premises during the construction thereof, in each case only to the extent in compliance with all Environmental Laws and other federal, state and local laws, rules and regulations, and only in such quantities as shall be used in the ordinary course for

the operation and maintenance of the Premises, and legally permissible construction items incorporated into the Premises during the construction thereof.

- (e) The term “**Report**” means, collectively, the environmental reports listed on Exhibit A hereto.

2. **Indemnity.** Indemnitor hereby agrees to pay, protect, defend (at trial and appellate levels) with attorneys, consultants and experts acceptable to each Lender, and save each Lender and its officers, directors, employees, agents (including Administrative Agent), participants, members, partners, successors and assigns, and any parent or affiliate of each Lender (collectively, the “**Beneficiaries**”) harmless from and against, and hereby indemnify the Beneficiaries from and against any and all present or future liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements and expenses of any kind or of any nature whatsoever (including, without limitation, attorneys’, consultants’ and experts’ fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding or enforcing the obligations of any Indemnitor hereunder) (collectively “**Costs**”) which may at any time be actually imposed upon, incurred by or asserted or awarded against any Beneficiary with respect to the Premises, and arising directly or indirectly from or out of: (i) the violation of any Environmental Law; (ii) the actual or alleged presence, release or threat of release of any Hazardous Material now or hereafter on, in, under or affecting all or any portion of the Premises or any surrounding areas, regardless of whether or not caused by or within the control of Indemnitor, or at any other location if the Hazardous Materials were generated, treated, stored, transported or disposed of by or on behalf of Indemnitor; (iii) the failure by Indemnitor to comply fully with the terms and conditions of this Agreement; (iv) the breach of any representation or warranty by Indemnitor contained in this Agreement; or (v) the enforcement of this Agreement, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Premises or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Materials on, in, under or affecting any portion of the Premises or any surrounding areas. “**Costs**” as used in this Agreement shall include any diminution in the value of the Premises or any future reduction of the sales or rental price of the Premises by reason of any matter set forth in this Paragraph 2, but “**Costs**” shall not include any other punitive or consequential damages.

3. **Representations Regarding Hazardous Materials.** Indemnitor hereby represents and warrants to and covenants and agrees with the Beneficiaries as follows:

- (a) Except as set forth in the Report, the Premises are not in violation of any Environmental Law;
- (b) Except as set forth in the Report, no Hazardous Materials (other than Operating Supplies) are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Premises (including underground contamination);

(c) Except as set forth in the Report, the Indemnitor has not received notice that the Premises is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Materials;

(d) Except as set forth in the Report, there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Materials on the Premises; and

(e) Except as set forth in the Report, the Indemnitor has not received notice of, and there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could reasonably be expected to result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Premises.

4. Covenants of Indemnitor.

(a) The Indemnitor shall, for so long as the Premises is owned by the Indemnitor, exercise the same degree of care as a reasonable, prudent developer or owner of like properties would exercise to keep or cause the Premises to be kept free from Hazardous Materials (other than Operating Supplies) and in compliance with all applicable Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use (other than Operating Supplies), generation, handling, storage, production, processing and disposal of Hazardous Materials by all occupants of space in the improvements at the Premises, and, without limiting the generality of the foregoing shall not install in the improvements at the Premises or permit to be installed in the improvements at the Premises asbestos or any substance containing asbestos. The Indemnitor acknowledges and agrees that the Beneficiaries have no duty to provide Indemnitor with any information regarding the Environmental Laws or any interpretation thereof.

(b) (i) Indemnitor shall immediately notify the Beneficiaries should Indemnitor become aware of (A) any Hazardous Materials (other than Operating Supplies), or other potential environmental problem or liability, with respect to the Premises, (B) any lien, regulatory or enforcement action or notice affecting the Premises or the Indemnitor resulting from any violation or alleged violation of the Environmental Laws, (C) the institution of any investigation, inquiry or proceeding by any applicable governmental authority concerning the Indemnitor or the Premises pursuant to any Environmental Law or otherwise relating to Hazardous Materials, or (D) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Agreement incorrect in any material respect if made at the time of such discovery.

(ii) The Indemnitor shall, promptly and when and as required and regardless of the source of the contamination, at its own expense, take all actions as shall be required pursuant to any applicable Environmental Laws, consistent with the use of the Premises, for the remediation of any and all portions of the Premises or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all Environmental Laws that are applicable to the Premises, and shall further pay or cause to be paid, at no expense to the Beneficiaries, all remediation, administrative and

enforcement costs imposed by applicable governmental agencies and which may be asserted against the Premises. In the event Indemnitor fails to do so, any or all Beneficiaries may, in their sole discretion (but shall have no obligation to), cause the Premises or other affected property to be so freed from any Hazardous Materials or otherwise brought into compliance with Environmental Laws consistent with the use of the Premises and any actual out-of-pocket cost incurred in connection therewith shall be included in Costs and shall be paid by Indemnitor; provided, however, that the Beneficiaries shall not take such action unless either (i) Indemnitor fails to commence such required actions within thirty (30) days after written notice by any Beneficiary, and/or Indemnitor thereafter fails to diligently and/or continuously prosecute to completion all required work and actions, and/or Indemnitor fails to complete the required work and actions within the time frames required under any applicable Environmental Laws and/or under the requirements of any governmental agency or body or (ii) any Beneficiary determines in its discretion that Indemnitor's failure to take the required actions is likely to have a material and adverse effect on the operation of the Premises as a whole or any Beneficiary's interests in the Premises and such Beneficiary gives notice to Indemnitor of such determination. In furtherance of the foregoing, the Indemnitor hereby grants to the Beneficiaries access to the Premises upon written notice to Indemnitor and an irrevocable license to remove any items deemed by the Beneficiaries to be Hazardous Materials in violation of Environmental Laws and to do all things any Beneficiary shall deem necessary to bring the Premises, upon written notice to the Indemnitor, into compliance with Environmental Laws.

(c) Upon the request of any Beneficiary, at any time and from time to time after the occurrence of a default by Indemnitor under this Agreement or at such other time as any Beneficiary has grounds to believe or suspect that Hazardous Materials are or have been released, stored or disposed of on or around the Premises (other than in accordance with applicable Environmental Laws) or that the Premises may be in violation of the Environmental Laws, Indemnitor shall provide, at its sole expense, an inspection or audit of the Premises prepared by a hydrogeologist or environmental engineer or other appropriate consultant selected by Indemnitor and approved by the Beneficiaries assessing the presence or absence of Hazardous Materials on the Premises. If Indemnitor fails to commence such inspection or audit within fifteen (15) days after such request, any Beneficiary may order the same, and the Indemnitor hereby grants to the Beneficiaries access to the Premises, upon written notice to the Indemnitor, and an irrevocable license to undertake such inspection or audit. The cost of such inspection or audit shall be included in Costs and shall be paid by Indemnitor.

#### 5. Indemnification Procedures.

(a) If any action shall be brought against any Beneficiary based upon any of the matters for which such Beneficiary is indemnified hereunder, such Beneficiary shall notify Indemnitor in writing thereof, which notice shall include a copy of all pleadings and summons in the possession of such Beneficiary relating to such action and shall specifically state that indemnification for such action is being sought under this Agreement, and Indemnitor shall promptly assume the defense thereof, including, without limitation, the employment of counsel selected by Indemnitor and acceptable to the applicable Beneficiary or Beneficiaries and the negotiation of any settlement; provided, however, that any failure of such Beneficiary to notify Indemnitor of such matter shall not impair or reduce the obligations of Indemnitor hereunder. The Beneficiaries shall reasonably cooperate with Indemnitor, at Indemnitor's sole cost and

expense, in connection with the defense or settlement of any such claim or action in accordance with the terms of this Agreement. If (i) any Beneficiary determines, based on the advice of counsel, that the conduct of its defense by Indemnitor would present a conflict of interest or otherwise be materially prejudicial to its interests, (ii) Indemnitor refuses to defend or (iii) Indemnitor shall have failed, in any Beneficiary's judgment, to defend the action in good faith, then the Beneficiaries shall have the right, at the expense of Indemnitor (which expense shall be included in Costs), to employ separate counsel in any such action and to participate in the defense thereof. In the event Indemnitor shall fail to undertake to defend the Beneficiaries against any claim, loss or liability for which the Beneficiaries are indemnified hereunder, the Beneficiaries may, at their sole option and election, defend or settle such claim, loss or liability (provided that the Beneficiaries shall give notice of any such settlement to Indemnitor). The liability of Indemnitor to the Beneficiaries hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the costs and expenses, including, without limitation, attorneys' fees and disbursements, incurred by the Beneficiaries in effecting such settlement. In such event, such settlement consideration, costs and expenses shall be included in Costs and Indemnitor shall pay the same as hereinafter provided. The Beneficiaries' good faith in any such settlement shall be conclusively established if the settlement is made on the advice of independent legal counsel for any Beneficiary.

(b) Indemnitor shall not, without the prior written consent of the Beneficiaries: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment with respect to any matter for which any Beneficiary is entitled to be indemnified hereunder and that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to the Beneficiaries of a full and complete written release of the Beneficiaries (in form, scope and substance satisfactory to the Beneficiaries) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that is reasonably likely to adversely affect the Beneficiaries or to obligate the Beneficiaries to pay any sum or perform any obligation.

(c) All Costs shall be immediately reimbursable to the Beneficiaries when and as incurred and, in the event of any litigation, claim or other proceedings without any requirement of waiting for the ultimate outcome of such litigation, claim or other proceedings and Indemnitor shall pay to the Beneficiaries any and all Costs within thirty (30) days after written notice from a Beneficiary itemizing in reasonable detail the amounts thereof incurred to the date of such notice. In addition to any other remedy available for the failure of Indemnitor to periodically pay such Costs, such Costs, if not paid by the twentieth (20<sup>th</sup>) day after such notice shall accrue interest at the Default Rate (as defined in the Note).

6. Reinstatement of Obligations. If at any time all or any part of any payment made by Indemnitor or received by the Beneficiaries from Indemnitor under or with respect to this Agreement is or must be rescinded or returned for any reason whatsoever (including, but not limited to, the insolvency, bankruptcy or reorganization of Indemnitor), then the obligations of Indemnitor hereunder shall, to the extent of the payment rescinded and returned, be deemed to have continued in existence, notwithstanding such previous payment made by Indemnitor, or receipt of payment by the Beneficiaries, and the obligations of

Indemnitor hereunder shall continue to be effective or be reinstated, as the case may be, as to such payment, all as though such previous payment by Indemnitor had never been made,

7. Waivers by Indemnitor. To the extent permitted by law, Indemnitor hereby waives and agrees not to assert or take advantage of:

(a) Any right to require the Beneficiaries to proceed against any other Person or to proceed against or exhaust any security held by the Beneficiaries at any time or to pursue any other remedy in the Beneficiaries' power or under any other agreement before proceeding against Indemnitor hereunder;

(b) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of the Beneficiaries to file or enforce a claim against the estate (in administration, bankruptcy or any other proceedings) of any other Person or Persons;

(c) Any defense based upon an election of remedies by the Beneficiaries;

(d) Any right or claim of right to cause a marshalling of the assets of Indemnitor;

(e) Any duty on the part of the Beneficiaries to disclose to Indemnitor any facts the Beneficiaries may now or hereafter know about the Premises of which Indemnitor also had or has knowledge at the operative time, regardless of whether the Beneficiaries has reason to believe that any such facts materially increase the risk beyond that which Indemnitor intends to assume or has reason to believe that such facts are unknown to Indemnitor or has a reasonable opportunity to communicate such facts to Indemnitor, it being understood and agreed that Indemnitor is fully responsible for being and keeping informed of the condition of the Premises and of any and all circumstances bearing on the risk that liability may be incurred by Indemnitor hereunder;

(f) Any invalidity, irregularity or unenforceability, or any amendment, in whole or in part, of any one or more of this Agreement, the Loan Agreement or the other Loan Documents;

(g) Any deficiency in the ability of the Beneficiaries to collect or to obtain performance from any Persons now or hereafter liable for the payment and performance of any obligation hereunder;

(h) An assertion or claim that the automatic stay provided by 11 U.S.C. §362 (arising upon the voluntary or involuntary bankruptcy proceeding of any Indemnitor) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of the Beneficiaries to enforce any of its rights, whether now or hereafter required, which the Beneficiaries may have against Indemnitor;

(i) Any modifications of the Loan Agreement or other Loan Documents or any obligation of Indemnitor relating to the Loan Agreement or other Loan Documents by operation of law or by action of any court, whether pursuant to the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise; and

(j) Any sale or transfer of all or part of the Premises.

8. General Provisions.

(a) Fully Recourse. All of the terms and provisions of this Agreement are recourse obligations of Indemnitor and not restricted by any limitation on personal liability contained in any of the Loan Documents.

(b) Separate Obligations. Indemnitor hereby acknowledges that even though the representations, warranties, covenants or agreements of Indemnitor contained herein may be identical or substantially similar to representations, warranties, covenants or agreements of Indemnitor under other agreements, the obligations of Indemnitor under this Agreement are separate obligations of Indemnitor hereunder which can be enforced against Indemnitor without regard to the existence of any other agreement.

(c) Survival. This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the payment in full of all amounts owed to each Lender under the Loan Agreement or the other Loan Documents and the exercise of any remedy by each Lender or Administrative Agent under the Loan Agreement or the other Loan Documents. Anything to the contrary herein notwithstanding, it is agreed and intended by Indemnitor and the Beneficiaries that this Agreement and the indemnities provided herein may be assigned or otherwise transferred by the Beneficiaries to any of their assignees with respect to the Loan and each Lender and Administrative Agent.

(d) No Recourse Against Beneficiaries. Indemnitor shall not have any right of recourse against the Beneficiaries by reason of any action the Beneficiaries may take or omit to take under the provisions of this Agreement provided that such Beneficiary has given notice of any action as required hereby and has not acted in bad faith or committed willful misconduct.

(e) Reservation of Rights. Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which the Beneficiaries may have against Indemnitor or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. §9601 *et seq.*), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(f) Rights Cumulative; Payments. The Beneficiaries' rights under this Agreement shall be in addition to all rights of the Beneficiaries under the Loan Agreement, the other Loan Documents and any agreements executed and delivered in connection therewith.

(g) No Limitation on Liability. Indemnitor hereby consents and agrees that each Beneficiary may at any time and from time to time without further consent from Indemnitor



do any of the following and the liability of Indemnitor under this Agreement shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Indemnitor or with or without consideration: (i) any extensions of time for performance required by the Loan Agreement or the other Loan Documents; (ii) any sale or transfer of the Premises; (iii) any change in the composition of Indemnitor or any affiliate thereof, including, without limitation, the withdrawal or removal of Indemnitor from any current or future position of ownership, management or control of Indemnitor; (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitor herein or in the Loan Agreement or the other Loan Documents; (v) the release of any Person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Loan Agreement or the other Loan Documents by operation of law, the Beneficiaries' voluntary act or otherwise; (vi) the modification of the terms of any one or more of the Loan Agreement or the other Loan Documents; or (vii) the taking or failure to take any action of any type whatsoever. No such action which any Beneficiary shall take or fail to take in connection with the Loan Agreement and the other Loan Documents, nor any course of dealing with Indemnitor or any other Person, shall limit, impair or release Indemnitor's obligations hereunder, affect this Agreement in any way or afford Indemnitor any recourse against the Beneficiaries. Nothing contained in this Paragraph shall be construed to require the Beneficiaries to take or refrain from taking any action referred to herein.

(h) Entire Agreement; Amendment; Severability. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(i) Governing Law; Binding Effect; Waiver of Acceptance. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises is located, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling. This Agreement shall bind Indemnitor and the heirs, personal representatives, successors and assigns of Indemnitor and shall inure to the benefit of the Beneficiaries and the officers, directors, shareholders, agents and employees of the Beneficiaries and their respective heirs, successors and assigns. Notwithstanding the foregoing, Indemnitor shall not assign any of its respective rights or obligations under this Agreement without the prior written consent of the Beneficiaries, which consent may be withheld by the Beneficiaries in their sole discretion. Indemnitor hereby waives any acceptance of this Agreement by the Beneficiaries, and this Agreement shall immediately be binding upon Indemnitor.

(j) Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the others). Notices or other communications given by FedEx or another nationally recognized overnight courier

service shall be deemed to be given on the following Business Day. Notices or other communications sent in any other manner shall be deemed given only when actually received.

If to Administrative Agent:     GSB NMTC Investor LLC  
200 West Street  
New York, New York 10282  
Attention: Margaret Anadu

with a copy to:                     GSB NMTC Investor LLC  
200 West Street  
New York, New York 10282  
Attention: Andrea Gift

with a copy to:                     gs-uig-docs@gs.com

with a copy to:                     Jones Day  
222 East 41<sup>st</sup> Street  
New York, New York 10017  
Attention: Aviva Yakren, Esq.

And with a copy to:               Carver CDC — Subsidiary CDE 21, LLC  
c/o Carver Community Development Corporation  
75 West 125<sup>th</sup> Street  
New York, New York 10027  
Attention: Blondel A. Pinnock

with a copy to:                     Manatt, Phelps & Phillips, LLP  
7 Times Square  
New York, New York 10036  
Attention: Neil S. Faden, Esq.

And with a copy to:               NCIF New Markets Capital Fund IX CDE, LLC  
c/o NCIF Capital, LLC  
135 S. LaSalle Street, Suite 2040  
Chicago, Illinois 60603  
Attention: Saurabh Narain

and to:                                 SNR Denton  
233 S. Wacker Drive, Suite 7800  
Chicago, Illinois 60606  
Attention: Scott A. Lindquist, Esq.

And with a copy to:	GSNMF Sub-CDE 2 LLC c/o Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Joe Curatolo
with a copy to:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Andrea Gift
with a copy to:	gsnmf@gs.com
with a copy to:	Jones Day 222 East 41 <sup>st</sup> Street New York, New York 10017 Attention: Aviva Yakren, Esq.
And with a copy to:	BACDE NMTC Fund 4, LLC c/o Building America CDE Inc. 2401 Pennsylvania Avenue, NW, Suite 200 Washington, DC 20037 Attention: Eric Price
with a copy to:	Nixon Peabody LLP 401 Ninth Street NW, Suite 900 Washington, DC 20004 Attention: Scott D. Sergio, Esq.
If to the Indemnitor:	Teachers Village Project A QALICB Urban Renewal Entity, LLC c/o RBH Group 89 Market Street, 8 <sup>th</sup> Floor Newark, New Jersey 07102 Attention: Ron Beit
with a copy to:	McManimon, Scotland & Baumann, LLC 75 Livingston Avenue, 2nd Floor Roseland, New Jersey 07068 Attention: Glenn F. Scotland, Esq.

(k) No Waiver: Time of Essence; Business Days. The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor

excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof. The term “**business day**” as used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in the State are authorized by law to be closed.

(l) Captions for Convenience. The captions and headings of the sections and paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

(m) Successive Actions. A separate right of action hereunder shall arise each time the Beneficiaries acquire knowledge of any matter indemnified by Indemnitor under this Agreement. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No legal proceeding hereunder shall preclude any subsequent legal proceeding, and Indemnitor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

(n) Reliance. Each Lender would not make the Loans to Indemnitor without this Agreement. Accordingly, Indemnitor intentionally and unconditionally enters into the covenants and agreements as set forth above and understand that, in reliance upon and in consideration of such covenants and agreements, the Loans shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

(o) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

(p) SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(1) INDEMNITOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON TO ENFORCE ANY ARBITRAL AWARD ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OVER THE COUNTY IN WHICH THE PROPERTY IS LOCATED, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT NONE OF THEM WILL BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE

BENEFICIARIES TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). INDEMNITOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO INDEMNITOR AT THE ADDRESS FOR NOTICES DESCRIBED IN PARAGRAPH 8(j) HEREOF, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(2) **THE BENEFICIARIES AND INDEMNITOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FOREGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF THE BENEFICIARIES OR ANY INDEMNITOR, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH THE BENEFICIARIES OR ANY INDEMNITOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

(q) Waiver by Indemnitor. Indemnitor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against any Indemnitor, no Indemnitor shall seek a supplemental stay or otherwise pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of the Beneficiaries to enforce any rights of the Beneficiaries against Indemnitor by virtue of this Agreement or otherwise.

(r) Further Assurances. Indemnitor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to the Beneficiaries all documents, and take all actions, reasonably required by the Beneficiaries from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, to protect and further the validity and enforceability of this Agreement or otherwise carry out the purposes of this Agreement.

(s) Administrative Agent. If the Administrative Agent is removed in accordance with Article 9 of the Loan Agreement, then the replacement administrative agent appointed pursuant to the Loan Agreement shall succeed to the rights of the Administrative Agent set forth herein. If any Lender does not appoint a replacement administrative agent, then each Lender shall have the rights of the Administrative Agent hereunder.

***[SIGNATURE PAGES IMMEDIATELY FOLLOW]***

IN WITNESS WHEREOF, the undersigned have executed this Environmental Indemnity Agreement as of the day and year first above written.

**INDEMNITOR:**

**TEACHERS VILLAGE PROJECT A URBAN  
RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

By: \_\_\_\_\_  
Ron Beit-Halachmy  
Authorized Signatory

Signature Page  
QLICI Environmental Indemnity

\_\_\_\_\_

**EXHIBIT A**

**Environmental Reports**

1. Remedial Action Report prepared by Viridian Inc. dated August 2009.
2. Remedial Action Report prepared by Viridian Inc. dated November 2008.
3. Ground Water Remedial Investigation Report prepared by JAMS Geology dated March 2008.
4. Preliminary Assessment Investigation Report prepared by JAMS Geology dated December 2007.
5. Preliminary Assessment Investigation Report prepared by JAMS Geology dated June 2007.
6. Preliminary Assessment Investigation Report prepared by JAMS Geology dated July 2009.
7. Letter from LFR Arcadis Company dated October 2, 2009.
8. Preliminary Assessment Investigation Report prepared by JMZ Geology dated October 2007.
9. Preliminary Assessment Investigation Report prepared by JMZ Geology dated July 2007.
10. Preliminary Assessment Investigation Report prepared by JMZ Geology dated July 2007.
11. Preliminary Assessment Investigation Report prepared by JMZ Geology dated April 2007.
12. Geotechnical Report by McLaren Engineering Group.

Signature Page  
QLICI Environmental Indemnity

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**BUILDING LOAN AGREEMENT**

Dated as of September 11, 2012

BY AND AMONG

**GSB NMTC INVESTOR LLC,**  
a Delaware limited liability company  
(“*Administrative Agent*”)

and

**NCIF NEW MARKETS CAPITAL FUND IX CDE, LLC,**  
a Delaware limited liability company  
(“*NCIF Lender*”)

and

**CARVER CDC — SUBSIDIARY CDE 21, LLC,**  
a Delaware limited liability company  
(“*Carver Lender*”)

and

**BACDE NMTC FUND 4, LLC,**  
a Delaware limited liability company  
(“*BA Lender*”)

and

**GSNMF SUB-CDE 2 LLC,**  
a Delaware limited liability company  
(“*GS Lender*”, and together with NCIF Lender, Carver Lender and BA Lender, “*Lenders*” and each a “*Lender*”)

and

**TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company  
(“*Borrower*”)

“*Administrative Agent’s Counsel*”: Jones Day  
222 East 41<sup>st</sup> Street  
New York, New York 10017  
Attn: Aviva Yakren, Esq.

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## Recitals

WHEREAS, on the date hereof, GS Halsey 2 NMTC Investment Fund LLC, a Delaware limited liability company (the “**Investment Fund**”) will make an equity investment in the (a) NCIF Lender in the amount of \$10,000,000 (the “**NCIF Equity Investment**”), (b) Carver Lender in the amount of \$12,500,000 (the “**Carver Equity Investment**”), (c) BA Lender in the amount of \$10,000,000 (the “**BA Equity Investment**”), and (d) GS Lender in the amount of \$8,500,000 (the “**GS Equity Investment**”), each of which shall be designated as a “qualified equity investment” or “**QEI**”) under Section 45D of the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws (the “**Code**”), in exchange for an equity interests therein; and

WHEREAS, each Lender is a “qualified community development entity” formed for the purpose of serving or providing investment capital for low-income communities or low-income persons (as such terms are defined for the purposes of Section 45D of the Code, consistent with the requirements of Section 45D of the Code); and

WHEREAS, in order to finance the development of the Projects (as hereinafter defined) the Lenders have determined to provide certain financing for the Projects, by using a new markets tax credit structure, as permitted by the Code; and

WHEREAS, the Lenders have agreed to provide the Loans (as hereinafter defined) to the Borrower, from the proceeds of the QEIs, to finance the costs of Borrower’s construction of the Improvements (as hereinafter defined); and

WHEREAS, a portion of each of the Notes (as hereinafter defined) shall be advanced to Borrower pursuant to the terms hereof to finance the Projects;

WHEREAS, the Borrower is expected to constitute a “qualified active low-income community business” as that term is defined in Section 45D of the Code (a “**QALICB**”); and

WHEREAS, each Lender intends to fulfill its purpose by making the Loans, each of which is intended to constitute a “qualified low income community investment” as that term is defined under Code Section 45D(d) and Treasury Regulations Section 1.45D-1(d) (a “**QLICF**”); and

WHEREAS, to evidence the Loans, Borrower has executed and delivered to the Lenders, respectively, the Notes; and

WHEREAS, the Notes are secured by the Mortgages (as hereinafter defined); and

WHEREAS, each Lender has agreed to make the Loans to Borrower, and the Administrative Agent has agreed to act as administrative agent for the benefit of the Lenders with respect to the Loans, upon and subject to all of the terms, conditions, covenants and agreements of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

PARTICULAR TERMS AND DEFINITIONS

1.1. As used in this Building Loan Agreement (this “*Agreement*”), the following terms shall have the respective meanings indicated opposite each of them:

“ <i>ADA Indemnification Agreement</i> ”	— ADA Indemnification Agreement, dated the date hereof, made by Borrower to Administrative Agent and Lenders, and any future amendments or modifications thereof.
“ <i>Administrative Agent</i> ”	— Has the meaning given to such term on the cover page of this Agreement, and any successors thereof pursuant to the terms of this Agreement.
“ <i>Administrative Agent’s Counsel</i> ”	— Has the meaning given to such term on the cover page of this Agreement.
“ <i>Affiliate</i> ”	— With respect to any specified Person, any other Person who has Control over such specified Person.
“ <i>Agent Affiliates</i> ”	— As such term is defined in Section 7.1(p)(iii) hereto.
“ <i>Agreement</i> ”	— Defined in Section 1.1 above.
“ <i>Aggregate Change Order Amount</i> ”	— With respect to Project 1, \$320,000; with respect to Project 2, \$830,000; and with respect to Project 3, \$620,000. (Such amounts are the aggregate amounts permitted under the Loans and/or under the Direct Loan.)
“ <i>Allocatees</i> ”	— Collectively, the NCIF Allocatee, the Carver Allocatee, the BA Allocatee and the GS Allocatee.
“ <i>Allocation Agreements</i> ”	— Collectively, the NCIF Allocation Agreement, the Carver Allocation Agreement, the BA Allocation Agreement and the GS Allocation Agreement.
“ <i>Anti-Terrorism Laws</i> ”	— Defined in Section 5.1(bb) hereof.
“ <i>Assignments of Contracts</i> ”	— That certain Assignment of Contracts and Permits by Borrower in favor of Administrative Agent and the Lenders.

<b><i>“Available Net Cash Flow”</i></b>	— Defined in Section 8.6 hereof.
<b><i>“BA Allocatee”</i></b>	— Building America CDE Inc., a Delaware corporation.
<b><i>“BA Allocation Agreement”</i></b>	— That certain Allocation Agreement by and between BA Allocatee, BA Lender (as well as other subsidiaries of BA Allocatee), and the CDFI Fund, effective April 3, 2012, as amended from time to time.
<b><i>“BA Asset Management Fee”</i></b>	— As such term is defined in Section 8.5 hereof.
<b><i>“BA Audit and Tax Fee”</i></b>	— As such term is defined in Section 8.5 hereof.
<b><i>“BA CDE Account”</i></b>	— As such term is defined in Section 8.5 hereof.
<b><i>“BA Equity Investment”</i></b>	— As such term is defined in the Recitals to this Agreement.
<b><i>“BA Loan Servicing Fee”</i></b>	— As such term is defined in Section 8.5 hereof.
<b><i>“Benefitted Persons”</i></b>	— As such term is defined in Section 7.16 hereof.
<b><i>“Borrower”</i></b>	— Has the meaning given to such term on the cover page of this Agreement.
<b><i>“Borrower’s Architect”</i></b>	— Richard Meier & Partners Architects LLP.
<b><i>“Borrower’s Equity”</i></b>	— That portion of the Project Cost Statement for Hard Costs and Soft Costs to be funded by Borrower in the amount of \$4,448,170 in advance of the Initial Release (or simultaneously with the funding of each Requisition).
<b><i>“Budget” or “Budgets”</i></b>	— Collectively or individually, as applicable, the Project 1 Budget, the Project 2 Budget and the Project 3 Budget.
<b><i>“Business Day”</i></b>	— A day other than a Saturday, Sunday or legal holiday for commercial banks in New York, New York.
<b><i>“Carver Allocatee”</i></b>	— Carver Community Development Corporation, a Delaware corporation.
<b><i>“Carver Allocation Agreement”</i></b>	— That certain Allocation Agreement by and between Carver Allocatee, Carver Lender (as well as other subsidiaries of Carver Allocatee), and the

CDFI Fund, effective May 6, 2009, as amended from time to time.

<b><i>“Carver Equity Investment”</i></b>	— As such term is defined in the Recitals to this Agreement.
<b><i>“Carver Asset Management Fee”</i></b>	— As such term is defined in Section 8.3 hereof.
<b><i>“Carver Audit and Tax Fee”</i></b>	— As such term is defined in Section 8.3 hereof.
<b><i>“Carver CDE Account”</i></b>	— As such term is defined in Section 8.3 hereof.
<b><i>“CDE Expenses”</i></b>	— All costs and expenses incurred by, or on behalf of, the Lenders or their respective managing members from time to time on account of, or in connection with, the administration of the Loans and the Loan Documents and/or the operation, oversight and management of the investment and business activities of the Lenders, including, but not limited to: (i) fees for bookkeeping, accounting, and other similar services relating to the affairs of the Lenders (including, without limitation, the annual audit and tax return preparation, the preparation of annual and interim Financial Statements, and the preparation and submission of reports to the Lenders’ respective members, the Investment Fund and/or the CDFI Fund), (ii) any program participation fee that may be charged by the CDFI Fund, (iii) any local, state or federal taxes or other annual filing or reporting fees, charges or expenses (including, without limitation, any income, withholding or gross receipts tax imposed on the Lenders as a result of the Loans), (iv) annual asset management or compliance fees in the amounts reflected in the Projections, (v) any third party fees and expenses incurred outside of the ordinary course of business, such as the exercise of remedies in the case of an Event of Default hereunder.
<b><i>“CDFI Fund”</i></b>	— The Community Development Financial Institutions Fund, an agency of the United States Treasury Department.
<b><i>“Census Tract”</i></b>	— Census tract number 34013008100, which as of the date hereof is a Low-Income Community

within the meaning of Section 45D of the Code.

<b>“Change Order”</b>	— Any modification or amendment to the Plans, General Contract or Major Subcontracts.
<b>“Change Order Amount”</b>	— \$150,000. (Such amount is the aggregate amount permitted under the Loans and/or under the Direct Loan.)
<b>“City”</b>	— The City of Newark, a municipal corporation in the County of Essex, State of New Jersey.
<b>“Code”</b>	— Has the meaning given to such term in the Recitals of this Agreement.
<b>“Community Benefits Agreement”</b>	— The Community Benefits Agreement, dated as of the date hereof, among the Lenders and the Borrower.
<b>“Completion Date”</b>	— September 11, 2014, TIME BEING OF THE ESSENCE.
<b>“Construction Consultant”</b>	— Hillmann Consulting, LLC, or other person or firm designated by Administrative Agent with the consent of the Lenders.
<b>“Control”</b>	— When used with respect to any Person, the power to direct the day to day management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise, and the terms “controlling,” “controlled by” and “under common control with” shall have the meanings correlative therewith.
<b>“Control Agreements”</b>	— Collectively, all account control agreements pertaining to all of the bank accounts of the Borrower pledged to the Administrative Agent for the benefit of the Lenders pursuant to the terms and conditions of this Agreement.
<b>“CRDA”</b>	— Casino Reinvestment Development Authority.
<b>“CRDA Loan”</b>	— The loan by CRDA to the Borrower in the amount of \$5,250,000 for the construction of the Projects.

<b>“Direct Costs” or “Hard Costs”</b>	— The aggregate costs of all labor, materials, equipment and fixtures necessary for completion of construction of the Improvements as more particularly set forth in the Direct Cost Statement.
<b>“Direct Cost Statement”</b>	— A statement in form approved by Administrative Agent of Direct Costs incurred and to be incurred, trade by trade, to be prepared by the General Contractor.
<b>“Direct Lender”</b>	— Goldman Sachs Bank USA.
<b>“Direct Loan”</b>	— The loan made by the Direct Lender to the Borrower in the principal amount of \$9,000,000.
<b>“Disapproval Notice”</b>	— As such term is defined in Section 2.10 hereof.
<b>“Disbursement Fund”</b>	— A controlled account established with Provident Bank for the benefit of Borrower into which the Lenders shall deposit funds, and from which the Administrative Agent, in accordance with the terms of this Agreement, shall thereafter authorize releases of proceeds of the Loans.
<b>“Engineer”</b>	— Collectively, Arup USA, Inc. and McLaren Engineering Group, or such person or firm as may be approved by Administrative Agent to provide engineering services in connection with the Projects.
<b>“Environmental Indemnity”</b>	— That certain Environmental Indemnity Agreement, dated as of the date hereof, from the Borrower, whereby, among other things, Administrative Agent and the Lenders are indemnified against damage, loss, cost, liability or expense suffered by Administrative Agent and/or the Lenders as a result of any Hazardous Materials at, on or about the Premises.
<b>“Environmental Report”</b>	— Collectively, the documents listed on Exhibit A to the Environmental Indemnity.
<b>“ERISA”</b>	— As such term is defined in Section 5.1(y) hereof.
<b>“Event of Default”</b>	— As such term is defined in Section 6.1 hereof.
<b>“Excluded Businesses”</b>	— As such term is defined in Section 10.3(j) hereof.



<b>“Executive Order”</b>	— Defined in Section 5.1(bb) hereof.
<b>“Fees”</b>	— Means any and all fees payable to the Lenders or Allocatees in connection with the Loans, including, without limitation, the NCIF Fees, the Carver Fees and the BA Fees, and as more particularly set forth herein or in the fee letters and/or agreements by and between the Borrower and any Lender or either Allocatee executed as of the date hereof.
<b>“Financial Agreement”</b>	— As such term is defined in Section 3.2(v) hereof.
<b>“Financial Statements”</b>	— Statements of the assets, liabilities (direct or contingent), income, expenses and cash flow of the Borrower and the General Contractor, prepared in accordance with the usual practices of the Borrower and the General Contractor.
<b>“Fund Expenses”</b>	— All out of pocket third party costs and expenses actually incurred by, or on behalf of, the Investment Fund on account of, or in connection with, the administration of its investments in the Lenders and/or the operation, oversight, and management of the investment and business activities of the Investment Fund, including, but not limited to: (i) expenses related to overseeing compliance by the Lenders with the NMTC Program Requirements, (ii) management fees payable to the Investment Fund’s managing member, fees for bookkeeping, accounting, and other similar services relating to the affairs of the Investment Fund (including, without limitation, the annual audit and tax return preparation and submission of reports to the member(s) of the Investment Fund), (iii) bank account and funds transfer fees and charges, and (iv) any local, state or federal taxes or annual filing or reporting fees, charges or expenses.
<b>“GAAP”</b>	— Generally accepted accounting principles as in effect from time to time in the United States and consistently applied.
<b>“General Contract” or “General Contracts”</b>	— Individually or collectively, as applicable, any contract (together with all riders, addenda and other instruments referred to therein as “ <b>contract documents</b> ”) between Borrower and General

Contractor or any other person which requires General Contractor or such other person to provide, or supervise or manage the procurement of, substantially all labor and materials needed for completion of the Improvements.

<b>“General Contractor”</b>	— Holister Construction or such other general contractor or site work contractor as are approved by Administrative Agent.
<b>“Governmental Authorities”</b>	— The United States, the State of New Jersey and City of Newark and any political subdivision, agency, department, commission, board, bureau or instrumentality of any of them, including any local authorities, which exercises jurisdiction over the Premises or the Improvements.
<b>“GS”</b>	— As such term is defined in Section 7.9 hereof.
<b>“GS Allocatee”</b>	— GS New Markets Fund LLC, a Delaware limited liability company.
<b>“GS Allocation Agreement”</b>	— That certain Allocation Agreement by and between GS Allocatee, GS Lender (as well as other subsidiaries of GS Allocatee), and the CDFI Fund, effective April 11, 2012, as amended from time to time.
<b>“GS Equity Investment”</b>	— As such term is defined in the Recitals to this Agreement.
<b>“Hazardous Materials”</b>	— Asbestos, polychlorinated biphenyls and petroleum products, and any other hazardous or toxic materials, wastes and substances (including, but not limited to, toxic mold) which are defined, determined or identified as such in, or subject to, any present and future federal, state or local laws, rules or regulations and judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments.
<b>“HUD”</b>	— The United States Department of Housing and Urban Development.
<b>“Improvements”</b>	— The construction of (i) in connection with Project 1, a building to be located on Block 57, Lot 31 (“ <b>Building I</b> ”) that will consist of multiple retail spaces on the ground floor and approximately 24 residential rental units on the upper floors, (ii) in

connection with Project 2, a building located on Block 58, Lot 1 (f.k.a. Lots 1, 2, 4, and 41, and portions of Lots 5, 35.02, and 43) (“**Building 6**”) that will consist of multiple retail spaces on the ground floor and approximately 65 residential rental units on the upper floors, and (iii) the building to be located at Block 95, Lot 1.02 (f.k.a. Lot 10 and portions of Lots 9 and 16) (“**Building 7**”) that will consist of multiple retail spaces on the ground floor and approximately 42 residential rental units on the upper floors, and which shall be additional collateral for the Loan.

<b>“Indirect Costs” or “Soft Costs”</b>	— Certain costs (other than Direct Costs) of completion of the Improvements, including, but not limited to, brokerage fees, developer fees, architects’, engineers’ and Administrative Agent’s and/or the Lenders’ attorneys’ fees, ground rents, interest on the Notes and recording taxes and title charges in respect of the Mortgages, real estate taxes, water and sewer rents, survey costs, loan commitment fees, insurance and bond premiums and such other non-construction costs as are part of the “cost of improvement”.
<b>“Indirect Cost Statement”</b>	— A statement in form approved by Administrative Agent of Indirect Costs incurred and to be incurred, to be prepared by Borrower.
<b>“Initial Release”</b>	— The first release of proceeds of the Loans from the Disbursement Fund to the Borrower to be made hereunder and on even date herewith.
<b>“Intercreditor Agreement”</b>	— That certain Subordination and Intercreditor Agreement, dated as of the date hereof, by and among Borrower, Lenders, Administrative Agent, CRDA, and Direct Lender.
<b>“Investment Fund”</b>	— Has the meaning given to such term in the Recitals to this Agreement.
<b>“Leases”</b>	— Collectively, the leases to be entered into by RBH Retail, LLC (as lessee under the Master Lease) related to the retail spaces at the Projects in excess of 5,000 square feet.

<b>“Lender” or “Lenders”</b>	— Has the meaning given to such term on the cover page of this Agreement.
<b>“Loan” or “Loans”</b>	— Means, individually or collectively as the case may be, Loan A, Loan B and Loan C, as evidenced by the Notes and secured by the respective Mortgage, all to be advanced pursuant to the terms of this Agreement.
<b>“Loan A”</b>	— Collectively, the portion of the Loans evidenced by the Loan A Notes.
<b>“Loan A Notes”</b>	— Collectively, the Loan A-1 Note, the Loan A-2 Note, the Loan A-3 Note, and the Loan A-4 Note.
<b>“Loan A-1 Note”</b>	— That certain Loan A-1 Note, in the maximum principal amount of \$3,829,268, made by the Borrower to the NCIF Lender, dated as of the date hereof.
<b>“Loan A-2 Note”</b>	— That certain Loan A-2 Note, in the maximum principal amount of \$4,786,585, made by the Borrower to the Carver Lender, dated as of the date hereof.
<b>“Loan A-3 Note”</b>	— That certain Loan A-3 Note, in the maximum principal amount of \$3,829,268, made by the Borrower to the BA Lender, dated as of the date hereof.
<b>“Loan A-4 Note”</b>	— That certain Loan A-4 Note, in the maximum principal amount of \$3,254,878, made by the Borrower to the GS Lender, dated as of the date hereof.
<b>“Loan B”</b>	— Collectively, the portion of the Loans evidenced by the Loan B Notes.
<b>“Loan B Notes”</b>	— Collectively, the Loan B-1 Note, the Loan B-2 Note, the Loan B-3 Note, and the Loan B-4 Note.
<b>“Loan B-1 Note”</b>	— That certain Loan B-1 Note, in the maximum principal amount of \$2,430,000, made by the Borrower to the NCIF Lender, dated as of the date hereof.
<b>“Loan B-2 Note”</b>	— That certain Loan B-2 Note, in the maximum principal amount of \$2,787,500, made by the Borrower to the Carver Lender, dated as of the

date hereof.

<b><i>“Loan B-3 Note”</i></b>	— That certain Loan B-3 Note, in the maximum principal amount of \$2,430,000, made by the Borrower to the BA Lender, dated as of the date hereof.
<b><i>“Loan B-4 Note”</i></b>	— That certain Loan B-4 Note, in the maximum principal amount of \$2,320,500, made by the Borrower to the GS Lender, dated as of the date hereof.
<b><i>“Loan C”</i></b>	— Collectively, the portion of the Loans evidenced by the Loan C Notes.
<b><i>“Loan C Notes”</i></b>	— Collectively, the Loan C-1 Note, the Loan C-2 Note, the Loan C-3 Note, and the Loan C-4 Note.
<b><i>“Loan C-1 Note”</i></b>	— That certain Loan C-1 Note, in the maximum principal amount of \$3,440,732, made by the Borrower to the NCIF Lender, dated as of the date hereof.
<b><i>“Loan C-2 Note”</i></b>	— That certain Loan C-2 Note, in the maximum principal amount of \$4,300,915, made by the Borrower to the Carver Lender, dated as of the date hereof.
<b><i>“Loan C-3 Note”</i></b>	— That certain Loan C-3 Note, in the maximum principal amount of \$3,440,732, made by the Borrower to the BA Lender, dated as of the date hereof.
<b><i>“Loan C-4 Note”</i></b>	— That certain Loan C-4 Note, in the maximum principal amount of \$2,924,622, made by the Borrower to the GS Lender, dated as of the date hereof.
<b><i>“Loan Budget Amounts”</i></b>	— The portion of the Loans as set forth on the Project Cost Statement, to be advanced for each category of Direct Costs and Indirect Costs.
<b><i>“Loan Documents”</i></b>	— Collectively, and as may be amended from time to time, this Agreement, the Notes, the Mortgages, the Guaranties, the Environmental Indemnity, the ADA Indemnification Agreement, the Assignment of Contracts, the Control Agreements, any financing statement under the Uniform Commercial Code and any and all other

	documents, instruments and/or certificates executed by the Borrower in connection with the Loans.
<b><i>“Low-Income Communities”</i></b>	— Has the meaning ascribed to it in Section 45D(e) of the Code.
<b><i>“Major Subcontractor”</i>; <i>“Major Subcontract”</i></b>	— Any single subcontractor or materialman who enters into a contract or contracts with General Contractor or the Borrower in connection with the construction of the Improvements, which contract or contracts provide for aggregate payments to such subcontractor or materialman equal to or in excess of \$250,000.
<b><i>“Master Lease”</i></b>	— That certain master lease, between the Borrower, as lessor, and RBH Retail, LLC, as lessee, of the retail space at the Projects.
<b><i>“Mortgages”</i></b>	— Collectively, those certain mortgages, assignment of leases and rents and security agreements, each made by the Borrower to the Lender, and each dated as of the date hereof, securing the Loan A, the Loan B and the Loan C, respectively.
<b><i>“Mortgaged Property”</i></b>	— The Premises and other property constituting the “Mortgaged Property,” as said quoted term is defined in the Mortgages.
<b><i>“NCIF Allocatee”</i></b>	— National Community Investment Fund, an Illinois charitable trust.
<b><i>“NCIF Allocation Agreement”</i></b>	— That certain Allocation Agreement by and between NCIF Allocatee, NCIF Lender (as well as other subsidiaries of NCIF Allocatee), and the CDFI Fund, effective October 30, 2009, as amended from time to time.
<b><i>“NCIF Equity Investment”</i></b>	— As such term is defined in the Recitals to this Agreement.
<b><i>“NCIF Fee Agreement”</i></b>	— That certain Asset Management Agreement, dated as of the date hereof, between NCIF Allocatee and the NCIF Lender.
<b><i>“NCIF CDE Account”</i></b>	— As such term is defined in Section 8.4 hereof.

<b>“NMTC Program Requirements”</b>	— Collectively, all provisions of Section 45D of the Code, the Treasury Regulations and Guidance and the Allocation Agreements.
<b>“Notes”</b>	— Collectively, the Loan A Notes, the Loan B Notes and the Loan C Notes.
<b>“Operating Account”</b>	— A separate bank account established by the Borrower into which releases of the proceeds of the Loans from the Disbursement Fund shall be deposited which is pledged hereunder by the Borrower to the Lenders.
<b>“Operating Agreement”</b>	— Collectively, the operating agreement of the Borrower and any and all amendments thereto.
<b>“Other Lenders”</b>	— Collectively, the Direct Lender and CRDA.
<b>“Other Mortgages”</b>	— As such term is defined in the Mortgages.
<b>“Payment and Performance Bonds”</b>	— Payment and performance bonds, issued by a surety acceptable to Lenders in their sole discretion, in an amount of each General Contract, along with dual obligee riders naming Lenders and Administrative Agent as additional beneficiaries, in form and substance satisfactory to Lenders.
<b>“Pension or Benefit Plan”</b>	— As such term is defined in Section 5.1(y) hereof.
<b>“Permitted Contest”</b>	— A contest by Borrower by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, as to the amount or validity or application in whole or in part of liens of any mechanics, materialmen and similar liens provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iii) the Premises nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly, upon final determination thereof, pay or cause the payment

of the amount of any such mechanics, materialmen or similar liens, together with all costs, interest and penalties which may be payable in connection therewith; (v) such proceeding shall suspend the collection of such contested any mechanics, materialmen or similar liens from the Premises; and (vi) Borrower shall furnish or cause to be furnished such security as may be required in the proceeding, or as may be reasonably requested by Administrative Agent, to insure the payment of any such mechanics, materialmen and similar liens, together with all interest and penalties thereon.

***“Permitted Loans”***

— The Direct Loan and the CRDA Loan.

***“Permitted Transferee”***

— One or more of the following: (i) one or more of the following: an insurance company, bank, savings and loan association, investment bank, trust company, commercial credit corporation, pension plan, pension fund, pension fund advisory firm, mutual fund, real estate investment trust or governmental entity or plan; or (ii) an investment company, money management firm or a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended; or (iii) an institution substantially similar to any of the foregoing, which, in the case of each of the sub-clauses of this definition, has at least \$300,000,000 in total assets (in name or under management), and is regularly engaged in the business of making or owning commercial real estate loans or commercial loans or mezzanine loans (or interests therein) similar to the loans described herein; (iv) any entity Controlled (as defined below) by or Controlling, or under common Control with, any of the entities described in clauses (i)-(iii) above, or (v) a governmental entity. (“Control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise, and “Controlled” and “Controlling”



have the meaning correlative thereto).

<b>“Person”</b>	— Any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.
<b>“Plans”</b>	— All final drawings, plans and specifications prepared by Borrower’s Architect, the General Contractor or Major Subcontractors, and approved by Administrative Agent, the Lenders and the Construction Consultant, which describe and show the labor, materials, equipment, fixtures and furnishings necessary for the construction of the Improvements, including all amendments and modifications thereof made by approved Change Orders (and also showing minimum grade of finishes and furnishings for all areas of the Improvements to be leased or sold in ready-for-occupancy conditions).
<b>“Portion of the Loans”</b>	— The rights, interests, and obligations of any Lender with respect to its Loans under or pursuant to the provisions of this Agreement.
<b>“Premises”</b>	— The real property described on <u>Schedule A</u> to the Mortgages, upon part of which the Improvements are to be constructed.
<b>“Project” or “Projects”</b>	— Individually or collectively, as the context may require, Project 1, Project 2 and/or Project 3.
<b>“Project 1”</b>	— Collectively, the Premises and Improvements in connection with the construction of Building 1.
<b>“Project 1 Budget”</b>	— The budget for Project 1 (and any and all amendments, additions, deletions, supplements and restatements thereof which are specifically approved in writing by Administrative Agent) setting forth all of the estimated costs for construction, furnishing and equipping of the Improvements for Project 1 and all related soft costs, as approved by Administrative Agent.

<b>“Project 2”</b>	— Collectively, the Premises and Improvements in connection with the construction of Building 6.
<b>“Project 2 Budget”</b>	— The budget for Project 2 (and any and all amendments, additions, deletions, supplements and restatements thereof which are specifically approved in writing by Administrative Agent) setting forth all of the estimated costs for construction, furnishing and equipping of the Improvements for Project 2 and all related soft costs, as approved by Administrative Agent.
<b>“Project 3”</b>	— Collectively, the Premises and Improvements in connection with the construction of Building 7.
<b>“Project 3 Budget”</b>	— The budget for Project 3 (and any and all amendments, additions, deletions, supplements and restatements thereof which are specifically approved in writing by Administrative Agent) setting forth all of the estimated costs for construction, furnishing and equipping of the Improvements for Project 3 and all related soft costs, as approved by Administrative Agent.
<b>“Project Cost Statement”</b>	— The statement setting forth, by category, the aggregate cost of each category of construction with respect to Project 1, Project 2 and/or Project 3, as applicable, as well as the amount of the applicable Loans and Borrower’s equity contribution attributable to each category.
<b>“Projections”</b>	— The financial projections with respect to the Projects, dated as of the date hereof, and prepared by Reznick Group, P.C.
<b>“Pro Rata Interest” or “Pro Rata Interests”</b>	— <b>“Pro-Rata Interest”</b> with respect to a Lender individually, or <b>“Pro Rata Interests”</b> with respect to the Lenders collectively, as the case may be, means the applicable percentage or percentages in which the Lenders agree to share in the collections, recoveries, and certain contribution obligations under and with respect to the Portion of the Loans being made by each Lender. The Pro Rata Interest of any Lender from time to time shall be equal to the percentage obtained by dividing (x) the outstanding principal balance of the Loans made by such Lender by (y) the outstanding principal balance of the Loans made

by all Lenders.

***“QALICB”***

— Has the meaning given to such term in the Recitals to this Agreement.

***“QEIs”***

— Has the meaning given to such term in the Recitals to this Agreement.

***“QLICF”***

— Has the meaning given to such term in the Recitals to this Agreement.

***“Recapture Event”***

— Any event or condition that causes or results in a disallowance or recapture of all or any portion of the new market tax credits pursuant to Section 45D of the Code or the Treasury Regulations or Guidance thereunder.

***“Reinvestment Proceeds”***

— As such term is defined in Section 9.19 hereof.

***“Required Lenders”***

— For any decision required to be made by the Lenders but which, pursuant to the terms of this Agreement, is not required to be unanimous, shall require the consent of the GS Lender together with at least two (2) of the other three (3) Lenders.

***“Requisition”***

— A statement by Borrower in form and substance similar to Exhibit B pursuant to the terms hereof, and approved by Administrative Agent setting forth the amount of the release of proceeds of the Loans from the Disbursement Fund, requested in each instance and including:

- (i) the Direct Cost Statement and Indirect Cost Statement;
- (ii) a “Contractor’s Cost Certification” in form approved by Administrative Agent and the Construction Consultant;
- (iii) “Lien Waivers” from all General Contractor and, if requested by Administrative Agent, subcontractors, or suppliers covered by a previous Requisition in form approved by Administrative Agent;
- (iv) proof of payment of all Indirect Costs covered by a previous Requisition;

(v) proof of payment of Borrower's Equity; and

(vi) AIA Form G702 Application and Certificate for Payment.

***“Residential Leases”***

— Collectively, the leases entered into by the Borrower with respect to the residential units of the Projects, in a form to be approved in writing by Lenders and Administrative Agent.

***“Retainage”***

— A sum equal to 10% of any advance of a Loan to the extent it funds Direct Costs including any advance of the ***“Contingency”*** as shown on the Project Cost Statement, which amount shall be reduced (but not released) to 5% of any advance of such Loan after completion of 90% of the applicable Project.

***“Retained Amounts”***

— The amounts permitted to be retained by Borrower from each draw request for Hard Costs under the General Contracts or Major Subcontracts.

***“Shortfall Amount”***

— As such term is defined in Section 7.1(d) hereof.

***“Shortfall Letter of Credit”***

— As such term is defined in Section 7.1(g) hereof.

***“Shortfall Payment”***

— As such term is defined in Section 7.1(d) hereof.

***“SPE”***

— A limited partnership or limited liability company which: (a) shall not commingle assets with those of any other entity and holds its assets in its own name; (b) conducts its business in its own name; (c) maintains separate bank accounts, books, records and Financial Statements; (d) pays its own liabilities out of its own funds; (e) maintains adequate capital in light of contemplated business operations; (f) observes all organizational formalities; (g) maintains an arm's-length relationship with each Affiliate; (h) pays the salaries of its own employees, if any, in light of contemplated business operations; (i) shall not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of others; (j) shall not acquire obligations or securities of any Affiliate; (k) shall not make loans to any other person or entity; (l) allocates fairly and

reasonably any overhead for shared office space, if any; (m) shall not pledge its assets for the benefit of any other entity; (n) holds itself out as a separate entity and shall not fail to correct any known misunderstanding regarding its separate identity; and (o) shall not identify itself or any of its Affiliates as a division or part of the other.

<b>“State”</b>	— The State of New Jersey.
<b>“Stored Materials”</b>	— As such term is defined in Section 2.5 hereof.
<b>“Stored Materials Statement”</b>	— A statement in form approved by Administrative Agent which, if advances are to be made for stored materials pursuant to Section 2.5 hereof, shall be prepared by Borrower as part of the Direct Cost Statement.
<b>“Tax”</b>	— As such term is defined in Section 5.2(ee) hereof.
<b>“Title Insurer”</b>	— Chicago Title Insurance Company or any other issuer(s) approved by Administrative Agent which is issuing the title insurance policy or policies insuring the Mortgages.
<b>“Title Policy”</b>	— As such term is defined in Section 3.4(b) hereof.
<b>“Treasury Regulations and Guidance”</b>	— Any proposed, temporary and/or final regulations promulgated under the Code and any guidance, rule or procedure published by the CDFI Fund, including, without limitation, the Community Development Entity Certification Application and Allocation Agreements.
<b>“UBO”</b>	— As such term is defined in Section 5.2(ee) hereof.
<b>“Unavoidable Delay”</b>	— Any delays due to industry-wide strikes or similar labor disputes, acts of God, governmental restrictions, enemy action, civil commotion, acts of terrorism, fire, unavoidable casualty, unusually adverse weather conditions; <u>provided, however</u> , that neither the failure of Borrower to fulfill the requirements to receive a release hereunder nor the lack of Borrower’s own funds shall be deemed a cause beyond the reasonable control of the Borrower.

(End of Article I)

## ARTICLE II

### ADVANCES OF THE LOANS

2.1. Subject to the provisions of this Agreement, including, without limitation, Articles III, IV, VIII and IX hereof, Administrative Agent will approve releases from the proceeds deposited into the Disbursement Fund, and Borrower will accept the releases of from the Disbursement Fund as follows:

The Initial Release will be made upon the satisfaction of the applicable conditions set forth in Article III hereof, and all subsequent releases from the Disbursement Fund shall be made no more frequently than every month thereafter, within ten (10) Business Days of receipt of a Requisition, and upon the satisfaction of the applicable conditions set forth in this Agreement, in amounts which shall be equal to the aggregate of the Direct Costs and Indirect Costs incurred by Borrower through the end of the period covered by the Requisition, less:

(a) the greater of the Retainage of such Direct Costs or the actual “Retained Amounts” specified on the Direct Cost Statement; and

(b) the total of the releases from the Disbursement Fund theretofore made;

and, at the election of Administrative Agent, less any costs covered by the Requisition not approved, certified or verified as provided in Section 2.2 hereof, any Indirect Costs covered by a previous or the current Requisition for which any requested proof of payment has not been received by Administrative Agent, and/or any Direct Costs covered by a previous or the current Requisition for which any requested payment receipts have not been received by Administrative Agent and the Construction Consultant.

2.2. Direct Costs are to be certified by the General Contractor and Borrower’s Architect and must be in accordance with the Direct Cost Statement. Verification of the monthly progress and Direct Costs which have been incurred by Borrower from time to time, and the estimated total Direct Costs, shall be reasonably determined by the Construction Consultant, except that both Direct Costs and Indirect Costs are also subject to reasonable approval and verification by Administrative Agent from time to time. Advances for Direct Costs shall be made only to the extent that the work is actually completed in accordance with the Plans and is in place and approved by the Construction Consultant and Administrative Agent.

2.3. All releases of proceeds from the Disbursement Fund to Borrower shall be deposited via wire transfer or other transfer of same day funds in the Borrower’s Operating Account; provided, however, that Administrative Agent reserves the right with respect to any Requisition, at any time and from time to time, to require that releases hereunder be made jointly to Borrower and the General Contractor and/or subcontractors and suppliers to be paid from the funds being advanced under such Requisition. Requisitions shall be received by Administrative Agent and Lenders at

least ten (10) Business Days prior to the date of the requested release from the Disbursement Fund of any of the proceeds held therein. Administrative Agent shall fund such Requisition within ten (10) Business Days after all conditions to make advances under this Article II and under Sections 3.1, 3.2 or 3.3 hereof, as the case may be, but shall have no obligation to authorize releases of the proceeds more frequently than once per calendar month.

2.4. Amounts, including Retainage (and any other amounts), not authorized for release pursuant to Section 2.1 hereof during the course of construction of the Improvements shall be authorized for release from the Disbursement Fund upon the satisfaction of the conditions set forth in Section 4.2 hereof. Loan Budget Amounts for Indirect Costs not released prior to completion of construction of the Improvements shall be released until exhausted, not more frequently than once a month, for Indirect Costs as incurred after such completion.

2.5. Administrative Agent shall, at its sole option, authorize release of proceeds from the Disbursement Fund, in such amounts as Administrative Agent shall approve, for Borrower's building materials (the "*Stored Materials*"), approved by Administrative Agent in accordance with clauses (a)-(g) below, which have been purchased by Borrower and stored in either a bonded public warehouse or in such other storage facility as is satisfactory to Administrative Agent or stored on site prior to incorporation in the Improvements provided:

(a) said Stored Materials are fully insured to Administrative Agent's satisfaction (in transit and while in storage) and will be incorporated into the Improvements within thirty (30) days of receipt of same at the Premises,

(b) the Stored Materials are marked and segregated from all other items stored in such bonded public warehouse or storage facility,

(c) Administrative Agent and Borrower shall have entered into a security agreement, in form and substance satisfactory to Administrative Agent, covering the Stored Materials and Administrative Agent on behalf of the Lenders shall have been provided with a satisfactory first chattel lien with respect thereto,

(d) Administrative Agent shall have received evidence, satisfactory to Administrative Agent, that the Borrower holds title (including, but not limited to, a bill of sale) to the Stored Materials free and clear of all liens and encumbrances (other than those in favor of Lenders and the Other Lenders), and any warehouseman's receipt or similar document, for the stored materials,

(e) if the Stored Materials are stored in a facility other than a bonded public warehouse, then the Stored Materials must be protected against theft and vandalism to Administrative Agent's satisfaction,

(f) Borrower shall provide to Administrative Agent photos of the Stored Materials; and

(g) the Stored Materials have been inspected by the Construction Consultant.

2.6. Subject to Article IX hereof, after an Event of Default hereunder, Administrative Agent may, in its sole and absolute discretion, accelerate all or any portion of the amounts to be advanced or released hereunder or cease to fund any amounts hereunder, all without regard to Borrower's satisfaction of the conditions to its entitlement to proceeds of the Loans to be disbursed from the Disbursement Fund and no person dealing with Borrower or the General Contractor or any other person (other than the Lenders) shall have standing to demand any different performance from Administrative Agent.

2.7. If, at any time, the Borrower shall request that the undisbursed balance of the Loan Budget Amount for any category of cost shown on the Project Cost Statement be reallocated to another category of cost, Administrative Agent shall consent to such reallocation only (i) if, in Administrative Agent's reasonable judgment, the unreleased balance of the Loan Budget Amount for such category of cost is excessive given the remaining cost for such category, (ii) there is no Event of Default and (iii) provided that any reallocation of Loan Budget Amounts pursuant to this Section 2.7 will not have any other adverse effect upon the Loans.

2.8. The Borrower hereby irrevocably authorizes Administrative Agent (or its replacement pursuant to Article IX hereof) on behalf of the Lenders to approve releases of, and the Lenders to release, proceeds from the Disbursement Fund to pay interest accrued on the Notes as it comes due, or to satisfy any of the conditions of this Agreement, including, without limitation, the payment of the reasonable CDE Expenses and the payment of the reasonable fees and expenses of Administrative Agent's Counsel and Lenders' counsel and the Construction Consultant actually incurred, notwithstanding that the Borrower may not have requested authorization of the release of such amounts and whether or not an Event of Default is continuing under this Agreement; provided, however, that regarding amounts that the Borrower has not requested released, within ten (10) Business Days following any such release, the Borrower is provided with notice of such release together with a reasonable accounting of such amounts released; provided, further, however, that failure to notify the Borrower shall have no consequences whatsoever to the effectiveness of any such release. The authorization granted hereby shall not prevent the Borrower from paying interest, or satisfying said conditions, from its own funds and shall in no event be construed so as to relieve the Borrower from its obligations to pay interest as and when due under the Notes, or to satisfy said conditions, or to obligate the Administrative Agent to approve releases of proceeds of the Loans for payment of interest or the satisfaction of said conditions. At such time as the Borrower commences leasing of the Improvements, interest on the Loans shall be paid from the net operating income of the Improvements to the extent there is sufficient net operating income to do so and the remainder of the interest payment shall be made from the proceeds of the Loans to the extent available for payment of interest on the Loans. Furthermore, if there are sufficient savings in line items in the Budget, the Borrower may request that Administrative Agent reallocate such savings toward payment of the NCIF Fees, the Carver Fees and the BA Fees (on a pro rata basis) or to an interest reserve, which



reallocated amounts may then be used to make interest payments in place of net operating income making such interest payments; provided, however, that the determination as to whether to so reallocate any cost savings shall be made in the sole discretion of Administrative Agent. Notwithstanding the Administrative Agent's sole discretion, should the Borrower provide the Administrative Agent with a certificate from the applicable Borrower's Architect stating there are sufficient funds to complete the Projects, the Administrative Agent shall reallocate such cost savings to make interest payments or to make payment of the NCIF Fees, the Carver Fees and the BA Fees (on a pro rata basis) as requested by the Borrower.

2.9. Intentionally Deleted.

2.10. Requisitions for the Initial Release and all subsequent releases from the Disbursement Fund shall be provided to each Lender by Borrower simultaneously with submission of such Requisition to Administrative Agent, together with all supporting material required by this Article II in the case of the Initial Release and Article IV in the case of each subsequent release (including, but not limited to, the reports of the Construction Consultant). In the event that a Lender disapproves all or a portion of the Requisition and notifies (which disapproval notification shall be made to the Administrative Agent in writing, be reasonable and be in sufficient detail for the Administrative Agent to be able to assess the disapproval (the "*Disapproval Notice*")) Administrative Agent of such disapproval prior to Administrative Agent disbursing the Loan proceeds, Administrative Agent shall not release such disbursement (or portion thereof that is being disapproved by the applicable Lender, as the case may be) until Administrative Agent, Required Lenders and the Borrower resolve the disputed items. In the event that a Lender disapproves or disputes all or a portion of a Requisition and provides a Disapproval Notice to Administrative Agent after Administrative Agent has disbursed the Loan proceeds, Administrative Agent shall not disburse the immediately succeeding Requisition until Administrative Agent, Required Lenders and the Borrower resolve the disputed items. Notwithstanding the foregoing, if a Lender has not disapproved a Requisition within five (5) days after the release of such disbursement, such Lender's consent shall be deemed given. For the purposes of this Section 2.10, in addition to delivering notices pursuant to Section 7.01(h) hereof, Required Lenders shall provide notice to Administrative Agent by electronic mail to Alexander.Ivanovic@gs.com. Notwithstanding anything to the contrary contained in this Agreement or otherwise, but subject to the Accepted Servicing Practices, Administrative Agent shall have no liability whatsoever to the Lenders for approving the advance of a Requisition that any Lender or Lenders subsequently disapprove, approved or are deemed to have approved.

2.11. Subject to Section 2.10 hereof, if Administrative Agent or a Lender questions the appropriateness of paying any portion of a Requisition, Administrative Agent shall nevertheless authorize the advance of the undisputed portion of the Requisition and the Administrative Agent and such Lender shall work with the Borrower in resolving any disputed items. The disputed portion of a Requisition shall not be paid until the dispute is resolved.

(End of Article II)

### ARTICLE III

#### CONDITIONS PRECEDENT TO ADMINISTRATIVE AGENT'S OBLIGATION TO APPROVE THE MAKING OF THE INITIAL RELEASE

3.1. Administrative Agent, on behalf of the Lenders, shall not be obligated to approve the making of the Initial Release by the Lenders until the following conditions shall have been satisfied by the Borrower or have been waived by Administrative Agent (provided that unless such waiver has been granted in writing, it shall not be deemed to have been waived for future releases):

- (a) Administrative Agent and the Lenders shall have received and approved the items specified in Section 3.2 below;
- (b) The Construction Consultant shall have received and approved the items specified in Section 3.3 below;
- (c) Counsel to each of the Lenders and Administrative Agent shall have received and approved the items specified in Section 3.4 below;
- (d) Administrative Agent and the Lenders shall have approved the Plans, the Environmental Report, the state of title to the Premises reflected in the Title Policy, the survey and such other documents required by the Administrative Agent and the Lenders;
- (e) The representations and warranties made in Article V and Article X hereof shall be true and correct on and as of the date of the Initial Release with the same effect as if made on such date;
- (f) The Improvements, if any, shall not have been injured or damaged by fire or other casualty unless Administrative Agent, on behalf of the Lenders, shall have received insurance proceeds sufficient in the judgment of the Construction Consultant to effect the satisfactory restoration of the Improvements and to permit completion of the Improvements prior to the Completion Date;
- (g) Administrative Agent and the Lenders shall have received a copy of the fully executed Master Lease, in form and substance satisfactory to Administrative Agent and the Lenders;
- (h) Administrative Agent and the Lenders shall have received evidence satisfactory to them that the proceeds of the Permitted Loans made by the Other Lenders will be available to the Borrower; and
- (i) There shall exist no default beyond any applicable periods of notice and grace under any of the Loan Documents, irrespective of whether or not the same shall constitute an Event of Default thereunder.

3.2. The items to be received and approved by Administrative Agent and the Lenders prior to the Initial Release shall be:

- (a) Evidence that all of the Fees due on or prior to the date of the Initial Release have been paid to the respective parties or will be made out of the Initial Release;
- (b) An appraisal, in form, substance and amount, and from an appraiser, satisfactory to the Administrative Agent and the Lenders;
- (c) Current Financial Statements and such other financial data as Administrative Agent and the Lenders shall require including, but not limited to, consolidated, audited Financial Statements of any member and/or manager of the Borrower, together with evidence that there has occurred no material adverse change in the financial condition reflected therein between the respective dates thereof and the date hereof;
- (d) The following, in form and substance reasonably satisfactory to Administrative Agent and the Lenders: (i) evidence that the Plans have been approved by Construction Consultant and by Governmental Authorities, (ii) evidence that the Improvements as shown by the Plans will comply with applicable zoning and environmental ordinances and regulations, (iii) evidence that the executed General Contracts are in effect which satisfactorily provides for the construction of the Improvements in accordance with the Plans, (iv) evidence that all roads and utilities necessary for the full utilization of the Improvements for their intended purposes have been completed or will be completed prior to the Completion Date or the presently installed and proposed roads and utilities will be sufficient for the full utilization of the Improvements for their intended purpose, (v) evidence that the construction of the Improvements theretofore performed, if any, was performed in accordance with the Plans and will be finished along with all necessary roads and utilities on or before the Completion Date, and (vi) evidence that the cost of constructing the Improvements shall not exceed the total development costs approved by the Administrative Agent and the Lenders and set forth in the Budgets;
- (e) An executed copy of the General Contracts in connection with the Projects, together with a copy of the agreement with Borrower's Architect;
- (f) An Architect's Qualification Statement on AIA Document B431 for the Architect, together with evidence that the Architect is duly licensed and registered in the State of New Jersey; a fully executed copy of the contract between Borrower and the Engineer acceptable to Administrative Agent in all respects; a Qualification Statement on AIA Form B431 (or similar qualification form from the ACEC for Engineer), together with evidence that Engineer is duly licensed and registered in the State of New Jersey; and a list of all contractors to be employed in connection with the construction of the Projects, which at a minimum sets forth the nature of the work to be performed, the labor and materials to be supplied and the dollar amount of such work and/or materials. The required list of contractors must specify the amount of each contract, subcontract, and material supply contract (which must be updated as and when additional contracts, subcontracts, or material supply contracts are awarded). If all contracts, subcontracts, and material supply contracts have not been awarded as of the date of the Initial Release, Borrower shall provide Administrative Agent with an updated list of contractors prior to each subsequent release of proceeds from the Disbursement Fund.

(g) The insurance policies for the types and in the amounts described on Exhibit H attached hereto, in form and substance satisfactory to Administrative Agent and Lenders, including flood insurance, if applicable (together with evidence of the payment of the premiums therefor when due) which policies will name Administrative Agent and each of the Lenders as additional insureds/loss payees and will contain an endorsement specifically providing that, in the case of any damage, all insurance proceeds will be paid to Administrative Agent for the benefit of the Lenders so long as it certifies to the insurer that the unpaid principal amount of the Mortgages exceeds the proceeds of insurance and if no flood insurance is applicable, evidence that the Premises are not located in an area that has been identified by the Secretary of Housing and Urban Development as an area requiring special flood insurance;

(h) The building permits required for the construction of the Improvements for Project 1 in accordance with the Plans for Project 1;

(i) A construction and Loans draw progress schedule or chart showing the interval of time over which each item of Direct Costs and Indirect Costs is projected to be incurred or paid for the Projects;

(j) The Project Cost Statement, Direct Cost Statement and Indirect Cost Statement for the Projects;

(k) A Requisition for the Initial Release, together with, if requested by Administrative Agent, proof of payment of any Indirect Costs included therein;

(l) Evidence that, except as set forth on the Environmental Report and other than those items that are to be remediated in connection with the construction of the Improvements, the Premises and the Improvements thereon are not currently and have not been subject to Hazardous Materials;

(m) The executed Environmental Indemnity, ADA Indemnification Agreement and all other Loan Documents;

(n) Evidence of all costs incurred by Borrower in connection with Project 1 as of the date of the Initial Release, as well as evidence that the same have been, or will be paid in full;

(o) The Allocation Agreements and evidence of the Investment Fund making the initial QEIs, on the date hereof, in the Lenders;

(p) A written legal opinion of Borrower's counsel in form and substance reasonably satisfactory to the Administrative Agent and Lenders with respect to matters related to this Agreement and the Loan Documents executed by such party;

(q) A written legal opinion of Borrower's counsel confirming Borrower's status as a QALICB, the status of the Loans as QLICIs and debt for federal income tax purposes and the reasonable expectation of the Lenders that the Borrower will remain a QALICB for the term of the Loans;

- (r) The Budgets for the Projects;
- (s) Projections covering the financial results of operation of the Projects prepared by Reznick Group, P.C., and a compilation letter with respect thereto prepared by Reznick Group, P.C.;
- (t) Payment and Performance Bonds for the full amount of the General Contracts;
- (u) The Community Benefits Agreement; and
- (v) The Financial Agreement dated as of the date hereof, by and between Newark Teachers Village Urban Renewal, LLC, and the City, executed by the parties thereto (the “*Financial Agreement*”).

3.3. The items to be received and approved by the Construction Consultant prior to the Initial Release shall be:

- (a) The Plans for the Projects;
- (b) Copies of the items required by Section 3.2 hereof and Section 3.4 hereof;
- (c) [Reserved];
- (d) Copies of all inspection and test records and reports made by or for Borrower’s Architect;
- (e) Copies of all documents listed as exceptions to title in the Title Policy;
- (f) Copies of all easements;
- (g) If the Initial Release consists in whole or in part of advances for Direct Costs, a copy of the Requisition therefor; and
- (h) Evidence that the Premises are not located in an area designated by the Secretary of Housing and Urban Development as having special flood hazards, or the flood-hazard insurance required by the NFIA of 1968, as amended (42 U.S. 4013, et seq.).

3.4. The items to be received and approved, on Administrative Agent’s and Lenders’ behalf, by Administrative Agent’s Counsel and counsel to each of the Lenders prior to the Initial Release shall be:

- (a) The executed Loan Documents;
- (b) Paid title insurance policies in the aggregate amount of the Mortgages, insuring the Mortgages (collectively, the “*Title Policy*”), in ALTA or other form approved by Administrative Agent, issued by the Title Insurer, which shall insure the Mortgages to be a valid lien on Borrower’s fee simple interest in the Premises free and

clear of all defects and encumbrances except those previously received and approved by Lenders, and shall contain:

- (1) full coverage against mechanics' liens (filed and inchoate),
  - (2) a reference to the survey but no survey exceptions except those theretofore approved by counsel to the Lenders,
  - (3) a Pending Disbursements Clause in the form of Exhibit A hereto; and, if any such policy is dated earlier than the date of the Initial Release, a continuation of or endorsement to such policy, in a form approved by Administrative Agent's Counsel, conforming to the requirements of said Exhibit A and setting forth no additional exceptions except those approved by counsel to the Lenders; and
  - (4) such endorsements as each Lender shall require in such party's sole and absolute discretion;
- (c) Copies of any and all authorizations including plot plan and subdivision approvals, zoning variances, sewer, building and other permits required by Governmental Authorities for the commencement of construction of the Premises and/or Improvements for the purposes contemplated by the Plans in accordance with all applicable building, environmental, ecological, landmark, subdivision and zoning codes, laws and regulations;
- (d) Letters and/or agreements from the Borrower's Architect and the General Contractor, in forms acceptable to Lenders and Administrative Agent, containing, among other things, their agreement to continue performance on behalf of the Lenders following an Event of Default;
- (e) UCC, judgment, litigation, lien and bankruptcy searches against Borrower or other owner of the Premises disclosing no judgments, liens or bankruptcies (except as set forth in a certificate, dated the date hereof, provided by Borrower to the Administrative Agent and the Lenders) and advice from the Title Insurer to the effect that searches of proper public records disclose no leases of personalty or financing statements filed or recorded against the Premises, Borrower or other owner of any Mortgaged Property (except as acceptable to Administrative Agent);
- (f) A survey (current to within thirty (30) days of the Initial Release or otherwise acceptable to Administrative Agent) of the Premises certified to Administrative Agent, the Lenders and the Title Insurer showing:
- (1) the location of the perimeter of the Premises by courses and distances,
  - (2) all plottable easements, rights-of-way, and utility lines referred to in the Title Policy or which actually service or cross the Premises to the extent (A) discernable by a visual inspection by the surveyor, (B) made pursuant to a written agreement made available to the surveyor or (C) made pursuant to a recorded document,

- building lines,
- (3) the lines of the streets abutting the Premises and width thereof, and any established
- (4) encroachments and the extent thereof upon the Premises,
- (5) the Improvements to the extent constructed, and the relationship of the Improvements by distances to the perimeter of the Premises, established building lines and street lines, and
- (6) if the Premises are described as being on a filed map, a legend relating the survey to said map;
- (g) Copies of letters from local utility companies or Governmental Authorities or Borrower's Architect stating that gas, electric power, sanitary and storm sewer and water facilities and other utilities are currently available or will be available to and servicing the Premises upon completion of construction of the Improvements;
- (h) Letters from the Borrower's Architect stating that the anticipated use of the Premises complies with all applicable zoning regulations;
- (i) Evidence of Borrower's Architect's errors and omissions insurance, and evidence of General Contractor's insurance required to be maintained under the applicable General Contract;
- (j) Any consents required by the General Contractor for the execution of the General Contracts;
- (k) [Reserved];
- (l) The Operating Agreement, certificate of formation, certificate of limited partnership, certificate of incorporation and/or operating agreement, partnership agreement or bylaws for the Borrower;
- (m) Copies of the following documents with respect to Borrower, the constituent members and managers of the Borrower (to the extent applicable):
- (1) a good-standing certificate from the state of its formation,
- (2) resolutions or unanimous written consents, certified by the secretary, of the shareholders or directors of the corporation or manager or managing member of the limited liability company or general partner of the partnership authorizing the consummation of the transactions contemplated hereby and the execution, delivery and performance of the Loan Documents to be executed, delivered or performed by said corporation, partnership or limited liability company, and
- (3) an incumbency certificate of the parties executing this Agreement, or any of the other documents required hereby;
- (n) Copies of the items required by Section 3.2 hereof;



(o) Evidence satisfactory to Administrative Agent and Lenders that the Premises upon completion will have a satisfactory payment in lieu of taxes (PILOT) agreement;

(p) An opinion of Borrower’s counsel satisfactory to Administrative Agent and Lenders in all respects, regarding, among other things, the enforceability of the documents executed in connection with the Loans and the authorization of the Borrower to enter into the documents executed in connection with the Loans, in form and substance reasonably satisfactory to Lenders’ counsel;

(q) Evidence of the establishment of the Disbursement Fund;

(r) The Master Lease;

(s) Compliance and debarment and tax certificates, tax opinions and all other instruments reasonably required by tax counsel for the Lenders; and

(t) The Intercreditor Agreement.

(End of Article III)

## ARTICLE IV

### CONDITIONS PRECEDENT TO ADMINISTRATIVE AGENT'S OBLIGATIONS TO APPROVE THE RELEASES OF THE PROCEEDS FROM THE DISBURSEMENT FUND AFTER THE INITIAL RELEASE

4.1. Administrative Agent, on behalf of the Lenders, shall not be obligated to approve any release of the proceeds of the Loans from the Disbursement Fund after the Initial Release until the following conditions shall have been satisfied by the Borrower or waived by the Administrative Agent (provided that unless such waiver has been granted in writing it shall not be deemed to have been waived for future releases):

(a) All conditions of Article III shall have been and remain satisfied in the same manner as satisfied prior to the Initial Release as of the date of such release.

(b) Administrative Agent, Lenders and the Construction Consultant shall have received a Requisition for the release, together with such other documentation and information as any of them may reasonably require.

(c) Administrative Agent shall have received from the Title Insurer a continuation report of, or endorsement to, the title policies insuring the Mortgages to the date of such release, conforming to the pending disbursement requirements set forth in Exhibit A hereto, as applicable, confirming the priority position of the Mortgages and setting forth no additional exceptions (including survey exceptions) except those approved by the Administrative Agent.

(d) If reasonably required by Administrative Agent or Construction Consultant, they shall have received a survey of the Premises certified to the Administrative Agent, the Lenders and the Title Insurer updated with respect to all relevant requirements and information to within fifteen (15) days of the release.

(e) Unless the same has been bonded and released of record or otherwise satisfied and released to the satisfaction of Administrative Agent, no lien for the performance of work or supplying of labor, materials or services shall have been filed against the Mortgaged Property and/or a Project. A lien search shall have been conducted (1) to verify that since the preceding disbursement, there have been no additional liens which have not been agreed to by Administrative Agent, and (2) to confirm that there has been no filing of any mechanic's or materialmen's or other lien that has not been released or bonded to Administrative Agent's satisfaction. Administrative Agent shall have received sworn statements and waivers of mechanics' and materialmen's liens, in form and substance satisfactory to Administrative Agent, covering all work done, materials supplied and services rendered to the date of disbursement in connection with the development and construction of the Projects, from all Persons who have furnished labor, materials and/or services in the construction of the Projects, in all cases in form satisfactory to the Lenders and Administrative Agent.

(f) Borrower shall have delivered to Administrative Agent true and complete copies of the most recent tax bills for the Mortgaged Property, and, if there is any

change in fee ownership or the taxes are not abated, any outstanding unpaid taxes, assessments or other charges or impositions of Governmental Authorities shall have been paid by Borrower.

(g) There shall have been no material adverse change in the financial condition of Borrower or General Contractor.

(h) No condemnation proceedings shall have been instituted, or to the best of Borrower's knowledge threatened, with respect to the Mortgaged Property or any part thereof.

(i) Borrower shall have delivered to Administrative Agent satisfactory evidence that the insurance required under the Loan Documents remains in full force and effect and is in compliance with the insurance requirements set forth in the Loan Documents.

(j) Administrative Agent shall have received evidence satisfactory to it that the Mortgaged Property has not been materially damaged by fire or other casualty unless Administrative Agent shall have received insurance proceeds, or satisfactory assurance that it will receive such proceeds in a timely manner, sufficient in the judgment of Administrative Agent to effect a satisfactory restoration and completion of the Projects in accordance with the terms of the this Agreement and the other Loan Documents.

(k) Administrative Agent shall have received evidence satisfactory to it that all work requiring inspection by any Governmental Authority having or claiming jurisdiction has been duly inspected and approved by such authority and by any rating or inspection organization, bureau, association or office having or claiming jurisdiction.

(l) Administrative Agent and Lenders shall have received evidence satisfactory to it, including, if reasonably requested by Administrative Agent, an engineering certification, that all work completed at the time of the Requisition has been performed in a good and workmanlike manner, that all materials and fixtures usually furnished and installed at that stage of construction have been so furnished and installed, and that the Improvements can be completed in accordance with the approved construction schedule.

(m) The labor, materials, equipment, work, services and supplies performed upon or furnished to the Projects shall be in full accordance with the Plans, which have not been amended except as expressly permitted by this Agreement, and there have been no material changes in the costs of the Projects from those set forth on the Budget, as amended by any amendment thereto heretofore delivered by Borrower to Administrative Agent and approved by Administrative Agent.

(n) There shall exist no condition or situation at the Premises which, in the reasonable determination of Administrative Agent, constitutes a danger to or impairment of the Projects or presents a danger or hazard to the public.

(o) The representations and warranties made in this Agreement shall be true and correct in all material respects on and as of the date of the release with the same effect as if made on such date.

(p) There shall exist no default hereunder or under any of the Loan Documents, irrespective of whether or not the same constitutes an Event of Default thereunder.

(q) If the release of proceeds from the Loans is for Direct Costs, prior to approving such release, the Administrative Agent must obtain the report of the Construction Consultant, which report shall be in form and substance satisfactory to the Administrative Agent and shall state (i) that the work completed under the applicable General Contract as of the date of the inspection has been performed and constructed substantially in accordance with the Plans, (ii) that the work is progressing on schedule, (iii) that the disbursements to date (including the proposed release) plus Retainage correspond with the percentage of work completed and in place as of the current Retainage, (iv) that undisbursed or unreleased proceeds of the Loans and Borrower's equity are sufficient to complete the remaining construction. If the Construction Consultant does not approve an item of work, then the Administrative Agent may hold back an amount which in the Administrative Agent's opinion shall be sufficient to remedy the item of work until the non-complying item of work is remedied.

(r) Asbestos reports satisfactory to Administrative Agent in its reasonable discretion.

4.2. In the case of the last release of proceeds from the Disbursement Fund as provided in Section 2.4 hereof, Administrative Agent and Lenders shall also have received:

(a) A certificate from the Construction Consultant and Borrower's Architect, as applicable, to the effect that construction of the Improvements has been completed (subject to funded punchlist items), and any necessary utilities and roads have been finished and made available for use, substantially in accordance with the Plans and that the Construction Consultant has received satisfactory evidence of the approval by all Governmental Authorities of the Improvements in their entirety for the contemplated uses thereof, to the extent any such approval is a condition of the lawful use and occupancy thereof;

(b) If requested by the Administrative Agent and/or the Title Insurer, a current final survey of the Premises, certified to the Title Insurer, the Lenders and the Administrative Agent showing the completed Improvements;

(c) Final releases of liens and/or other documents and instruments as may reasonably be requested or required by the Administrative Agent with respect to the release of any mechanics and/or materialmen's liens;

(d) A certificate of Borrower's Architect and the Construction Consultant to the effect that, inter alia, construction of the Improvements has been completed

substantially in accordance with the Plans (on a form to be provided by Administrative Agent), together with the AIA G704 Certificate of Substantial Completion, approved by the Lenders and Administrative Agent and all the requirements of all applicable Governmental Authorities;

(e) A final lien release and waiver from the General Contractor and all subcontractors, in form and substance acceptable to the Administrative Agent and the Lenders, with respect to all prior amounts funded from the Disbursement Fund pursuant to a Requisition and either final releases and waivers or releases and waivers conditioned only upon payment of amounts covered by the last Requisition of funds from the Disbursement Fund, from the General Contractor and all subcontractors;

(f) Two (2) sets of detailed as-built plans and specifications for the Improvements. The as-built plans and specifications shall be approved as such in writing by the Borrower, the General Contractor and Borrower's Architect and shall include plans and specifications for architectural, structural, mechanical, plumbing, electrical and site development work (including storm drainage, utility lines and landscaping);

(g) Insurance policies evidencing compliance with all insurance requirements under the Loan Documents;

(h) The Title Policy shall have been fully endorsed assuring that all applicable amounts of the Loans released to pay Direct Costs and Indirect Costs have the priority specified in the Mortgages and are subject to no other encumbrances other than those previously approved in writing by the Lenders;

(i) All conditions of Section 4.1 hereof, to the extent not otherwise enumerated above, shall have been satisfied; and

(j) A temporary or permanent certificate of occupancy for the Improvements and, if a temporary certificate of occupancy, an escrow agreement between the Administrative Agent and Borrower pursuant to which an amount determined by the Administrative Agent in its sole discretion as twice the estimated cost to complete all of the construction of the Improvements, including all punchlist items, and make all the necessary filings and inspections in order to obtain a permanent certificate of occupancy is received plus an aggregate \$100,000 (\$50,000 per Project) is escrowed with the Administrative Agent.

#### 4.3. Inspections.

(a) Borrower shall be responsible for making inspections of the Projects during the course of construction, and Borrower shall determine to its own satisfaction that the work done or material supplied by the contractors to which disbursements are to be made out of each disbursement has been properly done or supplied in accordance with the applicable contract with such contractor. Neither Administrative Agent nor the Lenders shall be required to conduct any inspection of the Projects. Any inspections done by or on behalf of the Lenders and/or Administrative Agent shall be solely for the benefit of the Lenders and/or Administrative Agent, and Borrower may not rely thereon.

(b) Lenders, Administrative Agent, and their consultants and representatives shall have access to the Projects and shall have the right to enter the Projects during normal business hours upon reasonable prior notice to the Borrower and to conduct such inspections thereof as they shall deem necessary or desirable for the protection of the Lenders' interests, including, without limitation, an inspection of the progress of construction in connection with any Requisition. Administrative Agent may take such steps as it may deem appropriate, at its option, to verify the application of the proceeds of the Loans to work done and material furnished for the Projects, including, without limiting the foregoing, reviewing invoices and such other supporting evidence as may be requested by Administrative Agent to establish the cost or value of the Projects for which disbursements are to be and have been made, or as may be required by this Agreement. Notwithstanding any provision of this Agreement to the contrary, in the event that Administrative Agent should determine that the actual quality or value of the work performed or the materials furnished does not correspond with the quality or value of the work required by the Plans, Administrative Agent shall notify Borrower of its objections thereto, and, upon demand, Borrower shall immediately correct the conditions to which Administrative Agent and the Lenders objected.

4.4. Disbursement Amounts; Retainage.

(a) Administrative Agent, subject to Section 2.10 hereof, shall determine the amount to be disbursed under each Requisition, and whether and to what extent amounts should be disbursed as requested in each Requisition, based on the information contained in each Requisition and subject to the provisions of this Agreement. In any case in which the amount to be disbursed is less than the amount requested in a Requisition, after the Administrative Agent provides a written explanation of the reason for such reduction to Borrower and Borrower has an opportunity to cure the problem or consent to such reduction within three (3) Business Days, the Requisition shall be amended to reflect the adjustments, and the Borrower shall execute the amended Requisition to reflect its agreement to the adjustments. Borrower acknowledges and agrees that Administrative Agent's determination in regard to disbursements is final.

(b) Borrower may obtain releases of proceeds of the Loans hereunder for payments owing to contractors only to the extent of the amount of the contract work satisfactorily completed or materials actually incorporated into the Projects by each such contractor in accordance with its contract, subcontract, or material supply contract, less amounts held as Retainage.

4.5. Contacts and Names of Contractors. Borrower shall advise Administrative Agent of the name of each contractor and subcontractor for the Projects. If requested by Administrative Agent or the Lenders, Borrower shall also furnish to Administrative Agent and the Lenders a copy of each contract with each of the contractors and subcontractors. Borrower shall keep Administrative Agent advised at all times of the names of all contractors and subcontractors, and of the type of work, material or services and the dollar amount covered by each of their respective contracts with Borrower.

4.6. **Building Permits.** Notwithstanding anything to the contrary contained herein, Administrative Agent shall not release proceeds of the Loans for Hard Costs of a particular Project until building permits are received for such Project.

(End of Article IV)

## ARTICLE V

### BORROWER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 5.1. Borrower represents, warrants and covenants that:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its formation, is qualified to do business and is in good standing in the State of New Jersey with full power and authority to enter into and to perform this Agreement, to borrow pursuant to the Notes, to mortgage the Mortgaged Property and to deliver the Loan Documents, and other instruments as herein provided, and to consummate the transactions contemplated hereby;

(b) The Plans are satisfactory to it, and have been reviewed and approved by the General Contractor, Borrower's Architect and, to the extent required by applicable law or any effective restrictive covenant, by all Governmental Authorities and the beneficiary of any such covenant; all construction, if any, already performed on the Improvements has been performed on the Premises in accordance with the Plans approved by the persons named above and with any restrictive covenants applicable thereto and to Borrower's knowledge there are no structural defects in such existing portions of the Improvements; the planned use of the Improvements complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Premises as well as all environmental, ecological, landmark, and other applicable laws and regulations; and all requirements for such use have been or will be satisfied;

(c) Financial Statements for the Borrower have been heretofore delivered to Administrative Agent and the Lenders which are true, correct and current in all material respects and which fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof; no material adverse change has occurred in the financial conditions of the Borrower reflected therein since the respective dates thereof and no borrowings (other than the Loans and the Permitted Loans) which might give rise to a lien or claim against the Mortgaged Property or other collateral or proceeds of the Loans have been made by Borrower or others since the date thereof;

(d) There are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting it, its constituent members or managers, the Premises or the validity or enforceability of the Mortgages or the priority of the lien thereof at law, in equity or before or by any Governmental Authorities; to Borrower's knowledge, it is not in default with respect to any order, writ, injunction, decree or demand of any court or Governmental Authorities; nor is the Borrower in default in the payment of any indebtedness representing any borrowed money or any other indebtedness, nor is the Borrower aware of any facts or circumstances which would give rise to any such default, which in any case could reasonably be expected to have a material adverse effect;

(e) The consummation of the transactions contemplated hereby and performance of this Agreement, the Notes, the Mortgages and all of the other Loan Documents have not and will not violate any law, rule, regulation, order, writ, judgment,



decree, determination or award presently in effect having applicability to the Borrower; conflict with any provision in the Borrower's certificate of formation or Operating Agreement; or result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Borrower, or any constituent member or manager of the Borrower, is a party or by which Borrower, or any such constituent member or manager of the Borrower, or may be bound or affected;

(f) All utility services necessary for the construction of the Improvements and the operation thereof for their intended purposes are available at the boundaries of the Premises (or through the course of the construction will become available at the Premises), including water supply, storm and sanitary sewer, gas, electric power and telephone facilities;

(g) It has entered into no contract or arrangement of any kind the performance of which by the other party thereto could give rise to a lien on the Mortgaged Property prior to the Mortgages, except for its arrangements with Borrower's Architect, the General Contractor, Major Subcontractors and contractors or subcontractors, all of whom have filed lien waivers or signed payment receipts in form approved by Administrative Agent for all payments due under said arrangements as of the end of the period covered by the last Requisition;

(h) All roads necessary for the full utilization of the Improvements for their intended purposes have either been completed or the necessary rights of way therefor have been acquired by appropriate Governmental Authorities or dedicated to public use, and all necessary steps have been taken by Borrower and said Governmental Authorities to assure the complete construction and installation thereof no later than the Completion Date or any earlier date required by any law, order or regulation;

(i) There exists no "Event of Default" under the Mortgages or any other Loan Documents and no event has occurred and is continuing which after notice or the passage of time, or both, would give rise to a default thereunder;

(j) The approved Plans referred to in paragraph (b) above are scheduled by sheet number, title, date and revised date in the letter from Borrower's Architect required by paragraph of Section 3.4 hereof, which schedule is hereby certified by Borrower to be true and correct;

(k) It has advised the Title Insurer in writing prior to the issuance of the Title Policy whether any site-development, excavation or other work related to construction of the Improvements was begun or done before the Mortgages were recorded;

(l) The Premises are not located in an area designated by the Secretary of Housing and Urban Development as having special flood hazards, or, if it is, Borrower has obtained the flood-hazard insurance required by the NFIA of 1968, as amended (42 U.S. 4013, et seq.);

(m) Except as disclosed in the Environmental Report, the Premises, and the Improvements thereon, are not currently subject to Hazardous Materials or their effects;

(n) There are no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders, relating to any hazardous or toxic substances or wastes, discharges, emissions or other forms of pollution relating in any way to the Premises or the Improvements thereon;

(o) The Borrower has, on the date hereof, certified to the Administrative Agent for the benefit of the Lenders, as true, correct and complete the organizational structure of the Borrower;

(p) None of the Borrower or any of its direct or indirect officers, managers, members, partners or principal employees is on the list of Specially Designated Nationals and Blocked Persons issued by the Office of Foreign Assets Control of the U.S. Department of Treasury;

(q) The Borrower is an SPE;

(r) Each Requisition presented to Administrative Agent, and the receipt of the funds requested thereby, shall constitute an affirmation that all of the representations and warranties of Borrower contained in this Agreement (including, but not limited to, those contained in this Section 5.1) remain true and correct in all respects as of the respective dates thereof;

(s) The Borrower has filed all tax returns, federal, state and local, required to be filed and has paid all taxes reported thereon to be due, including any interest and penalty, or has provided adequate reserves for payment thereof. No audit of any tax return is pending and the Borrower has not received any notice of any pending audit;

(t) There are no unpaid or unsatisfied judgments or orders of any court, arbitration or other tribunal, or governmental agency or department outstanding against the Borrower which in any case could reasonably be expected to have a material adverse effect;

(u) When this Agreement and the other Loan Documents are executed and delivered to the Administrative Agent and the Lenders by the Borrower, each such instrument shall constitute the legal, valid and binding obligation of the Borrower in accordance with its terms, except as enforcement thereof may be limited by general equitable principles and by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally;

(v) All factual information heretofore or contemporaneously furnished in writing by or on behalf of the Borrower to the Administrative Agent and the Lenders, upon which the Administrative Agent and the Lenders have relied, including, but not limited to, Financial Statements and reports, taken as a whole, are true and accurate in all material respects and fairly represent the condition and operations of the Borrower, and all future

information furnished in writing by the Borrower to the Administrative Agent and the Lenders, in whatever form, will be true and accurate in all material respects as of the date on which such information is furnished;

(w) The Borrower enjoys peaceful and undisturbed possession under all leases of real and personal property of which it is lessee, and, all such leases are valid and subsisting and in full force and effect;

(x) Each pension or other employee benefit plan as to which the Borrower may have any liability (herein called a “*Pension or Benefit Plan*”) has, to the extent required, been approved by the Internal Revenue Service under the Employee Retirement Income Security Act of 1974, as amended (herein called “*ERISA*”) and is in material compliance with all applicable requirements of law, rules and regulations adopted by regulatory authorities pursuant thereto, neither a “Reportable Event” nor a “Prohibited Transaction” has occurred with respect to any Pension or Benefit Plan, and the Borrower has filed all reports required to be filed by ERISA and such rules and regulations. Furthermore, no steps have been taken to terminate any Pension or Benefit Plan and the Borrower has not withdrawn from any Pension or Benefit Plan or initiated steps to do so, the Borrower has met its minimum funding requirements under ERISA with respect to all of its Pension or Benefit Plans and the present value of all vested benefits does not exceed the fair market value of all Pension or Benefit Plan assets allocable to such benefits, as determined on the most recent valuation date of the Pension or Benefit Plan and in accordance with the provisions of ERISA and the regulations thereunder for calculating the potential liability of the Borrower to the Pension Benefit Guaranty Corporation (herein called the “PBGC”) or the Pension or Benefit Plan under Title IV of ERISA, and the Borrower has not incurred any liability to the PBGC under ERISA;

(y) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock, and none of the proceeds of the Loans will be used for the purpose of, or be made available by the Borrower in any manner to any other person or entity to enable or assist such person or entity in, purchasing or carrying margin stock. Terms for which meanings are provided in Regulation U of the Board of Governors of the Federal Reserve System or any regulations substituted therefor, as from time to time in effect, are used herein with such meanings;

(z) Neither the business nor the properties of the Borrower are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance) which has or is likely to have a material adverse effect on the business or properties or the operation of the Borrower;

(aa) Borrower has delivered to the Lenders all formation and organizational documents of Borrower, the partners, members, joint venturers or shareholders of Borrower, if any, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to the Lenders;

(bb) (1) Neither Borrower nor any of its Affiliates is in violation of any law relating to terrorism or money laundering (“*Anti-Terrorism Laws*”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “*Executive Order*”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 10-56. Neither Borrower nor any of its Affiliates is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) supports “terrorism” as defined in the Executive Order; or

(v) a Person 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 or any replacement website or other replacement official publication of such list;

(2) Neither Borrower nor any of its Affiliates (1) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (i) above, (2) deals in, or otherwise engages in any transaction relating to any property or interests in property blocked pursuant to the Executive Order, or (3) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading a person that commits, threatens or conspires to commit or of avoiding, or attempt to violate, any of the prohibitions set forth in any Anti-Terrorism Law;

(cc) The Master Lease, the Financial Agreement and any other documents delivered to the Lenders prior to the date hereof are true and correct copies thereof, are in full force and effect and there exists no default or event of default thereunder; and

(dd) Twenty percent (20%) or more of total rental units financed with QLICs are both rent restricted, as defined in Section 42(g)(2) of the Code and occupied by individuals whose household income as illustrated by HUD Handbook 4350.3 REV-1 (or subsequent versions), is less than or equal to 80% of the area median family income as determined and adjusted annually by HUD. The Borrower shall also provide any information, certification, and/or documentation reasonably requested by the Lenders in order to substantiate compliance with the preceding sentence.

5.2. Borrower covenants and agrees with Administrative Agent and the Lenders that it will:

(a) Promptly comply with all laws, ordinances, orders, rules, statutes and regulations of Governmental Authorities and promptly furnish Administrative Agent with notices and reports of any official searches made by Governmental Authorities and any claims of violations thereof;

(b) Permit Administrative Agent or the Lenders, their representatives and the Construction Consultant to enter upon the Premises at reasonable times and upon reasonable notice to the Borrower, to inspect the Improvements and all materials to be used in the construction thereof and examine all detailed plans and shop drawings which are or may be kept at the construction site; at reasonable times it will cooperate and cause the General Contractor and shall cause the General Contractor to cause the Major Subcontractors to cooperate with the Construction Consultant to enable it to perform its functions hereunder; at the time of each inspection by the Construction Consultant, Borrower will cause the General Contractor and cause the General Contractor to cause the Major Subcontractors to make available to said Construction Consultant, on demand, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction;

(c) Pay all costs and expenses required for completion of the Improvements and the satisfaction of the conditions of this Agreement, including, without limitation:

(1) All, to the extent applicable, document and stamp taxes, recording and filing expenses and fees and commissions lawfully due to brokers in connection with the transactions contemplated hereby,

(2) the fees and expenses of the Administrative Agent, the Construction Consultant and such parties' attorneys in connection with the preparation for the consummation of the transactions contemplated hereby, and for any services of such parties which may be required in addition to those normally and reasonably contemplated hereby,

(3) any taxes, insurance premiums, liens, security interests or other claims or charges against the Premises or Improvements, and

(4) all costs of completion of the work to be performed by Borrower in space to be occupied in the Improvements to permit the lawful occupancy thereof, including that contemplated by the Leases or other agreements or letters of intent with respect thereto.

(d) Commence physical construction of the Improvements no later than ten (10) days from the date hereof; submit a Requisition for the Initial Release within thirty (30) days after such commencement and subsequent Requisitions not more frequently than on a monthly basis thereafter; cause the construction thus begun to be prosecuted with diligence and continuity in a good and workmanlike manner substantially in accordance with the Plans except during the existence of delays (for not more than a total of sixty (60) days) caused by events which constitute Unavoidable Delay; use only materials, fixtures, furnishings and equipment in connection with construction of the Improvements that are

not used or obsolete; and complete construction of the Improvements, and the installation of all necessary roads and utilities, substantially in accordance with the Plans, on or before the Completion Date, free and clear of defects and unbonded liens or claims for liens for material supplied or labor or services performed in connection with the construction of the Improvements; **TIME BEING OF THE ESSENCE** of this paragraph (d);

(e) Indemnify Administrative Agent and the Lenders against claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby;

(f) Subject to the requirements of Article X hereof, conduct its business substantially in the same manner as such business is now and has previously been conducted;

(g) Promptly deliver to Administrative Agent and Lenders and, if requested to do so, the Construction Consultant, copies of all contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien of the Mortgages, or under which it has incurred costs for which it is entitled to a Loan advance, and deliver to Administrative Agent and/or the Construction Consultant such other data or documents in connection with the Improvements as Administrative Agent and/or the Construction Consultant may, from time to time, reasonably request;

(h) Allow Administrative Agent and the Lenders, during normal business hours, upon receipt of reasonable notice by Borrower, access to the books, records and such other documents of the Borrower as Administrative Agent and/or the Lenders shall reasonably require and allow Administrative Agent and the Lenders, at Borrower's expense, to inspect, audit and examine same;

(i) Upon reasonable demand of Administrative Agent or the Construction Consultant, correct any defects (including structural) in the Improvements or any material departures from the Plans not approved by Administrative Agent;

(j) Not permit the performance of any work (i) pursuant to any General Contract, Change Order or Plans until Administrative Agent, Lenders and the Construction Consultant, shall have received copies thereof and (ii) in the case of Plans or Change Orders which will result in (A) a change in the aggregate of the contract prices for the construction of the Improvements in excess of the Change Order Amount or which, together with the aggregate of Change Orders theretofore executed by Borrower (excluding those approved by Administrative Agent pursuant to this paragraph) will result in a change in such prices in excess of the Aggregate Change Order Amount or (B) a change in the nature of the Improvements until prior written approval thereof by Administrative Agent; it being understood that approval of any Plans or Change Order will not obligate Administrative Agent to increase or advance any Loan Budget Amount on account of any such Plans or Change Orders; provided, however, that Administrative Agent shall provide each Lender with notice of any Change Order that would cause funds set aside in the Contingency Reserve to fall below \$2,500,000;

(k) Employ or cause the General Contractor to employ commercially reasonable means to protect from theft or vandalism all portions of the Improvements and all tools and building materials stored on the Premises;

(l) Comply with all restrictions, covenants and easements affecting the Premises or the Improvements and cause the satisfaction of all conditions of this Agreement;

(m) Contribute the Shortfall Payment or any other payments to be made pursuant to paragraph 7.1(d) hereof, separate and apart from the Loans at such time and times as Administrative Agent shall determine in its reasonable discretion;

(n) Not enter into any agreement for the sale of the Premises including, without limitation, the transfer of all or any part of the Premises to a partnership, limited liability company or other entity, without the express prior written consent of the Administrative Agent;

(o) Other than the Master Lease, Residential Leases, Leases approved by the Administrative Agent and the Lenders, and the Other Mortgages, not, directly or indirectly, transfer, mortgage, convey, sell, assign, lease, sublease, pledge or encumber the Mortgaged Property, or any part thereof or any direct or indirect interest therein, without the express prior written consent of the Administrative Agent and Lenders;

(p) Not incur or permit the incurrence of any debt (whether or not subordinate to the lien of the Mortgages) with respect to the Borrower or the Projects other than the Loans and the Permitted Loans without the prior written consent of the Administrative Agent and the Lenders, which consent may be granted or withheld in the sole and absolute discretion of the Administrative Agent;

(q) Simultaneously send to Administrative Agent and the Lenders a copy of any notice of default under the General Contract it sends to the General Contractor;

(r) Comply with all of the provisions of its organizational documents, not modify the organizational structure of the Borrower nor the direct or indirect ownership of the Borrower from that existing on the date hereof, and not modify, amend, terminate or cancel any organizational documents of the Borrower or any constituent members or managers of the Borrower in any material respect without the prior written consent of Administrative Agent and Lenders;

(s) Perform all environmental remediation required to be performed at the Premises in full compliance with all applicable laws;

(t) Maintain all construction and operating accounts of the Borrower at a banking institution approved by Administrative Agent and Lenders;

(u) Maintain its status as an SPE;

(v) Not change its fiscal year without the prior written consent of Administrative Agent;

- (w) Comply with the reporting requirements set forth in Article VIII and Article X hereof;
- (x) Deliver to Administrative Agent, within five (5) Business Days after request therefor, a written statement duly acknowledged by the Borrower of the amount due under the Loans and whether offsets or defenses exists against same;
- (y) Pay and discharge when due, and before subject to any penalty or further charge, and otherwise satisfy before maturity or delinquency, all obligations, debts, taxes and liabilities of whatever nature or amount;
- (z) Not modify, amend or terminate the General Contract (other than entering into Change Orders permitted hereunder) without consent of the Administrative Agent and Lenders or agree to reduce the amount that Borrower, as owner is permitted to retain against any application for payment pursuant to the terms thereof;
- (aa) Not, without the Lenders' permission, permit a change in control or ownership of interests in Borrower that would result in the Lenders or its members having "control" (as defined in Treasury Regulations Section 1.45D-1(d)(6)(ii)(B)) of Borrower;
- (bb) Comply with the terms and provisions of the Master Lease and the Leases and not permit any amendment, restatement or other modification of the Master Lease or the Leases without the consent of the Administrative Agent and Lenders, which consent shall not be unreasonably withheld, conditioned or delayed;
- (cc) Except for the Master Lease and the Residential Leases, not enter into any Leases without the prior consent of Administrative Agent and Lenders, which consent shall not be unreasonably withheld, conditioned or delayed;
- (dd) Not (i) be or become subject at any time to any law, regulation, or list of any governmental agency (including, without limitation, the U.S. Office of Foreign Asset Control list) and prohibits or limits Administrative Agent from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower, or (ii) fail to provide documentary and other evidence of the Borrower's identity as may be requested by Administrative Agent at any time to enable Administrative Agent to verify the Borrower's identity or comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318. Administrative Agent hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act of 2001, Administrative Agent is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Administrative Agent to identify the Borrower in accordance with the USA Patriot Act of 2001. Borrower represents and warrants that Borrower is in compliance with such requirements on the date of this Agreement;
- (ee) If, during the term of the Loans the City of Newark and/or the State imposes or assesses against the Lenders any fees or taxes, including, without limitation, financial institutions excise tax, or franchise, gross receipts or other similar tax



(collectively, the “Tax”) based upon Lenders’ status as an out-of-state financial institution, unincorporated business association and/or the like (collectively, “UBO”) doing business in the State solely as a result of making the Loans, pay an amount equal to such Tax to the Lenders upon presentation by the Lenders of documentation evidencing the assessment of such Tax against the Lenders and the amount thereof. Borrower shall have the right (but not the obligation) at its sole cost and expense and with counsel of its choosing to appeal the imposition of any Tax on the Lenders, and shall be entitled to any refunds of Tax paid by Borrower to the Lenders as a result of any appeal whether or not initiated by Borrower. The Lenders hereby agrees to make a good faith effort to provide Borrower with such information as is commercially reasonable for the Lenders to provide in connection with any appeal (all of which shall be at Borrower’s sole cost and expense);

(ff) Not modify, amend or terminate any of the Loan Documents without the prior written consent of the Administrative Agent and the Lenders to the extent set forth in Section 9.13(c) hereof;

(gg) Give prompt written notice to Administrative Agent of the occurrence of an Unavoidable Delay and any such Unavoidable Delay shall not extend the time for performance of an obligation hereunder by more than sixty (60) days;

(hh) Pay to Administrative Agent on behalf of the Lenders from time to time, within fifteen (15) days following written notice from Administrative Agent, the amount of CDE Expenses incurred from time to time by Administrative Agent and the Lenders or on behalf of the Lenders by their managers, to the extent the CDE Expenses exceed the amounts projected therefor in the Projections, and the amount of Fund Expenses that Investment Fund has directed Administrative Agent to require that Borrower reimburse, to the extent that distributions to Investment Fund from the Lenders are insufficient to pay such expenses after the Investment Fund shall have first paid all amounts then due and payable under the then outstanding borrowings of the Investment Fund. Administrative Agent agrees to provide to Borrower in any such notice a summary of CDE Expenses (to the extent that the Administrative Agent has received such a summary from the Lenders) and Fund Expenses (to the extent that the Administrative Agent has received such a summary from the managing member of the Investment Fund) on account of which such notice is being given;

(ii) Obtain and maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as Administrative Agent shall determine in good faith to be adequate in the circumstances;

(jj) Except for the Permitted Loans, not incur or permit the incurrence of any debt or financial obligation or permit the purchase price of property to be deferred (by way of conditional purchase or title retention agreement, or otherwise), or create, incur, assume or suffer to exist any mortgage (except for the Other Mortgages), pledge, lien, security interest or other charge or encumbrance (including the lien or retained security title of, a conditional vendor), whether or not subordinate to the lien of the Mortgages, upon or with respect to any of its properties or assets, tangible or intangible, real or personal, now owned or hereafter acquired (including, but not limited to the Premises), or assign or otherwise convey any right to receive income (other than with respect to the

security interests securing the indebtedness of the Borrower under this Agreement or under other agreements with the Administrative Agent and the Lenders and the Other Mortgages), or to permit or suffer the filing of any financing statement with respect to any of its properties or assets, without the prior written consent of the Administrative Agent and the Lenders, which consent may be granted or withheld in the sole and absolute discretion of the Administrative Agent and the Lenders, except in favor of the Administrative Agent and the Lenders as provided in this Agreement, and except: (i) liens securing the performance of bids, tenders, contracts, leases of real and personal property, statutory obligations, surety and appeal bonds, progress or partial payments made to it, and other liens of like nature made in the ordinary course of business; (ii) carrier's, mechanic's, workmen's, materialmen's, landlord's or other like liens arising in the ordinary course of business in respect of obligations which are not due or which are being contested pursuant to a Permitted Contest; (iii) liens for taxes, assessments, or other governmental charges not yet due or which are being contested pursuant to a Permitted Contest; (iv) liens, pledges and security interests existing on the date hereof and previously disclosed to Administrative Agent and the Lenders in writing, provided the same are not extended to cover any of its other properties, and will not interfere with the occupation, use or enjoyment of its properties and assets in the normal course of business; (v) liens arising out of judgments or awards against it with respect to which it shall currently be prosecuting an appeal, a stay of execution pending such appeal having been secured; (vi) security interests in furniture, fixtures and equipment purchased by Borrower with proceeds from governmental grants if such a security interest is a condition to receipt of such grant proceeds; (vii) the pledge of the collateral and any other liens on the collateral in favor of the Lenders to secure the indebtedness of the Borrower to the Lenders under the Loan Documents; and (viii) liens of landlords, vendors, carriers, warehousemen, mechanics, laborers and materialmen arising by law in the ordinary course of business for sums either not yet due or being contested pursuant to a Permitted Contest;

(kk) Not assume, guaranty, incur, create or endorse or otherwise be or become directly or contingently liable in respect of any obligation of any person, firm or corporation, except for (i) endorsements of negotiable instruments for deposit or collection and similar transactions in the ordinary course of business; (ii) the indebtedness to the Lenders under this Agreement, (iii) trade payables or operating leases from time to time incurred in the ordinary course of business; (iv) taxes, assessments or other government charges which are not yet due or are being contested pursuant to a Permitted Contest; and (v) operating deficit loans associated with the Improvements so long as same are unsecured and subordinate to the Loans;

(ll) Not merge into or consolidate with any person, firm or corporation, or acquire by lease, purchase or otherwise, all or substantially all of the assets of any person, firm or corporation;

(mm) Not make any loan or advance to any person, firm or corporation;

(nn) Not sell, lease, assign, transfer or otherwise dispose of all or a substantial portion of its assets, including its contracts and accounts receivable;

(oo) Not create any subsidiaries or affiliates;

(pp) Neither the Borrower nor any Pension or Benefit Plan of the Borrower will: (i) engage in any “Prohibited Transaction”, such term being used herein with, the meaning ascribed to it in Section 2003(a) of ERISA; (ii) incur any “Accumulated Funding Deficiency”, such term being used herein with the meaning ascribed to it in Section 302 of ERISA, whether or not waived; or (iii) terminate any Pension or Benefit Plan in a manner which could result in the imposition of a lien on any property of the Borrower pursuant to Section 4068 of ERISA;

(qq) Except as may be permitted pursuant to leases approved by Administrative Agent and Lenders, not assign any lease, consent to any assignment by the tenant under any such lease, or sublet, or consent to any subletting by the tenant under any such lease of all of the Premises demised under any such lease, without the express prior written consent of Administrative Agent and Lenders, which consent shall be provided, if at all, in their sole, but reasonable discretion;

(rr) Comply with any and all regulatory agreements and any covenants, conditions and restrictions that have been recorded against or otherwise encumber the Premises;

(ss) Defend and indemnify the Administrative Agent and Lenders and hold the Administrative Agent and Lenders harmless from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, reasonable costs and expenses of whatever kind or nature actually assessed or incurred at any time against or by the Administrative Agent and Lenders relating to, or arising in connection with, the development, construction, ownership, use, maintenance or occupancy of any of the collateral, including the breach of any representation or covenant of Borrower in any of the Loan Documents, including, but not limited to, the New Markets Tax Credit representations and covenants contained in Article X hereof (but as same may be limited under the terms and conditions under that certain Guaranty of New Markets tax Credits by Borrower in favor of GSB NMTC Investor LLC); provided, that any obligations of the Borrower to defend or indemnify a party shall not extend to any grossly negligent or intentional misconduct of such party;

(tt) Defend and indemnify the Administrative Agent and Lenders and hold the Administrative Agent and Lenders harmless from any allegation or charge whatsoever of negligence, misfeasance, or nonfeasance of the Administrative Agent and Lenders in whole or in part, pertaining to any defect in the Improvements, and particularly, any failure of the Administrative Agent and Lenders or any agent, officer, employee or representative of the Administrative Agent and Lenders, to note any defect in materials or workmanship or of physical conditions or failure to comply with the Plans or any ordinances, statutes or other governmental requirements, or to call to the attention of any person whatsoever, or take any action, or to demand that any action be taken, with regard to any such defect or failure or lack of compliance provided, that any obligations of the Borrower to defend or indemnify shall not extend to any grossly negligent or intentional misconduct of either the Administrative Agent or any of the Lenders;

(uu) Promptly notify the Administrative Agent and Lenders immediately in writing following Borrower's receipt of any written notification of any proposed condemnation or expropriation of any portion of the Improvements or Premises;

(vv) On the date hereof, Borrower shall pay the out-of-pocket fees payable and other charges incurred by Lenders in connection with this Agreement, the transaction contemplated by this Agreement, and the documents entered into in connection therewith, including, without limitation, each Lender's reasonable attorneys' fees and reasonable accounting fees. Borrower shall also pay, within ten (10) Business Days following written notice from any Lender, or Administrative Agent on behalf of any Lender, of the amount thereof, the out-of-pocket fees payable and other charges incurred in connection with servicing, special servicing, asset management, tax returns and audits, including audits required under the NMTC Program Requirements and each Lender's compliance and reporting obligations, as well as any amounts requested by or on behalf of any Lender to reimburse its investor member or manager for expenses incurred by such investor member or manager to the extent the expenses incurred by such investor member or manager are related to the Loans.

5.3. **Construction Covenants.**

(a) **Completing Construction.** Borrower shall expeditiously complete and fully pay for the development and construction of the Improvements in a good and workmanlike manner and substantially in accordance with the contracts, subcontracts, and material supply contracts and Plans submitted to and approved by Administrative Agent, and in compliance with all applicable laws, including any covenants, conditions, restrictions and reservations applicable thereto, so that completion of the Improvements occurs on or before the Completion Date. Borrower assumes full responsibility for the compliance of the Plans and the Projects with all applicable laws and with sound building and engineering practices, and, notwithstanding any review or approval by Administrative Agent or the Lenders, neither the Lenders nor the Administrative Agent shall have obligation or responsibility whatsoever for the Plans or any other matter incident to the Projects or the construction of the Improvements. Borrower shall immediately correct or cause to be corrected (i) any defect in the Improvements, (ii) any material departure in the construction of the Improvements from the Plans or applicable laws, and (iii) any encroachment by any part of the Project or any other structure located on the Mortgaged Property on any building line, easement, property line or restricted area.

(b) **Changing Costs, Scope or Timing of Work.** If Borrower becomes aware of any change in the approved costs set forth in the Budget which would materially increase, change, or cause a reallocation of the costs as shown on the Budget, Borrower shall immediately notify Administrative Agent and the Lenders in writing and promptly submit the following to Administrative Agent for approval: (i) a budget reallocation request, in form and substance approved by the Administrative Agent and (ii) a proposed revised Budget. Borrower shall have no right to receive further disbursements from the Disbursement Fund unless and until the budget reallocation request and the revised Budget are approved by the Administrative Agent and the Lenders (provided, however, that if any Lender fails to respond to Administrative Agent within five (5) Business Days of receipt of written notice of Administrative Agent's proposed determination, such Lender

shall be deemed to have concurred with such proposed determination). Borrower shall deliver to Administrative Agent and the Lenders a revised construction schedule, if and when any target date set forth therein has been delayed by ten (10) consecutive days or more, or when the aggregate of all such delays equals thirty (30) days or more. Borrower shall promptly furnish Administrative Agent with two (2) copies of all changes or modifications in the Plans, contracts, subcontracts, and material supply contracts for the Projects. No work may be performed (a) (i) if pursuant to any Change Order or pending Change Order where such work will not increase the Contract Price (as defined and set forth in the General Contract) by more than the Change Order Amount or which, together with the aggregate of Change Orders theretofore executed by Borrower will not result in a change in excess of the Aggregate Change Order Amount without prior written approval thereof by Administrative Agent in its sole discretion; or (ii) if pursuant to any Change Order or pending Change Order where such work will increase the Contract Price (as defined and set forth in the General Contract) by more than the Change Order Amount or which, together with the aggregate of Change Orders theretofore executed by Borrower will result in a change in excess of the Aggregate Change Order Amount without prior written approval thereof by Administrative Agent after consultation with the Lenders (provided, however, that if any Lender fails to respond to Administrative Agent within five (5) Business Days of receipt of written notice of Administrative Agent's proposed determination, such Lender shall be deemed to have concurred with such proposed determination), and (b) without Administrative Agent's and the Lenders' receipt of evidence that Borrower has obtained the prior approval of all parties whose approval is required, including, without limitation, sureties and governmental authorities. No work may be performed pursuant to any Change Order or pending Change Order prior to delivery thereof to and, if required hereunder, approval by, Administrative Agent and the Lenders. No review by Administrative Agent or the Lenders of any contract or change order shall make the Lenders and/or Administrative Agent responsible for the adequacy, form or content of such contract or change order.

(c) Using Proceeds of the Loan. Borrower shall use the proceeds of the Loans solely to pay, or to reimburse Borrower for paying, costs and expenses shown on the Budget and incurred by Borrower in connection with the acquisition of an interest in the Premises and the construction of the Improvements on the Premises, together with other expenses set forth on the Budget and such incidental costs and expenses relating thereto as may be approved from time to time in writing by Administrative Agent. Borrower shall take all steps necessary to assure such use of proceeds of the Loans by its contractors. Borrower shall not use the proceeds of the Loans, or any portion of them to pay any fees or other payments to any affiliate of Borrower, other than as set forth in the Budget, and other than the developer fee payable to RBH Project, LLC, with respect to payments for construction oversight and loans from an affiliated entity, without Administrative Agent's prior written consent, in its sole discretion.

(d) Defects; No Waiver. Borrower will, upon demand of Administrative Agent or the Lenders, correct or cause to be corrected any structural defect in any Improvements. The advance of any of the proceeds of the Loans hereunder shall not constitute a waiver of the Administrative Agent's right or the Lenders' right to require compliance with this covenant.

5.4. **Liens Pursuant to the Permitted Loans.** Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, the Lenders hereby consent to the Borrower's pledge to the Other Lenders of certain collateral to secure Borrower's obligations under the documents executed in connection with the Permitted Loans, and the Lenders acknowledge and agree that Borrower's pledge of such collateral to the Other Lenders shall not constitute a default under this Agreement or any other Loan Document.

5.5. **Certificate of Borrower.** Borrower will comply, and will use commercially reasonable best efforts to ensure that General Contractor will comply, with the requirements of that certain Certificate of Borrower and General Contractor, executed as of the date hereof, a form of which is attached hereto as Exhibit F. Furthermore, simultaneous with the completion of the Improvements, Borrower and General Contractor shall execute and deliver to BA Allocatee the Certificate of Borrower and General Contractor (Completion), a form of which is attached hereto as Exhibit G.

(End of Article V)

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

6.1. Each of the following shall constitute an “Event of Default” hereunder:

- (a) if the Borrower fails to pay or expend promptly when due or required any sum of money due or required to be paid or expended under this Agreement, the Notes, the Mortgages or any other Loan Documents, which failure shall continue beyond five (5) days after written notice of any such event;
- (b) if the Borrower fails for thirty (30) days after the giving to it by Administrative Agent of written notice to comply with any covenants or agreements made by it in this Agreement other than a covenant to pay or expend any sum of money or if Borrower otherwise fails to comply with any terms or conditions of this Agreement, provided, however, that if, in Administrative Agent’s reasonable judgment said failure to comply is not capable of being cured within said thirty (30) day period and is not curable by the payment of money, then the Borrower shall have such additional time as Administrative Agent deems necessary (but in no event will such additional time exceed sixty (60) days after the initial notice of such default) to cure such failure provided that (i) Borrower promptly proceeds to commence curing said failure to comply upon Borrower’s receipt of notice of said failure from Administrative Agent, (ii) in the reasonable judgment of Administrative Agent, Borrower thereafter diligently and continuously proceeds to cure said failure so as to cure said failure in the shortest time possible, (iii) such additional time to cure does not impair any rights and/or remedies of Lenders and will not adversely affect the completion of the Improvements by the Completion Date, and (iv) the Borrower furnishes to Lenders, upon demand of any Lender, such documents and information with respect to Borrower’s curing of said failure to comply, as such Lender may request; provided, further, however, that Borrower shall not be entitled to have any opportunity to cure a breach or violation of any of the representations and warranties set forth in Article X hereof or a breach, violation, or failure to comply with any of the covenants set forth in Article X hereof;
- (c) if the Borrower fails to satisfy any of the covenants set forth in Section 5.3 after any applicable notice and cure periods;
- (d) if a default which remains uncured after applicable periods of notice and grace shall occur under any of the Loan Documents or the Master Lease;
- (e) if at any time any representation or warranty made by the Borrower in this Agreement shall be materially incorrect;
- (f) if the construction of the Improvements is not carried on with reasonable dispatch or at any time is discontinued for a period of twenty (20) consecutive days, or for up to sixty (60) total calendar days when occasioned by Unavoidable Delay; provided, however, that no such time period shall constitute an extension of the Completion Date;

(g) if the Lenders, Administrative Agent or their representatives, or the Construction Consultant are not permitted at all reasonable times after prior notice, to enter upon the Premises, inspect the books and records of the Borrower, the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans, or if the Borrower shall fail to within five (5) Business Days furnish to the Administrative Agent or its authorized representative, when requested, copies of the Plans;

(h) if any of the materials, fixtures or articles of personal property used in the construction of the Improvements or the appurtenances thereto, or to be used in the operation thereof, are not in substantial accordance with the Plans as approved by the Administrative Agent, and such failure to be in substantial accordance is not remedied within thirty (30) days after written notice from Administrative Agent or the Lenders which specifies the items it believes are not in accordance with the Plans; provided, however, that if same cannot be remedied within said thirty (30) day period and the Borrower is diligently pursuing such remedy, the thirty (30) day period will be extended for the time necessary to complete such remedy, but in no event longer than a total of sixty (60) days after said written notice from Administrative Agent or Lenders;

(i) if the Borrower executes any conditional bill of sale, chattel mortgage or other security instrument covering any furniture, furnishings, fixtures and equipment intended to be incorporated in the Improvements or the appurtenances thereto, or covering articles of personal property placed in or on the Improvements, or files a financing statement publishing notice of such security instrument, or purchases any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in the Borrower, free from encumbrances, on delivery to the Premises; or if the Borrower, within ten (10) days of a request by Administrative Agent, does not produce to the Administrative Agent, upon demand, the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which the Borrower claims title to such materials, fixtures and articles;

(j) if the Borrower does not disclose to the Administrative Agent and the Construction Consultant, within ten (10) days of a request by Administrative Agent, the names of all persons with whom the Borrower contracted for the construction of the Improvements or for the furnishing of labor or materials thereof;

(k) if the Borrower fails or is unable, in the sole, but reasonable, judgment of Administrative Agent, to complete the Improvements on or before the Completion Date, with time of the essence;

(l) if the Borrower is unable to satisfy any condition of its right to receipt of an advance hereunder for a period in excess of thirty (30) days, unless otherwise agreed to by Administrative Agent;

(m) if a lien for the performance of work or supply of materials is filed against the Premises or any part thereof and remains unsatisfied or unbonded for a period of thirty (30) days after the date Borrower receives notice of such lien which are not being contested pursuant to a Permitted Contest;



(n) if the Borrower shall default beyond applicable periods of notice and grace in any respect under any other agreement with or obligation to the Administrative Agent or the Lenders;

(o) if any of the following events occur: (i) if by order of a court of competent jurisdiction, a receiver, liquidator or trustee of the Borrower or of any of its or their properties, shall be appointed and shall not have been discharged within ninety (90) days, or (ii) if any of the creditors of the Borrower shall commence against the Borrower an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and if such case shall not be discharged or dismissed within ninety (90) days after the date on which such case was commenced, or (iii) if the Borrower is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein), or (iv) if there is an attachment or sequestration of any of the property of the Borrower and same is not discharged or bonded within ninety (90) days, or (v) if the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, now or hereafter in effect, relating to the reorganization of the Borrower or the arrangement or readjustment of the debts of the Borrower or (vi) if the Borrower shall make any assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or of any part of its property, or if the Borrower shall fail generally to pay its debts as such debts become due, or if the Borrower shall take any action in furtherance of any of the foregoing;

(p) if the Premises, the Improvements, or any part thereof or any direct or indirect interest therein is sold, conveyed, assigned or transferred without the prior written consent of the Lenders;

(q) if there is a material adverse change in the identity, control or financial condition of the Borrower, any member of the Borrower or the Projects, or if there is any assignment of any direct or indirect interest in Borrower, as determined by Lenders in their sole, but reasonable, discretion;

(r) if the Borrower fails to pay or cause to be paid within ten (10) Business Days after written notice from Administrative Agent, before the same shall become delinquent, any fine, penalty, interest or cost that may be added thereto, all franchise taxes of the Borrower, or real estate taxes, assessments, water rates and charges, and other governmental charges, general and special, ordinary and extraordinary, foreseen as well as unforeseen, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Premises or become payable while any portion of the Loan remains outstanding or the Borrower enters into any agreement, whether written or oral, which has the effect of deferring the payment of any tax or other charges which will be assessed, levied, confirmed, imposed or become a lien on the Premises or become payable;

(s) if the Borrower ceases to do business or terminates its, his or their business for any reason whatsoever or shall cause or institute any proceeding for the dissolution or termination of the Borrower;

(t) if the Borrower fails for a period of five (5) days after notice from Administrative Agent to maintain in full force and effect any of the policies of insurance required by this Agreement and/or the Mortgages;

(u) if the Borrower encumbers, alienates, hypothecates, grants a security interest in or grants any other interest whatsoever in the Premises, the Improvements, the “Mortgaged Property,” as that term is defined in the Mortgages, or any part thereof or any right, title or interest in this Agreement or any proceeds of the Loans without the prior written consent of the Lenders;

(v) if the Borrower fails to timely perform any of the terms, conditions, covenants and/or agreements contained in Section 7.1(d) of this Agreement beyond applicable notice and cure periods;

(w) if a default, beyond any applicable notice and cure periods, occurs under the Leases and Borrower (or RBH Retail, LLC, as lessee under the Master Lease) has not found a suitable replacement tenant within sixty (60) days after the occurrence of such default and/or Borrower (or RBH Retail, LLC, as lessee under the Master Lease) has not executed a lease, in form and substance acceptable to the Lenders, with such tenant within one hundred twenty (120) days thereafter, or if any amendment or modification to the Leases occur without the prior written consent of the Lenders;

(x) if the Borrower fails to comply with any of the representations, warranties or covenants contained in Article VIII or Article X of this Agreement or any of the warranties or representations made are false, or if of a continuing nature, becomes false;

(y) if the Borrower fails to maintain its status as an SPE;

(z) if any of the Borrower, any officer, director, general partner or managing member of any of the Borrower shall be convicted of fraud or a crime constituting a felony or pleads *nolo contendere* with respect to a fraud or crime constituting a felony;

(aa) if the Borrower shall assign the Master Lease, the Leases, consent to any assignment by the tenant under any of the Leases or sublet, or consent to any subletting by the tenant under any of the Leases of, all or any portion of the Premises demised under any of the Leases without the express prior written consent of the Lenders, which consent shall not be unreasonably withheld, conditioned or delayed;

(bb) if there is a default under ERISA or a Pension or Benefit Plan;

(cc) if Borrower shall fail to pay the fees set forth in Section 5.2 hereof;

(dd) if the Borrower shall default beyond applicable periods of notice and grace in any respect under any agreement executed in connection with the Permitted Loans or any other document previously delivered by Borrower to Lenders in connection with the construction of the Projects; and/or

(ee) if there is an amendment, modification or termination of the Master Lease, Financial Agreement or any other document previously delivered by Borrower to Lenders in connection with the construction of the Projects (unless Administrative Agent and Lenders have consented to same).

6.2. Subject to the provisions of Article IX hereof, any Lender shall have the right upon the happening of any such Event of Default under this Agreement to declare the indebtedness evidenced by the Notes, together with all sums required to be paid under the terms hereof and/or of the Mortgages and/or any other Loan Documents, immediately due and payable.

6.3. Subject to the provisions of Article IX hereof, upon the happening of an Event of Default under this Agreement, in addition to any other rights and/or remedies available to Lenders under the Mortgages, this Agreement or by law, Lenders also shall have the right and is hereby given an irrevocable license to enter, or to cause the Construction Consultant or another independent contractor of Administrative Agent's selection to enter, the Premises, the Improvements or any part thereof and perform any and all work and labor necessary to complete the construction of the Improvements substantially in accordance with the Plans and employ watchmen to protect the Premises and the Improvements; all sums expended by the Lenders for such purposes shall be deemed to have been paid to the Borrower, evidenced by the Notes and secured by the Mortgages.

6.4. For the purposes set forth in Section 6.3 above, the Borrower hereby constitutes and appoints the Administrative Agent its true and lawful attorney-in-fact with full power of substitution, effective upon the occurrence of an Event of Default, to complete the Improvements in the name of the Borrower, and hereby empowers said attorney or attorneys as follows: to make such additions and changes and corrections in the Plans which shall be necessary to complete the Improvements in substantially the manner contemplated by the Plans; to use any funds of the Borrower including any balance which may be held in escrow and any funds which may remain unadvanced under this Agreement for the purpose of completing the Improvements in the manner called for by the Plans as may be modified hereby; to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Premises or any part thereof, or may be necessary for the completion of the Improvements or the clearance of title; to execute all applications and certificates in the name of the Borrower which may be required by any construction contract; and to do any and every act with respect to the construction of the Improvements which the Borrower may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. Said attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the construction of the Improvements on the

Premises and to take such action and require such performance as is deemed necessary. The Borrower hereby assigns and quitclaims to the Lenders all sums advanced pursuant to either this Section and/or Section 6.3 above and all sums in escrow subject to the condition that said sums, if any, be used for the completion of the Improvements. Entering the Premises in order to complete the Improvements and/or exercise of the aforesaid license and/or power-of-attorney will not exclude the Borrower from possession, custody, ownership or control of the Premises or Improvements or of any rents, issues or profit therefrom. In addition, Borrower expressly agrees that any powers of attorney executed by Borrower subsequent to the date hereof shall expressly state that the powers of attorney provided for in this Agreement shall continue to be in full force and effect until terminated in accordance with the terms of this Agreement.

6.5. If the Borrower shall fail to perform any of the covenants contained in Section 7.1(d) of this Agreement, the Lenders may make advances to perform the same on its behalf, and all sums so advanced shall be deemed to have been paid to Borrower, evidenced by the Notes and secured by the Mortgages. The Borrower will repay on demand of the Administrative Agent all sums so advanced pursuant to this Section 6.5 with interest at the “Involuntary Rate,” as such term is defined in the Mortgages. The provisions of this Section 6.5 shall not prevent any default in the observance of any covenant contained in said Section 7.1(d) of this Agreement from constituting an Event of Default.

6.6. If the Borrower shall fail to perform any of the covenants contained in Section 7.1(d) of this Agreement, if the Borrower shall fail to perform its covenants hereunder to construct the Improvements or if a General Contractor shall fail to perform under a General Contract, the Administrative Agent may submit a claim upon the Payment and Performance Bonds and, at its option, apply such proceeds to the costs of the construction of the Improvements.

6.7. In addition to, but subject to, any rights of the Administrative Agent or Lenders under applicable law, and subject to Article IX hereof, if an Event of Default occurs and is continuing, any and all deposits of the Borrower (including all account balances, whether provisions or final and whether or not collected or available) and any other funds of Borrower at any time held by the Administrative Agent or any of the Lenders or any Affiliate of the Administrative Agent or any of the Lenders to or for the credit or account of the Borrower may be offset and applied toward the payment of the debt, whether or not the debt, or any part thereof, shall then be due.

(End of Article VI)

**ARTICLE VII**  
**GENERAL CONDITIONS**

7.1. The following conditions shall be applicable at all times:

- (a) Any advance by the Lenders of proceeds of any of the Loans hereunder made prior to or without the fulfillment by Borrower of all of the conditions precedent thereto, whether or not known to the Lenders and/or the Administrative Agent, shall not constitute a waiver by the Lenders or the Administrative Agent of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances and releases of funds.
- (b) All documentation and proceedings deemed by Administrative Agent and Lenders to be necessary or required in connection with this Agreement and the documents relating hereto shall be subject to the prior approval of, and satisfactory to, Administrative Agent and Lenders as to form and substance. Administrative Agent and Lenders shall receive copies (certified if requested by either of them) of all documents which they may require in connection with the transaction contemplated hereby.
- (c) Administrative Agent shall, at all times, be free to independently establish at its sole cost and expense to its satisfaction the existence or nonexistence of any fact or facts the existence or nonexistence of which is a condition of this Agreement. Notwithstanding the foregoing, no independent verification by the Administrative Agent shall cause a delay in any performance of the Administrative Agent of its obligations under this Agreement.
- (d) (1) Administrative Agent shall have the right at any time to notify Borrower that, in Administrative Agent's sole, but reasonable, judgment, the undisbursed balance of the Loans plus the balance of the proceeds of the Loans not yet released or advanced from the Disbursement Fund (including the line item for contingency costs and all retained amounts) after reallocation of the Loan Budget Amount in accordance with Section 2.7 hereof, if any, is insufficient to pay the remaining Direct Costs, Indirect Costs or any other hard or soft costs associated with the construction of the Improvements necessary to complete the Improvements in accordance with the terms hereof. In connection with making the foregoing determination as respects Direct Costs, Administrative Agent shall consult with its Construction Consultant and shall take into account the General Contracts, its terms and the likelihood of fulfillment by the General Contractor of the terms.
- (2) If Administrative Agent informs Borrower of such deficiency, Borrower shall, at Borrower's sole discretion, either:
- (i) deposit with the Provident Bank or into the Disbursement Fund an amount (the "*Shortfall Payment*") from its own funds equal to such deficiency (the "*Shortfall Amount*") which Administrative Agent may authorize, from time to time, to be applied at its own direction or at Borrower's direction, upon approval by Administrative Agent to pay Direct Costs and Indirect Costs or cause the Borrower to

complete the construction of the Improvements which is the cause of the Shortfall Amount at no cost to the Administrative Agent; or

(ii) instead of requisitioning funds under this Agreement, pay for costs of completing the Improvements in accordance with the terms hereof from its own funds, up to and including the Shortfall Amount, so that the undisbursed balance of the Loans after payment of the Direct Costs and Indirect Costs by Borrower shall be sufficient to complete the Improvements substantially in accordance with the terms hereof, and Borrower shall furnish to Administrative Agent evidence of such payment as Administrative Agent shall reasonably require; or

(iii) deliver to Administrative Agent an irrevocable and unconditional letter of credit (the “*Shortfall Letter of Credit*”) in form and substance satisfactory to Administrative Agent issued in favor of Administrative Agent, for the benefit of the Lenders, by a financial institution satisfactory to Administrative Agent in its reasonable discretion, in the amount of the Shortfall Amount.

(3) The Shortfall Letter of Credit shall expire no earlier than sixty (60) days after the later of (a) the date, estimated by the Construction Consultant, by which the Improvements can be completed, or (b) the Completion Date. The estimate of time of completion shall be made by the Construction Consultant at the time that the Shortfall Amount is determined. The Shortfall Letter of Credit may be drawn upon at any time to fund any Shortfall Amount. Administrative Agent shall agree to reductions in the amount of any Shortfall Letter of Credit when and to the extent that Administrative Agent determines that the Shortfall Amount has been reduced or no longer exists.

(4) Borrower hereby agrees that Administrative Agent, on behalf of Lenders, shall have a first priority lien on, and security interest in, any sums deposited by Borrower pursuant to clause (x) above. In addition, Borrower shall have no right to withdraw any sums deposited on account of the Shortfall Amount except for the payment of Direct Costs and Indirect Costs as approved by Administrative Agent or upon completion of construction of the Improvements. Any sums not used pursuant to clause (x) hereinabove shall be released to Borrower when and to the extent that Administrative Agent determines that the amount thereof is in excess of the total remaining costs of completing the Improvements substantially in accordance with the terms hereof over the undisbursed balance of the Loan (including line item for contingency) plus the undrawn portion of the Shortfall Letter of Credit.

(e) During the existence of any Event of Default hereunder or under any of the Loan Documents, Borrower does hereby irrevocably authorize Administrative Agent to approve the release of any unreleased proceeds of the Loans in the Disbursement Fund for work performed or materials supplied directly to the General Contractor, Major Subcontractors and other persons to pay for completion of the Improvements, but Administrative Agent is under no obligation to do so. No further direction or authorization from Borrower shall be necessary to warrant such direct advances and all such advances shall satisfy *pro tanto* the obligations of Administrative Agent and/or the Lenders hereunder and shall be secured by the Mortgages as fully as if made to Borrower,

regardless of the disposition thereof by the General Contractor, any Major Subcontractor or other person.

(f) This Agreement is solely for the benefit of Administrative Agent, the Lenders and Borrower. All conditions of the obligations of Administrative Agent to approve, and Lenders to make, advances or releases of the proceeds of the Loans hereunder are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders and may be freely waived or modified in whole or in part, by Administrative Agent at any time if in its sole discretion it deems it advisable to do so, and no person other than Borrower (*provided, however*, that all conditions have been satisfied) shall have standing to require Administrative Agent to approve, or the Lenders to make, any advances of the Loans or to be a beneficiary of this Agreement or any advances to be made hereunder. Any waiver or modification asserted by Borrower to have been agreed to by Administrative Agent must be in writing and comply with the provisions of paragraph (i) of this Section 7.1 and Article IX.

(g) The Borrower hereby irrevocably authorizes the Administrative Agent to authorize automatic releases of proceeds of the Loans from the Disbursement Fund to pay CDE Expenses and interest accrued on the Notes as they become due, to the extent that payments for such amounts are not available from another source, notwithstanding that the Borrower may not have requested authorization of the release of such amounts and whether or not the Borrower may be in default under this Agreement, the Mortgages or any other Loan Documents. Any such disbursements shall be added to the outstanding principal balance of the Notes and shall be secured by the Mortgages. The authorization granted hereby shall not prevent the Borrower from paying interest, or satisfying said conditions, from its own funds and shall in no event be construed so as to relieve the Borrower from its obligation to pay interest as and when due under the Notes, or to satisfy said conditions, or to obligate the Administrative Agent to approve, for the Lenders to release, proceeds of the Loans for the payment of interest or the satisfaction of said conditions.

(h) All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by-hand, electronic communication (as described in Section 7.1(o)) or by reputable overnight courier (e.g., FedEx), to the address of the party as stated below:

If to Administrative Agent: GSB NMTC Investor LLC  
200 West Street  
New York, New York 10282  
Attention: Margaret Anadu

with a copy to: GSB NMTC Investor LLC  
200 West Street  
New York, New York 10282  
Attention: Andrea Gift

with a copy to:	gs-uig-docs@gs.com
with a copy to:	Jones Day 222 East 41 <sup>st</sup> Street New York, New York 10017 Attention: Aviva Yakren, Esq.
and with a copy to:	NCIF New Markets Capital Fund IX CDE, LLC c/o NCIF Capital, LLC 135 S. LaSalle Street, Suite 2040 Chicago, Illinois 60603 Attention: Saurabh Narain
and with a copy to:	SNR Denton US LLP 233 S. Wacker Drive, Suite 7800 Chicago, Illinois 60606 Attention: Scott A. Lindquist, Esq.
and with a copy to:	Carver CDC — Subsidiary CDE 21, LLC c/o Carver Community Development Corporation 75 West 125th Street New York, New York 10027 Attention: Blondel A. Pinnock
and with a copy to:	Manatt, Phelps & Phillips, LLP 7 Times Square New York, New York 10036 Attention: Neil S. Faden, Esq.
and with a copy to:	BACDE NMTC Fund 4 LLC c/o Building America CDE Inc. 2401 Pennsylvania Avenue, NW, Suite 200 Washington, DC 20037 Attention: Eric Price
and with a copy to:	Nixon Peabody LLP 401 Ninth Street NW, Suite 900 Washington, DC 20004 Attention: Scott D. Sergio, Esq.
and with a copy to:	GSNMF SUB-CDE 2 LLC Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Joe Curatolo



with a copy to:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Andrea Gift
with a copy to:	gs-uig-docs@gs.com and gsnmf@gs.com
with a copy to:	Jones Day 222 East 41 <sup>st</sup> Street New York, New York 10017 Attention: Aviva Yakren, Esq.
If to Borrower:	Teachers Village Project A QALICB Urban Renewal Entity, LLC c/o RBH Group 89 Market Street, 8 <sup>th</sup> Floor Newark, New Jersey 07102 Attention: Ron Beit
with a copy to:	McManimon, Scotland & Baumann, LLC 75 Livingston Avenue, 2nd Floor Roseland, New Jersey 07068 Attention: Glenn F. Scotland, Esq.
And to Investment Fund:	GS Halsey 2 NMTC Investment Fund LLC 200 West Street, New York New York 10282 Attention: Margaret Anadu
with a copy to:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Andrea Gift
with a copy to:	gs-uig-docs@gs.com
with a copy to:	Jones Day 222 East 41 <sup>st</sup> Street New York, New York 10017 Attention: Aviva Yakren, Esq.

or at such other address of which a party shall have notified the party giving such notice in writing in accordance with the foregoing requirements. Notwithstanding the foregoing, failure to deliver a notice to Investment Fund shall have no consequence whatsoever to the effectiveness of any notice made to any of the undersigned and shall not constitute a default hereunder.

(i) **No provision of the Notes, Mortgages or this Agreement or any other Loan Documents executed in connection with the Loans may be changed, waived,**

discharged or terminated orally, by telephone or by any other means except an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(j) Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Borrower, the Lenders and Administrative Agent and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Borrower, without the prior written consent of Administrative Agent and the Lenders in each instance, may not assign, transfer or set over to another, in whole or in part, all or any part of its benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof and the right to receive the proceeds of current or future advances.

(k) Borrower recognizes that without Borrower's consent, the Lenders may sell and transfer participation interests in the Loans, this Agreement, the Notes, the Mortgages, and any other Loan Documents to one or more participants that are Permitted Transferees and that all documentation, Financial Statements, appraisals and other data, or copies thereof, relevant to the Projects, the Borrower, the Loans, and to any advances hereunder, may be exhibited to and retained by any such participant or prospective participant for its files. The Lenders agrees that they shall notify Borrower of any sales or transfers of any interest in the Loan pursuant to this subparagraph (k).

(l) Furthermore, Borrower recognizes that the Administrative Agent may be replaced hereunder pursuant to the terms of Article IX and agrees that Borrower shall not have approval rights over any of the matters provided for in Article IX.

(m) Borrower agrees that, by its acceptance of and failure upon request to return any advance of proceeds of the Loans under this Agreement, it shall be bound in all respects by the Requisition submitted on its behalf in connection therewith with the same force and effect as if Borrower had itself executed and submitted the Requisition and whether or not the Requisition is executed and/or submitted by an authorized person.

(n) Any and all releases of proceeds of the Loans approved at any time by Administrative Agent pursuant to the irrevocable authorizations granted by paragraphs (e) and (g) of this Section 7.1 shall require no further direction, authorization or request for disbursement from Borrower. Borrower agrees that advances made pursuant to paragraph (e) of this Section 7.1, may be made without any further direction, authorization or request for disbursement from Borrower. Any and all such disbursements made pursuant to paragraphs (e), (f) or (g) of this Section 7.1, such disbursements, shall be added to the outstanding principal balance evidenced by the Notes and shall be secured by the Mortgages. The aforesaid authorizations shall (1) not prevent Borrower from paying the contractors and other persons, from paying the interest, or from satisfying the conditions and obligations referred to in said paragraphs, out of its own funds, (2) in no event be construed so as to relieve Borrower or others from their obligations to pay such contractors or other persons, to pay interest as and when due under the Notes, or to satisfy such conditions and obligations and (3) in no event obligate Administrative Agent to disburse proceeds of the Loans for any such purposes.

(o) **Electronic Communications.**

(1) Notices and other communications to the Lenders, Administrative Agent or any other party hereto may be delivered or furnished by electronic communication pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Person if such Person has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Administrative Agent otherwise prescribes, notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(2) Borrower understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(3) Approved Electronic Communications are provided "as is" and "as available". Neither Administrative Agent nor any of its respective officers, directors, employees, agents, advisors or representatives (the "*Agent Affiliates*") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications and each expressly disclaims liability for errors or omissions in the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Approved Electronic Communications.

7.2. The cover page and the Exhibits annexed hereto are incorporated as a part of this Agreement with the same effect as if set forth in the body hereof.

7.3. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State (without giving effect to the State's principles of conflicts of law). Borrower and Administrative Agent hereby irrevocably submit to the exclusive jurisdiction of any State or Federal court sitting in The City of Newark (or any county in the State where any portion of the Mortgaged Property is located) over any suit, action or proceeding arising out of or relating to this Agreement, and Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any

State or Federal court sitting in The City of Newark (or such other county in the State) may be made by certified or registered mail, return receipt requested, directed to Borrower at the address indicated in Section 7.1 hereof, and service so made shall be complete five (5) days after the same shall have been so mailed.

7.4. To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claims against Administrative Agent and the Lenders, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions or the use of the proceeds thereof.

7.5. Borrower shall not have the right to make any prepayment of all or any portion of the principal amount of the Loans until the seventh (7<sup>th</sup>) anniversary of the funding of the final installment of the Loans by the Lenders into the Disbursement Fund, unless otherwise accelerated pursuant to the terms of this Agreement or any other Loan Documents. Borrower acknowledges that this prepayment restriction is derived from Section 45D of the Code and that the Lenders would not make the Loans without such prepayment restriction. Borrower agrees that this prepayment restriction has been specifically bargained for by the Lenders and Borrower, and that such restriction is reasonable both in duration and effect. In the event that the Lenders or the Administrative Agent on behalf of the Lenders receive any amounts in excess of amounts required to be paid hereunder and pursuant to the Loan Documents, such amounts may be held in a non-interest bearing blocked escrow account with the Administrative Agent as additional collateral for the prompt and complete repayment of the amounts due with respect to the Loans until such time as a repayment of the Loans or any portion thereof is permitted.

7.6. The parties acknowledge that the Loans are to be funded with monies provided by the Lenders' investor members, and that the Lenders are under no obligation to request such funds for any disbursement of proceeds of the Loans unless and until all necessary preconditions to disbursement set forth herein and in the other Loan Documents shall have been satisfied to the satisfaction of the Lenders and their investor members, and that if all conditions precedent to funding are not immediately satisfied, significant time delays might occur in the funding of such monies by the Lenders' investor members and/or the Lenders. Without limiting the generality of Section 7.4 hereof, in no event shall the Lenders nor the Administrative Agent be liable to Borrower for any damages whatsoever which might result in whole or in part from any such delays in funding any proceeds of the Loans.

7.7. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument.

7.8. Notwithstanding anything to the contrary contained in this Agreement, neither the Administrative Agent, the Lenders nor any of their respective Affiliates, shall be required in order to resolve any objections asserted by any governmental

authority under the Hart-Scott-Rodino Act, the Sherman Antitrust Laws or any other foreign antitrust or combination Laws with respect to the transactions contemplated by this Agreement to divest any of its businesses, properties or assets, or take or agree to take any other action (including agreeing to hold separate any business or assets or take other similar actions) or agree to any limitation or restriction, that the Administrative Agent determines would be or presents a risk of being, individually or in the aggregate, adverse to Administrative Agent, the Lenders or any of their respective Affiliates.

7.9. Borrower agrees that it will not, without the prior written consent of the Administrative Agent or the applicable Affiliate of Goldman Sachs Bank USA (for purposes of this Section, “GS”), in each instance, (a) use in advertising, publicity, or otherwise the name of Goldman Sachs Bank USA, or any GS Affiliate, or any partner or employee of a GS Affiliate, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by GS or its Affiliates, or (b) represent, directly or indirectly, that any product or any service provided by the Lenders has been approved or endorsed by GS or a GS Affiliate.

7.10. Borrower acknowledges that it is not relying upon any person, firm or corporation, other than the Borrower and its officers, directors, consultants and advisors in entering into the Loans. Borrower agrees that none of Administrative Agent, the Lenders, any Affiliate of the Lenders, GS or any GS Affiliate or the respective controlling persons, officers, directors, partners, agents, or employees of any such person shall be liable to Borrower in connection with Borrower’s decision to enter into the Loans.

7.11. The parties hereto acknowledge and agree that nothing in this Agreement or the Loan Documents shall create a fiduciary duty of the Lenders, the Agent Affiliates, GS or any GS Affiliate to the Borrower or its shareholders. Notwithstanding anything to the contrary herein or in the Loan Documents or any actions or omissions by representatives of the Lenders, the Agent Affiliates, GS or any GS Affiliate in whatever capacity, it is understood that none of the Lenders, the Agent Affiliates, GS or any GS Affiliate is acting as a financial advisor, agent or underwriter to the Borrower or any Affiliates of Borrower, or otherwise on behalf of the Borrower or any Affiliates Borrower, unless retained to provide such services pursuant to a separate written agreement.

7.12. Nothing in this Agreement will be deemed to restrict the Lenders, the Agent Affiliates, GS or any GS Affiliate from providing services to Borrower or its Affiliates or earning fees and other compensation from Borrower or its Affiliates if otherwise permitted by law, including, without limitation, the Code.

7.13. The Borrower grants to the Lenders, the Agent Affiliates, GS and any GS Affiliate permission to use the Borrower’s or any Affiliate of Borrower’s name and logo in the marketing materials of the Lenders, the Agent Affiliates, GS and any GS Affiliate. GS or any GS Affiliate, shall, as applicable, include a trademark attribution notice giving notice of the Borrower’s or any Affiliate of Borrower’s ownership of its trademarks in the marketing materials in which the Borrower’s or any Affiliate of Borrower’s name and logo appear.

7.14. Notwithstanding anything in this Agreement, none of the provisions of this Agreement shall in any way limit the Lenders, the Agent Affiliates, GS or any GS Affiliate from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading, market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of the respective businesses of the Lenders, the Agent Affiliates, GS or the relevant GS Affiliate.

7.15. To the extent requested by the Internal Revenue Service or required by law, notwithstanding anything to the contrary herein, the Lenders or Borrower may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Loans and all materials of any kind (including opinions or other tax analyses) that are provided to the Lenders or Borrower relating to such tax treatment and tax structure.

7.16. Wherever this Agreement provides for a covenant by Borrower in favor of GS, any GS Affiliate or their respective successors and/or assigns (the “*Benefitted Persons*”), each Benefitted Person is hereby expressly declared to be an intended third party beneficiary of such covenant and shall have the right to directly enforce such covenant against the Borrower.

7.17. This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, supersedes all prior agreements and understandings, both written and oral, between the parties in respect of the subject matter hereof and no changes, amendments, or alterations hereto shall be effective unless pursuant to written instrument executed by the parties hereto.

7.18. Any term, covenant, agreement or condition of this Agreement or any of the Loan Documents may be amended or waived, and any departure therefrom may be consented to by Lenders, if, but only if, such amendment, waiver or consent is in writing signed by Lenders or Administrative Agent and, in the case of an amendment, by Borrower. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. In the event that any such waiver or amendment is requested by Borrower, Administrative Agent or Lenders may require and charge a fee in connection therewith and consideration thereof in such amount as shall be determined by Administrative Agent or Lenders in their reasonable discretion. The releases from the Disbursement Fund of proceeds of Loans by Lenders during the existence of a Event of Default shall not be deemed to constitute a waiver of such Event of Default.

7.19. The Borrower agrees to pay (i) all reasonable out-of-pocket costs and expenses of the Administrative Agent and Lenders in connection with the preparation, execution and delivery of this Agreement, the Loan Documents and any other documentation contemplated or required hereby, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel to Administrative Agent and Lenders with respect thereto, (ii) within thirty (30) days of Administrative Agent’s or a Lender’s written demand, all reasonable out-of-pocket costs and expenses Administrative Agent and/or Lenders may incur in connection with this transaction

resulting from the adoption of or changes, after the date hereof, in laws, regulations, rules or interpretative letters issued by the Office of the Comptroller of the Currency of the United States of America, the Banking Commissioner of the State of New York, the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System (or by any successor to any thereof) (provided, however, that Borrower shall only be responsible to pay up to \$500 annually of NCIF Lender's bank fees), (iii) any state or local taxes or other charges, including, but not limited to, income, withholding or gross receipts tax, imposed on the Lenders solely as a result of the Loans, and (iv) within thirty (30) days of the Administrative Agent's and/or a Lender's written demand, all reasonable out-of-pocket costs and expenses (including reasonable counsel's fees and expenses), if any, in connection with the interpretation, enforcement of, or the collection of any amounts owed to Administrative Agent or Lenders under, this Agreement or the Loan Documents which may be delivered in connection with this Agreement. Borrower covenants and agrees to pay within thirty (30) days of demand therefor Administrative Agent's and/or Lenders' expenses and any and all administrative and/or servicing fees charged and/or incurred by Administrative Agent and/or Lenders in connection with the administration of the Loans, and/or this Agreement.

7.20. TO THE EXTENT PERMITTED BY LAW, BORROWER, ADMINISTRATIVE AGENT AND LENDERS HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST BORROWER, ADMINISTRATIVE AGENT AND LENDERS ARISING OUT OF THIS AGREEMENT, THE COLLATERAL OR ANY ASSIGNMENT THEREOF OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN BORROWER, ADMINISTRATIVE AGENT AND LENDERS OF ANY KIND OR NATURE. BORROWER, ADMINISTRATIVE AGENT AND LENDERS HEREBY AGREE THAT ANY NEW JERSEY STATE COURT OR ANY FEDERAL COURT IN EITHER CASE, LOCATED IN ESSEX COUNTY OR, AT THE OPTION OF ADMINISTRATIVE AGENT, ANY COURT IN WHICH ADMINISTRATIVE AGENT OR LENDERS SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY, SHALL HAVE NONEXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER, ADMINISTRATIVE AGENT AND LENDERS, PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING THEREFROM. BORROWER, ADMINISTRATIVE AGENT AND LENDERS EACH EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURTS, HEREBY WAIVING PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN AND AGREEING THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER, ADMINISTRATIVE AGENT AND LENDERS, AS APPLICABLE, AT THE ADDRESS OF BORROWER, ADMINISTRATIVE AGENT AND

LENDERS, AS APPLICABLE, SET FORTH IN THIS AGREEMENT, PROVIDED A CONCURRENT COPY IS SENT TO BORROWER'S COUNSEL, ADMINISTRATIVE AGENT'S COUNSEL OR EACH LENDER'S COUNSEL, AS APPLICABLE. THE NONEXCLUSIVE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT OF ANY JUDGMENT OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE SAME IN ANY APPROPRIATE JURISDICTION. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY (DETERMINED WITHOUT PREFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS).

7.21. Subject to any other provisions of this Agreement applicable to Loans and subject to the Intercreditor Agreement, GS, or any Affiliate thereof (a "*GS Lender*") may at any time make, guarantee, own, acquire, or otherwise credit enhance, in whole or in part, a loan or other financing secured by a mortgage, deed of trust, trust deed, or other security instrument encumbering the Premises owned by the Borrower (a "*GS Loan*"). Under no circumstances whatsoever will any GS Lender be considered to be acting on behalf of or as an agent of or as the alter ego of any member of Borrower that is an Affiliate of such GS Lender (an "*Affiliated Member*"). Any GS Lender may take any action or fail to take any action that it determines, in its sole and absolute discretion, to be advisable in connection with the applicable GS transaction (including, but not limited to, in connection with the enforcement of its rights and remedies related to such GS transaction). Borrower hereby unconditionally agrees that no GS Lender owes the Borrower or any member of Borrower any fiduciary duty or other duty or obligation whatsoever by virtue of such GS Lender being an Affiliate of an Affiliated Member. Neither the Borrower nor any member of Borrower (i) will make any claim whatsoever against any GS Lender or against any Affiliated Member or (ii) will allege any breach of any fiduciary duty, duty of care or other duty whatsoever based in any way upon any affiliation or relationship between any GS Lender and any Affiliated Member. The Borrower and each member of Borrower hereby acknowledge and agree that any GS Loan shall be treated as debt for all purposes and no claim whatsoever shall be made that any GS Loan should be treated as equity under any circumstance whatsoever. The Borrower and each member of Borrower hereby further acknowledge and agree that any GS Loan shall be viewed for all purposes as a separate transaction and not related in any way to the investment of an Affiliated Member in the Borrower. Any claim whatsoever that any GS Loan should be treated as equity under any circumstance whatsoever is hereby irrevocably and unconditionally waived, to the fullest extent permitted by applicable law, by the Borrower and each member of Borrower.

(End of Article VII)



## ARTICLE VIII

### PARTICULAR PROVISIONS

8.1. **Reporting Requirements.** Borrower shall comply with the following financial reporting requirements until the Loans shall have been fully repaid, maintain a standard system of accounting in accordance with generally accepted accounting principles, and furnish or cause to be furnished to Administrative Agent and the Lenders all of the following which must be satisfactory in form and substance to Administrative Agent and the Lenders:

(a) **Quarterly Financial Statements.** As soon as available but in any event within thirty-five (35) days after the end of each fiscal quarter (except for the quarter in which the annual Financial Statements are delivered), quarterly Financial Statements of the Borrower prepared in accordance with generally accepted accounting principles consistently applied. All such statements of Borrower must be reasonably satisfactory in form and substance to Administrative Agent and the Lenders and shall be certified by an officer of Borrower to be true and complete as of the date so delivered.

(b) **Annual Financial Statements.** As soon as available, but in any event within ninety (90) days after the end of each fiscal year, a copy of Borrower's audited Financial Statements as of the end of such fiscal year, setting forth in each case in comparative form the figures for the preceding fiscal year, and, thirty (30) calendar days after filing but no later than one hundred twenty (120) days following the start of each calendar year, Borrower's federal income tax returns for the prior year. The Financial Statements and federal income tax returns shall be prepared by the accountants for the Borrower and certified by an officer of Borrower to be true and correct, which certification shall (x) state that such Financial Statements have been prepared in accordance with generally accepted accounting principles and, accordingly, include such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and (y) that such Financial Statements have been prepared in accordance with generally accepted accounting principles in a manner consistent with prior fiscal periods, except as otherwise specified in such certification.

(c) **Officer's Certificates.** At the time of the delivery of the Financial Statements provided for in this Section 8.1, a certificate of a manager of Borrower to the effect that no Event of Default has occurred and is continuing or, if any Event of Default has occurred and is continuing, specifying the nature and extent thereof and any actions taken or proposed to be taken with respect to any such Event of Default.

(d) **Appraisals.** Within thirty (30) days after notice from Administrative Agent, an appraisal of the Projects to be prepared at Borrower's sole cost and expense by an appraiser acceptable to Administrative Agent, which requirement for an appraisal may be invoked by Administrative Agent at any time after the occurrence of an Event of Default and from time to time, but not more than once during any calendar year, if there is no Event of Default or it is not required by applicable law or regulation. Borrower shall promptly pay to Administrative Agent within ten (10) days following written demand the cost of any appraisal, which payment shall be applied by Administrative Agent as a

reimbursement to itself if Administrative Agent obtained the appraisal, or if Administrative Agent previously paid the appraiser for any reason.

(e) **Environmental Audits.** Within thirty (30) days after written notice from Administrative Agent, an environmental audit or assessment of the Project of the type and scope specified by Administrative Agent to be prepared at Borrower's sole cost and expense by an environmental engineer or consultant approved by Administrative Agent, which requirement for an environmental audit or assessment may be invoked by Administrative Agent from time to time if (i) the Lenders or the Administrative Agent reasonably believes that there may have been a release of Hazardous Materials at the Projects, that any representation relating to Hazardous Materials in the Mortgages or in the Environmental Indemnity is incorrect or that Borrower has failed to comply with any of its covenants or agreements set forth therein, or (ii) an Event of Default has occurred. Borrower shall promptly pay to Administrative Agent the entire cost of any environmental audit or assessment relating to the Projects upon demand, which payment shall be applied by Administrative Agent as a reimbursement to itself if Administrative Agent caused any such environmental audit or assessment to be obtained, or if Administrative Agent previously paid an environmental engineer or consultant for any reason.

(f) **Other Indebtedness/Events of Default.** Prompt written notice to Administrative Agent and the Lenders if: (i) any indebtedness of Borrower is declared or shall become due and payable prior to its stated maturity, or called and not paid when due, (ii) a default shall have occurred under any note or other evidence of indebtedness or the holder of any such note or other evidence of indebtedness has the right to declare any such indebtedness due and payable prior to its stated maturity as a result of such default, or (iii) there shall occur an Event of Default, or an event which, after the passage of time and/or the giving of notice would become an Event of Default.

(g) **Notices from Governmental Authorities.** Prompt written notice of: (i) any citation, summons, subpoena, order to show cause, municipal violation or other order relating to a Project naming Borrower, or a Project a party to any proceeding before any Governmental Authorities, and include with such notice a copy of such citation, summons, subpoena, order to show cause, municipal violation or other order in connection with a claim in an amount exceeding \$10,000, (ii) any lapse or other termination of any material license, certificate, permit, franchise or other authorization issued to Borrower or a Project by any Governmental Authorities, (iii) any refusal by any Governmental Authorities to renew or extend any such material license, permit, certificate, franchise or other authorization, (iv) any dispute between Borrower and any Governmental Authorities or Person, which dispute might have a material adverse effect on Borrower or a Project, (v) any order, notice, claim, or proceeding received by, or brought against Borrower, or with respect to a Project or any part thereof, under or in connection with any federal, state or local law or regulation; or (vi) failure of the Premises to comply with applicable building codes.

(h) **Leasing Status Reports.** Borrower shall, throughout the term of the Loans, deliver to Administrative Agent and the Lenders quarterly reports, within fifteen (15) Business Days after the end of each calendar quarter, setting forth, in detail

reasonably acceptable to Administrative Agent and the Lenders, the status of all leasing and rental activity at the Projects for such immediately preceding quarterly period.

(i) **Other Information.** With reasonable promptness after written request by Administrative Agent, such other reasonable financial and other information with respect to Borrower and/or the Projects as Administrative Agent may request from time to time. In addition, Borrower shall promptly deliver to Administrative Agent and Lenders any notices it has given or received under the Master Lease or the Leases.

(j) **Borrower's Statement.** Within five (5) Business Days upon written request, a written statement duly acknowledged of the amount due whether for principal or interest on the Notes and whether any offsets or defenses or counterclaims exist against the obligations of the Borrower, if any are alleged to exist, the amount and nature of each such offset or defense or counterclaim shall be set forth in full detail.

(k) **Annual Deliverables:**

- (1) Annual operating budget, due by the start of each fiscal year of Borrower.
- (2) Evidence of insurance as required by the Loan Documents.
- (3) Copies of Borrower's annual real estate tax bills and evidence of payment when such taxes are due and payable.
- (4) Within thirty (30) days of filing, tax returns of the Borrower.

(l) **Semi-Annual Deliverables:**

- (1) Semi-annual QALICB certification due as set forth in Section 10.5(b) herein.
- (2) Evidence that all reserve accounts required to be funded under the Loan Documents were so funded, in the form of June 30<sup>th</sup> and December 31<sup>st</sup> bank statements due July 31<sup>st</sup> and January 31<sup>st</sup>, respectively, of each year.

(m) **Community Benefits Agreement.** Within 120 days after each fiscal year, any and all information required to be delivered pursuant to the Community Benefits Agreement.

8.2. **Tax and Insurance Escrow.** To the extent, or when, required by the Lenders or the Administrative Agent pursuant to the terms of the Mortgages, Borrower shall deposit with Provident Bank in a blocked account in favor of Administrative Agent for the benefit of Lenders an amount sufficient to pay the next installment of taxes and/or insurance due in connection with the Projects and, thereafter, pay to the Administrative Agent monthly an amount equal to 1/12 of the amount required to pay the next installment of such taxes and/or insurance.

8.3. **Carver Fee and Expense Reserve Account.** On the date hereof, the Borrower shall establish and fund an interest-bearing fee and expenses reserve account for the Carver Lender (the “*Carver CDE Account*”), and deposit, from the Initial Release, an amount equal to \$370,000. The Carver CDE Account shall be established in the name of the Borrower at a banking institution reasonably acceptable to the Administrative Agent and Carver Lender, which Carver CDE Account shall be pledged to Carver Lender. The funds in the Carver CDE Account shall be used and applied as set forth in the Projections to pay that portion of the interest payments required to be made to Carver Lender attributable to (a) an annual asset management fee in the amount of \$62,500 (\$15,625 per quarter) (the “*Carver Asset Management Fee*”); and (b) audit, tax and accounting expenses in the amount of \$15,000 annually (\$3,750 per quarter) (the “*Carver Audit and Tax Fee*”). With respect to the Carver Audit and Tax Fee, releases from the Carver CDE Account shall occur on a quarterly basis commencing October 15, 2012 and continuing on each January 15, April 15, July 15 and October 15 of each calendar year thereafter, through and including January 15, 2019; provided, however, that on each of October 15, 2012 and January 15, 2019 an aggregate amount equal to \$15,000 shall be released from the Carver CDE Account to pay the full Carver Audit and Tax Fee payable in each such year. The aggregate distribution from the Carver CDE Account with respect to the Carver Audit and Tax Fee shall be \$120,000. With respect to the Asset Management Fee, Lender and Borrower agree that \$15,625 shall be released from the Carver CDE Account on each of the following dates: December 15, 2012, March 15, 2013, June 15, 2013, September 15, 2013, December 15, 2013, March 15, 2017, June 15, 2017, September 15, 2017, December 15, 2017, March 15, 2018, June 15, 2018 and September 15, 2018; provided, however, that on December 15, 2012 an aggregate amount equal to \$62,500 shall be released from the Carver CDE Account to pay the full Carver Asset Management Fee payable in each such year. The aggregate distribution from the Carver CDE Account with respect to the Carver Asset Management Fee shall be \$250,000. So long as no Event of Default shall exist, all interest and earnings on the Carver CDE Account shall be payable to Borrower in accordance with the terms of the applicable account agreement governing such account. Upon an Event of Default, such funds shall be applied in such manner as the Carver Lender may determine, consistent with the provisions of the Loan Documents and applicable law.

8.4. **NCIF Fee and Expense Reserve Account.** On the date hereof, the Borrower shall establish and fund an interest-bearing fee and expenses reserve account for NCIF Lender for a portion of the interest payments required to be made under its Loan that are intended to be used to pay its CDE Expenses, from the Initial Release, in the amount of \$280,000 (such account, the “*NCIF CDE Account*”). The NCIF CDE Account shall be established in the name of the Borrower at a banking institution reasonably acceptable to the Administrative Agent and NCIF Lender, which NCIF CDE Account shall be pledged to NCIF Lender. The funds in the NCIF CDE Account shall be used and applied, and until such time as an Event of Default may occur hereunder, NCIF Lender is hereby granted the authority to cause such use and application of the funds in the NCIF CDE Account, on a quarterly basis, as follows: (a) commencing on December 15, 2012, and continuing on each March 15<sup>th</sup>, June 15<sup>th</sup>, and September 15<sup>th</sup> thereafter, the sum of \$2,500 per quarter, to pay a portion of the interest due in each quarter on the NCIF Lender’s Loan, for application by NCIF

Lender to the annual tax, accounting, and audit expenses incurred by NCIF Lender in each year; provided, that on September 15, 2019, NCIF Lender shall be entitled to draw an additional \$10,000 as a reimbursement of CDE Expenses expected to be incurred (but not yet incurred as of the payment date) with respect to calendar year 2019, and (b) commencing on December 15, 2012, and continuing on each March 15<sup>th</sup>, June 15<sup>th</sup>, and September 15<sup>th</sup> through and including September 15, 2014, the sum of \$12,500 per quarter, to pay a portion of the interest due in each quarter on the NCIF Lender's Loan, for application by NCIF Lender to payment of the Asset Management Fees (as defined under NCIF Fee Agreement) payable by NCIF for such period, and (c) commencing December 15, 2017, and continuing on each March 15<sup>th</sup>, June 15<sup>th</sup>, and September 15<sup>th</sup> thereafter, an amount equal to \$12,500 per quarter, to pay a portion of the interest due in each quarter on the NCIF Lender's Loan, for application by NCIF Lender to the Asset Management Fees payable by NCIF Lender for such period. So long as no Event of Default shall exist, all interest and earnings on the NCIF CDE Account shall be payable to Borrower in accordance with the terms of the applicable account agreement governing such account. Upon an Event of Default, such funds shall be applied in such manner as the NCIF Lender may determine, consistent with the provisions of the Loan Documents and applicable law.

8.5. **BA Fee and Expense Reserve Account.** On the date hereof, the Borrower shall establish and fund an interest-bearing fee and expenses reserve account for the BA Lender (the "*BA CDE Account*"), and deposit, from the Initial Release, an amount equal to \$332,000. The BA CDE Account shall be established in the name of the Borrower at a banking institution reasonably acceptable to the Administrative Agent and BA Lender, which BA CDE Account shall be pledged to BA Lender. The funds in the BA CDE Account shall be used and applied as set forth in the Projections to pay that portion of the interest payments required to be made to BA Lender attributable to (a) an annual asset management fee in the amount of \$50,000 (\$12,500 per quarter) (the "*BA Asset Management Fee*"); (b) loan servicing expenses in the amount of \$7,000 annually (\$1,700 per quarter) (the "*BA Loan Servicing Fee*"); and (c) audit, tax and accounting expenses in the amount of \$9,500 annually (\$2,375 per quarter) (the "*BA Audit and Tax Fee*"). With respect to the BA Loan Servicing Fee and the BA Audit and Tax Fee, releases from the BA CDE Account shall occur on a quarterly basis commencing December 15, 2012 and continuing on each March 15, June 15, September 15 and December 15 of each calendar year, through and including March 15, 2019; provided, however that BA Lender and Borrower agree that the \$16,500 shall be released on December 15, 2012 and March 15, 2019, representing the entire amount of the BA Loan Servicing Fee and the BA Audit and Tax Fee for 2012 and 2019 respectively. With respect to the BA Asset Management Fee, BA Lender and Borrower agree that \$12,500 shall be released from the BA CDE Account on each of the following dates: March 15, 2013, June 15, 2013, September 15, 2013, December 15, 2013, March 15, 2017, June 15, 2017, September 15, 2017, December 15, 2017, March 15, 2018, June 15, 2018, September 15, 2018, and December 15, 2018. In addition, BA Lender and Borrower agree that \$50,000 shall be released from the BA CDE Account on December 2012, representing the entire BA Asset Management Fee for 2012, for an aggregate amount of \$200,000.

8.6. **Pledge of Accounts; Additional Deposits.** As additional security for the Loans, the Borrower hereby unconditionally and irrevocably pledges, assigns, grants a security interest in, sets over and confirms unto the Administrative Agent for the benefit of the Lenders, all of the Borrower's accounts as more particularly described in the Control Agreements, including, but not limited to, the Disbursement Fund, the NCIF CDE Account, the Carver CDE Account, the BA CDE Account and the Operating Account. The Borrower acknowledges and agrees that this Agreement constitutes written notification to the Borrower with respect to the Administrative Agent's (for the benefit of the Lenders) security interest in the above-described accounts pursuant to Articles 8 and 9 of the Uniform Commercial Code in effect in New York or New Jersey as of the date hereof and any applicable federal regulations. Borrower agrees that, following the date on which Borrower begins to collect revenues from the Project, at such time as, and to the extent that, Borrower generates net cash flow that would otherwise be distributable to its members in accordance with the provisions of the Loan Documents and the documents pertaining to the Permitted Loans ("*Available Net Cash Flow*"), Borrower agrees instead to utilize such Available Net Cash Flow to replenish the Carver CDE Account, the NCIF CDE Account, and the BA CDE Account, to the extent proceeds therein were applied to make the payments described in Section 8.3 that pertain to 2012 and 2013, clause (b) of Section 8.4 and Section 8.5 that pertain to 2012 and 2013, during the period from October 15, 2012 through July 15, 2014. Borrower shall make such deposits no later than the next monthly loan payment date following the issuance of each quarterly financial statement under Section 8.1(a) hereof showing such Available Net Cash Flow, on a pro-rata basis in proportion to the aggregate amounts previously applied from each of the Carver CDE Account, the NCIF CDE Account, and the BA CDE Account, until the amounts applied from each of such accounts have been fully replenished.

(End of Article VIII)

## ARTICLE IX

### ADMINISTRATIVE AGENT AND LENDER

9.1. Subject to the terms and conditions of this Article IX, each of the Lenders hereby appoints and authorizes Administrative Agent to enter into each of the Loan Documents to which it is a party for the benefit of the Lenders (other than this Agreement) on its behalf and to take such actions and exercise the powers of the Lenders under the Loan Documents as are delegated to Administrative Agent by the terms of this Article IX, together with all such powers as are reasonably incidental thereto. Administrative Agent shall at all times act in accordance with the Accepted Servicing Practices (as hereinafter defined). Subject to the terms of this Article IX and to the terms of the Loan Documents, Administrative Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the Loan Documents on behalf of the Lenders. The provisions of this Article IX 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. In performing its functions and duties under this Agreement, Administrative Agent shall act solely as agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for the Borrower or any other Person. Administrative Agent may perform any of its duties hereunder, or under the Loan Documents, by or through its agents or employees.

9.2. Administrative Agent shall have the same rights and powers under the Loan Documents as the Lenders and may exercise or refrain from exercising the same as though it were not Administrative Agent subject to direction of the Lenders, and Administrative Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with Borrower or an Affiliate thereof as if it were not Administrative Agent hereunder.

9.3. Subject to the standard of care set forth in Section 9.13(a), the duties of Administrative Agent shall be mechanical and administrative in nature. Neither the Administrative Agent nor the Lenders shall have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Loan Documents is intended to or shall be construed to impose upon Administrative Agent any obligations in respect of this Agreement or any of the Loan Documents except as expressly set forth herein or therein. It is expressly acknowledged and agreed that the Administrative Agent shall have no fiduciary duties to Borrower with respect to Administrative Agent's exercise of any of the Lenders rights under this Agreement or the Loan Documents.

9.4. Administrative Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

9.5. Neither Administrative Agent nor any of its partners, directors, officers, agents, employees or Affiliates shall be liable to any Lender for any action taken or not

taken by it in connection with the Loan Documents, except that Administrative Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Administrative Agent nor any of its partners, directors, officers, agents, employees or Affiliates shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Loan Document; (c) the satisfaction of any condition specified in any Loan Document; (d) the validity, effectiveness, sufficiency or genuineness of any Loan Document, any lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any default or Event of Default; or (f) the financial condition of Borrower. Administrative Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, telex, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties (including as contemplated by Section 9.7 below). Administrative Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of the Lenders to whom payment was due but not made shall be to recover from the Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to promptly return to such Lender any such erroneous payments received by them).

9.6. Each Lender shall, in accordance with its respective share of the Loans, severally indemnify Administrative Agent (to the extent not reimbursed by Borrower and the Borrower is actually obligated to make such reimbursement) upon demand against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Administrative Agent's or its agents' or Affiliates' gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Administrative Agent may suffer or incur in connection with the Loan Documents or any action taken or omitted by Administrative Agent hereunder or thereunder; provided, however, that a Lender shall not be required to indemnify Administrative Agent if the indemnification claim by the Administrative Agent was due to the act or omission of another Lender(s), in which case the Lender(s) whose act(s) or omission(s) gave rise to the indemnification claim shall be required to indemnify Administrative Agent for its own acts or omissions. If any indemnity furnished to Administrative Agent for any purpose shall, in the reasonable opinion of Administrative Agent, be insufficient or become impaired, Administrative Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by the Lenders until such additional indemnity is furnished. Administrative Agent shall indemnify each Lender (to the extent not reimbursed by Borrower) upon demand against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such Lender's or such Lender's agents' or Affiliates' gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that such Lender may suffer



or incur in connection with any action taken or omitted by Administrative Agent hereunder or under the Loan Documents that is the result of gross negligence or willful misconduct on the part of the Administrative Agent.

9.7. Administrative Agent may at any time request instructions from the Lenders (provided, however, that if any Lender fails to respond to Administrative Agent within thirty (30) days of receipt of written notice of Administrative Agent's request, such Lender shall be deemed to have concurred with Administrative Agent's proposed determination; provided, further, however, that such thirty (30) day time period may be reduced, as the circumstance may require, to a shorter time period as set forth in the request sent by Administrative Agent, but which reduced time period shall in no event be less than five (5) Business Days) with respect to any actions or approvals which by the terms of this Agreement or of any of the Loan Documents Administrative Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Administrative Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, the Lenders shall not have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Lenders and, notwithstanding the instructions of the Lenders, Administrative Agent shall have no obligation to take any action if it believes, in good faith and in accordance with the Accepted Servicing Practices, that such action would violate applicable law or exposes Administrative Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 9.6.

9.8. Each Lender acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges 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 credit decisions in taking or not taking any action under the Loan Documents.

9.9. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Administrative Agent for the account of the Lenders, unless Administrative Agent shall have received written notice from the Lenders or the Borrower referring to this Agreement, describing such Event of Default and stating that such notice is a "notice of default". Administrative Agent will notify the Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to any Event of Default as may be requested by the Lenders in accordance with the terms hereof. Unless and until Administrative Agent has received any such request, Administrative Agent may (but shall not be obligated to) take such

action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interests of the Lenders.

9.10. Administrative Agent may at any time give notice of its resignation to the Lenders and Borrower. The Lenders, may, upon mutual agreement, with or without cause upon ten (10) days' prior written notice to the Administrative Agent and the other Lenders, remove the Administrative Agent; provided, however, that while GSB NMTC Investor LLC is the administrative agent, GS Lender shall not have approval rights regarding the removal of such administrative agent. For the purposes of this Section 9.10, the term "cause" means the gross negligence, willful misconduct or fraud by the Administrative Agent. Upon removal of the Administrative Agent, payments, communications and determinations provided to be made by, to or through the Administrative Agent for the benefit of the Lenders, shall be made to the Lenders directly. Upon receipt of any such notice of resignation or upon removal of the Administrative Agent by the Lenders, the Lenders shall have the right to appoint a successor Administrative Agent, solely as a result of a unanimous agreement by the Lenders as to the identity of the successor. Upon the acceptance of a successor's appointment as Administrative Agent hereunder and notice of such acceptance to the retiring Administrative Agent, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, subject to documentation of such succession as may be reasonably required by the Lenders, including, but not limited to, transfer of any and all collateral associated with the Loans to the successor and an acknowledgement by the successor of the terms and conditions of this Article IX, the retiring Administrative Agent's resignation shall become immediately effective and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Loan Documents (if such resignation was not already effective and such duties and obligations not already discharged, as provided below in this paragraph), provided that the foregoing shall not relieve retiring Administrative Agent from any liabilities occurring prior thereto. Until such time as a replacement Administrative Agent is appointed, the existing Administrative Agent shall continue to act as Administrative Agent hereunder and in accordance with the terms of this Agreement. If no such successor shall have been so appointed by the Lenders and shall have accepted such appointment within sixty (60) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders (but without any obligation) appoint a successor Administrative Agent. From and following the expiration of such sixty (60) day period, Administrative Agent shall have the exclusive right, upon one (1) Business Days' notice to the Lenders, to make its resignation effective immediately. From and following the effectiveness of such notice, (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, provided that the foregoing shall not relieve retiring Administrative Agent from any liabilities occurring prior to the effectiveness of such notice, and (b) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to the Lenders directly, until such time as the Lenders appoint a successor Administrative Agent as provided for above in this paragraph. The provisions of this Agreement shall continue in effect for the benefit of any retiring Administrative Agent and its sub-agents after the effectiveness of its resignation hereunder and under the

other Loan Documents in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting or was continuing to act as Administrative Agent.’

9.11. **Payments.**

(a) Payments of principal, interest and fees in respect of the Loans in accordance with the Loan Documents will be applied on the date of receipt if received by Administrative Agent on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month.

(b) If Administrative Agent pays an amount to a Lender under this Agreement in the commercially reasonable belief or expectation that a related payment has been or will be received by Administrative Agent from a Borrower and such related payment is not received by Administrative Agent, then Administrative Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(c) If a court of competent jurisdiction determines at any time that any amount received by Administrative Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Administrative Agent will not be required to distribute any portion thereof to the Lenders. In addition, each Lender will repay to Administrative Agent on demand any portion of such amount that Administrative Agent has distributed to such Lender, together with interest at such rate, if any, as such court determines that Administrative Agent is required to pay to any Borrower or such other person.

(d) The failure of any Lender to make any payment required by it hereunder, including, but not limited to, such Lender funding its required share of the Loans, shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Administrative Agent shall be responsible for the failure of any Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a “defaulted Lender” shall not have any voting or consent rights under or with respect to any Loan Document or constitute a “Lender” for any voting or consent rights under or with respect to any Loan Document.

(e) Any amounts received with respect to payments under the Notes shall be paid in accordance with Section 9.11(f) hereof. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of the Loans in excess of its share of payments entitled pursuant to the other provisions of this Section and the terms of the Notes, such Lender shall refund such money to the other Lenders, as applicable. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) 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 clause (e) to share in the benefits of any recovery on such secured claim.

9.12. If Borrower fails to perform any obligation hereunder or under any other Loan Document, Administrative Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrower's expense. Administrative Agent is further authorized by Borrower and the Lenders to make expenditures from time to time which Administrative Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrower, the Projects, the Mortgaged Property or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loans. Borrower hereby agrees to reimburse Administrative Agent on demand for any and all costs, liabilities and obligations incurred by Administrative Agent pursuant to this Section 9.12.

9.13. (a) Notwithstanding anything to the contrary herein, including Section 9.3 hereof, the Administrative Agent, as an independent contract servicer, shall service and administer the disbursement of the proceeds of the Loans from the Disbursement Fund on behalf of the Lenders in accordance with this Agreement, and the Loan Documents (all as determined by the Administrative Agent in its good-faith business judgment), and in furtherance of, and to the extent consistent with, such terms, in accordance with the same care, skill, prudence and diligence with which it services and administers similar mortgage loans for its own account and acting in accordance with applicable law, the terms of this Agreement and the terms of the Loan Documents (hereinafter referred to as "*Accepted Servicing Practices*").

(b) The Lenders and the Administrative Agent acknowledge and agree that the Administrative Agent has been engaged for the convenience of the Lenders and to facilitate the ease of administration of the Loans in recognition of the fact that there are four independent lenders. Nothing in this Agreement or the Loan Documents is intended to or shall be deemed to limit the ability of the managing member of each of the Lenders to maintain a controlling influence over the investment decisions or management policies of the applicable Lender or such Lenders respective QLICs.

(c) Each of the Lenders hereby agree, and each holder of any of the Notes by the acceptance thereof will be deemed to agree, that any action taken by the Administrative Agent, in accordance with the provisions of this Agreement and the Loan Documents, and the exercise by the Administrative Agent of the powers set forth herein or therein in accordance with the terms hereof, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon the Lenders. Without limiting the foregoing, the Administrative Agent shall be authorized and empowered, on behalf of the Lenders, without the necessity of any notice to or further consent from the Lenders from time to time to take the actions authorized hereby and by the other Loan Documents; provided, however, that unless it has obtained the prior, written consent of the Lenders, the Administrative Agent shall not agree on behalf of the Lenders to:

(1) increase or decrease the interest rate under any of the Loans (other than charging, or not charging, default rate interest, late fees, or similar charges provided for in the Loan Documents);

- (2)

agree to the forgiveness of any indebtedness under any of the Loans;
- (3)

extend (other than for up to six (6) months of a forbearance or other extension in connection with a restructuring of the Loans) or shorten the maturity date of any of the Loans, or extend or modify the dates on which installments of principal are payable under any of the Loans, or waive any restriction on a voluntary prepayment of any of the Loans by Borrower (other than in the context of the exercise of remedies hereunder after the occurrence of an Event of Default);
- (4)

waive, amend, or modify the provisions of any Loan Document pertaining to compliance with NMTC Program Requirements or that would materially adversely affect the rights of the Lenders in the collateral for the Loan or with respect to payment obligations;
- (5)

sell or encumber any of the Loans, or execute any agreement for any such sale or encumbrance, or subordinate the mortgage or other security for any Loan to any other indebtedness, interest, or obligation;
- Guaranty;

(6)

release from liability any Person liable for the repayment of any Loan or any
- (7)

release, or agree to the substitution or exchange of, any portion of the collateral;
- (8)

sell any QLICI;
- Article X hereof;

(9)

waive any material default under the Loan Documents or waive any default under
- (10)

accelerate the repayment of the Loans;
- (11)

take title to any collateral for the Loans;
- (12)

propose or consent to any plan of reorganization in a bankruptcy of the Borrower;
- Agent determines that the conditions for such application under the Loan Documents are not met; and

(13)

determine not to apply insurance proceeds in any case where the Administrative
- this Article IX and Section 2.12, expressly requires the consent or approval of the Lenders.

(14)

taking any other action or making any other determination that, under the terms of
- 9.14.

As set forth in this Agreement, the Carver Lender, the NCIF Lender and the BA Lender may apply or disburse the proceeds in the Carver CDE Account, the NCIF CDE Account or the BA CDE Account, respectively.

9.15. The Borrower acknowledges and agrees that all obligations of the Lenders including, but not limited to, releases to be made hereunder and all decisions to be made and/or consents to be given hereunder may be made by the Administrative Agent, if in compliance with this Article IX, with the same force and effect as the Lenders and the Administrative Agent, and the Borrower hereby waives any claims it may have by reason of Administrative Agent fulfilling the Lenders' obligations hereunder. The Borrower covenants and agrees to simultaneously deliver to Administrative Agent and all Lenders all documents, requests, statements and other information required to be delivered to the Administrative Agent or Lenders, as applicable, hereunder.

9.16. No provision of this Agreement or any other Loan Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the Lenders.

9.17. Administrative Agent and each Lender hereby appoint each other Lender as agent solely for the purpose of perfecting each Lender's security interest in assets which, in accordance with the Uniform Commercial Code, as enacted in the State, can be perfected by possession or control. Should any Lender obtain possession or control of any such assets, such Lender shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefor, shall deliver such assets to Administrative Agent or in accordance with Administrative Agent's instructions or transfer control to Administrative Agent in accordance with Administrative Agent's instructions. Each Lender and the Administrative Agent agree that it will not have any right individually to enforce or seek to enforce any Loan Document or to realize upon any collateral for the Loans unless, subject to the terms of Section 9.2 hereof, instructed to do so by the Lenders.

9.18. Lenders acknowledge and agree that the rights of the Lenders with respect to the Borrower and the Projects are as set forth herein, notwithstanding anything to the contrary in any of the other Loan Documents.

9.19. Approval and Funding of Other Loans. In the event of any unscheduled or unanticipated repayment or recovery of the principal amount of the Loans during the New Markets Tax Credit compliance period applicable to the Loans, to the extent such amounts are required to be re-invested to prevent a Recapture Event (herein referred to as "*Reinvestment Proceeds*"), each Lender shall be entitled to elect whether (i) to separately reinvest its Pro-Rata Interest in such Reinvestment Proceeds or (ii) to collectively reinvest such Reinvestment Proceeds (in proportion to their Pro-Rata Interests therein) in accordance with this Agreement. Unless the Lenders make the election in (ii) above, each Lender shall be separately responsible for reinvesting its Pro-Rata Interest in such Reinvestment Proceeds, and this Agreement shall be inapplicable to the selection, funding, administration, servicing, collection, or disposition of any loans or investments that each Lender may elect to make out of its portion of such Reinvestment proceeds. *Subject to the Intercreditor Agreement*, such Reinvestment Proceeds shall be paid to Lenders in the following priority: (w) first, GS Lender shall receive all Reinvestment Proceeds until GS Lender has received, in the aggregate, Reinvestment Proceeds in the amount of \$8,500,000.00; (x) second, any Reinvestment Proceeds over and above Reinvestment Proceeds so distributed to GS Lender shall be

**distributed to Carver Lender until Carver Lender has received, in the aggregate, Reinvestment Proceeds in the amount of \$11,875,000, (y) third, any Reinvestment Proceeds over and above the Reinvestment Proceeds so distributed to Carver Lender shall be distributed to NCIF Lender until NCIF Lender has received, in the aggregate, Reinvestment Proceeds in the amount of \$9,700,000, and (z) fourth, any Reinvestment Proceeds over and above the Reinvestment Proceeds so distributed to NCIF Lender shall be distributed to BA Lender.**

9.20. As used in this Article 9, the following term has the following meaning:

**“Federal Funds Rate”** means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the business day next succeeding such day; provided, however, that (a) if such day is not a business day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding business day, and (b) if no such rate is so published on such next preceding business day, the Federal Funds Rate for such day shall be the average rate quoted to Administrative Agent on such day on such transactions as determined by Administrative Agent.

## ARTICLE X

### NEW MARKETS TAX CREDITS PROVISIONS

10.1. **New Markets Tax Credit Program.** Borrower acknowledges that the Loans are intended to constitute “qualified low-income community investments” and that, for such purpose, Borrower will be required to be a “qualified active low-income community business”, as such terms are defined in Section 45D of the Code, as amended. Without limiting the foregoing, Borrower shall conduct the development, ownership and operation of the Premises, in a manner that complies with Treasury Regulations Section 1.45D-1(d)(4) and otherwise in the manner provided in this Article X.

10.2. **Failure to Qualify for New Markets Tax Credit Program.** Without limiting any other rights or remedies of the Administrative Agent or the Lenders, Borrower acknowledges and agrees that the failure of any of the Loans to constitute a QLICI as a result of Borrower’s actions, inaction or status as a QALICB, as well as the failure of Borrower to provide the certifications and other information that Administrative Agent or the Lenders may require in order to confirm and report that the Loans constitute QLICIs and that the Borrower is a QALICB, could have a material, adverse effect on the Lenders, and, accordingly, in the event that any Event of Default shall arise as a result of (i) a breach or violation of any of the representations and warranties set forth in this Article X or (B) a breach, violation, or failure to comply with any of the covenants set forth in this Article X, such Event of Default or breach shall be material and shall entitle the Administrative Agent (on behalf of the Lenders) to exercise any and all remedies available under this Agreement and the Loan Documents, or at law or in equity on account of any such Event of Default.

10.3. **New Markets Tax Credit Representations and Warranties.** Borrower hereby represents and warrants to the Administrative Agent and the Lenders as follows throughout the term of the Loans:

- (a) The Borrower is, and shall at all times remain, a QALICB; the Borrower is, and shall at all times remain, a disregarded entity for federal income tax purposes;
- (b) the Premises, as of the date hereof, is located within the Census Tract, which is a “low-income community” (as defined in Code Section 45D(e)(1) and the related Treasury Regulations and Guidance);
- (c) fifty percent (50%) or more of the use of the tangible property of the Borrower (whether owned or leased) is now and shall hereafter remain within the Census Tract, which percentage shall be determined utilizing the methodology set forth in Treasury Regulations Section 1.45D-1(d)(4)(i)(B); provided, however, that if Borrower has no employees, at least eighty-five percent (85%) of the use of tangible property of the Borrower (whether owned or leased) is now and shall remain in the Census Tract;



(d) with respect to each taxable year of the Borrower, at least fifty percent (50%) of the total gross income of the Borrower is and will be derived from the active conduct of a qualified business, as defined in Section 45D of the Code and the Treasury Regulations and Guidance, within the Census Tract, which percentage shall be determined utilizing the methodology set forth in Treasury Regulations Section 1.45D-1(d)(4)(i)(A);

(e) if Borrower has one or more employees, not less than fifty percent (50%) of the services performed for Borrower during Borrower's most recent fiscal year and during Borrower's current fiscal year, to date, are performed at the Projects or otherwise performed in one or more other Low-Income Communities, which percentage shall be determined utilizing the methodology set out in Treasury Regulations Section 1.45D-1(d)(4)(i)(C). If Borrower has any employees, Borrower has provided to the Administrative Agent and the Lenders a true, correct, and complete list of such employees that includes a description of where such employees' services are performed;

(f) with respect to each taxable year of the Borrower, less than five percent (5%) of the average of the aggregate unadjusted basis of the property of Borrower is attributable to collectibles (as defined in Section 408(m)(2) of the Code), other than collectibles that are held primarily for sale to customers in the ordinary course of business. Borrower acknowledges that collectibles include, without limitation: (i) works of art, (ii) rugs or antiques, (iii) metals or gems, (iv) stamps or coins, (v) alcoholic beverages, and (vi) any other tangible personal property specified by the Secretary of the United States Department of Treasury as a "collectible" other than collectibles primarily held for sale in the ordinary course of business;

(g) with respect to each taxable year of the Borrower, less than five percent (5%) of the average of the aggregate unadjusted basis of the property of Borrower is attributable to "nonqualified financial property" (as defined in Treasury Regulations Section 1.45D-1(d)(4)(i)(E)). Borrower acknowledges that "nonqualified financial property" includes, without limitation: debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property. Borrower has provided, and upon request will provide, to Administrative Agent and the Lenders a true, correct, and complete listing of any nonqualified financial property Borrower owns, including therein the unadjusted basis of such property;

(h) no part of Borrower's business activities includes the rental to others of residential rental property (as defined in Section 168(e)(2)(A) of the Code) whereby more than 80% of the Borrower's income is derived from revenues from residential rental property;

(i) no part of Borrower's business activities includes the development or holding of intangibles for sale or license;

(j) no part of Borrower's business activities includes the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of

which is the sale of alcoholic beverages for consumption off premises (“*Excluded Businesses*”);

(k) no part of the business activities of any tenant or subtenant at the Premises of the Borrower includes the operation of any Excluded Businesses;

(l) the principal activity of Borrower’s trade or business is not farming (within the meaning of Code Section 2032A(e)(5)(A) or (B) and the related Treasury Regulations and Guidance);

(m) none of Borrower or any of its respective principals, directors or officers has been debarred, declared ineligible or voluntarily excluded from participation in a covered transaction by any federal department or agency, as described in Executive Order 12549, nor is any such action pending or proposed, and Borrower shall, simultaneously with execution and delivery of this Agreement, execute and deliver a separate certification in form and substance satisfactory to the Lenders to further evidence such representation and warranty;

(n) none of Borrower’s assets are now nor shall hereafter be directly or indirectly subsidized by the low-income housing tax credit provided by Code Section 42 and no portion of the Projects constitutes a qualified low-income building under Section 42 of the Code;

(o) Borrower has not taken and shall not take any action which would or could cause the Loans not to constitute “qualified low-income community investments” (as defined Code Section 45D(d)(1) and the related regulations);

(p) Borrower has no information or knowledge that Borrower’s ownership, operation and maintenance of the Premises or any other owned or leased real property of Borrower, to the extent applicable, does not satisfy the definition of a qualified active low-income community business (as defined in Code Section 45D(d)(2)(A) and the related regulations);

(q) Borrower has not had any correspondence or any communication with, to or from the CDFI Fund concerning Borrower’s non-compliance with, or deficiencies in, reporting practices;

(r) Borrower acknowledges and agrees that the Loans shall be subject to the provisions of the NMTC Program Requirements, and Borrower covenants to cooperate fully and promptly with the Administrative Agent and the Lenders in strictly complying with the NMTC Program Requirements;

(s) all material information concerning Borrower and Borrower’s property known to Borrower requested by the Administrative Agent or the Lenders, has been disclosed by Borrower to the Administrative Agent and the Lenders, and there are no facts or information known to Borrower that would make any of the facts or information submitted by Borrower to Administrative Agent and/or the Lenders with respect to Borrower or its property inaccurate, incomplete or misleading in any material respect;

(t) all documents and information provided by Borrower to Administrative Agent and the Lenders are substantially complete and accurate in all material respects and represent the entire business of Borrower;

(u) all balance sheets and statements of operations supplied to Administrative Agent and the Lenders by Borrower fairly present, in all material respects, the financial condition of Borrower, as applicable, as at the close of business on the dates thereof and the results of operations for the periods then ended for all material respects of satisfying and complying with this Agreement;

(v) Borrower shall promptly pay to the Lenders any monitoring (and other) fees related to the Loans that are imposed on the Lenders or the Borrower directly or indirectly by the CDFI Fund, if any;

(w) the amounts of reserves, receivables, assets and other items of working capital shown on the balance sheets of Borrower submitted to Administrative Agent and the Lenders are reasonable based upon Borrower's reasonably anticipated business operations;

(x) Borrower expects to generate revenue from the Projects within three (3) years after the date of this Agreement;

(y) except as expressly permitted by the Mortgages, and subject to the terms of this Agreement (including but not limited to Section 5.2(pp) and Section 6.1(cc) hereof), Borrower shall not assign any of its respective rights, or lease any space, in the Premises without the prior written consent of the Lenders (which consent shall not be unreasonably withheld);

(z) Borrower is not a bank, credit union or other financial institution;

(aa) Borrower does not have any information or knowledge indicating that Borrower might not satisfy all of the requirements of a QALICB;

(bb) Borrower has fully and accurately stated in writing to the Administrative Agent and the Lenders the nature of Borrower's business and of the goods or services provided, Borrower's primary sources of revenue, and Borrower's primary expenditures;

(cc) Borrower does not have any present plans or intentions to (i) change the nature of, or manner in which it conducts, its business; (ii) move or expand its business to a new address; (iii) reduce the percentage of gross income derived from the active conduct of a qualified business within any Low-Income Community; (iv) reduce the percentage of employee services performed in any Low-Income Communities (if Borrower has any employees); (v) reduce the percentage of use of tangible property in any Low-Income Community; (vi) maintain collectibles not held primarily for sale in the ordinary course of business at more than 5% of the aggregate unadjusted cost basis of its assets; (vii) maintain nonqualified financial property at more than 5% of the aggregate unadjusted costs basis of its assets; or (viii) enter into leases with one or more tenants who engage in

one or more Excluded Businesses, in any way that would cause to be untrue any of the representations, warranties or covenants set out herein;

(dd) there have been no irregularities or illegal acts that would have a material effect on the matters described in this Section 10.3; there has been no: fraud involving management or employees who have significant roles in the internal control structure of Borrower, fraud involving other employees that could have a material effect on the matters described in this Section 10.3, or communications from the CDFI Fund or other regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the matters described in this Section 10.3;

(ee) if any of the proceeds of the Loans are being used to take-out or refinance existing debt on the Premises, such existing debt was used for (a) costs in connection with new construction or substantial rehabilitation of existing improvements on the Premises, and/or (b) costs in connection with the acquisition and new construction or acquisition and substantial rehabilitation on the Premises;

(ff) The Census Tract in which the Projects are located has a poverty rate greater than thirty percent (30%);

(gg) Borrower shall maintain in full force and effect the policies of insurance described in the Mortgages;

(hh) The assumptions underlying the Projections, a true and complete copy of which has been certified to the Lenders and Administrative Agent, are accurate and complete in all material respects and reasonable in light of all facts and circumstances; and

(ii) The Borrower shall be treated as a partnership for federal income tax purposes.

10.4. **New Markets Tax Credit Covenants.** Borrower hereby covenants and agrees to Administrative Agent and the Lenders that for so long as any of the Loans remain outstanding:

(a) Borrower shall maintain its status as a QALICB;

(b) with respect to each taxable year, at least fifty percent (50%) of the use of the tangible property of Borrower (whether owned or leased) will be within the Census Tract, which percentage shall be determined utilizing the methodology set out in Treasury Regulations Section 1.45D-1(d)(4)(i)(B); provided, however, that for any taxable year in which Borrower has no employees, at least eighty-five percent (85%) of the use of the tangible property of Borrower (whether owned or leased) will be within the Census Tract;

(c) with respect to each taxable year of Borrower, at least fifty (50%) percent of the total gross income of the Borrower will be derived from the conduct of a qualified business, as defined in Section 45D of the Code and the Treasury Regulations and

Guidance, within the Census Tract, which percentage shall be determined utilizing the methodology set forth in Treasury Regulations Section 1.45D-1(d)(4)(i)(A);

(d) if Borrower has one or more employees, then not less than fifty percent (50%) of the services performed for Borrower by such employees will be performed at the Projects or otherwise performed in one or more other Low-Income Communities, which percentage shall be determined utilizing the methodology set out in Treasury Regulations Section 1.45D-1(d)(4)(i)(C). Borrower shall provide to Administrative Agent a true, correct, and complete list of such employees that includes a description of where their services are performed and Administrative Agent shall promptly forward copies of same to the Lenders;

(e) less than five percent (5%) of the average of the aggregate unadjusted basis of the property of Borrower will be attributable to collectibles (as defined in Section 408(m)(2) of the Code), other than collectibles that are held primarily for sale to customers in the ordinary course of business. Borrower will update semi-annually and provide to Administrative Agent a true, correct, and complete listing of any non-qualified collectible property Borrower owns, including therein the unadjusted basis of such property;

(f) less than five percent (5%) of the average of the aggregate unadjusted basis of all the property of Borrower will be attributable to nonqualified financial property (as defined in Treasury Regulations Section 1.45D-1(d)(4)(i)(E)). Borrower will update semi-annually and provide to Administrative Agent a true, correct, and complete listing of any non-qualified financial property Borrower owns, including therein the unadjusted basis of such property and Administrative Agent shall promptly forward copies of same to the Lenders;

(g) no part of Borrower's business activities will include the rental to others of residential rental property (as defined in Section 168(e)(2)(A) of the Code) whereby more than 80% of the Borrower's gross income is derived from revenues from residential rental property, or consist of the operation of any Excluded Businesses;

(h) no part of the business activities of any tenant or subtenant of the Borrower at the Projects will consist of the operation of any Excluded Businesses;

(i) the trade or business of Borrower will not include the development or holding of intangibles for sale or license;

(j) farming (within the meaning of Section 2032A(e)(5)(A) or (B) of the Code) will not be an activity of Borrower;

(k) Borrower shall ensure that all tenants of the Premises satisfy all applicable requirements in order for the Borrower to at all times maintain its status as a QALICB.

(l) Borrower shall not be a bank, credit union or other financial institution;

(m) Borrower shall not discontinue conducting business, materially change the nature of its business, nor materially change the manner in which its business activities are conducted, other than changes in the nature of its business or the manner in which it conducts its business, provided such changes do not cause the Loans to cease to constitute QLICs (as determined by the Lenders in their good faith judgment and based upon the advice of counsel) and which are otherwise permitted hereunder;

(n) no portion of the Projects will constitute a qualified low-income building under Section 42 of the Code;

(o) upon request, Borrower will certify in writing to the Administrative Agent and the Lenders that it remains in compliance with the provisions of this Section 10.4, including in such certification the current percentages or ratios under the above paragraphs that are applicable to Borrower at such time;

(p) Borrower will supply all data, reports or statements required by the Administrative Agent and the Lenders for purposes of satisfying reporting requirements; monitoring compliance with Section 45D of the Code; and measuring the community benefit of Borrower's activities. In connection therewith, Borrower shall:

(1) maintain records of the activities and services performed by employees, if any, and the administration of their employment (including where their services are performed and, in instances where such employees also perform services for persons or entities other than Borrower, the allocation of their time between Borrower and any such other person or entity) that are sufficient to establish compliance with the requirements of this Section 10.4;

(2) maintain records of the average values and locations of its tangible personal property that are sufficient to establish compliance with the requirements of this Section 10.4;

(3) maintain records of the unadjusted basis of its property generally and in particular, any collectibles and any nonqualified financial property it may own, that are sufficient to establish compliance with the requirements of this Section 10.4;

(4) promptly supply the Administrative Agent and the Lenders with any reports, records, statements, documents or other information reasonably requested by the Administrative Agent and the Lenders in connection with responding to any request by the CDFI Fund or as may be required to comply with the NMTC Program Requirements; and

(5) maintain records of the total gross income of Borrower sufficient to establish compliance with the requirements of this Section 10.4.

(q) Borrower shall not by its action or inaction cause an event of recapture (as defined in Section 45D(g) of the Code and Treasury Regulation Section 1.45D-1(e));

(r) Borrower will treat the Loans as indebtedness for all purposes, and will not take any positions contrary to such treatment;

(s) Borrower shall generate revenues within three (3) years from the date hereof;

(t) Borrower shall collaborate with the Administrative Agent and the Lenders with respect to the response to be made to any ninety (90)-day notice of noncompliance and ability to cure the provisions of this Section 10.4 provided by the CDFI Fund to the Lenders;

(u) Borrower shall cooperate with the Administrative Agent and the Lenders and their members in seeking any waiver or extension sought by the Lenders and their members with respect to a Recapture Event (regardless of whether or not Borrower has violated any covenants provided herein or failed to act or not act as directed by the Administrative Agent or the Lenders and their members), pursuant to Treasury Regulations Section 1.45D-1(e)(5);

(v) Borrower will execute and deliver such documents, certifications or amendments to the Loan Documents as may be reasonably requested by the Administrative Agent or the Lenders to maintain the status of the Loans as QLICs and the status of the Borrower as a QALICB;

(w) Borrower shall promptly notify Administrative Agent of any risk of noncompliance with this Agreement and Administrative Agent shall promptly notify the Lenders of the same;

(x) Borrower shall expend all then available proceeds of the advances of the Loans within eighteen (18) months after the date thereof;

(y) Borrower shall not, without the Lenders' permission, permit a change in control or ownership of interests in Borrower that would result in the Lenders or their members having "control" (as defined in Treasury Regulations Section 1.45D-1(d)(6)(ii)(B)) of Borrower;

(z) Borrower shall not accept any capital contribution from, and shall not issue any equity interest to, the Lenders or its members or any Person in which the Lenders' members or any of their affiliates may own an interest without the prior written consent of the Lenders in each instance, which consent shall not be withheld unless the Lenders shall have a reasonable belief that such capital contribution or equity interest would cause any Lender to violate its Allocation Agreement;

(aa) The fair market value of the Projects, after completion, is not expected to be less than the aggregate amount of the Loans;

(bb) Borrower shall engage solely in the ownership, development, operation and management of the Projects, which is and shall remain a qualified business under the Treasury Regulations, and no other activity;

(cc) Borrower shall comply with Section 6.1 (Compliance with Government Requirements), Section 6.2 (Fraud Waste and Abuse), and Section 6.4 (Retention of Records) of the Allocation Agreements; and

(dd) Borrower will treat the Master Lease as a true lease for federal income tax purposes and not as a transfer of ownership.

10.5. **New Markets Tax Credit Reporting Requirements.**

(a) **General NMTC Reporting Requirements.** Borrower shall deliver to Administrative Agent and the Lenders, (i) such information, reports and certifications as Administrative Agent and the Lenders deems reasonably necessary to demonstrate compliance with the NMTC Program Requirements applicable to Borrower or the Lenders, including, without limitation, reports which the Lenders or Borrower must make on-line in connection with the NMTC Program Requirements, (ii) any information reports and certifications necessary to reasonably assess and report on employment and community impacts, and (iii) any other information reports and certifications that the United States Treasury Department may from time to time require the Lenders to collect or submit, including submissions required by the CDFI Fund's Community Investment Impact System. Such reports shall include but are not limited to the following:

(1) at the closing of the Loans, an estimate of the number of construction jobs, if any, involved in any anticipated improvement of the Premises, including the jobs held by low-income persons or residents of Low-Income Communities and a breakdown of the construction jobs based upon wages;

(2) an estimate of the number of full-time equivalent jobs as of the date hereof, and the projected full-time equivalent jobs to be created or retained, and within forty-five (45) days of the close of each tax year, the jobs actually created or retained as a result of the Loan, including an estimate of the number of permanent jobs held by low-income persons or residents of low-income communities, as defined in Section 45D of the Code and a breakdown of such jobs based on wages;

(3) at the closing of the Loans, the annual gross revenues of Borrower as of Borrower's fiscal year ending prior to the Loans, and within forty-five (45) days of the close of each tax year, the annual gross revenues of Borrower for each subsequent tax year; and

(4) at the closing of the Loans, a copy of Borrower's form of lease (if any and to the extent applicable).

(b) **Semi-Annual Certifications.** Each June 1 and December 1, or semi-annually on dates to be identified by the Lenders, throughout the term of the Loans, Borrower will (i) certify in writing to Administrative Agent and the Lenders that Borrower remains in compliance with the provisions of Section 10.3 and Section 10.4 of this Agreement by delivery of a certificate in the form set forth on Exhibit D attached hereto, and (ii) provide to Administrative Agent and the Lenders evidence including, without limitation the data to be maintained pursuant to Section 10.4(p) above, to reasonably



substantiate such certifications. At the request of the Administrative Agent or the Lenders, Borrower will permit each of their books and records to be audited (at Borrower's cost and expense and upon reasonable prior notice) for purposes of substantiating such certification. Borrower shall maintain records of the average values and locations and the unadjusted basis of its property.

(c) **Additional Notice Requirements.** Notwithstanding anything to the contrary contained herein, Borrower shall promptly (but in no event greater than five (5) Business Days following the date that Borrower shall acquire actual knowledge thereof) notify Administrative Agent and the Lenders of:

(1) The occurrence of any act, event, condition or omission which constitutes, or which after notice or lapse of time or both, would constitute or result in a Recapture Event, together with a written statement of any actions which have been proposed in order to cure or remedy such default, and any action taken with respect thereto;

(2) Receipt of any material communication from any taxing authority by Borrower; or

(3) Any other material information Borrower receives from time to time regarding the conduct of the Borrower's business.

(d) **Furnishing Information.** Within ten (10) Business Days after the written request of Administrative Agent or the Lenders or such longer period of time as may be reasonably necessary to comply with such request if same is being diligently pursued, Borrower shall furnish such reports, projections, certifications, budgets (including the annual operating budget to be approved by Administrative Agent), operating reports, tax returns and analyses as required by the NMTC Program Requirements, or by other applicable federal, state or local statutes or requirements and shall give specific answers to reasonable questions from the Administrative Agent and the Lenders, from time to time, relative to Borrower's income, assets, liabilities, contracts and operations, all in connection with the Borrower's property, and the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Borrower's property.

(e) **Further Documentation.** Borrower will execute and deliver such documents, certifications or amendments to the Loan Documents as may be reasonably requested by Administrative Agent or the Lenders to maintain the status of the Loans as QLICs and the status of Borrower as a QALICB.

10.6. **Penalty.** Without limiting any of Administrative Agent's or the Lenders' rights or remedies pursuant to the Loan Documents, in the event the reports or information provided for in this Article X are not provided within the time period(s) specified therein, at the discretion of the Administrative Agent or the Lenders, Borrower shall be obligated to pay to the applicable party a fee of \$150 per day, as liquidated damages, for each day from the date ten (10) Business Days after notice has

been provided to Borrower until the date upon which such reports or information is (are) provided to the applicable party.

10.7. **Indemnity.** Borrower hereby agrees to indemnify Lenders and Administrative Agent and save each harmless from and against any and all claims, actions, damages, costs, liabilities and expenses, including, without limitation, attorneys’ fees, incurred by Lenders and/or Administrative Agent in connection with the Premises or the Projects or occasioned wholly or in part by any act or omission of Borrower, its officers, directors, partners, managers, members, agents, contractors, employees or tenants, including, without limitation, Borrower’s fraud, gross negligence, willful misrepresentation, willful misconduct, or misappropriation and/or misapplication of funds, voluntary bankruptcy filings, or otherwise engineering a bankruptcy filing. Without limiting the generality of the foregoing, in case any Lender or Administrative Agent shall, without fault on its part, be made a party to any litigation commenced by or against Borrower, then Borrower shall protect and hold such Lender and/or Administrative Agent harmless and shall pay all costs, expenses and attorneys’ fees incurred or paid by Lender and/or Administrative Agent in connection with such litigation. The obligations of Borrower under this Section 10.8 shall survive the making and repayment of the Loan.

10.8. Notwithstanding anything to the contrary set forth in this Agreement, Lenders acknowledge and agree that Administrative Agent is not required to act on behalf of the Lenders with respect to Borrower’s compliance with Sections 10.1 through 10.5 hereof.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written, the execution hereof by Borrower constituting a certification by the Borrower that the representations and warranties made in Article V and Article X are true and correct as of the date hereof and that the person executing on behalf of the Borrower duly holds and is incumbent in the position indicated under his name.

**ADMINISTRATIVE AGENT:**

**GSB NMTC INVESTOR LLC,**  
a Delaware limited liability company

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

**LENDERS:**

**GSNMF SUB-CDE 2 LLC,**  
a Delaware limited liability company

By: GS New Markets Fund, LLC,  
a Delaware limited liability company,  
its manager

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

**CARVER CDC — SUBSIDIARY CDE 21, LLC,**  
a Delaware limited liability company

By: Carver Community Development Corporation,  
a Delaware corporation,  
its managing member

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

*[Signatures Continue on Following Page]*

**BACDE NMTC FUND 4, LLC,**  
a Delaware limited liability company

By: Building America CDE, Inc.,  
its managing member

By: \_\_\_\_\_  
Name: Eric W. Price  
Title: Chief Executive Officer

**NCIF NEW MARKETS CAPITAL FUND IX CDE, LLC,**  
a Delaware limited liability company

By: NCIF Capital, LLC,  
an Illinois limited liability company,  
its managing member

By: National Community Investment Fund,  
a charitable trust established under the laws of the State  
of Illinois,  
its managing member

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

**BORROWER:**

**TEACHERS VILLAGE PROJECT A QALICB URBAN  
RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

**SCHEDULE A**  
**DESCRIPTION OF REAL PROPERTY**

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## EXHIBIT A

### (PENDING DISBURSEMENTS CLAUSE)

Pending disbursement of the full proceeds of the loan secured by the insured mortgage described herein, this policy insures only to the extent of the amount actually disbursed plus interest accrued thereon but increases up to the face amount of the policy as disbursements are made in good faith and without knowledge of any defects in, or encumbrances prior to, the lien of the insured mortgage other than exceptions on Schedule B of this policy not insured against hereunder.

Title shall be continued down to the date of each disbursement and the Borrower shall furnish to the Insured a continuation report which shall note (1) the new effective date and amount of the policy, (2) all assessments, taxes, liens, encumbrances, leases, Mortgages, easements and other items including survey variations, encroachments and setback violations then affecting the insured premises which have been filed of record or discovered by the Company since the original date of the policy regardless of whether they affect the lien of the insured mortgage, (3) which of the aforesaid items have been filed or recorded since the date of the last preceding continuation report, and (4) which said items are intended to be added as exceptions to the coverage of the policy as to (a) all amounts secured by the insured mortgage, and (b) only amounts secured by the insured mortgage advanced on or after the new effective date of the policy.

In addition, each continuation search will notify Administrative Agent of any liens which have been discharged by bonding, court deposit or any other means other than full payment.

In the event that the lien of the insured mortgage described herein is insured by more than one insurer, this company agrees that it shall be bound by the continuation reports of a single company specified as "lead" insurer herein.

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EXHIBIT B  
(BORROWER’S REQUISITION — DISBURSEMENT FUND)

REQUISITION NO.

TO GSB NMTC INVESTOR LLC (“ADMINISTRATIVE AGENT”):

Date:	Borrower:
Period Covered	Premises
To	Retainage
	Percentage:
Acct. No.:	Loan No.:

Pursuant to the Loan Agreement for the subject Loan, Borrower hereby authorizes and requests an advance to its Operating Account having the Acct No. in the amount of \$ \_\_\_\_\_ which is calculated as follows:

- (1)

Direct Costs incurred to the  
end of the Period Covered  
(from SCHEDULES I AND I-A  
hereto):

\$
- (2)

Less the greater of —  
(a) Retainage Amounts  
or of said costs :\$  
(b) Retained Amounts  
to the end of the Period  
Covered (from SCHEDULES I  
AND I-A hereto):

\$

( )

\$
- (3)

Indirect Costs incurred to  
end of the Period Covered  
(from SCHEDULE II hereto):

\$
- (4)

Amount Requisitioned for  
the Period Covered  
(1-2+3-4):

\$

\_\_\_\_\_

**REQUISITION NO.**

In connection with and in order to induce Administrative Agent to advance the amount requested above, Borrower hereby represents, warrants and stipulates as follows:

- 1. The information stated above and the representations and warranties in Section 5.01 of the Loan Agreement are true and correct in all material respects as of the date of this Requisition and, unless Administrative Agent is notified to the contrary prior to the disbursement of the advance requested above, will be so on the date thereof.
- 2. The amounts and percentages set forth on SCHEDULES I, I-A and II hereto are true and correct to the best of Borrower’s knowledge.
- 3. All sums previously requisitioned have been applied to the payment of the Direct Costs and Indirect Costs heretofore incurred, or such sums have been retained in the Operating Account for such purpose and no other.
- 4. Names, addresses, contract dates and amounts for the contractors, subcontractors, suppliers and materialmen responsible for performing each item of Direct Cost listed on SCHEDULES I and I-A hereto have been heretofore or are herewith submitted to Administrative Agent and the construction consultant and copies of any General Contract or major Subcontracts not previously delivered to Administrative Agent or the Construction Consultant are enclosed herewith.
- 5. All Change Orders have been submitted to Administrative Agent and the Construction Consultant and all Change Orders for which an advance is requested hereby have been approved by Administrative Agent for funding.
- 6. All payment receipts due in accordance with the terms of the Loan Agreement as of the end of the Period Covered have been submitted to the Construction Consultant.
- 7. Capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

Very truly yours,

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

Subscribed and sworn to before me on \_\_\_\_\_, 20

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

\_\_\_\_\_



**EXHIBIT C**  
**(INTENTIONALLY OMITTED)**

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## EXHIBIT D

### COMPLIANCE CERTIFICATE (REAL ESTATE)

In order to ensure that the loans (the “**Loans**”) among NCIF NEW MARKETS CAPITAL FUND IX CDE, LLC, a Delaware limited liability company, CARVER CDC — SUBSIDIARY CDE 21, LLC, a Delaware limited liability company, BACDE NMTC FUND 4, LLC, a Delaware limited liability company, and GSNMF SUB-CDE 2 LLC, a Delaware limited liability company (collectively, the “**Lenders**”), and Teachers Village Project A QALICB Urban Renewal Entity, LLC (the “**Borrower**”) each qualify as a Qualified Low-Income Community Investment (“**QLICI**”), Borrower hereby certifies that it is a Qualified Active Low-Income Community Business (“**QALICB**”), as that term is defined by Section 45D of the Internal Revenue Code, as amended (the “**Code**”) and Section 1.45D-1(d)(4) of the Treasury Regulations:

1. Capitalized terms not otherwise defined in this Certificate have the meanings set forth in the Building Loan Agreement (the “Loan Agreement”) dated as of September , 2012 (the “Closing Date”) among Lenders, Borrower and GSB NMTC Investor LLC, as administrative agent.

2. Borrower acknowledges and agrees that the Loans constitute QLICIs and that the Borrower is and will remain a QALICB during the respective terms of the Loans. Accordingly, Borrower hereby certifies that, as of the date hereof:

a. The ratio of (i) the average value of the tangible property owned or leased by Borrower and used by the Borrower during the current fiscal year of the Borrower to date within any “low-income community” as such term is defined in Section 45D of the Code, to (ii) the total average value of the tangible property owned or leased by the Borrower and used by the Borrower in the current fiscal year of the Borrower to date, is no less than eighty-five percent (85%). For purposes of the preceding sentence, tangible property owned by the Borrower has been valued at its cost basis as determined under Section 1012 of the Code and tangible property leased by the Borrower has been valued at a reasonable amount established by the Borrower and reasonably acceptable to the Lenders. Specifically, the foregoing ratio is: 0%.

b. Less than five percent (5%) of the average aggregate unadjusted basis of Borrower’s property is attributable to collectibles (as defined in Section 408(m)(2) of the Code) other than collectibles held primarily for sale to customers in the ordinary course of business. The Borrower has provided the Lenders a true, correct and complete listing of any collectibles owned by the Borrower, which includes the unadjusted bases of such property. Specifically, the foregoing percentage is: 0%.

c. Less than five percent (5%) of the average aggregate unadjusted basis of Borrower’s property is attributable to nonqualified financial property (as defined in Section 1397C(e) of the Code). The Borrower has provided the Administrative Agent and the

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Lenders with a true, correct and complete listing of any non-qualified financial property owned by the Borrower, which includes the unadjusted bases of such property. Specifically, the foregoing percentage is: 2.63%.

- d. Borrower has maintained records sufficient to establish compliance with Sections 2(a), (b), and (c) of this Compliance Certificate, and has provided copies of such records to Lender with this Compliance Certificate.
- e. The business activities of the Borrower do not include operation of any of the following: (i) rental of residential real property (as defined under Section 168(e)(2)(A) of the Code); (ii) development or holding of intangibles for sale or license; (iii) farming; (iv) a massage parlor, hot tub facility, suntan facility, country club, racetrack or other facility used for gambling, or private or commercial golf course; (v) any store the principal business of which is the sale of alcoholic beverages for consumption off premises; or (vi) unimproved real property.
- f. Additionally, no lessee of the Borrower is a business operating any of the above-described enterprises as of the date hereof. Except that Borrower shall be permitted to engage in the business of renting residential rental property so long as not more than 80% of the Borrower’s gross income is not derived from such rentals.
- g. The Borrower does not currently have any employees; however, the Borrower anticipates having employees at any time during the respective terms of the QLICI Loans. If Borrower has one or more employees, then not less than fifty percent (50%) of the services performed for Borrower by such employees will be performed at the Projects or otherwise performed in one or more other Low-Income Communities, which percentage shall be determined utilizing the methodology set out in Treasury Regulations Section 1.45D-1(d)(4)(i)(C).
- h. The Borrower expects to generate revenues from the leasing of the Projects within three (3) years from the closing of the QLICI Loans, and have provided the Lenders documentation supporting the reasonableness of this expectation.
- i. The Projects are located within Census Tract No. 34013008100 which constitutes a “low-income community” under Section 45D of the Code. In addition, the Projects are located within a targeted distressed community because it meets the following criteria [check all that apply]:

- ☐ (i) Located in a census tract with a poverty rate greater than 30 percent;
  - ☐ (ii) Located in a census tract that (a) if located within a non-Metropolitan Area, has a median family income that does not exceed 60 percent of statewide median family income; or (b) if located within a Metropolitan Area, has a median family income that does not exceed 60 percent of the greater of statewide median family income or the Metropolitan Area median family income;
  - ☐ (iii) Located in a census tract with an unemployment rate at least 1.5 times the national average;
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☐ (iv) Located in a census tract that is located in a county not contained within a Metropolitan Statistical Area (MSA), as defined in OMB Bulletin No. 99-04, with respect to the 2000 Census data.

☐ (v) As permitted by IRS and related CDFI Fund guidance materials, serves Targeted Populations to the extent that: (a) the project is 60% owned by low-income persons (LIPs); or (b) at least 60% of employees are LIPs; or (c) at least 60% of customers are LIPs.

[NOTE: If none of (i) through (v) are selected, then at least two of (vi) through (xviii) below must be selected:]

☐ (vi) Located in a census tract with one of the following: (a) poverty rate greater than 25%; or (b) if located within a non-Metropolitan Area, median family income that does not exceed 70% of statewide median family income, or, if located within a Metropolitan Area, median family income that does not exceed 70% of the greater of the statewide median family income or the Metropolitan Area median family income; or (c) unemployment rate at least 1.25 times the national average.

☐ (vii) Located in a federally designated Empowerment Zone, Enterprise Community, or Renewal Community, specifically: \_\_\_\_\_;

☐ (viii) Located in a U.S. Small Business Administration (SBA) designated HUB Zones, to the extent that the QLICI supports a business that obtains HUB Zone certification from the SBA;

☐ (ix) Located in a Brownfield site as defined under 42 U.S.C. 9601(39)

☐ (x) Located in an area encompassed by a HOPE VI redevelopment plan;

☐ (xi) Located in an area federally designated as a Native American or Alaskan Native area, Hawaiian Homeland, or redevelopment area by the appropriate Tribal or other authority, specifically: \_\_\_\_\_;

☐ (xii) Located in an area designated as distressed by the Appalachian Regional Commission or Delta Regional Authority;

☐ (xiii) Located in a Colonias area as designated by the U.S. Department of Housing and Urban Development;

☐ (xiv) Located in a federally designated medically underserved area, to the extent that QLICI activities support health related services;

☐ (xv) Located in a state enterprise zone program, or other similar state/local program targeted towards particularly economically distressed communities, specifically: \_\_\_\_\_;

☐ (xvi) Located in a county for which the Federal Emergency Management Agency (FEMA) has (a) issued a “major disaster declaration” and (b) made a determination that

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such County is eligible for both “individual and public assistance;” provided that the initial project investment was made within 24 months of the disaster declaration;

☐ (xvii) a business certified by the Department of Commerce as eligible for assistance under the Trade Adjustment Assistance for Firms (TAA ) Program; or

☐ (xviii) located in a Food Desert, which must either be: 1) a census tract determined to be a Food Desert by the U.S. Department of Agriculture (USDA), as identified in USDA’s Food Desert Locator Tool; or 2) a census tract that qualifies as a Low-Income Community and has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative, to the extent QLICI activities will increase access to healthy food.

j. The nature of the Borrower’s business, and its primary sources of revenue, is the development and use of the Projects, and the Borrower’s primary expenditures are projected to be as set forth in the financial projections prepared by Reznick Group, P.C., dated the Closing Date. The Borrower does not have any present plans or intentions to change the nature or manner of the conduct its business which would cause it not to be in accordance with the provisions of this Section 2(j).

k. The representations and warranties set forth in Article X of the Loan Agreement are true and correct in all respects and the Borrower remain in compliance with the provisions of Section 10.3 and 10.4 of the Loan Agreement.

l. The Borrower agrees to execute and deliver such documents, certifications or amendments to the Loan Documents as may reasonably be requested by the Lenders to maintain the status of the Loans as QLICIs and the status of the Borrower as a QALICB.

m. No default or Event of Default exists as of the date hereof.

[Signature Page Follows]

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**BORROWER:**

**TEACHERS VILLAGE PROJECT A QALICB URBAN  
RENEWAL, LLC,**  
a New Jersey limited liability company

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

\_\_\_\_\_

**EXHIBIT E**  
**INTENTIONALLY OMITTED**

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**EXHIBIT F**

**CERTIFICATE OF BORROWER AND GENERAL CONTRACTOR**

, 201

1. The undersigned, Teachers Village Project A QALICB Urban Renewal Entity, LLC, a New Jersey limited liability company, and Del-Sano Contracting Corp., a corporation, are the owner (“Borrower”) and the general contractor (“Contractor”), respectively, of the project known as **Teachers Village Workforce A Project** located in Newark, New Jersey (the “Project”), which will be constructed in part using the proceeds of one or more qualified low-income community investments made in the form of loans (collectively, the “Loan”) to Borrower by BACDE NMTC Fund 4, LLC, a Delaware limited liability company (“Sub-CDE”), a subsidiary community development entity of Building America CDE, Inc. (“BACDE”). In order for Sub-CDE to make the Loan, BACDE will suballocate a portion of its allocation of New Markets Tax Credits (“NMTCs”) to Sub-CDE.
  2. In order to induce the BACDE to suballocate the NMTCs to Sub-CDE in connection with the financing of the Project, the Borrower and Contractor DO HEREBY JOINTLY AND SEVERALLY CERTIFY the following to BACDE. The Borrower and Contractor have employed and will employ, for all on-site work on this Project, only employees who are represented by unions affiliated with the local Building and Construction Trades Council, American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) and/or The Building and Construction Trades Department, AFL-CIO. In addition, the Borrower and Contractor will contract only with contractors and subcontractors who (i) will employ, for all on-site work on this Project, only employees who are represented by unions affiliated with the local Building and Construction Trades Council, AFL-CIO, and/or The Building and Construction Trades Department, AFL-CIO, and (ii) will themselves contract for the construction of the Project only with subcontractors who will employ, for all on-site work on this Project, only employees who are represented by unions affiliated with the local Building and Construction Trades Council, AFL-CIO, and/or The Building and Construction Trades Department, AFL-CIO. To help ensure that work on the Project proceeds in a timely and harmonious manner, the Borrower and Contractor will further ensure (i) that all on-site work for this Project will be performed within traditional craft lines in the area and (ii) that all contractors and subcontractors retained for on-site work for the Project shall agree to utilize and be bound by the jointly administered “Plan for the Settlement of Jurisdictional Disputes in the Construction Industry” established by The Building and Construction Trades Department, AFL-CIO, and various construction industry employer associations.
  3. In order to induce BACDE to suballocate the NMTCs to Sub-CDE in connection with the financing of the Project, the Borrower and Contractor do hereby agree to certify substantially as set forth in the document attached as “Exhibit F” of the Sub-CDE operating agreement executed as of even date herewith, upon BACDE’s request after completion of the construction of the Project.
  4. Any and all disputes arising from or relating to the obligations under Paragraph 2 of this Certificate of Borrower and Contractor (“Certificate”), and not subject to resolution under the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, shall be settled by
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final and binding arbitration procedures to be administered by the American Arbitration Association (“AAA”), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Procedures shall be in conformity with the specific provisions set forth in this paragraph, and in all other respects, in conformity with AAA’s Commercial Arbitration Rules, Expedited Procedures. The arbitrator shall be a member of the National Academy of Arbitrators with substantial experience in resolving construction industry labor disputes and shall be selected, using lists of such arbitrators submitted to the parties by the AAA, following the procedures set out in the regular AAA Commercial Arbitration Rules (i.e., non-expedited rules). The arbitrator may award any and all appropriate relief, interim or final, equitable or legal, injunctive or monetary, including awards of costs and fees to the prevailing party (including reasonable attorney fees, arbitration fees, and related expenses). The arbitration shall be in Washington, DC, unless the parties agree otherwise.

5. This certification is not intended to create rights in anyone other than BACDE. The interpretation of any provision herein shall be in the exclusive discretion of BACDE. No signatory or other party may challenge said interpretation or insist upon the application of the terms of this certification. The BACDE’s interpretation of this certification in relation to any particular situation shall be consistent with the BACDE’s internal policies and procedures.

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the date first written above.

BORROWER:

**TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC**, a New Jersey limited liability company

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

CONTRACTOR:

**DEL-SANO CONTRACTING CORP.**, a corporation

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

EXHIBIT G

CERTIFICATE OF BORROWER AND GENERAL CONTRACTOR (COMPLETION)

, 201

The undersigned, Teachers Village Project A QALICB Urban Renewal Entity, LLC, a New Jersey limited liability company, and Del-Sano Contracting Corp., a corporation are the owner (“Borrower”) and the general contractor (“Contractor”), respectively, of the project known as **Teachers Village Workforce A Project** located in Newark, New Jersey (the “Project”) which has been constructed in part using the proceeds of one or more qualified low-income community investments made in the form of loans (collectively, the “Loan”) to Borrower by BACDE NMTC Fund , LLC, a Delaware limited liability company (“Sub-CDE”), a subsidiary community development entity of Building America CDE, Inc. (“BACDE”). In order for Sub-CDE to make the Loan, BACDE suballocated a portion of its allocation of New Markets Tax Credits (“NMTCs”) to Sub-CDE. In satisfaction of the inducement to BACDE to suballocate NMTCs to Sub-CDE in connection with the financing of the Project the Borrower and Contractor agreed DO HEREBY JOINTLY AND SEVERALLY CERTIFY to BACDE as follows:

The Borrower and Contractor have employed, for all on-site work on this Project, only employees represented by unions affiliated with the local Building and Construction Trades Council, American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) and/or The Building and Construction Trades Department, AFL-CIO. In addition, the Borrower and Contractor have contracted only with contractors and subcontractors who (i) employed, for all on-site work on this Project, only employees represented by unions affiliated with the local Building and Construction Trades Council, AFL-CIO, and/or The Building and Construction Trades Department, AFL-CIO, and (ii) contracted for the construction of the Project only with subcontractors who employed, for all on-site work on this Project, only employees who were represented by unions affiliated with the local Building and Construction Trades Council, AFL-CIO, and/or The Building and Construction Trades Department, AFL-CIO.

This certification is not intended to create rights in anyone other than BACDE. The interpretation of any provision herein shall be in the exclusive discretion of BACDE. No signatory or other party may challenge said interpretation or insist upon the application of the terms of this certification. BACDE’s interpretation of this certification in relation to any particular situation shall be consistent with BACDE’s internal policies and procedures.

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IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the date first written above.

BORROWER:

**TEACHERS VILLAGE PROJECT A QALICB URBAN  
RENEWAL ENTITY, LLC**, a New Jersey limited liability  
company

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

CONTRACTOR:

**DEL-SANO CONTRACTING CORP.**, a                      corporation

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

\_\_\_\_\_

**EXHIBIT H**  
**INSURANCE REQUIREMENTS**

**Goldman Sachs Bank USA**  
**Insurance Requirements**

**I. INSURANCE REQUIREMENTS**

General Insurance Requirements

- All policies must be written on a per occurrence basis except for pollution liability and professional liability coverage which may be written on a Claims Made.
- Each policy must have a cancellation provision requiring the carrier to notify the Certificate Holder at least 30 days in advance of any policy reduction or cancellation for any reason except non-payment of premium. The cancellation provision must provide for at least a 10-day written notification for non-payment of premium. In the cancellation section of the ACORD Form the words “Endeavor to” and “But failure..through..Representatives” must be deleted. If this cannot be done, Goldman Sachs Bank USA (“GS Bank”) will accept the following sentence under the Description of Operations: “Certificate holder will receive 30 days written notice of cancellation.”
- All policies must name the Project Partnership as the Insured and GS Bank and the Investor Limited Partner and their successors and/or assigns as “Loss Payee” and “Additional Insured” for property coverage and “Additional Insured” for liability coverage.
- Each insurance policy must contain a Loss Payable clause and Additional Insured clause acceptable to GS Bank

Please note: depending on the size, scope and location of the project, insurance requirements, including types of coverage, can change.

Blanket Policies

Use of a blanket or package policy (or policies) of insurance covering the Property and other properties and liabilities of the Borrower is acceptable, provided that:

- The policy provides the same or better insurance coverage as a single property insurance policy.
- The property is listed and identifiable in the policy and/or associated schedules; and
- The policy complies with all other applicable requirements contained in this document.

Carriers

- All carriers must meet the following rating requirement:
  - A.M. Best general policyholder’s rating of “A-” or better and a financial performance index rating of VI or better in Best’s Insurance Reports or Key Ratings Guide or
  - A-or better by Standard and Poor’s.
  - Various state wind pools or flood companies approved under the National Flood Insurance Program (NFIP)
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Term

Each policy must either:

- Have a term of at least one year at the time of closing; or
- Have a term with less than 12 months remaining at the time of closing so long as the policy contains the required coverage and is being added to an existing policy.

Evidence must be provided that the policy premium has been paid in full.

Financing the Premium

All premiums for existing, new policies or renewal policies must be paid in full at closing and cannot be financed.

Evidence of Insurance

Either (i) an ACORD 28 (either the 2003 or 2006 version is acceptable), combined with ACORD 25S, or (ii) ACORD 75S, are acceptable forms of evidence. The Policy Declaration page of a National Flood Insurance Policy (NFIP) is acceptable evidence of flood insurance coverage.

II. CONSTRUCTION PERIOD

**Builders Risk**

What is Required	Section 1 - “All Risk” of Physical Loss or Damage Section 2 — Delay in start-up/soft costs
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% Replacement Cost (completed value) on Completed Value Form</li><li>• Coverage must contain no coinsurance, or a coinsurance clause that is offset by an Agreed Amount provision.</li></ul>
Coverage Must Include	<ul style="list-style-type: none"><li>• Permission to Occupy</li><li>• Contractors Equipment (if applicable)</li><li>• Design Error (if applicable)</li><li>• Removal of Debris</li><li>• Expediting Expenses</li><li>• Transit and Off-site Storage</li></ul>
Delay in Start-up/Soft Costs Should Include	<ul style="list-style-type: none"><li>• Loss of Earnings (12 months loss of rents)</li><li>• Debt Service Payments</li><li>• Fixed Operational &amp; Maintenance Expenses</li><li>• Additional Interest Expense</li><li>• Construction Loan Refinancing Fees</li><li>• Real Estate Taxes</li><li>• Legal Professional Fees</li><li>• Insurance Premiums</li></ul>
Maximum Deductible	Physical Damage: <ul style="list-style-type: none"><li>• \$10,000 up to \$50 million in replacement cost values</li><li>• \$25,000 up to \$100 million in replacement cost values</li><li>• \$100,000 over \$100 million in replacement cost values</li><li>• .</li></ul>



	Delayed Opening <ul style="list-style-type: none"><li>• 60 days</li></ul>
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
<b>Windstorm Coverage</b>	
What is Required	If the Builders Risk policy excludes any type of wind-related event, a separate windstorm insurance policy must be obtained.
When Does it Apply	Required for all properties
Amount of Coverage	See Builders Risk for What’s Required and Amount of Coverage
Maximum Deductible	5% of the total insured value, as listed in the policy
Loss Payee and Additional Insured clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
<b>Flood Insurance</b>	
What is Required	Flood Insurance
When Does it Apply	Flood insurance is required for Property improvements located in SFHA A or V GS Bank may require flood insurance for improvements located outside a SFHA. It will be evaluated on a case by case basis.
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% of the replacement cost of improvements located in an SFHA.</li><li>• Business Income / Rent Loss Coverage for a minimum of 12 months plus a 90 Day Extended Period of Indemnity for improvements located in an SFHA. Business Income / Rent Loss coverage is required even if written on a stand-alone basis.</li><li>• If 100% of the full replacement cost is unavailable, then the maximum amount of insurance available under the National Flood Insurance Program (NFIP) must be obtained. An excess flood or Difference in Conditions (DIC) policy must provide for the difference, if any, between maximum limit provided by NFIP policies and the full replacement cost and the required Business Income / Rent Loss coverage as noted above.</li></ul>
Maximum Deductible	5% of the Total Insured Value as listed on the policy The acceptable deductible for a DIC is the limit of the NFIP policy (ies)
Loss Payee and Additional Insured clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
Flood insurance must be in the form of the standard policy issued by members of the National Flood Insurance Program (NFIP). Other policies that meet the NFIP’s requirements—such as those issued by licensed property and casualty insurance companies that are authorized to participate in NFIP’s “Write Your Own” program—will be acceptable.	



Earthquake Insurance

What is Required	Earthquake Insurance
When Does it Apply	If the property is in a high probability earthquake zone (i.e. Zone 3 or 4), then GS Bank will require a Probable Maximum Loss (“PML”) study to be conducted for each building. If the PML study reveals that the PML is less than 20% of the replacement cost earthquake insurance will not be required
Amount of Coverage	<ul style="list-style-type: none"><li>• If PML is greater than or equal to 20% of the replacement cost, then earthquake insurance must be maintained at an amount equal to the PML percentage of the replacement cost.</li><li>• Business Income / Rent Loss Coverage for a minimum of 12 months plus a 90 Day Extended Period of Indemnity. Business Income / Rent Loss coverage is required even if written on a stand-alone basis.</li></ul>
Maximum Deductible	5% of the total insured value as listed on the policy
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

Ordinance and Law Coverage

What is Required	Ordinance and Law Coverage (if applicable)
When Does it Apply	Properties that contain any type of <i>non-conformance</i> under current building, zoning, or land use laws or ordinances.
Amount of Coverage	<ol style="list-style-type: none"><li>1. Coverage A - Loss of Undamaged Portion of the Building<ul style="list-style-type: none"><li>• Equal to 100% of the full replacement cost of the Property less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the Property</li></ul></li><li>2. Coverage B - Demolition Cost<ul style="list-style-type: none"><li>• Minimum 10% of the replacement cost.</li></ul></li><li>3. Coverage C - Increased Cost of Construction<ul style="list-style-type: none"><li>• Minimum 10% of the replacement cost.</li></ul></li></ol>

Commercial General Liability Insurance

What is Required	<p>Commercial General Liability Insurance for bodily injury, property damage and personal injury.</p> <p>Coverage must include:</p> <ul style="list-style-type: none"><li>• Dedicated project limits if part of a master program</li><li>• Completed Operations Extension</li><li>• Post Completion Construction defects insurance clause continues</li></ul>
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	for a period equal to the applicable Statute of Limitation/Repose.
Amount of Coverage	1. \$1 million per occurrence/\$2 million minimum general aggregate limit plus 2. Minimum Umbrella Liability Insurance (above the primary) of \$25 million The minimum required coverage limit may be satisfied by adding any combination of primary and umbrella/excess per occurrence and aggregate limits so that the sum of both equals the sum of the limits required in 1. plus 2. above. Umbrella coverage must sit above general liability, auto liability and employers liability.
Maximum Deductibles	\$10,000 total combined deductibles and self insured retentions
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insured.
<b>Commercial Auto Liability Insurance</b>	
What is Required	Commercial Auto Liability Insurance that covers owned, non-owned, hired and/or leased vehicles (whichever shall apply), including personal injury protection and uninsured motorist liability.
When Does it Apply	If the developer/sponsor uses cars, vans or trucks for business purposes, Commercial Auto Liability Insurance must cover those vehicles.
Amount of Coverage	\$1 million per occurrence
Maximum Deductible	\$10,000
<b>Workers' Compensation</b>	
What is Required	Statutory Workers' Compensation and Employer's Liability Insurance
When Does it Apply	Where employees of the Borrower are required to be covered by workers' compensation laws of the state where the Property is located.
Amount of Coverage	<ul style="list-style-type: none"><li>• Employer's Liability with a limit of \$1 million and</li><li>• Statutory Limits for compensation</li></ul>
<b>Terrorism Insurance</b>	
What is Required	Terrorism Insurance (if available, TRIA is acceptable). Coverage is required for both the property and general liability policy.
When Does it Apply	For all properties
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% of the replacement cost of the property improvements</li><li>• Business Income / Rent Loss Coverage for a minimum of 12 months plus a 90 Day Extended Period of Indemnity. Business Income / Rent Loss coverage is required even if written on a stand-alone basis.</li></ul>

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Maximum Deductible	<ul style="list-style-type: none"><li>• Not more than the deductible of property insurance policy.</li></ul>
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

**Environmental / Pollution Legal Liability**

What is Required	Pollution condition causes bodily injury or property damage to any party: construction workers, project or existing facilities, employees, general public or neighboring property owners. Owner has ultimate responsibility for clean-up, transportation and disposal of toxic substances.
When Does it Apply	Will be reviewed on a case-by-case basis to determine if coverage is required.
Amount of Coverage	Will vary depending on the property condition
Maximum Deductible	\$10,000
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insured.

**Architect Professional Liability**

What is Required	Professional liability for Architects
When Does it Apply	When a design professional is involved in the project
Amount of Coverage	Will vary depending on the property
Maximum Deductible	\$10,000

**General Contractor/Other Policies:**

If the general contractor is different from the Project Partnership, it is expected they carry their own respective insurance. Their insurance must comply with these requirements. In addition, they must carry contractor’s equipment. Please have proof of coverage provided accordingly.

**III. POST CONSTRUCTION — PERMANENT INSURANCE**

**Property Damage Insurance**

What is Required	“Special Form” (“All Risk”) Property Insurance Policy
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% Replacement Cost</li><li>• Coverage must contain no coinsurance, or a coinsurance clause that is offset by an Agreed Amount provision.</li></ul>
Maximum Deductible	Physical Damage: <ul style="list-style-type: none"><li>• \$10,000 up to \$50 million in replacement cost values</li><li>• \$25,000 up to \$100 million in replacement cost values</li><li>• \$100,000 over \$100 million in replacement cost values</li><li>• Blanket Policy — up to 1% of the total replacement values as listed in the policy, but no more than \$250,000.</li></ul>

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Loss Payable and  
Additional Insured Clause

GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA  
named as loss payees and additional insureds

Windstorm, Flood and Terrorism exclusions also are acceptable, provided a separate policy or coverage is obtained for these exclusions, as specified in this document.

**Mechanical Breakdown / Boiler & Machinery**

What is Required	Comprehensive Form, Including Mechanical Breakdown
Amount of Coverage	<ul style="list-style-type: none"><li>• Total Building Value</li></ul>
Maximum Deductible	Physical Damage: <ul style="list-style-type: none"><li>• \$10,000 up to \$50 million in replacement cost values</li><li>• \$25,000 up to \$100 million in replacement cost values</li><li>• \$100,000 over \$100 million in replacement cost values</li><li>• Blanket Policy — up to 1% of the total replacement values as listed in the policy, but no more than \$250,000.</li></ul>
Loss Payable and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

**Business Income/Rent Loss Coverage**

What is Required	1. Business Income / Rent Loss Coverage 2. 90-day Extended Period of Indemnity  Business Income / Rent Loss Coverage is required (as applicable in this document) for all property insurance coverage including windstorm, flood, earthquake and terrorism even if written on a stand-alone basis.
When Does it Apply	All property types
Amount of Coverage	<ul style="list-style-type: none"><li>• Actual loss sustained or minimum 12 months’ gross income/rents.</li><li>• Extended Period of Indemnity - 90 days’ loss of income / rents</li></ul>
Maximum Deductible	Two weeks per occurrence

**Windstorm Coverage**

What is Required	If the Special Form policy excludes any type of wind-related event, a separate windstorm insurance policy must be obtained.
When Does it Apply	Required for all properties
Amount of Coverage	See Property Insurance and Business Income sections for amount of coverage required.
Maximum Deductible	5% of the total insured value, as listed in the policy
Loss Payable and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

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**Flood Insurance**

What is Required	Flood Insurance
When Does it Apply	Flood insurance is required for Property improvements located in SFHA A or V GS Bank may require flood insurance for improvements located outside SFHA A or V. It will be evaluated on a case by case basis.
Amount of Coverage	100% of the replacement cost of improvements located in SFHA A or V. See “Business Income/Rent Loss” for coverage required for improvements located in SFHA A or V. If 100% of the full replacement cost is unavailable, then the maximum amount of insurance available under the National Flood Insurance Program (NFIP) must be obtained. An excess flood or Difference in Conditions (DIC) policy must provide for the difference, if any, between maximum limit provided by NFIP policies and the full replacement cost and the required Business Income / Rent Loss coverage as noted above.
Maximum Deductible	5% of the Total Insured Value as listed on the policy The acceptable deductible for a DIC is the limit of the NFIP policy (ies)
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

Flood insurance must be in the form of the standard policy issued by members of the National Flood Insurance Program (NFIP). Other policies that meet the NFIP’s requirements—such as those issued by licensed property and casualty insurance companies that are authorized to participate in NFIP’s “Write Your Own” program—will be acceptable.

**Earthquake Insurance**

What is Required	Earthquake Insurance
When Does it Apply	If the property is in a high probability earthquake zone (i.e. Zone 3 or 4), then GS Bank will require a Probable Maximum Loss (“PML”) study to be conducted for each building. If the PML study reveals that the PML is less than 20% of the replacement cost earthquake insurance will not be required
Amount of Coverage	If PML is greater than or equal to 20% of the replacement cost, then earthquake insurance must be maintained at an amount equal to the PML percentage of the replacement cost.  See “Business Income/Rent Loss” for coverage required
Maximum Deductible	5% of the total insured value as listed on the policy

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Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
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**Ordinance and Law Coverage**

What is Required	Ordinance and Law Coverage
When Does it Apply	Properties that contain any type of non-conformance under current building, zoning, or land use laws or ordinances.
Amount of Coverage	1. Coverage A - Loss of Undamaged Portion of the Building <ul style="list-style-type: none"><li>• Equal to 100% of the full replacement cost of the Property less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the Property</li></ul> 2. Coverage B - Demolition Cost <ul style="list-style-type: none"><li>• Minimum 10% of the replacement cost.</li></ul> 3. Coverage C - Increased Cost of Construction <ul style="list-style-type: none"><li>• Minimum 10% of the replacement cost.</li></ul>

**Commercial General Liability Insurance**

What is Required	Commercial General Liability Insurance for bodily injury, property damage and personal injury. Coverage must include dedicated project limits if part of a master program.
Amount of Coverage	1. \$1 million per occurrence/\$2 million minimum general aggregate limit plus 2. Minimum Umbrella Liability Insurance (above the primary): \$25 million <ul style="list-style-type: none"><li>• The minimum required coverage limit may be satisfied by adding any combination of primary and umbrella/excess per occurrence and aggregate limits so that the sum of both equals the sum of the limits required in 1. plus 2. above. Umbrella coverage must sit above general liability, auto liability and employers liability.</li></ul>
Maximum Deductibles	\$10,000 total combined deductibles and self insured retentions
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insureds

**Commercial Auto Liability Insurance**

What is Required	Commercial Auto Liability Insurance that covers owned, non-owned, hired and/or leased vehicles (whichever shall apply), including personal injury protection and uninsured motorist liability.
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When Does it Apply	If the developer/sponsor uses cars, vans or trucks for business purposes, Commercial Auto Liability Insurance must cover those vehicles.
Amount of Coverage	\$1 million per occurrence
Maximum Deductible	\$10,000
<b>Workers’ Compensation</b>	
What is Required	Statutory Workers’ Compensation and Employer’s Liability Insurance
When Does it Apply	Where employees of the Borrower are required to be covered by workers’ compensation laws of the state where the Property is located.
Amount of Coverage	Employer’s Liability with a limit of \$1 million and Statutory Limits for compensation
<b>Terrorism Insurance</b>	
What is Required	Terrorism Insurance (if available, TRIA is acceptable). Coverage is required for both the property and general liability policy.
When Does it Apply	For all properties
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% of the replacement cost of the property improvements</li><li>• See “Business Income/Rent Loss” for coverage required</li></ul>
Maximum Deductible	<ul style="list-style-type: none"><li>• Not more than the deductible of property insurance policy.</li></ul>
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
<b>Environmental / Pollution Legal Liability</b>	
What is Required	Pollution condition causes bodily injury or property damage to any party: construction workers, project or existing facilities, employees, general public or neighboring property owners. Owner has ultimate responsibility for clean-up, transportation and disposal of toxic substances.
When Does it Apply	Will be reviewed on a case-by-case basis to determine if coverage is required.
Amount of Coverage	Will vary depending on the property condition
Maximum Deductible	\$10,000
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insureds

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**Sinkhole/Mine Subsidence Insurance**

What is Required	Required for properties in areas prone to these geological phenomena.
When Does it Apply	Will be reviewed on a case-by-case basis to determine if coverage is required.
Amount of Coverage	See Property Insurance and Business Income/Rent Loss
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payee and additional insureds

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT**

Dated: September , 2012  
in the amount of  
\$15,699,999  
(the “*Mortgage Amount*”)

From

**TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

having its principal office at:  
c/o RBH Group  
89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102

(the “*Mortgagor*”)

To

**NCIF NEW MARKETS CAPITAL FUND IX CDE, LLC,**  
a Delaware limited liability company

having an office at:  
c/o NCIF Capital, LLC  
135 S. LaSalle Street, Suite 2040  
Chicago, Illinois 60603

(“*NCIF Lender*”)

And

**CARVER CDC — SUBSIDIARY CDE 21, LLC,**  
a Delaware limited liability company

having an office at:  
c/o Carver Community Development Corporation  
75 West 125<sup>th</sup> Street  
New York, New York 10027

(“*Carver Lender*”)

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**BACDE NMTC FUND 4, LLC,**  
a Delaware limited liability company

having an office at:  
c/o AFL-CIO Housing Investment Trust  
1270 Avenue of the Americas, Suite 210  
New York, New York 10020

(“*BA Lender*”)

And

**GSNMF SUB-CDE 2 LLC,**  
a Delaware limited liability company

having an office at:  
c/o Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282

(“*GS Lender*”)

LOCATION OF PREMISES:

Street Address: Halsey Street, Pearl Street, Maiden Lane

City of: Newark

County of: Essex

State of: New Jersey

Block 57, Lot 31

Block 58, Lot 1 (f.k.a. Lots 1, 2, 4, and 41, and portions of Lots 5, 35.02, and 43)

Block 95, Lot 1.02(f.k.a. Lot 10 and portions of Lots 9 and 16)

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS AND SECURES OBLIGATIONS CONTAINING PROVISIONS FOR CHANGES IN INTEREST RATES, EXTENSIONS OF TIME FOR PAYMENT AND OTHER “MODIFICATIONS,” AS DEFINED IN N.J. LAWS 1985, CH. 353, IN TERMS OF SUCH OBLIGATIONS. UPON ANY SUCH MODIFICATION, THIS MORTGAGE SHALL HAVE THE BENEFIT OF THE LIEN PRIORITY PROVISIONS OF THAT LAW.

After recording, please return to:  
Jones Day  
222 East 41<sup>st</sup> Street  
New York, New York 10017  
Attn: Aviva Yakren, Esq.

This instrument was prepared by the above named attorney.

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**Recital**

The Mortgagor is the owner of the fee simple interest in the premises described in Exhibit A hereto. The Mortgagor proposes to construct or rehabilitate improvements on the Premises (as defined below) and, in order to finance the construction thereof, will borrow amounts up to the Mortgage Amount (the “**Loan**”) from each of NCIF Lender, Carver Lender, BA Lender and GS Lender pursuant to a Building Loan Agreement among the Mortgagor, NCIF Lender, Carver Lender, BA Lender, GS Lender, and GSB NMTC Investor LLC, a Delaware limited liability company, as administrative agent (the “**Administrative Agent**”), dated the date hereof (such agreement, together with any modifications and/or amendments thereof, the “**Loan Agreement**”). The Mortgagor has executed and delivered (i) to NCIF Lender the Loan A-1 Note, (ii) to Carver Lender the Loan A-2 Note, (iii) to BA Lender the Loan A-3 Note and (iv) to GS Lender the Loan A-4 Note (each as defined in the Loan Agreement, and together with any modifications, extensions and amendments thereto hereinafter collectively referred to as the “**Note**”), dated the date hereof, obligating it to pay the Mortgage Amount, or so much thereof as may be advanced in accordance with the terms of the Loan Agreement.

**Certain Definitions**

The Mortgagor, NCIF Lender, Carver Lender, BA Lender and GS Lender, and Administrative Agent agree that, unless the context otherwise specifies or requires the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms.

“**Chattels**” means all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements on the Premises.

“**Events of Default**” means the events and circumstances described as such in Section 2.1 hereof.

“**Family Members**” shall mean the spouses, parents, children and grandchildren of the partners, members or other equity interest holders in Mortgagor and any trust established for estate planning purposes for the benefit of such partners, members or other equity interest holders in Mortgagor or any of the foregoing specified family members.

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

“**Intangibles**” means all “general intangibles” (as such quoted term is defined in the Uniform Commercial Code of the state wherein the Premises are located) in any way relating to the Premises and/or the Improvements and in which the Mortgagor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue

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under all insurance policies now or hereafter obtained by the Mortgagor insuring the Mortgaged Property, as hereinafter defined, and all rights and interest of the Mortgagor thereunder and all rights, claims and/or causes of action which the Mortgagor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Premises.

“**Involuntary Rate**” means twelve and seventy-five hundredths percent (12.75%) above the rate of interest that would otherwise be payable under the Note, but in no event to exceed the maximum rate allowed by law.

“**Mortgagee**” or “**Mortgagees**” means, collectively, NCIF Lender, Carver Lender, BA Lender, GS Lender, and Administrative Agent on behalf of NCIF Lender, Carver Lender, BA Lender and GS Lender.

“**Premises**” means the premises situated in the City of Newark, County of Essex and State of New Jersey and more fully described in Exhibit A attached hereto and made a part hereof, including all of the air space, easements, rights, privileges, royalties and appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title interest, claim or demand whatsoever of the Mortgagor therein and in the streets, alleys and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired.

“**Upper Tier Entity**” shall mean, individually and collectively as the context requires, (a) TRB Newark Assemblage, LLC, (b) TRB Newark TRS, LLC, (c) RBH Partners, LLC and RBH Capital, LLC.

The terms used in this Mortgage, Assignment of Leases and Rents and Security Agreement (this “**Mortgage**”) which are not defined above or in the text of this Mortgage shall have the meanings ascribed thereto in the Loan Agreement.

**Granting Clause**

**NOW, THEREFORE**, for the purposes of securing the payment and performance of the following obligations (collectively, all of such obligations are hereinafter referred to as the “**Indebtedness**”):

- (i) the payment of both the principal of, and the interest and any other sums payable on, the Note or under this Mortgage, together with interest thereon and any and all fees with respect thereto as may be set forth in the Note and/or the Loan Agreement, and all amounts expended by any Mortgagee to maintain the lien of this Mortgage or protect any of the Mortgaged Property, including, without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, reasonable litigation expenses to prosecute or defend the rights, remedies and lien of this mortgage or title to the Mortgaged Property, and any costs, charges or amounts to which any Mortgagee become subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority; and
- (ii) the performance and observance of all the provisions hereof and of the Note and of the Loan Agreement, including the payment of any sums advanced by any Mortgagee to complete the Improvements contemplated by the Loan Agreement to the

extent the aggregate of such sums and any other sums expended pursuant hereto exceed the sum of the Mortgage Amount

the Mortgagor, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, gives, grants, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto each Mortgagee, all its estate, right, title and interest in, to and under any and all of the following described property (the “*Mortgaged Property*”) whether now owned or held or hereafter acquired:

- (i) the Premises;
- (ii) the Improvements;
- (iii) the Chattels;
- (iv) the Intangibles;
- (v) all rents, royalties, issues, profits, revenue, income and other benefits of the Premises and the Improvements (the “*Rents*”), the Master Lease (as such term is defined in the Loan Agreement), the Leases (as such term is defined in the Loan Agreement) and all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including further, the right upon the happening of an Event of Default, to receive and collect the Rents thereunder;
- (vi) all real estate tax refunds;
- (vii) all contracts of sale now or hereafter entered into in connection with the Premises and/or the Improvements or any part thereof and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance of buyers of their obligations thereunder and also including the right upon the happening of an event of default thereunder to enforce the obligations of such buyers and to receive and collect the amounts deposited thereunder and any and all further amounts which may be due under such contracts of sale or due upon the consummation of such contracts of sale;
- (viii) all right, title and interest of Mortgagor in and to all agreements, or contracts, now or hereafter entered into for the sale, leasing, brokerage, development, construction, management, maintenance and/or operation of the Premises (or any part thereof), including all moneys due and to become due thereunder, and all permits, licenses, bonds, insurance policies, plans and specifications relative to the construction and/or operation of the Improvements upon the Premises;

(ix) all Mortgagor’s rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Mortgagor’s rights to remain in possession of the Premises;

(x) all of Mortgagor’s claims and rights to the payment of damages arising from any rejection of a lease under or pursuant to the Bankruptcy Code, 11 U.S.C. § 101 et seq.;

(xi) any other property and rights which are, by the provisions of any document entered into in connection with the making of the Loan (collectively, the “*Loan Documents*”), required to be subject to the lien hereof, and any additional property and rights that may from time to time hereafter by installation in the Improvements and/or the Premises, or by writing of any kind, or otherwise, be subjected to the lien hereof by Mortgagor or by anyone on its behalf;

(xii) all deposits in, and proceeds of, all operating accounts of Mortgagor maintained at any Mortgagee and at Provident Bank; and

(xiii) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and condemnation awards and all rights of the Mortgagor to refunds of real estate taxes and assessments.

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

**ARTICLE I**

**PARTICULAR COVENANTS OF THE MORTGAGOR**

The Mortgagor covenants and agrees as follows:

1.1 The Mortgagor represents and warrants that it has a good and marketable title to an indefeasible fee estate in the Premises subject to no lien, charge or encumbrance except such as are listed as exceptions to title in the title policy insuring the lien of this Mortgage; that it will own the Chattels free and clear of liens and claims; that this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property and the exceptions referred to above; that the execution and delivery of this Mortgage and the Note has been duly authorized by the Mortgagor and that there is no provision in any document which evidences or establishes the existence of the Mortgagor requiring further consent for such action by any other entity or person; that it is duly organized, validly existing and is in good standing under the laws of the state of its formation or incorporation, as the case may be; that it has (i) all necessary licenses, authorizations, registrations, permits and approvals and (ii) full power and authority to own its properties and carry on its business as presently conducted and the execution and delivery by it of and performance of its obligations under, this Mortgage and the Note will not result in the Mortgagor being in default under any provisions of any document which evidences or establishes the existence of the Mortgagor or of any mortgage, credit or other agreement to which the Mortgagor is a party or which affects the Mortgagor or the Premises, or any part thereof; that it will preserve such title, and will forever warrant and defend the same to each Mortgagee and will

forever warrant and defend the validity and priority of the lien hereof against the claims of all Persons and parties whomsoever.

1.2 The Mortgagor will, at the cost of the Mortgagor, and without expense to any Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as each Mortgagee shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto each Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to each Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, will execute and deliver, and hereby authorizes each Mortgagee to execute and file in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property or any part thereof. Mortgagor will, at its sole cost and expense, do, execute, acknowledge and deliver all and every such acts, information reports, returns and withholding of monies as shall be necessary or appropriate to comply fully, or to cause full compliance, with all applicable information reporting and back-up withholding requirements of the Internal Revenue Code of 1986, as amended (including all regulations promulgated thereunder) in respect of the Premises and all transactions related to the Premises, and will at all times upon any Mortgagee's request provide such Mortgagee with satisfactory evidence of such compliance and notify such Mortgagee of the information reported in connection with such compliance.

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

(b) Subject to the right of Mortgagor to in good faith contest such claims with the applicable authority, the Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or the Intangibles, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposes, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage or any mortgage supplemental hereto, any security instrument with respect to the Chattels and/or the Intangibles or any instrument of further assurance.

1.4 The Mortgagor will punctually pay the principal and interest and all other sums to become due in respect of the Note and the Loan Agreement at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all in any coin or currency of the United States of America which at the time of such payment shall be legal tender

for the payment of public and private debts and all such principal and interest due in respect of the Note and the Loan Agreement is hereby deemed an obligation due under this Mortgage.

1.5 The Mortgagor will, so long as it is owner of the Mortgaged Property or any part thereof, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business and/or limited liability company under the laws of the state of its formation and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

1.6 All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Premises or any part thereof, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor will execute and deliver to each Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as such Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

1.7 (a) The Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against the Mortgaged Property, or any part thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. The Mortgagor will, upon the reasonable request of any Mortgagee, deliver to such Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property, or any part thereof, or the revenues, rents, issues, income or profits thereof.

Mortgagees may, at their reasonable option to be exercised by thirty (30) days written notice to the Mortgagor, require the deposit by the Mortgagor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations under this subsection (a) when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with Mortgagees, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by Mortgagees in their reasonable discretion. Such amounts shall be held by Mortgagees with interest and applied to the payment of the obligations in respect to which such amounts were deposited or, at the option of Mortgagees, to the payment of said obligations in such order or priority as Mortgagees shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in

full, the Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with Mortgagees. Nothing herein contained shall be deemed to affect any right or remedy of any Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness.

(b) The Mortgagor will pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general will do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of the Mortgagor, without expense to any Mortgagee.

(c) Nothing in this Section 1.7 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section so long as the Mortgagor shall in good faith and at its own expense bond such obligation, contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Premises or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of any Mortgagee, provide security reasonably satisfactory to such Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section shall become necessary to prevent the delivery of a tax deed, or its equivalent, conveying the Mortgaged Property, or any part thereof, because of non-payment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or its equivalent.

1.8 The Mortgagor will pay any and all taxes, governmental charges, fees and/or levies by reason of each Mortgagee's ownership of the Note or this Mortgage and/or resulting from the exercise by any Mortgagee of any of its rights and/or remedies provided for under this Mortgage, except for income taxes of any Mortgagee, and any similar gains tax law which may hereafter be enacted. The obligations assumed by the Mortgagor pursuant to this Section 1.8 shall survive the exercise by each Mortgagee of any of its rights and/or remedies under this Mortgage.

1.9 (a) Mortgagor shall keep the Premises and Chattels insured against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain, at Mortgagor's sole cost and expense, the following described policies of insurance (collectively, the "**Insurance Policies**"):

(i) During any period of construction, repair or restoration, "All Risk" Builder's Risk insurance policy for the Project on which the work is to be executed or which is to be constructed, for the full completed value of Improvements and shall also cover material, equipment, and supplies of all kinds incident to the Improvements, in temporary structures, in vehicles, or in the open.

(ii) Property insurance, covering the Mortgaged Property, including 100% of the insurable replacement cost value of all tenant improvements and betterments that any



agreement requires Mortgagor to insure, against all risks of loss to the Improvements customarily covered by so-called "Cause of Loss — Special Form" policies as available in the insurance market as of the closing date. Such policy shall cover at least the following perils: building collapse, fire, flood, back-up of sewers and drains, water damage, tsunami, windstorm, earthquake, earth movement, landslide, mudslide, subsidence, acts of terrorism, impact of vehicles and aircraft, lightning, machinery breakdown, malicious mischief, and vandalism. The policy shall cover (i) 100% of the insurable replacement cost value of the Mortgaged Property; (ii) 100% of the insurable replacement cost value of all tenant improvements and betterments that any agreement requires Mortgagor to insure; (iii) loss of the undamaged portion of the Mortgaged Property and additional expense of demolition and increased cost of construction, including, without limitation, increased costs that arise from any changes in laws or other legal requirements with respect to such restoration, in an amount as is acceptable to Mortgagee. Coverage to include replacement cost valuation, no margin clause and a waiver of coinsurance or agreed amount endorsement, and include such clauses as may be necessary to ensure that the Mortgagee will not be deemed to be a co-insured thereunder. The policy shall have no deductible more than \$25,000, except as agreed to by Mortgagee, and shall be written with an unexpired term of at least one year, issued by an insurer acceptable to the Mortgagee. The policy shall also cover business interruption and/or rent loss, on an actual loss sustained basis, in an amount at least equal to 18 months of the Mortgagor's actual or projected gross revenue, and if applicable Mortgagor's income, with respect to tenants, at 80% occupancy during such period. The amount of such insurance shall be increased from time to time during the term of the Note as and when receipts from the Premises increase, and shall be endorsed to include an extended period of indemnity of at least 180 days. The policy shall name the Mortgagee on a standard mortgagee endorsement for real property and lender loss payee endorsement for loss of income coverage on forms acceptable to Mortgagee. With respect to property insurance sub limits and/or annual or policy-term aggregate limits applicable to any insured peril, including but not limited to earthquake, flood, named storm and any other peril that may be subject to such sub limit and/or aggregate limit, Mortgagor agrees that if the limit of insurance applicable to any insured peril is subject to an annual aggregate or a policy-term aggregate, Mortgagor will notify Mortgagee if and when applicable policy aggregate limits are eroded due to incurred losses by 50% or more of applicable limits during the term of the loan, and further, that Mortgagor, as commercially reasonable, (as agreed to between the Mortgagor and Mortgagee), will immediately cause the aggregate limits to be restored to 100% of the pre-loss aggregate limit;

(iii) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Mortgaged Property (such coverage to include provisions waiving subrogation against the Authority and the Purchaser), including coverage for: (i) commercial general liability insurance; (iii) umbrella liability insurance. Liability insurance shall be in the so-called "occurrence" form and shall provide coverage in amounts not less than \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate. All Liability Insurance shall name Mortgagee as an "Additional Insured", including both on-going and completed operations, by endorsements satisfactory to Mortgagee;

(iv) Worker's Compensation and Employer's Liability insurance shall be provided in accordance with the requirements of the laws of New Jersey.

(v) During any period of construction Mortgagor shall provide or ensure that the following coverage is maintained:

(A) “Special Perils” builders’ all risk insurance written in “100% builders risk completed value, non-reporting form”, including coverage therein for “completion and/or premises occupancy”, such insurance to be in the amounts and terms specified in subparagraph (ii) above, plus, (1) coverage for all materials which will become a part of the new building, whether at the construction site, stored elsewhere, or in transit; (2) soft costs coverage including 100% of the loan interest, and coverage for recurring expenses including but not limited to plans, specifications, blueprints and models, real estate taxes, real estate commissions, advertising, architectural and engineering supervisory costs, legal and accounting costs, and delayed completion business income/rental interruption (if any) on an actual loss sustained basis; (3) provide for permission for partial occupancy.

(B) Mortgagor shall ensure that the general contractor for this project maintains (i) commercial general liability coverage, including products and completed operations coverage, containing no EIFS (Exterior Insulation Finish System) exclusion with respect to this project if the project will use EFIS, that shall be continuously renewed for the statutory period during which claims can be made following completion of the project, (ii) automobile liability insurance (including owned, hired and non-owned liability) and (iii) umbrella/excess liability insurance with no less than \$25,000,000 in limits per occurrence and in the annual aggregate per project or \$50,000,000 if aggregates are shared among multiple projects, and in addition all trade contractors shall provide similar liability insurance coverage with umbrella liability limits that are commensurate with the risks presented by their operations at the site as determined by the general contractor, provided that any crane subcontractor shall provide limits of at least \$10,000,000 or such other amount as is acceptable to Mortgagee. All parties engaged in work on the Improvements or on any restoration shall maintain any workers’ compensation and employer’s liability insurance required by law in force for all workers on the job. A certificate of insurance shall be issued to Mortgagee, naming Mortgagee as Additional Insured (except with respect to workers’ compensation and employer’s liability), and evidencing all insurance required in this subsection. Mortgagee shall be named as Additional Insured with respect to general contractor’s ongoing operations and completed operations by endorsements satisfactory to Mortgagee. Such insurance shall be primary and any other insurance maintained by the additional insured shall be excess only and not contributing with this insurance.

(C) Contractor’s Pollution Legal Liability Insurance for the entire term of the construction project, in a minimum amount of \$5,000,000, and including coverage for mold. Such policy shall name Mortgagee as Additional Insured on a form acceptable to Mortgagee.

(D) Architects and Engineers Professional Liability Insurance. Mortgagor shall cause the Architect and Engineers to obtain and maintain Architect’s and Engineer’s Professional Liability Insurance during the period commencing on the date of the Architect’s agreement or the date of contract with the engineers, respectively, and continuously renewing for a period no less than the statute of limitations in the state where the project is located during which claims can be made after substantial completion. Such insurance shall be in an amount equal to at least \$3,000,000 per claim and in the annual aggregate, or such other

amount acceptable to Mortgagee. Any subcontractor to the Architect shall maintain such insurance in an amount not less than \$1,000,000 per claim and in the annual aggregate or such other amount acceptable to Mortgagee.

(vi) Borrower shall maintain environmental insurance covering unknown environmental hazards in an amount not less than \$10,000,000 per discovery and in the Aggregate. Such coverage shall identify Mortgagee as an "Additional Named Insured" through an endorsement satisfactory to Mortgagee. The carrier shall agree that the policy rights for the project shall be automatically assigned to Mortgagee, with no further action required by any person, if control of the Mortgaged Property passes to Mortgagee or to any of their respective designees as the direct or indirect result of an event of default or as the direct or indirect result of the enforcement of any rights or remedies of Mortgagee hereunder or under any of the Loan Documents (including, without limitation, the transfer of the property and/or Improvements or any interest therein to Mortgagee or its designee through foreclosure, by deed-in-lieu of foreclosure or otherwise);

(vii) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions or testing procedures), in an amount at least equal to the outstanding principal amount of the Note or \$5,000,000, whichever is less;

(viii) If the Premises, or any part thereof, are located in an area that has been identified by the Federal Emergency Management Agency as being located in a special flood hazard area, Mortgagor will keep, for as long as any Indebtedness remains unpaid, the Improvements covered by flood insurance in an amount equal to the lesser of (A) the full replacement cost of the Premises or (B) the maximum limit of coverage available for the Premises under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as the same may have been or may hereafter be amended or modified (and any successor act thereto); and

(ix) Such other types and amounts of insurance coverage as shall be reasonably requested by Mortgagee and are customarily (A) maintained by owners or operators of properties similarly situated to the Premises, or (B) required by institutional lenders in like transactions.

(b) Each of the Insurance Policies shall be endorsed to name Mortgagee and its successors and assigns as mortgagee or lender loss payee, with loss greater than \$250,000.00 payable to Mortgagee and its successors and assigns, without contribution or assessment, pursuant to a standard first mortgage endorsement in the form of, or substantially equivalent to, the standard mortgagee or lender loss payee endorsement used in the State of New Jersey, provided that with respect to liability insurance or other policies of insurance required hereunder where a mortgagee or lender loss payee endorsement is not available, Mortgagee shall, to the fullest extent available, be named as an additional insured in any such Insurance Policies. All Insurance Policies and endorsements required pursuant to this Section 1.9 shall be fully paid as premiums are due and contain such provisions and expiration dates and be in such form and amounts as indicated above and shall be issued by an insurance company authorized to sell

insurance in the State of New Jersey, and having an A.M. Best General policyholders' rating of A or better and a financial size category of 8 or better. Each policy shall specifically provide that (A) such policy may not be cancelled except upon thirty (30) days' prior written notice to Mortgagee and that no act or thing done by Mortgagor shall invalidate the policy as against Mortgagee and (B) any and all insurance proceeds will be paid to Mortgagee so long as Mortgagee certifies to the insurer that the unpaid Indebtedness exceeds the proceeds of insurance. Each policy shall provide a waiver of any right of subrogation of the insurers thereunder against any Person insured under such policy, and a waiver of any right of the insurers to any set off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and each policy shall provide such other terms and provisions as any owner or operator of facilities similar to the Mortgagor's would, in the prudent management of its properties, require to be provided in policies, binders or interim insurance contracts with respect to facilities similar to the Project or the collateral owned or operated by it. At least thirty (30) days prior to the expiration of any such policy, the Mortgagor shall furnish the Mortgagee with evidence that such policy has been renewed or replaced, in formats acceptable to the Mortgagee. Mortgagor shall provide copies of all renewal or replacement policies within 60 days of the renewal date. Mortgagor shall assign and deliver the Insurance Policies to Mortgagee and Mortgagee shall have and hold said Insurance Policies as collateral and further security for the payment of the Indebtedness until the full payment of the Indebtedness, or, if reasonably acceptable to Mortgagee, certificates of such policies together with such other information regarding such policy as Mortgagee shall reasonably require. In addition, from time to time, upon occurrence of any change in the use, operation or value of the Premises, or in the availability of insurance in the area in which the Premises are located, Mortgagor shall, within twenty (20) days after reasonable demand by Mortgagee, take out such additional amounts and/or such other kinds of insurance as Mortgagee may require. The Insurance Policies delivered by Mortgagor to Mortgagee on the date hereof shall be deemed acceptable to Mortgagee.

(c) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.9, unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under the standard mortgage endorsement of the character above described. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

(d) Mortgagor shall give Mortgagee prompt written notice of any damage to, or destruction of, the Improvements, or any part thereof, or of any other casualty or loss at or affecting the Premises or the Chattels, and Mortgagee shall have the right to approve the adjustment of any insurance claim in respect of any such damage, destruction, casualty or loss in excess of \$250,000. To the fullest extent permitted by applicable law, the proceeds of any insurance coming into the possession of Mortgagee in respect of any damage, destruction, casualty or loss shall not be deemed trust funds, and Mortgagee shall have the option, in its sole discretion, to apply any insurance proceeds it may receive pursuant hereto or otherwise to the payment of the Indebtedness, or to allow all or a portion of such proceeds to be used for the restoration of the Mortgaged Property. In the event any such insurance proceeds shall be used to reduce the Indebtedness, the same shall be applied by Mortgagee, after the deduction therefrom and repayment to Mortgagee of any and all costs incurred by Mortgagee in the recovery thereof

(including reasonable attorneys' fees and disbursements), in any manner it shall designate, including, but not limited to, the application of such proceeds to the then unpaid installments of the principal balance due under the Note in the inverse order of their maturity, such that the regular payments, if any, under the Note shall not be reduced or altered in any manner. Any prepayment of the Note from the proceeds of insurance shall be without prepayment premium. Notwithstanding the foregoing, if the Improvements have been damaged or destroyed, Mortgagee shall allow Mortgagor to use any such insurance proceeds for the restoration of the Improvements, provided that Mortgagee shall reasonably determine that the restoration of the Improvements can be completed prior to the Maturity Date (as defined in the Note) of the Note, and that insurance proceeds shall be sufficient to complete the restoration, or if the amount of such insurance proceeds shall be insufficient to complete such restoration, Mortgagor deposits with Mortgagee an amount equal to the difference between the estimate of the Architect (as hereinafter defined) (as derived in accordance with subsection (e) below) of the cost of such restoration and the insurance proceeds received.

(e) Unless the Indebtedness is paid in full to Mortgagee within thirty (30) days of the date of any damage, destruction, loss or other casualty to the Improvements, and provided that casualty insurance proceeds are made available to Mortgagor, Mortgagor shall promptly commence and diligently continue to perform the repairs, restoration and rebuilding of the portion of the Improvements so damaged or destroyed (hereinafter the "**Work**") so as to restore the Improvements and Chattels in full compliance with all legal requirements and so that the Mortgaged Property shall be at least equal in value and general utility as they were prior to such damage or destruction, and if such damage or destruction, in the reasonable judgment of Mortgagee, shall exceed Two Hundred Fifty Thousand (\$250,000) Dollars (hereinafter, collectively "**Major Work**"), Mortgagor shall, prior to the commencement of the Major Work, furnish to Mortgagee for its approval: (1) complete plans and specifications for the Major Work, with satisfactory evidence of the approval thereof (i) by all governmental authorities whose approval is required and (ii) by Borrower's Architects (as defined in the Loan Agreement) or other architect satisfactory to Mortgagee (hereinafter, the "**Architect**") and which shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the Major Work; and (2) certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the Major Work. Mortgagor shall not commence any of the Major Work until Mortgagor shall have complied with applicable requirements referred to in this subsection (e), and after commencing the Major Work, Mortgagor shall perform the Major Work diligently and in good faith in accordance with the plans and specifications referred to in this subsection (e), if applicable.

(f) If the insurance proceeds, less the cost, if any, to Mortgagee of such recovery and of paying out such proceeds (including reasonable attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor) should be paid towards restoration of the Improvements and Chattels or if such insurance proceeds are applied toward such restoration, then such insurance proceeds shall be applied by Mortgagee to the payment of the cost of the Work and shall be paid out from time to time to Mortgagor and/or, at Mortgagee's option, directly to the contractor, subcontractors, materialmen, laborers, engineers, architects and other persons rendering services or materials for the Work, as said Work progresses except as otherwise hereinafter provided, but subject to the following conditions, any of which Mortgagee may freely waive, at Mortgagee's sole discretion:

(i) If the Work to be done is Major Work, as determined by Mortgagee, the Architect shall be in charge of such Major Work;

(ii) Each request for payment shall be made on fifteen (15) days prior notice to Mortgagee and shall be accompanied by a certificate of the Architect if one is required under subsection (e) above, otherwise by a certificate of an officer of Mortgagor, stating (A) that all of the Work completed has been done in compliance with the approved plans and specifications, if any be required under said subsection (e) above, and in accordance with all provisions of law; (B) the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractor, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums, if any, previously paid out by Mortgagee does not exceed the value of the Work done to date of such certificate, and (C) that the amount of such proceeds and other deposits remaining in the hands of Mortgagee will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion);

(iii) Each request shall be accompanied by waivers of liens satisfactory to Mortgagee covering that part of the Work previously paid for, if any, and by a search prepared by the title company which insured the lien of the Mortgage or by other evidence satisfactory to Mortgagee, that there has not been filed with respect to the Premises or any part thereof any mechanic's lien or other lien or instrument for the retention of title in respect of any part of the Work not discharged of record and that there exist no encumbrances on or affecting the Premises or any part thereof or any part of the other Mortgaged Property, other than the Other Mortgages;

(iv) The request for any payment after the Work has been completed shall be accompanied by a copy of all certificates, permits, licenses, waivers and/or other documents required by law to render occupancy of the Premises legal; and

Upon completion of the Work and payment in full therefor, or upon failure on the part of Mortgagor to commence, as provided in Section 1.9(e) above, or diligently to continue the Work, or at any time upon request by Mortgagor, Mortgagee may apply the amount of any such proceeds then or thereafter in the hands of Mortgagee to the payment of the Indebtedness; provided, however, that nothing herein contained shall prevent Mortgagee from applying at any time the whole or any part of such proceeds to the curing of any default after expiration of applicable notice and cure periods under this Mortgage, the Note or any other Loan Documents.

(g) Notwithstanding the foregoing, provided no Event of Default exists hereunder, each Mortgagee shall allow the use of such proceeds for the restoration of the "Improvements", as defined in the Loan Agreement and Chattels, provided each Mortgagee and "Construction Consultant," as such term is defined in the Loan Agreement, determine that the amount of such insurance proceeds plus the undisbursed portion of the Loan for "Direct Costs", as defined in the Loan Agreement, and any available equity or other funds of the Mortgagor shall be sufficient to complete the Improvements on or before the "Completion Date", as defined in the Loan Agreement. In the event any Mortgagee shall allow the use of such proceeds for the

restoration of the "Improvements," as defined in the Loan Agreement, the Mortgagor shall diligently prosecute completion of the Improvements in accordance with the terms of the Loan Agreement, and the insurance proceeds and/or the amount of any such deposits shall be disbursed to Mortgagor under the same terms and conditions for the advancing of loan proceeds under the Loan Agreement except that if the damage is less than \$250,000.00, then the proceeds shall be disbursed to Mortgagor in one advance upon completion of the restoration; amounts not required for such purposes shall be applied, at such Mortgagee's option, to the prepayment of the Note and to interest, if any, accrued and unpaid thereon in such order and proportions as such Mortgagee may elect. In the event that such proceeds are reasonably determined by any Mortgagee to be inadequate, such Mortgagee shall receive from Mortgagor a cash deposit equal to the excess of said estimated cost of restoration over the amount of said available proceeds. If the conditions for the advance of insurance proceeds for restoration set forth above are not satisfied within sixty (60) days of such Mortgagee's receipt thereof or if the actual restoration shall not have been commenced within such period, each such Mortgagee shall have the option at any time thereafter to apply such insurance proceeds to the payment of the Note and to interest, if any, accrued and unpaid thereon in such order and proportions as such Mortgagee may elect.

(h) Notwithstanding the foregoing, the Mortgagor shall comply with all insurance requirements contained in the Loan Agreement, and in the case that this Section 1.9 conflicts with the insurance requirements contained in the Loan Agreement, the requirements set forth in the Loan Agreement shall control.

1.10 If the Mortgagor shall fail to perform any of the covenants contained in Section 1.1, 1.3, 1.7, 1.8, 1.9, 1.12 or 1.15, Mortgagees may make advances to perform the same on Mortgagor's behalf, and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. The Mortgagor will repay on demand all sums so advanced on its behalf with interest at the Involuntary Rate. The provisions of this Section 1.10 shall not prevent or delay any default in the observance of any covenant contained in said Section 1.1, 1.3, 1.7, 1.8, 1.9, 1.12 or 1.15 from constituting an Event of Default.

1.11 (a) The Mortgagor will keep adequate records and books of account in accordance with generally accepted accounting principles and will permit each Mortgagee, by its respective agents, accountants and attorneys, to visit and inspect the Premises and examine its records and books of account and to discuss its affairs, finances and accounts with the officers of the Mortgagor, at such reasonable times as may be requested by such Mortgagee.

(b) The Mortgagor will deliver to each Mortgagee with reasonable promptness, but in no event later than ninety (90) days after the close of its fiscal year, an audited balance sheet and statement of profit and loss setting forth in each case, in comparative form, figures for the preceding year. Throughout the term of this Mortgage, the Mortgagor, with reasonable promptness, will deliver to each Mortgagee such other information with respect to the Mortgagor as such Mortgagee may reasonably request from time to time. All financial statements of the Mortgagor shall be prepared in accordance with generally accepted accounting principles, shall be delivered in duplicate, and shall be accompanied by the certificate of a principal financial or accounting officer of the Mortgagor, dated within five (5) business days of the delivery of such statements to each Mortgagee, stating that he knows of no Event of Default, nor of any default which after notice or passage of time or both would constitute an Event of

Default, which has occurred and is continuing, or, if any such default or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Mortgagor has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that the Mortgagor has fulfilled all its obligations under this Mortgage which are required to be fulfilled on or prior to the date of such certificate.

(c) The Mortgagor, within five (5) days after request therefor, shall furnish a written statement duly acknowledged of the amount due whether for principal or interest on the Note and whether any offsets, counterclaims or defenses exist against any Mortgagee or the Indebtedness or any part thereof.

1.12 The Mortgagor will not commit any waste on the Mortgaged Property, or any part thereof, or make any change in the use of the Mortgaged Property, or any part thereof, which will in any material way increase any ordinary fire or other hazard arising out of construction or operation. The Mortgagor will, at all times, maintain the Improvements in good operating order and condition and will promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end.

1.13 The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises, or any part thereof, will notify each Mortgagee of the pendency of such proceedings. Each Mortgagee may participate in any such proceedings and the Mortgagor from time to time will deliver to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to the Mortgagees. Mortgagees shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid subject to Mortgagor's consent, which shall not be unreasonably withheld. In any such condemnation proceedings each Mortgagee may be represented by counsel selected by each such Mortgagee. The proceeds of any award or compensation so received shall, at the option of each Mortgagee, either be applied toward the payment of the Indebtedness, notwithstanding the fact that the Indebtedness may not then be due and payable, or to the restoration of the Improvements. In the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, the same shall be applied by each Mortgagee in any manner it shall designate, including, but not limited to, the application of such award or compensation to the then unpaid installments of the principal balance due under the Note in the inverse order of their maturity such that the regular payments under the Note shall not be reduced or altered in any manner. The Mortgagor, upon request by any Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to each Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. Mortgagees shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for in the Note.

1.14 (a) The Mortgagor will not (i) execute an assignment of the rents, or any part thereof, from the Premises, except pursuant to the Other Mortgages (as hereinafter defined), (ii) terminate or consent to the cancellation or surrender of any lease of the Premises, or any part thereof, now existing or hereafter to be made, other than in the ordinary course of business with



respect to Residential Leases (as such term is defined in the Loan Agreement), (iii) modify or amend or consent to the modification or amendment of any other lease or sublease of the Premises, or any part thereof, now existing or hereafter to be made, other than in the ordinary course of business with respect to Residential Leases, or (iv) accept prepayments of any installments of rents to become due under such leases, except prepayments in the nature of security for the performance of the lessees thereunder, in any other manner materially impair the value of the Mortgaged Property or the security of this Mortgage without the written consent of Mortgagee, which consent shall not be unreasonably withheld.

(b) Except for Residential Leases executed in the standard form previously approved by Mortgagee and the Master Lease and the Leases, the Mortgagor will not execute any lease of all or any portion of the Premises, without first obtaining the written consent of Mortgagee, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all such approved leases, on the part of the lessor thereunder to be kept and performed and will at all times do all things necessary to compel performance by the lessee under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. Any and all Leases entered into shall, unless otherwise consented to by Mortgagee in writing, be subject and subordinate to the terms of this Mortgage. All Leases entered into shall provide, and if any Residential Lease provide, for the giving by the lessee thereunder of certificates with respect to the state of such Leases, and Mortgagor shall exercise its right to request such certificates within ten (10) business days of any demand thereof by Mortgagee. Mortgagor shall furnish to Mortgagee, within ten (10) business days after a request by Mortgagee to do so, an executed counterpart of all such Leases. All lessees under such Leases shall execute such estoppel certificates, subordinations, attornments and other agreements as Mortgagee may require. Under no circumstances shall Mortgagee be liable for any obligation to pay any leasing commission, brokerage fee or similar fee or charge in connection with any Lease nor shall Mortgagee be obligated to complete any Improvements for the benefit of any lessee.

(c) The Mortgagor shall furnish to each Mortgagee, within fifteen (15) business days after a request by any Mortgagee to do so, a written statement containing the names of all lessees of the Premises, the terms of their respective leases, the space occupied and the rentals payable thereunder.

1.15 The Mortgagor will cause the Improvements to be constructed substantially in accordance with the terms of the Loan Agreement, will prosecute such construction with due diligence, and will comply with the covenants made by it in the Loan Agreement, all of which are incorporated herein by reference as though set forth herein, and will permit no "Event of Default", as therein defined, to occur thereunder.

1.16 To the extent not so provided by applicable law each lease of the Premises, or of any part thereof, shall provide that, in the event of the enforcement by any Mortgagee of the remedies provided for by law or by this Mortgage, the lessee thereunder will, upon request of any person succeeding to the interest of the Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one month in advance, except

prepayments in the nature of security for the performance by said lessee of its obligations under said lease or (ii) any amendment or modification of the lease made without the consent of each Mortgagee or such successor in interest. Each lease shall also provide that, upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.

1.17 In the event any payment provided for herein or in the Note shall become overdue for a period in excess of fifteen (15) days, a late charge of five (5) cents for each dollar so overdue shall become immediately due to each respective Mortgagee for the purpose of defraying the expenses incident to handling such delinquent payment, and such charge shall be deemed to be part of the Indebtedness and therefore secured by the lien of this Mortgage. Late charges shall be payable with the next installment of principal and/or interest due under the Note.

1.18 [RESERVED.]

1.19 The Mortgagor agrees that it shall indemnify and hold each Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorneys' fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Mortgage.

1.20 The Mortgagor expressly covenants and agrees to pay in full the reasonable fees and expenses of each Mortgagee's counsel, promptly upon receipt of a statement therefor, which are incurred prior to and after the date hereof and which fees and expenses arise in connection with any matter incidental to the loan which is evidenced by the Note and secured by this Mortgage.

1.21 The Mortgagor hereby represents, warrants, covenants and agrees that other than as set forth in the Environmental Report (as defined in the Loan Agreement), to the best of Mortgagor's knowledge after due inquiry, the Premises and the Improvements comply and shall hereafter comply with all laws, rules, regulations and ordinances of the state and the local governmental authorities where the Premises are located and the United States of America relating to the storage, use, disposal, generation, transportation, and/or treatment of hazardous, toxic and/or radioactive matter and/or waste, including without limitation asbestos (collectively "**Toxic Materials**"). If the presence of Toxic Materials on the Premises or in any Improvements has resulted in, and/or shall hereafter result in (a) contamination or deterioration of water or soil to a level of contamination greater than the levels permitted or established by any governmental agency or authority having jurisdiction over such contamination, (b) the termination or modification of any permit or authorization as to the use and/or occupancy of the Premises or Improvements and/or (c) the inability to obtain or maintain insurance policies satisfactory to each Mortgagee, then the Mortgagor covenants and agrees to promptly take any and all action necessary to clean up such contamination to the extent required by any such governmental agency or authority and/or issuer of an insurance policy. The Mortgagor covenants and agrees to indemnify each Mortgagee and any affiliate or nominee of each Mortgagee and hold each Mortgagee and any affiliate or nominee of each Mortgagee harmless from any and all liabilities, losses, costs and/or expenses arising out of and/or resulting from the existence and/or the removal of any Toxic Materials at, on, and/or in the Premises or any part or parts thereof or the Improvements or any part or parts thereof and/or the effects of any such Toxic Materials located

at, on and/or in the Premises or any part or parts thereof or the Improvements or any part or parts thereof except for matters caused by any Mortgagee. The foregoing indemnity shall survive any foreclosure sale of the Premises and any delivery by the Mortgagor and the acceptance by each Mortgagee of a deed in lieu of foreclosure of the Premises.

1.22 Mortgagor will not consent to, join in, permit or allow any change in the zoning laws or ordinances relating to or affecting the Premises, and will promptly notify each Mortgagee of any changes to the zoning laws affecting the Premises of which it has received written notice thereof.

1.23 Except for the Other Mortgages, the Master Lease, the Leases and the Residential Leases, Mortgagor will not, directly or indirectly, transfer, mortgage, convey, sell, assign, lease, pledge or encumber the Mortgaged Property, or any part thereof or any direct or indirect interest therein, without the express prior written consent of each Mortgagee. Mortgagor shall not, directly or indirectly, create, incur, assume or suffer to exist any liability for indebtedness (including subordinated indebtedness), whether secured or unsecured, except indebtedness due with respect to the Loan. Neither the structure of Mortgagor nor the direct or indirect ownership of Mortgagor may be changed from that existing on the date hereof, nor may Mortgagor consolidate with, be acquired by, or merge into or with any Person (as defined in the Loan Agreement), without the express prior written consent of each Mortgagee. Mortgagor shall not change the management structure of the Mortgagor or the Premises, nor shall Mortgagor enter into any management and/or leasing agency or similar agreements with respect to the Premises without the prior written consent of each Mortgagee. Notwithstanding anything contained herein in or in the Loan Documents to the contrary, the following transfers shall be permitted hereunder: (a) the direct or indirect transfer in any Upper Tier Entity to one or more Family Members for estate planning purposes, provided that the transferor of any such interest shall at all times retain all decision-making authority with respect to such transferred interest, including all voting and consent rights with respect thereto, (b) the direct or indirect transfer, in one or a series of transactions, in any Upper Tier Entity; provided, however, that as a condition to each such transfer set forth in (a) or (b) above: (i) Mortgagee shall receive not less than thirty (30) days prior written notice with respect to any direct transfer by an Upper Tier Entity of its direct interests in RBH-TRB Newark Holdings LLC, including, without limitation, the name of the proposed transferee and the date the transfer is expected to be effective, and Mortgagee shall be informed of any indirect transfer of any interests in the direct or indirect constituent members of any Upper Tier Entity which such Upper Tier Entity receives, or has the right to consent to, pursuant to its organizational documents, by such Upper Tier Entity delivering notice thereof to Mortgagee, (ii) the transferee must be in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control of the U.S. Department of the Treasury and must not be listed on any restricted list published by the Federal Government of the United States of America, (iii) at all times Nicolas Berggruen shall continue to own (legally and beneficially), directly or indirectly, no less than a forty percent (40%) interest in RBH Partners, LLC, and (iv) at all times Ron Beit-Halachmy shall (A) continue to control, directly or indirectly, Mortgagor, and (B) continue to own (legally and beneficially), directly or indirectly, no more than a twenty-five percent (25%) interest in Mortgagor.

1.24 In the event of any sale, conveyance, transfer, pledge or further encumbrance, by operation of law or otherwise, of all or any part of the Mortgaged Property, of any interest

therein, or in the event of any change in the ownership or composition of Mortgagor, or (except for the Other Mortgages) any further assignment of rents from the Mortgaged Property, or (except for the Master Lease, the Leases or the Residential Leases) any lease of all or substantially all of the Mortgaged Property, the Premises or the Improvements, without the prior written consent of each Mortgagee, then, at each Mortgagee's option (and in addition to any other rights each Mortgagee may have pursuant to the terms of this Mortgage), each Mortgagee may declare that portion of the Loan secured by this Mortgage to be due and payable immediately, and upon such declaration such portion shall immediately become and be due and payable without demand or notice. Each Mortgagee's consent shall be within its sole and absolute discretion, and each Mortgagee specifically reserves the right to condition its consent upon (by way of illustration but not by way of limitation) its approval of the financial and/or management ability of the purchaser, transferee, lessee, pledge or assignee, upon an agreement to escalate the interest rate of the Note to each such Mortgagee's then current interest rate for similarly situated properties, upon the assumption of the obligations and liabilities of the Note and this Mortgage by the purchaser, transferee, lessee, pledge or assignee, upon the receipt of guarantees of the Loan satisfactory to each such Mortgagee and/or additional collateral satisfactory to each such Mortgagee and upon payment to each such Mortgagee of an assumption fee. Mortgagor covenants and agrees that it shall not take any of the actions, or suffer any of the events, that would be a cause for acceleration of the portion of the Loan secured by this Mortgage pursuant to this Section, without the prior written consent of each Mortgagee. Any purchaser, transferee, lessee, pledge or assignee referred to above shall be deemed to have assumed and agreed to pay the portion of the Loan secured by this Mortgage and to have assumed and agreed to be bound by the terms and conditions of this Mortgage (including, without limitation, the terms of this Section 1.24) unless each Mortgagee specifically agrees in writing to the contrary. Mortgagor agrees that, in the event ownership of all or any part of the Mortgaged Property becomes vested in a person other than Mortgagor, each Mortgagee may, without notice to the Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the other Loan Documents and the indebtedness, without in any way vitiating or discharging Mortgagor's liability with respect thereto. No sale, conveyance, transfer, pledge, encumbrance, assignment or lease referred to above, and no forbearance, extension or assumption by or to any person with respect to the Indebtedness or any of the Loan Documents, shall operate to release, discharge, modify, change or affect the liability of Mortgagor either in whole or in part, unless each Mortgagee specifically agrees in writing to the contrary.

**ARTICLE II**

**EVENTS OF DEFAULT AND REMEDIES**

- 2.1 If one or more of the following Events of Default shall happen, that is to say:
- (a) if (i) default shall be made in the payment of any interest due under the Note, or in the payment of any installment of principal due under the Note, in either such case, when and as the same shall become due and payable, and such default shall have continued for a period of five (5) days or (ii) default shall be made in any other payment of the principal of the Note, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any prepayment or otherwise, in each case, as in the Note and this

Mortgage provided or (iii) default in the payment of any other Indebtedness due to any Mortgagee under this Mortgage and such default shall have continued for a period of five (5) days after written notice thereof, or (iv) default shall be made in the payment of any tax required by Section 1.7 to be paid and said default shall have continued for a period of five (5) days after written notice thereof; provided, however, that if Mortgagor, within any twelve (12) month period, shall fail to make more than two (2) such payments by their due dates, said five (5) day period shall become null and void and of no further force or effect and failure to make payment shall become an immediate Event of Default, or

(b) if default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor contained in Section 1.1, 1.3, 1.8, or 1.9, and such default shall have continued for a period of thirty (30) days after written notice thereof shall have been given to the Mortgagor by Mortgagees. For the purposes of this clause if any representation made in Section 1.1 shall be incorrect, it shall be deemed to be a default; or

(c) if default shall be made in the due observance or performance of any other covenant or condition on the part of the Mortgagor in the Note, the Loan Agreement or in this Mortgage contained, and such default shall have continued for a period of thirty (30) days after written notice specifying such default and demanding that the same be remedied shall have been given to the Mortgagor by Mortgagees; provided, however, that if, in Mortgagees' sole judgment, said failure to comply is not capable of being cured within said thirty (30) day period and is not curable by the payment of money, then the Mortgagor shall have such additional time as Mortgagees deem reasonably necessary to cure such failure (but in no event will such additional time exceed ninety (90) days after the initial notice of such default) provided that (i) Mortgagor promptly proceeds to commence curing said failure to comply upon receipt of notice of said failure from Mortgagees, (ii) in the sole judgment of Mortgagees, Mortgagor thereafter diligently and continuously proceeds to cure said failure so as to cure said failure in the shortest time possible, (iii) such additional time to cure does not materially impair any rights and/or remedies of Mortgagees and will not adversely affect the completion of the Improvements by the Completion Date and (iv) the Mortgagor furnishes to Mortgagees, upon demand of Mortgagees, such documents and information with respect to Mortgagor's curing of said failure to comply, as Mortgagees may reasonably request; or

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

(e) if the Mortgagor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or of any substantial part of its property, or if the Mortgagor shall make any general assignment for the benefit of creditors, or if the Mortgagor shall fail generally to pay its debts as such debts become due, or if the Mortgagor shall take any action in furtherance of any of the foregoing; or

(f) if any of the creditors of the Mortgagor shall commence against the Mortgagor an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and if such case shall not be discharged or dismissed within ninety (90) days after the date on which such case was commenced; or

(g) if final judgment for the payment of money in excess of \$50,000 in the aggregate shall be rendered against the Mortgagor and the Mortgagor shall not discharge the same or cause it to be discharged within sixty (60) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal; or

(h) except with respect to the Other Mortgages, if any sale, conveyance, transfer, pledge or further encumbrance, by operation of law or otherwise, of all or any part of the Mortgaged Property, of any interest therein, or in the event of any change in the ownership or composition of Mortgagor, or any further assignment of rents from the Mortgaged Property (except for the Other Mortgages), or any lease of all or substantially all of the Mortgaged Property (except for the Master Lease, the Leases and the Residential Leases), the Premises or the Improvements, shall occur, without the prior written consent of each Mortgagee; or

(i) if Mortgagor shall fail to maintain its legal existence in good standing in its state of formation; or

(j) if the Mortgagor defaults beyond any applicable notice and cure periods under any other agreement with any Mortgagee; or

(k) if any easement over, across, under or otherwise affecting the Mortgaged Property or any portion thereof shall be granted or released without each Mortgagee's prior written consent or if there shall be a default by Mortgagor under any easement, covenant or restriction affecting the Premises or any portion thereof or if any easement in favor of the Premises or any portion thereof shall be terminated or modified; or

(l) except with respect to the Other Mortgages, if Mortgagor shall assign any lease or the rents from any lease for all or a part of the Premises other than the Other Mortgages, without the prior written consent of each Mortgagee, or shall enter into, amend, extend, renew, abridge or otherwise modify, any lease, or shall cancel or consent to the cancellation or surrender of any lease unless in the ordinary course and in accordance with reasonably prudent management practice, or shall in any other manner materially impair the security of any Mortgagee for the payment of the debt secured by this Mortgage; or

(m) if Mortgagor incurs any additional indebtedness, with the exception of the Loan and trade payables customarily incurred in the ordinary course of business without the prior written consent of each Mortgagee; or

(n) if the Mortgaged Property or any material part thereof shall be condemned; or

(o) if any material adverse change in the Mortgagor, any Guarantor, or the Mortgaged Property shall occur; or

(p) if any person or entity having or claiming an interest in the Mortgagor or the Mortgaged Property commences an action or proceeding against the Mortgagor, the Mortgaged Property or any person or entity having or claiming an interest in the Mortgagor or the Mortgaged Property and such action or proceeding shall be finally determined in a manner that adversely affects any Mortgagee's rights, remedies and/or position hereunder,

then and in every such case:

(I) During the continuance of any such Event of Default each Mortgagee, by written notice given to the Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon together with all other Indebtedness, to be due and payable immediately, and upon any such declaration the principal of the Note, said accrued and unpaid interest thereon and all other Indebtedness shall become and be immediately due and payable, anything in the Note, in this Mortgage or in the Loan Agreement to the contrary notwithstanding;

(II) During the continuance of any such Event of Default, each Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Premises, and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, any such Mortgagee, at the expense of the Mortgaged Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid, may complete the construction of the Improvements and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Mortgaged Property, any such Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case each Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and each Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of the Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as well as just and reasonable compensation for the services of each Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, each such Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest thereon, when and as the same shall become payable and second, to the payment of any other Indebtedness and sums required to be paid by the Mortgagor under this Mortgage;

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

(1) [Reserved]

(2) institute proceedings for the complete or partial foreclosure of this Mortgage; or

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

(IV) Each Mortgagee also shall have such other rights and/or remedies provided to a mortgagee and/or secured party by the Uniform Commercial Code, as that model statute is enacted and in effect in the jurisdiction wherein the Premises are situated.

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

(b) Upon the completion of any sale or sales made by any Mortgagee under or by virtue of this Article II, any such Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold and shall execute and deliver to the appropriate governmental authority any affidavit, instrument, document and/or filing required pursuant to any applicable statute, ordinance, rule and/or regulation. Each Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, including, without limitation, any affidavit, instrument, document or filing required pursuant to any applicable statute, rule or regulation and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless the Mortgagor, if so requested by any Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to such Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the reasonable judgment of such Mortgagee, for that purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings of sale, herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor. In addition, Mortgagor expressly agrees that any



powers of attorney executed by Mortgagor subsequent to the date hereof shall expressly state that the power of attorney provided for in this Mortgage shall continue to be in full force and effect until terminated in accordance with the terms of this Mortgage.

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

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

First: To the payment of the costs and expenses of such sale, including, but not limited to, the reasonable compensation to each Mortgagee, the agents and counsel of each, and any sums that may be due under and/or pursuant to any statute, rule, regulation and/or law which imposes any tax, charge, fee and/or levy in connection with and/or arising from the exercise of any right and/or remedy under this Mortgage or the requirement that any sum be paid in order to record and/or file any deed, instrument of transfer or other such document in connection with any such sale, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by each Mortgagee under this Mortgage, together with interest at the Involuntary Rate on all advances made by each Mortgagee and all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at the Involuntary Rate from and after the happening of any Event of Default described in Section 2.1 from the due date of any such payment of principal until the same is paid.

Third: To the payment of any other Indebtedness and any other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, the Note or the Loan Agreement.

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

(e) Upon any sale made under or by virtue of this Article II whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, each Mortgagee may bid for and acquire the Mortgaged Property, or any part thereof, and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which each Mortgagee is authorized to deduct under this Mortgage.

2.3 (a) In case an Event of Default described in Section 2.1 shall have happened and be continuing, then, upon written demand of any Mortgagee, the Mortgagor will pay to each such Mortgagee the whole amount which then shall have become due and payable on the Note, for principal or interest or both, as the case may be, and after the happening of said Event of Default will also pay to each such Mortgagee interest at the Involuntary Rate on the then unpaid principal of the Note, and the sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to each such Mortgagee, its agents, and counsel and any reasonable expenses incurred by each such Mortgagee hereunder. In the event the Mortgagor shall fail forthwith to pay such amounts upon such demand, each Mortgagee shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by its counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Mortgagor and collect, out of the property of the Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, money adjudged or decreed to be payable.

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

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

(d) Any moneys thus collected by each Mortgagee under this Section 2.3 shall be applied by each Mortgagee in accordance with the provisions of subsection (d) of Section 2.2.

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

2.5 Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagor shall be entitled to retain possession and control of all Property now or hereafter held under this Mortgage.

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

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

enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

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

**ARTICLE III**  
**MISCELLANEOUS**

3.1 In the event any one or more of the provisions contained in this Mortgage or in the Note or in the Loan Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of each Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

3.2 All notices and/or consents, hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when delivered in person or one (1) day after being sent by a nationally recognized overnight delivery service (e.g. FedEx) or three (3) days after being sent by registered or certified mail, return receipt requested, to Mortgagor at its address above stated, with a copy to McManimon, Scotland & Baumann, L.L.C., Attention: Glenn F. Scotland, Esq.; in the case of each Mortgagee, at its respective address above stated, with copy to Administrative Agent at 200 West Street, New York, New York 10282, Attention: Margaret Anadu (and with a copy to the attention of Andrea Gift and with an electronic copy to gs-uig-docs@gs.com), or at such other address of which it shall have notified the party giving such notice in writing as aforesaid.

3.3 Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

3.4 All of the grants, terms, conditions, provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of each Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall include and refer to the Mortgagor named herein, any subsequent owner of the Mortgaged Property, or any part thereof, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

3.5 The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State where the Premises are located. Nothing in this Mortgage, the Note or in any other agreement between the Mortgagor and each Mortgagee shall require the Mortgagor to pay, or each Mortgagee to accept, interest in an amount which would subject each Mortgagee to pay any penalty or forfeiture under applicable law. In the event that the payment of any charges, fees or other sums due hereunder or under the Note or any such other agreement which are or could be held to be in the nature of interest and which would subject each Mortgagee to any penalty or forfeiture under applicable law, then *ipso facto* the obligations of the Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law. Should any Mortgagee receive any payment which is or would be in excess of the highest rate authorized under law, such payment shall have been, and shall be deemed to have been, made in error and shall automatically be applied to reduce the outstanding balance of the Indebtedness.

3.6 The truth, accuracy, adequacy and completeness of the representations, warranties and covenants contained in this Mortgage and the Note shall survive, and not merge with, the execution and delivery of this Mortgage and the Note.

3.7 Whenever the consent or approval of each Mortgagee is required, the decision whether to consent or approve shall be in the sole and absolute but reasonable discretion of each Mortgagee.

3.8 This Mortgage, the Note and all other documents executed and delivered in connection herewith or therewith shall be given a fair and reasonable construction in accordance with the intention of the parties as expressed herein and therein and without regard for any rule of law requiring construction against the party who prepares such instruments.

3.9 The Mortgagor expressly agrees, intending that each Mortgagee rely thereon, that this Mortgage also shall constitute a “security agreement,” as such term is defined in the Uniform Commercial Code in the jurisdiction wherein the Premises are situated (the “*Code*”) the Mortgaged Property includes, and shall be deemed to include, *inter alia*, the Chattels and the Intangibles, regardless of whether they are held or hereafter acquired, of the Mortgagor in, to and under the Mortgaged Property. By executing and delivering this Mortgage, the Mortgagor has granted, in the same manner and with the same effect described in the Granting Clause hereof, to each Mortgagee, as additional security, a security interest in the Chattels and the Intangibles which are subject to the Code. If any Event of Default shall occur, each Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies granted to a secured party under the Code, including, but not limited to, the right to take possession of the Chattels and the Intangibles, or any part thereof, and the right to advertise and sell the Chattels and the Intangibles, or any part thereof, pursuant to and in accordance with the power of sale provided for in this Mortgage. The Mortgagor agrees that any notice of sale or other action intended by each Mortgagee with respect to the Chattels and the Intangibles, or any part thereof, shall constitute reasonable notice if it is sent to the Mortgagor not less than ten (10) days prior to any such sale or intended action. The proceeds of any such sale of the Chattels and the Intangibles, or any part thereof, shall be applied in the manner set forth in clauses First through Fourth of Section 2.2(d) of this Mortgage.

3.10 [RESERVED.]

3.11 This Mortgage and all of the terms, covenants, provisions, conditions and grants contained in this Mortgage cannot be altered, amended, waived, modified or discharged orally and no executory agreement shall be effective to modify, waive or discharge, in whole or in part, anything contained in this Mortgage unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, waiver or discharge is sought.

3.12 The Mortgagor acknowledges that it has received a true copy of this Mortgage.

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

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

3.15 The Mortgagor represents and warrants that it has no offsets, defenses or counterclaims to the payment of the Mortgage Amount.

3.16 The Mortgage and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with the laws of the State of New Jersey (without giving effect to New Jersey's principles of conflicts of law). Mortgagor and each Mortgagee hereby irrevocably submit to the non-exclusive jurisdiction of any New Jersey State or Federal court sitting in the City of Newark (or any county where the property is located) over any suit, action or proceeding arising out of or relating to this Mortgage, and Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any New Jersey State or Federal court sitting in the City of Newark (or such other county in New Jersey State) may be made by certified or registered mail, return receipt requested, directed to Mortgagor at the address indicated on the cover page hereof, with a copy to the Mortgagor's Counsel, and service so made shall be complete five (5) days after the same shall be complete five (5) days after the same shall have been so mailed.

3.17 Each Mortgagee hereby notifies the Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (Signed into law October 26, 2001) (the "**Act**"), each Mortgagee is required to obtain, verify and record information that identifies the Mortgagor, which information includes the name and address of the Mortgagor and other information that will allow each Mortgagee to identify the Mortgagor in accordance with the Act.

3.18 The Mortgagor hereby knowingly, voluntarily and intentionally waives any right it may have to consequential or punitive damages arising out of, under or in connection with the Loan Documents or the transactions contemplated therein. Further, the Mortgagor hereby certifies that no representative of any Mortgagee, or counsel to any Mortgagee, has represented, expressly or otherwise, that any Mortgagee would not, in the event of such litigation, seek to enforce this waiver of consequential and punitive damages. The Mortgagor acknowledges that each Mortgagee has been induced to accept this Mortgage by, inter alia, the provisions of this Section.

3.19 The lien of this Mortgage is co-equal in lien priority to that certain Mortgage, Assignment of Leases and Rents and Security Agreement (the “**Co-Equal Mortgage**”), dated the date hereof, made by Mortgagor for the benefit of Goldman Sachs Bank USA (the “**Senior Lender**”), in the principal amount of \$9,000,000.

3.20 With respect to the Mortgaged Property located at Block 57, Lot 31 and Block 58, Lot 1 (f.k.a. Lots 1, 2, 4, and 41, and portions of Lots 5, 35.02, and 43), the lien of this Mortgage is superior in lien priority to that certain Mortgage and Security Agreement, dated the date hereof, made by Mortgagor for the benefit of the Casino Reinvestment Development Authority (“**CRDA**”), in the principal amount of \$5,250,000, and that certain Assignment of Leases and Rents made by Mortgagor for the benefit of CRDA (collectively, the “**CRDA Mortgage**”). However, with respect to the Mortgaged Property located at Block 95, Lot 1.02 (f.k.a. Lot 10 and portions of Lots 9 and 16), the lien of this Mortgage is subordinate in lien priority to the CRDA Mortgage.

3.21 The lien of this Mortgage is superior in lien priority to (i) that certain Mortgage, Assignment of Leases and Rents and Security Agreement made by Mortgagor for the benefit of the Mortgagee, in the principal amount of \$9,968,000, and (ii) that certain Mortgage, Assignment of Leases and Rents and Security Agreement made by Mortgagor for the benefit of the Mortgagee, in the principal amount of \$14,107,001 (collectively, the “**Subordinate Mortgages**,” and together with the Co-Equal Mortgage and the CRDA Mortgage, the “**Other Mortgages**”). Further, the liens and security interests granted hereunder and under the Other Mortgages, and the exercise of any rights or remedies by the Mortgagee hereunder or by the lenders under the Other Mortgages, are subject to the limitations and provisions of the Subordination and Intercreditor Agreement dated as of the date hereof (the “**Intercreditor Agreement**”), among Mortgagor, Mortgagee, CRDA and the Senior Lender. To the extent of any conflict between the terms of this Mortgage and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall govern and control.

3.22 THE MORTGAGOR AND EACH MORTGAGEE WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS MORTGAGE AND/OR ANY OTHER LOAN DOCUMENTS.

3.23 THE MORTGAGOR ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE AND CORRECT COPY OF THIS MORTGAGE.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the date first above written.

TEACHERS VILLAGE PROJECT A QALICB  
URBAN RENEWAL ENTITY, LLC,  
a New Jersey limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF ESSEX )

On the \_\_\_\_\_, 2012 before me, \_\_\_\_\_, Notary Public, personally appeared Ron Beit-Halachmy, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

Signature Page  
QLICI Mortgage (Insured)

\_\_\_\_\_



**EXHIBIT A**

**DESCRIPTION OF PREMISES**

[Follows on Next Page]

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT**

Dated: September , 2012  
in the amount of  
\$9,000,000  
(the “*Mortgage Amount*”)

From

**TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

having its principal office at:  
c/o RBH Group  
89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102

(the “*Mortgagor*”)

To

**GOLDMAN SACHS BANK USA,**  
a New York banking corporation

having an office at:  
200 West Street  
New York, New York 10282

(the “*Mortgagee*”)

**LOCATION OF PREMISES:**

Street Address: Halsey Street, Pearl Street, Maiden Lane

City of: Newark

County of: Essex

State of: New Jersey

Block 57, Lot 31

Block 58, Lot 1 (f.k.a. Lots 1, 2, 4, and 41, and portions of Lots 5, 35.02, and 43)

Block 95, Lot 1.02(f.k.a. Lot 10 and portions of Lots 9 and 16)

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THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS AND SECURES OBLIGATIONS CONTAINING PROVISIONS FOR CHANGES IN INTEREST RATES, EXTENSIONS OF TIME FOR PAYMENT AND OTHER “MODIFICATIONS,” AS DEFINED IN N.J. LAWS 1985, CH. 353, IN TERMS OF SUCH OBLIGATIONS. UPON ANY SUCH MODIFICATION, THIS MORTGAGE SHALL HAVE THE BENEFIT OF THE LIEN PRIORITY PROVISIONS OF THAT LAW.

After recording, please return to:  
Jones Day  
222 East 41<sup>st</sup> Street  
New York, New York 10017  
Attn: Aviva Yakren, Esq.

This instrument was prepared by the above named attorney.

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**Recital**

The Mortgagor is the owner of the fee simple interest in the premises described in Exhibit A hereto. The Mortgagor proposes to construct or rehabilitate improvements on the Premises (as defined below) and, in order to finance the construction thereof, will borrow amounts up to the Mortgage Amount (the “**Loan**”) from Mortgagee pursuant to a Building Loan Agreement between the Mortgagor and Mortgagee dated the date hereof (such agreement, together with any modifications and/or amendments thereof, the “**Loan Agreement**”). The Mortgagor has executed and delivered to Mortgagee a certain promissory note (together with any modifications, extensions and amendments thereto hereinafter collectively referred to as the “**Note**”), dated the date hereof, obligating it to pay the Mortgage Amount, or so much thereof as may be advanced in accordance with the terms of the Loan Agreement.

**Certain Definitions**

The Mortgagor and Mortgagee agree that, unless the context otherwise specifies or requires the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms.

“**Chattels**” means all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements on the Premises.

“**Events of Default**” means the events and circumstances described as such in Section 2.1 hereof.

“**Family Members**” shall mean the spouses, parents, children and grandchildren of the partners, members or other equity interest holders in Mortgagor and any trust established for estate planning purposes for the benefit of such partners, members or other equity interest holders in Mortgagor or any of the foregoing specified family members.

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

“**Intangibles**” means all “general intangibles” (as such quoted term is defined in the Uniform Commercial Code of the state wherein the Premises are located) in any way relating to the Premises and/or the Improvements and in which the Mortgagor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Mortgagor insuring the Mortgaged Property, as hereinafter defined, and all rights and interest of the Mortgagor thereunder and all rights, claims and/or causes of action which the Mortgagor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Premises.

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“**Involuntary Rate**” means eighteen percent (18%), but in no event to exceed the maximum rate allowed by law.

“**Premises**” means the premises situated in the City of Newark, County of Essex and State of New Jersey and more fully described in Exhibit A attached hereto and made a part hereof, including all of the air space, easements, rights, privileges, royalties and appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title interest, claim or demand whatsoever of the Mortgagor therein and in the streets, alleys and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired.

“**Upper Tier Entity**” shall mean, individually and collectively as the context requires, (a) TRB Newark Assemblage, LLC, (b) TRB Newark TRS, LLC, (c) RBH Partners, LLC and RBH Capital, LLC.

The terms used in this Mortgage, Assignment of Leases and Rents and Security Agreement (this “**Mortgage**”) which are not defined above or in the text of this Mortgage shall have the meanings ascribed thereto in the Loan Agreement.

#### **Granting Clause**

**NOW, THEREFORE**, for the purposes of securing the payment and performance of the following obligations (collectively, all of such obligations are hereinafter referred to as the “**Indebtedness**”):

(i) the payment of both the principal of, and the interest and any other sums payable on, the Note or under this Mortgage, together with interest thereon and any and all fees with respect thereto as may be set forth in the Note and/or the Loan Agreement, and all amounts expended by Mortgagee to maintain the lien of this Mortgage or protect any of the Mortgaged Property, including, without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, reasonable litigation expenses to prosecute or defend the rights, remedies and lien of this mortgage or title to the Mortgaged Property, and any costs, charges or amounts to which Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority; and

(ii) the performance and observance of all the provisions hereof and of the Note and of the Loan Agreement, including the payment of any sums advanced by Mortgagee to complete the Improvements contemplated by the Loan Agreement to the extent the aggregate of such sums and any other sums expended pursuant hereto exceed the sum of the Mortgage Amount

the Mortgagor, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, gives, grants, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto Mortgagee, all its estate, right, title and interest in, to and under any and all of the following described property (the “**Mortgaged Property**”) whether now owned or held or hereafter acquired:

- (i) the Premises;
- (ii) the Improvements;
- (iii) the Chattels;
- (iv) the Intangibles;

(v) all rents, royalties, issues, profits, revenue, income and other benefits of the Premises and the Improvements (the “**Rents**”), the Master Lease (as such term is defined in the Loan Agreement), the Leases (as such term is defined in the Loan Agreement) and all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including further, the right upon the happening of an Event of Default, to receive and collect the Rents thereunder;

- (vi) all real estate tax refunds;

(vii) all contracts of sale now or hereafter entered into in connection with the Premises and/or the Improvements or any part thereof and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance of buyers of their obligations thereunder and also including the right upon the happening of an event of default thereunder to enforce the obligations of such buyers and to receive and collect the amounts deposited thereunder and any and all further amounts which may be due under such contracts of sale or due upon the consummation of such contracts of sale;

(viii) all right, title and interest of Mortgagor in and to all agreements, or contracts, now or hereafter entered into for the sale, leasing, brokerage, development, construction, management, maintenance and/or operation of the Premises (or any part thereof), including all moneys due and to become due thereunder, and all permits, licenses, bonds, insurance policies, plans and specifications relative to the construction and/or operation of the Improvements upon the Premises;

(ix) all Mortgagor’s rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Mortgagor’s rights to remain in possession of the Premises;

(x) all of Mortgagor’s claims and rights to the payment of damages arising from any rejection of a lease under or pursuant to the Bankruptcy Code, 11 U.S.C. § 101 et seq.;

(xi) any other property and rights which are, by the provisions of any document entered into in connection with the making of the Loan (collectively, the “**Loan Documents**”), required to be subject to the lien hereof, and any additional

property and rights that may from time to time hereafter by installation in the Improvements and/or the Premises, or by writing of any kind, or otherwise, be subjected to the lien hereof by Mortgagor or by anyone on its behalf;

(xii) all deposits in, and proceeds of, all operating accounts of Mortgagor maintained at Mortgagee and at Provident Bank; and

(xiii) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and condemnation awards and all rights of the Mortgagor to refunds of real estate taxes and assessments.

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

**ARTICLE I**

**PARTICULAR COVENANTS OF THE MORTGAGOR**

The Mortgagor covenants and agrees as follows:

1.1 The Mortgagor represents and warrants that it has a good and marketable title to an indefeasible fee estate in the Premises subject to no lien, charge or encumbrance except such as are listed as exceptions to title in the title policy insuring the lien of this Mortgage; that it will own the Chattels free and clear of liens and claims; that this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property and the exceptions referred to above; that the execution and delivery of this Mortgage and the Note has been duly authorized by the Mortgagor and that there is no provision in any document which evidences or establishes the existence of the Mortgagor requiring further consent for such action by any other entity or person; that it is duly organized, validly existing and is in good standing under the laws of the state of its formation or incorporation, as the case may be; that it has (i) all necessary licenses, authorizations, registrations, permits and approvals and (ii) full power and authority to own its properties and carry on its business as presently conducted and the execution and delivery by it of and performance of its obligations under, this Mortgage and the Note will not result in the Mortgagor being in default under any provisions of any document which evidences or establishes the existence of the Mortgagor or of any mortgage, credit or other agreement to which the Mortgagor is a party or which affects the Mortgagor or the Premises, or any part thereof; that it will preserve such title, and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all Persons and parties whomsoever.

1.2 The Mortgagor will, at the cost of the Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the



performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, will execute and deliver, and hereby authorizes Mortgagee to execute and file in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property or any part thereof. Mortgagor will, at its sole cost and expense, do, execute, acknowledge and deliver all and every such acts, information reports, returns and withholding of monies as shall be necessary or appropriate to comply fully, or to cause full compliance, with all applicable information reporting and back-up withholding requirements of the Internal Revenue Code of 1986, as amended (including all regulations promulgated thereunder) in respect of the Premises and all transactions related to the Premises, and will at all times upon Mortgagee's request provide Mortgagee with satisfactory evidence of such compliance and notify Mortgagee of the information reported in connection with such compliance.

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

(b) Subject to the right of Mortgagor to in good faith contest such claims with the applicable authority, the Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or the Intangibles, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposes, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage or any mortgage supplemental hereto, any security instrument with respect to the Chattels and/or the Intangibles or any instrument of further assurance.

1.4 The Mortgagor will punctually pay the principal and interest and all other sums to become due in respect of the Note and the Loan Agreement at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all in any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts and all such principal and interest due in respect of the Note and the Loan Agreement is hereby deemed an obligation due under this Mortgage.

1.5 The Mortgagor will, so long as it is owner of the Mortgaged Property or any part thereof, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business and/or limited liability company under the laws of the state of its formation and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

1.6 All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Premises or any part thereof, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

1.7 (a) The Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against the Mortgaged Property, or any part thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. The Mortgagor will, upon the reasonable request of Mortgagee, deliver to Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property, or any part thereof, or the revenues, rents, issues, income or profits thereof.

Mortgagee may, at its reasonable option to be exercised by thirty (30) days written notice to the Mortgagor, require the deposit by the Mortgagor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations under this subsection (a) when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by Mortgagee in its reasonable discretion. Such amounts shall be held by Mortgagee with interest and applied to the payment of the obligations in respect to which such amounts were deposited or, at the option of Mortgagee, to the payment of said obligations in such order or priority as Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, the Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with Mortgagee. Nothing herein contained shall be deemed to affect any right or remedy of Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness.

(b) The Mortgagor will pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general will

do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of the Mortgagor, without expense to Mortgagee.

(c) Nothing in this Section 1.7 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section so long as the Mortgagor shall in good faith and at its own expense bond such obligation, contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Premises or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of Mortgagee, provide security reasonably satisfactory to Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section shall become necessary to prevent the delivery of a tax deed, or its equivalent, conveying the Mortgaged Property, or any part thereof, because of non-payment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or its equivalent.

1.8 The Mortgagor will pay any and all taxes, governmental charges, fees and/or levies by reason of Mortgagee's ownership of the Note or this Mortgage and/or resulting from the exercise by Mortgagee of any of its rights and/or remedies provided for under this Mortgage, except for income taxes of Mortgagee, and any similar gains tax law which may hereafter be enacted. The obligations assumed by the Mortgagor pursuant to this Section 1.8 shall survive the exercise by Mortgagee of any of its rights and/or remedies under this Mortgage.

1.9 (a) Mortgagor shall keep the Premises and Chattels insured against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain, at Mortgagor's sole cost and expense, the following described policies of insurance (collectively, the "**Insurance Policies**"):

(i) During any period of construction, repair or restoration, "All Risk" Builder's Risk insurance policy for the Project on which the work is to be executed or which is to be constructed, for the full completed value of Improvements and shall also cover material, equipment, and supplies of all kinds incident to the Improvements, in temporary structures, in vehicles, or in the open.

(ii) Property insurance, covering the Mortgaged Property, including 100% of the insurable replacement cost value of all tenant improvements and betterments that any agreement requires Mortgagor to insure, against all risks of loss to the Improvements customarily covered by so-called "Cause of Loss — Special Form" policies as available in the insurance market as of the closing date. Such policy shall cover at least the following perils: building collapse, fire, flood, back-up of sewers and drains, water damage, tsunami, windstorm, earthquake, earth movement, landslide, mudslide, subsidence, acts of terrorism, impact of vehicles and aircraft, lightning, machinery breakdown, malicious mischief, and vandalism. The policy shall cover (i) 100% of the insurable replacement cost value of the Mortgaged Property; (ii) 100% of the insurable replacement cost value of all tenant improvements and betterments that any agreement requires Mortgagor to insure; (iii) loss of the undamaged portion of the Mortgaged Property and additional expense of demolition and

increased cost of construction, including, without limitation, increased costs that arise from any changes in laws or other legal requirements with respect to such restoration, in an amount as is acceptable to Mortgagee. Coverage to include replacement cost valuation, no margin clause and a waiver of coinsurance or agreed amount endorsement, and include such clauses as may be necessary to ensure that Mortgagee will not be deemed to be a co-insured thereunder. The policy shall have no deductible more than \$25,000, except as agreed to by Mortgagee, and shall be written with an unexpired term of at least one year, issued by an insurer acceptable to Mortgagee. The policy shall also cover business interruption and/or rent loss, on an actual loss sustained basis, in an amount at least equal to 18 months of the Mortgagor's actual or projected gross revenue, and if applicable Mortgagor's income, with respect to tenants, at 80% occupancy during such period. The amount of such insurance shall be increased from time to time during the term of the Note as and when receipts from the Premises increase, and shall be endorsed to include an extended period of indemnity of at least 180 days. The policy shall name Mortgagee on a standard mortgagee endorsement for real property and lender loss payee endorsement for loss of income coverage on forms acceptable to Mortgagee. With respect to property insurance sub limits and/or annual or policy-term aggregate limits applicable to any insured peril, including but not limited to earthquake, flood, named storm and any other peril that may be subject to such sub limit and/or aggregate limit, Mortgagor agrees that if the limit of insurance applicable to any insured peril is subject to an annual aggregate or a policy-term aggregate, Mortgagor will notify Mortgagee if and when applicable policy aggregate limits are eroded due to incurred losses by 50% or more of applicable limits during the term of the loan, and further, that Mortgagor, as commercially reasonable, (as agreed to between the Mortgagor and Mortgagee), will immediately cause the aggregate limits to be restored to 100% of the pre-loss aggregate limit;

(iii) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Mortgaged Property (such coverage to include provisions waiving subrogation against the Authority and the Purchaser), including coverage for: (i) commercial general liability insurance; (iii) umbrella liability insurance, Liability insurance shall be in the so-called "occurrence" form and shall provide coverage in amounts not less than \$25,000,000 per occurrence and \$25,000,000 in the annual aggregate. All Liability Insurance shall name Mortgagee as an "Additional Insured", including both on-going and completed operations, by endorsements satisfactory to Mortgagee;

(iv) Worker's Compensation and Employer's Liability insurance shall be provided in accordance with the requirements of the laws of New Jersey.

(v) During any period of construction Mortgagor shall provide or ensure that the following coverage is maintained:

(A) "Special Perils" builders' all risk insurance written in "100% builders risk completed value, non-reporting form", including coverage therein for "completion and/or premises occupancy", such insurance to be in the amounts and terms specified in subparagraph (ii) above, plus, (1) coverage for all materials which will become a part of the new building, whether at the construction site, stored elsewhere, or in transit; (2) soft costs coverage including 100% of the loan interest, and coverage for recurring expenses including but not limited to plans, specifications, blueprints and models, real estate taxes, real estate commissions,

advertising, architectural and engineering supervisory costs, legal and accounting costs, and delayed completion business income/rental interruption (if any) on an actual loss sustained basis; (3) provide for permission for partial occupancy.

(B) Mortgagor shall ensure that the general contractor for this project maintains (i) commercial general liability coverage, including products and completed operations coverage, containing no EIFS (Exterior Insulation Finish System) exclusion with respect to this project if the project will use EFIS, that shall be continuously renewed for the statutory period during which claims can be made following completion of the project, (ii) automobile liability insurance (including owned, hired and non-owned liability) and (iii) umbrella/excess liability insurance with no less than \$25,000,000 in limits per occurrence and in the annual aggregate per project or \$50,000,000 if aggregates are shared among multiple projects, and in addition all trade contractors shall provide similar liability insurance coverage with umbrella liability limits that are commensurate with the risks presented by their operations at the site as determined by the general contractor, provided that any crane subcontractor shall provide limits of at least \$10,000,000 or such other amount as is acceptable to Mortgagee. All parties engaged in work on the Improvements or on any restoration shall maintain any workers' compensation and employer's liability insurance required by law in force for all workers on the job. A certificate of insurance shall be issued to Mortgagee, naming Mortgagee as Additional Insured (except with respect to workers' compensation and employer's liability), and evidencing all insurance required in this subsection. Mortgagee shall be named as Additional Insured with respect to general contractor's ongoing operations and completed operations by endorsements satisfactory to Mortgagee. Such insurance shall be primary and any other insurance maintained by the additional insured shall be excess only and not contributing with this insurance.

(C) Contractor's Pollution Legal Liability Insurance for the entire term of the construction project, in a minimum amount of \$5,000,000, and including coverage for mold. Such policy shall name Mortgagee as Additional Insured on a form acceptable to Mortgagee.

(D) Architects and Engineers Professional Liability Insurance. Mortgagor shall cause the Architect and Engineers to obtain and maintain Architect's and Engineer's Professional Liability Insurance during the period commencing on the date of the Architect's agreement or the date of contract with the engineers, respectively, and continuously renewing for a period no less than the statute of limitations in the state where the project is located during which claims can be made after substantial completion. Such insurance shall be in an amount equal to at least \$3,000,000 per claim and in the annual aggregate, or such other amount acceptable to Mortgagee. Any subcontractor to the Architect shall maintain such insurance in an amount not less than \$1,000,000 per claim and in the annual aggregate or such other amount acceptable to Mortgagee.

(vi) Borrower shall maintain environmental insurance covering unknown environmental hazards in an amount not less than \$10,000,000 per discovery and in the Aggregate. Such coverage shall identify Mortgagee as an "Additional Named Insured" through an endorsement satisfactory to Mortgagee. The carrier shall agree that the policy rights for the project shall be automatically assigned to Mortgagee, with no further action required by any person, if control of the Mortgaged Property passes to Mortgagee or to any of

their respective designees as the direct or indirect result of an event of default or as the direct or indirect result of the enforcement of any rights or remedies of Mortgagee hereunder or under any of the Loan Documents (including, without limitation, the transfer of the property and/or Improvements or any interest therein to Mortgagee or its designee through foreclosure, by deed-in-lieu of foreclosure or otherwise);

(vii) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions or testing procedures), in an amount at least equal to the outstanding principal amount of the Note or \$5,000,000, whichever is less;

(viii) If the Premises, or any part thereof, are located in an area that has been identified by the Federal Emergency Management Agency as being located in a special flood hazard area, Mortgagor will keep, for as long as any Indebtedness remains unpaid, the Improvements covered by flood insurance in an amount equal to the lesser of (A) the full replacement cost of the Premises or (B) the maximum limit of coverage available for the Premises under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as the same may have been or may hereafter be amended or modified (and any successor act thereto); and

(ix) Such other types and amounts of insurance coverage as shall be reasonably requested by Mortgagee and are customarily (A) maintained by owners or operators of properties similarly situated to the Premises, or (B) required by institutional lenders in like transactions.

(b) Each of the Insurance Policies shall be endorsed to name Mortgagee and its successors and assigns as mortgagee or lender loss payee, with loss greater than \$250,000.00 payable to Mortgagee and its successors and assigns, without contribution or assessment, pursuant to a standard first mortgage endorsement in the form of, or substantially equivalent to, the standard mortgagee or lender loss payee endorsement used in the State of New Jersey, provided that with respect to liability insurance or other policies of insurance required hereunder where a mortgagee or lender loss payee endorsement is not available, Mortgagee shall, to the fullest extent available, be named as an additional insured in any such Insurance Policies. All Insurance Policies and endorsements required pursuant to this Section 1.9 shall be fully paid as premiums are due and contain such provisions and expiration dates and be in such form and amounts as indicated above and shall be issued by an insurance company authorized to sell insurance in the State of New Jersey, and having an A.M. Best General policyholders' rating of A or better and a financial size category of 8 or better. Without limiting the foregoing, each policy shall specifically provide that (A) such policy may not be cancelled except upon thirty (30) days' prior written notice to Mortgagee and that no act or thing done by Mortgagor shall invalidate the policy as against Mortgagee and (B) any and all insurance proceeds will be paid to Mortgagee so long as Mortgagee certifies to the insurer that the unpaid Indebtedness exceeds the proceeds of insurance. Each policy shall provide a waiver of any right of subrogation of the insurers thereunder against any Person insured under such policy, and a waiver of any right of the insurers to any set off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and each policy

shall provide such other terms and provisions as any owner or operator of facilities similar to the Mortgagor's would, in the prudent management of its properties, require to be provided in policies, binders or interim insurance contracts with respect to facilities similar to the Project or the collateral owned or operated by it. At least thirty (30) days prior to the expiration of any such policy, the Mortgagor shall furnish Mortgagee with evidence that such policy has been renewed or replaced, in formats acceptable to Mortgagee. Mortgagor shall provide copies of all renewal or replacement policies within 60 days of the renewal date. Mortgagor shall assign and deliver the Insurance Policies to Mortgagee and Mortgagee shall have and hold said Insurance Policies as collateral and further security for the payment of the Indebtedness until the full payment of the Indebtedness, or, if reasonably acceptable to Mortgagee, certificates of such policies together with such other information regarding such policy as Mortgagee shall reasonably require. In addition, from time to time, upon occurrence of any change in the use, operation or value of the Premises, or in the availability of insurance in the area in which the Premises are located, Mortgagor shall, within twenty (20) days after reasonable demand by Mortgagee, take out such additional amounts and/or such other kinds of insurance as Mortgagee may require. The Insurance Policies delivered by Mortgagor to Mortgagee on the date hereof shall be deemed acceptable to Mortgagee.

(c) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.9, unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under the standard mortgage endorsement of the character above described. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

(d) Mortgagor shall give Mortgagee prompt written notice of any damage to, or destruction of, the Improvements, or any part thereof, or of any other casualty or loss at or affecting the Premises or the Chattels, and Mortgagee shall have the right to approve the adjustment of any insurance claim in respect of any such damage, destruction, casualty or loss in excess of \$250,000. To the fullest extent permitted by applicable law, the proceeds of any insurance coming into the possession of Mortgagee in respect of any damage, destruction, casualty or loss shall not be deemed trust funds, and Mortgagee shall have the option, in its sole discretion, to apply any insurance proceeds it may receive pursuant hereto or otherwise to the payment of the Indebtedness, or to allow all or a portion of such proceeds to be used for the restoration of the Mortgaged Property. In the event any such insurance proceeds shall be used to reduce the Indebtedness, the same shall be applied by Mortgagee, after the deduction therefrom and repayment to Mortgagee of any and all costs incurred by Mortgagee in the recovery thereof (including reasonable attorneys' fees and disbursements), in any manner it shall designate, including, but not limited to, the application of such proceeds to the then unpaid installments of the principal balance due under the Note in the inverse order of their maturity, such that the regular payments, if any, under the Note shall not be reduced or altered in any manner. Any prepayment of the Note from the proceeds of insurance shall be without prepayment premium. Notwithstanding the foregoing, if the Improvements have been damaged or destroyed, Mortgagee shall allow Mortgagor to use any such insurance proceeds for the restoration of the Improvements, provided that Mortgagee shall reasonably determine that the restoration of the Improvements can be completed prior to the Maturity Date (as defined in the Note) of the Note, and that insurance proceeds shall be sufficient to complete the restoration, or if the amount of

such insurance proceeds shall be insufficient to complete such restoration, Mortgagor deposits with Mortgagee an amount equal to the difference between the estimate of the Architect (as hereinafter defined) (as derived in accordance with subsection (e) below) of the cost of such restoration and the insurance proceeds received.

(e) Unless the Indebtedness is paid in full to Mortgagee within thirty (30) days of the date of any damage, destruction, loss or other casualty to the Improvements, and provided that casualty insurance proceeds are made available to Mortgagor, Mortgagor shall promptly commence and diligently continue to perform the repairs, restoration and rebuilding of the portion of the Improvements so damaged or destroyed (hereinafter the “**Work**”) so as to restore the Improvements and Chattels in full compliance with all legal requirements and so that the Mortgaged Property shall be at least equal in value and general utility as they were prior to such damage or destruction, and if such damage or destruction, in the reasonable judgment of Mortgagee, shall exceed Two Hundred Fifty Thousand (\$250,000) Dollars (hereinafter, collectively “**Major Work**”), Mortgagor shall, prior to the commencement of the Major Work, furnish to Mortgagee for its approval: (1) complete plans and specifications for the Major Work, with satisfactory evidence of the approval thereof (i) by all governmental authorities whose approval is required and (ii) by Borrower’s Architects (as defined in the Loan Agreement) or other architect satisfactory to Mortgagee (hereinafter, the “**Architect**”) and which shall be accompanied by the Architect’s signed estimate, bearing the Architect’s seal, of the entire cost of completing the Major Work; and (2) certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the Major Work. Mortgagor shall not commence any of the Major Work until Mortgagor shall have complied with applicable requirements referred to in this subsection (e), and after commencing the Major Work, Mortgagor shall perform the Major Work diligently and in good faith in accordance with the plans and specifications referred to in this subsection (e), if applicable.

(f) If the insurance proceeds, less the cost, if any, to Mortgagee of such recovery and of paying out such proceeds (including reasonable attorneys’ fees and costs allocable to inspecting the Work and the plans and specifications therefor) should be paid towards restoration of the Improvements and Chattels or if such insurance proceeds are applied toward such restoration, then such insurance proceeds shall be applied by Mortgagee to the payment of the cost of the Work and shall be paid out from time to time to Mortgagor and/or, at Mortgagee’s option, directly to the contractor, subcontractors, materialmen, laborers, engineers, architects and other persons rendering services or materials for the Work, as said Work progresses except as otherwise hereinafter provided, but subject to the following conditions, any of which Mortgagee may freely waive, at Mortgagee’s sole discretion:

(i) If the Work to be done is Major Work, as determined by Mortgagee, the Architect shall be in charge of such Major Work;

(ii) Each request for payment shall be made on fifteen (15) days prior notice to Mortgagee and shall be accompanied by a certificate of the Architect if one is required under subsection (e) above, otherwise by a certificate of an officer of Mortgagor, stating (A) that all of the Work completed has been done in compliance with the approved plans and specifications, if any be required under said subsection (e) above, and in accordance with all provisions of law; (B) the sum requested is justly required to reimburse Mortgagor for



payments by Mortgagor to, or is justly due to, the contractor, subcontractor, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums, if any, previously paid out by Mortgagee does not exceed the value of the Work done to date of such certificate, and (C) that the amount of such proceeds and other deposits remaining in the hands of Mortgagee will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion);

(iii) Each request shall be accompanied by waivers of liens satisfactory to Mortgagee covering that part of the Work previously paid for, if any, and by a search prepared by the title company which insured the lien of the Mortgage or by other evidence satisfactory to Mortgagee, that there has not been filed with respect to the Premises or any part thereof any mechanic's lien or other lien or instrument for the retention of title in respect of any part of the Work not discharged of record and that there exist no encumbrances on or affecting the Premises or any part thereof or any part of the other Mortgaged Property, other than the Other Mortgages (as hereinafter defined);

(iv) The request for any payment after the Work has been completed shall be accompanied by a copy of all certificates, permits, licenses, waivers and/or other documents required by law to render occupancy of the Premises legal; and

Upon completion of the Work and payment in full therefor, or upon failure on the part of Mortgagor to commence, as provided in Section 1.9(e) above, or diligently to continue the Work, or at any time upon request by Mortgagor, Mortgagee may apply the amount of any such proceeds then or thereafter in the hands of Mortgagee to the payment of the Indebtedness; provided, however, that nothing herein contained shall prevent Mortgagee from applying at any time the whole or any part of such proceeds to the curing of any default after expiration of applicable notice and cure periods under this Mortgage, the Note or any other Loan Documents.

(g) Notwithstanding the foregoing, provided no Event of Default exists hereunder, Mortgagee shall allow the use of such proceeds for the restoration of the "Improvements", as defined in the Loan Agreement and Chattels, provided Mortgagee and "Construction Consultant," as such term is defined in the Loan Agreement, determine that the amount of such insurance proceeds plus the undisbursed portion of the Loan for "Direct Costs", as defined in the Loan Agreement, and any available equity or other funds of the Mortgagor shall be sufficient to complete the Improvements on or before the "Completion Date", as defined in the Loan Agreement. In the event Mortgagee shall allow the use of such proceeds for the restoration of the "Improvements," as defined in the Loan Agreement, the Mortgagor shall diligently prosecute completion of the Improvements in accordance with the terms of the Loan Agreement, and the insurance proceeds and/or the amount of any such deposits shall be disbursed to Mortgagor under the same terms and conditions for the advancing of loan proceeds under the Loan Agreement except that if the damage is less than \$250,000.00, then the proceeds shall be disbursed to Mortgagor in one advance upon completion of the restoration; amounts not required for such purposes shall be applied, at Mortgagee's option, to the prepayment of the Note and to interest, if any, accrued and unpaid thereon in such order and proportions as Mortgagee may elect. In the event that such proceeds are reasonably determined by Mortgagee to be

inadequate, Mortgagee shall receive from Mortgagor a cash deposit equal to the excess of said estimated cost of restoration over the amount of said available proceeds. If the conditions for the advance of insurance proceeds for restoration set forth above are not satisfied within sixty (60) days of Mortgagee's receipt thereof or if the actual restoration shall not have been commenced within such period, each Mortgagee shall have the option at any time thereafter to apply such insurance proceeds to the payment of the Note and to interest, if any, accrued and unpaid thereon in such order and proportions as Mortgagee may elect.

(h) Notwithstanding the foregoing, the Mortgagor shall comply with all insurance requirements contained in the Loan Agreement, and in the case that this Section 1.9 conflicts with the insurance requirements contained in the Loan Agreement, the requirements set forth in the Loan Agreement shall control.

1.10 If the Mortgagor shall fail to perform any of the covenants contained in Section 1.1, 1.3, 1.7, 1.8, 1.9, 1.12 or 1.15, Mortgagee may make advances to perform the same on Mortgagor's behalf, and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. The Mortgagor will repay on demand all sums so advanced on its behalf with interest at the Involuntary Rate. The provisions of this Section 1.10 shall not prevent or delay any default in the observance of any covenant contained in said Section 1.1, 1.3, 1.7, 1.8, 1.9, 1.12 or 1.15 from constituting an Event of Default.

1.11 (a) The Mortgagor will keep adequate records and books of account in accordance with generally accepted accounting principles and will permit Mortgagee, by its respective agents, accountants and attorneys, to visit and inspect the Premises and examine its records and books of account and to discuss its affairs, finances and accounts with the officers of the Mortgagor, at such reasonable times as may be requested by Mortgagee.

(b) The Mortgagor will deliver to Mortgagee with reasonable promptness, but in no event later than ninety (90) days after the close of its fiscal year, an audited balance sheet and statement of profit and loss setting forth in each case, in comparative form, figures for the preceding year. Throughout the term of this Mortgage, the Mortgagor, with reasonable promptness, will deliver to Mortgagee such other information with respect to the Mortgagor as Mortgagee may reasonably request from time to time. All financial statements of the Mortgagor shall be prepared in accordance with generally accepted accounting principles, shall be delivered in duplicate, and shall be accompanied by the certificate of a principal financial or accounting officer of the Mortgagor, dated within five (5) business days of the delivery of such statements to Mortgagee, stating that he knows of no Event of Default, nor of any default which after notice or passage of time or both would constitute an Event of Default, which has occurred and is continuing, or, if any such default or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Mortgagor has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that the Mortgagor has fulfilled all its obligations under this Mortgage which are required to be fulfilled on or prior to the date of such certificate.

(c) The Mortgagor, within five (5) days after request therefor, shall furnish a written statement duly acknowledged of the amount due whether for principal or interest on the

Note and whether any offsets, counterclaims or defenses exist against Mortgagee or the Indebtedness or any part thereof.

1.12 The Mortgagor will not commit any waste on the Mortgaged Property, or any part thereof, or make any change in the use of the Mortgaged Property, or any part thereof, which will in any material way increase any ordinary fire or other hazard arising out of construction or operation. The Mortgagor will, at all times, maintain the Improvements in good operating order and condition and will promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end.

1.13 The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises, or any part thereof, will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and the Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee. Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid subject to Mortgagor's consent, which shall not be unreasonably withheld. In any such condemnation proceedings Mortgagee may be represented by counsel selected by Mortgagee. The proceeds of any award or compensation so received shall, at the option of Mortgagee, either be applied toward the payment of the Indebtedness, notwithstanding the fact that the Indebtedness may not then be due and payable, or to the restoration of the Improvements. In the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, the same shall be applied by Mortgagee in any manner it shall designate, including, but not limited to, the application of such award or compensation to the then unpaid installments of the principal balance due under the Note in the inverse order of their maturity such that the regular payments under the Note shall not be reduced or altered in any manner. The Mortgagor, upon request by Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for in the Note.

1.14 (a) The Mortgagor will not (i) execute an assignment of the rents, or any part thereof, from the Premises, except pursuant to the Other Mortgages, (ii) terminate or consent to the cancellation or surrender of any lease of the Premises, or any part thereof, now existing or hereafter to be made, other than in the ordinary course of business with respect to Residential Leases (as such term is defined in the Loan Agreement), (iii) modify or amend or consent to the modification or amendment of any other lease or sublease of the Premises, or any part thereof, now existing or hereafter to be made, other than in the ordinary course of business with respect to Residential Leases, or (iv) accept prepayments of any installments of rents to become due under such leases, except prepayments in the nature of security for the performance of the lessees thereunder, in any other manner materially impair the value of the Mortgaged Property or the security of this Mortgage without the written consent of Mortgagee, which consent shall not be unreasonably withheld.

(b) Except for Residential Leases executed in the standard form previously approved by Mortgagee and the Master Lease and the Leases, the Mortgagor will not execute any lease of all or any portion of the Premises, without first obtaining the written consent of Mortgagee, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all such approved leases, on the part of the lessor thereunder to be kept and performed and will at all times do all things necessary to compel performance by the lessee under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. Any and all Leases entered into shall, unless otherwise consented to by Mortgagee in writing, be subject and subordinate to the terms of this Mortgage. All Leases entered into shall provide, and if any Residential Lease provide, for the giving by the lessee thereunder of certificates with respect to the state of such Leases, and Mortgagor shall exercise its right to request such certificates within ten (10) business days of any demand thereof by Mortgagee. Mortgagor shall furnish to Mortgagee, within ten (10) business days after a request by Mortgagee to do so, an executed counterpart of all such Leases. All lessees under such Leases shall execute such estoppel certificates, subordinations, attornments and other agreements as Mortgagee may require. Under no circumstances shall Mortgagee be liable for any obligation to pay any leasing commission, brokerage fee or similar fee or charge in connection with any Lease nor shall Mortgagee be obligated to complete any Improvements for the benefit of any lessee.

(c) The Mortgagor shall furnish to Mortgagee, within fifteen (15) business days after a request by Mortgagee to do so, a written statement containing the names of all lessees of the Premises, the terms of their respective leases, the space occupied and the rentals payable thereunder.

1.15 The Mortgagor will cause the Improvements to be constructed substantially in accordance with the terms of the Loan Agreement, will prosecute such construction with due diligence, and will comply with the covenants made by it in the Loan Agreement, all of which are incorporated herein by reference as though set forth herein, and will permit no "Event of Default", as therein defined, to occur thereunder.

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

1.17 In the event any payment provided for herein or in the Note shall become overdue for a period in excess of fifteen (15) days, a late charge of five (5) cents for each dollar so overdue shall become immediately due to Mortgagee for the purpose of defraying the expenses

incident to handling such delinquent payment, and such charge shall be deemed to be part of the Indebtedness and therefore secured by the lien of this Mortgage. Late charges shall be payable with the next installment of principal and/or interest due under the Note.

1.18 [RESERVED.]

1.19 The Mortgagor agrees that it shall indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorneys' fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Mortgage.

1.20 The Mortgagor expressly covenants and agrees to pay in full the reasonable fees and expenses of Mortgagee's counsel, promptly upon receipt of a statement therefor, which are incurred prior to and after the date hereof and which fees and expenses arise in connection with any matter incidental to the loan which is evidenced by the Note and secured by this Mortgage.

1.21 The Mortgagor hereby represents, warrants, covenants and agrees that other than as set forth in the Environmental Report (as defined in the Loan Agreement), to the best of Mortgagor's knowledge after due inquiry, the Premises and the Improvements comply and shall hereafter comply with all laws, rules, regulations and ordinances of the state and the local governmental authorities where the Premises are located and the United States of America relating to the storage, use, disposal, generation, transportation, and/or treatment of hazardous, toxic and/or radioactive matter and/or waste, including without limitation asbestos (collectively "**Toxic Materials**"). If the presence of Toxic Materials on the Premises or in any Improvements has resulted in, and/or shall hereafter result in (a) contamination or deterioration of water or soil to a level of contamination greater than the levels permitted or established by any governmental agency or authority having jurisdiction over such contamination, (b) the termination or modification of any permit or authorization as to the use and/or occupancy of the Premises or Improvements and/or (c) the inability to obtain or maintain insurance policies satisfactory to Mortgagee, then the Mortgagor covenants and agrees to promptly take any and all action necessary to clean up such contamination to the extent required by any such governmental agency or authority and/or issuer of an insurance policy. The Mortgagor covenants and agrees to indemnify Mortgagee and any affiliate or nominee of Mortgagee and hold Mortgagee and any affiliate or nominee of Mortgagee harmless from any and all liabilities, losses, costs and/or expenses arising out of and/or resulting from the existence and/or the removal of any Toxic Materials at, on, and/or in the Premises or any part or parts thereof or the Improvements or any part or parts thereof and/or the effects of any such Toxic Materials located at, on and/or in the Premises or any part or parts thereof or the Improvements or any part or parts thereof except for matters caused by Mortgagee. The foregoing indemnity shall survive any foreclosure sale of the Premises and any delivery by the Mortgagor and the acceptance by Mortgagee of a deed in lieu of foreclosure of the Premises.

1.22 Mortgagor will not consent to, join in, permit or allow any change in the zoning laws or ordinances relating to or affecting the Premises, and will promptly notify Mortgagee of any changes to the zoning laws affecting the Premises of which it has received written notice thereof.

1.23 Except for the Other Mortgages, the Master Lease, the Leases and the Residential Leases, Mortgagor will not, directly or indirectly, transfer, mortgage, convey, sell, assign, lease, pledge or encumber the Mortgaged Property, or any part thereof or any direct or indirect interest therein, without the express prior written consent of Mortgagee. Mortgagor shall not, directly or indirectly, create, incur, assume or suffer to exist any liability for indebtedness (including subordinated indebtedness), whether secured or unsecured, except indebtedness due with respect to the Loan. Neither the structure of Mortgagor nor the direct or indirect ownership of Mortgagor may be changed from that existing on the date hereof, nor may Mortgagor consolidate with, be acquired by, or merge into or with any Person (as defined in the Loan Agreement), without the express prior written consent of Mortgagee. Mortgagor shall not change the management structure of the Mortgagor or the Premises, nor shall Mortgagor enter into any management and/or leasing agency or similar agreements with respect to the Premises without the prior written consent of Mortgagee. Notwithstanding anything contained herein in or in the Loan Documents to the contrary, the following transfers shall be permitted hereunder: (a) the direct or indirect transfer in any Upper Tier Entity to one or more Family Members for estate planning purposes, provided that the transferor of any such interest shall at all times retain all decision-making authority with respect to such transferred interest, including all voting and consent rights with respect thereto, (b) the direct or indirect transfer, in one or a series of transactions, in any Upper Tier Entity; provided, however, that as a condition to each such transfer set forth in (a) or (b) above: (i) Mortgagee shall receive not less than thirty (30) days prior written notice with respect to any direct transfer by an Upper Tier Entity of its direct interests in RBH-TRB Newark Holdings LLC, including, without limitation, the name of the proposed transferee and the date the transfer is expected to be effective, and Mortgagee shall be informed of any indirect transfer of any interests in the direct or indirect constituent members of any Upper Tier Entity which such Upper Tier Entity receives, or has the right to consent to, pursuant to its organizational documents, by such Upper Tier Entity delivering notice thereof to Mortgagee, (ii) the transferee must be in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control of the U.S. Department of the Treasury and must not be listed on any restricted list published by the Federal Government of the United States of America, (iii) at all times Nicolas Berggruen shall continue to own (legally and beneficially), directly or indirectly, no less than a forty percent (40%) interest in RBH Partners, LLC, and (iv) at all times Ron Beit-Halachmy shall (A) continue to control, directly or indirectly, Mortgagor, and (B) continue to own (legally and beneficially), directly or indirectly, no more than a twenty-five percent (25%) interest in Mortgagor.

1.24 In the event of any sale, conveyance, transfer, pledge or further encumbrance, by operation of law or otherwise, of all or any part of the Mortgaged Property, of any interest therein, or in the event of any change in the ownership or composition of Mortgagor, or (except for the Other Mortgages) any further assignment of rents from the Mortgaged Property, or (except for the Master Lease, the Leases or the Residential Leases) any lease of all or substantially all of the Mortgaged Property, the Premises or the Improvements, without the prior written consent of Mortgagee, then, at Mortgagee's option (and in addition to any other rights Mortgagee may have pursuant to the terms of this Mortgage), Mortgagee may declare that portion of the Loan secured by this Mortgage to be due and payable immediately, and upon such declaration such portion shall immediately become and be due and payable without demand or notice. Mortgagee's consent shall be within its sole and absolute discretion, and Mortgagee specifically reserves the right to condition its consent upon (by way of illustration but not by way

of limitation) its approval of the financial and/or management ability of the purchaser, transferee, lessee, pledge or assignee, upon an agreement to escalate the interest rate of the Note to Mortgagee's then current interest rate for similarly situated properties, upon the assumption of the obligations and liabilities of the Note and this Mortgage by the purchaser, transferee, lessee, pledge or assignee, upon the receipt of guarantees of the Loan satisfactory to Mortgagee and/or additional collateral satisfactory to Mortgagee and upon payment to Mortgagee of an assumption fee. Mortgagor covenants and agrees that it shall not take any of the actions, or suffer any of the events, that would be a cause for acceleration of the portion of the Loan secured by this Mortgage pursuant to this Section, without the prior written consent of Mortgagee. Any purchaser, transferee, lessee, pledge or assignee referred to above shall be deemed to have assumed and agreed to pay the portion of the Loan secured by this Mortgage and to have assumed and agreed to be bound by the terms and conditions of this Mortgage (including, without limitation, the terms of this Section 1.24) unless Mortgagee specifically agrees in writing to the contrary. Mortgagor agrees that, in the event ownership of all or any part of the Mortgaged Property becomes vested in a person other than Mortgagor, Mortgagee may, without notice to the Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the other Loan Documents and the indebtedness, without in any way vitiating or discharging Mortgagor's liability with respect thereto. No sale, conveyance, transfer, pledge, encumbrance, assignment or lease referred to above, and no forbearance, extension or assumption by or to any person with respect to the Indebtedness or any of the Loan Documents, shall operate to release, discharge, modify, change or affect the liability of Mortgagor either in whole or in part, unless Mortgagee specifically agrees in writing to the contrary.

**ARTICLE II**

**EVENTS OF DEFAULT AND REMEDIES**

2.1 If one or more of the following Events of Default shall happen, that is to say:

- (a) if (i) default shall be made in the payment of any interest due under the Note, or in the payment of any installment of principal due under the Note, in either such case, when and as the same shall become due and payable, and such default shall have continued for a period of five (5) days or (ii) default shall be made in any other payment of the principal of the Note, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any prepayment or otherwise, in each case, as in the Note and this Mortgage provided or (iii) default in the payment of any other Indebtedness due to Mortgagee under this Mortgage and such default shall have continued for a period of five (5) days after written notice thereof, or (iv) default shall be made in the payment of any tax required by Section 1.7 to be paid and said default shall have continued for a period of five (5) days after written notice thereof; provided, however, that if Mortgagor, within any twelve (12) month period, shall fail to make more than two (2) such payments by their due dates, said five (5) day period shall become null and void and of no further force or effect and failure to make payment shall become an immediate Event of Default, or
- (b) if default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor contained in Section 1.1, 1.3, 1.8, or 1.9, and such default shall have continued for a period of thirty (30) days after written notice thereof shall

have been given to the Mortgagor by Mortgagee. For the purposes of this clause if any representation made in Section 1.1 shall be incorrect, it shall be deemed to be a default; or

(c) if default shall be made in the due observance or performance of any other covenant or condition on the part of the Mortgagor in the Note, the Loan Agreement or in this Mortgage contained, and such default shall have continued for a period of thirty (30) days after written notice specifying such default and demanding that the same be remedied shall have been given to the Mortgagor by Mortgagee; provided, however, that if, in Mortgagee's sole judgment, said failure to comply is not capable of being cured within said thirty (30) day period and is not curable by the payment of money, then the Mortgagor shall have such additional time as Mortgagee deems reasonably necessary to cure such failure (but in no event will such additional time exceed ninety (90) days after the initial notice of such default) provided that (i) Mortgagor promptly proceeds to commence curing said failure to comply upon receipt of notice of said failure from Mortgagee, (ii) in the sole judgment of Mortgagee, Mortgagor thereafter diligently and continuously proceeds to cure said failure so as to cure said failure in the shortest time possible, (iii) such additional time to cure does not materially impair any rights and/or remedies of Mortgagee and will not adversely affect the completion of the Improvements by the Completion Date and (iv) the Mortgagor furnishes to Mortgagee, upon demand of Mortgagee, such documents and information with respect to Mortgagor's curing of said failure to comply, as Mortgagee may reasonably request; or

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

(e) if the Mortgagor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or of any substantial part of its property, or if the Mortgagor shall make any general assignment for the benefit of creditors, or if the Mortgagor shall fail generally to pay its debts as such debts become due, or if the Mortgagor shall take any action in furtherance of any of the foregoing; or

(f) if any of the creditors of the Mortgagor shall commence against the Mortgagor an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and if such case shall not be discharged or dismissed within ninety (90) days after the date on which such case was commenced; or

(g) if final judgment for the payment of money in excess of \$50,000 in the aggregate shall be rendered against the Mortgagor and the Mortgagor shall not discharge the same or cause it to be discharged within sixty (60) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal; or



(h) except with respect to the Other Mortgages, if any sale, conveyance, transfer, pledge or further encumbrance, by operation of law or otherwise, of all or any part of the Mortgaged Property, of any interest therein, or in the event of any change in the ownership or composition of Mortgagor, or any further assignment of rents from the Mortgaged Property (except for the Other Mortgages), or any lease of all or substantially all of the Mortgaged Property (except for the Master Lease, the Residential Leases and the Leases), the Premises or the Improvements, shall occur, without the prior written consent of Mortgagee; or

(i) if Mortgagor shall fail to maintain its legal existence in good standing in its state of formation; or

(j) if the Mortgagor defaults beyond any applicable notice and cure periods under any other agreement with Mortgagee; or

(k) if any easement over, across, under or otherwise affecting the Mortgaged Property or any portion thereof shall be granted or released without Mortgagee's prior written consent or if there shall be a default by Mortgagor under any easement, covenant or restriction affecting the Premises or any portion thereof or if any easement in favor of the Premises or any portion thereof shall be terminated or modified; or

(l) except with respect to the Other Mortgages, if Mortgagor shall assign any lease or the rents from any lease for all or a part of the Premises other than the Other Mortgages, without the prior written consent of Mortgagee, or shall enter into, amend, extend, renew, abridge or otherwise modify, any lease, or shall cancel or consent to the cancellation or surrender of any lease unless in the ordinary course and in accordance with reasonably prudent management practice, or shall in any other manner materially impair the security of Mortgagee for the payment of the debt secured by this Mortgage; or

(m) if Mortgagor incurs any additional indebtedness, with the exception of the Loan and trade payables customarily incurred in the ordinary course of business without the prior written consent of Mortgagee; or

(n) if the Mortgaged Property or any material part thereof shall be condemned; or

(o) if any material adverse change in the Mortgagor, any Guarantor, or the Mortgaged Property shall occur; or

(p) if any person or entity having or claiming an interest in the Mortgagor or the Mortgaged Property commences an action or proceeding against the Mortgagor, the Mortgaged Property or any person or entity having or claiming an interest in the Mortgagor or the Mortgaged Property and such action or proceeding shall be finally determined in a manner that adversely affects Mortgagee's rights, remedies and/or position hereunder,

then and in every such case:

(I) During the continuance of any such Event of Default, Mortgagee, by written notice given to the Mortgagor, may declare the entire principal of the Note then outstanding (if

not then due and payable), and all accrued and unpaid interest thereon together with all other Indebtedness, to be due and payable immediately, and upon any such declaration the principal of the Note, said accrued and unpaid interest thereon and all other Indebtedness shall become and be immediately due and payable, anything in the Note, in this Mortgage or in the Loan Agreement to the contrary notwithstanding;

(II) During the continuance of any such Event of Default, Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Premises, and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Mortgagee, at the expense of the Mortgaged Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid, may complete the construction of the Improvements and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Mortgaged Property, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of the Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest thereon, when and as the same shall become payable and second, to the payment of any other Indebtedness and sums required to be paid by the Mortgagor under this Mortgage;

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

- (1) [Reserved]
- (2) institute proceedings for the complete or partial foreclosure of this Mortgage; or
- (3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in the Loan Agreement or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the

enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

(IV) Mortgagee also shall have such other rights and/or remedies provided to a mortgagee and/or secured party by the Uniform Commercial Code, as that model statute is enacted and in effect in the jurisdiction wherein the Premises are situated.

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

(b) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Article II, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold and shall execute and deliver to the appropriate governmental authority any affidavit, instrument, document and/or filing required pursuant to any applicable statute, ordinance, rule and/or regulation. Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, including, without limitation, any affidavit, instrument, document or filing required pursuant to any applicable statute, rule or regulation and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless the Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the reasonable judgment of Mortgagee, for that purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings of sale, herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor. In addition, Mortgagor expressly agrees that any powers of attorney executed by Mortgagor subsequent to the date hereof shall expressly state that the power of attorney provided for in this Mortgage shall continue to be in full force and effect until terminated in accordance with the terms of this Mortgage.

(c) In the event of any sale made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by the Mortgagor

pursuant to this Mortgage, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

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

First: To the payment of the costs and expenses of such sale, including, but not limited to, the reasonable compensation to Mortgagee, the agents and counsel of each, and any sums that may be due under and/or pursuant to any statute, rule, regulation and/or law which imposes any tax, charge, fee and/or levy in connection with and/or arising from the exercise of any right and/or remedy under this Mortgage or the requirement that any sum be paid in order to record and/or file any deed, instrument of transfer or other such document in connection with any such sale, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Involuntary Rate on all advances made by Mortgagee and all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at the Involuntary Rate from and after the happening of any Event of Default described in Section 2.1 from the due date of any such payment of principal until the same is paid.

Third: To the payment of any other Indebtedness and any other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, the Note or the Loan Agreement.

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

(e) Upon any sale made under or by virtue of this Article II whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property, or any part thereof, and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

2.3 (a) In case an Event of Default described in Section 2.1 shall have happened and be continuing, then, upon written demand of Mortgagee, the Mortgagor will pay to Mortgagee the whole amount which then shall have become due and payable on the Note, for principal or interest or both, as the case may be, and after the happening of said Event of Default will also pay to Mortgagee interest at the Involuntary Rate on the then unpaid principal of the Note, and the sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to Mortgagee, its agents, and

counsel and any reasonable expenses incurred by Mortgagee hereunder. In the event the Mortgagor shall fail forthwith to pay such amounts upon such demand, Mortgagee shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by its counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Mortgagor and collect, out of the property of the Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, money adjudged or decreed to be payable.

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

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

(d) Any moneys thus collected by Mortgagee under this Section 2.3 shall be applied by Mortgagee in accordance with the provisions of subsection (d) of Section 2.2.

2.4 After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to obtain judgment for the principal of, or interest on, the Note and/or all other Indebtedness and/or other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, or of any other nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property, or any part thereof, and of all the earnings, revenues, rents,

issues, profits and income thereof. After the happening of any Event of Default and during its continuance, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of Mortgagee, Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the Indebtedness, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such a receiver or receivers.

2.5 Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagor shall be entitled to retain possession and control of all Property now or hereafter held under this Mortgage.

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

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

2.8 During the continuance of any Event of Default and pending the exercise by Mortgagee of its right to exclude the Mortgagor from all or any part of the Mortgaged Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property, or any part thereof, which are in its possession for such period, and upon default of any such payment, will vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and if in default thereof may be evicted by any summary

action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.

**ARTICLE III**  
**MISCELLANEOUS**

3.1 In the event any one or more of the provisions contained in this Mortgage or in the Note or in the Loan Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

3.2 All notices and/or consents, hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when delivered in person or one (1) day after being sent by a nationally recognized overnight delivery service (e.g. FedEx) or three (3) days after being sent by registered or certified mail, return receipt requested, to Mortgagor at its address above stated, with a copy to McManimon, Scotland & Baumann, L.L.C., Attention: Glenn F. Scotland, Esq.; in the case of Mortgagee, at its respective address above stated, with copy to Mortgagee at 200 West Street, New York, New York 10282, Attention: Maraget Anadu (and with a copy to the attention of Andrea Gift and with a copy to gs-uig-docs@gs.com), or at such other address of which it shall have notified the party giving such notice in writing as aforesaid.

3.3 Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

3.4 All of the grants, terms, conditions, provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall include and refer to the Mortgagor named herein, any subsequent owner of the Mortgaged Property, or any part thereof, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

3.5 The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State where the Premises are located. Nothing in this Mortgage, the Note or in any other agreement between the Mortgagor and Mortgagee shall require the Mortgagor to pay, or Mortgagee to accept, interest in an amount which would subject Mortgagee to pay any penalty or forfeiture under applicable law. In the event that the payment of any charges, fees or other sums due hereunder or under the Note or any such other agreement which are or could be held to be in the nature of interest and which would subject Mortgagee to any penalty or forfeiture under applicable law, then *ipso facto* the obligations of the Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law. Should Mortgagee receive any payment which is or would be in excess of the highest rate authorized under law, such payment

shall have been, and shall be deemed to have been, made in error and shall automatically be applied to reduce the outstanding balance of the Indebtedness.

3.6 The truth, accuracy, adequacy and completeness of the representations, warranties and covenants contained in this Mortgage and the Note shall survive, and not merge with, the execution and delivery of this Mortgage and the Note.

3.7 Whenever the consent or approval of Mortgagee is required, the decision whether to consent or approve shall be in the sole and absolute but reasonable discretion of Mortgagee.

3.8 This Mortgage, the Note and all other documents executed and delivered in connection herewith or therewith shall be given a fair and reasonable construction in accordance with the intention of the parties as expressed herein and therein and without regard for any rule of law requiring construction against the party who prepares such instruments.

3.9 The Mortgagor expressly agrees, intending that Mortgagee rely thereon, that this Mortgage also shall constitute a “security agreement,” as such term is defined in the Uniform Commercial Code in the jurisdiction wherein the Premises are situated (the “*Code*”) the Mortgaged Property includes, and shall be deemed to include, *inter alia*, the Chattels and the Intangibles, regardless of whether they are held or hereafter acquired, of the Mortgagor in, to and under the Mortgaged Property. By executing and delivering this Mortgage, the Mortgagor has granted, in the same manner and with the same effect described in the Granting Clause hereof, to Mortgagee, as additional security, a security interest in the Chattels and the Intangibles which are subject to the Code. If any Event of Default shall occur, Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies granted to a secured party under the Code, including, but not limited to, the right to take possession of the Chattels and the Intangibles, or any part thereof, and the right to advertise and sell the Chattels and the Intangibles, or any part thereof, pursuant to and in accordance with the power of sale provided for in this Mortgage. The Mortgagor agrees that any notice of sale or other action intended by Mortgagee with respect to the Chattels and the Intangibles, or any part thereof, shall constitute reasonable notice if it is sent to the Mortgagor not less than ten (10) days prior to any such sale or intended action. The proceeds of any such sale of the Chattels and the Intangibles, or any part thereof, shall be applied in the manner set forth in clauses First through Fourth of Section 2.2(d) of this Mortgage.

3.10 [RESERVED.]

3.11 This Mortgage and all of the terms, covenants, provisions, conditions and grants contained in this Mortgage cannot be altered, amended, waived, modified or discharged orally and no executory agreement shall be effective to modify, waive or discharge, in whole or in part, anything contained in this Mortgage unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, waiver or discharge is sought.

3.12 The Mortgagor acknowledges that it has received a true copy of this Mortgage.

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



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

3.15 The Mortgagor represents and warrants that it has no offsets, defenses or counterclaims to the payment of the Mortgage Amount.

3.16 The Mortgage and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with the laws of the State of New Jersey (without giving effect to New Jersey's principles of conflicts of law). Mortgagor and Mortgagee hereby irrevocably submit to the non-exclusive jurisdiction of any New Jersey State or Federal court sitting in the City of Newark (or any county where the property is located) over any suit, action or proceeding arising out of or relating to this Mortgage, and Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any New Jersey State or Federal court sitting in the City of Newark (or such other county in New Jersey State) may be made by certified or registered mail, return receipt requested, directed to Mortgagor at the address indicated on the cover page hereof, with a copy to the Mortgagor's Counsel, and service so made shall be complete five (5) days after the same shall be complete five (5) days after the same shall have been so mailed.

3.17 Mortgagee hereby notifies the Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (Signed into law October 26, 2001) (the "**Act**"), Mortgagee is required to obtain, verify and record information that identifies the Mortgagor, which information includes the name and address of the Mortgagor and other information that will allow Mortgagee to identify the Mortgagor in accordance with the Act.

3.18 The Mortgagor hereby knowingly, voluntarily and intentionally waives any right it may have to consequential or punitive damages arising out of, under or in connection with the Loan Documents or the transactions contemplated therein. Further, the Mortgagor hereby certifies that no representative of Mortgagee, or counsel to Mortgagee, has represented, expressly or otherwise, that Mortgagee would not, in the event of such litigation, seek to enforce this waiver of consequential and punitive damages. The Mortgagor acknowledges that Mortgagee has been induced to accept this Mortgage by, inter alia, the provisions of this Section.

3.19 The lien of this Mortgage is co-equal in lien priority to that certain Mortgage, Assignment of Leases and Rents and Security Agreement (the "**Co-Equal Mortgage**"), dated the date hereof made by Mortgagor for the benefit of NCIF New Markets Capital Fund IX CDE, LLC, Carver CDC — Subsidiary 21, LLC, BACDE NMTC Fund 4, LLC and GSNMF Sub-CDE 2-LLC, in the principal amount of \$15,699,999, (collectively, the "**QLICI Lenders**"). The lien of this Mortgage is superior in lien priority to that certain (i) Mortgage and Security Agreement, dated the date hereof, made by Mortgagor for the benefit of the Casino Reinvestment Development Authority ("**CRDA**"), in the principal amount of \$5,250,000 and that certain Assignment of Leases and Rents made by Mortgagor for the benefit of CRDA, (ii) that certain Mortgage, Assignment of Leases and Rents and Security Agreement made by Mortgagor for the benefit of the QLICI Lenders, in the principal amount of \$9,968,000, and (iii) that certain Mortgage, Assignment of Leases and Rents and Security Agreement made by Mortgagor for the benefit of the QLICI Lenders, in the principal amount of \$14,107,001 (collectively, the "**Subordinate Mortgages**," and together with the Co-Equal Mortgage, the "**Other Mortgages**").

Further, the liens and security interests granted hereunder and under the Other Mortgages, and the exercise of any rights or remedies by the Mortgagee hereunder or by the lenders under the Other Mortgages, are subject to the limitations and provisions of the Subordination and Intercreditor Agreement dated as of the date hereof (the “*Intercreditor Agreement*”), among Mortgagor, Mortgagee, CRDA, NCIF New Markets Capital Fund IX CDE, LLC, Carver CDC — Subsidiary 21, LLC, BACDE NMTC Fund 4, LLC, GSNMF Sub-CDE 2 LLC and GSB NMTC Investor LLC. To the extent of any conflict between the terms of this Mortgage and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall govern and control.

3.20 THE MORTGAGOR AND MORTGAGEE WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS MORTGAGE AND/OR ANY OTHER LOAN DOCUMENTS.

3.21 THE MORTGAGOR ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE AND CORRECT COPY OF THIS MORTGAGE.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, this Mortgage has been duly executed by the Mortgagor as of the date first above written.

**TEACHERS VILLAGE PROJECT A QALICB URBAN  
RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

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

On the \_\_\_\_\_ day of September in the year 2012 before me, the undersigned, a notary public in and for said state, personally appeared Ron Beit-Halachmy, 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 s/he executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

Signature Page  
Direct Loan Mortgage

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**EXHIBIT A**

**DESCRIPTION OF PREMISES**

[Follows on Next Page]

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**LOAN AGREEMENT**

Dated as of September 11, 2012

between

**GOLDMAN SACHS BANK USA,**

Lender,

and

**RBH-TRB NEWARK HOLDINGS, LLC,**

Borrower.

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EXHIBITS

Exhibit A	-	Intentionally Deleted
Exhibit B	-	Pledge and Security Agreement
Exhibit C	-	Form of Note
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**LOAN AGREEMENT** (this “Agreement”), dated as of September 11, 2012, between **GOLDMAN SACHS BANK USA**, a New York banking corporation (together with its successors and assigns, the “Lender”), and **RBH-TRB NEWARK HOLDINGS, LLC**, a New York limited liability company (the “Borrower”).

All capitalized terms used herein shall have the respective meanings set forth in Section 1.1 hereof or elsewhere in this Agreement.

**WITNESSETH:**

WHEREAS, the Borrower has requested that the Lender provide certain financing to the Borrower in the amount of up to Eighteen Million Seven Hundred Ninety Four Thousand Two Hundred Fifty One and 00/100 Dollars (\$18,794,251.00) (the “Loan”);

WHEREAS, a portion of the proceeds of the Loan in the amount of \$9,397,082 will be used by the Borrower to make a capital contribution to its Affiliate (as hereinafter defined), RBH-TRB West I Mezz Urban Renewal Entity, LLC, a New Jersey limited liability company (“Leverage Lender”);

WHEREAS, Leverage Lender will use such capital contribution, along with other sources of capital, in a New Markets Tax Credit financing structure (“NMTC Transaction”) to make a leverage loan in the aggregate amount of \$30,207,000 (the “Leverage Loan”) to GS Halsey 2 NMTC Investment Fund LLC (the “Investment Fund”);

WHEREAS, the Investment Fund shall use the proceeds of the Leverage Loan, along with an equity contribution by an equity investor, to make an equity investment in various “qualified community development entities” (collectively, the “CDEs”) formed for the purpose of serving or providing investment capital for low-income communities or low-income persons (as such terms are defined for the purposes of Section 45D of the Code, consistent with the requirements of Section 45D of the Code);

WHEREAS, the CDEs shall make loans (the “QLICIs”), from proceeds of the equity investments, to Teachers Village Project A QALICB Urban Renewal Entity, LLC (the “QALICB”), which has acquired the Property (as hereinafter defined) and shall construct thereon a portion of the Project (as hereinafter defined);

WHEREAS, the Lender shall make a direct loan in the amount of \$9,000,000 (the “Direct Loan”) to the QALICB to finance the construction on the Property of a portion of the Project;

WHEREAS, the Casino Reinvestment Development Authority shall make a loan in the amount of \$5,250,000 (the “CRDA Loan”) to the QALICB to finance the construction on the Property of a portion of the Project;

WHEREAS, a portion of the Loan in the amount of \$5,302,670 will be used by the Borrower to make a capital contribution to the QALICB and will be used by the QALICB to fund construction costs of the Project;

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WHEREAS, a portion of the Loan in the amount of \$4,094,500 will be used by the Borrower to repay a portion of the outstanding amount of a predevelopment loan made by the Lender to the Borrower on September 14, 2010 (the “Predevelopment Loan”) and to fund a six (6) month interest reserve for the extension of the repayment date of said Predevelopment Loan;

WHEREAS, the Lender is willing to provide the Loan to the Borrower upon the terms and conditions set forth in this Agreement and the other Loan Documents;

WHEREAS, the Lender and the Borrower acknowledge that the Loan is being made in connection with the anticipation of the Project receiving Urban Transit Hub Tax Credits (“UTHTCs”).

NOW, THEREFORE, in consideration of the funding of the financing described herein and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1      Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“Acceptable Third Party Terms” has the meaning provided in Section 2.5(d).

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling (including, but not limited to, all partners, directors, officers and members of such Person), controlled by or under direct or indirect common control with such Person. For purposes of this definition, a Person shall be deemed to control a corporation, a partnership, a trust or a limited liability company if such Person possesses, directly or indirectly, the power (i) to vote 10% or more of the securities having ordinary voting power for the election of directors of such corporation or to vote 10% or more of the partnership, trust or limited liability company interests of such partnership, trust or limited liability company, respectively, or (ii) to direct or cause direction of the management and policies of such corporation, partnership, trust or limited liability company, whether through the ownership of voting securities, as managing or general partner, as managing member, by contract or otherwise.

“Agreement” means this Agreement, as amended, supplemented or modified from time to time.

“Amortization Schedule” has the meaning set forth in Section 2.2(a).

“Annual Compliance Letters” mean the letters issued annually by the NJEDA to the holder of the Certificate or the Tax Credit Transfer Certificate certifying the Borrower is in compliance with its annual reporting requirements, and defined as the “Letter of Compliance” in

N.J. Admin. Code 19:31-9.2, and as provided for in N.J. Admin. Code 19:31-9.7(h), 19:31-9.8, 19:31-9.14.

“Bankruptcy Code” means any rules promulgated by a Governmental Authority of the applicable jurisdiction relating to bankruptcy, insolvency, corporate reorganization, appointment of a trustee, receiver, administrator or similar insolvency officer, or similar debtor relief under any applicable law.

“Borrower” has the meaning provided in the first paragraph of this Agreement.

“Borrower’s Knowledge” means the knowledge of Ron Beit-Halachmy.

“Borrower’s Operating Agreement” has the meaning set forth in Section 5.5.

“Business Day” means any day other than a Saturday, Sunday or any other day on which national banks in New York are not open for business.

“Business Plan” means the business plan for the Project, which shall include, but not be limited to, a description of the proposed financing strategy and all required projected subsidies and projected financing sources for the acquisition, development and construction of the Project, as approved by Lender prior to the date hereof.

“CDEs” has the meaning set forth in the Recitals.

“Certificate” means the certificate evidencing all of the UTHTCs granted to Borrower for the Project and issued by the Director of the Division of Taxation of the State of New Jersey.

“Closing Date” means the date hereof.

“Controlling Person” means, when used with reference to a Person, any Person that directly or indirectly through one or more intermediaries controls the specified Person.

“CRDA Loan” has the meaning set forth in the Recitals.

“Debt” means the outstanding principal amount set forth in, and evidenced by, the Note, together with all interest accrued and unpaid thereon and all other sums due to the Lender in respect of the Loan, including any sums due under the Note, this Agreement, the Pledge or any other Loan Document.

“Default” means the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to the lesser of (i) twenty-five percent (25%) per annum and (ii) the maximum interest rate permitted by applicable law. The Default Rate shall be calculated on the basis of a 360 day year for the actual number of days elapsed.

“Direct Loan” has the meaning set forth in the Recitals.

“Event of Default” has the meaning provided in Section 7.1.

“Family Members” shall mean the spouses, parents, children and grandchildren of the partners, members or other equity interest holders in the Borrower and any trust established for estate planning purposes for the benefit of such partners, members or other equity interest holders in the Borrower or any of the foregoing specified family members.

“Financing” means any investment or financing for the Project, which may be in the form of an equity investment, tax credit investment, mezzanine debt, senior construction financing, credit enhancement for senior construction financing or otherwise, including, without limitation, any and all government subsidies and/or grants.

“Future Project” has the meaning provided in Section 2.5(a).

“GAAP” means generally accepted accounting principles in the United States of America, consistently applied, as of the relevant date in question.

“Governmental Authority” means any court, board, agency, commission, office or authority of any nature whatsoever of or for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

“Guarantor” means Ron Beit-Halachmy, an individual.

“Guaranty Obligations” means any obligations (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing any Indebtedness, leases, dividends or other obligations of any other Person in any manner, whether direct or indirect, and including, any obligation, whether or not contingent, (i) to purchase any such Indebtedness or other obligation or any property constituting security therefor, (ii) to advance or provide funds or other support for the payment or purchase of such Indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements), (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness or obligation, or (iv) otherwise assure or hold harmless the owner of such Indebtedness or obligation against loss in respect thereof.

“Guaranty of Recourse Obligations” means that certain Guaranty of Recourse Carveouts, to be executed on the date hereof and to be made by the Guarantor for the benefit of the Lender.

“Indebtedness” means, with respect to any Person, without duplication, the following, whether direct or contingent:

- (a) all indebtedness for borrowed money;

(b) the deferred purchase price of assets or services which in accordance with GAAP would be shown to be a liability (or on the liability side of a balance sheet);

(c) all Guaranty Obligations;

(d) the maximum amount of all letters of credit issued or acceptance facilities established for the account of such Person and, without duplication, all drafts drawn thereunder (other than letters of credit (i) supporting other Indebtedness of the Borrower or (ii) offset by a like amount of cash or government securities held in escrow to secure such letter of credit and draws thereunder);

(e) all capitalized lease obligations;

(f) all Indebtedness of another Person secured by any lien on any property of the Borrower, whether or not such indebtedness has been assumed;

(g) all obligations under take-or-pay or similar arrangements or under interest rate, currency, or commodities agreements;

(h) indebtedness created or arising under any conditional sale or title retention agreement (other than conditional sale and title retention agreements entered into in the ordinary course of business for assets incidental to the management and operation of the Project, or any portion thereof); and

(i) obligations of such Person with respect to withdrawal liability to or on behalf of any “multiemployer plan” as defined in Section 4001(a) of ERISA;

provided, however, that Indebtedness shall not include (i) current accounts payable (other than for borrowed money or purchase money obligations) incurred in the ordinary course of business or in the development of the Project consistent with the terms of this Agreement and the Business Plan; provided, further, however, that all such liabilities, accounts and claims shall be paid when due (or in conformity with customary trade terms or customary dispute resolution procedures or, in the case of accounts payable in connection with the development of the Project, in conformity with the provisions of this Agreement and the Business Plan) and accrued expenses (other than for borrowed money or purchase money obligations) incurred in the ordinary course of business and (ii) indemnification, recourse carve-out and similar contingent obligations which are not assurances of payment of the items described in sub-clauses (a) through (i) of this definition.

“Initial Funding” has the meaning set forth in Section 2.1(a).

“Investment Fund” has the meaning set forth in the Recitals.

“Lender” has the meaning provided in the first paragraph of this Agreement.

“Leverage Lender” has the meaning set forth in the Recitals.

“Leverage Loan” has the meaning set forth in the Recitals.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice perfecting a security interest under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction, or other similar recording or notice statute, and any lease in the nature thereof).

“Loan” has the meaning set forth in the Recitals.

“Loan Documents” means, collectively, this Agreement, the Note, the Pledge (including any financing statements executed and delivered in connection therewith), the Guaranty of Recourse Obligations, as well as all other documents now or hereafter executed and/or delivered in connection with the Debt or hereafter delivered by or on behalf of the Borrower pursuant to the requirements hereof or of any other Loan Document, as the same may be amended from time to time.

“Material Adverse Effect” means any event or condition that has a material adverse effect upon (i) the business operations, economic performance, properties, assets or condition (financial or otherwise) of the Borrower, the Guarantor or the Project, in each case taken as a whole, (ii) the ability of the Borrower or the Guarantor to perform, in all material respects, its obligations under each Loan Document, (iii) the enforceability or validity of any Loan Document or the perfection or priority of any Lien created under any Loan Document, (iv) the value of the Project, taken as a whole, (v) the ability of the Borrower to receive the Certificates, or (vi) the rights, interests and remedies of the Lender under the Loan Documents.

“Maturity Date” means the date on which the Loan becomes due and payable as herein provided, whether on December 31, 2023, or such earlier date as may be the result of acceleration of the Loan or otherwise.

“NJEDA” means the New Jersey Economic Development Authority.

“NMTC Transaction” has the meaning set forth in the Recitals.

“Note” means the promissory note of the Borrower in favor of the Lender evidencing the Loan and provided in accordance with Section 2.2 hereof, as such promissory note may be amended, modified, supplemented or replaced from time to time.

“Officer’s Certificate” means one or more certificates certified by an individual authorized to act on behalf of the Borrower and, to the extent applicable, any constituent Person with respect to the Borrower.

“Permits” has the meaning provided in Section 4.1(h).

“Permitted Lender Transferees” One or more of the following: (i) one or more of the following: an insurance company, bank, savings and loan association, investment bank, trust company, commercial credit corporation, pension plan, pension fund, pension fund advisory firm, mutual fund, real estate investment trust or governmental entity or plan; or (ii) an investment company, money management firm or a “qualified institutional buyer” within the

meaning of Rule 144A under the Securities Act of 1933, as amended; or (iii) an institution substantially similar to any of the foregoing, which, in the case of each of the sub-clauses of this definition, has at least \$300,000,000 in total assets (in name or under management), and is regularly engaged in the business of making or owning commercial real estate loans or commercial loans or mezzanine loans (or interests therein) similar to the loans described herein; (iv) any entity Controlled (as defined below) by or Controlling, or under common Control with, any of the entities described in clauses (i)-(iii) above, or (v) a governmental entity. (“Control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise, and “Controlled” and “Controlling” have the meaning correlative thereto).

“Permitted Liens” means (i) Liens created by, under or in connection with this Agreement or the other Loan Documents, if any, in favor of the Lender, including, without limitation, the lien created by the Pledge, (ii) Liens which exist for taxes and assessments not yet due and payable and (iii) any Liens of record which exist with respect to the Project at the time of the acquisition of the Project, are approved by the Lender hereunder and which do not have a Material Adverse Effect on the UTHTCs and/or the Certificates.

“Permitted Transfer” means (a) the direct or indirect transfer in any Upper Tier Entity to one or more Family Members for estate planning purposes, provided that the transferor of any such interest shall at all times retain all decision-making authority with respect to such transferred interest, including all voting and consent rights with respect thereto, (b) the direct or indirect transfer, in one or a series of transactions, in any Upper Tier Entity; provided, however, that as a condition to each such transfer set forth in (a) or (b) above: (i) the Lender shall receive not less than thirty (30) days prior written notice with respect to any direct transfer by an Upper Tier Entity of its direct interests in the Borrower, including, without limitation, the name of the proposed transferee and the date the transfer is expected to be effective, and the Lender shall be informed of any indirect transfer of any interests in the direct or indirect constituent members of any Upper Tier Entity which such Upper Tier Entity receives, or has the right to consent to, pursuant to its organizational documents, by such Upper Tier Entity delivering notice thereof to the Lender, (ii) the transferee must be in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control of the U.S. Department of the Treasury and must not be listed on any restricted list published by the Federal Government of the United States of America, (iii) at all times Nicolas Berggruen shall continue to own (legally and beneficially), directly or indirectly, no less than a forty percent (40%) interest in RBH Partners, LLC, and (iv) at all times Ron Beit-Halachmy shall (A) continue to control, directly or indirectly, the Borrower, and (B) continue to own (legally and beneficially), directly or indirectly, no more than a twenty-five percent (25%) interest in the Borrower.

“Person” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.



“Pledge” means, that certain Pledge and Security Agreement made by the Borrower for the benefit of the Lender, in the form attached hereto as Exhibit B, to be executed on the date hereof.

“Pledged Collateral” means all of the Borrower’s (or an Affiliate’s) right, title and interest as the owner of the Certificate (prior to transferring same to Lender), including, without limitation, all of the following now owned or at any time hereafter acquired by the Borrower, or in which the Borrower now has or at any time in the future may acquire any right, title or interest: (a) all certificates, instruments or other writings representing or evidencing interest in the UTHTCs, including, but not limited to, the Certificate, the Annual Compliance Letters, the Tax Credit Transfer Certificate or any of the other items referred to in the preceding clause, and all accounts and general intangibles arising out of, or with respect to any of the foregoing interests; (b) any and all moneys or property due and to become due to the Borrower now or in the future with respect to the foregoing interests, or to which the Borrower may now or in the future be entitled in its capacity as owner of the foregoing interests, as may be applicable; (c) all rights of the Borrower pursuant to all agreements, if any, to which the Borrower is a party from time to time that relate to its ownership of the foregoing interests; and (d) to the extent not otherwise included, all proceeds of or from any or all of the foregoing.

“Project” means the Teachers Village Project, an approximately 422,628 square foot mixed use development consisting of three (3) charter schools, a day care center, approximately 205 residential rental housing units (each component thereof as described in the Business Plan being a “Residential Component”) and approximately 63,000 square feet of retail space to be located on and/or adjacent to Halsey Street in the City of Newark, New Jersey.

“Project Budget” means the budget for the Project, as approved by the Lender.

“Property” means the land identified on Exhibit A attached hereto and the building, structures and improvements now or hereafter situated thereon.

“Proposed Financing” has the meaning provided in Section 2.5(b).

“Proposed Financing Notice” has the meaning provided in Section 2.5(b).

“Proposed Term(s)” has the meaning provided in Section 2.5(b).

“QALICB” has the meaning provided in the Recitals of this Agreement.

“QLICIs” has the meaning provided in the Recitals of this Agreement.

“Second Funding” has the meaning provided in Section 2.1(a).

“Taxes” means all real estate and personal property taxes, assessments, fees, taxes on rents or rentals, water rates or sewer rents, and other governmental charges now or hereafter levied or assessed or imposed against the Borrower and/or the Property (or any portion thereof) or rents therefrom or which may become Liens.

“Tax Credit Transfer Certificate” has the meaning set forth in Section 5.6(e).

“Term” means the entire term of this Agreement, which shall expire upon repayment in full of the Debt and full performance of each and every obligation to be performed by the Borrower and any other Person which is an Affiliate of the Borrower pursuant to the Loan Documents.

“Third Party Terms” has the meaning provided in Section 2.5(d).

“Upper Tier Entity” shall mean, individually and collectively as the context requires, (a) TRB Newark Assemblage, LLC, (b) TRB Newark TRS, LLC, (c) RBH Partners, LLC and RBH Capital, LLC.

“UTHTCs” has the meaning provided in the Recitals of this Agreement.

Section 1.2        Principles of Construction.

All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The words “includes”, “including” and similar terms shall be construed as if followed by the words “without limitation”. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. All accounting terms not specifically defined herein shall be construed in accordance with GAAP, as may be modified herein.

ARTICLE II

GENERAL

Section 2.1        Commitment and Loan.

(a)        Commitment and Advances of the Loan. Provided that no Event of Default has occurred and is continuing (provided, however, that the Lender shall have no obligation to accept a cure of any Event of Default) hereunder and the Borrower has satisfied, or caused to be satisfied all of the conditions precedent set forth in this Agreement with respect to each advance, the Lender will advance and the Borrower will accept installments of the Loan. Advances of the Loan shall be made available to the Borrowers in two tranches, as follows: (i) an initial tranche (the “Initial Funding”) in the amount of Thirteen Million Four Hundred Ninety One Thousand Five Hundred Eighty Two Dollars (\$13,491,582), which tranche shall be made available upon the terms and conditions of this Agreement, including, without limitation, the satisfaction of the conditions set forth in Section 3.1, and (ii) a second tranche (the “Second Funding”) in the amount of Five Million Three Hundred Two Thousand Six Hundred Sixty Nine Dollars (\$5,302,669), which tranche shall be made available upon the terms and conditions of this Agreement, including, without limitation, the satisfaction of the conditions set forth in Section 3.2.

(b)        Uses. The parties acknowledge and agree that a portion of the proceeds of the Initial Funding in the amount of \$9,397,082 shall be used by the Borrower to make a capital

contribution to the Leverage Lender in order for the Leverage Lender to make the Leverage Loan and the remaining portion of the Initial Funding, in the amount of \$4,094,500, shall be used by the Borrower to repay a portion of the outstanding amount of the Predevelopment Loan and to fund a six (6) month interest reserve for the extension of the repayment date of said Predevelopment Loan. In addition, the parties acknowledge and agree that the Borrower shall use proceeds of the Second Funding to make a capital contribution to the QALICB which the QALICB will use for construction costs of the Project.

(c) The Note. The Borrower's obligation in respect of the Loan shall be evidenced by the Note, in the form of Exhibit C attached hereto, in the principal amount of \$18,794,251, delivered to the Lender on the date hereof. The Note shall bear interest as provided herein. The Note shall be entitled to the benefits of this Agreement and secured by the Pledge and the other Loan Documents.

(d) Security. As security for the Loan, on the Closing Date, the Borrower shall grant to the Lender a first priority security interest in the Pledged Collateral, in the form of the Pledge.

#### Section 2.2 Repayment of Loan.

(a) Amortization. During the construction of the Project, interest shall accrue on a quarterly basis and shall be added to the principal amount outstanding under the Loan, but shall not be payable, on the Loan at the Interest Rate. Commencing on December 31, 2014, the Loan shall be repaid in equal annual installments of principal and interest, on the last day of each calendar year, pursuant to the attached amortization schedule, attached hereto as Exhibit G (the "Amortization Schedule").

(b) Prepayment of the Loan. The Loan may be repaid at any time without a prepayment fee or charge.

(c) Additional Borrowing. Amounts borrowed hereunder and repaid may not be re-borrowed.

(d) Principal Outstanding. Notwithstanding any prepayment of the Loan, any and all amounts of the Loan that remain unpaid, whether, principal, interest or otherwise, shall be immediately due and payable on the Maturity Date.

#### Section 2.3 Interest Rate.

(a) Interest. The Loan shall bear interest at a rate of 8.65319% per annum.

(b) Default Rate. Notwithstanding the foregoing, from and after the occurrence and during the continuance of an Event of Default (provided, however, that the Lender shall have no obligation to accept a cure of any Event of Default), the Loan shall bear interest at the Default Rate. Payment or acceptance of the increased rates provided for in this Section 2.3(b) is not a permitted alternative to timely payment or full performance by the Borrower and shall not constitute a waiver of any Default or Event of Default or a waiver in

respect of this Agreement or any other Loan Document and shall not otherwise prejudice or limit any rights or remedies of the Lender.

Section 2.4      Payments and Computations.

(a)      Making of Payments. All payments hereunder or under any other Loan Document shall be made to the Lender, in U.S. Dollars in immediately available funds to such account as the Lender may instruct the Borrower in a written notice delivered to the Borrower at least five (5) Business Days prior to the applicable payment date no later than 3:00 PM (New York time) on the date when due. Payments received after such time shall be deemed to have been received on the next succeeding Business Day. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and shall include interest for the period of such extension. Commencing on December 31, 2014 or the next Business Day thereafter and continuing on the annual anniversary of said date (each a "Payment Date"), payments of principal and interest shall be made pursuant to the Amortization Schedule.

(b)      Payments by Tax Credit Transfer Certificates. Notwithstanding anything in Section 2.4(a) to the contrary, in lieu of making a payment in cash on a Payment Date, the Borrower may, on or prior to a Payment Date, deliver to the Lender an Annual Compliance Letter, which entitles the Lender, via the Tax Credit Transfer Certificate, to claim ten percent (10%) of the total UTHTCs transferred to the Lender by the Borrower as evidenced by the Tax Credit Transfer Certificate. As a result of the transfer and assignment of such Annual Compliance Letter, together with the Tax Credit Transfer Certificate to Lender, a portion of the amount of the principal and interest outstanding with respect to the Loan in the amount set forth on the Tax Credit Transfer Certificate (i.e. ten percent (10%) of the total UTHTCs as transferred) shall be deemed to have been repaid and the UTHTCs so transferred shall be deemed to have been conveyed at a value that is not less than 75% of each such UTHTC.

(c)      Computations. Interest payable on the Loan shall be calculated on an annual basis and computed on the basis of the actual number of days elapsed in the period in question (*i.e.*, with respect to the interest due on a given date, from and including the date of the last payment, as applicable, to but excluding the date of current payment) over a year of 365 days and the actual number of days in such year.

(d)      Compensation for Taxes. The Borrower shall indemnify the Lender for the full amount of taxes (other than income taxes, franchise taxes or taxes imposed on or measured by net capital) imposed by any Governmental Authority on (i) the Loan, (ii) amounts payable or paid to the Lender hereunder or under any other Loan Document, or (iii) any taxes payable under this Section 2.4(c), and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto. Payment under this indemnification shall be made within fifteen (15) Business Days after the date the Lender makes written demand therefor. The agreements and obligations of the Borrower contained in this Section 2.4(c) shall survive the payment in full of the Loan and the termination of this Agreement.

(e)      Interest on Late Payments. Any amount that is not paid when due and payable hereunder or under any other Loan Document shall bear interest at the Default Rate

(provided that, if the terms of Section 2.3(b) shall be applicable with respect to an amount owed to the Lender, then this Section 2.4(d) shall not be applicable). Payment or acceptance of the increased rates provided for in this Section 2.4(d) is not a permitted alternative to timely payment or full performance by the Borrower and shall not constitute a waiver of any Default or Event of Default or a waiver in respect of this Agreement or any other Loan Document and shall not otherwise prejudice or limit any rights or remedies of the Lender.

Section 2.5      Future Project Financing Rights.

(a)      Financing of Phase III of the Project. The Borrower and the Lender acknowledge and agree that if the Borrower (or any Affiliate or subsidiary thereof) seeks to finance any remaining portion of the Project, then Borrower is hereby committed to do so with the Lender on terms and conditions which are substantially the same terms and conditions as have been entered into with respect to the rest of the Project that was financed as of February, 2012 and on the date hereof so long as the Lender agrees to provide all such sought financing (i.e., debt and equity).

(b)      Financing. The Borrower shall provide the Lender with a first opportunity to provide Financing that the Borrower may be seeking in connection with any and all real estate projects within a one-quarter (1/4) mile radius of the Project (a "Future Project"), because the parties recognize that any future financing with a third party for such a Future Project may put the Loan and/or the Lender at additional risk.

(c)      Proposal. If the Borrower (or an Affiliate thereof) seeks Financing for a Future Project (the "Proposed Financing"), the Borrower (or an Affiliate thereof), shall provide the Lender with written notice (the "Proposed Financing Notice") of the Proposed Financing. In connection with the delivery of the Proposed Financing Notice, the Borrower (or an Affiliate thereof) shall deliver to the Lender (i) the information with respect to such Proposed Financing as described on Exhibit H attached hereto to the extent relevant to such Proposed Financing, and (ii) the following terms from the applicable Proposed Financing (each, a "Proposed Term" and collectively, the "Proposed Terms"): (A) the principal amount; (B) the term; (C) the interest rate; (D) the items to be guaranteed and the indemnities to be provided; and/or (E) equity pricing and contribution schedule, depending on the type of Proposed Financing.

(d)      Response. Following the Lender's receipt of a Proposed Financing Notice, the Lender shall have the one-time option, exercisable by written notice to the Borrower (or its Affiliate), given within fifteen (15) Business Days after the Lender's receipt of the information with respect to the Proposed Financing described in Section 2.5(b) above, to elect to provide the Proposed Financing upon the Proposed Terms. If the Lender exercises such option, the Borrower (or its Affiliate) and the Lender shall thereafter negotiate the definitive documents in respect of such Financing upon the Proposed Terms and upon such other reasonable terms as the Borrower (or its Affiliate) and Lender mutually agree upon. Notwithstanding the foregoing, if the parties fail to close on the Proposed Financing for any reason on or before the outside date for closing set forth in Lender's term sheet or commitment, then the Borrower (or its Affiliate) may proceed to consummate such Proposed Financing with any third party but solely on Third Party Terms (as such term is defined below) and the Lender shall be deemed to have waived its rights under this Section 2.5 to provide the Proposed Financing that was the subject of the

Proposed Financing Notice (but shall retain such rights with respect to any other Proposed Financing).

(e) Rejection. If the Lender fails to exercise its right to provide the Proposed Financing that is the subject of the Proposed Financing Notice by providing to the Borrower a term sheet for all portions of such Proposed Financing or confirming, in writing, that the Lender will provide such Proposed Financing on the terms and conditions set forth in the Proposed Terms, as aforesaid, within fifteen (15) Business Days of the date that the Lender receives the information described in Section 2.5(b) above, then the Lender shall be deemed to have waived its rights under this Section 2.5 to provide the Proposed Financing that is the subject of the applicable Proposed Financing Notice and the Borrower (or its Affiliate) shall have the absolute right to consummate such Proposed Financing with any third party upon the Proposed Terms or upon terms which are more favorable to the Borrowers or the Companies, as applicable (the “Third Party Terms”), provided, however, that if one or more of the Proposed Terms of the Third Party Terms is less favorable to the Borrower (or its Affiliate) than the corresponding Proposed Term, then the Borrower (or its Affiliate) shall provide the Lender with the right to provide the Proposed Financing, to be exercised upon ten (10) Business Days of receipt of the applicable Third Party Terms, upon any such Third Party Terms as the Borrower (or its Affiliate) is willing to accept (the “Acceptable Third Party Terms”); provided, further, however, that if the Lender elects not to provide the Proposed Financing upon the Acceptable Third Party Terms, then the Borrower (or its Affiliate) shall have the absolute right to consummate such Proposed Financing upon the Acceptable Third Party Terms with any third party other than Lender.

(f) The terms and provisions of this Section 2.5 shall be in force and effect for until September 12, 2022. Furthermore, in the event of any termination of this Agreement, the terms and provisions of this Section 2.5 shall nevertheless survive and be applicable, without modification, until September 12, 2022.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent to the Making of the Initial Funding. The obligation of the Lender to make the Initial Funding of the Loan to the Borrower is subject to the fulfillment of the following conditions precedent to the satisfaction of the Lender:

(a) Representations and Warranties; Compliance with Conditions. The representations and warranties of the Borrower contained in this Agreement or any other Loan Document shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Event of Default shall have occurred and be continuing (provided, however, that Lender shall have no obligation to accept a cure of any Event of Default); and the Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed;

(b) Agreement, Note and Pledge. The Lender shall have received (i) this Agreement, duly executed and delivered by the Borrower, (ii) the Note, duly executed and delivered by the Borrower, and (iii) the Pledge, duly executed and delivered by the Borrower;

(c) Guaranty. The Lender shall have received the Guaranty of Recourse Obligations, duly executed and delivered by the Guarantor;

(d) Costs; Expenses; Fees. The Borrower shall have paid all of the Lender's reasonable out-of-pocket costs, expenses and fees (including the legal fees and expenses of counsel for the Lender) incurred with respect to the Loan;

(e) Delivery of Other Loan Documents. The Lender shall have received fully executed copies of any and all other Loan Documents required to be executed as of the Closing Date;

(f) Related Documents. Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by the Borrower, the Guarantor and/or any other applicable party, as applicable, and the Lender shall have received and approved certified copies thereof;

(g) Delivery of Organizational Documents. The Borrower shall deliver or cause to be delivered to the Lender copies certified by the Borrower of all of its organizational documentation and/or the formation, structure, existence, good standing and/or qualification to do business, including good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan Documents and incumbency certificates;

(h) Opinions of Counsel. The Lender shall have received opinions of the Borrower's counsel with respect to due execution, delivery, authority, enforceability of the Loan Documents by the Borrower and such other matters as the Lender may reasonably require with respect to the Borrower's receipt of the UTHTCs and the Certificates, all such opinions in form, scope and substance satisfactory to the Lender and its counsel in their discretion, reasonably exercised;

(i) Completion of Proceedings. All limited liability company proceedings taken or to be taken by the Borrower (and any other applicable entities) in connection with the transactions contemplated by this Agreement and other Loan Documents shall be reasonably satisfactory in form and substance to the Lender, and the Lender shall have received all such counterpart originals or certified copies of such documents as the Lender may reasonably request;

(j) Searches. The Lender shall have received and approved satisfactory judgment, lien, UCC, bankruptcy and litigation searches with respect to the Borrower and the Guarantor;

(k) Insurance. The Lender shall have received and approved valid certificates of insurance evidencing property (to the extent applicable) and liability insurance coverage, satisfactory to the Lender in its reasonable discretion, and evidence of the payment of all

premiums for the existing policy period. The Lender shall be included as an “additional named insured” under such policies;

(l) Financial Statements. A copy of the most recent financial statements of the Guarantor and the Borrower that have been prepared in accordance with cash basis accounting;

(m) Compliance With Law. Lender shall have received and approved satisfactory evidence that the Borrower is in compliance with all governmental rules and regulations including, without limitation, compliance with the PATRIOT Act;

(n) Survey. The Lender shall have received and approved surveys of the Property (and any existing improvements thereon);

(o) Intentionally Deleted.

(p) Environmental Reports. The Lender shall have received copies of the Phase I environmental reports in respect of the Property, together with any remedial action plan with respect to any environmental condition noted for remediation in any such report;

(q) Appraisal. The Lender shall have received an appraisal of the Property, which appraisal shall be reasonably satisfactory in form and substance to the Lender from an appraiser reasonably satisfactory to the Lender;

(r) Zoning. The Lender shall have received a zoning opinion of the Property or other evidence of site plan approvals in form and substance satisfactory to the Lender;

(s) Tax: The Lender shall have received and reviewed all tax matters pertaining to the UTHTCs and the receipt of reasonably satisfactory tax opinions with respect to the UTHTCs;

(t) NMTC: The NMTC Transaction shall close simultaneously with the transaction contemplated by this Agreement;

(u) Direct Loan: The Direct Loan shall close simultaneously with the transaction contemplated by this Agreement;

(v) CRDA Loan: The CRDA Loan shall close simultaneously with the transaction contemplated by this Agreement;

(w) Due Diligence: The Lender shall have completed all of its due diligence that is reasonable and customary for an investment in UTHTCs; and

(x) Other Documents. The Lender shall have received such other documents and materials in respect of the Borrower, the Guarantor, the Project and the UTHTCs, as may be reasonably requested by the Lender.



Section 3.2      Conditions Precedent to the Making of the Second Funding. The obligation of the Lender to make the Second Funding of the Loan to the Borrower is subject to the fulfillment of the following conditions precedent to the satisfaction of the Lender:

(a)      Representations and Warranties; Compliance with Conditions. The representations and warranties of the Borrower contained in this Agreement or any other Loan Document shall be true and correct in all material respects on and as of the date of the funding of the Second Funding with the same effect as if made on and as of such date, and no Event of Default shall have occurred and be continuing (provided, however, that Lender shall have no obligation to accept a cure of any Event of Default); and the Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed;

(b)      Back-Up Documentation. The Lender shall have received evidence satisfactory to it in its reasonable discretion, that the proceeds of the Second Funding shall be used for costs set forth in the Project Budget for the Project.

(c)      Date: The Second Funding shall not be advanced prior to September 30, 2013.

(d)      Gap Analysis. The Borrower shall provide to Lender evidence satisfactory to Lender that that gap analysis permitting only a portion of the Project to be completed in order to obtain a sufficient amount of UTHTCs for the Borrower to satisfy its obligations under this Loan Agreement has been approved by NJEDA.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

Section 4.1      Representations and Warranties of the Borrower. The Borrower hereby represents and warrants to the Lender on and as of the Closing Date, and on and as of the date of any advance of the Loan, that:

(a)      Organization. The Borrower has been duly formed or organized and is validly existing and is in good standing with requisite power and authority to own its properties and to transact its businesses in which it is now engaged. The Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its respective properties, businesses and operations. The Borrower, and to Borrower's Knowledge, the Guarantor, possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own their properties and to operate the businesses in which it is now engaged (or will be engaged).

(b)      Proceedings. All necessary action has been taken by the Borrower to authorize the execution, delivery and performance of this Agreement and the other Loan Documents to which the Borrower is a party. This Agreement and such other Loan Documents have been duly authorized, executed and delivered by the Borrower and, to Borrower's Knowledge, the Guarantor and constitute the Borrower's and, to Borrower's Knowledge,

Guarantor's legal, valid and binding obligations enforceable against them in accordance with their respective terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally and general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(c) No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents to which the Borrower is a party 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 its properties or assets pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, operating agreement, trust agreement or other material agreement or instrument to which the Borrower is a party or by which the Borrower or any of the Borrower's properties 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 the Borrower or the 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 the Borrower of this Agreement or any other Loan Documents to which the Borrower is a party has been obtained and is in full force and effect in all material respects.

(d) Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or, to Borrower's Knowledge, threatened in writing against or affecting the Borrower, the Project, the Property or, to Borrower's Knowledge, the Guarantor, which actions, suits or proceedings, alone or in the aggregate would have a Material Adverse Effect on the Borrower, the Guarantor, the Project or the Property.

(e) Agreements. None of the Borrower nor, to Borrower's Knowledge, the Guarantor is in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which it is bound, which would have a Material Adverse Effect on the Guarantor or the Project or the Borrower.

(f) No Bankruptcy Filing. Neither the Borrower, nor to Borrower's Knowledge, the Guarantor is contemplating either the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidation of its assets or property, and to Borrower's Knowledge, no Person is contemplating the filing of any such petition against them.

(g) Full and Accurate Disclosure. No statement of fact made by the Borrower, or to Borrower's Knowledge, the Guarantor in this Agreement or in any of the other Loan Documents to which same is a party 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.

(h) Compliance. The Borrower, and, to Borrower's Knowledge, the Guarantor, has obtained and maintains (or will obtain and maintain) in full force and effect all

applicable licenses, permits, certificates and waivers (“Permits”) from all Governmental Authorities having jurisdiction thereover required as of the date hereof to operate its businesses and to occupy, operate and use all of its properties in the manner in which they are currently operated, and all such Permits are valid and in full force and effect.

(i) Taxes. The Borrower, and, to Borrower’s Knowledge, the Guarantor, have filed, caused to be filed or will file, all material tax returns (federal, state, local and foreign) required to be filed (subject to extensions permitted by applicable law) and paid all amounts of taxes shown thereon to be due (including interest and penalties) and have paid all other taxes (including intangible fees, assessments and other governmental charges taxes) owing (or necessary to preserve any Liens in favor of the Lender), by them, except for such taxes which are not yet delinquent. The Borrower, and to Borrower’s Knowledge, the Guarantor, are not aware of any proposed material tax assessments against it. No extension of time for assessment or payment by it of any federal, state or local tax is in effect, except as permitted by applicable law.

(j) Not a Foreign Person. The Borrower is not a “foreign person” within the meaning of §1445(f)(3) of the Bankruptcy Code.

(k) Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by the Borrower, including the defense of usury, nor would the exercise of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable.

(l) Organizational Structure. The Borrower shall be a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of New York and shall not:

(i) Merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part without the prior written consent of the Lender;

(ii) Other than pursuant to a Permitted Transfer, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure without the prior written consent of the Lender;

(iii) Fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, or amend, modify or terminate any provisions of its organizational documents which relate to separateness or which may hereafter be required by any of the Loan Documents;

(iv) Commingle its assets with the assets of any of its general partners, managing members, affiliates or principals, or of any other Person;

(v) Incur any Indebtedness for borrowed money not existing as of the date hereof which would cause the Borrower to breach the terms of Section 5.7 hereof;

(vi) Fail to maintain its records, books of account and bank accounts (if any) separate and apart from those of any other Person;

(vii) Enter into any contract or agreement with any Affiliate, except upon terms and conditions that are on an arm's length basis;

(viii) Fail to diligently endeavor to correct any known misunderstandings regarding the separate identity of itself and/or the QALICB;

(ix) Hold itself out to be responsible for the debts of another Person in such amount or manner as would cause the Borrower to breach the terms of Section 5.7 hereof;

(x) Fail to file its own tax returns, if required, unless part of the consolidated returns of another Person;

(xi) Enter into or consummate any transaction which would, at the time entered into or consummated, render the Guarantor insolvent, unable to meet their debts as they mature and without adequate capital to conduct the business in which it is or proposes to be engaged;

(xii) Fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not to (A) mislead others as to the identity with which such other party is transacting business or (B) suggest that it is responsible for the debts of any third party;

(xiii) Hold itself out as or be designated as a department or division of any other Person; and/or

(xiv) File or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or any entity in which it has a direct or indirect ownership interest.

(m) UTHTCs. The Borrower hereby represents and warrants to Lender with respect to the UTHTCs that:

(i) The Project is located within the urban transit hub;

(ii) The Project is a "mixed use" project as defined under the New Jersey statutes governing the UTHTCs, and the entire Project is being treated as a "qualified residential project" as defined in N.J. Rev. Stat. § 34:1B-209.2, with capital investments totaling not less than \$50,000,000;

(iii) The Project is a "qualified residential project" as defined in N.J. Rev. Stat. § 34:1B-209.2;

(iv) The Borrower, or an Affiliate thereof, has successfully submitted all the relevant documentation required to be submitted prior to the date hereof and received conditional approval of its UTHTC amount from the NJEDA as required under N.J. Rev. Stat. § 34:1B-207, et. Seq., in the amount of \$39,456,741, as set forth in the "Approval Letter" from the NJEDA, as such term is defined in N.J. Admin. Code 19:31-9.2, attached hereto Exhibit D;

(v) The Borrower, or an Affiliate thereof, is not participating in the Business Employment Incentive Program grant pursuant to N.J. Rev. Stat. § 34:1B-124, et seq., not receiving assistance from the Business Retention and Relocation Assistance Grant Program pursuant to N.J. Rev. Stat. § 34:1B-112, et seq., not receiving incentives authorized by Municipal Rehabilitation and Economic Recovery pursuant to N.J. Rev. Stat. § 52:27BBB-1, et seq., and not receiving grants authorized by the InvestNJ Business Grant Program Act pursuant to N.J. Rev. Stat. § 34:1B-237, et seq., based upon or relating to the same capital investment and site that qualify for the UTHTCs, or any other programs or grants that would jeopardize the Borrower's, or an Affiliate thereof, entitlement to the UTHTCs.

(n) Project. The Borrower has received, or shall cause the QALICB to receive, all necessary approvals, permits and any other documentation necessary from any Governmental Authorities, or otherwise, to construct the Project as contemplated.

Section 4.2 Survival of Representations. All of the representations and warranties set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive the issuance of the Loan. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by the Borrower shall be deemed to have been relied upon by the Lender, notwithstanding any investigation heretofore or hereafter made by the Lender and shall be deemed to be relied on by the Lender in connection with each advance of the Loan made hereunder.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Section 5.1 Information Covenants. The Borrower will furnish to Lender:

(a) Annual Financial Statements. As soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Borrower, a balance sheet of the Borrower at the end of such fiscal year together with related statements of income, and retained earnings and of cash flows for such fiscal year (and annual cash flow projections), all in reasonable detail and examined by independent certified public accountants reasonably acceptable to the Lender whose opinion shall be to the effect that such financial statements have been prepared in accordance with accrual basis accounting (except for changes with which such accountants concur) and shall not be qualified as to the scope of the report or as to the status of the Borrower as a going concern, all of the foregoing to be in reasonable detail and in form and substance satisfactory to Lender in its reasonable discretion.

(b) Business Plan. Annually, not later than upon the anniversary of this of this Agreement, the Borrower shall provide to the Lender any and all updates that have occurred to the Business Plan.

(c) Officer's Certificate. At the time of delivery of the financial statements provided for in Section 5.2(a) hereof, an Officer's Certificate of the applicable Borrower, certified by Ron Beit-Halachmy, which, if it includes a statement that a Default or an Event of

Default exists, shall specify the nature and extent thereof and what action the Borrower proposes to take with respect thereto.

(d) Auditor's Reports: Tax Returns. Promptly upon receipt thereof, (i) a copy of any other report or "management letter" submitted by independent accountants to the Borrower in connection with any annual, interim or special audit or review of the books of the Borrower and (ii) if requested by the Lender, a copy of the Borrower's federal tax return.

(e) Environmental Reports. Promptly upon transmission thereof, or receipt by, the Borrower or the QALICB, copies of any filings and registrations with, and reports to, the United States Environmental Protection Agency, or any state or local agency responsible for environmental matters, the United States Occupational Health and Safety Administration, or any state or local agency responsible for health and safety matters, or any successor agencies or authorities concerning environmental, health or safety matters.

(f) Status of the Project. Promptly upon receipt thereof (but in any event within five (5) Business Days), copies of any and all notices or information of any material adverse effect on the Project or the ability to complete the Project, develop same in accordance with the Business Plan and/or the ability to receive the UTHTCs and the Certificates.

(g) Other Information. With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Borrower, as the Lender may reasonably request.

(h) Notice of Default, Casualty, Condemnation or Litigation. Promptly after (but in any event within five (5) Business Days after) the Borrower obtains knowledge thereof, the Borrower will give written notice to the Lender, of the occurrence of any of the following with respect to the Borrower: (i) the occurrence of a Default which is reasonably likely to have a Material Adverse Effect, specifying the nature and existence thereof and what action the Borrower proposes to take with respect thereto, (ii) commencement of any litigation, arbitration or governmental proceeding against the Borrower in respect of environmental matters in which damages are sought or environmental remediation demanded which exceeds \$250,000 in any instance or \$350,000 in the aggregate or which is reasonably likely to otherwise materially adversely affect the business, properties, assets or condition (financial or otherwise) of the Borrower, (iii) the commencement of any litigation, arbitration or governmental proceeding against the Borrower in which damages are sought which exceeds \$50,000 in any instance or \$100,000 in the aggregate and which is reasonably likely to otherwise materially adversely affect the business, properties, assets or condition (financial or otherwise) of the Borrower, taken as a whole, (iv) any levy of an attachment, execution or other process against its assets which exceeds \$150,000 in the aggregate, (v) with respect to the Borrower, the occurrence of a Default by reason of an event of default under any other agreement for borrowed money, (vi) any casualty or condemnation of the Property likely to result in award or proceeds in excess of \$100,000 or (vii) the institution of any proceedings involving, or the receipt of written notice of potential liability or responsibility for, any violation, or alleged violation of any federal, state or local law, rule or regulation, including but not limited to, regulations promulgated under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., regulating the generation, handling or disposal of any toxic or hazardous waste or substance or the release into the

environment or storage of any toxic or hazardous waste or substance, the violation of which could give rise to a material liability of, or a Material Adverse Effect on the business, assets, properties or condition (financial or otherwise) of the Borrower.

Section 5.2      Preservation of Existence and Franchises. The Borrower will do or cause to be done, all things necessary to preserve and keep in full force and effect its existence, rights, franchises and authority.

Section 5.3      Books, Records and Inspections. The Borrower will keep complete and accurate books and records of its transactions in accordance with accrual basis accounting (or other reasonable accounting standards reasonably acceptable to the Lender) applied on a consistent basis. The Borrower will permit, on reasonable notice and during reasonable hours, officers or designated representatives of the Lender to visit and inspect the Borrower's books of account and records and any of its properties or assets (in whomever's possession) and to discuss the affairs, finances and accounts of the Borrower with, and be advised as to the same by, its officers, directors, partners and independent accountants. The Borrower shall pay the reasonable out-of-pocket costs of (i) one such inspection on an annual basis (provided the Lender determines to conduct such inspection) if Lender retains a third party to conduct such inspection and (ii) any such inspection and audit that may be conducted from time to time following an Event of Default; otherwise, the costs of any such inspection and audit shall be borne by the Lender.

Section 5.4      Compliance with Law. The Borrower shall comply, and shall cause the QALICB to comply, in all material respects with all applicable laws, rules, regulations and orders of, and all applicable restrictions imposed by all Governmental Authorities, in respect of the Project, the conduct of its businesses and the UTHTCs.

Section 5.5      Ownership and Management of Borrower.

(a)      The ownership structure of the Borrower shall, at all times during the term of this Agreement, remain as it is on the date hereof, subject to Permitted Transfers.

(b)      Ron Beit-Halachmy or an entity directly or indirectly controlled by Ron Beit-Halachmy shall at all times control the day-to-day operations of the Borrower with respect to the Project and all financing pertaining thereto, including, but not limited to, this Loan and all decision to be made with respect thereto and under the Borrower's Operating Agreement which are reasonably likely to have an effect on the Borrower as the borrower of the Loan or on the Project.

(c)      In the event that Ron Beit-Halachmy or an entity directly or indirectly controlled by Ron Beit-Halachmy is removed as the manager of the Borrower pursuant to the terms of the Borrower's Operating Agreement, the manager may be replaced with a manager acceptable to the Lender in the Lender's sole and absolute discretion; provided, however, that such replacement manager or an Affiliate thereof shall replace the Guarantor under the Guaranty of Recourse Obligations and the determination as to whether such replacement guarantor is an acceptable replacement shall also be in the sole and absolute discretion of the Lender.

Section 5.6      Covenants re: UTHTCs. In connection with the UTHTCs, the Borrower, or an Affiliate thereof, shall, and/or shall cause the QALICB, to:

(a)      timely comply with the terms and the conditions set forth in the Approval Letter including, but not limited to, a timely submission of progress reports that may be required by the NJEDA to preserve the approval of the UTHTCs;

(b)      timely submit to the NJEDA a certification of a certified public accountant of the eligible capital investment, or any other additional information requested by the NJEDA, as required pursuant to N.J. Admin. Code 19:31-9.7;

(c)      timely obtain, not less frequently than annually, an Annual Compliance Letter. Specifically, in the context of obtaining the Annual Compliance Letter, the Borrower, or an Affiliate thereof, shall timely furnish a report to the NJEDA in a format as may be determined by the NJEDA which shall contain the following information:

(i)      documentary evidence that a deed restriction has been recorded against each Residential Component of the Project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;

(ii)      evidence that the residential units of the Project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by a MAI appraiser or governmental official. Failure to submit a copy of the annual report or submission of the annual report, without the information required above, will result in forfeiture of any annual tax credits to be received by the business or tax credit holder unless the NJEDA determines that there are extenuating circumstances excusing the business or tax credit transferee from the timely filing required. The NJEDA reserves the right to audit any of the representations made and documents submitted in the annual report; and

(iii)      any other information requested by the NJEDA;

(d)      comply with the requirement of the NJEDA that twenty percent (20%) of the residential units within the Project are required to be reserved for low or moderate income households, as those terms are defined by the New Jersey Department of Community Affairs;

(e)      to the extent the Borrower repays the Lender by transferring UTHTCs, the Borrower shall obtain from the Director of the New Jersey Division of Taxation and the Chief Executive Office of the NJEDA, a "Tax Credit Transfer Certificate," as provided under N.J. Admin. Code 19:31-9.10, and in the form attached hereto as Exhibit E (a "Tax Credit Transfer Certificate"). Additionally, the Borrower (or an Affiliate thereof) shall submit to the NJEDA an executed copy of this Agreement which states that the consideration received by the business is not less than 75% of the transferred UTHTCs, as provided under N.J. Admin. Code 19:31-9.10(b);

(f)      in the event of the sale or other conveyance of the Project, in whole or in part, the Borrower (or an Affiliate thereof) shall retain the UTHTCs and shall not assign UTHTCs to the purchaser, unless explicitly agreed to by the Lender;



(g) at all times during the period the Loan remains outstanding, the residential components of the Project shall constitute the preponderance thereof as it existed at the time of certification of the UTHTC amount (however, additions of commercial space to the Project shall not be considered in this determination); and

(h) not later than September 15, 2014 submit all documentation necessary to receive from the Director of the Division of Taxation the Certificate, which documentation shall detail, among other items, (i) the total amount of the approved UTHTCs, (ii) the commencement of the eligibility period and (iii) the annual reporting requirements of the business; provided, however, notwithstanding anything to the contrary contained herein, if the Borrower is unable to provide such documentation with respect to the entire Project by September 15, 2014, the Borrower shall provide such documentation as is necessary to enable the Borrower to receive a Certificate for an amount of UTHTCs sufficient to repay the Loan on or before the Maturity Date and as contemplated on the Amortization Schedule.

Section 5.7 Net Worth Covenant. At all times during the term of this Loan, the Borrower shall maintain a Net Worth (as hereinafter defined) of not less than \$20,000,000. Furthermore, at all times the Borrower shall not permit its ratio of contingent liabilities (other than that for environmental indemnities) and Indebtedness to Net Worth to exceed 6 to 1. For purposes of this Agreement, the term "Net Worth" means total assets plus non-cash items (e.g., depreciation) minus total liabilities (exclusive of that portion of the QLICIs made to the QALICB which are evidenced by (x) the Loan B Notes and Loan C Notes (as such terms are defined in that certain Building Loan Agreement, dated as of the date hereof, by and among the QALICB, the CDEs and GSB NMTC Investor LLC, as administrative agent and (y) the Loan B Notes, Loan C Notes and Loan D Notes (as such terms are defined in that certain Building Loan Agreement, dated as of February 3, 2012, by and among Teacher's Village School QALICB Urban Renewal, LLC, NJCC CDE Essex LLC, Gateway SubCDE I, LLC and TD Bank, N.A., as administrative agent) to the extent reflected as a liability in the books and records of the Borrower), all as set forth in a financial statement prepared by Borrower. The Borrower shall provide to the Lender a certification of compliance with the terms of this Section 5.7 annually upon the anniversary of the date of this Agreement and otherwise within ten (10) business days after a request therefor from the Lender.

Section 5.8 Costs of Enforcement. In the event (i) that this Agreement, the Note or any other Loan Document is put into the hands of any attorney for collection, or for any other claim, suit or action as against the Borrower, (ii) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of the Borrower or the Guarantor or an assignment by the Borrower or the Guarantor for the benefit of its creditors, or (iii) the Lender shall attempt to remedy any Default hereunder or incur any expense with respect to any Default (whether or not involving collection efforts), the Borrower shall be chargeable with and hereby agrees to pay all reasonable costs incurred by the Lender as a result thereof, including costs of collection and defense, including reasonable attorney's fees (and experts', consultants' and witnesses' fees) in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes; provided, however, that the Borrower shall not have any obligation to the Lender under this section for any expense arising from any litigation commenced by the Lender

to the extent the same is determined adversely to the Lender or otherwise arises from the Lender’s gross negligence or willful misconduct.

Section 5.9        Estoppel Statement. After written request by the Lender, the Borrower shall within ten (10) Business Days furnish the Lender with a statement, duly acknowledged and certified, setting forth (i) the outstanding principal amount of the Loan, (ii) to Borrower’s Knowledge, the then-current outstanding Debt, (iii) any offsets or defenses known to Borrower’s Knowledge to the payment of the Debt, (iv) that this Agreement, the Pledge and the other Loan Documents are in full force and effect as the valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification and (v) such other matters as the Lender may reasonably request.

ARTICLE VI

NEGATIVE COVENANTS

The Borrower hereby covenants and agrees that, without prior written consent of the Lender:

Section 6.1        Indebtedness. The Borrower will not incur any Indebtedness for borrowed money that will result in a breach by the Borrower of the provisions of Section 5.7 hereof.

Section 6.2        No Amendment of Documents. It will not amend, modify or terminate, or permit the amendment, modification or termination of, or waive any rights or consent to any matters under (i) the Business Plan in any manner materially adverse to the Lender, or (ii) any of the organizational documents of the Borrower; provided, however, that modifications or amendments may be made to the Borrower’s Operating Agreement without Lender’s consent if such modifications or amendments do not relate to the Pledged Collateral, the Project, the Property or the management of Borrower (other than a modification or amendment solely for the purposes of reflecting a change in the manager or a change in the membership interests which is permitted pursuant to the terms of this Agreement) and does not result in any impairment to the rights of Lender with respect to the Loan, and notice of same is provided to Lender no later than five (5) Business Days after the execution of such modification or amendment.

Section 6.3        Liens. Except for Permitted Liens, the Borrower will not (i) contract, create, incur, assume or permit to exist any Lien with respect to the UTHTCs and the Certificates unless same are released from the Pledged Collateral pursuant to the terms of the Pledge, (ii) sell any part of its properties or assets such that it shall cause a breach by the Borrower of the terms of Section 5.7 hereof or (iii) assign any of its right to receive income.

Section 6.4        Nature of Business. It will not engage in any business other than the businesses in which it is currently engaged, and activities incidental thereto.

Section 6.5        Consolidation, Merger, Sale or Purchase of Assets, Etc. (a) The Borrower will not dissolve, liquidate, or wind up its affairs, and (b) the Borrower will not (i) enter into any transaction of merger or consolidation, (ii) other than with respect to Permitted

Transfers, issue or permit or suffer the issuance of any direct or indirect ownership interests in the Borrower; or (iii) other than with respect to Permitted Transfers, permit or suffer any direct or indirect transfers of interest, including change in control, in the Borrower without the prior written consent of the Lender.

Section 6.6        Intentionally Deleted.

Section 6.7        Transactions with Affiliates. The Borrower will not enter into any agreement, transaction or series of transactions with any Affiliate other than such agreements as are entered into on an arm’s length basis.

Section 6.8        Intentionally Deleted.

Section 6.9        Intentionally Deleted.

Section 6.10       Intentionally Deleted.

Section 6.11       Bankruptcy. The Borrower will not file a voluntary proceeding under the Bankruptcy Code.

Section 6.12       Limitation on Certain Activities. The Borrower will not (and will not permit the QALICB to), without the prior written consent of the Lender, which shall not be unreasonably withheld:

- (a)        engage in any activity other than the activities in which it is engaged in as of the Closing Date or any activities incidental thereto;
- (b)        execute any material agreements not in the ordinary course of business or not required in accordance with a Business Plan;
- (c)        commence, defend or settle any litigation, or confess a judgment in excess of \$250,000;
- (d)        use the name “Goldman Sachs” or any variant or representation thereof on any press release or other publicity or promotional information issued by the Borrower or the Guarantor (or any of their Affiliates) or any documents issued by or on behalf of the Borrower or the Guarantor (or any of their Affiliates) and disseminated beyond their legal counsel, and the parties to this transaction, or permit any such press release or other publicity or promotional information to be disseminated without first offering the Lender an opportunity to be referred to therein in a manner reasonably approved by the Lender;
- (e)        except as permitted pursuant to Section 6.2 hereof, amend or modify the organizational documents of the Borrower;
- (f)        modify the Business Plan;

(g) cause the QALICB to sell or otherwise dispose of the Project or any portion thereof if the Loan and all interest accrued and fees thereon are not paid in full simultaneously therewith in accordance with the terms of this Agreement;

(h) other than as contemplated in the Business Plan, cause the QALICB to commence or allow, without the prior written consent of the Lender, any demolition, construction or other activity with respect to the Project that is of a nature that any party performing such demolition, construction or other activity would have a right to place a mechanic's or materialmen's lien on the Property;

(i) amend, modify or terminate, or permit the amendment, modification or termination of, or waive any rights or consent to any matters under the documents evidencing the NMTC Transaction, the Direct Loan and/or the CRDA Loan;

(j) alter the residential components of the Project such that the residential components do not constitute the preponderance thereof as it existed at the time of certification of the tax credit amount; and/or

(k) engage in any activities that could result in recapture, reduction or forfeiture of UTHTCs.

## ARTICLE VII

### DEFAULTS

Section 7.1 Events of Default. An Event of Default shall exist upon the occurrence of any of the following specified events (each, an "Event of Default");

(a) if any payment owed hereunder or under any other Loan Document shall not be paid within five (5) Business Days of the date that it is due;

(b) if any portion of the Pledged Collateral is transferred or encumbered in any manner, other than as contemplated herein or in the Pledge, or any direct or indirect interest in the Borrower is transferred or assigned, except for Permitted Liens or Permitted Transfers or as otherwise permitted hereunder; or Section 5.5 shall be violated, and except for any transfer of interests in the Borrower to trusts or entities wholly owned by the Guarantor and/or immediate family members of the Guarantor established for the purposes of, or to immediate family members in connection with, estate planning, provided that the Guarantor continues to be the Controlling Person of the Borrower and notice of same is provided to the Lender;

(c) if any representation or warranty made by the Borrower herein (including, but not limited to, Section 4.1(m) hereof) or in any other Loan Document shall be knowingly false or misleading in any material respect on or as of the date the representation or warranty was made;

(d) if the Borrower, the Guarantor or the QALICB shall make an assignment for the benefit of creditors, or if the Borrower or the Guarantor shall generally not be paying their debts as they become due;

(e) if a receiver, liquidator or trustee shall be appointed for the Borrower or the QALICB, or if the Borrower, the QALICB or the Guarantor shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, the Borrower, the QALICB or the Guarantor nor if any proceeding for the dissolution or liquidation of the Borrower or the QALICB shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the Borrower, the QALICB or the Guarantor, as applicable, upon the same not being discharged, stayed or dismissed within one hundred twenty (120) days;

(f) if the Borrower attempts to assign or encumber its rights under this Agreement or under any other Loan Document or any interest herein or therein;

(g) if an Event of Default as defined or described in any of the other Loan Documents occurs;

(h) if any Loan Document shall fail to be in full force and effect or to give the Lender, in all material respects, the liens, rights, powers and privileges purported to be created thereby for thirty (30) days after the written notice to the Borrower from the Lender, or if the Borrower or any other Person shall assert that the Pledge or any other Loan Document is not in full force and effect or fails to give the Lender the liens, rights, powers and privileges purported to be created thereby;

(i) if there shall be a default on the part of the Borrower with respect to this Agreement which is not otherwise specified in any other subsection of this Section 7.1 where such failure continues for (i) more than thirty (30) Business Days after written notice thereof, where the same can be cured by the payment of money, and (ii) more than thirty (30) days after written notice thereof, where the same cannot be cured by the payment of money; provided, however, that, with respect to a default described in clause (ii), if the failure is reasonably susceptible of cure but not within said 30-day period, then so long as the Borrower has promptly commenced and is diligently prosecuting such cure to completion, said 30-day period shall be extended by an additional sixty (60) days;

(j) if the Borrower shall default beyond any applicable notice, grace or cure periods in any of its obligations with respect to any other Indebtedness for borrowed money in excess of \$250,000, and the exercise by the lender thereunder of any of its rights with respect thereto is reasonably likely to have a Material Adverse Effect on the Borrower;

(k) if the Borrower shall default beyond any applicable notice, grace or cure periods in the observance or performance of any material agreement or condition relating to any other Indebtedness in excess of \$250,000 or contained in any instrument or agreement evidencing, or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default or other event or condition causes the holder or holders of such Indebtedness (or trustee or the agent on behalf of such holders) to cause any such Indebtedness to become due prior to its stated maturity and such action is reasonably likely to have a Material Adverse Effect on the Borrower;

(l) if any Indebtedness in excess of \$250,000 of the Borrower shall not be paid upon its scheduled maturity (as same may be extended), shall be declared (or shall become) due and payable prior to the stated maturity thereof or shall be required to be prepaid other than by a regularly scheduled required prepayment prior to the stated maturity thereof;

(m) one or more final judgments or decrees in excess of \$250,000 shall be entered against the Borrower (not paid or fully covered by insurance provided by a carrier who has acknowledged coverage) and any such judgments or decrees shall not have been vacated, discharged, paid or stayed or bonded pending appeal within the time permitted to appeal therefrom and same is reasonably likely to have a Material Adverse Effect;

(n) if the Guarantor fails (within applicable notice and cure periods) to comply with any covenants or are otherwise in default under the Guaranty;

(o) any felony criminal conviction of the Borrower or the Guarantor;

(p) if any federal tax lien exceeding \$75,000 is filed against the Borrower or the Guarantor, or if any federal tax lien less than or equal to \$250,000 is filed against the Borrower or the Guarantor and the same is not discharged of record within thirty (30) days after the same is filed;

(q) if the Borrower fails to comply with the requirements set forth in Section 5.6 hereof or any other requirements of the NJEDA with respect to the UTHTCs (whether now or hereafter imposed) such that the Project fails to receive UTHTCs or if the Borrower engages in any activities or fails to engage in any applicable activities resulting in any recapture, reduction or forfeiture of UTHTCs whatsoever;

(r) if the Project ceases to be constructed;

(s) if there is a default under any of the construction financing for the Project, including, but not limited to, the NMTC Transaction, the Direct Loan and/or the CRDA Loan, and/or

(t) if there is a material adverse change in the control (including a change in the Borrower), which may, in the reasonable opinion of the Lender, impair the Borrower's ability to meet its obligations.

Section 7.2 Remedies. Upon the occurrence and during the continuance of an Event of Default (provided, however, that the Lender has no obligation to accept a cure of an Event of Default), the Lender, by written notice to the Borrower, may take any of the following actions without prejudice to the rights of the Lender to enforce its claims against the Borrower:

(a) Acceleration of Accrued Balance. Declare all outstanding Debt to be due, whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; provided, however, that, notwithstanding the foregoing, if an Event of Default specified in Section 7.1(d) or (e) shall occur, then the outstanding Debt shall immediately become due and payable without the giving of any notice or other action by the Lender.

(b) Enforcement of Rights. Enforce any and all Liens and security interests in favor of the Lender in respect of the outstanding Debt and any other amounts due, including, without limitation, all rights and interests created and existing under the Loan Documents and all rights of set-off.

(c) Remedies with Respect to the Pledged Collateral. Apply the proceeds of any exercise of remedies by the Lender with respect to any Pledged Collateral to payment of the following obligations, and the Lender may account for the purchase price of any sale by crediting the sales price against: (A) first, the expenses of the liquidation, sale or collection, the costs of any action and any other costs or expenses for which the Borrower is obligated; and (B) then, all other Debt, including, without limitation, all amounts then due, owing and unpaid for principal, interest and other amounts under this Agreement in such order and proportions as the Lender, in its discretion, may choose.

(d) Other Remedies. Exercise any other right or remedy available to the Lender under applicable law or in equity.

## ARTICLE VIII

### WAIVERS

Section 8.1 Waiver of Defenses. The Borrower agrees that its obligations under this Agreement and the other Loan Documents are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents, or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guaranty of or security for the Debt, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense, it being the intent of this Section 8.1 that the obligations of the Borrower hereunder shall be absolute and unconditional under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Borrower hereunder which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Borrower, the time for any performance of, or compliance with, any obligations for the payment of all or any portion of the Debt may be extended, or such performance or compliance may be waived;

(b) any of the acts required or contemplated in any of the provisions of any of the Loan Documents or any other agreement or instrument referred therein may be performed or omitted;

(c) the maturity of all or any portion of the Debt may be accelerated as may be provided hereunder, or the Maturity Date may be extended, or all or any of portion of the Debt may be waived, modified, supplemented or amended in any respect, or any right under any of the Loan Documents or any other agreement or instrument referred to therein may be waived or extended or any other guaranty of all or any portion of the Debt or any security therefor may be released or exchanged in whole or in part or otherwise dealt with;

(d) the Lender receives and holds security for the payment of the Debt or any other indebtedness of the Borrower to the Lender and exchanges, enforces, waives, releases, fails to perfect, sells, or otherwise disposes of any such security;

(e) the Lender applies such security and directs the order or manner of sale thereof as the Lender in its discretion may determine;

(f) the Lender releases or substitutes all or any portion of the Debt or any other indebtedness of the Borrower to the Lender;

(g) any Lien granted to, or in favor of, the Lender as security for all or any portion of the Debt shall fail to attach or be perfected;

(h) all or any portion of the Debt or any Lien granted or purported to be granted in respect thereof shall be determined to be void or voidable or shall be subordinated to the claims of any Person; or

(i) there shall occur any insolvency, bankruptcy, reorganization or dissolution of the Borrower.

With respect to its obligations hereunder, the Borrower hereby expressly waives diligence, presentment, demand of payment (except for such demands provided for in the Loan Documents), protest and all notices (except for notices provided for in the Loan Documents) whatsoever, and any requirement that the Lender exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other agreement or instrument referred to therein, or against any other Person under any other guaranty of, or security for, or obligation relating to, all or any portion of the Debt.

Section 8.2 Reinstatement. The obligations of the Borrower hereunder shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of any Person in respect of the Debt is rescinded or must be otherwise restored by any holder of any of the Debt, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will pay to the Lender on demand all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable fees of counsel) incurred by the Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

Section 8.3 Certain Additional Waivers. Without limiting the generality of the provisions of any other provision of this Article VIII, the Borrower hereby specifically waives: (a) promptness, diligence, notice of acceptance and any other notice (except for notices provided for in the Loan Documents) with respect to all or any portion of the Debt or any other obligations under the Loan Documents or this Article VIII, (b) any requirement that the Lender or any other Person protect, secure or insure any Lien or any property subject thereto or exhaust any right or take any action against the Borrower or any other Person or any collateral or undertake any marshalling of assets, (c) any right to direct the order of enforcement of remedies, (d) any defense arising by reason of any claim or defense based upon an election of remedies by the



Lender which in any manner impairs, reduces, releases or otherwise adversely affects its subrogation, contribution or reimbursement rights or other rights to proceed against the Borrower or any other Person or any collateral, (e) any duty on the part of the Lender to disclose to the Borrower any matter, fact or thing relating to the business, operation or condition of the Borrower or any other party to any of the Loan Documents and their assets now known or hereafter known by the Lender, and (f) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of the guaranty provided for in this Article VIII (except for demands and notices provided for in the Loan Documents) and, without Lender’s prior written consent, the existence, creation, or incurrence of new or additional Indebtedness.

Section 8.4        Costs of Enforcement. In the event (i) that this Agreement or any other Loan Document is put into the hands of an attorney for collection, suit or action as against the Borrower, (ii) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of the Borrower or assignment by the Borrower for the benefit of its creditors, or (iii) the Lender shall attempt to remedy any Default hereunder, the Borrower, its successors or assigns, shall be chargeable with and agrees to pay all reasonable costs and expenses incurred by the Lender as a result thereof, including costs of collection and defense, including reasonable attorneys’ fees (and experts’, consultants’ and witnesses’ fees) in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes; provided, however, that the Borrower shall not have any obligation to the Lender under this section for any expense arising from any litigation commenced by the Lender to the extent the same is determined adversely to the Lender or otherwise arises from the Lender’s gross negligence or willful misconduct.

Section 8.5        Exculpation. The obligations under this Agreement and the Loan Documents (other than the Guaranty of Recourse Obligation which shall be recourse to the Guarantor) shall be recourse only to the Borrower but, notwithstanding anything to the contrary herein, at law or in equity (other than in the Guaranty of Recourse Obligations with respect to the Guarantor) shall in all events be non-recourse to the members of the Borrower and their respective officers, directors, employees, members, partners and affiliates (collectively, the “Exculpated Parties”), and accordingly, the Lender shall not enforce the liability and obligation of the Borrower to perform and observe the obligations contained in this Agreement or any other Loan Document or any other obligation or liability of the Borrower hereunder by an action or proceeding wherein a money judgment or any other remedy shall be sought against any of the Exculpated Parties or their respective assets. The Lender, by entering into this Agreement, agrees that it shall not sue for, seek or demand any deficiency judgment or take any other action or seek any other legal or equitable remedy against any Exculpated Party in any action or proceeding, under, by reason of or in connection with this Agreement or any of the Loan Documents (other than the Guaranty of Recourse Obligations with respect to the Guarantor thereunder).

ARTICLE IX

MISCELLANEOUS

Section 9.1        Survival. This Agreement and all covenants, agreements, indemnities, representations and warranties made herein and in the certificates delivered pursuant

hereto shall survive the issuance of the Loan and the execution and delivery to the Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid. Whenever in this Agreement any Person is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such Person (*provided* that the foregoing shall not be deemed to permit any transfer of any ownership interest that is otherwise prohibited hereunder). All covenants, promises and agreements in this Agreement contained, by or on behalf of the Borrower shall inure to the benefit of the successors and assigns of the Lender.

Section 9.2      Governing Law; Consent to Jurisdiction.

(a)      THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY THE LENDER AND ACCEPTED BY THE BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE 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 MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND ANY OTHER LOAN DOCUMENT, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF THIS AGREEMENT RELATING TO THE UTHTCs AND THE CERTIFICATES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY.

(b)      ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE LENDER OR THE BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, PURSUANT TO § 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND THE BORROWER WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING AND HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. EACH BORROWER DOES HEREBY AGREE THAT SERVICE OF PROCESS UPON THE BORROWER MAILED OR DELIVERED TO THE BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON THE BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK.

(c) The Borrower hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other Loan Document brought in the courts referred to in subsection (b) hereof and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 9.3 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, the Note or any other Loan Document, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on the Borrower shall entitle the Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 9.4 Delay Not a Waiver. Neither any failure nor any delay on the part of the Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, the Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 9.5 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing (regardless whether the provision in question requires that notice be in writing) and shall be effective for all purposes if hand delivered or sent by expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed as follows (or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to the Lender:

Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282-2198  
Attention: Margaret Anadu

with a copy to:

Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282-2198  
Attention: Andrea Gift

with an electronic copy to:

gs-uig-docs@gs.com

with a copy to:

Jones Day  
222 East 41st Street  
New York, New York 10017  
Attention: Steven C. Koppel, Esq.

If to Borrower:

c/o RBH Group  
89 Market Street, 8th Floor  
Newark, New Jersey 07102  
Attention: Ron Beit-Halachmy

with a copy to:

McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, New Jersey 07068  
Attention: Leah Sandbank, Esq.

with a copy to:

Hunton & Williams LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Laure A. Grasso, Esq.

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; or in the case of expedited prepaid delivery, upon the delivery (or refusal) thereof.

Section 9.6 Trial by Jury. THE BORROWER AND THE LENDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION

ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE BORROWER AND THE LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EITHER PARTY HERETO IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

Section 9.7        Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 9.8        Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 9.9        Preferences. The Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the obligations of the Borrower hereunder. To the extent the Borrower makes a payment or payments to the Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Lender. The foregoing is without limitation of the rights in favor of the Lender set forth in Article VIII.

Section 9.10       Waiver of Notice. The Borrower shall not be entitled to any notices of any nature whatsoever from the Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by the Lender to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable law, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by the Lender to the Borrower.

Section 9.11       Sole Discretion of Lender. Except as may otherwise be expressly provided to the contrary, wherever pursuant to this Agreement, the Note, the Pledge or any other Loan Document now or hereafter executed and delivered in connection therewith or otherwise with respect to the Loan, Lender exercises any right given to it to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to the Lender, the decision of the Lender to consent or not consent, or to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of the Lender and shall be final and conclusive.

Section 9.12      Remedies of the Borrower. In the event that a claim or adjudication is made that the Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, the Lender has an obligation to act reasonably or promptly, the Borrower agrees that the Lender, and its agents, shall not be liable for any monetary damages, and the Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment, except in any case where it is determined that the Lender has acted with willful misconduct or gross negligence. The parties hereto agree that any action or proceeding to determine whether the Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 9.13      Expenses; Indemnity.

(a)      The Borrower covenants and agrees to reimburse the Lender upon receipt of written notice from the Lender for all reasonable out-of-pocket costs and expenses (including, but not limited to, reasonable attorneys' fees and disbursements) incurred by or on behalf of the Lender in connection with: (i) the negotiation, preparation, execution, delivery and administration of all Loan Documents and taking of collateral, including, but not limited to, any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by the Lender; (ii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting this Agreement, the other Loan Documents or any other security given for the Loan; and (iii) enforcing any obligations of or collecting any payments due from the Borrower under this Agreement or the other Loan Documents or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings.

(b)      The Borrower shall indemnify and hold harmless the Lender and its Affiliates, officers, partners, directors, employees and agents, from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for the Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not the Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against the Lender in any manner relating to or arising out of the transactions contemplated hereby, including environmental liabilities, as well as, any breach by the Borrower of its obligations under, or any material misrepresentation by the Borrower contained in this Agreement or the other Loan Documents.

(c)      For the avoidance of doubt, the Lender will not have any liability for any special, punitive, consequential, or indirect damages in connection with the Loan Documents.

Section 9.14      Exhibits and Schedules Incorporated. The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 9.15      No Joint Venture or Partnership. The parties hereto intend that the relationships created hereunder and under the other Loan Documents be solely that of creditor

and debtor. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between or among the parties hereto nor to grant the Lender any interest other than that of a lender/creditor secured pursuant to the terms of the Loan Documents.

Section 9.16      Publicity. All news releases, publicity or advertising by the Borrower or its Affiliates which it controls through any media intended to reach the general public which refers to the Loan Documents, the financing evidenced by the Loan Documents, the Lender or its Affiliates shall be subject to the prior written approval of the Lender.

Section 9.17      Waiver of Marshaling of Assets. To the fullest extent the Borrower may legally do so, the Borrower waives all rights to a marshalling of the assets of the Borrower, its owners, if any, and others with interests in such Person, 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 marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of the Lender under the Loan Documents to a sale of the Pledged Collateral for the collection of the Debt without any prior or different resort for collection, of the right of the Lender to the payment of the Debt out of the net proceeds of the Pledged Collateral or any interest therein in preference to every other claimant whatsoever. In addition, the Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Liens, any equitable right otherwise available to the Borrower which would require the separate sale of the Pledged Collateral or require the Lender to exhaust its remedies against any part of the Pledged Collateral before proceeding against any other part or parts thereof; and further in the event of such foreclosure the Borrower does hereby expressly consent to and authorize, at the option of the Lender, the foreclosure and sale either separately or together of any or all of the Pledged Collateral.

Section 9.18      Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. In case any provision in or obligation hereunder or under any other of the Loan Documents shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or such provision or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default of an Event of Default if such action is taken or condition exists.

Section 9.19      Brokers and Financial Advisors. Other than as disclosed by the Borrower in the Business Plan, each of the Lender and the Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, lenders or finders in connection with the transactions contemplated by this Agreement. The Borrower hereby

indemnifies the Lender and holds it 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 the Borrower in connection with the transactions contemplated herein. The provisions of this Section shall survive the expiration and termination of this Agreement and the repayment of the Debt.

Section 9.20      No Third Party Beneficiaries. This Agreement and the other Loan Documents are solely for the benefit of the Borrower and the Lender, and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than such Persons any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of the issuance of the Loan hereunder are imposed solely and exclusively for the benefit of the Lender, and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Lender will refuse to issue all or any portion of the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by the Lender if, in its sole discretion, it deems it advisable or desirable to do so.

Section 9.21      Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, between the Borrower and the Lender with respect to the subject matter hereof, are superseded by the terms of this Agreement and the other Loan Documents.

Section 9.22      Counterparts. This Agreement may be executed in any number of counterparts, each of which were so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 9.23      Payment of Expenses, Etc. The Borrower agrees to:

(a)            pay and hold the Lender harmless from and against any and all present and future stamp and other similar taxes arising out of the transactions contemplated hereby and save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to the Lender) to pay such taxes; and

(b)            indemnify the Lender, its officers, directors, employees, representatives and agents (each a “Lender Party”) from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not the Lender is a party thereto) related to the entering into and/or performance of any Loan Document or the use of proceeds of the Loan hereunder or the consummation of any other transactions contemplated in any Loan Document, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding (but excluding any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of gross negligence, willful misconduct or fraudulently



on the part of any Lender Party to be indemnified as determined by a final, non-appealable judgment of a court of competent jurisdiction).

Section 9.24 Amendments, Waivers and Consents. Neither this Agreement nor any other Loan Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated, nor shall any consent or approval be deemed granted hereunder, unless such amendment, change, waiver, discharge, termination, consent or approval is in writing signed by the Borrower and the Lender.

Section 9.25 Transfers, Sales and Participations. Notwithstanding anything to the contrary contained herein, the Lender shall have the right to transfer, sell, convey or participate any or all of the Loan to any Permitted Lender Transferee of its choosing without any consent of the Borrower and, in connection therewith, each Borrower acknowledges that the Lender shall have the right to deliver to such party information relating to the Borrower and its Affiliates, the Guarantor, the Loan and the Loan Documents, as is reasonably necessary to facilitate such transfer, sale, conveyance or participation, subject to the provisions of Section 9.26 hereof.

Section 9.26 No Fiduciary Duty. The Lender and its Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that conflict with those of the Borrower and/or their Affiliates. The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Lender or its Affiliates, on the one hand, and Borrower or its Affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower, its stockholders or its Affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) the Lender is acting solely as principal and not as the agent or fiduciary of the Borrower, its management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transaction or the process leading thereto.

Section 9.27 Confidentiality. The Lender shall hold all non-public information regarding the Guarantor, the Borrower and their respective subsidiaries and their businesses identified as such by the Borrower and/or Guarantor and obtained by the Lender pursuant to the requirements hereof in accordance with the Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by the Borrower that, in any event, the Lender may make (i) disclosures of such information to Affiliates of the Lender

and to its agents and advisors (and to other Persons authorized by the Lender to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this section), (ii) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of the Loan or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this section or other provisions at least as restrictive as this section), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Borrower or Guarantor received by it from the Lender, (iv) disclosures in connection with the exercise of any remedies hereunder or under any other Loan Document and (v) disclosures required or requested by any governmental agency or representative thereof or by the NAIC or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, the Lender shall make reasonable efforts to notify Borrower and/or the Guarantor of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of the Lender by such governmental agency) for disclosure of any such non public information prior to disclosure of such information.

Section 9.28      Patriot Act. The Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the PATRIOT Act.

Section 9.29      Benefit of Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided, however, that the Borrower may not assign and transfer any of its rights or obligations hereunder without prior written consent of the Lender.

*[Signatures appear on following pages]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

Borrower:

**RBH-TRB NEWARK HOLDINGS, LLC,**  
a New York limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

Lender:

**GOLDMAN SACHS BANK USA,**  
a New York State chartered bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

\_\_\_\_\_

**EXHIBIT A**

Intentionally Deleted

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**EXHIBIT B**

Form of Pledge Agreement

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**EXHIBIT C**

Form of Note

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**EXHIBIT D**

NJEDA Approval Letter

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**EXHIBIT E**

Form of Tax Credit Transfer Certificate

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**EXHIBIT F**

Intentionally Deleted

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**EXHIBIT G**

### Amortization Schedule

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## EXHIBIT H

### Evaluation Materials

The Borrower shall initiate the Lender's 15 Business Day review period of any Proposed Financing with delivery of standard and customary underwriting information as well as any other materials that the Lender shall reasonably request. These materials should include but are not limited to:

- Project location
  - Street address and/or block and lot information
  - Description of area
- Project overview / description
  - Highlights
  - Approximate gross square footage with breakdown for parking, residential, retail/commercial, etc.
  - Approximate net square footage with breakdown for parking, residential, retail/commercial, etc
  - Approximate number of units
  - Projected number of floors
  - Type of construction
  - Anticipated amenities
  - Current site use
  - Projected project timeline
- Information regarding land purchase as well as any existing land loan
- Current site zoning information and necessary adjustments and variances to execute the Project as conceived
- Project Budget that distinguishes between what is required for land acquisition/pre-development versus the Project construction phase(s)
- Sources and uses of capital as well as projected profits
- Market overview
  - Comparable sales or rental information regarding all that apply: residential, parking, retail/commercial, etc.
  - Description of any known product in the pipeline

Such other materials as may be reasonably requested by the Lender during its 15 Business Day review period based upon a review of the materials submitted in accordance with the foregoing list

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**BUILDING LOAN AGREEMENT**

Dated as of September 11, 2012

BY AND BETWEEN

**GOLDMAN SACHS BANK USA,**  
a New York State chartered bank  
(“*Lender*”)

and

**TEACHERS VILLAGE PROJECT A QALICB URBAN RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company  
(“*Borrower*”)

“*Lender’s Counsel*”:

Jones Day  
222 East 41<sup>st</sup> Street  
New York, New York 10017  
Attn: Aviva Yakren, Esq.

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**Recitals**

**WHEREAS**, in order to finance the development of the Project (as hereinafter defined) the Lender has determined to provide certain financing for the Project, which financing is in addition to certain other financing the Borrower is receiving pursuant to that certain building loan agreement, dated as of the date hereof, among Borrower, GSNMF SUB-CDE 2 LLC, NCIF NEW MARKETS CAPITAL FUND IX CDE, LLC, CARVER CDC — SUBSIDIARY CDE 21, LLC, BACDE NMTC FUND 4, LLC, and GSB NMTC Investor Member LLC, as administrative agent (the “*QLICI Loan Agreement*”); and

**WHEREAS**, the Lender has agreed to provide the Loan (as hereinafter defined) to the Borrower to finance the costs of Borrower’s construction of the Improvements (as hereinafter defined); and

**WHEREAS**, to evidence the Loan, Borrower has executed and delivered the Note (as hereinafter defined) to the Lender; and

**WHEREAS**, the Note is secured by the Mortgage (as hereinafter defined); and

**WHEREAS**, the Lender has agreed to make the Loan to Borrower upon and subject to all of the terms, conditions, covenants and agreements of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**

**PARTICULAR TERMS AND DEFINITIONS**

1.1. As used in this Building Loan Agreement (this “*Agreement*”), the following terms shall have the respective meanings indicated opposite each of them:

“3 Month Debt Service Coverage Ratio”	—	Shall mean the ratio of Net Operating Income to Debt Service for the 3 month period preceding the date of such test.
“12 Month Debt Service Coverage Ratio”	—	Shall mean the ratio of Net Operating Income to Debt Service for the 12 month period preceding the Calculation Date or the applicable Additional Calculation Date.
“Additional Calculation Date”	—	Shall mean the date twelve months after the Calculation Date and each date that is twelve months thereafter.

<b><i>“Affiliate”</i></b>	— With respect to any specified Person, any other Person who has Control over such specified Person.
<b><i>“Agent Affiliates”</i></b>	— As such term is defined in Section 7.1(p)(iii) hereto.
<b><i>“Agreement”</i></b>	— Defined in Section 1.1 above.
<b><i>“Aggregate Change Order Amount”</i></b>	— With respect to Project 1, \$320,000; with respect to Project 2, \$830,000; and with respect to Project 3, \$620,000. (Such amounts are the aggregate amounts permitted under the Loan and/or the QLICI Loans.)
<b><i>“Anti-Terrorism Laws”</i></b>	— Defined in Section 5.1(bb) hereof.
<b><i>“Assignments of Contracts”</i></b>	— That certain Assignment of Contracts and Permits by Borrower in favor of the Lender.
<b><i>“Benefitted Persons”</i></b>	— As such term is defined in Section 7.16 hereof.
<b><i>“Borrower”</i></b>	— Has the meaning given to such term on the cover page of this Agreement.
<b><i>“Borrower’s Architect”</i></b>	— Richard Meier & Partners Architects LLP.
<b><i>“Borrower’s Equity”</i></b>	— That portion of the Project Cost Statement for Hard Costs and Soft Costs to be funded by Borrower in advance of the Initial Advance (or simultaneously with the funding of each Requisition).
<b><i>“Budget” or “Budgets”</i></b>	— Collectively or individually, as applicable, the Project 1 Budget, the Project 2 Budget and the Project 3 Budget.
<b><i>“Business Day”</i></b>	— A day other than a Saturday, Sunday or legal holiday for commercial banks in New York, New York.
<b><i>“Calculation Date”</i></b>	— Shall mean the date that is twelve months after the Date of Conversion.
<b><i>“Cash Sweep Account”</i></b>	— As such term is defined in Section 8.6(b) hereof.
<b><i>“Change Order”</i></b>	— Any modification or amendment to the Plans, General Contract or Major Subcontracts.



<b><i>“Change Order Amount”</i></b>	— \$150,000. (Such amount is the aggregate amount permitted under the Loan and/or the QLICI Loans.)
<b><i>“City”</i></b>	— The City of Newark, a municipal corporation in the County of Essex, State of New Jersey.
<b><i>“Commitment Fee”</i></b>	— \$90,000 payable on the date hereof, and deemed earned in full upon payment of same by the Borrower to Lender.
<b><i>“Completion Date”</i></b>	— September 11, 2014, TIME BEING OF THE ESSENCE.
<b><i>“Construction Consultant”</i></b>	— Hillmann Consulting, LLC, or other person or firm designated by the Lender.
<b><i>“Control”</i></b>	— When used with respect to any Person, the power to direct the day to day management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise, and the terms “controlling,” “controlled by” and “under common control with” shall have the meanings correlative therewith.
<b><i>“Control Agreements”</i></b>	— Collectively, all account control agreements pertaining to all of the bank accounts of the Borrower pledged to the Lender pursuant to the terms and conditions of this Agreement.
<b><i>“Credit Party”</i></b>	— Any of the Borrower and/or Guarantors.
<b><i>“CRDA”</i></b>	— Casino Reinvestment Development Authority.
<b><i>“CRDA Loan”</i></b>	— The loan by CRDA to the Borrower in the amount of \$5,250,000 for the construction of the Projects.
<b><i>“Cure Date”</i></b>	— Shall mean any Quarterly Calculation Date upon which the Borrower complies with the covenant set forth in Section 8.6(a).
<b><i>“Date of Conversion”</i></b>	— As such term is defined in Section 8.6.
<b><i>“Debt Service”</i></b>	— Shall mean the payments that were payable (i) on the outstanding Loan during the same period for which Net Operating Income is measured

(provided, however, if the Date of Conversion has not yet occurred, the foregoing calculation shall be based on the payments that would have been payable over such period on the outstanding Loan using the Post-Conversion Interest Rate (as defined in the Note)) and (ii) that certain Promissory Note from RBH-TRB West I Mezz Urban Renewal Entity, LLC to Goldman Sachs Bank USA in the amount of \$15,700,000, dated as of the date hereof.

<b>“Direct Costs” or “Hard Costs”</b>	— The aggregate costs of all labor, materials, equipment and fixtures necessary for completion of construction of the Improvements as more particularly set forth in the Direct Cost Statement.
<b>“Direct Cost Statement”</b>	— A statement in form approved by Lender of Direct Costs incurred and to be incurred, trade by trade, to be prepared by the General Contractor.
<b>“Engineer”</b>	— Collectively, Arup USA, Inc. and McLaren Engineering Group, or such person or firm as may be approved by Lender to provide engineering services in connection with the Projects.
<b>“Environmental Indemnity”</b>	— That certain Environmental Indemnity Agreement, dated as of the date hereof, from the Borrower, whereby, among other things, the Lender is indemnified against damage, loss, cost, liability or expense suffered by the Lender as a result of any Hazardous Materials at, on or about the Premises.
<b>“Environmental Report”</b>	— Collectively, the documents listed on Exhibit A to the Environmental Indemnity.
<b>“ERISA”</b>	— As such term is defined in Section 5.1(y) hereof.
<b>“Event of Default”</b>	— As such term is defined in Section 6.1 hereof.
<b>“Executive Order”</b>	— Defined in Section 5.1(bb) hereof.
<b>“Fees”</b>	— Means any and all fees payable to the Lender in connection with the Loan, as more particularly set forth herein or in the fee letters and/or agreements by and between the Borrower and the Lender executed as of the date hereof.

<b><i>“Financial Agreement”</i></b>	— As such term is defined in Section 3.2(v) hereof.
<b><i>“Financial Statements”</i></b>	— Statements of the assets, liabilities (direct or contingent), income, expenses and cash flow of the Borrower, the General Contractor, and the Guarantors, prepared in accordance with the usual practices of the Borrower, the General Contractor, and the Guarantors.
<b><i>“GAAP”</i></b>	— Generally accepted accounting principles as in effect from time to time in the United States and consistently applied.
<b><i>“General Contract”</i></b>	— The contract (together with all riders, addenda and other instruments referred to therein as <b>“contract documents”</b> ) between Borrower and General Contractor or any other person which requires General Contractor or such other person to provide, or supervise or manage the procurement of, substantially all labor and materials needed for completion of the Improvements.
<b><i>“General Contractor”</i></b>	— Holister Contracting Corp. or such other general contractor or site work contractor as are approved by Lender.
<b><i>“Governmental Authorities”</i></b>	— The United States, the State of New Jersey and City of Newark and any political subdivision, agency, department, commission, board, bureau or instrumentality of any of them, including any local authorities, which exercises jurisdiction over the Premises or the Improvements.
<b><i>“GS”</i></b>	— As such term is defined in Section 7.9 hereof.
<b><i>“Guarantors”</i></b>	— Collectively, RBH-TRB Newark Holdings, LLC, a New York limited liability company, and Ron Beit-Halachmy, an individual.
<b><i>“Guaranties”</i></b>	— Collectively, that certain Guaranty of Payment and Recourse Carveouts, made by the Guarantors in favor of the Lender, and that certain Joint and Several Completion Guaranty made by the Borrower and RBH-TRB Newark Holdings, LLC in favor of the Lender, each dated the date hereof, and in form and substance satisfactory to the Lender.

<b>“Hazardous Materials”</b>	<ul style="list-style-type: none"> <li>Asbestos, polychlorinated biphenyls and petroleum products, and any other hazardous or toxic materials, wastes and substances (including, but not limited to, toxic mold) which are defined, determined or identified as such in, or subject to, any present and future federal, state or local laws, rules or regulations and judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments.</li> </ul>
<b>“Hedge Arrangement”</b>	<ul style="list-style-type: none"> <li>Any interest rate swap, interest rate cap or other arrangement, contractual or otherwise, which has the effect of an interest rate swap or an interest rate cap or which otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.</li> </ul>
<b>“Hedge Assignment and Security Agreement”</b>	<ul style="list-style-type: none"> <li>As such term is defined in Section 8.7 hereof.</li> </ul>
<b>“Hedge Documents”</b>	<ul style="list-style-type: none"> <li>As such term is defined in Section 8.7 hereof.</li> </ul>
<b>“Hedge Provider”</b>	<ul style="list-style-type: none"> <li>Any provider or counterparty providing a Hedging Arrangement, which provider or counterparty shall be rated at least “Aa2” by Moody’s or “AA” by Standard and Poor’s and shall otherwise be reasonably acceptable to Lender in all respects.</li> </ul>
<b>“Improvements”</b>	<ul style="list-style-type: none"> <li>The construction of (i) in connection with Project 1, a building to be located on Block 57, Lot 31 (<b>“Building 1”</b>) that will consist of multiple retail spaces on the ground floor and approximately 24 residential rental units on the upper floors, (ii) in connection with Project 2, a building located on Block 58, Lot 1 (f.k.a. Lots 1, 2, 4, and 41, and portions of Lots 5, 35.02, and 43) (<b>“Building 6”</b>) that will consist of multiple retail spaces on the ground floor and approximately 65 residential rental units on the upper floors, and (iii) the building to be located at Block 95, Lot 1.02 (f.k.a. Lot 10 and portions of Lots 9 and 16) (<b>“Building 7”</b>) that will consist of multiple retail spaces on the ground floor and approximately 42 residential</li> </ul>

	rental units on the upper floors, and which shall be additional collateral for the Loan.
<b>“Indirect Costs” or “Soft Costs”</b>	— Certain costs (other than Direct Costs) of completion of the Improvements, including, but not limited to, brokerage fees, developer fees, architects’, engineers’ and the Lender’s attorneys’ fees, ground rents, interest on the Note and recording taxes and title charges in respect of the Mortgage, real estate taxes, water and sewer rents, survey costs, loan commitment fees, insurance and bond premiums and such other non-construction costs as are part of the “cost of improvement”.
<b>“Indirect Cost Statement”</b>	— A statement in form approved by Lender of Indirect Costs incurred and to be incurred, to be prepared by Borrower.
<b>“Initial Advance”</b>	— The first advance of proceeds of the Loan from the Lender to the Borrower to be made hereunder.
<b>“Intercreditor Agreement”</b>	— That certain Subordination and Intercreditor Agreement, dated as of the date hereof, by and among Borrower, QLICI Lenders, CRDA and Lender.
<b>“Leases”</b>	— Collectively, the leases to be entered into by RBH Retail, LLC (as lessee under the Master Lease) related to the retail spaces at the Projects in excess of 5,000 square feet.
<b>“Lender”</b>	— Has the meaning given to such term on the cover page of this Agreement.
<b>“Lender’s Counsel”</b>	— Has the meaning given to such term on the cover page of this Agreement.
<b>“Loan”</b>	— Means an amount of \$9,000,000, as evidenced by the Note and secured by the Mortgage, all to be advanced pursuant to the terms of this Agreement.
<b>“Loan Budget Amounts”</b>	— The portion of the Loan as set forth on the Project Cost Statement, to be advanced for each category of Direct Costs and Indirect Costs.
<b>“Loan Documents”</b>	— Collectively, and as may be amended from time to time, this Agreement, the Note, the Mortgage,

the Guaranties, the Environmental Indemnity, the Assignment of Contracts, the Control Agreements, the Pledge of Membership Interests, any financing statement under the Uniform Commercial Code and any and all other documents, instruments and/or certificates executed by the Borrower or Guarantors in connection with the Loans.

<b><i>“Major Subcontractor”; “Major Subcontract”</i></b>	— Any single subcontractor or materialman who enters into a contract or contracts with General Contractor or the Borrower in connection with the construction of the Improvements, which contract or contracts provide for aggregate payments to such subcontractor or materialman equal to or in excess of \$250,000.
<b><i>“Master Lease”</i></b>	— That certain master lease, between the Borrower, as lessor, and RBH Retail, LLC, as lessee, of the retail space at the Projects.
<b><i>“Mortgage”</i></b>	— That certain mortgage, assignment of leases and rents and security agreement, made by the Borrower to the Lender, dated as of the date hereof, securing the Loan.
<b><i>“Mortgaged Property”</i></b>	— The Premises and other property constituting the “Mortgaged Property,” as said quoted term is defined in the Mortgage.
<b><i>“Net Operating Income”</i></b>	— Shall mean, for any given period, all income derived from the Improvements, minus Operating Expenses.
<b><i>“Note”</i></b>	— That certain GS Building Loan Note, dated as of the date hereof, by Borrower to the order of Lender, in the principal amount of \$9,000,000.
<b><i>“Operating Account”</i></b>	— A separate bank account established by the Borrower into which advances of the proceeds of the Loan shall be deposited which is pledged hereunder by the Borrower to the Lender, and subject to a Control Agreement.
<b><i>“Operating Agreement”</i></b>	— Collectively, the operating agreement of the Borrower and any and all amendments thereto.
<b><i>“Operating Expenses”</i></b>	— Shall mean, with respect to the applicable period, the greater of (i) actual expenditures of all kinds,

computed in accordance with generally accepted accounting principles, made with respect to the operation of the Improvements in the normal course of business, including, but not limited to, expenditures for real estate taxes, insurance, repairs, replacements, maintenance, management fees, salaries, wages and utility costs, but expressly excluding any debt service on the Loan, the QLICI Loans, the CRDA Loan, depreciation, capital expenditures, and any one time or extraordinary expenses or (ii) Pro Forma Expenditures.

<b><i>“Other Lenders”</i></b>	— Collectively, the QLICI Lenders and CRDA.
<b><i>“Other Mortgages”</i></b>	— As such term is defined in the Mortgages.
<b><i>“Payment and Performance Bonds”</i></b>	— Payment and performance bonds, issued by a surety acceptable to Lender in its sole discretion, in an amount of the General Contract, along with dual obligee riders naming Lender as additional beneficiary, in form and substance satisfactory to Lender.
<b><i>“Pension or Benefit Plan”</i></b>	— As such term is defined in Section 5.1(y) hereof.
<b><i>“Permitted Contest”</i></b>	— A contest by Borrower by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, as to the amount or validity or application in whole or in part of liens of any mechanics, materialmen and similar liens provided that (i) no Event of Default has occurred and remains uncured; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iii) the Premises nor any part thereof or interest therein will be in imminent danger of being sold, forfeited, terminated, cancelled or lost; (iv) Borrower shall promptly, upon final determination thereof, pay or cause the payment of the amount of any such mechanics, materialmen or similar liens, together with all costs, interest and penalties which may be payable in connection therewith; (v) such

proceeding shall suspend the collection of such contested any mechanics, materialmen or similar liens from the Premises; and (vi) Borrower shall furnish or cause to be furnished such security as may be required in the proceeding, or as may be reasonably requested by Lender, to insure the payment of any such mechanics, materialmen and similar liens, together with all interest and penalties thereon.

***“Permitted Loans”***

- The QLICI Loans and the CRDA Loan.

***“Permitted Transferee”***

- One or more of the following: (i) one or more of the following: an insurance company, bank, savings and loan association, investment bank, trust company, commercial credit corporation, pension plan, pension fund, pension fund advisory firm, mutual fund, real estate investment trust or governmental entity or plan; or (ii) an investment company, money management firm or a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended; or (iii) an institution substantially similar to any of the foregoing, which, in the case of each of the sub-clauses of this definition, has at least \$300,000,000 in total assets (in name or under management), and is regularly engaged in the business of making or owning commercial real estate loans or commercial loans or mezzanine loans (or interests therein) similar to the loans described herein; (iv) any entity Controlled (as defined below) by or Controlling, or under common Control with, any of the entities described in clauses (i)-(iii) above, or (v) a governmental entity. (“Control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise, and “Controlled” and “Controlling” have the meaning correlative thereto).

***“Person”***

- Any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture,



association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

- “Plans”***
- All final drawings, plans and specifications prepared by Borrower’s Architect, the General Contractor or Major Subcontractors, and approved by the Lender and the Construction Consultant, which describe and show the labor, materials, equipment, fixtures and furnishings necessary for the construction of the Improvements, including all amendments and modifications thereof made by approved Change Orders (and also showing minimum grade of finishes and furnishings for all areas of the Improvements to be leased or sold in ready-for-occupancy conditions).
- “Pledge of Membership Interests”***
- That certain pledge and security agreement whereby 100% of the Borrower’s managing member’s membership interests in the Borrower are assigned to the Lender for additional collateral for the Loan.
- “Premises”***
- The real property described on Schedule A to the Mortgage, upon part of which the Improvements are to be constructed.
- “Pro Forma Expenditures”***
- Shall mean, with respect to the applicable period, the projected expenditures of all kinds, computed in accordance with generally accepted accounting principles, with respect to the operation of the Improvements in the normal course of business, including, but not limited to, expenditures for real estate taxes, insurance, repairs, replacements, maintenance, management fees, salaries, wages and utility costs, but expressly excluding any debt service on the Loan, the QLICI Loans, the CRDA Loan, depreciation, capital expenditures, and any one time or extraordinary expenses, which projected expenditures shall be as set forth in the pro forma approved by Lender as of the date hereof (or as may be updated from time to time with Lender’s consent).

<b>“Project” or “Projects”</b>	— Individually or collectively, as the context may require, Project 1, Project 2 and/or Project 3.
<b>“Project 1”</b>	— Collectively, the Premises and Improvements in connection with the construction of Building 1.
<b>“Project 1 Budget”</b>	— The budget for Project 1 (and any and all amendments, additions, deletions, supplements and restatements thereof which are specifically approved in writing by Lender) setting forth all of the estimated costs for construction, furnishing and equipping of the Improvements for Project 1 and all related soft costs, as approved by Lender.
<b>“Project 2”</b>	— Collectively, the Premises and Improvements in connection with the construction of Building 6.
<b>“Project 2 Budget”</b>	— The budget for Project 2 (and any and all amendments, additions, deletions, supplements and restatements thereof which are specifically approved in writing by Lender) setting forth all of the estimated costs for construction, furnishing and equipping of the Improvements for Project 2 and all related soft costs, as approved by Lender.
<b>“Project 3”</b>	— Collectively, the Premises and Improvements in connection with the construction of Building 7.
<b>“Project 3 Budget”</b>	— The budget for Project 3 (and any and all amendments, additions, deletions, supplements and restatements thereof which are specifically approved in writing by Lender) setting forth all of the estimated costs for construction, furnishing and equipping of the Improvements for Project 3 and all related soft costs, as approved by Lender.
<b>“Project Cost Statement”</b>	— The statement setting forth, by category, the aggregate cost of each category of construction with respect to Project 1, Project 2 and/or Project 3, as applicable, as well as the amount of the applicable Loans and Borrower’s equity contribution attributable to each category.
<b>“QLICI Lenders”</b>	— Collectively, GSNMF Sub-CDE 2 LLC, NCIF New Markets Capital Fund IX CDE, LLC, Carver CDC — Subsidiary CDE 21, LLC, BACDE NMTC Fund 4, LLC.

<b>“QLICI Loan”</b>	—	Collectively, the loans made by the QLICI Lenders to the Borrower in the principal amount of \$39,775,000.
<b>“QLICI Mortgages”</b>	—	Collectively, the mortgages made by Borrower in favor of the QLICI Lenders, securing the QLICI Loan.
<b>“Quarterly Calculation Date”</b>	—	Shall mean the date which is three months after a Calculation Date or Additional Calculation Date, as the case may be, and each date which is three months thereafter.
<b>“Requisition”</b>	—	<p>A statement by Borrower in form and substance similar to <u>Exhibit B</u> pursuant to the terms hereof, and approved by Lender setting forth the amount of the advance of proceeds of the Loan requested in each instance and including:</p> <ul style="list-style-type: none"> <li>(i) the Direct Cost Statement and Indirect Cost Statement;</li> <li>(ii) a “Contractor’s Cost Certification” in form approved by Lender and the Construction Consultant;</li> <li>(iii) “Lien Waivers” from the General Contractor and, if requested by Lender, subcontractors, or suppliers covered by a previous Requisition in form approved by Lender;</li> <li>(iv) proof of payment of all Indirect Costs covered by a previous Requisition;</li> <li>(v) proof of payment of Borrower’s Equity; and</li> <li>(vi) AIA Form G702 Application and Certificate for Payment.</li> </ul>
<b>“Residential Leases”</b>	—	Collectively, the leases entered into by the Borrower with respect to the residential units of the Projects, in a form to be approved in writing by Lender.
<b>“Retainage”</b>	—	A sum equal to 10% of any advance of the Loan to the extent it funds Direct Costs including any advance of the <b>“Contingency”</b> as shown on the Project Cost Statement, which amount shall be reduced (but not released) to 5% of any advance

	of the Loan after completion of 90% of the applicable Project.
<b><i>“Retained Amounts”</i></b>	— The amounts permitted to be retained by Borrower from each draw request for Hard Costs under the General Contracts or Major Subcontracts.
<b><i>“Shortfall Amount”</i></b>	— As such term is defined in Section 7.1(d) hereof.
<b><i>“Shortfall Letter of Credit”</i></b>	— As such term is defined in Section 7.1(g) hereof.
<b><i>“Shortfall Payment”</i></b>	— As such term is defined in Section 7.1(d) hereof.
<b><i>“SPE”</i></b>	— A limited partnership or limited liability company which: (a) shall not commingle assets with those of any other entity and holds its assets in its own name; (b) conducts its business in its own name; (c) maintains separate bank accounts, books, records and Financial Statements; (d) pays its own liabilities out of its own funds; (e) maintains adequate capital in light of contemplated business operations; (f) observes all organizational formalities; (g) maintains an arm’s-length relationship with each Affiliate; (h) pays the salaries of its own employees, if any, in light of contemplated business operations; (i) shall not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of others; (j) shall not acquire obligations or securities of any Affiliate; (k) shall not make loans to any other person or entity; (l) allocates fairly and reasonably any overhead for shared office space, if any; (m) shall not pledge its assets for the benefit of any other entity; (n) holds itself out as a separate entity and shall not fail to correct any known misunderstanding regarding its separate identity; and (o) shall not identify itself or any of its Affiliates as a division or part of the other.
<b><i>“State”</i></b>	— The State of New Jersey.
<b><i>“Stored Materials”</i></b>	— As such term is defined in Section 2.5 hereof.
<b><i>“Stored Materials Statement”</i></b>	— A statement in form approved by Lender which, if advances are to be made for stored materials pursuant to Section 2.5 hereof, shall be prepared

	by Borrower as part of the Direct Cost Statement.
<b>“Tax”</b>	— As such term is defined in Section 5.2(ee) hereof.
<b>“Title Insurer”</b>	— Chicago Title Insurance Company or any other issuer(s) approved by Lender which is issuing the title insurance policy insuring the Mortgage.
<b>“Title Policy”</b>	— As such term is defined in Section 3.4(b) hereof.
<b>“UBO”</b>	— As such term is defined in Section 5.2(ee) hereof.
<b>“Unavoidable Delay”</b>	— Any delays due to industry-wide strikes or similar labor disputes, acts of God, governmental restrictions, enemy action, civil commotion, acts of terrorism, fire, unavoidable casualty, unusually adverse weather conditions; <u>provided, however</u> , that neither the failure of Borrower to fulfill the requirements to receive a release hereunder nor the lack of Borrower’s own funds shall be deemed a cause beyond the reasonable control of the Borrower.

(End of Article I)

## ARTICLE II

### ADVANCES OF THE LOAN

2.1. **Subject to the provisions of this Agreement, including, without limitation, Articles III, IV and VIII hereof, Lender will advance, and Borrower will accept the installments of the Loan as follows:**

The Initial Advance will be made upon the satisfaction of the applicable conditions set forth in Article III hereof, and all subsequent advances shall be made no more frequently than every month thereafter, within ten (10) Business Days of receipt of a Requisition, and upon the satisfaction of the applicable conditions set forth in this Agreement, in amounts which shall be equal to the aggregate of the Direct Costs and Indirect Costs incurred by Borrower through the end of the period covered by the Requisition, less:

(a) **the greater of the Retainage of such Direct Costs or the actual “Retained Amounts” specified on the Direct Cost Statement; and**

(b) **the total of the Loan advances theretofore made;**

and, at the election of Lender, less any costs covered by the Requisition not approved, certified or verified as provided in Section 2.2 hereof, any Indirect Costs covered by a previous or the current Requisition for which any requested proof of payment has not been received by Lender, and/or any Direct Costs covered by a previous or the current Requisition for which any requested payment receipts have not been received by Lender and the Construction Consultant.

2.2. **Direct Costs are to be certified by the General Contractor and Borrower’s Architect and must be in accordance with the Direct Cost Statement. Verification of the monthly progress and Direct Costs which have been incurred by Borrower from time to time, and the estimated total Direct Costs, shall be reasonably determined by the Construction Consultant, except that both Direct Costs and Indirect Costs are also subject to reasonable approval and verification by Lender from time to time. Advances for Direct Costs shall be made only to the extent that the work is actually completed in accordance with the Plans and is in place and approved by the Construction Consultant and Lender.**

2.3. **All advances to Borrower shall be deposited via wire transfer or other transfer of same day funds in the Borrower’s Operating Account; provided, however, that Lender reserves the right with respect to any Requisition, at any time and from time to time, to require that advances hereunder be made jointly to Borrower and the General Contractor and/or subcontractors and suppliers to be paid from the funds being advanced under such Requisition. Requisitions shall be received by Lender at least ten (10) Business Days prior to the date of the requested advance. Lender shall fund such Requisition within ten (10) Business Days after all conditions to make advances under this Article II and under Sections 3.1, 3.2 or 3.3 hereof, as the case may**

be, but shall have no obligation to advance Loan proceeds more frequently than once per calendar month.

2.4. Amounts, including Retainage (and any other amounts), not authorized for release pursuant to Section 2.1 hereof during the course of construction of the Improvements shall be advanced upon the satisfaction of the conditions set forth in Section 4.2 hereof. Loan Budget Amounts for Indirect Costs not advanced prior to completion of construction of the Improvements shall be advanced until exhausted, not more frequently than once a month, for Indirect Costs as incurred after such completion.

2.5. Lender shall make, at its sole option, advances in such amounts as Lender shall approve, for Borrower's building materials (the "*Stored Materials*"), approved by Lender in accordance with clauses (a)-(g) below, which have been purchased by Borrower and stored in either a bonded public warehouse or in such other storage facility as is satisfactory to Lender or stored on site prior to incorporation in the Improvements provided:

(a) said Stored Materials are fully insured to Lender's satisfaction (in transit and while in storage) and will be incorporated into the Improvements within thirty (30) days of receipt of same at the Premises,

(b) the Stored Materials are marked and segregated from all other items stored in such bonded public warehouse or storage facility,

(c) Lender and Borrower shall have entered into a security agreement, in form and substance satisfactory to Lender, covering the Stored Materials and Lender shall have been provided with a satisfactory first chattel lien with respect thereto,

(d) Lender shall have received evidence, satisfactory to Lender, that the Borrower holds title (including, but not limited to, a bill of sale) to the Stored Materials free and clear of all liens and encumbrances (other than those in favor of Lender and the Other Lenders), and any warehouseman's receipt or similar document, for the stored materials,

(e) if the Stored Materials are stored in a facility other than a bonded public warehouse, then the Stored Materials must be protected against theft and vandalism to Lender's satisfaction,

(f) Borrower shall provide to Lender photos of the Stored Materials; and

(g) the Stored Materials have been inspected by the Construction Consultant.

2.6. After an Event of Default hereunder, Lender may, in its sole and absolute discretion, accelerate all or any portion of the amounts to be advanced or released hereunder or cease to fund any amounts hereunder, all without regard to Borrower's satisfaction of the conditions to its entitlement to Loan proceeds and no person dealing

with Borrower or the General Contractor or any other person shall have standing to demand any different performance from Lender.

2.7. If, at any time, the Borrower shall request that the undisbursed balance of the Loan Budget Amount for any category of cost shown on the Project Cost Statement be reallocated to another category of cost, Lender shall consent to such reallocation only (i) if, in Lender's reasonable judgment, the undisbursed balance of the Loan Budget Amount for such category of cost is excessive given the remaining cost for such category, (ii) there is no Event of Default and (iii) provided that any reallocation of Loan Budget Amounts pursuant to this Section 2.7 will not have any other adverse effect upon the Loan.

2.8. The Borrower hereby irrevocably authorizes Lender to disburse proceeds of the Loan to pay interest accrued on the Note as it comes due, or to satisfy any of the conditions of this Agreement, including, without limitation, the payment of the reasonable fees and expenses of Lender's Counsel and the Construction Consultant actually incurred, notwithstanding that the Borrower may not have requested authorization of the advance of such amounts and whether or not an Event of Default is continuing under this Agreement; provided, however, that regarding amounts that the Borrower has not requested advanced, within ten (10) Business Days following any such advance, the Borrower is provided with notice of such advance together with a reasonable accounting of such amounts advanced; provided, further, however, that failure to notify the Borrower shall have no consequences whatsoever to the effectiveness of any such advance. The authorization granted hereby shall not prevent the Borrower from paying interest, or satisfying said conditions, from its own funds and shall in no event be construed so as to relieve the Borrower from its obligations to pay interest as and when due under the Note, or to satisfy said conditions, or to obligate the Lender to advance proceeds of the Loan for payment of interest or the satisfaction of said conditions. At such time as the Borrower commences leasing of the Improvements, interest on the Loan shall be paid from the net operating income of the Improvements to the extent there is sufficient net operating income to do so and the remainder of the interest payment shall be made from the proceeds of the Loan to the extent available for payment of interest on the Loan. Furthermore, if there are sufficient savings in line items in the Budget, the Borrower may request that Lender reallocate such savings toward the funding of an interest reserve, which reallocated amounts may then be used to make interest payments in place of net operating income making such interest payments; provided, however, that the determination as to whether to so reallocate any cost savings shall be made in the sole discretion of Lender. Notwithstanding the Lender's sole discretion, should the Borrower provide the Lender with a certificate from Borrower's Architect stating there are sufficient funds to complete the Projects, the Lender shall reallocate such cost savings to make interests payments.

2.9. Each request by Borrower to Lender for an advance of the Loan shall be in the form attached hereto as Exhibit B and signed by a duly authorized representative of Borrower. Each such request for advance for Indirect Costs shall be delivered to Lender not less than ten (10) Business Days prior to the date upon which an advance of the Loan is requested and shall be accompanied by: (a) bills or invoices for the Indirect Costs, and (b) such other information and documents as may be reasonably requested



or required by Lender. Each advance of the Loan shall be made, in whole or in part as set forth in Section 2.3 hereof.

(End of Article II)

### ARTICLE III

#### CONDITIONS PRECEDENT TO ADMINISTRATIVE AGENT'S OBLIGATION TO APPROVE THE MAKING OF THE INITIAL ADVANCE

3.1. Lender shall not be obligated to make the Initial Advance until the following conditions shall have been satisfied by Borrower or have been waived by Lender (provided that unless such waiver has been granted in writing, it shall not be deemed to have been waived for future advances) and upon the satisfaction of such conditions or waiver, as applicable, Lender hereby agrees to make the Initial Advance:

- (a) The Lender shall have received and approved the items specified in Section 3.2 below;
- (b) The Construction Consultant shall have received and approved the items specified in Section 3.3 below;
- (c) Lender's Counsel shall have received and approved the items specified in Section 3.4 below;
- (d) The Lender shall have approved the Plans, the Environmental Report, the state of title to the Premises reflected in the Title Policy, the survey and such other documents required by the Lender;
- (e) The representations and warranties made in Article V hereof shall be true and correct on and as of the date of the Initial Advance with the same effect as if made on such date;
- (f) The Improvements, if any, shall not have been injured or damaged by fire or other casualty unless the Lender shall have received insurance proceeds sufficient in the judgment of the Construction Consultant to effect the satisfactory restoration of the Improvements and to permit completion of the Improvements prior to the Completion Date;
- (g) The Lender shall have received a copy of the fully executed Master Lease, in form and substance satisfactory to the Lender;
- (h) The Lender shall have received evidence satisfactory to it that the proceeds of the Permitted Loans made by the Other Lenders will be available to the Borrower; and
- (i) There shall exist no default beyond any applicable periods of notice and grace under any of the Loan Documents, irrespective of whether or not the same shall constitute an Event of Default thereunder.

3.2. The items to be received and approved by the Lender prior to the Initial Advance shall be:

(a) Evidence that all of the fees due on or prior to the date of the Initial Advance have been paid to the respective parties or will be made out of the Initial Advance, including, but not limited to, the Commitment Fee;

(b) An appraisal, in form, substance and amount, and from an appraiser, satisfactory to the Lender;

(c) Current Financial Statements, tax returns and such other financial data as the Lender shall require including, but not limited to, consolidated, audited Financial Statements of the Guarantors, or any member and/or manager of the Borrower, together with evidence that there has occurred no material adverse change in the financial condition reflected therein between the respective dates thereof and the date hereof. With respect to any Financial Statements of Guarantors that had been certified by an independent certified public accountant when initially provided to Lender, such Financial Statements shall be accompanied by a certificate of Guarantors' independent certified public accountant acceptable to Lender stating that there has occurred no material adverse change in the financial condition reflected therein of Guarantors between the date of the Financial Statements and the date hereof;

(d) The following, in form and substance reasonably satisfactory to the Lender: (i) evidence that the Plans have been approved by Construction Consultant and by Governmental Authorities, (ii) evidence that the Improvements as shown by the Plans will comply with applicable zoning and environmental ordinances and regulations, (iii) evidence that the executed General Contracts are in effect which satisfactorily provides for the construction of the Improvements in accordance with the Plans, (iv) evidence that all roads and utilities necessary for the full utilization of the Improvements for their intended purposes have been completed or will be completed prior to the Completion Date or the presently installed and proposed roads and utilities will be sufficient for the full utilization of the Improvements for their intended purpose, (v) evidence that the construction of the Improvements theretofore performed, if any, was performed in accordance with the Plans and will be finished along with all necessary roads and utilities on or before the Completion Date, and (vi) evidence that the cost of constructing the Improvements shall not exceed the total development costs approved by the Lender and set forth in the Budget;

(e) An executed copy of the General Contract in connection with the Project, together with a copy of the agreement with Borrower's Architect;

(f) An Architect's Qualification Statement on AIA Document B431 for the Architect, together with evidence that the Architect is duly licensed and registered in the State of New Jersey; a fully executed copy of the contract between Borrower and the Engineer acceptable to Lender in all respects; a Qualification Statement on AIA Form B431 (or similar qualification form from the ACEC for Engineer), together with evidence that Engineer is duly licensed and registered in the State of New Jersey; and a list of all contractors to be employed in connection with the construction of the Projects, which at a minimum sets forth the nature of the work to be performed, the labor and materials to be supplied and the dollar amount of such work and/or materials. The required list of contractors must specify the amount of each contract, subcontract, and material supply contract (which must be updated as and when additional contracts, subcontracts, or

material supply contracts are awarded). If all contracts, subcontracts, and material supply contracts have not been awarded as of the date of the Initial Advance, Borrower shall provide Lender with an updated list of contractors prior to each subsequent advance of Loan proceeds.

(g) The insurance policies for the types and in the amounts described on Exhibit F attached hereto, in form and substance satisfactory to the Lender, including flood insurance, if applicable (together with evidence of the payment of the premiums therefor when due) which policies will name the Lender as additional insured/loss payee and will contain an endorsement specifically providing that, in the case of any damage, all insurance proceeds will be paid to the Lender so long as it certifies to the insurer that the unpaid principal amount of the Mortgage exceeds the proceeds of insurance and if no flood insurance is applicable, evidence that the Premises are not located in an area that has been identified by the Secretary of Housing and Urban Development as an area requiring special flood insurance;

(h) The building permits required for the construction of the Improvements for the Projects in accordance with the Plans for Projects;

(i) A construction and Loan draw progress schedule or chart showing the interval of time over which each item of Direct Costs and Indirect Costs is projected to be incurred or paid for the Project;

(j) The Project Cost Statement, Direct Cost Statement and Indirect Cost Statement for the Project;

(k) A Requisition for the Initial Advance, together with, if requested by Lender, proof of payment of any Indirect Costs included therein;

(l) Evidence that, except as set forth on the Environmental Report and other than those items that are to be remediated in connection with the construction of the Improvements, the Premises and the Improvements thereon are not currently and have not been subject to Hazardous Materials;

(m) The executed Environmental Indemnity, Guaranties and all other Loan Documents;

(n) Evidence of all costs incurred by Borrower in connection with the Projects as of the date of the Initial Advance, as well as evidence that the same have been, or will be paid in full;

(o) The executed Pledge of Membership Interests;

(p) A written legal opinion of Borrower's and Guarantors' counsel in form and substance reasonably satisfactory to the Lender with respect to matters related to this Agreement and the Loan Documents executed by such party;

(q) The Budget for the Project;

- (r) **Payment and Performance Bonds for the full amount of the General Contracts;**
- (s) **The Financial Agreement dated February 3, 2012, by and between Newark Teachers Village Urban Renewal, LLC, and the City, executed by the parties thereto (the “*Financial Agreement*”); and**
- (t) **Asbestos reports satisfactory to Lender in its reasonable discretion.**

3.3. **The items to be received and approved by the Construction Consultant prior to the Initial Advance shall be:**

- (a) **The Plans for the Project;**
- (b) **Copies of the items required by Section 3.2 hereof and Section 3.4 hereof;**
- (c) **[Reserved];**
- (d) **Copies of all inspection and test records and reports made by or for Borrower’s Architect;**
- (e) **Copies of all documents listed as exceptions to title in the Title Policy;**
- (f) **Copies of all easements;**
- (g) **If the Initial Advance consists in whole or in part of advances for Direct Costs, a copy of the Requisition therefor; and**
- (h) **Evidence that the Premises are not located in an area designated by the Secretary of Housing and Urban Development as having special flood hazards, or the flood-hazard insurance required by the NFIA of 1968, as amended (42 U.S. 4013, et seq.).**

3.4. **The items to be received and approved, by Lender’s Counsel prior to the Initial Advance shall be:**

- (a) **The executed Loan Documents;**
- (b) **A paid title insurance policy, in the amount of the Loan (the “*Title Policy*”), in ALTA or other form approved by Lender, issued by the Title Insurer, which shall insure the Mortgage to be a valid lien on Borrower’s fee simple interest in the Premises free and clear of all defects and encumbrances except those previously received and approved by Lender, and shall contain:**
  - (1) **full coverage against mechanics’ liens (filed and inchoate),**
  - (2) **a reference to the survey but no survey exceptions except those theretofore approved by counsel to the Lender,**

(3) a Pending Disbursements Clause in the form of Exhibit A hereto; and, if any such policy is dated earlier than the date of the Initial Advance, a continuation of or endorsement to such policy, in a form approved by Lender’s Counsel, conforming to the requirements of said Exhibit A and setting forth no additional exceptions except those approved by Lender’s Counsel; and

(4) such endorsements as Lender shall require in its sole and absolute discretion;

(c) Copies of any and all authorizations including plot plan and subdivision approvals, zoning variances, sewer, building and other permits required by Governmental Authorities for the commencement of construction of the Premises and/or Improvements for the purposes contemplated by the Plans in accordance with all applicable building, environmental, ecological, landmark, subdivision and zoning codes, laws and regulations;

(d) Letters and/or agreements from the Borrower’s Architect and the General Contractor, in forms acceptable to Lender, containing, among other things, their agreement to continue performance on behalf of the Lender following an Event of Default;

(e) UCC, judgment, litigation, lien and bankruptcy searches against Borrower or other owner of the Premises and Guarantors disclosing no judgments, liens or bankruptcies (except as set forth in a certificate, dated the date hereof, provided by Borrower and/or Guarantors, as may be applicable, to the Lender) and advice from the Title Insurer to the effect that searches of proper public records disclose no leases of personalty or financing statements filed or recorded against the Premises, Borrower, Guarantors or other owner of any Mortgaged Property (except as acceptable to Lender);

(f) A survey (current to within thirty (30) days of the Initial Advance or otherwise acceptable to Lender) of the Premises certified to Lender and the Title Insurer showing:

(1) the location of the perimeter of the Premises by courses and distances,

(2) all plottable easements, rights-of-way, and utility lines referred to in the Title Policy or which actually service or cross the Premises to the extent (A) discernable by a visual inspection by the surveyor, (B) made pursuant to a written agreement made available to the surveyor or (C) made pursuant to a recorded document,

(3) the lines of the streets abutting the Premises and width thereof, and any established building lines,

(4) encroachments and the extent thereof upon the Premises,

(5) the Improvements to the extent constructed, and the relationship of the Improvements by distances to the perimeter of the Premises, established building lines and street lines, and

said map;

(6) if the Premises are described as being on a filed map, a legend relating the survey to

(g) Copies of letters from local utility companies or Governmental Authorities or Borrower's Architect stating that gas, electric power, sanitary and storm sewer and water facilities and other utilities are currently available or will be available to and servicing the Premises upon completion of construction of the Improvements;

(h) Letters from the Borrower's Architect stating that the anticipated use of the Premises complies with all applicable zoning regulations;

(i) Evidence of Borrower's Architect's errors and omissions insurance, and evidence of General Contractor's insurance required to be maintained under the applicable General Contract;

(j) Any consents required by the General Contractor for the execution of the General Contracts;

(k) [Reserved];

(l) The Operating Agreement, certificate of formation, certificate of limited partnership, certificate of incorporation and/or operating agreement, partnership agreement or bylaws for each of the Borrower and Guarantors, as applicable;

(m) Copies of the following documents with respect to Borrower, the constituent members and managers of the Borrower and Guarantors (to the extent applicable):

(1) a good-standing certificate from the state of its formation,

(2) resolutions or unanimous written consents, certified by the secretary, of the shareholders or directors of the corporation or manager or managing member of the limited liability company or general partner of the partnership authorizing the consummation of the transactions contemplated hereby and the execution, delivery and performance of the Loan Documents to be executed, delivered or performed by said corporation, partnership or limited liability company, and

(3) an incumbency certificate of the parties executing this Agreement, or any of the other documents required hereby;

(n) Copies of the items required by Section 3.2 hereof;

(o) An opinion of Borrower's and Guarantors' counsel satisfactory to Lender in all respects, regarding, among other things, the enforceability of the documents executed in connection with the Loan and the authorization of the Borrower and Guarantors to enter into the documents executed in connection with the Loan, in form and substance reasonably satisfactory to Lender's counsel;

(p) The Master Lease; and

(q)       **The Intercreditor Agreement.**

(End of Article III)



## ARTICLE IV

### CONDITIONS PRECEDENT TO LENDER'S OBLIGATIONS TO MAKE ADVANCES AFTER THE INITIAL ADVANCE

4.1. Lender's obligation to make advances of the Loan after the Initial Advance shall be subject to the satisfaction of the following conditions:

- (a) All conditions of Article III shall have been and remain satisfied in the same manner as satisfied prior to the Initial Advance as of the date of such advance.
- (b) Lender and the Construction Consultant shall have received a Requisition for the advance, together with such other documentation and information as any of them may reasonably require.
- (c) Lender shall have received from the Title Insurer a continuation report of, or endorsement to, the title policies insuring the Mortgage to the date of such advance, conforming to the pending disbursement requirements set forth in Exhibit A hereto, as applicable, confirming the priority position of the Mortgage and setting forth no additional exceptions (including survey exceptions) except those approved by the Lender.
- (d) If reasonably required by Lender or Construction Consultant, they shall have received a survey of the Premises certified to the Lender and the Title Insurer updated with respect to all relevant requirements and information to within fifteen (15) days of the advance.
- (e) Unless the same has been bonded and released of record or otherwise satisfied and released to the satisfaction of Lender, no lien for the performance of work or supplying of labor, materials or services shall have been filed against the Mortgaged Property and/or a Project. A lien search shall have been conducted (1) to verify that since the preceding disbursement, there have been no additional liens which have not been agreed to by Lender, and (2) to confirm that there has been no filing of any mechanic's or materialmen's or other lien that has not been released or bonded to Lender's satisfaction. Lender shall have received sworn statements and waivers of mechanics' and materialmen's liens, in form and substance satisfactory to Lender, covering all work done, materials supplied and services rendered to the date of disbursement in connection with the development and construction of the Projects, from all Persons who have furnished labor, materials and/or services in the construction of the Projects, in all cases in form satisfactory to the Lender.
- (f) Borrower shall have delivered to Lender true and complete copies of the most recent tax bills for the Mortgaged Property, and, if there is any change in fee ownership or the taxes are not abated, any outstanding unpaid taxes, assessments or other charges or impositions of Governmental Authorities shall have been paid by Borrower.
- (g) There shall have been no material adverse change in the financial condition of Borrower, Guarantors, or General Contractor.

(h) No condemnation proceedings shall have been instituted, or to the best of Borrower's knowledge threatened, with respect to the Mortgaged Property or any part thereof.

(i) Borrower shall have delivered to Lender satisfactory evidence that the insurance required under the Loan Documents remains in full force and effect and is in compliance with the insurance requirements set forth in the Loan Documents.

(j) Lender shall have received evidence satisfactory to it that the Mortgaged Property has not been materially damaged by fire or other casualty unless Lender shall have received insurance proceeds, or satisfactory assurance that it will receive such proceeds in a timely manner, sufficient in the judgment of Lender to effect a satisfactory restoration and completion of the Projects in accordance with the terms of the this Agreement and the other Loan Documents.

(k) Lender shall have received evidence satisfactory to it that all work requiring inspection by any Governmental Authority having or claiming jurisdiction has been duly inspected and approved by such authority and by any rating or inspection organization, bureau, association or office having or claiming jurisdiction.

(l) Lender shall have received evidence satisfactory to it, including, if reasonably requested by Lender, an engineering certification, that all work completed at the time of the Requisition has been performed in a good and workmanlike manner, that all materials and fixtures usually furnished and installed at that stage of construction have been so furnished and installed, and that the Improvements can be completed in accordance with the approved construction schedule.

(m) The labor, materials, equipment, work, services and supplies performed upon or furnished to the Projects shall be in full accordance with the Plans, which have not been amended except as expressly permitted by this Agreement, and there have been no material changes in the costs of the Projects from those set forth on the Budget, as amended by any amendment thereto heretofore delivered by Borrower to Lender and approved by Lender.

(n) There shall exist no condition or situation at the Premises which, in the reasonable determination of Lender, constitutes a danger to or impairment of the Projects or presents a danger or hazard to the public.

(o) The representations and warranties made in this Agreement shall be true and correct in all material respects on and as of the date of the advance with the same effect as if made on such date.

(p) There shall exist no default hereunder or under any of the Loan Documents, irrespective of whether or not the same constitutes an Event of Default thereunder.

(q) If the advance of proceeds from the Loan is for Direct Costs, prior to approving such advance, the Lender must obtain the report of the Construction Consultant, which report shall be in form and substance satisfactory to the Lender and

shall state (i) that the work completed under the General Contract as of the date of the inspection has been performed and constructed substantially in accordance with the Plans, (ii) that the work is progressing on schedule, (iii) that the disbursements to date (including the proposed advance) plus Retainage correspond with the percentage of work completed and in place as of the current Retainage, (iv) that undisbursed proceeds of the Loan and Borrower's equity are sufficient to complete the remaining construction. If the Construction Consultant does not approve an item of work, then the Lender may hold back an amount which in the Lender's opinion shall be sufficient to remedy the item of work until the non-complying item of work is remedied.

4.2. In the case of the last advance of Loan proceeds, Lender shall also have received:

(a) A certificate from the Construction Consultant and Borrower's Architect, as applicable, to the effect that construction of the Improvements has been completed (subject to funded punchlist items), and any necessary utilities and roads have been finished and made available for use, substantially in accordance with the Plans and that the Construction Consultant has received satisfactory evidence of the approval by all Governmental Authorities of the Improvements in their entirety for the contemplated uses thereof, to the extent any such approval is a condition of the lawful use and occupancy thereof;

(b) If requested by the Lender and/or the Title Insurer, a current final survey of the Premises, certified to the Title Insurer and the Lender showing the completed Improvements;

(c) Final releases of liens and/or other documents and instruments as may reasonably be requested or required by the Lender with respect to the release of any mechanics and/or materialmen's liens;

(d) A certificate of Borrower's Architect and the Construction Consultant to the effect that, inter alia, construction of the Improvements has been completed substantially in accordance with the Plans (on a form to be provided by Lender), together with the AIA G704 Certificate of Substantial Completion, approved by the Lender and all the requirements of all applicable Governmental Authorities;

(e) A final lien release and waiver from the General Contractor and all subcontractors, in form and substance acceptable to the Lender, with respect to all prior advances of Loan proceeds pursuant to a Requisition and either final releases and waivers or releases and waivers conditioned only upon payment of amounts covered by the last Requisition of Loan proceeds, from the General Contractor and all subcontractors;

(f) Two (2) sets of detailed as-built plans and specifications for the Improvements. The as-built plans and specifications shall be approved as such in writing by the Borrower, the General Contractor and Borrower's Architect and shall include plans and specifications for architectural, structural, mechanical, plumbing, electrical and site development work (including storm drainage, utility lines and landscaping);

Documents; (g) Insurance policies evidencing compliance with all insurance requirements under the Loan

(h) The Title Policy shall have been fully endorsed assuring that all applicable amounts of the Loan advanced to pay Direct Costs and Indirect Costs have the priority specified in the Mortgage and are subject to no other encumbrances other than those previously approved in writing by the Lender;

(i) All conditions of Section 4.1 hereof, to the extent not otherwise enumerated above, shall have been satisfied; and

(j) A temporary or permanent certificate of occupancy for the Improvements and, if a temporary certificate of occupancy, an escrow agreement between Lender and Borrower pursuant to which an amount determined by Lender in its sole discretion as twice the estimated cost to complete all of the construction of the Improvements, including all punchlist items, and make all the necessary filings and inspections in order to obtain a permanent certificate of occupancy is received plus an aggregate \$50,000 is escrowed with the Lender.

4.3. Inspections.

(a) Borrower shall be responsible for making inspections of the Projects during the course of construction, and Borrower shall determine to its own satisfaction that the work done or material supplied by the contractors to which disbursements are to be made out of each disbursement has been properly done or supplied in accordance with the applicable contract with such contractor. Lender shall not be required to conduct any inspection of the Projects. Any inspections done by or on behalf of the Lender shall be solely for the benefit of the Lender, and Borrower may not rely thereon.

(b) Lender and its consultants and representatives shall have access to the Projects and shall have the right to enter the Projects during normal business hours upon reasonable prior notice to the Borrower and to conduct such inspections thereof as they shall deem necessary or desirable for the protection of the Lender's interests, including, without limitation, an inspection of the progress of construction in connection with any Requisition. Lender may take such steps as it may deem appropriate, at its option, to verify the application of the proceeds of the Loan to work done and material furnished for the Projects, including, without limiting the foregoing, reviewing invoices and such other supporting evidence as may be requested by Lender to establish the cost or value of the Projects for which disbursements are to be and have been made, or as may be required by this Agreement. Notwithstanding any provision of this Agreement to the contrary, in the event that Lender should determine that the actual quality or value of the work performed or the materials furnished does not correspond with the quality or value of the work required by the Plans, Lender shall notify Borrower of its objections thereto, and, upon demand, Borrower shall immediately correct the conditions to which the Lender objected.

4.4. **Disbursement Amounts; Retainage.**

(a) Lender shall determine the amount to be disbursed under each Requisition, and whether and to what extent amounts should be disbursed as requested in each Requisition, based on the information contained in each Requisition and subject to the provisions of this Agreement. In any case in which the amount to be disbursed is less than the amount requested in a Requisition, after the Lender provides a written explanation of the reason for such reduction to Borrower and Borrower has an opportunity to cure the problem or consent to such reduction within three (3) Business Days, the Requisition shall be amended to reflect the adjustments, and the Borrower shall execute the amended Requisition to reflect its agreement to the adjustments. Borrower acknowledges and agrees that Lender's determination in regard to disbursements is final.

(b) Borrower may obtain advances of proceeds of the Loan hereunder for payments owing to contractors only to the extent of the amount of the contract work satisfactorily completed or materials actually incorporated into the Projects by each such contractor in accordance with its contract, subcontract, or material supply contract, less amounts held as Retainage.

4.5. **Contacts and Names of Contractors.** Borrower shall advise Lender of the name of each contractor and subcontractor for the Projects. If requested by the Lender, Borrower shall also furnish to the Lender a copy of each contract with each of the contractors and subcontractors. Borrower shall keep Lender advised at all times of the names of all contractors and subcontractors, and of the type of work, material or services and the dollar amount covered by each of their respective contracts with Borrower.

4.6. **Building Permits.** Notwithstanding anything to the contrary contained herein, Administrative Agent shall not advance proceeds of the Loan for Hard Costs of a particular Project until building permits are received for such Project.

(End of Article IV)

## ARTICLE V

### BORROWER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 5.1. Borrower represents, warrants and covenants that:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its formation, is qualified to do business and is in good standing in the State of New Jersey with full power and authority to enter into and to perform this Agreement, to borrow pursuant to the Note, to mortgage the Mortgaged Property and to deliver the Loan Documents, and other instruments as herein provided, and to consummate the transactions contemplated hereby;

(b) The Plans are satisfactory to it, and have been reviewed and approved by the General Contractor, Borrower's Architect and, to the extent required by applicable law or any effective restrictive covenant, by all Governmental Authorities and the beneficiary of any such covenant; all construction, if any, already performed on the Improvements has been performed on the Premises in accordance with the Plans approved by the persons named above and with any restrictive covenants applicable thereto and to Borrower's knowledge there are no structural defects in such existing portions of the Improvements; the planned use of the Improvements complies with applicable zoning ordinances, regulations and restrictive covenants affecting the Premises as well as all environmental, ecological, landmark, and other applicable laws and regulations; and all requirements for such use have been or will be satisfied;

(c) Financial Statements for the Guarantors have been heretofore delivered to the Lender which are true, correct and current in all material respects and which fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof; no material adverse change has occurred in the financial conditions of Guarantors reflected therein since the respective dates thereof and no borrowings (other than the Loan or the Permitted Loans) which might give rise to a lien or claim against the Mortgaged Property or Guarantors' assets or other collateral or proceeds of the Loan have been made by Borrower or others since the date thereof;

(d) There are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting it, its constituent members or managers, the Guarantors, the Premises or the validity or enforceability of the Mortgage or the priority of the lien thereof at law, in equity or before or by any Governmental Authorities; to Borrower's knowledge, neither it nor the Guarantors are in default with respect to any order, writ, injunction, decree or demand of any court or Governmental Authorities; nor is the Borrower in default in the payment of any indebtedness representing any borrowed money or any other indebtedness, nor is the Borrower aware of any facts or circumstances which would give rise to any such default, which in any case could reasonably be expected to have a material adverse effect;

(e) The consummation of the transactions contemplated hereby and performance of this Agreement, the Note, the Mortgage and all of the other Loan Documents have not and will not violate any law, rule, regulation, order, writ, judgment,

decree, determination or award presently in effect having applicability to the Borrower; conflict with any provision in the Borrower's certificate of formation or Operating Agreement; or result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Borrower, or any constituent member or manager of the Borrower or the Guarantors, is a party or by which Borrower, or any such constituent member or manager of the Borrower or the Guarantors, or may be bound or affected;

(f) All utility services necessary for the construction of the Improvements and the operation thereof for their intended purposes are available at the boundaries of the Premises (or through the course of the construction will become available at the Premises), including water supply, storm and sanitary sewer, gas, electric power and telephone facilities;

(g) It has entered into no contract or arrangement of any kind the performance of which by the other party thereto could give rise to a lien on the Mortgaged Property prior to the Mortgage, except for its arrangements with Borrower's Architect, the General Contractor, Major Subcontractors and contractors or subcontractors, all of whom have filed lien waivers or signed payment receipts in form approved by Lender for all payments due under said arrangements as of the end of the period covered by the last Requisition;

(h) All roads necessary for the full utilization of the Improvements for their intended purposes have either been completed or the necessary rights of way therefor have been acquired by appropriate Governmental Authorities or dedicated to public use, and all necessary steps have been taken by Borrower and said Governmental Authorities to assure the complete construction and installation thereof no later than the Completion Date or any earlier date required by any law, order or regulation;

(i) There exists no "Event of Default" under the Mortgage or any other Loan Documents and no event has occurred and is continuing which after notice or the passage of time, or both, would give rise to a default thereunder;

(j) The approved Plans referred to in paragraph (b) above are scheduled by sheet number, title, date and revised date in the letter from Borrower's Architect required by paragraph of Section 3.4 hereof, which schedule is hereby certified by Borrower to be true and correct;

(k) It has advised the Title Insurer in writing prior to the issuance of the Title Policy whether any site-development, excavation or other work related to construction of the Improvements was begun or done before the Mortgage was recorded;

(l) The Premises are not located in an area designated by the Secretary of Housing and Urban Development as having special flood hazards, or, if it is, Borrower has obtained the flood-hazard insurance required by the NFIA of 1968, as amended (42 U.S. 4013, et seq.);

(m) Except as disclosed in the Environmental Report, the Premises, and the Improvements thereon, are not currently subject to Hazardous Materials or their effects;

(n) There are no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders, relating to any hazardous or toxic substances or wastes, discharges, emissions or other forms of pollution relating in any way to the Premises or the Improvements thereon;

(o) The Borrower has, on the date hereof, certified to the Lender, as true, correct and complete the organizational structure of the Borrower;

(p) None of the Borrower or any of its direct or indirect officers, managers, members, partners or principal employees is on the list of Specially Designated Nationals and Blocked Persons issued by the Office of Foreign Assets Control of the U.S. Department of Treasury;

(q) The Borrower is an SPE;

(r) Each Requisition presented to Lender, and the receipt of the funds requested thereby, shall constitute an affirmation that all of the representations and warranties of Borrower contained in this Agreement (including, but not limited to, those contained in this Section 5.1) remain true and correct in all respects as of the respective dates thereof;

(s) The Borrower and the Guarantors have filed all tax returns, federal, state and local, required to be filed and has paid all taxes reported thereon to be due, including any interest and penalty, or has provided adequate reserves for payment thereof. No audit of any tax return is pending and the Borrower has not received any notice of any pending audit;

(t) There are no unpaid or unsatisfied judgments or orders of any court, arbitration or other tribunal, or governmental agency or department outstanding against the Borrower which in any case could reasonably be expected to have a material adverse effect;

(u) When this Agreement and the other Loan Documents are executed and delivered to the Lender by the Borrower, each such instrument shall constitute the legal, valid and binding obligation of the Borrower in accordance with its terms, except as enforcement thereof may be limited by general equitable principles and by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally;

(v) All factual information heretofore or contemporaneously furnished in writing by or on behalf of the Borrower to the Lender, upon which the Lender has relied, including, but not limited to, Financial Statements and reports, taken as a whole, are true and accurate in all material respects and fairly represent the condition and operations of the Borrower, and all future information furnished in writing by the Borrower to the



Lender, in whatever form, will be true and accurate in all material respects as of the date on which such information is furnished;

(w) The Borrower enjoys peaceful and undisturbed possession under all leases of real and personal property of which it is lessee, and, all such leases are valid and subsisting and in full force and effect;

(x) Each pension or other employee benefit plan as to which the Borrower may have any liability (herein called a “*Pension or Benefit Plan*”) has, to the extent required, been approved by the Internal Revenue Service under the Employee Retirement Income Security Act of 1974, as amended (herein called “*ERISA*”) and is in material compliance with all applicable requirements of law, rules and regulations adopted by regulatory authorities pursuant thereto, neither a “Reportable Event” nor a “Prohibited Transaction” has occurred with respect to any Pension or Benefit Plan, and the Borrower has filed all reports required to be filed by ERISA and such rules and regulations. Furthermore, no steps have been taken to terminate any Pension or Benefit Plan and the Borrower has not withdrawn from any Pension or Benefit Plan or initiated steps to do so, the Borrower has met its minimum funding requirements under ERISA with respect to all of its Pension or Benefit Plans and the present value of all vested benefits does not exceed the fair market value of all Pension or Benefit Plan assets allocable to such benefits, as determined on the most recent valuation date of the Pension or Benefit Plan and in accordance with the provisions of ERISA and the regulations thereunder for calculating the potential liability of the Borrower to the Pension Benefit Guaranty Corporation (herein called the “PBGC”) or the Pension or Benefit Plan under Title IV of ERISA, and the Borrower has not incurred any liability to the PBGC under ERISA;

(y) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock, and none of the proceeds of the Loan will be used for the purpose of, or be made available by the Borrower in any manner to any other person or entity to enable or assist such person or entity in, purchasing or carrying margin stock. Terms for which meanings are provided in Regulation U of the Board of Governors of the Federal Reserve System or any regulations substituted therefor, as from time to time in effect, are used herein with such meanings;

(z) Neither the business nor the properties of the Borrower are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance) which has or is likely to have a material adverse effect on the business or properties or the operation of the Borrower;

(aa) Borrower has delivered to the Lender all formation and organizational documents of Borrower, the partners, members, joint venturers or shareholders of Borrower, if any, and of Guarantors, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to the Lender;

(bb) (1) Neither Borrower nor any of its Affiliates is in violation of any law relating to terrorism or money laundering (“*Anti-Terrorism Laws*”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “*Executive Order*”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 10-56. Neither Borrower nor any of its Affiliates is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) supports “terrorism” as defined in the Executive Order; or

(v) a Person 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 or any replacement website or other replacement official publication of such list;

(2) Neither Borrower nor any of its Affiliates (1) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in paragraph (i) above, (2) deals in, or otherwise engages in any transaction relating to any property or interests in property blocked pursuant to the Executive Order, or (3) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading a person that commits, threatens or conspires to commit or of avoiding, or attempt to violate, any of the prohibitions set forth in any Anti-Terrorism Law; and

(cc) The Master Lease, the Financial Agreement and any other documents delivered to the Lender prior to the date hereof are true and correct copies thereof, are in full force and effect and there exists no default or event of default thereunder; and

5.2. Borrower covenants and agrees with the Lender that it will:

(a) Promptly comply with all laws, ordinances, orders, rules, statutes and regulations of Governmental Authorities and promptly furnish Lender with notices and reports of any official searches made by Governmental Authorities and any claims of violations thereof;

(b) Permit the Lender, its representatives and the Construction Consultant to enter upon the Premises at reasonable times and upon reasonable notice to the Borrower, to inspect the Improvements and all materials to be used in the construction thereof and examine all detailed plans and shop drawings which are or may be kept at the

construction site; at reasonable times it will cooperate and cause the General Contractor and shall cause the General Contractor to cause the Major Subcontractors to cooperate with the Construction Consultant to enable it to perform its functions hereunder; at the time of each inspection by the Construction Consultant, Borrower will cause the General Contractor and cause the General Contractor to cause the Major Subcontractors to make available to said Construction Consultant, on demand, daily log sheets covering the period since the immediately preceding inspection showing the date, weather, subcontractors on the job, number of workers and status of construction;

(c) Pay all costs and expenses required for completion of the Improvements and the satisfaction of the conditions of this Agreement, including, without limitation:

(1) All, to the extent applicable, document and stamp taxes, recording and filing expenses and fees and commissions lawfully due to brokers in connection with the transactions contemplated hereby,

(2) the fees and expenses of the Lender, the Construction Consultant and such parties' attorneys in connection with the preparation for the consummation of the transactions contemplated hereby, and for any services of such parties which may be required in addition to those normally and reasonably contemplated hereby,

(3) any taxes, insurance premiums, liens, security interests or other claims or charges against the Premises or Improvements, and

(4) all costs of completion of the work to be performed by Borrower in space to be occupied in the Improvements to permit the lawful occupancy thereof, including that contemplated by the Leases or other agreements or letters of intent with respect thereto.

(d) Commence physical construction of the Improvements no later than ten (10) days from the date hereof; submit Requisitions not more frequently than on a monthly basis after the Initial Advance; cause the construction thus begun to be prosecuted with diligence and continuity in a good and workmanlike manner substantially in accordance with the Plans except during the existence of delays (for not more than a total of sixty (60) days) caused by events which constitute Unavoidable Delay; use only materials, fixtures, furnishings and equipment in connection with construction of the Improvements that are not used or obsolete; and complete construction of the Improvements, and the installation of all necessary roads and utilities, substantially in accordance with the Plans, on or before the Completion Date, free and clear of defects and unbonded liens or claims for liens for material supplied or labor or services performed in connection with the construction of the Improvements; TIME BEING OF THE ESSENCE of this paragraph (d);

(e) Indemnify the Lender against claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby;

(f) Conduct its business substantially in the same manner as such business is now and has previously been conducted;

(g) Promptly deliver to Lender and, if requested to do so, the Construction Consultant, copies of all contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien of the Mortgage, or under which it has incurred costs for which it is entitled to a Loan advance, and deliver to Lender and/or the Construction Consultant such other data or documents in connection with the Improvements as Lender and/or the Construction Consultant may, from time to time, reasonably request;

(h) Allow the Lender, during normal business hours, upon receipt of reasonable notice by Borrower, access to the books, records and such other documents of the Borrower as the Lender shall reasonably require and allow the Lender, at Borrower's expense, to inspect, audit and examine same;

(i) Upon reasonable demand of Lender or the Construction Consultant, correct any defects (including structural) in the Improvements or any material departures from the Plans not approved by Lender;

(j) Not permit the performance of any work (i) pursuant to any General Contract, Change Order or Plans until Lender and the Construction Consultant, shall have received copies thereof and (ii) in the case of Plans or Change Orders which will result in (A) a change in the aggregate of the contract prices for the construction of the Improvements in excess of the Change Order Amount or which, together with the aggregate of Change Orders theretofore executed by Borrower (excluding those approved by Lender pursuant to this paragraph) will result in a change in such prices in excess of the Aggregate Change Order Amount or (B) a change in the nature of the Improvements until prior written approval thereof by Lender; it being understood that approval of any Plans or Change Order will not obligate Lender to increase or advance any Loan Budget Amount on account of any such Plans or Change Orders;

(k) Employ or cause the General Contractor to employ commercially reasonable means to protect from theft or vandalism all portions of the Improvements and all tools and building materials stored on the Premises;

(l) Comply with all restrictions, covenants and easements affecting the Premises or the Improvements and cause the satisfaction of all conditions of this Agreement;

(m) Contribute the Shortfall Payment or any other payments to be made pursuant to paragraph 7.1(d) hereof, separate and apart from the Loan at such time and times as Lender shall determine in its reasonable discretion;

(n) Not enter into any agreement for the sale of the Premises including, without limitation, the transfer of all or any part of the Premises to a partnership, limited liability company or other entity, without the express prior written consent of the Lender;

(o) Other than the Master Lease, Residential Leases, Leases approved by the Lender, and the Other Mortgages, not, directly or indirectly, transfer, mortgage, convey, sell, assign, lease, sublease, pledge or encumber the Mortgaged Property, or any part thereof or any direct or indirect interest therein, without the express prior written consent of the Lender;

(p) Not incur or permit the incurrence of any debt (whether or not subordinate to the lien of the Mortgage) with respect to the Borrower or the Projects other than the Loan and the Permitted Loans without the prior written consent of the Lender, which consent may be granted or withheld in the sole and absolute discretion of the Lender;

(q) Simultaneously send to the Lender a copy of any notice of default under the General Contract it sends to the General Contractor;

(r) Comply with all of the provisions of its organizational documents, not modify the organizational structure of the Borrower nor the direct or indirect ownership of the Borrower from that existing on the date hereof, and not modify, amend, terminate or cancel any organizational documents of the Borrower or any constituent members or managers of the Borrower in any material respect without the prior written consent of Lender;

(s) Perform all environmental remediation required to be performed at the Premises in full compliance with all applicable laws;

(t) Maintain all construction and operating accounts of the Borrower at a banking institution approved by Lender;

(u) Maintain its status as an SPE;

(v) Not change its fiscal year without the prior written consent of Lender;

(w) Comply with the reporting requirements set forth in Article VIII hereof;

(x) Deliver to Lender, within five (5) Business Days after request therefor, a written statement duly acknowledged by the Borrower of the amount due under the Loan and whether offsets or defenses exists against same;

(y) Pay and discharge when due, and before subject to any penalty or further charge, and otherwise satisfy before maturity or delinquency, all obligations, debts, taxes and liabilities of whatever nature or amount;

(z) Not modify, amend or terminate the General Contract (other than entering into Change Orders permitted hereunder) without consent of the Lender or agree to reduce the amount that Borrower, as owner is permitted to retain against any application for payment pursuant to the terms thereof;

(aa) Not, without the Lender's permission, permit a change in control or ownership of interests in Borrower;

(bb) Comply with the terms and provisions of the Master Lease and the Leases and not permit any amendment, restatement or other modification of the Master Lease or the Leases without the consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed;

(cc) Except for the Master Lease and the Residential Leases, not enter into any Leases without the prior consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed;

(dd) Not (i) be or become subject at any time to any law, regulation, or list of any governmental agency (including, without limitation, the U.S. Office of Foreign Asset Control list) and prohibits or limits Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower, or (ii) fail to provide documentary and other evidence of the Borrower's identity as may be requested by Lender at any time to enable Lender to verify the Borrower's identity or comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318. Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act of 2001, Lender is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Lender to identify the Borrower in accordance with the USA Patriot Act of 2001. Borrower represents and warrants that Borrower and Guarantors are in compliance with such requirements on the date of this Agreement;

(ee) If, during the term of the Loan the City of Newark and/or the State imposes or assesses against the Lender any fees or taxes, including, without limitation, financial institutions excise tax, or franchise, gross receipts or other similar tax (collectively, the "Tax") based upon Lender's status as an out-of-state financial institution, unincorporated business association and/or the like (collectively, "UBO") doing business in the State solely as a result of making the Loan, pay an amount equal to such Tax to the Lender upon presentation by the Lender of documentation evidencing the assessment of such Tax against the Lender and the amount thereof. Borrower shall have the right (but not the obligation) at its sole cost and expense and with counsel of its choosing to appeal the imposition of any Tax on the Lender, and shall be entitled to any refunds of Tax paid by Borrower to the Lender as a result of any appeal whether or not initiated by Borrower. The Lender hereby agrees to make a good faith effort to provide Borrower with such information as is commercially reasonable for the Lender to provide in connection with any appeal (all of which shall be at Borrower's sole cost and expense);

(ff) Not modify, amend or terminate any of the Loan Documents without the prior written consent of the Lender;

(gg) Give prompt written notice to Lender of the occurrence of an Unavoidable Delay and any such Unavoidable Delay shall not extend the time for performance of an obligation hereunder by more than sixty (60) days;

(hh) Obtain and maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as Lender shall determine in good faith to be adequate in the circumstances;

(ii) Except for the Permitted Loans, not incur or permit the incurrence of any debt or financial obligation or permit the purchase price of property to be deferred (by way of conditional purchase or title retention agreement, or otherwise), or create, incur, assume or suffer to exist any mortgage (except for the Other Mortgages), pledge, lien, security interest or other charge or encumbrance (including the lien or retained security title of, a conditional vendor), whether or not subordinate to the lien of the Mortgage, upon or with respect to any of its properties or assets, tangible or intangible, real or personal, now owned or hereafter acquired (including, but not limited to the Premises), or assign or otherwise convey any right to receive income (other than with respect to the security interests securing the indebtedness of the Borrower under this Agreement or under other agreements with the Lender and the Other Mortgages), or to permit or suffer the filing of any financing statement with respect to any of its properties or assets, without the prior written consent of the Lender, which consent may be granted or withheld in the sole and absolute discretion of the Lender, except in favor of the Lender as provided in this Agreement, and except: (i) liens securing the performance of bids, tenders, contracts, leases of real and personal property, statutory obligations, surety and appeal bonds, progress or partial payments made to it, and other liens of like nature made in the ordinary course of business; (ii) carrier's, mechanic's, workmen's, materialmen's, landlord's or other like liens arising in the ordinary course of business in respect of obligations which are not due or which are being contested pursuant to a Permitted Contest; (iii) liens for taxes, assessments, or other governmental charges not yet due or which are being contested pursuant to a Permitted Contest; (iv) liens, pledges and security interests existing on the date hereof and previously disclosed to the Lender in writing, provided the same are not extended to cover any of its other properties, and will not interfere with the occupation, use or enjoyment of its properties and assets in the normal course of business; (v) liens arising out of judgments or awards against it with respect to which it shall currently be prosecuting an appeal, a stay of execution pending such appeal having been secured; (vi) security interests in furniture, fixtures and equipment purchased by Borrower with proceeds from governmental grants if such a security interest is a condition to receipt of such grant proceeds; (vii) the pledge of the collateral and any other liens on the collateral in favor of the Lender to secure the indebtedness of the Borrower to the Lender under the Loan Documents; and (viii) liens of landlords, vendors, carriers, warehousemen, mechanics, laborers and materialmen arising by law in the ordinary course of business for sums either not yet due or being contested pursuant to a Permitted Contest;

(jj) Not assume, guaranty, incur, create or endorse or otherwise be or become directly or contingently liable in respect of any obligation of any person, firm or corporation, except for (i) endorsements of negotiable instruments for deposit or collection and similar transactions in the ordinary course of business; (ii) the indebtedness to the Lender under this Agreement, (iii) trade payables or operating leases from time to time incurred in the ordinary course of business; (iv) taxes, assessments or other government charges which are not yet due or are being contested pursuant to a Permitted Contest; and (v) operating deficit loans associated with the Improvements so long as same are unsecured and subordinate to the Loan;

(kk) Not merge into or consolidate with any person, firm or corporation, or acquire by lease, purchase or otherwise, all or substantially all of the assets of any person, firm or corporation;

(ll) Not make any loan or advance to any person, firm or corporation;

(mm) Not sell, lease, assign, transfer or otherwise dispose of all or a substantial portion of its assets, including its contracts and accounts receivable;

(nn) Not create any subsidiaries or affiliates;

(oo) Neither the Borrower nor any Pension or Benefit Plan of the Borrower will: (i) engage in any "Prohibited Transaction", such term being used herein with the meaning ascribed to it in Section 2003(a) of ERISA; (ii) incur any "Accumulated Funding Deficiency", such term being used herein with the meaning ascribed to it in Section 302 of ERISA, whether or not waived; or (iii) terminate any Pension or Benefit Plan in a manner which could result in the imposition of a lien on any property of the Borrower pursuant to Section 4068 of ERISA;

(pp) Except as may be permitted pursuant to leases approved by Lender, not assign any lease, consent to any assignment by the tenant under any such lease, or sublet, or consent to any subletting by the tenant under any such lease of all of the Premises demised under any such lease, without the express prior written consent of Lender, which consent shall be provided, if at all, in its sole, but reasonable discretion;

(qq) Comply with any and all regulatory agreements and any covenants, conditions and restrictions that have been recorded against or otherwise encumber the Premises;

(rr) Defend and indemnify the Lender and hold the Lender harmless from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, reasonable costs and expenses of whatever kind or nature actually assessed or incurred at any time against or by the Lender relating to, or arising in connection with, the development, construction, ownership, use, maintenance or occupancy of any of the collateral, including the breach of any representation or covenant of Borrower in any of the Loan Documents; provided, that any obligations of the Borrower to defend or indemnify a party shall not extend to any grossly negligent or intentional misconduct of such party;

(ss) Defend and indemnify the Lender and hold the Lender harmless from any allegation or charge whatsoever of negligence, misfeasance, or nonfeasance of the Lender in whole or in part, pertaining to any defect in the Improvements, and particularly, any failure of the Lender or any agent, officer, employee or representative of the Lender, to note any defect in materials or workmanship or of physical conditions or failure to comply with the Plans or any ordinances, statutes or other governmental requirements, or to call to the attention of any person whatsoever, or take any action, or to demand that any action be taken, with regard to any such defect or failure or lack of compliance provided, that any obligations of the Borrower to defend or indemnify shall not extend to any grossly negligent or intentional misconduct of the Lender;



(tt) Promptly notify the Lender immediately in writing following Borrower's receipt of any written notification of any proposed condemnation or expropriation of any portion of the Improvements or Premises;

(uu) On the date hereof, Borrower shall pay the out-of-pocket fees payable and other charges incurred by Lender in connection with this Agreement, the transaction contemplated by this Agreement, and the documents entered into in connection therewith, including, without limitation, the Lender's reasonable attorneys' fees and reasonable accounting fees. Borrower shall also pay, within ten (10) Business Days following written notice from the Lender of the amount thereof, the out-of-pocket fees payable and other charges incurred in connection with servicing, special servicing, asset management, tax returns and audits, and the Lender's compliance and reporting obligations.

5.3. Construction Covenants.

(a) Completing Construction. Borrower shall expeditiously complete and fully pay for the development and construction of the Improvements in a good and workmanlike manner and substantially in accordance with the contracts, subcontracts, and material supply contracts and Plans submitted to and approved by Lender, and in compliance with all applicable laws, including any covenants, conditions, restrictions and reservations applicable thereto, so that completion of the Improvements occurs on or before the Completion Date. Borrower assumes full responsibility for the compliance of the Plans and the Projects with all applicable laws and with sound building and engineering practices, and, notwithstanding any review or approval by the Lender, the Lender shall not have obligation or responsibility whatsoever for the Plans or any other matter incident to the Projects or the construction of the Improvements. Borrower shall immediately correct or cause to be corrected (i) any defect in the Improvements, (ii) any material departure in the construction of the Improvements from the Plans or applicable laws, and (iii) any encroachment by any part of the Projects or any other structure located on the Mortgaged Property on any building line, easement, property line or restricted area.

(b) Changing Costs, Scope or Timing of Work. If Borrower becomes aware of any change in the approved costs set forth in the Budget which would materially increase, change, or cause a reallocation of the costs as shown on the Budget, Borrower shall immediately notify the Lender in writing and promptly submit the following to Lender for approval: (i) a budget reallocation request, in form and substance approved by the Lender and (ii) a proposed revised Budget. Borrower shall have no right to receive further disbursements from the Loan proceeds unless and until the budget reallocation request and the revised Budget are approved by the Lender. Borrower shall deliver to the Lender a revised construction schedule, if and when any target date set forth therein has been delayed by ten (10) consecutive days or more, or when the aggregate of all such delays equals thirty (30) days or more. Borrower shall promptly furnish Lender with two (2) copies of all changes or modifications in the Plans, contracts, subcontracts, and material supply contracts for the Projects. No work may be performed (a) (i) if pursuant to any Change Order or pending Change Order where such work will not increase the Contract Price (as defined and set forth in the General Contract) by more than the Change Order Amount or which, together with the aggregate of Change Orders theretofore executed by Borrower will not result in a change in excess of the Aggregate Change Order Amount

without prior written approval thereof by Lender in its sole discretion; or (ii) if pursuant to any Change Order or pending Change Order where such work will increase the Contract Price (as defined and set forth in the General Contract) by more than the Change Order Amount or which, together with the aggregate of Change Orders theretofore executed by Borrower will result in a change in excess of the Aggregate Change Order Amount without prior written approval thereof by the Lender, and (b) without the Lender's receipt of evidence that Borrower has obtained the prior approval of all parties whose approval is required, including, without limitation, sureties and governmental authorities. No work may be performed pursuant to any Change Order or pending Change Order prior to delivery thereof to and, if required hereunder, approval by, the Lender. No review by the Lender of any contract or change order shall make the Lender responsible for the adequacy, form or content of such contract or change order.

(c) **Using Proceeds of the Loan.** Borrower shall use the proceeds of the Loan solely to pay, or to reimburse Borrower for paying, costs and expenses shown on the Budget and incurred by Borrower in connection with the acquisition of an interest in the Premises and the construction of the Improvements on the Premises, together with other expenses set forth on the Budget and such incidental costs and expenses relating thereto as may be approved from time to time in writing by Lender. Borrower shall take all steps necessary to assure such use of proceeds of the Loan by its contractors. Borrower shall not use the proceeds of the Loan, or any portion thereof to pay any fees or other payments to any affiliate of Borrower, other than as set forth in the Budget, and other than the developer fee payable to RBH Project, LLC, with respect to payments for construction oversight and loans from an affiliated entity, without Lender's prior written consent, in its sole discretion.

(d) **Defects; No Waiver.** Borrower will, upon demand of the Lender, correct or cause to be corrected any structural defect in any Improvements. The advance of any of the proceeds of the Loan hereunder shall not constitute a waiver of the Lender's right or the Lender's right to require compliance with this covenant.

5.4. **Liens Pursuant to the Permitted Loans.** Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, the Lender hereby consents to the Borrower's pledge to the Other Lenders of certain collateral to secure Borrower's obligations under the documents executed in connection with the Permitted Loans, and the Lender acknowledges and agrees that Borrower's pledge of such collateral to the Other Lenders shall not constitute a default under this Agreement or any other Loan Document.

(End of Article V)

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

6.1. Each of the following shall constitute an “Event of Default” hereunder:

- (a) if the Borrower fails to pay or expend promptly when due or required any sum of money due or required to be paid or expended under this Agreement, the Note, the Mortgage or any other Loan Documents, which failure shall continue beyond five (5) days after written notice of any such event;
- (b) if the Borrower fails for thirty (30) days after the giving to it by the Lender of written notice to comply with any covenants or agreements made by it in this Agreement other than a covenant to pay or expend any sum of money or if Borrower otherwise fails to comply with any terms or conditions of this Agreement, provided, however, that if, in Lender’s reasonable judgment said failure to comply is not capable of being cured within said thirty (30) day period and is not curable by the payment of money, then the Borrower shall have such additional time as Lender deems necessary (but in no event will such additional time exceed sixty (60) days after the initial notice of such default) to cure such failure provided that (i) Borrower promptly proceeds to commence curing said failure to comply upon Borrower’s receipt of notice of said failure from Lender, (ii) in the reasonable judgment of Lender, Borrower thereafter diligently and continuously proceeds to cure said failure so as to cure said failure in the shortest time possible, (iii) such additional time to cure does not impair any rights and/or remedies of Lender and will not adversely affect the completion of the Improvements by the Completion Date, and (iv) the Borrower furnishes to Lender, upon demand of Lender, such documents and information with respect to Borrower’s curing of said failure to comply, as Lender may request;
- (c) if the Borrower fails to satisfy any of the covenants set forth in Section 5.3 or if Guarantors fail to satisfy any of the covenants in the Guaranties after any applicable notice and cure periods;
- (d) if a default which remains uncured after applicable periods of notice and grace shall occur under any of the Loan Documents or the Master Lease;
- (e) if at any time any representation or warranty made by the Borrower in this Agreement shall be materially incorrect;
- (f) if the construction of the Improvements is not carried on with reasonable dispatch or at any time is discontinued for a period of twenty (20) consecutive days, or for up to sixty (60) total calendar days when occasioned by Unavoidable Delay; provided, however, that no such time period shall constitute an extension of the Completion Date;
- (g) if the Lender or its representatives, or the Construction Consultant are not permitted at all reasonable times after prior notice, to enter upon the Premises, inspect the books and records of the Borrower, the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to

examine all the Plans, or if the Borrower shall fail to within five (5) Business Days furnish to the Lender or its authorized representative, when requested, copies of the Plans;

(h) if any of the materials, fixtures or articles of personal property used in the construction of the Improvements or the appurtenances thereto, or to be used in the operation thereof, are not in substantial accordance with the Plans as approved by the Lender, and such failure to be in substantial accordance is not remedied within thirty (30) days after written notice from the Lender which specifies the items it believes are not in accordance with the Plans; provided, however, that if same cannot be remedied within said thirty (30) day period and the Borrower is diligently pursuing such remedy, the thirty (30) day period will be extended for the time necessary to complete such remedy, but in no event longer than a total of sixty (60) days after said written notice from Lender;

(i) if the Borrower executes any conditional bill of sale, chattel mortgage or other security instrument covering any furniture, furnishings, fixtures and equipment intended to be incorporated in the Improvements or the appurtenances thereto, or covering articles of personal property placed in or on the Improvements, or files a financing statement publishing notice of such security instrument, or purchases any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in the Borrower, free from encumbrances, on delivery to the Premises; or if the Borrower, within ten (10) days of a request by Lender, does not produce to the Lender, upon demand, the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which the Borrower claims title to such materials, fixtures and articles;

(j) if the Borrower does not disclose to the Lender and the Construction Consultant, within ten (10) days of a request by Lender, the names of all persons with whom the Borrower contracted for the construction of the Improvements or for the furnishing of labor or materials thereof;

(k) if the Borrower fails or is unable, in the sole, but reasonable, judgment of Lender, to complete the Improvements on or before the Completion Date, with time of the essence;

(l) if the Borrower is unable to satisfy any condition of its right to receipt of an advance hereunder for a period in excess of thirty (30) days, unless otherwise agreed to by Lender;

(m) if a lien for the performance of work or supply of materials is filed against the Premises or any part thereof and remains unsatisfied or unbonded for a period of thirty (30) days after the date Borrower receives notice of such lien which are not being contested pursuant to a Permitted Contest;

(n) if the Borrower shall default beyond applicable periods of notice and grace in any respect under any other agreement with or obligation to the Lender;

(o) if any of the following events occur: (i) if by order of a court of competent jurisdiction, a receiver, liquidator or trustee of the Borrower or of any of its or

their properties, shall be appointed and shall not have been discharged within ninety (90) days, or (ii) if any of the creditors of the Borrower shall commence against the Borrower an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and if such case shall not be discharged or dismissed within ninety (90) days after the date on which such case was commenced, or (iii) if the Borrower is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein), or (iv) if there is an attachment or sequestration of any of the property of the Borrower and same is not discharged or bonded within ninety (90) days, or (v) if the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, now or hereafter in effect, relating to the reorganization of the Borrower or the arrangement or readjustment of the debts of the Borrower or (vi) if the Borrower shall make any assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or of any part of its property, or if the Borrower shall fail generally to pay its debts as such debts become due, or if the Borrower shall take any action in furtherance of any of the foregoing;

(p) if any of the events described in Section 6.1(o) above occur with respect to any Guarantor prior to termination of the Guaranties;

(q) if the Premises, the Improvements, or any part thereof or any direct or indirect interest therein is sold, conveyed, assigned or transferred without the prior written consent of the Lender;

(r) except as expressly permitted in the other Loan Documents, if there is a material adverse change in the identity, control or financial condition of the Borrower, Guarantors, any member of the Borrower or Guarantors or the Projects, or if there is any assignment of any direct or indirect interest in Borrower or Guarantors, as determined by Lender in its sole, but reasonable, discretion;

(s) if the Borrower fails to pay or cause to be paid within ten (10) Business Days after written notice from Lender, before the same shall become delinquent, any fine, penalty, interest or cost that may be added thereto, all franchise taxes of the Borrower, or real estate taxes, assessments, water rates and charges, and other governmental charges, general and special, ordinary and extraordinary, foreseen as well as unforeseen, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Premises or become payable while any portion of the Loan remains outstanding or the Borrower enters into any agreement, whether written or oral, which has the effect of deferring the payment of any tax or other charges which will be assessed, levied, confirmed, imposed or become a lien on the Premises or become payable;

(t) if the Borrower ceases to do business or terminates its, his or their business for any reason whatsoever or shall cause or institute any proceeding for the dissolution or termination of the Borrower;

(u) if the Borrower fails for a period of five (5) days after notice from Lender to maintain in full force and effect any of the policies of insurance required by this Agreement and/or the Mortgage;

(v) if the Borrower encumbers, alienates, hypothecates, grants a security interest in or grants any other interest whatsoever in the Premises, the Improvements, the “Mortgaged Property,” as that term is defined in the Mortgage, or any part thereof or any right, title or interest in this Agreement or any proceeds of the Loan without the prior written consent of the Lender;

(w) if the Borrower fails to timely perform any of the terms, conditions, covenants and/or agreements contained in Section 7.1(d) of this Agreement beyond applicable notice and cure periods;

(x) if a default, beyond any applicable notice and cure periods, occurs under the Leases and Borrower (or RBH Retail, LLC, as lessee under the Master Lease) has not found a suitable replacement tenant within sixty (60) days after the occurrence of such default and/or Borrower (or RBH Retail, LLC, as lessee under the Master Lease) has not executed a lease, in form and substance acceptable to the Lender, with such tenant within one hundred twenty (120) days thereafter, or if any amendment or modification to the Leases occur without the prior written consent of the Lender;

(y) if the Borrower fails to comply with any of the representations, warranties or covenants contained in Article VIII this Agreement or any of the warranties or representations made are false, or if of a continuing nature, becomes false;

(z) if the Borrower fails to maintain its status as an SPE;

(aa) if any of the Borrower, Guarantors or any officer, director, general partner or managing member of any of the Borrower or Guarantors shall be convicted of fraud or a crime constituting a felony or pleads *nolo contendere* with respect to a fraud or crime constituting a felony;

(bb) if the Borrower shall assign the Master Lease, the Leases, consent to any assignment by the tenant under any of the Leases or sublet, or consent to any subletting by the tenant under any of the Leases of, all or any portion of the Premises demised under any of the Leases without the express prior written consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed;

(cc) if there is a default under ERISA or a Pension or Benefit Plan;

(dd) if Borrower shall fail to pay the fees set forth in Section 5.2 hereof;

(ee) if the Borrower shall default beyond applicable periods of notice and grace in any respect under any agreement executed in connection with the Permitted Loans or any other document previously delivered by Borrower to Lenders in connection with the construction of the Projects;

(ff) if there is an amendment, modification or termination of the Master Lease, Financial Agreement or any other document previously delivered by Borrower to Lender in connection with the construction of the Projects (unless Lender has consented to same);

(gg) if the Date of Conversion has not occurred on or before twenty four (24) months following the date hereof; and/or

(hh) if (i) Borrower fails to pay when due or within the applicable grace period any amount payable by Borrower under any Hedging Arrangement, or (ii) there occurs any other default, beyond any applicable notice and cure period, by Borrower under any Hedging Arrangement.

6.2. Lender shall have the right upon the happening of any such Event of Default under this Agreement to declare the indebtedness evidenced by the Note, together with all sums required to be paid under the terms hereof and/or of the Mortgage and/or any other Loan Documents, immediately due and payable.

6.3. Upon the happening of an Event of Default under this Agreement, in addition to any other rights and/or remedies available to Lender under the Mortgage, this Agreement or by law, Lender also shall have the right and is hereby given an irrevocable license to enter, or to cause the Construction Consultant or another independent contractor of Lender's selection to enter, the Premises, the Improvements or any part thereof and perform any and all work and labor necessary to complete the construction of the Improvements substantially in accordance with the Plans and employ watchmen to protect the Premises and the Improvements; all sums expended by the Lender for such purposes shall be deemed to have been paid to the Borrower, evidenced by the Note and secured by the Mortgage.

6.4. For the purposes set forth in Section 6.3 above, the Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact with full power of substitution, effective upon the occurrence of an Event of Default, to complete the Improvements in the name of the Borrower, and hereby empowers said attorney or attorneys as follows: to make such additions and changes and corrections in the Plans which shall be necessary to complete the Improvements in substantially the manner contemplated by the Plans; to use any funds of the Borrower including any balance which may be held in escrow and any funds which may remain unadvanced under this Agreement for the purpose of completing the Improvements in the manner called for by the Plans as may be modified hereby; to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Premises or any part thereof, or may be necessary for the completion of the Improvements or the clearance of title; to execute all applications and certificates in the name of the Borrower which may be required by any construction contract; and to do any and every act with respect to the construction of the Improvements which the Borrower may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. Said attorney-in-fact shall also have power to prosecute and defend all actions or

proceedings in connection with the construction of the Improvements on the Premises and to take such action and require such performance as is deemed necessary. The Borrower hereby assigns and quitclaims to the Lender all sums advanced pursuant to either this Section and/or Section 6.3 above and all sums in escrow subject to the condition that said sums, if any, be used for the completion of the Improvements. Entering the Premises in order to complete the Improvements and/or exercise of the aforesaid license and/or power-of-attorney will not exclude the Borrower from possession, custody, ownership or control of the Premises or Improvements or of any rents, issues or profit therefrom. In addition, Borrower expressly agrees that any powers of attorney executed by Borrower subsequent to the date hereof shall expressly state that the powers of attorney provided for in this Agreement shall continue to be in full force and effect until terminated in accordance with the terms of this Agreement.

6.5. If the Borrower shall fail to perform any of the covenants contained in Section 7.1(d) of this Agreement, the Lender may make advances to perform the same on its behalf, and all sums so advanced shall be deemed to have been paid to Borrower, evidenced by the Note and secured by the Mortgage and the Pledge of Membership Interests. The Borrower will repay on demand of the Lender all sums so advanced pursuant to this Section 6.5 with interest at the "Involuntary Rate," as such term is defined in the Mortgage. The provisions of this Section 6.5 shall not prevent any default in the observance of any covenant contained in said Section 7.1(d) of this Agreement from constituting an Event of Default.

6.6. If the Borrower shall fail to perform any of the covenants contained in Section 7.1(d) of this Agreement, if the Borrower shall fail to perform its covenants hereunder to construct the Improvements or if the General Contractor shall fail to perform under the General Contract, the Lender may submit a claim upon the Payment and Performance Bonds and, at its option, apply such proceeds to the costs of the construction of the Improvements.

6.7. In addition to, but subject to, any rights of the Lender under applicable law, if an Event of Default occurs and is continuing, any and all deposits of the Borrower (including all account balances, whether provisions or final and whether or not collected or available) and any other funds of Borrower at any time held by the Lender or any Affiliate of the Lender to or for the credit or account of the Borrower may be offset and applied toward the payment of the debt, whether or not the debt, or any part thereof, shall then be due.

(End of Article VI)



**ARTICLE VII**  
**GENERAL CONDITIONS**

7.1. The following conditions shall be applicable at all times:

- (a) Any advance by the Lender of proceeds of any of the Loan hereunder made prior to or without the fulfillment by Borrower of all of the conditions precedent thereto, whether or not known to the Lender, shall not constitute a waiver by the Lender of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances of funds.
- (b) All documentation and proceedings deemed by Lender to be necessary or required in connection with this Agreement and the documents relating hereto shall be subject to the prior approval of, and satisfactory to, Lender as to form and substance. Lender shall receive copies (certified if requested by either of them) of all documents which they may require in connection with the transaction contemplated hereby.
- (c) Lender shall, at all times, be free to independently establish at its sole cost and expense to its satisfaction the existence or nonexistence of any fact or facts the existence or nonexistence of which is a condition of this Agreement. Notwithstanding the foregoing, no independent verification by the Lender shall cause a delay in any performance of the Lender of its obligations under this Agreement.
- (d) (1) Lender shall have the right at any time to notify Borrower that, in Lender's sole, but reasonable, judgment, the undisbursed balance of the Loan plus the balance of the proceeds of the Loan not yet advanced (including the line item for contingency costs and all retained amounts) after reallocation of the Loan Budget Amount in accordance with Section 2.7 hereof, if any, is insufficient to pay the remaining Direct Costs, Indirect Costs or any other hard or soft costs associated with the construction of the Improvements necessary to complete the Improvements in accordance with the terms hereof. In connection with making the foregoing determination as respects Direct Costs, Lender shall consult with its Construction Consultant and shall take into account the General Contract, its terms and the likelihood of fulfillment by the General Contractor of the terms.
- (2) If Lender informs Borrower of such deficiency, Borrower shall, at Borrower's sole discretion, either:
- (i) deposit an amount (the "*Shortfall Payment*") from its own funds equal to such deficiency (the "*Shortfall Amount*") which Lender may authorize, from time to time, to be applied at its own direction or at Borrower's direction, upon approval by Lender to pay Direct Costs and Indirect Costs or cause the Borrower to complete the construction of the Improvements which is the cause of the Shortfall Amount at no cost to the Lender; or

(ii) instead of requisitioning funds under this Agreement, pay for costs of completing the Improvements in accordance with the terms hereof from its own funds, up to and including the Shortfall Amount, so that the undisbursed balance of the Loan after payment of the Direct Costs and Indirect Costs by Borrower shall be sufficient to complete the Improvements substantially in accordance with the terms hereof, and Borrower shall furnish to Lender evidence of such payment as Lender shall reasonably require; or

(iii) deliver to Lender an irrevocable and unconditional letter of credit (the “*Shortfall Letter of Credit*”) in form and substance satisfactory to Lender issued in favor of Lender by a financial institution satisfactory to Lender in its reasonable discretion, in the amount of the Shortfall Amount.

(3) The Shortfall Letter of Credit shall expire no earlier than sixty (60) days after the later of (a) the date, estimated by the Construction Consultant, by which the Improvements can be completed, or (b) the Completion Date. The estimate of time of completion shall be made by the Construction Consultant at the time that the Shortfall Amount is determined. The Shortfall Letter of Credit may be drawn upon at any time to fund any Shortfall Amount. Lender shall agree to reductions in the amount of any Shortfall Letter of Credit when and to the extent that Lender determines that the Shortfall Amount has been reduced or no longer exists.

(4) Borrower hereby agrees that Lender shall have a first priority lien on, and security interest in, any sums deposited by Borrower pursuant to clause (x) above. In addition, Borrower shall have no right to withdraw any sums deposited on account of the Shortfall Amount except for the payment of Direct Costs and Indirect Costs as approved by Lender or upon completion of construction of the Improvements. Any sums not used pursuant to clause (x) hereinabove shall be released to Borrower when and to the extent that Lender determines that the amount thereof is in excess of the total remaining costs of completing the Improvements substantially in accordance with the terms hereof over the undisbursed balance of the Loan (including line item for contingency) plus the undrawn portion of the Shortfall Letter of Credit.

(e) During the existence of any Event of Default hereunder or under any of the Loan Documents, Borrower does hereby irrevocably authorize Lender to approve the advance of any unadvanced proceeds of the Loan for work performed or materials supplied directly to the General Contractor, Major Subcontractors and other persons to pay for completion of the Improvements, but Lender is under no obligation to do so. No further direction or authorization from Borrower shall be necessary to warrant such direct advances and all such advances shall satisfy *pro tanto* the obligations of the Lender hereunder and shall be secured by the Mortgage as fully as if made to Borrower, regardless of the disposition thereof by the General Contractor, any Major Subcontractor or other person.

(f) This Agreement is solely for the benefit of the Lender and Borrower. All conditions of the obligations of Lender to make advances of the proceeds of the Loan hereunder are imposed solely and exclusively for the benefit of the Lender and may be freely waived or modified in whole or in part, by Lender at any time if in its sole discretion

it deems it advisable to do so, and no person other than Borrower (*provided, however,* that all conditions have been satisfied) shall have standing to require Lender to make any advances of the Loan or to be a beneficiary of this Agreement. Any waiver or modification asserted by Borrower to have been agreed to by Lender must be in writing and comply with the provisions of paragraph (i) of this Section 7.1.

(g) The Borrower hereby irrevocably authorizes the Lender to authorize automatic advances of the Loan to pay interest accrued on the Note as it becomes due, to the extent that payments for such amounts are not available from another source, notwithstanding that the Borrower may not have requested authorization of the advance of such amounts and whether or not the Borrower may be in default under this Agreement, the Mortgage or any other Loan Documents. Any such disbursements shall be added to the outstanding principal balance of the Note and shall be secured by the Mortgage. The authorization granted hereby shall not prevent the Borrower from paying interest, or satisfying said conditions, from its own funds and shall in no event be construed so as to relieve the Borrower from its obligation to pay interest as and when due under the Note, or to satisfy said conditions, or to obligate the Lender to make advances of the Loan for the payment of interest or the satisfaction of said conditions.

(h) All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by-hand, electronic communication (as described in Section 7.1(o)) or by reputable overnight courier (e.g., FedEx), to the address of the party as stated below:

If to Lender:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Margaret Anadu
with a copy to:	Goldman Sachs Bank USA 200 West Street New York, New York 10282 Attention: Andrea Gift
with a copy to:	gs-uig-docs@gs.com
with a copy to:	Jones Day 222 East 41 <sup>st</sup> Street New York, New York 10017 Attention: Aviva Yakren, Esq.
If to Borrower:	Teachers Village Project A QALICB Urban Renewal Entity, LLC c/o RBH Group

89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102  
Attention: Ron Beit

with a copy to:

McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, New Jersey 07068  
Attention: Glenn F. Scotland, Esq.

or at such other address of which a party shall have notified the party giving such notice in writing in accordance with the foregoing requirements.

(i) **No provision of the Note, Mortgage or this Agreement or any other Loan Documents executed in connection with the Loan may be changed, waived, discharged or terminated orally, by telephone or by any other means except an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.**

(j) **Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Borrower, the Lender and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Borrower, without the prior written consent of the Lender in each instance, may not assign, transfer or set over to another, in whole or in part, all or any part of its benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof and the right to receive the proceeds of current or future advances.**

(k) **Borrower recognizes that without Borrower's consent, the Lender may sell and transfer participation interests in the Loan, this Agreement, the Note, the Mortgage, and any other Loan Documents to one or more participants that are Permitted Transferees and that all documentation, Financial Statements, appraisals and other data, or copies thereof, relevant to the Project, the Borrower, Guarantors or the Loan, and to any advances hereunder, may be exhibited to and retained by any such participant or prospective participant for its files. The Lender agrees that it shall notify Borrower of any sales or transfers of any interest in the Loan pursuant to this subparagraph (k).**

(l) **Intentionally Deleted.**

(m) **Borrower agrees that, by its acceptance of and failure upon request to return any advance of proceeds of the Loan under this Agreement, it shall be bound in all respects by the Requisition submitted on its behalf in connection therewith with the same force and effect as if Borrower had itself executed and submitted the Requisition and whether or not the Requisition is executed and/or submitted by an authorized person.**

(n) **Any and all advances of proceeds of the Loan approved at any time by Lender pursuant to the irrevocable authorizations granted by paragraphs (e) and (g) of this Section 7.1 shall require no further direction, authorization or request for disbursement from Borrower. Borrower agrees that advances made pursuant to paragraph (e) of this Section 7.1, may be made without any further direction, authorization or request for disbursement from Borrower. Any and all such disbursements made**

pursuant to paragraphs (e), (f) or (g) of this Section 7.1, such disbursements, shall be added to the outstanding principal balance evidenced by the Note and shall be secured by the Mortgage. The aforesaid authorizations shall (1) not prevent Borrower from paying the contractors and other persons, from paying the interest, or from satisfying the conditions and obligations referred to in said paragraphs, out of its own funds, (2) in no event be construed so as to relieve Borrower or others from their obligations to pay such contractors or other persons, to pay interest as and when due under the Note, or to satisfy such conditions and obligations and (3) in no event obligate Lender to disburse proceeds of the Loan for any such purposes.

(o) Electronic Communications.

(1) Notices and other communications to the Lender or any other party hereto may be delivered or furnished by electronic communication pursuant to procedures approved by Lender, provided that the foregoing shall not apply to notices to any Person if such Person has notified Lender that it is incapable of receiving notices under such Section by electronic communication. Lender or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Lender otherwise prescribes, notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(2) Each Credit Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Lender, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(3) Approved Electronic Communications are provided "as is" and "as available". Neither Lender nor any of its respective officers, directors, employees, agents, advisors or representatives (the "*Agent Affiliates*") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications and each expressly disclaims liability for errors or omissions in the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Approved Electronic Communications.

7.2. The cover page and the Exhibits annexed hereto are incorporated as a part of this Agreement with the same effect as if set forth in the body hereof.

7.3. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State (without giving effect to the State's principles of conflicts of law). Borrower and Lender hereby irrevocably submit to the exclusive jurisdiction of any State or Federal court sitting in The City of Newark (or any county in the State where any portion of the Mortgaged Property is located) over any suit, action or proceeding arising out of or relating to this Agreement, and Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any State or Federal court sitting in The City of Newark (or such other county in the State) may be made by certified or registered mail, return receipt requested, directed to Borrower at the address indicated in Section 7.1 hereof, and service so made shall be complete five (5) days after the same shall have been so mailed.

7.4. To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claims against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions or the use of the proceeds thereof.

7.5. Intentionally Deleted.

7.6. Intentionally Deleted.

7.7. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument.

7.8. Notwithstanding anything to the contrary contained in this Agreement, neither the Lender nor any of its respective Affiliates, shall be required in order to resolve any objections asserted by any governmental authority under the Hart-Scott-Rodino Act, the Sherman Antitrust Laws or any other foreign antitrust or combination Laws with respect to the transactions contemplated by this Agreement to divest any of its businesses, properties or assets, or take or agree to take any other action (including agreeing to hold separate any business or assets or take other similar actions) or agree to any limitation or restriction, that the Lender determines would be or presents a risk of being, individually or in the aggregate, adverse to Lender or any of its Affiliates.

7.9. Borrower agrees that it will not, without the prior written consent of the Lender or the applicable Affiliate of Goldman Sachs Bank USA (for purposes of this Section, "GS"), in each instance, (a) use in advertising, publicity, or otherwise the name of Goldman Sachs Bank USA, or any GS Affiliate, or any partner or employee of a GS Affiliate, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by GS or its Affiliates, or (b) represent, directly or indirectly, that any product or any service provided by the Lender has been approved or endorsed by GS or a GS Affiliate.

7.10. Borrower acknowledges that it is not relying upon any person, firm or corporation, other than the Borrower and its officers, directors, consultants and advisors in entering into the Loan. Borrower agrees that none of the Lender, any Affiliate of the Lender, GS or any GS Affiliate or the respective controlling persons, officers, directors, partners, agents, or employees of any such person shall be liable to Borrower in connection with Borrower's decision to enter into the Loan.

7.11. The parties hereto acknowledge and agree that nothing in this Agreement or the Loan Documents shall create a fiduciary duty of the Lender, GS or any GS Affiliate to the Borrower or its shareholders. Notwithstanding anything to the contrary herein or in the Loan Documents or any actions or omissions by representatives of the Lender, GS or any GS Affiliate in whatever capacity, it is understood that none of the Lender, GS or any GS Affiliate is acting as a financial advisor, agent or underwriter to the Borrower or any Affiliates of Borrower, or otherwise on behalf of the Borrower or any Affiliates of Borrower, unless retained to provide such services pursuant to a separate written agreement.

7.12. Nothing in this Agreement will be deemed to restrict the Lender, GS or any GS Affiliate from providing services to Borrower or its Affiliates or earning fees and other compensation from Borrower or its Affiliates if otherwise permitted by law, including, without limitation, the Code.

7.13. The Borrower grants to the Lender, GS and any GS Affiliate permission to use the Borrower's or any Affiliate of Borrower's name and logo in the marketing materials of the Lender, GS and any GS Affiliate. GS or any GS Affiliate, shall, as applicable, include a trademark attribution notice giving notice of the Borrower's or any Affiliate of Borrower's ownership of its trademarks in the marketing materials in which the Borrower's or any Affiliate of Borrower's name and logo appear.

7.14. Notwithstanding anything in this Agreement, none of the provisions of this Agreement shall in any way limit the Lender, GS or any GS Affiliate from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading, market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of the respective businesses of the Lender, GS or the relevant GS Affiliate.

7.15. To the extent requested by the Internal Revenue Service or required by law, notwithstanding anything to the contrary herein, the Lender or Borrower may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Loan and all materials of any kind (including opinions or other tax analyses) that are provided to the Lender or Borrower relating to such tax treatment and tax structure.

7.16. Wherever this Agreement provides for a covenant by Borrower in favor of GS, any GS Affiliate or their respective successors and/or assigns (the "*Benefitted Persons*"), each Benefitted Person is hereby expressly declared to be an intended third party beneficiary of such covenant and shall have the right to directly enforce such covenant against the Borrower.

7.17. This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, supersedes all prior agreements and understandings, both written and oral, between the parties in respect of the subject matter hereof and no changes, amendments, or alterations hereto shall be effective unless pursuant to written instrument executed by the parties hereto.

7.18. Any term, covenant, agreement or condition of this Agreement or any of the Loan Documents may be amended or waived, and any departure therefrom may be consented to by Lender, if, but only if, such amendment, waiver or consent is in writing signed by Lender and, in the case of an amendment, by Borrower. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. In the event that any such waiver or amendment is requested by Borrower or Lender may require and charge a fee in connection therewith and consideration thereof in such amount as shall be determined by Lender in their reasonable discretion. The advance of proceeds of Loan by Lender during the existence of a Event of Default shall not be deemed to constitute a waiver of such Event of Default.

7.19. The Borrower agrees to pay (i) all reasonable out-of-pocket costs and expenses of the Lender in connection with the preparation, execution and delivery of this Agreement, the Loan Documents and any other documentation contemplated or required hereby, including, without limitation, the reasonable fees and out-of-pocket expenses of Lender's Counsel with respect thereto, (ii) within thirty (30) days of Lender's written demand, all reasonable out-of-pocket costs and expenses Lender may incur in connection with this transaction resulting from the adoption of or changes, after the date hereof, in laws, regulations, rules or interpretative letters issued by the Office of the Comptroller of the Currency of the United States of America, the Banking Commissioner of the State of New York, the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System (or by any successor to any thereof), (iii) any state or local taxes or other charges, including, but not limited to, income, withholding or gross receipts tax, imposed on the Lender solely as a result of the Loan, and (iv) within thirty (30) days of the Lender's written demand, all reasonable out-of-pocket costs and expenses (including reasonable counsel's fees and expenses), if any, in connection with the interpretation, enforcement of, or the collection of any amounts owed to Lender under this Agreement or the Loan Documents which may be delivered in connection with this Agreement. Borrower covenants and agrees to pay within thirty (30) days of demand therefor Lender's expenses and any and all administrative and/or servicing fees charged and/or incurred by Lender in connection with the administration of the Loan, and/or this Agreement.

7.20. **TO THE EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST BORROWER AND LENDER ARISING OUT OF THIS AGREEMENT, THE COLLATERAL OR ANY ASSIGNMENT THEREOF OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN BORROWER AND LENDER OF ANY KIND OR NATURE. BORROWER AND**



LENDER HEREBY AGREE THAT ANY NEW JERSEY STATE COURT OR ANY FEDERAL COURT IN EITHER CASE, LOCATED IN ESSEX COUNTY OR, AT THE OPTION OF LENDER, ANY COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY, SHALL HAVE NONEXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER AND LENDER, PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING THEREFROM. BORROWER AND LENDER EACH EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURTS, HEREBY WAIVING PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN AND AGREEING THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AND LENDER, AS APPLICABLE, AT THE ADDRESS OF BORROWER AND LENDER, AS APPLICABLE, SET FORTH IN THIS AGREEMENT, PROVIDED A CONCURRENT COPY IS SENT TO BORROWER'S COUNSEL, OR LENDER'S COUNSEL, AS APPLICABLE. THE NONEXCLUSIVE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT OF ANY JUDGMENT OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE SAME IN ANY APPROPRIATE JURISDICTION. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY (DETERMINED WITHOUT PREFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS).

7.21. Subject to any other provisions of this Agreement applicable to the Loan and subject to the Intercreditor Agreement, GS, or any Affiliate thereof (a "*GS Lender*") may at any time make, guarantee, own, acquire, or otherwise credit enhance, in whole or in part, a loan or other financing secured by a mortgage, deed of trust, trust deed, or other security instrument encumbering the Premises owned by the Borrower (a "*GS Loan*"). Under no circumstances whatsoever will any GS Lender be considered to be acting on behalf of or as an agent of or as the alter ego of any member of Borrower that is an Affiliate of such GS Lender (an "*Affiliated Member*"). Any GS Lender may take any action or fail to take any action that it determines, in its sole and absolute discretion, to be advisable in connection with the applicable GS transaction (including, but not limited to, in connection with the enforcement of its rights and remedies related to such GS transaction). Borrower hereby unconditionally agrees that no GS Lender owes the Borrower or any member of Borrower any fiduciary duty or other duty or obligation whatsoever by virtue of such GS Lender being an Affiliate of an Affiliated Member. Neither the Borrower nor any member of Borrower (i) will make any claim whatsoever against any GS Lender or against any Affiliated Member or (ii) will allege any breach of any fiduciary duty, duty of care or other duty whatsoever based in any way upon any affiliation or relationship between any GS Lender and any Affiliated Member. The Borrower and each member of Borrower

hereby acknowledge and agree that any GS Loan shall be treated as debt for all purposes and no claim whatsoever shall be made that any GS Loan should be treated as equity under any circumstance whatsoever. The Borrower and each member of Borrower hereby further acknowledge and agree that any GS Loan shall be viewed for all purposes as a separate transaction and not related in any way to the investment of an Affiliated Member in the Borrower. Any claim whatsoever that any GS Loan should be treated as equity under any circumstance whatsoever is hereby irrevocably and unconditionally waived, to the fullest extent permitted by applicable law, by the Borrower and each member of Borrower.

(End of Article VII)

## ARTICLE VIII

### PARTICULAR PROVISIONS

8.1. **Reporting Requirements.** Borrower shall comply with the following financial reporting requirements until the Loan shall have been fully repaid, maintain a standard system of accounting in accordance with generally accepted accounting principles, and furnish or cause to be furnished to the Lender all of the following which must be satisfactory in form and substance to the Lender:

(a) **Quarterly Financial Statements.** As soon as available but in any event within thirty-five (35) days after the end of each fiscal quarter (except for the quarter in which the annual Financial Statements are delivered), quarterly Financial Statements of the Borrower prepared in accordance with generally accepted accounting principles consistently applied. All such statements of Borrower must be reasonably satisfactory in form and substance to the Lender and shall be certified by an officer of Borrower to be true and complete as of the date so delivered.

(b) **Annual Financial Statements.** As soon as available, but in any event within ninety (90) days after the end of each fiscal year, a copy of Borrower's and Guarantors' audited Financial Statements as of the end of such fiscal year, setting forth in each case in comparative form the figures for the preceding fiscal year, and, thirty (30) calendar days after filing but no later than one hundred twenty (120) days following the start of each calendar year, Borrower's and Guarantors' federal income tax returns for the prior year. The Financial Statements and federal income tax returns shall be prepared by the accountants for the Borrower and Guarantors, as applicable, and certified by an officer of Borrower and Guarantors, as applicable, to be true and correct, which certification shall (x) state that such Financial Statements have been prepared in accordance with generally accepted accounting principles and, accordingly, include such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and (y) that such Financial Statements have been prepared in accordance with generally accepted accounting principles in a manner consistent with prior fiscal periods, except as otherwise specified in such certification. To the extent that any Guarantor is an individual, such individual is to provide his/her personal Financial Statement, in form and substance reasonably acceptable to Lender, as of the end of such calendar year on a form acceptable to Lender together with a signed copy of such Guarantor's federal income tax returns, certified by such Guarantor to be true and correct.

(c) **Officer's Certificates.** At the time of the delivery of the Financial Statements provided for in this Section 8.1, a certificate of a manager of Borrower and Guarantors, as applicable, to the effect that no Event of Default has occurred and is continuing or, if any Event of Default has occurred and is continuing, specifying the nature and extent thereof and any actions taken or proposed to be taken with respect to any such Event of Default.

(d) **Appraisals.** Within thirty (30) days after notice from Lender, an appraisal of the Project to be prepared at Borrower's sole cost and expense by an appraiser

acceptable to Lender, which requirement for an appraisal may be invoked by Lender at any time after the occurrence of an Event of Default and from time to time, but not more than once during any calendar year, if there is no Event of Default or it is not required by applicable law or regulation. Borrower shall promptly pay to Lender within ten (10) days following written demand the cost of any appraisal, which payment shall be applied by Lender as a reimbursement to itself if Lender obtained the appraisal, or if Lender previously paid the appraiser for any reason.

(e) **Environmental Audits.** Within thirty (30) days after written notice from Lender, an environmental audit or assessment of the Project of the type and scope specified by Lender to be prepared at Borrower's sole cost and expense by an environmental engineer or consultant approved by Lender, which requirement for an environmental audit or assessment may be invoked by Lender from time to time if (i) the Lender reasonably believes that there may have been a release of Hazardous Materials at the Project, that any representation relating to Hazardous Materials in the Mortgage or in the Environmental Indemnity is incorrect or that Borrower has failed to comply with any of its covenants or agreements set forth therein, or (ii) an Event of Default has occurred. Borrower shall promptly pay to Lender the entire cost of any environmental audit or assessment relating to the Project upon demand, which payment shall be applied by Lender as a reimbursement to itself if Lender caused any such environmental audit or assessment to be obtained, or if Lender previously paid an environmental engineer or consultant for any reason.

(f) **Other Indebtedness/Events of Default.** Prompt written notice to the Lender if: (i) any indebtedness of Borrower is declared or shall become due and payable prior to its stated maturity, or called and not paid when due, (ii) a default shall have occurred under any note or other evidence of indebtedness or the holder of any such note or other evidence of indebtedness has the right to declare any such indebtedness due and payable prior to its stated maturity as a result of such default, or (iii) there shall occur an Event of Default, or an event which, after the passage of time and/or the giving of notice would become an Event of Default.

(g) **Notices from Governmental Authorities.** Prompt written notice of: (i) any citation, summons, subpoena, order to show cause, municipal violation or other order relating to a Project naming Borrower, Guarantors, or a Project a party to any proceeding before any Governmental Authorities, and include with such notice a copy of such citation, summons, subpoena, order to show cause, municipal violation or other order in connection with a claim in an amount exceeding \$10,000, (ii) any lapse or other termination of any material license, certificate, permit, franchise or other authorization issued to Borrower or a Project by any Governmental Authorities, (iii) any refusal by any Governmental Authorities to renew or extend any such material license, permit, certificate, franchise or other authorization, (iv) any dispute between Borrower, Guarantors and any Governmental Authorities or Person, which dispute might have a material adverse effect on Borrower, Guarantors or a Project, (v) any order, notice, claim, or proceeding received by, or brought against Borrower, or with respect to a Project or any part thereof, under or in connection with any federal, state or local law or regulation; or (vi) failure of the Premises to comply with applicable building codes.

(h) **Leasing Status Reports.** Borrower shall, throughout the term of the Loan, deliver to the Lender quarterly reports, within fifteen (15) Business Days after the end of each calendar quarter, setting forth, in detail reasonably acceptable to the Lender, the status of all leasing and rental activity at the Projects for such immediately preceding quarterly period.

(i) **Other Information.** With reasonable promptness after written request by Lender, such other reasonable financial and other information with respect to Borrower, Guarantors and/or the Project as Lender may request from time to time. In addition, Borrower shall promptly deliver to Lender any notices it has given or received under the Master Lease or the Leases.

(j) **Borrower's Statement.** Within five (5) Business Days upon written request, a written statement duly acknowledged of the amount due whether for principal or interest on the Note and whether any offsets or defenses or counterclaims exist against the obligations of the Borrower, if any are alleged to exist, the amount and nature of each such offset or defense or counterclaim shall be set forth in full detail.

(k) **Annual Deliverables:**

- (1) Annual operating budget, due by the start of each fiscal year of Borrower.
- (2) Evidence of insurance as required by the Loan Documents.
- (3) Copies of Borrower's annual real estate tax bills and evidence of payment when such taxes are due and payable.
- (4) Within thirty (30) days of filing, tax returns of the Borrower.

8.2. **Tax and Insurance Escrow.** To the extent, or when, required by the Lender pursuant to the terms of the Mortgage, Borrower shall deposit with Provident Bank in a blocked account in favor of Lender an amount sufficient to pay the next installment of taxes and/or insurance due in connection with the Projects and, thereafter, pay to the Lender monthly an amount equal to 1/12 of the amount required to pay the next installment of such taxes and/or insurance.

8.3. **Pledge of Accounts.** As additional security for the Loan, the Borrower hereby unconditionally and irrevocably pledges, assigns, grants a security interest in, sets over and confirms unto the Lender, all of the Borrower's accounts as more particularly described in the Control Agreements, including, but not limited to, the Operating Account. The Borrower acknowledges and agrees that this Agreement constitutes written notification to the Borrower with respect to the Lender's security interest in the above-described accounts pursuant to Articles 8 and 9 of the Uniform Commercial Code in effect in New York or New Jersey as of the date hereof and any applicable federal regulations.

8.4. **Lender's Fees.** On or before the date hereof, Borrower shall pay to Lender \$90,000, which fee shall be deemed earned in full when paid.

8.5. **Conversion.**

(a) Upon the Date of Conversion, the interest rate payable on the Loan shall be adjusted to the Post-Conversion Interest Rate (as defined in the Note).

(b) For purposes herein, the “Date of Conversion” shall be the date upon which the following conditions have been satisfied, and which date shall be acknowledged in writing by Lender and Borrower:

(1) the construction of the Improvements shall have been completed free of all mechanics liens or such liens have been properly bonded over and permanent certificates of occupancy (or temporary certificates of occupancy reasonably satisfactory to the Lender) have been issued for the entirety of the Improvements;

(2) the Borrower shall be in full compliance with any and all covenants and restrictions with respect to the Project, as well as the Borrower’s organizational documents;

(3) the Borrower shall be in compliance with all insurance requirements set forth in the Loan Documents;

(4) the Borrower has achieved at the Project, as of the date of such test, a 3 Month Debt Service Coverage Ratio of 1.20 to 1.00;

(5) there is at least a 90% occupancy rate on the residential apartments located within the Project;

(6) no Event of Default has occurred under this Agreement; and

(7) Borrower shall have executed all documents reasonably required by Lender (including, but not limited to, a replacement Note and reaffirmation of any guaranties or indemnities) and shall deliver to Lender, at Borrower’s sole cost and expense, such title insurance endorsements, opinions of counsel and evidence of authority as may be reasonably required by Lender.

8.6. **Debt Service Covenant Ratio Covenant.**

(a) From and after the Date of Conversion, the Borrower shall maintain a 12 Month Debt Service Coverage Ratio as of the Calculation Date and each Additional Calculation Date of not less than 1.20 to 1.00.

(b) If the covenant set forth above shall not be complied with as of the Calculation Date or any Additional Calculation Date, Borrower shall cause, until the occurrence of the Cure Date, all amounts deposited into the Borrower’s operating account with Provident Bank in excess of the amounts required to maintain a 12 Month Debt Service Coverage Ratio of 1.0 to 1.0 to be deposited into an account controlled by the Lender (the “Cash Sweep Account”). It shall be an Event of Default if Borrower fails to make such payments within ten (10) Business Days after notice from Lender to Borrower requiring such deposit or executing such documents to evidence Lender’s control of such

account. Borrower shall be entitled to receive the return of the payments made to the Cash Sweep Account if Borrower can demonstrate that, as of the Cure Date, it can meet the covenant set forth in Section 8.6(a), without regard to the payment described herein. If Borrower provides a written certification to Lender that retention of the entire balance within the Cash Sweep Account would result in a failure by Borrower to meet the non-qualified financial property test under Treasury Regulations 1.45D-1(d)(4)(i)(E) and therefore requests that some or all of such amounts within the Cash Sweep Account be applied to the outstanding principal of the Loan in order to meet such test, Lender shall apply such requested amounts to the outstanding principal of the Loan. Without limiting the foregoing, if Lender reasonably determines that retention of the entire balance within the Cash Sweep Account would result in a failure by Borrower to meet the non-qualified financial property test under Treasury Regulations 1.45D-1(d)(4)(i)(E), then Lender shall apply an amount from the Cash Sweep Account toward the principal outstanding on the Loan in order to allow Borrower to meet such test.

(c) From and after the Calculation Date, Borrower shall provide Lender with a certification as to the calculations contemplated herein together with such reports as are necessary to enable Lender to confirm such calculations, within the later of thirty (30) days after Lender’s request therefor or forty-five (45) days following the Calculation Date, the Additional Calculation Date or the Quarterly Calculation Date, as applicable. It shall be an Event of Default if Borrower has failed to give Lender the information set forth herein within five (5) days after notice from the Lender.

8.7. **Hedging Arrangement.** If Borrower enters into one or more Hedging Arrangements, such Hedging Agreements shall be evidenced and governed by such documents (the “*Hedge Documents*”) as shall be acceptable to, and which shall be in form and substance reasonably acceptable to, Lender. Borrower shall assign each Hedging Arrangement that is in effect from time to time to Lender pursuant to a Hedge Assignment and Security Agreement, in form and substance satisfactory to Administrative Agent (the “*Hedge Assignment and Security Agreement*”). The Hedge Documents and the Hedge Assignment and Security Agreement shall direct the Hedge Provider to make any payments directly to Lender to be held and disbursed in accordance with the terms of the Hedge Assignment and Security Agreement. If Borrower enters into one or more Hedging Arrangements, Borrower shall timely perform all of its obligations under each Hedge Document in accordance with its terms. Borrower shall not exercise any right or remedy under any Hedge Document without Lender’s prior written consent, which shall not be unreasonably withheld, and shall exercise its rights and remedies under the Hedge Documents as directed by Lender in writing.

(End of Article VIII)

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written, the execution hereof by Borrower constituting a certification by the Borrower that the representations and warranties made in Article V are true and correct as of the date hereof and that the person executing on behalf of the Borrower duly holds and is incumbent in the position indicated under his name.

**LENDER:**

**GOLDMAN SACHS BANK USA,**  
a New York State chartered bank

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

**BORROWER:**

**TEACHERS VILLAGE PROJECT A QALICB  
URBAN RENEWAL ENTITY, LLC,**  
a New Jersey limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory



**SCHEDULE A**  
**DESCRIPTION OF REAL PROPERTY**

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## **EXHIBIT A**

### **(PENDING DISBURSEMENTS CLAUSE)**

Pending disbursement of the full proceeds of the loan secured by the insured mortgage described herein, this policy insures only to the extent of the amount actually disbursed plus interest accrued thereon but increases up to the face amount of the policy as disbursements are made in good faith and without knowledge of any defects in, or encumbrances prior to, the lien of the insured mortgage other than exceptions on Schedule B of this policy not insured against hereunder.

Title shall be continued down to the date of each disbursement and the Borrower shall furnish to the Insured a continuation report which shall note (1) the new effective date and amount of the policy, (2) all assessments, taxes, liens, encumbrances, leases, mortgages, easements and other items including survey variations, encroachments and setback violations then affecting the insured premises which have been filed of record or discovered by the Company since the original date of the policy regardless of whether they affect the lien of the insured mortgage, (3) which of the aforesaid items have been filed or recorded since the date of the last preceding continuation report, and (4) which said items are intended to be added as exceptions to the coverage of the policy as to (a) all amounts secured by the insured mortgage, and (b) only amounts secured by the insured mortgage advanced on or after the new effective date of the policy.

In addition, each continuation search will notify Lender of any liens which have been discharged by bonding, court deposit or any other means other than full payment.

In the event that the lien of the insured mortgage described herein is insured by more than one insurer, this company agrees that it shall be bound by the continuation reports of a single company specified as "lead" insurer herein.

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**EXHIBIT B**  
**(BORROWER’S REQUISITION)**

REQUISITION NO.

**TO GOLDMAN SACHS BANK USA (“LENDER”):**

Date:	Borrower:
Period Covered	Premises
To	Retainage
	Percentage:
Acct. No.:	Loan No.:

Pursuant to the Loan Agreement for the subject Loan, Borrower hereby authorizes and requests an advance to its Operating Account having the Acct No. in the amount of \$ \_\_\_\_\_ which is calculated as follows:

- (1)

Direct Costs incurred to the  
end of the Period Covered  
(from SCHEDULES I AND I-A  
hereto):     \$
- (2)

Less the greater of —  
(a) Retainage Amounts  
or of said costs : \$  
(b) Retained Amounts  
to the end of the Period  
Covered (from SCHEDULES I  
AND I-A hereto):     \$  
  
(   ) \$
- (3)

Indirect Costs incurred to  
end of the Period Covered  
(from SCHEDULE II hereto):     \$
- (4)

Amount Requisitioned for  
the Period Covered  
(1-2+3-4):     \$

**REQUISITION NO.**

In connection with and in order to induce Lender to advance the amount requested above, Borrower hereby represents, warrants and stipulates as follows:

- 1. The information stated above and the representations and warranties in Section 5.01 of the Loan Agreement are true and correct in all material respects as of the date of this Requisition and, unless Lender is notified to the contrary prior to the disbursement of the advance requested above, will be so on the date thereof.
- 2. The amounts and percentages set forth on SCHEDULES I, I-A and II hereto are true and correct to the best of Borrower’s knowledge.
- 3. All sums previously requisitioned have been applied to the payment of the Direct Costs and Indirect Costs heretofore incurred, or such sums have been retained in the Operating Account for such purpose and no other.
- 4. Names, addresses, contract dates and amounts for the contractors, subcontractors, suppliers and materialmen responsible for performing each item of Direct Cost listed on SCHEDULES I and I-A hereto have been heretofore or are herewith submitted to Lender and the construction consultant and copies of any General Contract or major Subcontracts not previously delivered to Lender or the Construction Consultant are enclosed herewith.
- 5. All Change Orders have been submitted to Lender and the Construction Consultant and all Change Orders for which an advance is requested hereby have been approved by Lender for funding.
- 6. All payment receipts due in accordance with the terms of the Loan Agreement as of the end of the Period Covered have been submitted to the Construction Consultant.
- 7. Capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

Very truly yours,

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

Subscribed and sworn to before me on \_\_\_\_\_, 20

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

\_\_\_\_\_

**EXHIBIT C**  
**(INTENTIONALLY OMITTED)**

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**EXHIBIT D**  
**(INTENTIONALLY OMITTED)**

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**EXHIBIT E**  
**FORM OF RESIDENTIAL LEASE**

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**EXHIBIT F**  
**INSURANCE REQUIREMENTS**

**Goldman Sachs Bank USA**  
**Insurance Requirements**

**I. Insurance Requirements**

General Insurance Requirements

- All policies must be written on a per occurrence basis except for pollution liability and professional liability coverage which may be written on a Claims Made.
- Each policy must have a cancellation provision requiring the carrier to notify the Certificate Holder at least 30 days in advance of any policy reduction or cancellation for any reason except non-payment of premium. The cancellation provision must provide for at least a 10-day written notification for non-payment of premium. In the cancellation section of the ACORD Form the words “Endeavor to” and “But failure..through..Representatives” must be deleted. If this cannot be done, Goldman Sachs Bank USA (“GS Bank”) will accept the following sentence under the Description of Operations: “Certificate holder will receive 30 days written notice of cancellation.”
- All policies must name the Project Partnership as the Insured and GS Bank and the Investor Limited Partner and their successors and/or assigns as “Loss Payee” and “Additional Insured” for property coverage and “Additional Insured” for liability coverage.
- Each insurance policy must contain a Loss Payable clause and Additional Insured clause acceptable to GS Bank

Please note: depending on the size, scope and location of the project, insurance requirements, including types of coverage, can change.

Blanket Policies

Use of a blanket or package policy (or policies) of insurance covering the Property and other properties and liabilities of the Borrower is acceptable, provided that:

- The policy provides the same or better insurance coverage as a single property insurance policy.
- The property is listed and identifiable in the policy and/or associated schedules; and
- The policy complies with all other applicable requirements contained in this document.

Carriers

- All carriers must meet the following rating requirement:
  - A.M. Best general policyholder’s rating of “A-” or better and a financial performance index rating of VI or better in Best’s Insurance Reports or Key Ratings Guide or
  - A-or better by Standard and Poor’s.
  - Various state wind pools or flood companies approved under the National Flood Insurance Program (NFIP)
-



Term

Each policy must either:

- Have a term of at least one year at the time of closing; or
- Have a term with less than 12 months remaining at the time of closing so long as the policy contains the required coverage and is being added to an existing policy.

Evidence must be provided that the policy premium has been paid in full.

Financing the Premium

All premiums for existing, new policies or renewal policies must be paid in full at closing and cannot be financed.

Evidence of Insurance

Either (i) an ACORD 28 (either the 2003 or 2006 version is acceptable), combined with ACORD 25S, or (ii) ACORD 75S, are acceptable forms of evidence. The Policy Declaration page of a National Flood Insurance Policy (NFIP) is acceptable evidence of flood insurance coverage.

II. CONSTRUCTION PERIOD

**Builders Risk**

What is Required	Section 1 - “All Risk” of Physical Loss or Damage  Section 2 — Delay in start-up/soft costs
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% Replacement Cost (completed value) on Completed Value Form</li><li>• Coverage must contain no coinsurance, or a coinsurance clause that is offset by an Agreed Amount provision.</li></ul>
Coverage Must Include	<ul style="list-style-type: none"><li>• Permission to Occupy</li><li>• Contractors Equipment (if applicable)</li><li>• Design Error (if applicable)</li><li>• Removal of Debris</li><li>• Expediting Expenses</li><li>• Transit and Off-site Storage</li></ul>
Delay in Start-up/Soft Costs Should Include	<ul style="list-style-type: none"><li>• Loss of Earnings (12 months loss of rents)</li><li>• Debt Service Payments</li><li>• Fixed Operational &amp; Maintenance Expenses</li><li>• Additional Interest Expense</li><li>• Construction Loan Refinancing Fees</li><li>• Real Estate Taxes</li><li>• Legal Professional Fees</li><li>• Insurance Premiums</li></ul>
Maximum Deductible	Physical Damage: <ul style="list-style-type: none"><li>• \$10,000 up to \$50 million in replacement cost values</li><li>• \$25,000 up to \$100 million in replacement cost values</li><li>• \$100,000 over \$100 million in replacement cost values</li><li>• .</li></ul> Delayed Opening

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	<ul style="list-style-type: none"><li>• 60 days</li></ul>
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
<b>Windstorm Coverage</b>	
What is Required	If the Builders Risk policy excludes any type of wind-related event, a separate windstorm insurance policy must be obtained.
When Does it Apply	Required for all properties
Amount of Coverage	See Builders Risk for What’s Required and Amount of Coverage
Maximum Deductible	5% of the total insured value, as listed in the policy
Loss Payee and Additional Insured clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
<b>Flood Insurance</b>	
What is Required	Flood Insurance
When Does it Apply	Flood insurance is required for Property improvements located in SFHA A or V  GS Bank may require flood insurance for improvements located outside a SFHA. It will be evaluated on a case by case basis.
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% of the replacement cost of improvements located in an SFHA.</li><li>• Business Income / Rent Loss Coverage for a minimum of 12 months plus a 90 Day Extended Period of Indemnity for improvements located in an SFHA. Business Income / Rent Loss coverage is required even if written on a stand-alone basis.</li><li>• If 100% of the full replacement cost is unavailable, then the maximum amount of insurance available under the National Flood Insurance Program (NFIP) must be obtained. An excess flood or Difference in Conditions (DIC) policy must provide for the difference, if any, between maximum limit provided by NFIP policies and the full replacement cost and the required Business Income / Rent Loss coverage as noted above.</li></ul>
Maximum Deductible	5% of the Total Insured Value as listed on the policy  The acceptable deductible for a DIC is the limit of the NFIP policy (ies)
Loss Payee and Additional Insured clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
Flood insurance must be in the form of the standard policy issued by members of the National Flood Insurance Program (NFIP). Other policies that meet the NFIP’s requirements—such as those issued by licensed property and casualty insurance companies that are authorized to participate in NFIP’s “Write Your Own” program—will be acceptable.	

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Earthquake Insurance

What is Required	Earthquake Insurance
When Does it Apply	If the property is in a high probability earthquake zone (i.e. Zone 3 or 4), then GS Bank will require a Probable Maximum Loss (“PML”) study to be conducted for each building. If the PML study reveals that the PML is less than 20% of the replacement cost earthquake insurance will not be required
Amount of Coverage	<ul style="list-style-type: none"><li>• If PML is greater than or equal to 20% of the replacement cost, then earthquake insurance must be maintained at an amount equal to the PML percentage of the replacement cost.</li><li>• Business Income / Rent Loss Coverage for a minimum of 12 months plus a 90 Day Extended Period of Indemnity. Business Income / Rent Loss coverage is required even if written on a stand-alone basis.</li></ul>
Maximum Deductible	5% of the total insured value as listed on the policy
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

Ordinance and Law Coverage

What is Required	Ordinance and Law Coverage (if applicable)
When Does it Apply	Properties that contain any type of <i>non - conformance</i> under current building, zoning, or land use laws or ordinances.
Amount of Coverage	<ol style="list-style-type: none"><li>1. Coverage A - Loss of Undamaged Portion of the Building<ul style="list-style-type: none"><li>• Equal to 100% of the full replacement cost of the Property less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the Property</li></ul></li><li>2. Coverage B - Demolition Cost<ul style="list-style-type: none"><li>• Minimum 10% of the replacement cost.</li></ul></li><li>3. Coverage C - Increased Cost of Construction<ul style="list-style-type: none"><li>• Minimum 10% of the replacement cost.</li></ul></li></ol>

Commercial General Liability Insurance

What is Required	<p>Commercial General Liability Insurance for bodily injury, property damage and personal injury.</p> <p>Coverage must include:</p> <ul style="list-style-type: none"><li>• Dedicated project limits if part of a master program</li><li>• Completed Operations Extension</li><li>• Post Completion Construction defects insurance clause continues for a period equal to the applicable Statute of Limitation/Repose.</li></ul>
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Amount of Coverage	<div>1. \$1 million per occurrence/\$2 million minimum general aggregate limit plus</div> <div>2. Minimum Umbrella Liability Insurance (above the primary) of \$25 million</div> <div>The minimum required coverage limit may be satisfied by adding any combination of primary and umbrella/excess per occurrence and aggregate limits so that the sum of both equals the sum of the limits required in 1. plus 2. above. Umbrella coverage must sit above general liability, auto liability and employers liability.</div>
Maximum Deductibles	\$10,000 total combined deductibles and self insured retentions
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insured.
<b>Commercial Auto Liability Insurance</b>	
What is Required	Commercial Auto Liability Insurance that covers owned, non-owned, hired and/or leased vehicles (whichever shall apply), including personal injury protection and uninsured motorist liability.
When Does it Apply	If the developer/sponsor uses cars, vans or trucks for business purposes, Commercial Auto Liability Insurance must cover those vehicles.
Amount of Coverage	\$1 million per occurrence
Maximum Deductible	\$10,000
<b>Workers’ Compensation</b>	
What is Required	Statutory Workers’ Compensation and Employer’s Liability Insurance
When Does it Apply	Where employees of the Borrower are required to be covered by workers’ compensation laws of the state where the Property is located.
Amount of Coverage	<div>• Employer’s Liability with a limit of \$1 million</div> <div>and</div> <div>• Statutory Limits for compensation</div>
<b>Terrorism Insurance</b>	
What is Required	Terrorism Insurance (if available, TRIA is acceptable). Coverage is required for both the property and general liability policy.
When Does it Apply	For all properties
Amount of Coverage	<div>• 100% of the replacement cost of the property improvements</div> <div>• Business Income / Rent Loss Coverage for a minimum of 12 months plus a 90 Day Extended Period of Indemnity. Business Income / Rent Loss coverage is required even if written on a stand-alone basis.</div>
Maximum Deductible	<div>• Not more than the deductible of property insurance policy.</div>
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Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
<b>Environmental / Pollution Legal Liability</b>	
What is Required	Pollution condition causes bodily injury or property damage to any party: construction workers, project or existing facilities, employees, general public or neighboring property owners. Owner has ultimate responsibility for clean-up, transportation and disposal of toxic substances.
When Does it Apply	Will be reviewed on a case-by-case basis to determine if coverage is required.
Amount of Coverage	Will vary depending on the property condition
Maximum Deductible	\$10,000
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insured.
<b>Architect Professional Liability</b>	
What is Required	Professional liability for Architects
When Does it Apply	When a design professional is involved in the project
Amount of Coverage	Will vary depending on the property
Maximum Deductible	\$10,000
<b>General Contractor/Other Policies:</b>	
If the general contractor is different from the Project Partnership, it is expected they carry their own respective insurance. Their insurance must comply with these requirements. In addition, they must carry contractor’s equipment. Please have proof of coverage provided accordingly.	
<b>III. POST CONSTRUCTION — PERMANENT INSURANCE</b>	
<b>Property Damage Insurance</b>	
What is Required	“Special Form” (“All Risk”) Property Insurance Policy
Amount of Coverage	<ul style="list-style-type: none"><li>100% Replacement Cost</li><li>Coverage must contain no coinsurance, or a coinsurance clause that is offset by an Agreed Amount provision.</li></ul>
Maximum Deductible	Physical Damage: <ul style="list-style-type: none"><li>\$10,000 up to \$50 million in replacement cost values</li><li>\$25,000 up to \$100 million in replacement cost values</li><li>\$100,000 over \$100 million in replacement cost values</li><li>Blanket Policy — up to 1% of the total replacement values as listed in the policy, but no more than \$250,000.</li></ul>
Loss Payable and Additional Insured	GS Bank USA and the Investor Limited Partner and their successors
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Clause and/or assigns, ATIMA named as loss payees and additional insureds

Windstorm, Flood and Terrorism exclusions also are acceptable, provided a separate policy or coverage is obtained for these exclusions, as specified in this document.

**Mechanical Breakdown / Boiler & Machinery**

What is Required	Comprehensive Form, Including Mechanical Breakdown
Amount of Coverage	<ul style="list-style-type: none"><li>• Total Building Value</li></ul>
Maximum Deductible	Physical Damage: <ul style="list-style-type: none"><li>• \$10,000 up to \$50 million in replacement cost values</li><li>• \$25,000 up to \$100 million in replacement cost values</li><li>• \$100,000 over \$100 million in replacement cost values</li><li>• Blanket Policy — up to 1% of the total replacement values as listed in the policy, but no more than \$250,000.</li></ul>
Loss Payable and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

**Business Income/Rent Loss Coverage**

What is Required	<div>1. Business Income / Rent Loss Coverage</div> <div>2. 90-day Extended Period of Indemnity</div> <div>Business Income / Rent Loss Coverage is required (as applicable in this document) for all property insurance coverage including windstorm, flood, earthquake and terrorism even if written on a stand-alone basis.</div>
When Does it Apply	All property types
Amount of Coverage	<ul style="list-style-type: none"><li>• Actual loss sustained or minimum 12 months’ gross income/rents.</li><li>• Extended Period of Indemnity - 90 days’ loss of income / rents</li></ul>
Maximum Deductible	Two weeks per occurrence

**Windstorm Coverage**

What is Required	If the Special Form policy excludes any type of wind-related event, a separate windstorm insurance policy must be obtained.
When Does it Apply	Required for all properties
Amount of Coverage	See Property Insurance and Business Income sections for amount of coverage required.
Maximum Deductible	5% of the total insured value, as listed in the policy
Loss Payable and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

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**Flood Insurance**

What is Required	Flood Insurance
When Does it Apply	<p>Flood insurance is required for Property improvements located in SFHA A or V</p> <p>GS Bank may require flood insurance for improvements located outside SFHA A or V. It will be evaluated on a case by case basis.</p>
Amount of Coverage	<p>100% of the replacement cost of improvements located in SFHA A or V.</p> <p>See “Business Income/Rent Loss” for coverage required for improvements located in SFHA A or V.</p> <p>If 100% of the full replacement cost is unavailable, then the maximum amount of insurance available under the National Flood Insurance Program (NFIP) must be obtained. An excess flood or Difference in Conditions (DIC) policy must provide for the difference, if any, between maximum limit provided by NFIP policies and the full replacement cost and the required Business Income / Rent Loss coverage as noted above.</p>
Maximum Deductible	<p>5% of the Total Insured Value as listed on the policy</p> <p>The acceptable deductible for a DIC is the limit of the NFIP policy (ies)</p>
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

Flood insurance must be in the form of the standard policy issued by members of the National Flood Insurance Program (NFIP). Other policies that meet the NFIP’s requirements—such as those issued by licensed property and casualty insurance companies that are authorized to participate in NFIP’s “Write Your Own” program—will be acceptable.

**Earthquake Insurance**

What is Required	Earthquake Insurance
When Does it Apply	If the property is in a high probability earthquake zone (i.e. Zone 3 or 4), then GS Bank will require a Probable Maximum Loss (“PML”) study to be conducted for each building. If the PML study reveals that the PML is less than 20% of the replacement cost earthquake insurance will not be required
Amount of Coverage	<p>If PML is greater than or equal to 20% of the replacement cost, then earthquake insurance must be maintained at an amount equal to the PML percentage of the replacement cost.</p> <p>See “Business Income/Rent Loss” for coverage required</p>
Maximum Deductible	5% of the total insured value as listed on the policy
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds

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**Ordinance and Law Coverage**

What is Required	Ordinance and Law Coverage
When Does it Apply	Properties that contain any type of non-conformance under current building, zoning, or land use laws or ordinances.
Amount of Coverage	<div>1. Coverage A - Loss of Undamaged Portion of the Building</div> <div>• Equal to 100% of the full replacement cost of the Property less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the Property</div> <div>2. Coverage B - Demolition Cost</div> <div>• Minimum 10% of the replacement cost.</div> <div>3. Coverage C - Increased Cost of Construction</div> <div>• Minimum 10% of the replacement cost.</div>

**Commercial General Liability Insurance**

What is Required	<div>Commercial General Liability Insurance for bodily injury, property damage and personal injury.</div> <div>Coverage must include dedicated project limits if part of a master program.</div>
Amount of Coverage	<div>1. \$1 million per occurrence/\$2 million minimum general aggregate limit plus</div> <div>2. Minimum Umbrella Liability Insurance (above the primary): \$25 million</div> <div>•</div> <div>The minimum required coverage limit may be satisfied by adding any combination of primary and umbrella/excess per occurrence and aggregate limits so that the sum of both equals the sum of the limits required in 1. plus 2. above. Umbrella coverage must sit above general liability, auto liability and employers liability.</div>
Maximum Deductibles	\$10,000 total combined deductibles and self insured retentions
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insureds

**Commercial Auto Liability Insurance**

What is Required	Commercial Auto Liability Insurance that covers owned, non-owned, hired and/or leased vehicles (whichever shall apply), including personal injury protection and uninsured motorist liability.
When Does it Apply	If the developer/sponsor uses cars, vans or trucks for business purposes, Commercial Auto Liability Insurance must cover those vehicles.

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Amount of Coverage	\$1 million per occurrence
Maximum Deductible	\$10,000
<b>Workers’ Compensation</b>	
What is Required	Statutory Workers’ Compensation and Employer’s Liability Insurance
When Does it Apply	Where employees of the Borrower are required to be covered by workers’ compensation laws of the state where the Property is located.
Amount of Coverage	Employer’s Liability with a limit of \$1 million  and  Statutory Limits for compensation
<b>Terrorism Insurance</b>	
What is Required	Terrorism Insurance (if available, TRIA is acceptable). Coverage is required for both the property and general liability policy.
When Does it Apply	For all properties
Amount of Coverage	<ul style="list-style-type: none"><li>• 100% of the replacement cost of the property improvements</li><li>• See “Business Income/Rent Loss” for coverage required</li></ul>
Maximum Deductible	<ul style="list-style-type: none"><li>• Not more than the deductible of property insurance policy.</li></ul>
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payees and additional insureds
<b>Environmental / Pollution Legal Liability</b>	
What is Required	Pollution condition causes bodily injury or property damage to any party: construction workers, project or existing facilities, employees, general public or neighboring property owners. Owner has ultimate responsibility for clean-up, transportation and disposal of toxic substances.
When Does it Apply	Will be reviewed on a case-by-case basis to determine if coverage is required.
Amount of Coverage	Will vary depending on the property condition
Maximum Deductible	\$10,000
Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as additional insureds
<b>Sinkhole/Mine Subsidence Insurance</b>	
What is Required	Required for properties in areas prone to these geological phenomena.
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When Does it Apply	Will be reviewed on a case-by-case basis to determine if coverage is required.
Amount of Coverage	See Property Insurance and Business Income/Rent Loss
Loss Payee and Additional Insured Clause	GS Bank USA and the Investor Limited Partner and their successors and/or assigns, ATIMA named as loss payee and additional insureds

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**LOAN AGREEMENT**

THIS LOAN AGREEMENT (this “Agreement”) is made as of this 11<sup>th</sup> day of September, 2012, by and between RBH-TRB WEST I MEZZ URBAN RENEWAL ENTITY, LLC, a New Jersey urban renewal limited liability company (“Borrower”), and GOLDMAN SACHS BANK USA, a New York banking corporation (together with any and all of its successors and assigns, “Lender”).

**RECITALS**

A. Background And Project. Certain real property located at (i) Block 57, Lot 31 (the “Building 1 Property”); (ii) Block 58, Lot 1 (*f.k.a.* Lots 1, 2, 4, 41, and portions of Lots 5, 35.02, and 43) (the “Building 6 Property”); and (iii) Block 95, Lot 1.02 (*f.k.a.* Lot 10 and portions of Lots 9 and 16) (the “Building 7 Property”, together with the Building 1 Property and the Building 6 Property, the “Workforce Housing A Property”) will be developed to provide approximately 123 residential rental housing units and approximately 27,730 square feet of rentable retail space (the “Workforce Housing A Project”).

B. Teachers Village Project A QALICB Urban Renewal Entity, LLC, a New Jersey urban renewal limited liability company (“Owner”) will purchase the Workforce Housing A Property and construct the Workforce Housing A Project.

C. Owner has applied to (i) Carver CDC — Subsidiary CDE 21, LLC, a Delaware limited liability company (together with its successors and assigns, “Carver Sub-CDE”), (ii) New Markets Capital Fund IX CDE, LLC, a Delaware limited liability company (together with its successors and assigns, “NCIF Sub-CDE”), (iii) GS Sub-CDE 2 LLC, a Delaware limited liability company (together with its successors and assigns, “GS Sub-CDE”), and (iv) BACDE NMTC Fund 4, LLC, a Delaware limited liability company (together with its successors and assigns, the “BA Sub-CDE”) for loans in the aggregate principal amount of THIRTY EIGHT MILLION THREE HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$38,375,000.00) (the “QLICI Loans”) to finance the construction of the Property. As used herein, “Sub-CDEs” means collectively Carver Sub-CDE, NCIF Sub-CDE, GS Sub-CDE and BA Sub-CDE.

D. Carver Sub-CDE. GS Halsey 2 NMTC Investment Fund LLC, a Delaware limited liability company (the “Investment Fund”) is the 99.99% investor member of Carver Sub-CDE (“Carver Sub-CDE Membership Interest”) in accordance with the terms and conditions of that certain Amended and Restated Operating Agreement, dated as of the date hereof, by and between the Investment Fund and Carver Community Development Corporation, a Delaware corporation, as the managing member (as amended, restated, supplemented or modified at any time and from time to time, “Carver Sub-CDE Operating Agreement”).

E. NCIF Sub-CDE. The Investment Fund is the 99.99% investor member of NCIF Sub-CDE (“NCIF Sub-CDE Membership Interest”) in accordance with the terms and conditions of that certain Amended and Restated Operating Agreement, dated as of the date hereof, by and between the Investment Fund and National Community Investment Fund, an Illinois charitable

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trust, as the 0.01% managing member (as amended, restated, supplemented or modified at any time and from time to time, “NCIF Sub-CDE Operating Agreement”).

F. GS Sub-CDE. The Investment Fund is the 100% investor member of GS Sub-CDE (“GS Sub-CDE Membership Interest”) in accordance with the terms and conditions of that certain Amended and Restated Operating Agreement, dated as of the date hereof, by and among the Investment Fund, GS New Markets Fund PNR, Inc., a Delaware corporation, as the withdrawing member, and GS New Markets Fund, LLC, a Delaware limited liability company, as the manager (as amended, restated, supplemented or modified at any time and from time to time, “GS Sub-CDE Operating Agreement”).

G. BA Sub-CDE. The Investment Fund is the 99.99% investor member of BA Sub-CDE (“BA Sub-CDE Membership Interest”; collectively, the Carver Sub-CDE Membership Interest, the NCIF Sub-CDE Membership Interest, the GS Sub-CDE Membership Interest and the BA Sub-CDE Membership Interest shall be referred to herein as the “Sub-CDE Membership Interests”) in accordance with the terms and conditions of that certain Amended and Restated Operating Agreement, dated as of the date hereof, by and between the Investment Fund, AFL-CIO Housing Investment Trust, a District of Columbia common law trust, as the withdrawing member, and Building America CDE Inc., a Delaware corporation, as the managing member (as amended, restated, supplemented or modified at any time and from time to time, “BA Sub-CDE Operating Agreement”; collectively, the Carver Sub-CDE Operating Agreement, the NCIF Sub-CDE Operating Agreement, the GS Sub-CDE Operating Agreement and the BA Sub-CDE Operating Agreement shall be referred to herein as the “Sub-CDE Operating Agreements”).

H. Leverage Loan. Borrower has agreed to make a loan to the Investment Fund in the principal amount up to \$30,207,000 (“Leverage Loan”) in accordance with the terms and conditions of that certain Leverage Loan Agreement, dated as of the date hereof, between the Investment Fund and Borrower (the “Leverage Loan Agreement”). All obligations, liabilities and indebtedness of the Investment Fund under and in connection with the Leverage Loan and any or all of the documents executed in connection with the Leverage Loan (collectively, “Leverage Loan Obligations”) are secured by a first priority lien on, assignment of, and security interest in, all of the Investment Fund’s rights, title and interest in, to and under the Sub-CDE Membership Interests in accordance with the terms and conditions of that certain Pledge and Security Agreement, dated as of the date hereof, from the Investment Fund to Borrower (as amended, restated, supplemented or otherwise modified at any time and from time to time, “Pledge Agreement”). The Leverage Loan Agreement, the promissory note made by the Investment Fund to Borrower evidencing the Leverage Loan, the Pledge Agreement and any and all other agreements, documents or instruments which at any time evidence, secure or guaranty payment and/or performance of all or any portion of the Leverage Loan Obligations, as the same may be amended, restated, supplemented or otherwise modified at any time and from time to time, are collectively referred to herein as the “Leverage Loan Documents”).

I. Loan to Borrower. Lender has agreed to make a loan to Borrower in the principal amount of up to \$15,700,000 (the “Loan”) in accordance with the terms and conditions of this Agreement. Along with other sources of capital, Borrower shall use the proceeds of the Loan to make the Leverage Loan. All obligations, liabilities and indebtedness of Borrower under and in connection with the Loan and any or all of the documents executed in connection with the Loan

(collectively, “Loan Obligations”) are secured by a collateral assignment of Leverage Loan Documents, pursuant to that certain Collateral Assignment of Leverage Loan Documents, dated as of the date hereof, from Borrower to Lender (as amended, restated, supplemented or otherwise modified at any time and from time to time, the “Assignment”). This Agreement, the Note (as hereinafter defined), the Assignment and any and all other agreements, documents or instruments which at any time evidence, secure or guaranty payment and/or performance of all or any portion of the Loan Obligations, as the same may be amended, restated, supplemented or otherwise modified at any time and from time to time, are collectively referred to herein as the “Loan Documents”).

J. QEIs. Pursuant to the Investment Fund’s operating agreement dated as of the date hereof (as amended, restated, supplemented or modified at any time and from time to time by written agreement by the members thereof, “Investment Fund Operating Agreement”) by and between GSB NMTC Investor LLC, a Delaware limited liability company (the “Investor”) and Carver Community Development Corporation, the Investor has been admitted as the sole member of the Investment Fund and in consideration of such admission has agreed to make capital contributions to the Investment Fund in an aggregate amount up to \$10,865,400 (“Investor’s Capital Contribution”), subject to, and in accordance with, the terms and conditions of the Investment Fund Operating Agreement. The Investment Fund, in accordance with its organizational purposes, has agreed to use the proceeds of the Leverage Loan together with the proceeds of the Investor’s Capital Contribution to make “qualified equity investments” (as such term is defined in Section 45D of the Internal Revenue Code of 1986, as amended and Treasury Regulations thereunder (collectively, “NMTC Law”)) in the Sub-CDEs in the aggregate amount of \$39,800,000 (each such “qualified equity investment” shall be referred to herein as a “QEI” and collectively, such “qualified equity investments” shall be referred to herein as the “QEIs”) in exchange for the Sub-CDE Membership Interests, which QEIs are intended to generate new markets tax credits (“New Markets Tax Credits”).

K. QLICIs. The Sub-CDEs intend to use substantially all of the proceeds of the QEIs to make loans (the “QLICI Loans”) to the Owner which constitute a “qualified low-income community investment” pursuant to NMTC Law. The Owner intends to use the proceeds of the QLICI Loan to acquire an interest in the Property and complete the construction of the improvements on the Property and to furnish equipment thereon as a “qualified active low-income community business” pursuant to NMTC Law.

L. Building 1 Property and Building 6 Property. The QLICI Loans will fund, in part, the financing and construction costs of the improvements located on the Building 1 Property and the Building 6 Property.

M. This Agreement. In order to secure the full payment and performance by Borrower of all of the Loan Obligations, Borrower is entering into this Agreement for the benefit of Lender, as required by Lender as a condition of Lender funding the Loan.

**AGREEMENT**

Now, therefore, in consideration of the premises, and in further consideration of the mutual covenants and agreements herein set forth and of the sum of Ten Dollars (\$10.00) paid by

each party to the other, receipt of which is hereby acknowledged, the parties covenant and agree as follows:

**1. Basic Definitions and Data.** Each reference in this Agreement or in any of the other Loan Documents to any of the following terms shall incorporate the definition or data specified below:

“Agreement” shall have the meaning set forth in the introductory paragraph.

“Assignment” shall have the meaning set forth in the Recitals.

“BA Sub-CDE” shall have the meaning set forth in the Recitals.

“BA Sub-CDE Membership Interest” shall have the meaning set forth in the Recitals.

“BA Sub-CDE Operating Agreement” shall have the meaning set forth in the Recitals.

“Borrower” shall have the meaning set forth in the introductory paragraph.

“Borrower’s Mailing Address”

RBH-TRB West I Mezz Urban Renewal Entity, LLC  
c/o RBH Group  
89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102  
Attention: Ron Beit

With copy to:

McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, New Jersey 07068  
Attention: Glenn F. Scotland, Esq.

“Borrower Operating Account” shall have the meaning set forth in Section 9(d).

“Business Day” means any day other than a Saturday, Sunday or legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in the State of New York.

“Carver Sub-CDE” shall have the meaning set forth in the Recitals.

“Carver Sub-CDE Membership Interest” shall have the meaning set forth in the Recitals.

“Carver Sub-CDE Operating Agreement” shall have the meaning set forth in the Recitals.

“Closing Conditions” shall have the meaning set forth in Section 9.

“Closing Date” means the date all Closing Conditions have been satisfied and/or waived to satisfaction of Lender, as determined by Lender in its sole and absolute discretion.

“Collateral” means the Leverage Loan Collateral (as such term is defined in the Assignment).

“Event of Default” shall have the meaning set forth in Section 13.

“Financial Projections” shall have the meaning set forth in Section 9(f).

“GS Sub-CDE” shall have the meaning set forth in the Recitals.

“GS Sub-CDE Membership Interest” shall have the meaning set forth in the Recitals.

“GS Sub-CDE Operating Agreement” shall have the meaning set forth in the Recitals.

“Investment Fund Operating Agreement” shall have the meaning set forth in the Recitals.

“Investor” shall have the meaning set forth in the Recitals.

“Investor’s Capital Contribution” shall have the meaning set forth in the Recitals.

“Lender’s Mailing Address”

Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282-2198  
Attn: Margaret Anadu

And to:

Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282-2198  
Attn: Andrea Gift

With copy to:

gs-uig-docs@gs.com

With copy to:

Jones Day  
222 East 41<sup>st</sup> Street  
New York, New York 10017  
Attn: Steven C. Koppel, Esq.



“Leverage Loan Documents” shall have the meaning set forth in the Recitals.

“Leverage Loan” shall have the meaning set forth in the Recitals.

“Leverage Loan Obligations” shall have the meaning set forth in the Recitals.

“Loan” shall have the meaning set forth in the Recitals.

“Loan Documents” shall have the meaning set forth in the Recitals.

“Loan Obligations” shall have the meaning set forth in the Recitals.

“Maturity Date” means September 11, 2019.

“NCIF Sub-CDE” shall have the meaning set forth in the Recitals.

“NCIF Sub-CDE Membership Interest” shall have the meaning set forth in the Recitals.

“NCIF Sub-CDE Operating Agreement” shall have the meaning set forth in the Recitals.

“Note” means that certain promissory note, dated as of the date of this Agreement, from Borrower, as maker, payable to the order of Lender, in the aggregate maximum principal amount of the Loan, as amended, restated, supplemented or modified at any time and from time to time.

“Owner” shall have the meaning set forth in the Recitals.

“Participant” shall have the meaning set forth in Section 23(c).

“QLICI Loan Agreement” means that certain Building Loan Agreement, dated as of the date of this Agreement, by and among Owner, GSB NMTC Investor LLC (as administrative agent), Carver Sub-CDE, NCIF Sub-CDE, GS Sub-CDE and BA Sub-CDE, as amended, restated supplemented or otherwise modified at any time and from time to time. Sub-CDEs have made and agreed to make the QLICI Loans to the Owner subject to, and in accordance with, the terms and conditions of the QLICI Loan Agreement.

“QLICI Loan Documents” means any and all instruments, agreements and documents which evidence, secure, guaranty or otherwise govern all or any portion of the QLICI Loans, including, without limitation, the QLICI Loan Agreement.

“Recapture Event” means a recapture of the New Markets Tax Credits pursuant to federal law applicable to New Markets Tax Credits and any loss, disallowance or inability to claim projected New Markets Tax Credits set forth in the Financial Projections.

“Sub-CDEs” shall have the meaning set forth in the Recitals.

“Sub-CDE Membership Interests” shall have the meaning set forth in the Recitals.

“Sub-CDE Operating Agreements” shall have the meaning set forth in the Recitals.

**2. Agreement to Lend and Borrow.** Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, the Loan, subject to the terms and conditions of the Note, this Agreement and the other Loan Documents. The Loan is not a revolving loan; Borrower shall not be entitled to re-borrow any amounts borrowed and repaid hereunder.

**3. Intentionally Deleted.**

**4. Disbursement of Loan.** Lender shall, subject to Borrower's compliance with all of the other terms, conditions and provisions of this Agreement (including Borrower's satisfaction of all applicable conditions set forth in Section 9 of this Agreement), make disbursement of the entire Loan in a single advance on the Closing Date.

**5. Repayment.** Borrower agrees to repay to Lender the Loan Obligations at the times, in the amounts and as and to the extent set forth in the Note.

**6. Use of Loan Proceeds.** The proceeds of the Loan shall be used by Borrower solely, along with other sources of capital, to make the Leverage Loan and for no other purpose unless otherwise expressly agreed in writing by Lender. Borrower shall use the proceeds of the Loan promptly and solely for the purposes expressly permitted by this Agreement.

**7. Collateral.**

(a) Payment and performance of the Loan Obligations are secured by a collateral assignment of the Collateral. The Collateral shall not be subject to any other liens, charges or encumbrances, whether inferior or superior, except as otherwise approved by Lender in writing, which approval may be granted, conditioned, or withheld in Lender's sole and absolute discretion.

(b) Borrower agrees that Lender shall have in respect thereof all of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the State of New Jersey, as well as those provided in this Agreement, the Assignment and the other Loan Documents. Notwithstanding the fact that the proceeds of a disposition of the Collateral constitute a part of the Collateral, Borrower may not dispose of the Collateral, or any part thereof. At its expense, Borrower will defend the title to the Collateral (or any part thereof), and will promptly execute, acknowledge and deliver any financing statement, other notice, continuation statement, security agreement, notice, assignment or other document as may be necessary or beneficial, in the opinion of Lender, to perfect, preserve, provide notice of, publicize, maintain, continue, protect and/or extend the assignment, lien or security interest granted to Lender under this Agreement, the Assignment and/or any of the other Loan Documents and the priority thereof. Borrower will immediately upon obtaining possession or control over any Collateral which may be perfected by possession or control deliver the same to Lender, with such endorsements, stock powers or other documents or instruments as Lender may from time to time require. Borrower will from time to time do whatever Lender may require by way of obtaining, executing, delivering, and/or filing financing statements, landlords' or mortgagees' waivers, notices of assignment and other notices and amendments and renewals thereof and Borrower will take any and all steps and observe such formalities as Lender may

require, in order to create and maintain a valid first lien upon, pledge of, or security interest in, the Collateral. Without implying any limitation on the foregoing, with respect to the Collateral that may be perfected by control, Borrower shall take such steps as Lender may require in order that Lender may have such control. Borrower agrees that a copy of a fully executed security agreement and/or financing statement shall be sufficient to satisfy for all purposes the requirements of a financing statement as set forth in Article 9 of the applicable Uniform Commercial Code. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact, with power of substitution, in the name of Lender or in the name of Borrower or otherwise, for the use and benefit of Lender, but at the cost and expense of Borrower and without notice to the Borrower, to execute and deliver any and all of the instruments and other documents and take any action which Lender may require pursuant the foregoing provisions of this Section. Further, to the extent permitted by applicable laws, Lender may file, without Borrower's signature, one or more financing statements or other notices disclosing Lender's liens and other security interests. Borrower acknowledges and agrees that Lender is authorized to file, and to amend, financing statements and do such other acts or things deemed necessary or desirable by Lender to grant to Lender a first priority, perfected security interest in all or any portion of the Collateral.

**8. Representations and Warranties.** Borrower hereby represents and warrants to Lender as follows:

(a) Each of the Closing Conditions has been satisfied or, if not satisfied, waived by Lender in writing.

(b) Borrower (a) is a limited liability company duly organized, existing and in good standing under the laws of the State of New Jersey and (b) has the power, authority and legal right to own its property and carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents to which Borrower is a party. The Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower and the execution and delivery of, and the carrying out of the transactions contemplated by, such Loan Documents, and the performance and observance of the terms and conditions thereof, have been duly authorized by all necessary organizational action by and on behalf of Borrower. The Loan Documents to which Borrower is a party constitute the valid and legally binding obligations of Borrower and are fully enforceable against Borrower in accordance with their respective terms, except to the extent that such enforceability may be limited by laws generally affecting the enforcement of creditors' rights and principles of equity.

(c) Intentionally Deleted.

(d) Intentionally Deleted.

(e) The execution and performance of the Loan Documents to which Borrower is a party and the consummation of the transactions contemplated herein or thereby will not conflict with, result in any breach of, or constitute a default under, the organizational documents of Borrower or any contract, agreement, document or other

instrument to which Borrower is a party or by which Borrower or any of its properties may be bound or affected, and such actions do not and will not violate or contravene any law to which Borrower is subject.

(f) Borrower owns all of the Collateral free and clear of any liens, encumbrances, and claims of any kind or nature whatsoever, except the lien granted to Lender pursuant to terms and conditions of the Assignment. Without limiting the generality of the foregoing, Borrower has full right and title to its interest in the Collateral and has the full power, legal right, and authority to pledge, convey, transfer, and assign such interest to Lender, subject to terms and conditions of this Agreement, the Assignment and the Loan Documents. None of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer, or other security interest of any character, or to any attachment, levy, garnishment, other judicial process, claim for set-off, counterclaim, deduction, or discount. Borrower shall not, without the prior written consent of Lender, which may be granted or denied in Lender's sole and absolute discretion, further convey, transfer, set over, or pledge to any party any of its interests in the Collateral.

(g) There are no claims or investigations by or before any court or governmental authority, pending, or to the best of Borrower's knowledge and belief, threatened against or affecting Borrower. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower.

(h) Borrower has furnished to Lender true, correct and complete copies of all of the fully executed Loan Documents, together with all exhibits and schedules thereto. There is no default or event which upon notice or lapse of time or both would constitute a default under any of the Loan Documents and all of the Loan Documents remain in full force and effect. None of the Loan Documents have been amended, restated, supplemented or otherwise modified, except as otherwise expressly disclosed to Lender in writing.

(i) Borrower has no liabilities, obligations or indebtedness, except for the Loan (and the other sources of capital it has received in order to make the Leverage Loan) and Borrower's obligations, liabilities and indebtedness under the Loan Documents to which Borrower is a party.

**9. Conditions of Lender's Obligations.** In addition to the conditions stated elsewhere in this Agreement and/or in any of the other Loan Documents, Lender shall not be obligated to consider or to make any advance under this Agreement unless on the date the advance is requested and on the date the advance is to be made all of the following conditions are satisfied, as determined by Lender in its sole and absolute discretion, except to the extent expressly waived by Lender (the "Closing Conditions"):

(a) Lender shall have received all required original Loan Documents fully executed by all applicable parties, true, correct and complete copies of all fully executed Loan Documents, together with all opinions (including satisfactory tax opinions),

waivers, certificates and such other documents or items as Lender may require, all in form and substance satisfactory to Lender and its counsel, in the exercise of their sole and absolute discretion.

(b) Lender shall have received evidence satisfactory to Lender in its sole and absolute discretion that Borrower has taken or caused to be taken all such actions, executed and delivered or caused to be executed and delivered all such agreements, documents, and instruments, and made or caused to be made all such filings and recordings that are necessary or, in Lender's discretion, appropriate to create in favor of Lender a valid assignment of the Collateral.

(c) Lender shall have received \$157,000, as a commitment fee to Lender, which fee shall be deemed earned in full upon payment of same by the Borrower to Lender.

(d) Intentionally Deleted.

(e) Execution and delivery of all Loan Documents by all parties, each in form and substance satisfactory to Lender in its sole and absolute discretion.

(f) Delivery to Lender of the final version of the financial projections prepared by The Reznick Group, P.C. dated on or about the date hereof ("Financial Projections"), together with the report of the compilation thereof by The Reznick Group, P.C.

(g) Truth, accuracy, and completeness of each of the representations and warranties made in this Agreement, in any of the other Loan Documents as though made or deemed to be made under the terms of this Agreement.

(h) No Event of Default or event which upon notice of lapse of time or both would constitute an Event of Default has occurred and is continuing.

(i) There shall have been no adverse change, as determined by Lender, in its sole and absolute discretion, as to the financial condition or business of Borrower, the Investment Fund or the Sub-CDEs.

(j) Delivery to Lender of any and all other documents, certificates or other information that Lender requests.

**10. Loan Funding Obligations.** Upon satisfaction by Borrower of the Closing Conditions (or waiver by Lender in its sole and absolute discretion), Lender shall disburse to Borrower the proceeds of the Loan in accordance with the terms of this Agreement. Upon disbursing the Loan to Borrower, Lender hereby acknowledges that each of the Closing Conditions has been satisfied or if not satisfied waived by Lender.

**11. Borrower's Covenants.** Borrower hereby covenants with Lender that as long as the Loan or any other amounts due under the Loan Documents remain unpaid:

(a) Borrower will maintain its valid existence, good standing and qualification to do business wherever required, and will comply with all applicable laws.

(b) Intentionally Deleted.

(c) Borrower shall comply with all applicable state and federal statutory and regulatory provisions applicable to such entity, including the filing of tax returns, reports, and other information.

(d) Borrower shall not exercise any voting rights, or give any approvals, consents, waivers or other ratifications in respect to the Collateral which would violate or contravene, or which would cause or otherwise authorize Borrower to violate or contravene, any provision of this Agreement or any of the other Loan Documents.

(e) Borrower shall use the proceeds of the Loan only to make the Leverage Loan and shall do so immediately upon receipt of the proceeds hereunder.

(f) Borrower will not (a) grant, suffer or permit any liens, security interests, pledges or other encumbrances, contractual or otherwise, against the Collateral, except liens in favor of Lender and (b) agree for the benefit of any person or entity (other than Lender) to grant a lien, security interest, pledge or other encumbrance on any of its Collateral.

(g) All capital contributions or other loans received by Borrower shall be used to make the Leverage Loan, unless otherwise approved by Lender.

**12. Reporting Requirements.** Borrower will keep and maintain full and accurate books and records administered in accordance with sound accounting principles, consistently applied. Borrower will keep and maintain its books and records, including recorded data of any kind and regardless of the medium of recording, at the Borrower's Mailing Address. Borrower shall permit Lender, or any person authorized by Lender, to inspect and examine such books and records (regardless of where maintained) and all supporting vouchers and data and to make copies and extracts therefrom at all times and as often as may be requested by Lender. Borrower shall deliver to Lender the following, if and to the extent in the possession of or available to Borrower, as soon as Borrower is able to obtain each such item within each specified time period or thereafter.

(a) Promptly and in any event within ten (10) calendar days after Borrower has actual knowledge thereof, a report or statement executed by a manager or authorized agent of Borrower describing the following, accompanied by copies of any relevant documentation:

(i) the occurrence of an Event of Default or any event which upon notice or lapse of time or both would constitute an Event of Default;

(ii) the occurrence of any act, event, condition, or omission which constitutes, or after notice or lapse of time or both would constitute, a Recapture Event;

(iii) the existence or change in status of any pending or threatened litigation or administrative proceedings or investigations against or affecting Borrower which, if determined adversely to such entity, would have an adverse effect on Borrower or the Collateral;

(iv) the receipt by Borrower of any material communication from the Internal Revenue Service or any other taxing authority with respect to the Loan, the Leverage Loan and/or the Collateral; and

(v) any and all other material information Borrower receives from time to time regarding the Collateral.

(b) Such other reports with respect to Borrower as Lender may, from time to time, request in writing, subject to applicable laws.

**13. Events of Default.** If one or more of the following events (each an “Event of Default”) shall occur, Borrower shall be considered in default under this Agreement, subject to any grace, notice, and/or cure period specified below:

(a) Borrower fails to make any payment of principal or interest on the Loan on or before the date such payment is due pursuant to the terms and conditions of the Note, whether at stated maturity or at a date fixed for any installment thereof, or in any notice of prepayment or otherwise and such failure continues unremedied for a period of ten (10) calendar days.

(b) The Assignment at any time after its execution and delivery for any reason ceases to be a valid assignment of the Collateral.

(c) Any Loan Document ceases to be a legal, valid, and binding agreement, enforceable against Borrower in accordance with its terms, or in any way is declared ineffective or inoperative or challenged or contested by Borrower.

(d) Borrower (i) suspends or discontinues its business; (ii) makes an assignment for the benefit of creditors or a composition with creditors; (iii) generally does not pay its debts as they mature; (iv) admits its inability to pay its debts as they mature; (v) files a petition in bankruptcy; (vi) becomes insolvent (howsoever such insolvency may be evidenced); (vii) is adjudicated insolvent or bankrupt; (viii) petitions or applies to any tribunal for the appointment of any receiver, custodian, liquidator, or trustee of or for it, any of the Collateral, or any of its other property or assets; (ix) commences any proceeding relating to it under any bankruptcy, reorganization, arrangement, readjustment of debt, receivership, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (x) has any such proceeding commenced against it and the same is not dismissed within one hundred eighty (180) calendar days after an order, judgment, or decree approving the petition in such proceeding is entered against it; (xi) by any act or failure to act indicates its consent to, approval of, or acquiescence in, any such proceeding or any appointment of any receiver, custodian, liquidator, or trustee of or for it or for any substantial part of its property or assets; (xii) fails to obtain dismissal of any such proceeding within one hundred eighty

(180) calendar days after any court of competent jurisdiction assumes jurisdiction thereof; (xiii) allows or suffers any receiver, trustee, or other officer or representative of a court, governmental office, or agency, under color of legal authority, to take and hold possession of any of the Collateral or its other property or assets without relinquishing possession within one hundred eighty (180) calendar days; (xiv) conceals, removes, or permits to be concealed or removed any of the Collateral or its other property or assets with intent to hinder, delay, or defraud its creditors or any of them; (xv) makes or suffers any transfer of any of the Collateral or its property or assets which may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; (xvi) makes any transfer of any of the Collateral or its other property or assets to or for the benefit of a creditor which constitutes a preferential transfer under any bankruptcy or similar law; or (xvii) allows or suffers, while insolvent, any creditor to obtain a lien on any of the Collateral or its other property or assets through legal proceedings or distraint.

(e) Borrower fails to observe or perform any other term, covenant, or agreement contained in any of the Loan Documents and (i) such failure continues unremedied for the applicable grace period, if any, specified herein or therein, or (ii) if no such grace period is otherwise specified, Borrower fails to promptly commence efforts to cure and proceed diligently to cure such failure after written notice thereof has been given to Borrower by Lender.

(f) Borrower fails to maintain its valid existence and good standing as a New Jersey limited liability company.

(g) Borrower fails to contribute the proceeds of the Leverage Loan to the Investment Fund.

**14. Lender's Remedies.** Upon an Event of Default, Lender shall have the right to exercise any or all of the remedies provided in this Agreement, pursuant to applicable law or at equity, including, without limitation, the following:

(a) Lender may receive cash on deposit in the Borrower Operating Account to the extent of accrued and unpaid interest on the Loan, or on maturity of the Note, to the extent of all obligations of Borrower under the Loan Documents, but only if and to the extent such receipt of cash would not cause a Recapture Event with respect to the Sub-CDEs which continues unremedied for the applicable cure period, if any, under NMTC Law.

(b) Lender may, on written notice to Borrower, declare all obligations of Borrower under the Note and other Loan Documents to be immediately due and payable, whereupon the same shall become due and payable without presentment, demand, protest, or notice of any kind. No delay in accelerating the maturity of any obligation as aforesaid or in taking any other action with respect to any Event of Default shall affect the rights of Lender later to take such action with respect thereto, and no waiver as to a prior occasion shall affect rights as to any other Event of Default.



(c) Lender may exercise any and all remedies provided in the Assignment for the enforcement or realization upon the interests provided in the Assignment.

(d) Lender may protect and enforce its rights by appropriate judicial proceedings, including in appropriate cases an award of specific performance or other equitable remedy in aid of the exercise of any power granted in or pursuant to this Agreement.

**15. Intentionally Deleted.**

**16. Waiver and Estoppel.**

(a) Borrower represents and acknowledges that it knowingly waives each and every one of the following rights, and agrees that it will be estopped from asserting any argument to the contrary: (a) any promptness in making any claim or demand hereunder; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Borrower or the failure to file or enforce a claim against Borrower's estate (in administration, bankruptcy or any other proceeding); (c) any defense based upon an election of remedies by Lender which destroys or otherwise impairs any or all of the Collateral; (d) the right of Borrower to proceed against Lender or any other person for reimbursement; and (e) all duty or obligation of Lender to perfect, protect, retain, or enforce any security for the payment of amounts payable by Borrower hereunder.

(b) TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY SEVERALLY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR COUNTERCLAIM BROUGHT BY ANY PARTY ARISING OUT OF, IN CONNECTION WITH, OR OTHERWISE RELATING TO THIS AGREEMENT.

**17. Borrower's Indemnity.** Borrower hereby indemnifies and holds harmless Lender from and agrees to reimburse Lender for all costs and expenses, including attorneys' fees, growing out of or resulting from the exercise by Lender of any right or remedy granted to it under this Agreement or any Loan Document. The foregoing indemnification shall survive repayment of the Note and the release or assignment of the security interests in the Collateral.

**18. Independent Obligations.** The obligations of Borrower are independent of the obligations of any other party which may be initially or otherwise responsible for performance or payment of the Loan Obligations. A separate action or actions for payment, damages, or performance may be brought and prosecuted by Lender against Borrower, individually, for the full amount of the Loan Obligations then due and payable, whether or not an action is brought against any other party, whether or not Lender is involved in any proceedings, and whether or not Lender or Borrower, or any other person is joined in any action or proceedings.

**19. No Borrower Offset Rights.** No lawful act of commission or omission of any kind or at any time upon the part of Borrower shall in any way affect or impair the rights of Lender to enforce any right, power, or benefit under this Agreement, and no set-off, recoupment, counterclaim, claim, reduction, or diminution of any obligation, or any defense of any kind or nature which Borrower has or may have against Lender or against any other party, shall be

available against Lender in any suit or action brought by Lender to enforce any right, power, or benefit under this Agreement.

**20. Dispute Expenses.** Borrower and Lender each agree to pay to the opposing prevailing party, upon demand, reasonable attorneys' fees and all costs and other expenses which the prevailing party expends or incurs in any dispute or litigation over any matters described in this Agreement, including but not limited to the collection, or defense against collection, of any amounts claimed to be payable by Borrower hereunder or in the enforcement of this Agreement against Borrower, whether or not suit is filed.

**21. Recourse Obligation.** None of Borrower's members, managers or their assigns shall have any personal liability for repayment of the Loan, any interest thereon, or any other charges in connection therewith.

**22. Termination.** This Agreement and the Loan Documents shall terminate and be of no further force or effect, and the Collateral shall be released from any lien and security interest under the Loan Documents, upon the earlier to occur of Borrower's performance in full of the Loan Obligations or the mutual written consent of Borrower and Lender. Borrower and Lender shall cooperate in the preparation and filing of all documents required to terminate any and all UCC-1 financing statements that have been filed with respect to the security interests under the Loan Documents.

**23. Miscellaneous.**

(a) Notices. All notices, requests, demands, consents, waivers and other communications given under any of the provisions of this Agreement shall be in writing and shall be delivered or mailed, and if mailed, shall be deemed given when deposited in the mail first-class, postage prepaid, or registered or certified mail, return receipt requested, sent to the parties' respective addresses set forth in Section 1 hereof.

(b) No Waiver; No Third-Party Beneficiaries. No delay or failure on the part of Lender in exercising any rights hereunder, and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights hereunder. Nothing in this Agreement shall be construed as giving any person, firm, corporation or other entity other than the parties hereto any right, remedy or claim under or in respect of this Agreement or any provision hereof.

(c) Successors and Assigns. This Agreement shall bind, and the benefits and burdens shall inure to, the parties hereto and their respective successors and assigns. Borrower shall not transfer or assign any of its rights or obligations hereunder without the prior written consent of Lender which may be withheld for any reason or no reason. Subject to the terms herein, Lender may assign, transfer, sell, or otherwise convey in whole or in part, at any time, in the form of participations or otherwise, its right, duties, title, and interest under, in, and to its Loan and the applicable Loan Documents. Lender shall have the unrestricted right at any time and from time to time, and without the consent of or notice to Borrower or any guarantor, to grant to one or more banks or other financial institutions (each, a "Participant") participating interests in Lender's obligation

to lend hereunder and/or any or all of the loans held by Lender hereunder. In the event of any such grant by Lender of a participating interest to a Participant, whether or not upon notice to Borrower, Lender shall remain responsible for the performance of its obligations hereunder and Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations hereunder. Lender may furnish any information concerning Borrower or any guarantor to prospective assignees and Participants, and shall provide notice to Borrower of the furnishing of such information; provided, however, that Borrower shall have not have to consent to the furnishing of such information and the failure to notify the Borrower shall have no consequences on the furnishing of such information.

(d) Entire Agreement; Amendments. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto with respect to the transactions contemplated hereby. No amendment, modification, or waiver of any provision hereof shall be valid unless in writing signed by the party to be bound.

(e) Survival of Representations, Warranties and Agreements. All representations, warranties, and agreements herein shall survive until the expiration of the term of this Agreement, except to the extent that a representation, warranty, or agreement expressly provides otherwise.

(f) Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of conflicts of law. The Parties further agree that upon an Event of Default, this Agreement may be enforced in any court of competent jurisdiction in the State of New Jersey, and they do hereby submit to the jurisdiction of any and all such courts regardless of their residence or where this Agreement may be executed. If any provision of this Agreement shall for any reason be held to be illegal, invalid, or unenforceable, no other provision of this Agreement shall be affected thereby, but this Agreement shall be construed as if such illegal, invalid, or unenforceable provision had never been contained herein.

(g) Consents and Approvals. Whenever Lender has any rights under this Agreement or any other Loan Document to consent to or approve any request, action, plan, or other matter, such consent or approval rights (i) have been reserved for the sole benefit of Lender, (ii) shall be given, withheld, or conditioned by Lender solely to protect its interests, and (iii) may not be relied upon by Borrower or any third party for any purpose whatsoever.

(h) Treatment for Tax Purposes. Each of the Lender and the Borrower agrees to treat the Loan as debt for federal income tax purposes.

(i) Counterparts. This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**[Signature Follows on Next Page]**

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

**Borrower**

RBH-TRB WEST I MEZZ URBAN RENEWAL ENTITY, LLC,  
a New Jersey urban renewal limited liability company

By: \_\_\_\_\_  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

**Lender**

GOLDMAN SACHS BANK USA,  
a New York State chartered bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

\_\_\_\_\_



## EXHIBIT 12.1

## BRT AND SUBSIDIARIES

## SCHEDULE OF COMPUTATION OF RATIO AND EARNINGS TO FIXED CHARGES

(Dollars in thousands, except ratios)

	Years Ended December 31,				
	2012	2011	2010	2009	2008
Earnings:					
Income before discontinued operations . . . . .	\$ 758	\$3,578	\$ (9,927)	\$(19,236)	\$ 7,734
Interest expense . . . . .	4,729	2,112	1,773	4,435	6,644
Total earnings . . . . .	<u>\$5,487</u>	<u>\$5,690</u>	<u>\$ (8,154)</u>	<u>\$(14,801)</u>	<u>\$14,378</u>
Fixed charges:					
Interest expense . . . . .	\$4,729	\$2,112	\$ 1,773	\$ 4,435	\$ 6,644
Capitalized interest . . . . .	1,655	775	—	—	—
Total fixed charges . . . . .	<u>\$6,384</u>	<u>\$2,887</u>	<u>\$ 1,773</u>	<u>\$ 4,435</u>	<u>\$ 6,644</u>
Ratio of earnings to fixed charges . . . . .	<u>0.86x</u>	<u>1.97x</u>	<u>— 4.60x</u>	<u>— 3.34x</u>	<u>2.16x</u>



**EXHIBIT 21.1****SUBSIDIARIES**

<u>COMPANY</u>	<u>STATE OF ORGANIZATION</u>
TRB No. 1 Corp. ....	New York
TRB 69th Street Corp. ....	New York
TRB Lawrence Realty Corp. ....	New York
TRB Yonkers Corp. ....	New York
RIPCO-TRB Venture I LLC ....	New York
TRB Apopka LLC ....	Florida
TRB West Palm Beach II LLC ....	Florida
TRB Daytona LLC ....	Florida
TRB Newark Assemblage LLC ....	New Jersey
RBH-TRB Newark Assemblage LLC ....	Delaware
TRB Newark TRS LLC ....	New Jersey
BRT RLOC LLC ....	New York
TRB Ivy Ridge LLC ....	Delaware
TRB Lenox LLC ....	New York
TRB Union Palm LLC ....	Delaware
TRB Lawrenceville LLC ....	Delaware
TRB Melbourne LLC ....	Delaware
TRB Schilling LLC ....	Delaware
TRB Bronx LLC ....	Delaware
TRB Regal LLC ....	Delaware





**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Form S-3 (No. 333-128458) and the related Prospectuses regarding BRT Realty Trust's Shelf Registration Statement,
- (2) Form S-3 (No. 333-118915) regarding BRT Realty Trust's Dividend Reinvestment and Share Purchase Plan,
- (3) Form S-3 (No. 333-160569) and the related Prospectuses regarding BRT Realty Trust's Shelf Registration Statement,
- (4) Form S-8 (No. 333-101681) regarding BRT Realty Trust's 1996 Stock Option Plan,
- (5) Form S-8 (No. 333-104461) regarding BRT Realty Trust's 2003 Incentive Plan,
- (6) Form S-8 (No. 333-159903) regarding BRT Realty Trust's 2009 Incentive Plan, and
- (7) Form S-8 (No. 333-182044) regarding BRT Realty Trust's 2012 Incentive Plan;

of our reports dated December 13, 2012, with respect to the consolidated financial statements and schedules of BRT Realty Trust and Subsidiaries and the effectiveness of internal control over financial reporting of BRT Realty Trust and Subsidiaries, included in this Annual Report (Form 10-K) for the year ended September 30, 2012.

/s/ BDO USA LLP

New York, New York  
December 13, 2012



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Form S-3 (No. 333-128458) and the related Prospectuses regarding BRT Realty Trust's Shelf Registration Statement,
- (2) Form S-3 (No. 333-118915) regarding BRT Realty Trust's Dividend Reinvestment and Share Purchase Plan,
- (3) Form S-3 (No. 333-160569) and the related Prospectuses regarding BRT Realty Trust's Shelf Registration Statement,
- (4) Form S-8 (No. 333-101681) regarding BRT Realty Trust's 1996 Stock Option Plan,
- (5) Form S-8 (No. 333-104461) regarding BRT Realty Trust's 2003 Incentive Plan,
- (6) Form S-8 (No. 333-159903) regarding BRT Realty Trust's 2009 Incentive Plan, and
- (7) Form S-8 (No.333-182044) regarding BRT Realty Trust's 2012 Incentive Plan;

of our report dated December 13, 2010, the consolidated financial statement of BRT Realty Trust and Subsidiaries included in this Annual Report (Form 10-K) for the year ended September 30, 2012.

/s/ Ernst & Young LLP

New York, New York  
December 13, 2012



## CERTIFICATION

I, Jeffrey A. Gould, certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended September 30, 2012 of BRT 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 officers 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 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 officers and I have disclosed, based on our most recent evaluation of internal controls 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.

Date: December 13, 2012

/s/ JEFFREY A. GOULD

Jeffrey A. Gould  
*President and Chief Executive Officer*



## CERTIFICATION

I, David W. Kalish, certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended September 30, 2012 of BRT 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 officers 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 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 officers and I have disclosed, based on our most recent evaluation of internal controls 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.

Date: December 13, 2012

/s/ DAVID W. KALISH

David W. Kalish

Senior Vice President—Finance





## CERTIFICATION

I, George Zweier, certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended September 30, 2012 of BRT 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 officers 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 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 officers and I have disclosed, based on our most recent evaluation of internal controls 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.

Date: December 13, 2012

/s/ GEORGE ZWEIER

George Zweier  
*Vice President and Chief Accounting Officer*



**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**

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

The undersigned, Jeffrey A. Gould, does hereby certify to his knowledge, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based upon a review of the Annual Report on Form 10-K for the year ended September 30, 2012 of the registrant:

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

Date: December 13, 2012

/s/ JEFFREY A. GOULD

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Jeffrey A. Gould  
*President and Chief Executive Officer*



**CERTIFICATION OF SENIOR VICE PRESIDENT—FINANCE**

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

The undersigned, David W. Kalish, does hereby certify to his knowledge, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based upon a review of the Annual Report on Form 10-K for the year ended September 30, 2012 of the registrant:

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

Date: December 13, 2012

/s/ DAVID W. KALISH

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David W. Kalish  
*Senior Vice President—Finance*



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

The undersigned, George Zweier, does hereby certify to his knowledge, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based upon a review of the Annual Report on Form 10-K for the year ended September 30, 2012 of the registrant:

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

Date: December 13, 2012

/s/ GEORGE ZWEIER

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George Zweier  
*Vice President and Chief Accounting Officer*