

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

**FORM 10-Q**

**Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended **March 31, 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, NY**  
(Address of principal executive offices)

**11021**  
(Zip Code)

**516-466-3100**  
(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting company)

Smaller reporting company

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

Indicate the number of shares outstanding of each of the issuer's classes of stock, as of the latest practicable date.

14,060,612 Shares of Beneficial Interest,  
\$3 par value, outstanding on May 9, 2012

---

---

[Table of Contents](#)

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Table of Contents**

<a href="#">Part I - Financial Information</a>		<u>Page No.</u>
<a href="#">Item 1.</a>	<a href="#">Financial Statements</a>	
	<a href="#">Consolidated Balance Sheets — March 31, 2012 and September 30, 2011</a>	1
	<a href="#">Consolidated Statements of Operations — Three and six months ended March 31, 2012 and 2011</a>	2
	<a href="#">Consolidated Statements of Comprehensive (Loss) Income — Three and six months ended March 31, 2012 and 2011</a>	3
	<a href="#">Consolidated Statements of Equity — Six months ended March 31, 2012</a>	4
	<a href="#">Consolidated Statements of Cash Flows — Six months ended March 31, 2012 and 2011</a>	5
	<a href="#">Notes to Consolidated Financial Statements</a>	7
<a href="#">Item 2.</a>	<a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	22
<a href="#">Item 3.</a>	<a href="#">Quantitative and Qualitative Disclosures About Market Risks</a>	30
<a href="#">Item 4.</a>	<a href="#">Controls and Procedures</a>	31
<a href="#">Part II — Other Information</a>		
<a href="#">Item 1A.</a>	<a href="#">Risk Factors</a>	32
<a href="#">Item 2.</a>	<a href="#">Unregistered sales of equity securities and use of proceeds</a>	34
<a href="#">Item 5.</a>	<a href="#">Other information</a>	34
<a href="#">Item 6.</a>	<a href="#">Exhibits</a>	37

---

**Part 1 - FINANCIAL INFORMATION**  
**Item 1. Financial Statements**

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**(Dollars in thousands, except share data)**

	March 31, 2012 (Unaudited)	September 30, 2011
<b>ASSETS</b>		
Real estate loans	\$ 73,503	\$ 67,266
Deferred fee income	(1,302)	(576)
	72,201	66,690
Real estate loan held for sale	—	8,446
Real estate properties net of accumulated depreciation of \$2,867 and \$2,511	131,997	59,277
Investment in unconsolidated ventures	5,503	4,247
Cash and cash equivalents	37,094	44,025
Restricted cash - construction holdbacks	33,064	—
Available-for-sale securities, at fair value	2,509	2,766
Deferred costs	8,501	1,692
Other assets	8,475	3,869
Total Assets	<u>\$ 299,344</u>	<u>\$ 191,012</u>
<b>LIABILITIES AND EQUITY</b>		
Liabilities:		
Junior subordinated notes	\$ 37,400	\$ 37,400
Mortgages payable	100,306	14,417
Accounts payable and accrued liabilities	1,045	948
Deposits payable	2,614	2,518
Deferred income	13,730	—
Total Liabilities	155,095	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, 13,924 and 14,994 issued	41,772	44,981
Additional paid-in capital	167,044	171,889
Accumulated other comprehensive income	548	278
Accumulated deficit	(74,169)	(77,015)
Cost of 451 and 1,422 treasury shares of beneficial interest	(3,505)	(11,070)
Total BRT Realty Trust shareholders' equity	131,690	129,063
Non-controlling interests	12,559	6,666
Total Equity	144,249	135,729
Total Liabilities and Equity	<u>\$ 299,344</u>	<u>\$ 191,012</u>

See accompanying notes to consolidated financial statements.

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

	Three Months Ended March 31,		Six Months Ended March 31,	
	2012	2011	2012	2011
<b>Revenues:</b>				
Interest on real estate loans	\$ 1,704	\$ 1,746	\$ 3,614	\$ 2,902
Loan fee income	498	275	840	518
Rental revenue from real estate properties	1,019	959	1,787	1,813
Recovery of previously provided allowances	3	2,566	10	2,566
Other income	463	151	590	350
<b>Total revenues</b>	<b>3,687</b>	<b>5,697</b>	<b>6,841</b>	<b>8,149</b>
<b>Expenses:</b>				
Interest on borrowed funds	875	542	1,342	1,199
Advisor's fees, related party	273	241	444	462
Foreclosure related professional fees	—	167	—	357
Property acquisition costs	1,793	—	1,793	—
General and administrative—including \$232 and \$234 to related party for the three months ended and \$481 and \$451 for the six months ended	2,006	1,629	3,680	3,060
Operating expenses relating to real estate properties	959	850	1,745	1,766
Amortization and depreciation	180	184	364	372
<b>Total expenses</b>	<b>6,086</b>	<b>3,613</b>	<b>9,368</b>	<b>7,216</b>
<b>Total revenues less total expenses</b>	<b>(2,399)</b>	<b>2,084</b>	<b>(2,527)</b>	<b>933</b>
Equity in (loss) earnings of unconsolidated ventures	(40)	86	(115)	135
Gain on sale of available-for-sale securities	342	593	324	1,014
Gain on sale of loan	—	—	3,192	—
Loss on extinguishment of debt	—	(2,138)	—	(2,138)
<b>(Loss) income from continuing operations</b>	<b>(2,097)</b>	<b>625</b>	<b>874</b>	<b>(56)</b>
<b>Discontinued operations:</b>				
Gain on sale of real estate assets	—	697	490	697
<b>Net (loss) income</b>	<b>(2,097)</b>	<b>1,322</b>	<b>1,364</b>	<b>641</b>
Plus: net loss attributable to non-controlling interests	1,069	525	1,482	698
<b>Net (loss) income attributable to common shareholders</b>	<b>\$ (1,028)</b>	<b>\$ 1,847</b>	<b>\$ 2,846</b>	<b>\$ 1,339</b>
<b>Basic and diluted per share amounts attributable to common shareholders:</b>				
(Loss) income from continuing operations	\$ (.07)	\$ .08	\$ .17	\$ .05
Discontinued operations	—	.05	.03	.05
<b>Basic and diluted (loss) income per share</b>	<b>\$ (.07)</b>	<b>\$ .13</b>	<b>\$ .20</b>	<b>\$ .10</b>
<b>Amounts attributable to BRT Realty Trust:</b>				
(Loss) income from continuing operations	\$ (1,028)	\$ 1,150	\$ 2,356	\$ 642
Discontinued operations	—	697	490	697
<b>Net (loss) income</b>	<b>\$ (1,028)</b>	<b>\$ 1,847</b>	<b>\$ 2,846</b>	<b>\$ 1,339</b>
<b>Weighted average number of common shares outstanding:</b>				
Basic and diluted	14,050,088	14,047,924	14,015,940	14,012,404

Continued on Next Page

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

	Three Months Ended March 31,		Six Months Ended March 31,	
	2012	2011	2012	2011
Net (loss) income	\$ (2,097)	\$ 1,322	\$ 1,364	\$ 641
Other comprehensive income:				
Net unrealized (loss) gain on available-for-sale securities	(79)	(354)	297	(405)
Unrealized loss on derivative instruments	(27)	—	(27)	—
Other comprehensive (loss) income	(106)	(354)	270	(405)
Comprehensive (loss) income	(2,203)	968	1,634	236
Comprehensive loss attributable to non-controlling interests	1,069	525	1,482	698
Comprehensive (loss) income attributable to common shareholders	<u>\$ (1,134)</u>	<u>\$ 1,493</u>	<u>\$ 3,116</u>	<u>\$ 934</u>

See accompanying notes to consolidated financial statements.

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

	<u>Shares of Beneficial Interest</u>	<u>Additional Paid-In Capital</u>	<u>Accumulated Other Comprehensive Income</u>	<u>(Accumulated Deficit)</u>	<u>Treasury Shares</u>	<u>Non- Controlling Interest</u>	<u>Total</u>
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	—	391	—	—	—	—	391
Contributions from non-controlling interests	—	—	—	—	—	7,375	7,375
Retirement of treasury shares (930,198 shares)	(2,790)	(4,456)	—	—	7,246	—	—
Shares repurchased 139,507 shares	(419)	(461)	—	—	—	—	(880)
Net income (loss)	—	—	—	2,846	—	(1,482)	1,364
Other comprehensive income	—	—	270	—	—	—	270
Comprehensive income	—	—	—	—	—	—	1,634
Balances, March 31, 2012	<u>\$ 41,772</u>	<u>\$ 167,044</u>	<u>\$ 548</u>	<u>\$ (74,169)</u>	<u>\$ (3,505)</u>	<u>\$ 12,559</u>	<u>\$ 144,249</u>

See accompanying notes to consolidated financial statements.

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

	Six Months Ended March 31,	
	2012	2011
<b>Cash flows from operating activities:</b>		
Net income	\$ 1,364	\$ 641
Adjustments to reconcile net income to net cash (used in) provided by operating activities:		
Recovery of previously provided allowances	(10)	(2,566)
Amortization and depreciation	611	468
Amortization of deferred fee income	(817)	(495)
Accretion of junior subordinated notes principal	—	277
Amortization of securities discount	—	(28)
Amortization of restricted stock	391	426
Gain on sale of real estate assets from discontinued operations	(490)	(697)
Gain on sale of available-for-sale securities	(324)	(1,014)
Loss on extinguishment of debt	—	2,138
Gain on sale of loan	(3,192)	—
Equity in loss (earnings) of unconsolidated joint ventures	115	(135)
Distribution of earnings of unconsolidated joint ventures	355	95
Decrease (increase) in straight line rent	16	(49)
Increases and decreases from changes in other assets and liabilities:		
Decrease (increase) in interest and dividends receivable	254	(113)
Decrease in prepaid expenses	120	1,058
Increase in prepaid interest	165	—
(Decrease) increase in accounts payable and accrued liabilities	(2,058)	2,183
Decrease in deferred costs	(33)	—
Increase in security deposits and other receivable	(2,940)	(496)
Other	(8)	37
Net cash (used in) provided by operating activities	<u>(6,481)</u>	<u>1,730</u>
<b>Cash flows from investing activities:</b>		
Collections from real estate loans	71,499	21,165
Additions to real estate loans	(66,099)	(88,858)
Proceeds from the sale of loans and loan participations	—	26,500
Loan loss recoveries	10	9
Additions to real estate	(68,650)	—
Net costs capitalized to real estate owned	(4,365)	(1,294)
Net change in restricted cash - construction holdbacks	(33,064)	—
Collection of loan fees	1,544	1,583
Proceeds from sale of real estate owned	516	3,365
Proceeds from sale of available-for-sale securities	2,513	6,288
Purchase of available-for-sale securities	(1,634)	(55)
Distributions of capital of unconsolidated joint ventures	3,035	—
Contributions to unconsolidated joint ventures	(4,760)	—
Purchase of interest from minority partner	—	(713)
Net cash used in investing activities	<u>(99,455)</u>	<u>(32,010)</u>

Continued on next page

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

	Six Months Ended March 31,	
	2012	2011
<b>Cash flows from financing activities:</b>		
Repayment of junior subordinated notes	—	(5,000)
Increase in mortgages payable	88,992	136
Mortgage principal payments	(3,103)	(135)
Increase in deferred borrowing costs	(7,110)	(623)
Capital contributions from non-controlling interests	7,375	349
Capital distribution to non-controlling interests		(66)
Proceeds from sale of New Markets Tax Credits	13,730	
Repurchase of shares of beneficial interest	(879)	(1,178)
Net cash provided by (used in) financing activities	<u>99,005</u>	<u>(6,517)</u>
Net increase (decrease) in cash and cash equivalents	(6,931)	(36,797)
Cash and cash equivalents at beginning of period	44,025	58,497
Cash and cash equivalents at end of period	<u>\$ 37,094</u>	<u>\$ 21,700</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the period for interest	<u>\$ 1,383</u>	<u>\$ 335</u>
Taxes paid	<u>\$ 168</u>	<u>\$ —</u>

See accompanying notes to consolidated financial statements.



**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements**  
**March 31, 2012**

**Note 1 — Organization and Background**

BRT Realty Trust (“BRT” or the “Trust”) is a business trust organized in Massachusetts. The Trust originates and holds for investment senior mortgage loans secured by commercial and multi-family real estate property in the United States. The loans generally have relatively high yields and are short-term or bridge loans with durations 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 fixed rate loans are originated as circumstances dictate. The Trust generally receives an origination fee for the loans it originates.

Beginning in the quarter ended March 31, 2012, BRT expanded its business activities by acquiring for investment, with venture partners, multi-family residential properties. The Trust contributed 80% of the required equity in such transactions.

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

**Note 2 - Basis of Preparation**

The accompanying interim unaudited consolidated financial statements as of March 31, 2012 and for the three and six months ended March 31, 2012 and 2011 reflect all normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of the results for such interim periods. The results of operations for the three and six months ended March 31, 2012 are not necessarily indicative of the results for the full year. The balance sheet as of September 30, 2011 has been derived from the audited financial statements at that date but does not include all the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements.

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 it is the primary beneficiary. Material intercompany items and transactions have been eliminated.

Restricted cash — construction holdbacks represent a portion of the net proceeds received from mortgage financing completed in February 2012. These funds are to be used for construction at the Teachers Village project of our Newark Joint Venture.

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

RBH-TRB Newark Holdings LLC was determined to be a Variable Interest Entity (“VIE”) because the total equity investment at risk is not sufficient to permit this entity to finance its activities without additional subordinated financial support by its equity holders. The Trust was determined to be the primary beneficiary as it has a controlling financial interest in the VIE as it has the power to direct the activities of the VIE and has the obligation to absorb a majority of the VIE’s expected losses.

**Note 2 - Basis of Preparation (Continued)**

The Trust's two consolidated joint ventures that own multi-family residential properties in Florida were determined to be VIEs because the holders of equity at risk, as a group, lack the power to direct the activities that most significantly impact the economic performance of the ventures. The Trust was determined to be the primary beneficiary as it has a controlling financial interest in the VIEs as it has the power to direct the activities of the VIEs that most significantly impact the ventures performance and has the obligation to absorb a majority of the VIEs' expected losses. For these reasons, the Trust has consolidated the operations and assets of these VIEs in the Trust's consolidated financial statements.

These statements should be read in conjunction with the consolidated financial statements and related notes which are included in BRT's Annual Report on Form 10-K for the year ended September 30, 2011.

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.

**Note 3 - Equity**

**Common Share Dividend Distribution**

During the quarter ended March 31, 2012, the Trust did not declare a dividend to its shareholders.

**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. A maximum of 600,000 shares may be issued pursuant to such plan. An aggregate of 587,430 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. 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 three months ended March 31, 2012 and 2011 the Trust recorded \$179,000 and \$218,000 of compensation expense, respectively, and for the six months ended March 31, 2012 and 2011, recorded \$391,000 and \$426,000 of compensation expense, respectively. At March 31, 2012, \$2,287,000 has been deferred as unearned compensation and will be charged to expense over the remaining weighted average vesting period of approximately 3.06 years.

**Per Share Data**

Basic earnings (loss) per share attributable to holders of shares of beneficial interest was determined by dividing net income (loss) for the period by the weighted average number of common shares outstanding during each period.

**Note 3 — Equity (Continued)**

Diluted earnings (loss) per share attributable to holders of shares of beneficial interest reflects the potential dilution that could occur if securities or other contracts to issue common shares were exercised or converted into common shares or resulted in the issuance of common shares that shared in the earnings of the Trust.

Basic and diluted shares outstanding for the three months ended March 31, 2012 and 2011 were 14,050,088 and 14,047,924, respectively and for the six months ended March 31, 2012 and 2011 were 14,015,940 and 14,012,404, respectively.

**Note 4 - Real Estate Loans**

Information relating to real estate loans, all of which are earning interest, is summarized below (dollars in thousands):

Property Type	March 31, 2012		September 30, 2011	
	Real Estate Loans, Net	Percent	Real Estate Loans, Net	Percent
Multi-family residential	\$ 57,469	78%	\$ 26,300	39%
Industrial	11,784	16	11,874	18
Office	2,250	3	24,975	37
Retail	2,000	3	4,117	6
	73,503	100%	67,266	100%
Deferred fee income	(1,302)		(576)	
Real estate loans, net	\$ 72,201		\$ 66,690	

The Trust recognized cash basis interest of \$153,000 and \$303,000 on non-earning loans in the three and six months ended March 31, 2011, respectively.

At March 31, 2012, one borrower had a loan outstanding in excess of 5% of total assets. Information regarding this loan is set forth in the table below (dollars in thousands):

Property Type	Gross Loan Balance	# of Loans	% of Gross Loans	% of Assets	State	Status
Multi-Family	\$ 27,439	1	37%	9.2%	GA	Performing

Substantially all of the Trust's portfolio consists of senior mortgage loans secured by real properties, 37% of which are located in Georgia, 27% in Florida, 16% in Maryland, 17% in New York and 3% in Connecticut.

**Note 5 - Real Estate Loan Held For Sale**

At September 30, 2011, the Trust had one loan 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. 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

**Note 5 - Real Estate Loan Held For Sale (Continued)**

proceeds of approximately \$23.5 million. The Trust recognized a gain of \$3.2 million on the sale, representing its 50% interest in the loan. The Trust provided \$15 million of financing for the purchase which was paid off on December 5, 2011.

**Note 6 - Allowance for Possible Loan Losses**

At March 31, 2012 and September 30, 2011 the Trust did not have an allowance for possible loan losses.

**Note 7 - Real Estate Properties**

A summary of real estate properties owned is set forth below (dollars in thousands):

	September 30, 2011 Balance	Additions	Costs Capitalized	Depreciation and Amortization	March 31, 2012 Balance
Shopping centers/Retail	\$ 2,853	—	—	\$ (52)	\$ 2,801
Condominium and coop units	315	—	\$ 2	(26)	291
Commercial (a)	48,137	—	4,449	(303)	52,283
Multi-family (b)	—	\$ 68,650	—	—	68,650
Land	7,972	—	—	—	7,972
Total real estate properties	<u>\$ 59,277</u>	<u>\$ 68,650</u>	<u>\$ 4,451</u>	<u>\$ (381)</u>	<u>\$ 131,997</u>

(a) Represents the real estate assets of RBH-TRB Newark Holdings LLC, a consolidated VIE which owns 26 operating and development properties in Newark, NJ. These properties contain a mix of office and retail space, totaling approximately 637,000 square feet. These assets are subject to blanket mortgages aggregating \$23,250,000, held by the Trust, which are eliminated in consolidation. Several of the assets are also encumbered by other mortgages - see Note 10 Debt Obligations — Mortgages Payable.

(b) On March 22, 2012, the Trust, through a consolidated joint venture, purchased a 542 unit multi-family residential property located in Palm Beach Gardens, Florida. The purchase price was \$59,400,000 exclusive of acquisition costs of \$1,555,000 which were expensed in the three months ended March 31, 2012. The Trust has an 80% interest in this joint venture. The property is encumbered by a \$45,200,000 mortgage — see Note 10 Debt Obligations — Mortgages Payable. The Trust made a capital contribution of \$14,480,000 representing its proportionate share of capital required to purchase and improve the property.

On March 30, 2012, the Trust, through a consolidated joint venture, purchased a 208 unit multi-family residential property located in Melbourne, Florida. The purchase price was \$9,300,000 exclusive of \$238,000 of acquisition costs which were expensed in the quarter ended March 31, 2012. The Trust has

**Note 7 - Real Estate Properties (Continued)**

an 80% interest in this joint venture. The property is encumbered by a \$7,680,000 mortgage — see Note 10 Debt Obligations — Mortgages Payable. The Trust made a capital contribution of \$3,120,000 representing its proportionate share of capital required to purchase and improve the property.

**Note 8 — Investment in Unconsolidated Ventures**

The Trust is a partner in four unconsolidated ventures, each of which owns and operates one property. The Trust's share of (loss) earnings in all of its unconsolidated joint ventures, including a joint venture engaged in purchasing loans that ceased investment activities in November 2011, was \$(40,000) and \$86,000 for the three months ended March 31, 2012 and 2011, respectively, and \$(115,000) and \$135,000 for the six months ended March 31, 2012 and 2011, respectively. The Trust's equity in these unconsolidated ventures totaled \$5,503,000 and \$4,247,000 at March 31, 2012 and September 30, 2011, respectively.

On January 12, 2012, an unconsolidated joint venture in which the Trust has an 80% interest purchased a 207 unit multi-family residential property in Marietta, Georgia. The Trust's equity investment was \$2,560,000.

On February 23, 2012, an unconsolidated joint venture in which the Trust has an 80% interest purchased a 170 unit multi-family residential property in Lawrenceville, Georgia. The Trust's equity investment was \$2,200,000.

**Note 9 — Available-For-Sale Securities**

Information regarding our available-for-sale securities, all of which are equity securities, is set forth below (dollars in thousands):

	<u>March 31, 2012</u>	<u>September 30, 2011</u>
Cost basis	\$ 1,934	\$ 2,488
Unrealized gains	610	406
Unrealized losses	(35)	(128)
Market value	<u>\$ 2,509</u>	<u>\$ 2,766</u>

Unrealized gains and losses are reflected as 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 to be other than temporarily impaired because the Trust expects the value of these securities to recover and plans on holding them until at least such recovery.

**Note 9 — Available-For-Sale Securities**

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

	Three months ended March 31,		Six months ended March 31,	
	2012	2011	2012	2011
Proceeds from sale	\$ 1,957	\$ 2,231	\$ 2,513	\$ 2,871
Less cost basis	1,615	2,130	2,189	2,349
Gain on sale	\$ 342	\$ 101	\$ 324	\$ 522

For 2011, the calculation of gain on sale was determined using an average cost. For 2012, the gain or loss on sale was determined using specific identification.

During the three and six months ended March 31, 2011, the Trust sold available-for-sale debt securities for \$3,417,000 which had a basis of \$2,925,000 determined using specific cost. Accordingly the Trust recognized a gain of \$492,000 from these sales.

**Note 10 — Debt Obligations**

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

	March 31, 2012	September 30, 2011
Line of Credit	—	—
Junior subordinated notes	\$ 37,400	\$ 37,400
Mortgages payable	100,306	14,417
Total debt obligations	\$ 137,706	\$ 51,817

*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 on, among other things, the type of property secured by the eligible mortgage receivables pledged 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 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.

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 incurrence of debt.

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.

For the three and six months ended March 31, 2012, fee amortization with respect to the facility was \$37,000 and \$74,000, respectively, and is a component of interest expense. At March 31, 2012 and

[Table of Contents](#)

**Note 10 — Debt Obligations (Continued)**

September 30, 2011, there were no outstanding balances on this facility.

*Junior Subordinated Notes*

At March 31, 2012, the Trust's junior subordinated notes had an outstanding principal balance of \$37,400,000. The interest rates on the outstanding notes are set forth in the table below:

<u>Interest Period</u>	<u>Interest Rate</u>
May 2009 through March 14, 2011	3.50%
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%

Interest expense relating to the junior subordinated notes for the three months ended March 31, 2012 and 2011 was \$281,000 and \$483,000, respectively, and for the six months ended March 31, 2012 and 2011, interest expense was \$561,000 and \$1,004,000, respectively. Amortization of the deferred costs which is a component of interest expense on borrowed funds was \$5,000 and \$7,000 for the three months ended March 31, 2012 and 2011, respectively and \$10,000 and \$15,000 for the six months ended March 31, 2012 and 2011, respectively.

*Mortgages Payable*

At March 31, 2012, the Trust and its consolidated subsidiaries had 13 mortgages outstanding. The mortgages bear interest at rates ranging between 2% and 17% and mature between 2014 and 2031. Scheduled principal repayments during the next five years and thereafter are as follows (dollars in thousands):

Year ended March 31,	
2013	\$ 5,374
2014	1,197
2015	2,701
2016	1,894
2017	1,988
Thereafter	87,152
Total	\$ 100,306

**Note 10 — Debt Obligations (Continued)**

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

<b>Property</b>	<b>March 31, 2012</b>	<b>September 30, 2011</b>	<b>Rate</b>	<b>Maturity</b>
Yonkers, NY (1)	\$ 1,990	\$ 2,041	5.25%	April 2022
Palm Beach Gardens, FL	45,200(2)	—	3.78%	April 2019
Melbourne, FL	7,680(2)	—	3.97%	April 2019
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	5,743	5,828	6.00%	August 2030
909 Broad St — Newark, NJ	479	486	6.00%	August 2030
Teachers Village — Newark, NJ (3) (4)	22,748	—	5.50%	December 2030
Teachers Village — Newark, NJ (3)	4,250	—	3.46%	February 2032
Teachers Village — Newark, NJ (3)	1,000	—	2.00%	February 2022
Teachers Village — Newark, NJ (3)	1,908	—	2.50%	February 2014
Teachers Village — Newark, NJ (3) (5)	1,832	—	(5)	February 2034
Teachers Village — Newark, NJ (6)	6,576	3,962	17%	June 2012
	<u>\$ 100,306</u>	<u>\$ 14,417</u>		

- (1) On March 29, 2012, a 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) Reflects the mortgage debt obtained with respect to the acquisition of such property in March 2012.
- (3) From December 29, 2011 through February 2, 2012, subsidiaries of our consolidated Newark Joint Venture entered into a series of agreements and transactions pursuant to which such entities obtained \$31.8 million of mortgage financing and \$13.7 million in Federal New Markets Tax Credit (the “NMTC”) proceeds. The NMTC proceeds were recorded as a deferred gain on the consolidated balance sheet. The proceeds of the foregoing, together with \$2.5 million in NMTC proceeds received in May 2012, after giving effect to the payment of transaction fees and the repayment of certain outstanding debt, are to be used to construct two buildings at the Teachers Village site. The remaining proceeds from the transaction which totalled \$33,064,000 are to be used for construction and are reflected on the consolidated balance sheet as restricted cash-construction holdbacks. See Note 11 to the Trust’s consolidated financial statements.
- (4) 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 rate of interest thereon is 5.5% per year; however, the United States Treasury Department is covering the interest at the rate of 4.99% per year and accordingly, the effective rate of interest thereon until 2018 is 0.51% per year.



**Note 10 — Debt Obligations (Continued)**

- (5) 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.
- (6) As of March 31, 2012, the trust had guaranteed \$1,647,000 of this mortgage obligation.

**Note 11 — Deferred Income (New Markets Tax Credit Transaction)**

On February 3, 2012, subsidiaries of the Newark Joint Venture entered into a transaction with an affiliate of Goldman Sachs (“Goldman”) related to the Teacher’s Village project and received proceeds from the NMTC credits. 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 a net amount of \$16.4 million to the project through a special-purpose entity created to effect the financing transaction and is entitled to receive tax credits against the \$60 million qualified investment in the project over the next seven years. At the end of the seven years, the Newark Joint Venture’s subsidiaries have the option to acquire the special purpose entity for a nominal fee and it is anticipated that it will exercise this option.

Included in deferred income on the Trust’s consolidated balance sheet at March 31, 2012 is \$13.7 million of the Goldman contribution — the balance of approximately \$2.5 million became available after March 31, 2012 and accordingly is not included in the consolidated balance sheet at such date. The aggregate of approximately \$16.2 million will be recognized into income when the obligation to comply with the requirements of the New Markets Tax Credit 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 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 this transaction are deferred and will be recognized as an expense based on the maturities of the various mortgage financings related to the NMTC transaction. At March 31, 2012, these costs totaled \$6,700,000 and are included in deferred costs on the consolidated balance sheet.

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

**Note 12 - Segment Reporting**

Management has determined that the Trust operates in two reportable segments: (i) a loan and investment segment which includes the origination and servicing of the Trust's loan portfolio and investments; and (ii) a real estate segment which includes the operation and disposition of the Trust's real estate assets.

The following table summarizes the Trust's segment reporting for the periods indicated (dollars in thousands):

	Three Months Ended March 31, 2012			Six Months Ended March 31, 2012		
	Loan and Investment	Real Estate	Total	Loan and Investment	Real Estate	Total
Interest and loan fees	\$ 2,202	—	\$ 2,202	\$ 4,454	—	\$ 4,454
Rental revenue	—	\$ 1,019	1,019	—	\$ 1,787	1,787
Other income	173	293	466	307	293	600
Total revenues	<u>2,375</u>	<u>1,312</u>	<u>3,687</u>	<u>4,761</u>	<u>2,080</u>	<u>6,841</u>
Interest on borrowed funds	118	757	875	329	1,013	1,342
Operating expenses relating to real estate properties	—	959	959	—	1,745	1,745
Other expenses	928	1,351	2,279	2,136	1,988	4,124
Property acquisition costs	—	1,793	1,793	—	1,793	1,793
Amortization and depreciation	—	180	180	—	364	364
Total expenses	<u>1,046</u>	<u>5,040</u>	<u>6,086</u>	<u>2,465</u>	<u>6,903</u>	<u>9,368</u>
Total revenues less total expenses	1,329	(3,728)	(2,399)	2,296	(4,823)	(2,527)
Equity in (loss) earnings of unconsolidated ventures	6	(46)	(40)	(136)	21	(115)
Gain on sale of available- for-sale securities	342	—	342	324	—	324
Gain on extinguishment of debt	—	—	—	3,192	—	3,192
Income (loss) from continuing operations	1,677	(3,774)	(2,097)	5,676	(4,802)	874
Discontinued operations:						
Gain on sale of real estate assets	—	—	—	—	490	490
Net income (loss)	1,677	(3,774)	(2,097)	5,676	(4,312)	1,364
Plus: net loss attributable to non-controlling interests	—	1,069	1,069	—	1,482	1,482
Net income (loss) attributable to common shareholders	<u>\$ 1,677</u>	<u>\$ (2,705)</u>	<u>\$ (1,028)</u>	<u>\$ 5,676</u>	<u>\$ (2,830)</u>	<u>\$ 2,846</u>
Segment assets at March 31, 2012	<u>\$ 108,626</u>	<u>\$ 190,718</u>	<u>\$ 299,344</u>	<u>\$ 108,626</u>	<u>\$ 190,718</u>	<u>\$ 299,344</u>

[Table of Contents](#)

**Note 12 -Segment Reporting (Continued)**

The following table summarizes the Trust's segment reporting for the periods indicated (dollars in thousands):

	Three Months Ended March 31, 2011			Six Months Ended March 31, 2011		
	Loan and Investment	Real Estate	Total	Loan and Investment	Real Estate	Total
Interest and loan fees	\$ 2,021	—	\$ 2,021	\$ 3,420	—	\$ 3,420
Rental revenue	—	\$ 959	959	—	\$ 1,813	1,813
Other income	2,717	—	2,717	2,916	—	2,916
<b>Total Revenues</b>	<b>4,738</b>	<b>959</b>	<b>5,697</b>	<b>6,336</b>	<b>1,813</b>	<b>8,149</b>
Interest on borrowed funds	331	211	542	690	509	1,199
Other expenses	1,435	1,452	2,887	2,742	2,903	5,645
Amortization and depreciation	—	184	184	—	372	372
<b>Total expenses</b>	<b>1,766</b>	<b>1,847</b>	<b>3,613</b>	<b>3,432</b>	<b>3,784</b>	<b>7,216</b>
<b>Total revenues less total expenses</b>	<b>2,972</b>	<b>(888)</b>	<b>2,084</b>	<b>2,904</b>	<b>(1,971)</b>	<b>933</b>
Equity in earnings of unconsolidated ventures	—	86	86	—	135	135
Gain on sale of available- for-sale securities	593	—	593	1,014	—	1,014
Loss on extinguishment of debt	(1,448)	(690)	(2,138)	(1,448)	(690)	(2,138)
Income (loss) from continuing operations	2,117	(1,492)	625	2,470	(2,526)	(56)
Discontinued operations:						
Gain on sale of real estate assets	—	697	697	—	697	697
<b>Net income (loss)</b>	<b>2,117</b>	<b>(795)</b>	<b>1,322</b>	<b>2,470</b>	<b>(1,829)</b>	<b>641</b>
Less net loss attributable to non-controlling interests	—	525	525	—	698	698
<b>Net income (loss) attributable to common shareholders</b>	<b>\$ 2,117</b>	<b>\$ (270)</b>	<b>\$ 1,847</b>	<b>\$ 2,470</b>	<b>\$ (1,131)</b>	<b>\$ 1,339</b>
<b>Segment assets at March 31, 2011</b>	<b>\$ 124,690</b>	<b>\$ 59,398</b>	<b>\$ 184,088</b>	<b>\$ 124,690</b>	<b>\$ 59,398</b>	<b>\$ 184,088</b>

**Note 13 — 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 recorded at fair value on the consolidated balance sheets:

**Note 13 — Fair Value of Financial Instruments (Continued)**

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

*Real estate loans:* The mortgage loans of the Trust which have variable rate provisions, based upon a margin over prime rate, have an estimated fair value which is equal to their carrying value assuming market rates of interest between 10% and 12.5%. The mortgage loans of the Trust which have fixed rate provisions have an estimated fair value of \$34,000 greater than their carrying value assuming a market rate of interest of 11% which management believes reflect institutional lender yield requirements.

*Junior Subordinated Notes:* At March 31, 2012, the estimated fair value of the Trust's junior subordinated notes is lower than their carrying value by approximately \$472,000 based on a market rate of 3.47%.

*Mortgages Payable:* At March 31, 2012, the estimated fair value of the Trust's mortgages payable is higher than their carrying value by approximately \$65,000 assuming market interest rates between 3.48% and 17%. Market 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 instruments that are classified as Level 3.

**Note 13 — Fair Value of Financial Instruments (Continued)**

Set forth below is information regarding the Trust's financial assets measured at fair value as of March 31, 2012 (dollars in thousands):

	Carrying and Fair Value	Fair Value Measurements Using Fair Value Hierarchy	
		Level 1	Level 2
Financial Assets:			
Available-for-sale securities:			
Corporate equity securities	\$ 2,509	\$ 2,509	—
Financial Liabilities:			
Derivative Financial Instruments	\$ 27	—	\$ 27

*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 other than temporary impairment because the Trust expects the value of these securities to recover and plans on holding them until at least such recovery occurs.

*Derivative financial instrument:* 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 March 31, 2012, this derivative is included in 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. However, as of March 31, 2012, the Trust has assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and has determined that the credit valuation adjustments are not significant to the overall valuation of its derivatives. As a result, the Trust has determined that its derivative valuation is classified in Level 2 of the fair value hierarchy.

**Note 14 — 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 and is subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. In March

**Note 14 — Derivative Financial Instruments (Continued)**

2012, the Trust executed an interest rate swap used to hedge the variable cash flows associated with existing variable-rate debt. The ineffective portion of the change in fair value of the derivatives is recognized directly in earnings. During the three months ended March 31, 2012 the Trust did not record any hedge ineffectiveness.

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 March 31, 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	\$ 1,990	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):

	<u>Fair Values of Derivative Instruments</u>			
	<u>Derivative Assets</u>			
	<u>Fair Values of Derivative Instruments</u>			
	<u>Derivative Assets</u>		<u>Derivatives Liabilities</u>	
	<u>March 31, 2012</u>	<u>September 30, 2011</u>	<u>March 31, 2012</u>	<u>September 30, 2011</u>
<u>Derivative designated as hedging instruments</u>				
<u>Interest rate derivative</u>				
<u>Balance Sheet Location</u>	<u>Other Assets</u>	<u>Other Assets</u>	<u>Accounts Payable and Accrued Liabilities</u>	<u>Accounts Payable and Accrued Liabilities</u>
Pay-Fixed Swap	\$ —	\$ —	\$ 27	\$ 0

The following table presents the effect of the Trust's derivative financial instrument on the consolidated statements of comprehensive (loss) income for the three and six months ended March 31, 2012 (dollars in thousands):

	<u>Three Months Ended</u>	<u>Six Months Ended</u>
	<u>March 31, 2012</u>	<u>March 31, 2012</u>
Amount of loss recognized on derivative in Other Comprehensive Income	\$ 27	\$ 27
Amount of loss reclassified from Accumulated Other Comprehensive Income into Interest Expense	\$ —	\$ —

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 three and six months ended March 31, 2012 or March 31, 2011. During the twelve months ending September 30, 2012, the Trust estimates an additional \$35,000 will be reclassified from other comprehensive income as an increase to interest expense.

**Note 14 — Derivative Financial Instruments (Continued)**

*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 March 31, 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 \$27,000. As of March 31, 2012, the Trust has not posted any collateral related to this agreement. If the Trust had been in breach of this agreement at March 31, 2012, it could have been required to settle its obligations thereunder at its termination value of \$27,000.

**Note 15 — New Accounting Pronouncements**

In May 2011, the FASB issued ASU No. 2011-04, which is included in ASC 820, Fair Value Measurement: Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S GAAP and IFRS. This update defines fair value, clarifies a framework to measure fair value, and requires specific disclosures of fair value measurements. The guidance is effective for the Trust's interim and annual reporting periods beginning December 15, 2011, and is applied prospectively. Adoption of this guidance did not have a material impact on the Trust's financial condition, results of operations or disclosures.

In June 2011, the FASB issued ASU No. 2011-05, which is included in ASC 220, Presentation of Comprehensive Income. This update improves the comparability, consistency, and transparency of financial reporting and increases the prominence of items reported in other comprehensive income. The guidance requires all non-owner changes in shareholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The Trust adopted this guidance on January 1, 2012. Adoption of this guidance did not have a material impact on the Trust's financial condition, results of operations or disclosures.

**Note 16 — Subsequent Events**

Subsequent events have been evaluated and any significant events, relative to our consolidated financial statements as of March 31, 2012 that require additional disclosure have been included in the notes to the consolidated financial statements.

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

### Forward-Looking Statements

With the exception of historical information, this report on Form 10-Q contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended. We intend such forward-looking statements to be covered by the safe harbor provision 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, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words "may", "will", "believe", "expect", "intend", "anticipate", "estimate", "project", or similar expressions or variations thereof. Forward-looking statements involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, performance or achievements. Investors are cautioned not to place undue reliance on any forward-looking statements and are urged to read the section "Item 1A Risk Factors" in our Annual Report on Form 10-K for the year ended September 30, 2011 and in this Quarterly Report on Form 10-Q.

### Overview

We are a real estate investment trust, also known as a REIT. We originate and hold for investment senior mortgage loans secured by commercial and multi-family properties in the United States. Beginning in the quarter ended March 31, 2012, we expanded our activities by acquiring for investment, with venture partners, multi-family residential properties. Historically, our primary source of revenue has been interest income, and to a lesser extent, loan fee income generated on the origination and extension of loans, rental revenue from real properties and investment income. As a result of the expansion of our activities and the acquisition in March 2012 of multi-family residential properties, we expect that rental revenues, real estate operating expenses and cash flow from operations will increase in the future.

The following highlights our activities during the six months ended March 31, 2012:

- the Newark Joint Venture closed on approximately \$48 million of financing (comprised of \$31.8 million of mortgage debt and \$16.2 million of New Markets Tax Credits proceeds (inclusive of approximately \$2.5 million of such proceeds that became available in May 2012), for the Teachers Village project enabling it to begin construction on two buildings of the project;
- our consolidated joint ventures purchased two multi-family residential properties with an aggregate of 750 units for an aggregate purchase price of \$68.7 million (excluding acquisition costs of \$1.79 million and including an aggregate of \$52.9 million of mortgage debt);
- we invested an aggregate of \$4.8 million (including funds for anticipated property improvements and cash needs), representing an 80% interest, in two unconsolidated joint ventures that purchased two multi-family residential properties with an aggregate of 377 units for an aggregate purchase price of \$14.4 million (excluding \$193,000 of acquisition costs and including an aggregate of \$11.2 million of mortgage debt);
- we originated \$66.1 million of mortgage loans in the first six months of fiscal 2012 compared to \$88.9 million in the first six months of fiscal 2011;



[Table of Contents](#)

- at March 31, 2012 we had cash and cash equivalents and available-for-sale securities of \$39.6 million; and
- at March 31, 2012, our net loan portfolio totaled \$72.2 million - all of the loans in the portfolio are performing.

**Results of Operations** — Three months ended March 31, 2012 compared to the three months ended March 31, 2011

**Revenues**

The following table compares our revenues for the periods indicated:

(Dollars in thousands):	Three Months Ended March 31,		Increase (Decrease)	%Change
	2012	2011		
Interest on real estate loans	\$ 1,704	\$ 1,746	\$ (42)	(2.4)%
Loan fee income	498	275	223	81
Rental revenue from real estate properties	1,019	959	60	6
Recovery of previously provided allowances	3	2,566	(2,563)	N/A
Other, income	463	151	312	205.3
Total revenues	<u>\$ 3,687</u>	<u>\$ 5,697</u>	<u>\$ (2,010)</u>	(35.3)

*Interest on real estate loans.* The decrease is attributable to: (i) the inclusion in the corresponding period in 2011 of \$153,000 of cash basis income received primarily from non-performing loans; (ii) an approximately \$121,000 decrease due to the decline in the weighted average interest rate on the performing portfolio from 12.77% to 11.65% - the interest rate decreased as a result of competitive pricing pressure; and (iii) the inclusion in the corresponding period in the prior year of approximately \$92,000 of interest income from our purchase money mortgages that were subsequently paid off. Partially offsetting the decline was a \$500,000 increase in interest attributable to a \$16.4 million increase in the average balance of earning loans outstanding. While originations are lower in the current fiscal year than the prior fiscal year, the timing of the payoffs of our loans caused the average balance to increase.

*Loan fee income.* The increase is primarily due to amortization of loan fees resulting from larger loan portfolio.

*Recovery of previously provided allowances.* The decline is due to the inclusion of \$2,566,000 of recoveries in the 2011 period. There were only limited recoveries in the current period.

*Rental revenue from real estate properties.* The increase is primarily due to the approximately \$178,000 of rental income received from a multi-family residential property we acquired on March 22, 2012. (Another multi-family residential property was acquired on March 30, 2012, but due to the timing, such acquisition did not impact such revenues or the related operating and interest expense). This increase was partially offset by the inclusion of \$68,000 of rebill income at a Newark Joint Venture property in the corresponding period in the prior year and an approximately \$45,000 decline in rental income at the Newark Joint Venture due to the loss of several commercial tenants at the Market Street property. This is a future development site and accordingly only short term leases are offered at this property. As a result, retaining tenants and finding new and replacement tenants at such property is difficult.

[Table of Contents](#)

*Other income.* The increase is the result of a US Treasury subsidy which is covering approximately 90% of the interest payments with respect to Qualified School Construction Bonds (“QSCB’s”) in principal amount of approximately \$22.7 million issued by the Newark Joint Venture. We anticipate this subsidy, in the annual amount of approximately \$1.2 million, will continue until at least 2018.

**Expenses**

The following table compares our expenses for the periods indicated:

(Dollars in thousands)	Three Months Ended March 31,		Increase (Decrease)	%Change
	2012	2011		
Interest — borrowed funds	\$ 875	\$ 542	\$ 333	61.3%
Advisor’s fees — related party	273	241	32	13.2
Foreclosure related professional fees	—	167	(167)	N/A
Property acquisition costs	1,793	—	1,793	N/A
General and administrative	2,006	1,629	377	23.2
Operating expenses relating to real estate properties	959	850	109	12.9
Amortization and depreciation	180	184	(4)	(2.0)
Total expenses	<u>\$ 6,086</u>	<u>\$ 3,613</u>	<u>\$ 2,473</u>	68.4

*Interest - borrowed funds.* Approximately \$449,000 of the increase (net of \$223,000 in capitalized interest) is attributable to increased interest expense related to the Newark Joint Venture’s financing transactions, approximately \$50,000 of the increase is attributable to mortgages on the multi-family properties acquired in March 2012 and approximately \$37,000 is related to the amortization of fees associated with our credit line. The increase was partially offset by a \$204,000 reduction in interest expense resulting from the March 2011 restructuring of our junior subordinated notes. We anticipate that interest expense will increase in the future because: (i) the interest expense reflected for the current three months does not include interest expense for the full quarter with respect to the aggregate net mortgage debt of \$95.9 million incurred in the current quarter; and (ii) the interest rate on the junior subordinated notes will increase from 3% to 4.9% in August 2012.

*Foreclosure related professional fees.* There were no such fees in the current period as we resolved all of the bankruptcy, foreclosure and related proceedings in which we had been involved.

*Property acquisition costs.* Our consolidated joint ventures purchased two separate properties and incurred property acquisition costs of \$1,793,000. Such costs included acquisition fees to our joint venture partner, brokerage fees, and legal, due diligence and other transactional costs and expenses.

*General and administrative.* Approximately \$165,000 of the increase is a result of the payment of Federal alternative minimum tax resulting from the use of net operating loss carryforwards to reduce 2011 taxable income. The balance is attributable to increases in professional fees of approximately \$92,000, higher payroll and payroll related expenses of approximately \$52,000 resulting from higher salaries, and the payment, beginning this quarter, of a quarterly fee of \$50,000 to our chairman of the board.

*Operating expenses relating to real estate properties.* Approximately \$67,000 of the increase is due to the multi-family residential property purchased in the current quarter and approximately \$90,000

[Table of Contents](#)

of the increase is due to the inclusion in the corresponding quarter of the prior year, of a reversal of an over-accrual for real estate taxes on our Daytona, Florida property. These increases were partially offset by \$48,000 in decreases in various expenses, none of which was individually significant.

*Amortization and depreciation.* We estimate that such expense will increase by approximately \$417,000 per quarter due to the inclusion for a full quarter in subsequent periods of such expense from the multi-family residential properties acquired by our consolidated joint ventures in March 2012.

***Other revenue and expense items***

*Equity in (loss) earnings of unconsolidated joint ventures.* The decrease of \$126,000 is attributable to property acquisition costs.

*Gain on sale of available-for-sale securities.* In the three months ended March 31, 2012, we sold available-for-sale securities with a cost basis of \$1,615,000 and recognized a gain of \$342,000. In the second quarter of fiscal 2011, we sold available-for-sale debt and equity securities with a cost basis of \$5,056,000 and recognized a gain of approximately \$593,000.

*Loss on extinguishment of debt.* In the quarter ended March 31, 2011, we restructured our outstanding junior subordinated notes. For accounting 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 loss in the current quarter.

*Discontinued operations.* In the second quarter of fiscal 2011, discontinued operations consisted of a gain on the sale of a vacant cooperative apartment in New York City and the payoff of a loan which was classified as real estate for financial statement purposes.

**Results of Operations** — Six months ended March 31, 2012 compared to the six months ended March 31, 2011**Revenues**

The following table sets forth a comparison of our revenues for the periods indicated:

(Dollars in thousands):	Six Months Ended March 31,		Increase (Decrease)	%Change
	2012	2011		
Interest on real estate loans	\$ 3,614	\$ 2,902	\$ 712	24.5%
Loan fee income	840	518	322	62.3
Rental revenue from real estate properties	1,787	1,813	(26)	(1.4)
Recovery of previously provided allowances	10	2,566	(2,556)	N/A
Other, income	590	350	240	68.3
Total revenues	<u>\$ 6,841</u>	<u>\$ 8,149</u>	<u>(1,308)</u>	(16.1)

*Interest on real estate loans.* The increase is primarily due to a \$25.7 million increase in the average balance of earning loans outstanding. While originations are lower in the current six months than in the corresponding period in the prior fiscal year, the timing of the payoffs of loans caused the average balance to increase. Partially offsetting this increase was (i) a \$148,000 decrease due to the decline from 12.35% to 11.55% in the weighted average interest rate earned on the performing loan portfolio — the interest rate decreased as a result of competitive pricing pressure; and (ii) the inclusion during the six months ended March 31, 2011 of \$479,000 in cash basis income collected primarily on non-performing loans.

*Loan fee income.* The increase is primarily due to amortization of loan fees resulting from a larger loan portfolio.

*Recovery of previously provided allowances.* The decline is due to the inclusion of \$2,566,000 in recoveries in the 2011 period. There were only limited recoveries in the current six months.

*Rental revenue from real estate properties.* The decrease is attributable to (i) the inclusion in the corresponding period of the prior year of \$102,000 of rebill income at a Newark Joint Venture property and (ii) \$112,000 decrease due to the loss of several commercial tenants at the Newark Joint Venture's Market Street property. Partially offsetting this decline is the inclusion of approximately \$178,000 of rental income from the multi-family property acquired on March 22, 2012.

*Other income.* The increase is the result of a US Treasury subsidy which will cover approximately 90% of the interest payments with respect to QSCB's in principal amount of \$22.7 million issued by the Newark Joint Venture. We anticipate this subsidy in the annual amount of approximately \$1.2 million will continue until at least 2018.

**Expenses**

The following table sets forth a comparison of our expenses for the periods indicated:

(Dollars in thousands)	Six Months Ended March 31,		Increase (Decrease)	%Change
	2012	2011		
Interest — borrowed funds	\$ 1,342	\$ 1,199	\$ 143	11.9%
Advisor's fees — related party	444	462	(18)	(3.8)
Foreclosure related professional fees	—	357	(357)	N/A
Property acquisition costs	1,793	—	1,793	N/A
General and administrative	3,680	3,060	620	20.3
Operating expenses relating to real estate properties	1,745	1,766	21	1.2
Amortization and depreciation	364	372	8	2.3
Total expenses	<u>\$ 9,368</u>	<u>\$ 7,216</u>	<u>2,152</u>	<u>29.8</u>

*Interest - borrowed funds.* Approximately \$517,000 of the increase (net of \$372,000 in capitalized interest) is attributable to increased interest expense related to the Newark Joint Venture's financing transactions, approximately \$50,000 of the increase is attributable to mortgages on the multi-family properties acquired in March 2012 and approximately \$74,000 is related to amortization of fees associated with our credit line. The increase was partially offset by the \$448,000 reduction in interest expense resulting from the March 2011 restructuring of our junior subordinated notes.

*Property acquisition costs.* Our consolidated joint ventures purchased two separate properties and incurred property acquisition costs of \$1,793,000. Such costs included acquisition fees to our joint venture partners, brokerage fees, and legal, due diligence and other transactional costs and expenses.

*General and administrative.* Approximately \$165,000 of the increase is a result of the payment of Federal alternative minimum tax resulting from the use of net operating loss carryforwards to reduce 2011 taxable income. In addition, there were increases in professional fees of approximately \$135,000, higher payroll and payroll related expenses of approximately \$148,000 resulting from higher salaries and the payment, beginning January 2012, of a quarterly fee of \$50,000 to our chairman of the board.

**Other revenue and expense items**

*Equity in (loss) earnings of unconsolidated joint ventures.* The decrease of \$250,000 is related to a loss of: (i) \$127,000 from a joint venture entered into in the March 2012 quarter which loss is primarily the result of \$193,000 of acquisition costs; and (ii) \$136,000 (which reflects the write-off of \$297,000 of capitalized costs) related to a joint venture that ceased loan purchasing activities in November 2011.

*Gain on sale of available-for-sale securities-* In the six months ended March 31, 2012, we sold available-for-sale securities with a cost basis of \$2,189,000 and recognized a gain of \$324,000. In the first half of fiscal 2011, we sold available-for-sale debt and equity securities with a cost basis of \$5,274,000 and recognized a gain of approximately \$1,014,000.

*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.

[Table of Contents](#)

*Discontinued operations*

In the first half of fiscal 2012, discontinued operations consisted of the gain on the sale of a vacant cooperative apartment in New York City.

**Liquidity and Capital Resources**

Liquidity is a measurement of our ability to meet cash requirements, including to fund loan originations, pay operating expenses, repay borrowings, and other general business needs. We require capital to fund loan originations, acquire properties, invest in joint ventures and pay operating expenses. Our current sources of capital and liquidity primarily consist of our cash and credit facility. At March 31, 2012, our total available liquidity (excluding \$33 million in restricted cash-construction holdback which is to be used by the Newark Joint Venture) was \$39.6 million, including approximately \$37.1 million of cash and cash equivalents. At May 4, 2012, our total available liquidity was \$47.8 million, including approximately \$39.2 million of cash and cash equivalents and up to \$6.5 million that we may borrow for up to 90 days pursuant to our credit facility.

We estimate that of the aggregate of \$15.4 million of contractual obligations that become payable during the twelve months ending March 31, 2013, (i) approximately \$ 8.8 million (of which approximately \$ 3.2 million is recourse to us) will be paid from the \$ 2.6 million interest reserve established in connection with the Teachers Village financing, cash and cash reserves and cash flow from operations and (ii) approximately \$6.6 million of debt relating to the Newark Joint Venture (of which approximately \$ 1.65 million is recourse to us) which matures in June 2012 will be extended or refinanced, though no assurance can be given that such extension or refinancing will be affected.

We estimate that the aggregate of \$18.5 million of contractual obligations (of which approximately \$6.3 million is recourse to us) that become payable during the 24 months ending March 31, 2015 will be paid from the remaining balance of the interest reserve, cash and cash reserves, cash flow from operations and if and to the extent necessary, the extension or refinancing of then maturing debt. No assurance can be given that we or the Newark Joint Venture, as the case may be, will be able to affect such extension or refinancing.

We believe we have sufficient capital to meet our operating expenses in fiscal 2012, to fund any capital contributions required by the general operations of the Newark Joint Venture and to engage in our lending business. The acquisition of additional real properties may be constrained by our liquidity and capital resource position.

*Credit Facility*

A senior secured revolving credit facility with Capital One, N.A. permits our subsidiary to borrow the lesser of \$25 million and the borrowing base (as determined pursuant to the facility) and provides for an interest rate equal to the greater of (i) 4% plus LIBOR and (ii) 5.5%. The facility, among other things, requires the Trust and the subsidiary to maintain or comply with, net worth and liquidity covenants, debt service and collateral coverage ratios and limits, with specified exceptions, the incurrence of debt. 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 million. At May 4, 2012 the maximum we could borrow under this facility was \$6.5 million.

*Multi-Family Residential Properties*

We anticipate that we will be able to fund the debt service (principal and interest) and the operating expenses with respect to the multi-family residential properties acquired in March 2012 from the cash flow generated by such properties. The mortgage debt with respect to these properties is non-recourse to us, subject to customary carve-outs.

*Newark Joint Venture*

The current principal focus of the Newark Joint Venture is the redevelopment of its Teacher's Village site. The venture contemplates three financing phases, the first phase of which was completed in February 2012. Set forth below is information pertaining to funding of the development of this site.

*Phase 1.* The Newark Joint Venture obtained \$31.8 million of construction and permanent financing which, together with \$16.2 million of New Markets Tax Credits proceeds (including \$2.5 million of proceeds that became available in May 2012), was used to (i) pay transaction expenses of approximately \$6.7 million (which is reflected on our consolidated balance sheet as deferred cost) and \$6.3 million of debt (including \$4.3 million of debt

## [Table of Contents](#)

which had been owed to us and (ii) will be used to construct two buildings at the Teacher's Village site in Newark, New Jersey. Approximately \$33 million of the proceeds of this financing is reflected on our consolidated balance sheet as of March 31, 2012 as "restricted cash-construction holdbacks" and will be released to the venture from time to time primarily upon satisfaction of specified construction and permitting related conditions. An interest reserve of \$2.6 million, which is included in Other Assets on our consolidated balance sheet, is expected to cover, until December 2013, the interest expense on the mortgage debt incurred in this financing. Thereafter, the Newark Joint Venture's ability to pay debt service (*i.e.* principal and interest) on such debt and the estimated operating expenses of these buildings will depend on generating rental revenue and cash flow from tenants. After giving effect to the approximately \$1.23 million to be generated from the in-place lease agreement with charter schools and a daycare center (and without giving effect to contractual rent increases), the Newark Joint Venture estimates that it will require at least an additional \$420,000 in rental payments from prospective retail tenants at these buildings to cover debt service and operating expenses. 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 will be sufficient to cover debt service and operating expenses. If such payments are insufficient, we may, but are not obligated to, cover a shortfall. See "Part II — Item 5 - Other Information - Newark Joint Venture" for additional information regarding these transactions.

*Phases 2 and 3.* The Newark Joint Venture contemplates that an aggregate of an additional \$85 million will be raised in 2012 from public and private sources to complete the construction of an additional six residential/retail buildings at the Teachers Village site. No assurance can be given such financing will be obtained or that if is obtained, that the project will be profitable. The failure to complete these phases (including completing the contemplated construction), may adversely impact the ability to obtain and retain tenants at the buildings to be constructed as contemplated by Phase 1.

**Disclosure of Contractual Obligations**

The following table sets forth as of March 31, 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)	\$ 13,750	\$ 15,738	\$ 14,606	\$ 169,712	\$ 213,806
Capital Lease Obligations	—	—	—	—	—
Operating Lease Obligation	188	389	368	435	1,380
Purchase Obligations(2)	1,467	2,371	1,433	—	5,271
Other Long-Term Liabilities Reflected on the Trust's Balance Sheet Under GAAP(3)	—	—	—	13,730	13,730
Total	<u>\$ 15,405</u>	<u>\$ 18,498</u>	<u>\$ 16,407</u>	<u>\$ 183,877</u>	<u>\$ 234,187</u>

- (1) Includes payments of principal (including amortization payments) and interest. Assumes that the QSCBs will be refinanced in 2018 on the same terms and that the interest rate on the junior subordinated notes after April 30, 2016 will be 3% per annum.
- (2) Reflects 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 our chairman. This agreement terminates June 30, 2014. Also includes an estimated \$717,000 payable annually pursuant to the Shared Services Agreement. No amount has been reflected as payable pursuant to such agreement after five years as such amount is not determinable. Does not include contractual obligations of the Newark Joint Venture relating to the construction of two buildings at Teachers Village site. It is anticipated that such cost will be covered by the application of the \$33 million reflected on our consolidated balance sheet as restricted cash-construction holdbacks and up to \$2 million from a Community Block Development Grant.
- (3) Does not include approximately \$2.5 million that became available after March 31, 2012. See Note 11 of the Consolidated Financial Statements.

**Cash Distribution Policy**

At December 31, 2011, we had approximately \$62 million of net operating loss carry forwards available to offset future income. It therefore is highly unlikely that we will pay or, to maintain our REIT status, be required to pay any dividend in 2012 and for several years thereafter.

**Off Balance Sheet Arrangements**

At March 31, 2012, the Trust had guaranteed \$1.65 million of a mortgage obligation of its Newark Joint Venture. The outstanding balance of the mortgage at March 31, 2012 was \$6,576,000.

In the quarter ended March 31, 2012, a consolidated joint venture entered into an interest rate swap agreement in connection with a mortgage refinancing. At March 31, 2012, the swap had a notional principal value of \$1,990,000.

**Item 3. Quantitative and Qualitative Disclosures About Market Risks**

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 March 31, 2012, approximately 94% the principal amount of our outstanding mortgage loans were comprised of variable rate based loans tied to the prime rate and with a stated minimum interest 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



[Table of Contents](#)

assessed the market risk for our variable rate mortgage receivables as of March 31, 2012 and believe that a one percent increase in interest rates would have a positive annual effect of approximately \$667,000 on income before taxes and a one percent decline in interest rates would have no effect on our annual income before taxes because all of our variable rate loans have a stated minimum rate. As of March 31, 2012, 37% of our loan portfolio was secured by properties located in the Metropolitan Atlanta area, 27% in Florida and 17% in in the New York metropolitan area and we are therefore subject to risks associated with those markets.

As of March 31, 2012, we had one interest rate swap agreement outstanding. The fair value of our interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. At March 31, 2012, if there had been a 1% increase in forward interest rates, the fair market value of the interest rate swaps and net unrealized loss on derivative instruments would have decreased by approximately \$19,000. If there had been a 1% decrease in forward interest rates, the fair market value of the interest rate swaps and net unrealized loss on derivative instruments would have increased by approximately \$19,000. These changes would not have any impact on our net income or cash.

**Item 4. Controls and Procedures**

As required under Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer, Senior Vice President-Finance and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2012. Based upon that evaluation, the Chief Executive Officer, Senior Vice President-Finance and Chief Financial Officer concluded that our disclosure controls and procedures as of March 31, 2012 are effective.

There have been no changes in our internal control over financial reporting during the quarter ended March 31, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

## Part II

### Item 1A. Risk Factors

As of March 31, 2012, there were no material changes in our risk factors from those disclosed in Part I, Item 1A in our 2011 Annual Report on Form 10-K except for items noted below:

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

Because of our inexperience in owning multi-family properties we invest in such properties, as a co-venturer, with a more experienced partner. Joint venture investments involve risks, including the possibility that our partner might become insolvent or otherwise refuse to make capital contributions 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.

***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 are 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. In September 2008, the U.S. government assumed control of Fannie Mae and Freddie Mac and placed both companies into a government conservatorship. In February 2011, the Obama administration released its blueprint for winding down Fannie Mae and Freddie Mac and for reforming the system of housing finance. A decision by the U.S. government to eliminate or downscale Fannie Mae or Freddie Mac or to reduce government support for multi-family housing more generally may adversely affect interest rates, capital availability, development of multi-family properties and the value of multi-family residential real estate and, as a result, may adversely affect our activities.

***Most of our multi-family residential properties are located in Florida and Georgia, which makes us susceptible to adverse economic developments in those 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 we have concentrations of properties. Because most of our multi-family properties are located in Florida and Georgia, adverse economic developments in those states or in the sub-market's in which such properties are located, could adversely impact the operations of these properties and, therefore our profitability. 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

[Table of Contents](#)

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.

***Renewing leases or reletting units as leases expire is a risk of ownership.***

When our tenants decide not to renew their leases upon expiration, we may not be able to relet these units. Even if the residents do renew or the units can be relet, the terms of renewal or reletting may be less favorable than current lease terms. Because leases for multi-family units are generally short-term, if we are unable to promptly renew the leases or relet the units, or if the rental rates upon renewal or reletting are significantly lower than expected, our results of operations and financial condition may be adversely affected.

***We have limited experience acquiring and managing multi-family properties.***

Our business activities have historically been focused primarily on originating loans secured by real estate. While these activities have allowed us to gain experience in analyzing multi-family properties from the lender's perspective, we have limited experience in acquiring, managing or selling these properties. Accordingly, we are partnering with co-venturers that have more experience than us in owning and managing multi-family properties. Because this is relatively new business activity for us, we are subject to all the risks and uncertainties associated with any new business activity, including the risk that we will not attain our investment objectives.

***Our Newark Joint Venture may be obligated to repay up to \$23.4 million (and interest and penalties) if the requirements of the NMTC program are not met.***

The tax credits issued pursuant to the NMTC program may be disallowed and will be subject to recapture if the requirements of the program, which are generally set forth in Section 45D of the Internal Revenue Code of 1986, as amended (the "Code") and the rules and regulations promulgated thereunder, are not met. The NMTC program generally requires, among other things, that (i) specified participants (including a subsidiary of the Newark Joint Venture) in the program maintain their status as a "qualified active low income community businesses", and that the project debt not be prepaid (whether such prepayment is voluntary or involuntary, such as through a foreclosure or otherwise) and (ii) that the subject properties not be used for prohibited purposes. If the requirements imposed by the NMTC program are not met and the tax credits are disallowed and recaptured, the Newark Joint Venture may be required to indemnify for the loss of such tax credits in amount not to exceed \$23.4 million (exclusive of interest and penalties), subject to reduction if and to the extent such credits were used in conformance with the applicable NMTC requirements.

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

In September 2011, we announced that our Board of Trustees had authorized a share buyback plan pursuant to which we may, through September 2013, expend up to \$2,000,000 to acquire our common shares. Set forth below is a table which provides the purchases we made in the quarter ended March 31, 2012:

**Issuer Purchases of Equity Securities**

<u>Period</u>	<u>Total Number of Shares</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Approximate Dollar Value that May Yet Be Purchased Under the Plans or Programs</u>
January 1, 2012 — January 31, 2012	461	\$ 6.59	461	\$ 1,182,150
February 1, 2012 — February 28, 2012	—	—	—	\$ 1,182,150
March 1, 2012 — March 31, 2012	<u>16,100</u>	<u>6.71</u>	<u>16,100</u>	\$ 1,074,119
Total	<u>16,561</u>	<u>\$ 6.71</u>	<u>16,561</u>	

**Item 5. Other Information***Newark Joint Venture*

From late December 2011 through February 3, 2012, the NJV Subsidiaries (defined below) entered into a series of agreements and transactions (including a New Markets Tax Credits transaction) pursuant to which the NJV Subsidiaries (as defined) obtained in connection with the Teachers Village project approximately \$31.8 million of financing which, together with approximately \$16.2 million of New Markets Tax Credits proceeds (inclusive of \$2.5 million of such proceeds that became available in May 2012) will, after paying the expenses of the transaction and paying down approximately \$6.3 million of debt, be used to construct two buildings at certain of Newark Joint Venture's properties. Generally, the properties are located generally along Halsey Street and Maiden Lane in Newark, NJ (collectively, the "Property"). The funds are to be used to construct: (i) an approximately 92,000 gross square foot building of which approximately 73,000 rentable square feet of the gross school area has been leased to two charter schools and approximately 20,000 rentable square feet will be used for retail space; and (ii) an approximately 40,000 gross square foot building of which approximately 35,000 rentable square feet of the gross school area has been leased to a charter school and a day care center and approximately 6,000 rentable square feet will be leased for retail space. The Newark Joint Venture estimates that these buildings will be completed in 2013.

The three charter schools and the day care have entered into 20 year leases - the term of the applicable lease generally commences when the tenant is able to move into its leased space. The leases with the schools and day care center provide for aggregate annual rental payments of approximately \$1.26 million in the first year after construction increasing to approximately \$2.2 million at the end of the lease term. The marketing effort to lease the retail space in these buildings has commenced.

## [Table of Contents](#)

Set forth below is a summary of the material economic components and terms of the financing arrangements concluded by the Newark Joint Venture:

<u>Sources</u>	<u>Terms</u>	<u>Proceeds</u>
Qualified School Construction Bonds (1)	Matures December 2030. Interest only until December 2013 and then amortizes on a 20 year schedule. The interest rate currently payable by the NJV Subsidiaries, after giving effect to Federal subsidies, is 0.51% per annum.	\$ 22,748,000
Casino Reinvestment Development Authority Loan (2)	Matures February 2032 and bears interest at the rate of 3.463% per year. This obligation is interest only until January 2019 and then it amortizes on a 30 year schedule until December 2030 at which time it amortizes fully over the remaining term.	\$ 4,250,000
Brick City Development Corporation Loan (2)	Matures February 2022 with a 30 year amortization schedule, bears interest at a rate of 2% per year and requires a 1.5% annual fee on the principal amount then outstanding.	\$ 1,000,000
TD Bank, N.A. Loan (2)	Self- amortizing loan matures February 2014 and bears interest at a rate of 2.5% per year.	\$ 2,000,000
Redevelopment Area Bond (3)	Matures in 2034. The bonds are serviced in full by annual payment- in-lieu of taxes ("PILOT") of \$256,000 in 2013 increasing to approximately \$281,000 at maturity.	\$ 1,832,000

(1) In December 2011 (a) TD Bank, N.A. purchased these bonds and (b) the Newark Joint Venture prepaid \$118,000 of interest for 2012 on these bonds. The bonds are secured by a first mortgage on the Property. TD Bank has the right, in 2018, to require the repurchase of these bonds. If such right is exercised, the NJV Subsidiaries will be required to refinance these bonds. The stated rate of interest on these bonds is 5.5% per year; however, the United States Treasury Department is covering the interest on these bonds at the rate of 4.99% per year and accordingly, the effective rate of interest for the NJV Subsidiary until 2018 is 0.51%.

(2) These loans are secured by junior mortgages on the Property.

[Table of Contents](#)

(3) The PILOT payments are payable in quarterly installments and may be subject to increase if the value of the land underlying the building is re-assessed.

The Newark Joint Venture also anticipates receiving up to a \$2 million Community Development Block Grant to be provided by the City of Newark for tenant improvements for the day care center.

The Newark Joint Venture has guaranteed various obligations arising from the financing transaction. With respect to the approximately \$22.8 million in principal amount of Qualified School Construction Bonds, the venture guaranteed:

- The completion of the construction of the two buildings;
- The carrying costs associated with the properties (*e.g.*, interest on the bonds and the operating expenses of the buildings) until specified milestones have been achieved;
- The principal associated with the bonds (but generally limited to \$3 million (which has already been posted as collateral)); and
- The losses incurred by the lender by reason of certain “bad-acts” by the borrower (*e.g.*, fraud and misappropriation).

The Newark Joint Venture has also agreed to indemnify the beneficiaries of the New Markets Tax Credits for losses sustained if such credits are disallowed. Such indemnity obligation will not exceed \$23.4 million (exclusive of interest and penalties) and is subject to reduction to the extent the credits are not disallowed.

The term NJV Subsidiaries refers to various indirect majority owned subsidiaries of RBH- TRB Newark Holdings LLC (the “Newark Joint Venture”). We own 50.1% of the Newark Joint Venture.

*Participation Agreement*

In April 2012, we amended our arrangement with 512 Lending, LLC to provide that each party has the option, but not the obligation, to present to the other the opportunity to participate in loans such party originates. To date, neither party has, pursuant to this arrangement, participated in loans originated by the other.

*Credit Facility*

The information set forth in “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Credit Facility” is incorporated herein by this reference.

**Item 6. Exhibits**

In reviewing the agreements included as exhibits to this Quarterly Report on Form 10-Q, please note 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.

[Table of Contents](#)

<b>Exhibit No.</b>	<b>Title of Exhibits</b>
10.1	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
10.2	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.
10.3	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
10.4	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.
10.5	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.
10.6	Security Agreement dated as of February 3rd, 2012, by and between RBH-TRB East Mezz Urban Renewal Entity, LLC and TD Bank, N.A.
10.7	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.
10.8	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.
10.9	Joint and Several Completion Guaranty dated as of February 3, 2012, made on a joint and several basis 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.
10.10	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.
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Senior Vice President—Finance pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.3	Certification of Vice President and Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of President and Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Senior Vice President—Finance pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.3	Certification of Vice President and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
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



SIGNATURES

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

BRT REALTY TRUST  
(Registrant)

May 10, 2012

/s/ Jeffrey A. Gould  
Jeffrey A. Gould, President and  
Chief Executive Officer  
(principal executive officer)

May 10, 2012

/s/ George Zweier  
George Zweier, Vice President  
and Chief Financial Officer  
(principal financial officer)

**MULTIFAMILY LOAN AND SECURITY AGREEMENT  
(NON-RECOURSE)**

**BY AND BETWEEN**

**LANDMARK AT GARDEN SQUARE, LLC**, a Delaware limited liability company

**AND**

**BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company

**DATED AS OF**

March 22, 2012



## TABLE OF CONTENTS

<b>ARTICLE 1 - DEFINITIONS; SUMMARY OF MORTGAGE LOAN TERMS</b>	<b>1</b>
SECTION 1.01 DEFINED TERMS	1
SECTION 1.02 SCHEDULES, EXHIBITS AND ATTACHMENTS INCORPORATED	1
<b>ARTICLE 2 - GENERAL MORTGAGE LOAN TERMS</b>	<b>1</b>
SECTION 2.01 MORTGAGE LOAN ORIGINATION AND SECURITY	1
(a) Making of Mortgage Loan	1
(b) Security for Mortgage Loan	2
(c) Protective Advances	2
SECTION 2.02 PAYMENTS ON MORTGAGE LOAN	2
(a) Debt Service Payments	2
(b) Capitalization of Accrued But Unpaid Interest	3
(c) Late Charges	3
(d) Default Rate	4
(e) Address for Payments	5
(f) Application of Payments	5
SECTION 2.03 LOCKOUT/PREPAYMENT	5
(a) Prepayment; Prepayment Lockout; Prepayment Premium	5
(b) Voluntary Prepayment in Full	5
(c) Acceleration of Mortgage Loan	6
(d) Application of Collateral	6
(e) Casualty and Condemnation	6
(f) No Effect on Payment Obligations	7
(g) Loss Resulting from Prepayment	7
<b>ARTICLE 3 - PERSONAL LIABILITY</b>	<b>7</b>
SECTION 3.01 NON-RECOURSE MORTGAGE LOAN; EXCEPTIONS	7
SECTION 3.02 PERSONAL LIABILITY OF BORROWER (EXCEPTIONS TO NON-RECOURSE PROVISION)	7
(a) Personal Liability Based on Lender's Loss	7
(b) Full Personal Liability for Mortgage Loan	8
SECTION 3.03 PERSONAL LIABILITY FOR INDEMNITY OBLIGATIONS	9
SECTION 3.04 LENDER'S RIGHT TO FOREGO RIGHTS AGAINST MORTGAGED PROPERTY	9
<b>ARTICLE 4 - BORROWER STATUS</b>	<b>9</b>
SECTION 4.01 REPRESENTATIONS AND WARRANTIES	9
(a) Due Organization and Qualification	9
(b) Location	9
(c) Power and Authority	9
(d) Due Authorization	10
(e) Valid and Binding Obligations	10
(f) Effect of Mortgage Loan on Borrower's Financial Condition	10
(g) Economic Sanctions, Anti-Money Laundering and Anti-Corruption	10
(h) Borrower Single Asset Status	11
(i) No Bankruptcies or Judgments	12
(j) No Litigation	12
(k) Payment of Taxes, Assessments and Other Charges	12

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Fannie Mae**

**Form 6001.NR  
04-11**

**© 2011 Fannie Mae**

(l)	Not a Foreign Person	13
(m)	ERISA	13
(n)	Default Under Other Obligations	13
(o)	Prohibited Person	14
SECTION 4.02	COVENANTS	14
(a)	Maintenance of Existence; Organizational Documents	14
(b)	Economic Sanctions and Anti-Money Laundering	14
(c)	Payment of Taxes, Assessments and Other Charges	15
(d)	Borrower Single Asset Status	15
(e)	ERISA	16
(f)	Notice of Litigation or Insolvency	16
(g)	Payment of Costs, Fees, and Expenses	16
<b>ARTICLE 5 - THE MORTGAGE LOAN</b>		<b>17</b>
SECTION 5.01	REPRESENTATIONS AND WARRANTIES	17
(a)	Receipt and Review of Loan Documents	17
(b)	No Default	17
SECTION 5.02	COVENANTS	17
(a)	Ratification of Covenants; Estoppels; Certifications	17
(b)	Further Assurances	18
(c)	Sale of Mortgage Loan	18
(d)	Limitations on Further Acts of Borrower	19
(e)	Financing Statements; Record Searches	19
<b>ARTICLE 6 - PROPERTY USE, PRESERVATION AND MAINTENANCE</b>		<b>20</b>
SECTION 6.01	REPRESENTATIONS AND WARRANTIES	20
(a)	Compliance with Law; Permits and Licenses	20
(b)	Property Characteristics	20
(c)	Property Ownership	21
SECTION 6.02	COVENANTS	21
(a)	Use of Property	21
(b)	Property Maintenance	21
(c)	Property Preservation	22
(d)	Property Inspections	23
(e)	Compliance with Laws	23
SECTION 6.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING THE PROPERTY	24
(a)	Property Management	24
(b)	Subordination of Fees to Affiliated Property Managers	24
(c)	Physical Needs Assessment	24
<b>ARTICLE 7 - LEASES AND RENTS</b>		<b>24</b>
SECTION 7.01	REPRESENTATIONS AND WARRANTIES	24
(a)	Prior Assignment of Rents	24
(b)	Prepaid Rents	25
SECTION 7.02	COVENANTS	25
(a)	Leases	25
(b)	Commercial Leases	25
(c)	Payment of Rents	26
(d)	Assignment of Rents	26

(e)	Further Assignments of Leases and Rents	27
(f)	Options to Purchase by Tenants	27
SECTION 7.03	MORTGAGE LOAN ADMINISTRATION REGARDING LEASES AND RENTS	27
(a)	Material Commercial Lease Requirements	27
(b)	Residential Lease Requirements	27
<b>ARTICLE 8 - BOOKS AND RECORDS; FINANCIAL REPORTING</b>		<b>28</b>
SECTION 8.01	REPRESENTATIONS AND WARRANTIES	28
(a)	Financial Information	28
(b)	No Change in Facts or Circumstances	28
SECTION 8.02	COVENANTS	28
(a)	Obligation to Maintain Accurate Books and Records	28
(b)	Items to Furnish to Lender	28
(c)	Delivery of Books and Records	30
SECTION 8.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING BOOKS AND RECORDS AND FINANCIAL REPORTING	30
(a)	Right to Audit Books and Records	30
(b)	Credit Reports; Credit Score	30
<b>ARTICLE 9 - INSURANCE</b>		<b>30</b>
SECTION 9.01	REPRESENTATIONS AND WARRANTIES	30
(a)	Compliance with Insurance Requirements	31
(b)	Property Condition	31
SECTION 9.02	COVENANTS	31
(a)	Insurance Requirements	31
(b)	Delivery of Policies, Renewals, Notices and Proceeds	31
SECTION 9.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING INSURANCE	32
(a)	Lender's Ongoing Insurance Requirements	32
(b)	Application of Proceeds on Event of Loss	33
(c)	Payment Obligations Unaffected	34
(d)	Foreclosure Sale	35
(e)	Appointment of Lender as Attorney-In-Fact	35
<b>ARTICLE 10 - CONDEMNATION</b>		<b>35</b>
SECTION 10.01	REPRESENTATIONS AND WARRANTIES	35
(a)	Prior Condemnation Action	35
(b)	Pending Condemnation Actions	35
SECTION 10.02	COVENANTS	35
(a)	Notice of Condemnation	35
(b)	Condemnation Proceeds	35
SECTION 10.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING CONDEMNATION	36
(a)	Application of Condemnation Awards	36
(b)	Payment Obligations Unaffected	36
(c)	Appointment of Lender as Attorney-In-Fact	36
(d)	Application of Proceeds	36
<b>ARTICLE 11 - LIENS, TRANSFERS AND ASSUMPTIONS</b>		<b>36</b>
SECTION 11.01	REPRESENTATIONS AND WARRANTIES	36
(a)	No Labor or Materialmen's Claims	36

(b) No Other Interests	37
SECTION 11.02 COVENANTS	37
(a) Liens; Encumbrances	37
(b) Transfers	37
SECTION 11.03 MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING LIENS, TRANSFERS AND ASSUMPTIONS	39
(a) Assumption of Mortgage Loan	39
(b) Transfers to Key Principal-Owned Affiliates or Guarantor-Owned Affiliates	40
(c) Estate Planning	40
(d) Termination or Revocation of Trust	41
(e) Death of Key Principal or Guarantor	41
(f) Bankruptcy of Guarantor	42
(g) Further Conditions to Transfers and Assumption	43
SECTION 11.04 TRANSACTION SPECIFIC TRANSFERS	44
<b>ARTICLE 12 - IMPOSITIONS</b>	<b>46</b>
SECTION 12.01 REPRESENTATIONS AND WARRANTIES	46
(a) Payment of Taxes, Assessments and Other Charges	46
SECTION 12.02 COVENANTS	47
(a) Imposition Deposits, Taxes, and Other Charges	47
SECTION 12.03 MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING IMPOSITIONS	47
(a) Maintenance of Records by Lender	47
(b) Imposition Accounts	48
(c) Payment of Impositions; Sufficiency of Imposition Deposits	48
(d) Imposition Deposits Upon Event of Default	48
(e) Contesting Impositions	48
(f) Release to Borrower	49
<b>ARTICLE 13 - REPLACEMENT RESERVE AND REPAIRS</b>	<b>49</b>
SECTION 13.01 COVENANTS	49
(a) Initial Deposits to Replacement Reserve Account and Repairs Escrow Account	49
(b) Monthly Replacement Reserve Deposits	49
(c) Payment for Replacements and Repairs	49
(d) Assignment of Contracts for Replacements and Repairs	50
(e) Indemnification	50
(f) Amendments to Loan Documents	50
(g) Administrative Fees and Expenses	50
SECTION 13.02 MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING RESERVES	50
(a) Accounts, Deposits, and Disbursements	50
(b) Approvals of Contracts; Assignment of Claims	56
(c) Delays and Workmanship	56
(d) Appointment of Lender as Attorney-In-Fact	57
(e) No Lender Obligation	57
(f) No Lender Warranty	57
<b>ARTICLE 14 - DEFAULTS/REMEDIES</b>	<b>58</b>
SECTION 14.01 EVENTS OF DEFAULT	58
(a) Automatic Events of Default	58
(b) Events of Default Subject to a Specified Cure Period	59

(c) Events of Default Subject to Extended Cure Period	59
SECTION 14.02 REMEDIES	59
(a) Acceleration; Foreclosure	59
(b) Loss of Right to Receive Replacement Reserve Disbursements and Repairs Disbursements	60
(c) Remedies Cumulative	60
SECTION 14.03 ADDITIONAL LENDER RIGHTS; FORBEARANCE	61
(a) No Effect Upon Obligations	61
(b) No Waiver of Rights or Remedies	61
(c) Appointment of Lender as Attorney-in-Fact	62
SECTION 14.04 WAIVER OF MARSHALING	63
<b>ARTICLE 15 - MISCELLANEOUS</b>	<b>63</b>
SECTION 15.01 GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE	63
(a) Governing Law	63
(b) Venue	63
SECTION 15.02 NOTICE	64
(a) Process of Serving Notice	64
(b) Change of Address	64
(c) Default Method of Notice	64
(d) Receipt of Notices	64
SECTION 15.03 SUCCESSORS AND ASSIGNS BOUND; SALE OF MORTGAGE LOAN	65
(a) Binding Agreement	65
(b) Sale of Mortgage Loan; Change of Servicer	65
SECTION 15.04 COUNTERPARTS	65
SECTION 15.05 JOINT AND SEVERAL (OR SOLIDARY) LIABILITY	65
SECTION 15.06 RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY	65
(a) Solely Creditor and Debtor	65
(b) No Third Party Beneficiaries	65
SECTION 15.07 SEVERABILITY; ENTIRE AGREEMENT; AMENDMENTS	66
SECTION 15.08 CONSTRUCTION	66
SECTION 15.09 MORTGAGE LOAN SERVICING	67
SECTION 15.10 DISCLOSURE OF INFORMATION	67
SECTION 15.11 WAIVER; CONFLICT	67
SECTION 15.12 DETERMINATIONS BY LENDER	67
SECTION 15.13 SUBROGATION	67
SECTION 15.14 COUNTING OF DAYS	68
SECTION 15.15 REVIVAL AND REINSTATEMENT OF INDEBTEDNESS	68
SECTION 15.16 TIME IS OF THE ESSENCE	68
SECTION 15.17 FINAL AGREEMENT	68
SECTION 15.18 WAIVER OF TRIAL BY JURY	68

**SCHEDULES & EXHIBITS**

**Schedules**

<b>Schedule 1</b>	<b>Definitions Schedule (required)</b>	<b>Form 6101.FR</b>
<b>Schedule 2</b>	<b>Summary of Loan Terms (required)</b>	<b>Form 6102.FR</b>
<b>Schedule 3</b>	<b>Interest Rate Type Provisions (required)</b>	<b>Form 6103.FR</b>
<b>Schedule 4</b>	<b>Prepayment Premium Schedule (required)</b>	<b>Form 6104.01</b>
<b>Schedule 5</b>	<b>Required Replacement Schedule (required)</b>	<b>Form 6001.NR</b>
<b>Schedule 6</b>	<b>Required Repair Schedule (required)</b>	<b>Form 6001.NR</b>
<b>Schedule 7</b>	<b>Exceptions to Representations and Warranties Schedule (required)</b>	<b>Form 6001.NR</b>

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Fannie Mae**

**Form 6001.NR  
04-11**

**© 2011 Fannie Mae**



**MULTIFAMILY LOAN AND SECURITY AGREEMENT  
(Non-Recourse)**

This MULTIFAMILY LOAN AND SECURITY AGREEMENT (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) is made as of the Effective Date (as hereinafter defined) by and between **LANDMARK AT GARDEN SQUARE, LLC**, a Delaware limited liability company (“**Borrower**”), and **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company (“**Lender**”).

**RECITALS:**

WHEREAS, Borrower desires to obtain the Mortgage Loan (as hereinafter defined) from Lender to be secured by the Mortgaged Property (as hereinafter defined); and

WHEREAS, Lender is willing to make the Mortgage Loan on the terms and conditions contained in this Loan Agreement and in the other Loan Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the making of the Mortgage Loan by Lender and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the parties hereby covenant, agree, represent and warrant as follows:

**AGREEMENTS:**

**ARTICLE 1- DEFINITIONS; SUMMARY OF MORTGAGE  
LOAN TERMS**

Section 1.01 **Defined Terms.**

Capitalized terms not otherwise defined in the body of this Loan Agreement shall have the meanings set forth in the Definitions Schedule attached as Schedule 1 to this Loan Agreement.

Section 1.02 **Schedules, Exhibits and Attachments Incorporated.**

The schedules, exhibits and any other addenda or attachments are incorporated fully into this Loan Agreement by this reference and each constitutes a substantive part of this Loan Agreement.

**ARTICLE 2 - GENERAL MORTGAGE LOAN TERMS**

Section 2.01 **Mortgage Loan Origination and Security.**

(a) **Making of Mortgage Loan.**

On the Effective Date and subject to the terms and conditions of this Loan Agreement and the other Loan Documents, Lender hereby makes the Mortgage Loan to Borrower and

Borrower hereby accepts the Mortgage Loan from Lender. Borrower covenants and agrees that it shall:

(1) pay the Indebtedness, including the Prepayment Premium, if any (whether in connection with any voluntary prepayment or in connection with an acceleration by Lender of the Indebtedness), in accordance with the terms of this Loan Agreement and the other Loan Documents; and

(2) perform, observe and comply with this Loan Agreement and all other provisions of the other Loan Documents.

**(b) Security for Mortgage Loan.**

The Mortgage Loan is made pursuant to this Loan Agreement, is evidenced by the Note and is secured by the Security Instrument, this Loan Agreement and the other Loan Documents that are expressly stated to be security for the Mortgage Loan.

**(c) Protective Advances.**

As provided in the Security Instrument, Lender may take such actions or disburse such funds as Lender reasonably deems necessary to perform the obligations of Borrower under this Loan Agreement and the other Loan Documents and to protect Lender's interest in the Mortgaged Property.

Section 2.02 **Payments on Mortgage Loan.**

**(a) Debt Service Payments.**

**(1) Short Month Interest.**

If the Effective Date is any day other than the first day of the month, interest for the period beginning on the Effective Date and ending on and including the last day of the month in which the Effective Date occurs shall be payable by Borrower on the Effective Date.

**(2) Interest Accrual and Computation.**

Except as provided in Section 2.02(a)(1), interest shall be paid in arrears. Interest shall accrue as provided in the Schedule of Interest Rate Type Provisions and shall be computed in accordance with the Interest Accrual Method. If the Interest Accrual Method is "Actual/360", Borrower acknowledges and agrees that the amount allocated to interest for each month will vary depending on the actual number of calendar days during such month.

**(3) Monthly Debt Service Payments.**

Consecutive monthly debt service installments (comprised of either interest only or principal and interest, depending on the Amortization Type), each in the amount of the applicable Monthly Debt Service Payment, shall be due and payable on the First Payment Date, and on each Payment Date thereafter until the Maturity Date at which time all Indebtedness shall be due. Any regularly scheduled Monthly Debt Service Payment that

is received by Lender before the applicable Payment Date shall be deemed to have been received on such Payment Date solely for the purpose of calculating interest due.

**(4) Payment at Maturity.**

The unpaid principal balance of the Mortgage Loan, any Accrued Interest thereon and all other Indebtedness shall be due and payable on the Maturity Date.

**(5) Interest Rate Type.**

See the Schedule of Interest Rate Type Provisions for additional provisions, if any, specific to the Interest Rate Type.

**(b) Capitalization of Accrued But Unpaid Interest.**

Any accrued and unpaid interest on the Mortgage Loan remaining past due for thirty (30) days or more may, at Lender's election, be added to and become part of the unpaid principal balance of the Mortgage Loan.

**(c) Late Charges.**

(1) If any Monthly Debt Service Payment (other than the payment due on the Maturity Date for repayment of the Mortgage Loan in full) due hereunder is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the applicable Payment Date, or if any other amount payable under this Loan Agreement or any other Loan Document is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the date such amount is due, inclusive of the date on which such amount is due, Borrower shall pay to Lender, immediately and without demand by Lender, the Late Charge.

The Late Charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 2.02 (d).

(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan;

(B) it is extremely difficult and impractical to determine those additional expenses;

(C) Lender is entitled to be compensated for such additional expenses; and

(D) the Late Charge represents a fair and reasonable estimate, taking into account all circumstances existing on the date hereof, of the additional expenses Lender will incur by reason of any such late payment.

**(d) Default Rate.**

(1) Default interest shall be paid as follows:

(A) If any amount due on the Mortgage Loan (other than amounts due on the Maturity Date) remains past due for thirty (30) days or more, interest on such unpaid amount(s) shall accrue from the date payment is due at the Default Rate and shall be payable upon demand by Lender.

(B) If any principal, Accrued Interest or other Indebtedness due on the Mortgage Loan is not paid in full on the Maturity Date, then interest shall accrue at the Default Rate on all such unpaid amounts from the Maturity Date until fully paid and shall be payable upon demand by Lender.

Absent a demand by Lender, any such amounts shall be payable by Borrower in the same manner as provided for the payment of Monthly Debt Service Payments. To the extent permitted by applicable law, interest shall also accrue at the Default Rate on any judgment obtained by Lender against Borrower in connection with the Mortgage Loan.

(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan; and

(B) in connection with any failure to timely pay all amounts due in respect of the Mortgage Loan on the Maturity Date, or during the time that any Monthly Debt Service Payment or other payment due on the Mortgage Loan is delinquent for more than thirty (30) days:

(i) Lender's risk of nonpayment of the Mortgage Loan will be materially increased;

(ii) Lender's ability to meet its other obligations and to take advantage of other investment opportunities will be adversely impacted;

(iii) Lender will incur additional costs and expenses arising from its loss of the use of the amounts due;

(iv) it is extremely difficult and impractical to determine such additional costs and expenses;

(v) Lender is entitled to be compensated for such additional risks, costs and expenses; and

(vi) the increase from the Interest Rate to the Default Rate represents a fair and reasonable estimate of the additional risks, costs and expenses Lender will incur by reason of Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquency on the Mortgage Loan (taking into account all circumstances existing on the Effective Date).

**(e) Address for Payments.**

All payments due pursuant to the Loan Documents shall be payable at Lender's Payment Address, or such other place and in such manner as may be designated from time to time by written notice to Borrower by Lender.

**(f) Application of Payments.**

If at any time Lender receives, from Borrower or otherwise, any amount in respect of the Indebtedness that is less than all amounts due and payable at such time, then Lender may apply such payment to amounts then due and payable in any manner and in any order determined by Lender or hold in suspense and not apply such amount at Lender's election. Neither Lender's acceptance of an amount that is less than all amounts then due and payable, nor Lender's application of, or suspension of the application of, such payment, shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Loan Agreement and the other Loan Documents shall remain unchanged.

Section 2.03 **Lockout/Prepayment.**

**(a) Prepayment; Prepayment Lockout; Prepayment Premium.**

(1) Borrower shall not make a voluntary full or partial prepayment on the Mortgage Loan during any Prepayment Lockout Period nor shall Borrower make a voluntary partial prepayment at any time. Except as expressly provided in this Loan Agreement (including as provided in the Prepayment Premium Schedule), a Prepayment Premium calculated in accordance with the Prepayment Premium Schedule shall be payable in connection with any prepayment of the Mortgage Loan.

(2) If a Prepayment Lockout Period applies to the Mortgage Loan, and during such Prepayment Lockout Period Lender accelerates the unpaid principal balance of the Mortgage Loan or otherwise applies collateral held by Lender to the repayment of any portion of the unpaid principal balance of the Mortgage Loan, the Prepayment Premium shall be due and payable and equal to the amount obtained by multiplying the percentage indicated (if at all) in the Prepayment Premium Schedule by the amount of principal being prepaid at the time of such acceleration or application.

**(b) Voluntary Prepayment in Full.**

At any time after the expiration of any Prepayment Lockout Period, Borrower may voluntarily prepay the Mortgage Loan in full on a Permitted Prepayment Date so long as:

(1) Borrower delivers to Lender a Prepayment Notice specifying the Intended Prepayment Date not more than sixty (60) days, but not less than thirty (30) days (if given via U.S. Postal Service) or twenty (20) days (if given via facsimile, e-mail or overnight courier) prior to such Intended Prepayment Date; and

(2) Borrower pays to Lender an amount equal to the sum of:

(A) the entire unpaid principal balance of the Mortgage Loan; plus

- (B) all Accrued Interest (calculated through the last day of the month in which the prepayment occurs); plus
- (C) the Prepayment Premium; plus
- (D) all other Indebtedness.

In connection with any such voluntary prepayment, Borrower acknowledges and agrees that interest shall always be calculated and paid through the last day of the month in which the prepayment occurs (even if the Permitted Prepayment Date for such month is not the last day of such month, or if Lender approves prepayment on an Intended Prepayment Date that is not a Permitted Prepayment Date). Borrower further acknowledges that Lender is not required to accept a voluntary prepayment of the Mortgage Loan on any day other than a Permitted Prepayment Date. However, if Lender does approve an Intended Prepayment Date that is not a Permitted Prepayment Date and accepts a prepayment on such Intended Prepayment Date, such prepayment shall be deemed to be received on the immediately following Permitted Prepayment Date. If Borrower fails to prepay the Mortgage Loan on the Intended Prepayment Date for any reason (including on any Intended Prepayment Date that is not a Permitted Prepayment Date but is approved by Lender) and such failure continues for five (5) Business Days or longer, or into the following month (if sooner), Lender may recalculate the payoff amount. Borrower shall immediately pay to Lender any additional amounts required by any such recalculation.

**(c) Acceleration of Mortgage Loan.**

Upon acceleration of the Mortgage Loan, Borrower shall pay to Lender:

- (1) the entire unpaid principal balance of the Mortgage Loan;
- (2) all Accrued Interest (calculated through the last day of the month in which the acceleration occurs);
- (3) the Prepayment Premium; and
- (4) all other Indebtedness.

**(d) Application of Collateral.**

Any application by Lender of any collateral or other security to the repayment of all or any portion of the unpaid principal balance of the Mortgage Loan prior to the Maturity Date in accordance with the Loan Documents shall be deemed to be a prepayment by Borrower. Any such prepayment shall require the payment to Lender by Borrower of the Prepayment Premium calculated on the amount being prepaid in accordance with this Loan Agreement.

**(e) Casualty and Condemnation.**

Notwithstanding any provision of this Loan Agreement to the contrary, no Prepayment Premium shall be payable with respect to any prepayment occurring as a result of the application of any insurance proceeds or condemnation award in accordance with this Loan Agreement.

**(f) No Effect on Payment Obligations.**

Unless otherwise expressly provided in this Loan Agreement, any prepayment required by any Loan Document of less than the entire unpaid principal balance of the Mortgage Loan shall not extend or postpone the due date of any subsequent Monthly Debt Service Payments, Monthly Replacement Reserve Deposit, or other payment, or change the amount of any such payments or deposits.

**(g) Loss Resulting from Prepayment.**

Borrower acknowledges and agrees that:

- (1) any prepayment of the unpaid principal balance of the Mortgage Loan, whether voluntary or involuntary, or resulting from a default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional risk, expense and frustration or impairment of Lender's ability to meet its commitments to third parties;
- (2) it is extremely difficult and impractical to ascertain the extent of such losses, risks and damages;
- (3) the formula for calculating the Prepayment Premium represents a reasonable estimate of the losses, risks and damages Lender will incur as a result of a prepayment; and
- (4) the provisions regarding the Prepayment Premium contained in this Loan Agreement are a material part of the consideration for the Mortgage Loan, and that the terms of the Mortgage Loan are in other respects more favorable to Borrower as a result of Borrower's voluntary agreement to such prepayment provisions.

**ARTICLE 3 - PERSONAL LIABILITY**

**Section 3.01 Non-Recourse Mortgage Loan; Exceptions.**

Except as otherwise provided in this Article 3 or in any other Loan Document, none of Borrower, or any director, officer or employee of Borrower, shall have personal liability under this Loan Agreement or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of such Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any Guarantor under any Loan Document.

**Section 3.02 Personal Liability of Borrower (Exceptions to Non-Recourse Provision).**

**(a) Personal Liability Based on Lender's Loss.**

Borrower shall be personally liable to Lender for the repayment of the portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of:

- (1) failure to pay to Lender upon demand after an Event of Default, all Rents to which Lender is entitled under the Loan Documents and the amount of all security deposits collected by Borrower from tenants;
- (2) failure to maintain all insurance policies required by the Loan Documents;
- (3) failure to apply all insurance proceeds and any condemnation award as required by the Loan Documents;
- (4) failure to comply with any provision of this Loan Agreement or any other Loan Document relating to the delivery of books and records, statements, schedules and reports;
- (5) failure to apply Rents to the ordinary and necessary expenses of owning and operating the Mortgaged Property (other than property management fees that are not currently payable pursuant to the terms of any collateral assignment of property management agreement required by Lender), and to Debt Service Amounts, except that Borrower will not be personally liable with respect to Rents that are distributed in any calendar year if Borrower has paid all ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service for the calendar year that such Rents are attributable; or
- (6) waste or abandonment of the Mortgaged Property;

provided, however, Borrower shall not have personal liability under clauses (1), (3), or (5) above to the extent that Borrower lacks the legal right to direct the disbursement of the applicable funds due to an involuntary Bankruptcy Event that occurs without the consent, encouragement or active participation of Guarantor, Key Principal or Borrower Affiliate.

**(b) Full Personal Liability for Mortgage Loan.**

Borrower shall be personally liable to Lender for the repayment of all of the Indebtedness, and the Mortgage Loan shall be fully recourse to Borrower, upon the occurrence of any of the following:

- (1) failure by Borrower to comply with the single-asset entity requirements of this Loan Agreement or any other Loan Document;
- (2) a Transfer (other than a conveyance of the Mortgaged Property at a Foreclosure Event pursuant to the Security Instrument and this Loan Agreement) that is not permitted under this Loan Agreement or any other Loan Document;
- (3) the occurrence of any Bankruptcy Event (other than an acknowledgement in writing as described in (ii) of the definition of "Bankruptcy Event"); provided, however, in the event of an involuntary Bankruptcy Event, Borrower shall only be personally liable if such involuntary Bankruptcy Event occurs with the consent, encouragement or active participation of Borrower, Guarantor, Key Principal or any Borrower Affiliate; or
- (4) fraud or written material misrepresentation by Borrower, Guarantor, Key Principal, or any officer, director, partner, member, or shareholder of Borrower, Guarantor, or Key Principal or material omission in connection with: any application for



or creation of the Indebtedness, on-going financial or other reporting, or any request for action or consent by Lender.

**Section 3.03 Personal Liability for Indemnity Obligations.**

Borrower shall be personally and fully liable to Lender for Borrower's indemnity obligations under Section 13.01(e), the Environmental Indemnity Agreement and any other indemnity provided by Borrower under any other Loan Document. Borrower's liability for such indemnity obligations shall not be limited by the amount of the Indebtedness, the repayment of the Indebtedness, or otherwise.

**Section 3.04 Lender's Right to Forego Rights Against Mortgaged Property.**

To the extent that Borrower has personal liability under this Loan Agreement or any other Loan Document, Lender may exercise its rights against Borrower personally to the fullest extent permitted by applicable law without regard to whether Lender has exercised any rights against the Mortgaged Property, the UCC Collateral or any other security, or pursued any rights against any Guarantor or Key Principal, or pursued any other rights available to Lender under this Loan Agreement, any other Loan Document or applicable law. For purposes of this Section 3.04 only, the term "Mortgaged Property" shall not include any funds that have been applied by Borrower as required or permitted by this Loan Agreement prior to the occurrence of an Event of Default, or that Borrower was unable to apply as required or permitted by this Loan Agreement because of a Bankruptcy Event. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Article 3, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

**ARTICLE 4 - BORROWER STATUS**

**Section 4.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 4.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Due Organization and Qualification.**

Borrower is validly existing and qualified to transact business and is in good standing in the state in which it is formed or organized, the Property Jurisdiction and in each other jurisdiction that qualification or good standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to be so qualified or in good standing would adversely affect Borrower's operation of the Mortgaged Property or the validity, enforceability or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document.

**(b) Location.**

Borrower's General Business Address is Borrower's principal place of business and principal office.

**(c) Power and Authority.**

Borrower has the requisite power and authority:

(1) to own the Mortgaged Property and to carry on its business as now conducted and as contemplated to be conducted in connection with the performance of its obligations under this Loan Agreement and under the other Loan Documents to which it is a party; and

(2) to execute and deliver this Loan Agreement and the other Loan Documents to which it is a party, and to carry out the transactions contemplated by this Loan Agreement and the other Loan Documents to which it is a party.

**(d) Due Authorization.**

The execution, delivery and performance of this Loan Agreement and the other Loan Documents to which it is a party have been duly authorized by all necessary action and proceedings by or on behalf of Borrower, and no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of Borrower as a condition to the valid execution, delivery and performance by Borrower of this Loan Agreement or any of the other Loan Documents to which it is a party, except filings required to perfect and maintain the liens to be granted under the Loan Documents and routine filings to maintain good standing and its existence.

**(e) Valid and Binding Obligations.**

This Loan Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforceability may be limited by applicable Insolvency Laws or by the exercise of discretion by any court.

**(f) Effect of Mortgage Loan on Borrower's Financial Condition.**

Borrower is not presently Insolvent and the Mortgage Loan will not render Borrower Insolvent. Borrower has sufficient working capital, including proceeds from the Mortgage Loan, cash flow from the Mortgaged Property, or other sources, not only to adequately maintain the Mortgaged Property, but also to pay all of Borrower's outstanding debts as they come due, including all Debt Service Amounts.

**(g) Economic Sanctions, Anti-Money Laundering and Anti-Corruption.**

None of Borrower, any Guarantor, any Key Principal, or any Principal, nor to Borrower's knowledge, its general partners, managing members, managers (if non-member managed), or any Person owning or controlling any of them:

(1) is in violation of:

(A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act;

(B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or

(C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or

(2) is a Person:

(A) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws;

(B) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws;

(C) named on the list of “Specially Designated Nationals or Blocked Persons” maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list);

(D) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law; or

(E) that is owned, controlled by, or affiliated with any Person identified in clause (A), (B), (C), and/or (D) of this Section 4.01(g)(2); or

(3) is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

**(h) Borrower Single Asset Status.**

Borrower:

(1) does not own any real property, personal property or assets other than the Mortgaged Property;

(2) does not own, operate or participate in any business other than the management and operation of the Mortgaged Property;

(3) has no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Mortgaged Property is otherwise bound, other than unsecured obligations incurred in the ordinary course of the operation of the Mortgaged Property and obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents;

(4) has accurately maintained its financial statements, accounting records and other partnership, real estate investment trust, limited liability company or corporate documents, as the case may be, separate from those of any other Person;

(5) has not commingled its assets or funds with those of any other Person;

(6) has been adequately capitalized in light of its contemplated business operations;

(7) has not assumed, guaranteed or become obligated for the liabilities of any other Person (except in connection with the Mortgage Loan or the endorsement of negotiable instruments in the ordinary course of business) or held out its credit as being available to satisfy the obligations of any other Person; and

(8) has not entered into, and was not a party to, any transaction with any affiliate of any Person, except in the ordinary course of business and on terms which are no less favorable to any such Person than would be obtained in a comparable arm's length transaction with an unrelated third party.

**(i) No Bankruptcies or Judgments.**

None of Borrower, any Guarantor, any Key Principal, or any Principal, nor to Borrower's knowledge, its general partners, managing members, managers (if non-member managed), or any Person owning a Controlling Interest in any of them is currently:

(1) the subject of or a party to any completed or pending bankruptcy, reorganization, including any receivership or other insolvency proceeding;

(2) preparing or intending to be the subject of a Bankruptcy Event; or

(3) the subject of any judgment unsatisfied of record or docketed in any court; or

(4) Insolvent.

**(j) No Litigation.**

There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to Borrower's knowledge, threatened against or affecting Borrower, any Guarantor, any Key Principal, any Principal or the Mortgaged Property.

**(k) Payment of Taxes, Assessments and Other Charges.**

Borrower confirms that:

(1) it has filed all federal, state, county and municipal tax returns and reports required to have been filed by Borrower;

(2) it has paid all taxes, governmental charges and assessments due and payable with respect to such returns and reports;

(3) there is no controversy or objection pending, or to the knowledge of Borrower, threatened in respect of any tax returns of Borrower; and

(4) it has made adequate reserves on its books and records for all taxes that have accrued but which are not yet due and payable.

**(l) Not a Foreign Person.**

Borrower is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

**(m) ERISA.**

Borrower acknowledges that:

(1) it has no Employee Benefit Plan and does not maintain or sponsor an Employee Benefit Plan intended to meet the requirements of a “qualified plan” under Section 401(a) of the Internal Revenue Code;

(2) it does not maintain, sponsor or contribute to any Employee Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code;

(3) it has not engaged in a non-exempt “prohibited transaction” described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could result in an assessment of a civil penalty under Section 502(i) of ERISA or excise tax under Section 4975 of the Internal Revenue Code and none of the assets of Borrower constitute “plan assets” (within the meaning of Department of Labor Regulation Section 2510.3-101) of any Employee Benefit Plan subject to Title I of ERISA;

(4) it has not incurred any “withdrawal liability” and no “reportable event” has occurred (as such terms are described in Title IV of ERISA) with respect to any such Employee Benefit Plan, unless approved by the appropriate Governmental Authority;

(5) none of Borrower, any general partner, manager (if non-member managed), or managing member of Borrower, or any Guarantor, Principal, or Key Principal, or any person under common control with Borrower, is or ever has been obligated to contribute to any “multiemployer plan” (as defined in Section 3(37) of ERISA; and

(6) it has no unpaid obligations or liabilities that have not been discharged arising under ERISA of a character which if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets, including satisfaction of any plan funding requirements.

**(n) Default Under Other Obligations.**

(1) The execution, delivery and performance of the obligations imposed on Borrower under this Loan Agreement and the Loan Documents to which it is a party will not cause Borrower to be in default under the provisions of any agreement, judgment or order to which Borrower is a party or by which such Borrower is bound.

(2) None of Borrower, any general partner, manager (if non-member managed) or managing member of Borrower, or any Guarantor, Principal or Key Principal is in default under any obligation to Lender.

**(o) Prohibited Person.**

None of Borrower, any Guarantor, any Key Principal or any Principal, nor to Borrower's knowledge, its general partners, managing members, managers (if non-member managed) or any Person owning a Controlling Interest in any of them is a Prohibited Person.

Section 4.02 **Covenants.**

**(a) Maintenance of Existence; Organizational Documents.**

Borrower shall maintain its existence, its entity status, franchises, rights and privileges under the laws of the state of its formation or organization (as applicable). Borrower shall continue to be duly qualified and in good standing to transact business in each jurisdiction that qualification or standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to do so would adversely affect Borrower's operation of the Mortgaged Property or the validity, enforceability or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document. Borrower shall not make any material change to its organizational documents, including changes relating to control of, or the ability to oversee management and day-to-day operations of, Borrower, without Lender's prior written consent.

**(b) Economic Sanctions and Anti-Money Laundering.**

(1) Borrower shall at all times remain, and shall cause its general partners, managing members and managers (if non-member managed), and any Guarantor, Key Principal, Principal and any Person owning or controlling any of them to remain, in compliance with:

- (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act;
- (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; and
- (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal.

(2) At no time shall Borrower, or its general partners, managing members, managers (if non-member managed), any Guarantor, Key Principal, Principal, or any Person owning or controlling any of them, be a Person:

- (A) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws;
- (B) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under, any such laws;
- (C) named on the list of "Specially Designated Nationals or Blocked Persons" maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list);

(D) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law; or

(E) that is owned, controlled by or affiliated with any Person identified in clause (A), (B), (C), and/or (D) of this Section 4.02(b)(2).

(3) At no time shall Borrower, its general partners, managing members, managers, non-member managers, any Guarantor, Key Principal, Principal and any Person owning or controlling any of them, be a Person in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering, and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

**(c) Payment of Taxes, Assessments and Other Charges.**

Borrower shall file all federal, state, county and municipal tax returns and reports required to be filed by Borrower and shall pay, before any fine, penalty, interest or cost may be added thereto, all taxes payable with respect to such returns and reports.

**(d) Borrower Single Asset Status.**

Until the Indebtedness is fully paid, Borrower:

- (1) shall not acquire any real property, personal property or assets other than the Mortgaged Property;
- (2) shall not own, operate or participate in any business other than the management and operation of the Mortgaged Property;
- (3) shall not commingle its assets or funds with those of any other Person unless such assets or funds can be segregated and identified;
- (4) shall accurately maintain its financial statements, accounting records and other partnership, real estate investment trust, limited liability company or corporate documents, as the case may be, separate from those of any other Person;
- (5) shall not assume, guaranty or become obligated for, the liabilities of any other Person (except in connection with the Mortgage Loan or the endorsement of negotiable instruments in the ordinary course of business) or hold out its credit as being available to satisfy the obligations of any other Person; or
- (6) shall not enter into, or become a party to, any transaction with any affiliate of any Person, except in the ordinary course of business and on terms which are no less favorable to any such Person than would be obtained in a comparable arm's length transaction with an unrelated third party.

**(e) ERISA.**

Borrower acknowledges that:

- (1) it shall not maintain or sponsor an Employee Benefit Plan or fail to comply with the requirements of a “qualified plan” under Section 401(a) of the Internal Revenue Code;
- (2) it shall not maintain, sponsor or contribute to any Employee Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code;
- (3) it shall not engage in a non-exempt “prohibited transaction” described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could result in an assessment of a civil penalty under Section 502(i) of ERISA or excise tax under Section 4975 of the Internal Revenue Code, and none of the assets of Borrower shall constitute “plan assets” (within the meaning of Department of Labor Regulation Section 2510.3-101) of any Employee Benefit Plan subject to Title I of ERISA;
- (4) it shall not incur any “withdrawal liability” or trigger a “reportable event” (as such terms are described in Title IV of ERISA) with respect to any such Employee Benefit Plan, unless approved by the appropriate Governmental Authority;
- (5) none of Borrower, any general partner, manager, managing member or Principal of Borrower, or any Guarantor or Key Principal, or any person under common control with Borrower, shall withdraw from any Employee Benefit Plan that is a “multiemployer plan” (as defined in Section 3(37) of ERISA); and
- (6) it shall not incur any liabilities under ERISA that if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets, including satisfaction of any plan funding requirements.

**(f) Notice of Litigation or Insolvency.**

Borrower shall give immediate written notice to Lender of any claims, actions, suits or proceedings at law or in equity (including any insolvency, bankruptcy or receivership proceeding) by or before any Governmental Authority pending or, to Borrower’s knowledge, threatened against or affecting Borrower, any Guarantor, any Key Principal, any Principal or the Mortgaged Property, which claims, actions, suits or proceedings, if adversely determined would reasonably be expected to materially adversely affect the financial condition or business of Borrower, any Guarantor, any Key Principal or any Principal or the condition or ownership of the Mortgaged Property (including any claims, actions, suits or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be deemed material).

**(g) Payment of Costs, Fees, and Expenses.**

In addition to the payments specified in this Loan Agreement, Borrower shall pay, on demand, all of Lender’s out-of-pocket fees, costs, charges or expenses (including the reasonable fees and expenses of attorneys, accountants, and other experts) incurred by Lender in connection with:



- (1) any amendment to, or consent, or waiver required under this Loan Agreement or any of the Loan Documents (whether or not any such amendments, consents, or waivers are entered into);
- (2) defending or participating in any litigation arising from actions by third parties and brought against or involving Lender with respect to:
  - (A) the Mortgaged Property;
  - (B) any event, act, condition, or circumstance in connection with the Mortgaged Property; or
  - (C) the relationship between Lender, Borrower, Key Principal and Guarantor in connection with this Loan Agreement or any of the transactions contemplated by this Loan Agreement;
- (3) the administration or enforcement of, or preservation of rights or remedies under, this Loan Agreement or any other Loan Documents including or in connection with any litigation or appeals, any Foreclosure Event or other disposition of any collateral granted pursuant to the Loan Documents;
- (4) any Bankruptcy Event or Guarantor Bankruptcy Event;
- (5) any disclosure documents, including fees payable to any rating agencies, including the reasonable fees and expenses of Lender's attorneys and accountants.

## **ARTICLE 5 - THE MORTGAGE LOAN**

### **Section 5.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 5.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

#### **(a) Receipt and Review of Loan Documents.**

Borrower has received and reviewed this Loan Agreement and all of the other Loan Documents.

#### **(b) No Default.**

No Event of Default exists under any of the Loan Documents and the execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower to be in default under the provisions of any agreement, judgment or order to which Borrower is a party or by which Borrower is bound.

### **Section 5.02 Covenants.**

#### **(a) Ratification of Covenants; Estoppels; Certifications.**

Borrower shall:

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Article 4**

**Form 6001.NR  
04-11**

**© 2011 Fannie Mae**

(1) promptly notify Lender in writing upon any violation of any covenant set forth in any Loan Document; provided, however, any such notice by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Loan Agreement or any other Loan Document; and

(2) within ten (10) days after a request from Lender, provide a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement:

(A) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications);

(B) the unpaid principal balance of the Mortgage Loan;

(C) the date to which interest on the Mortgage Loan has been paid;

(D) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Loan Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail);

(E) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and

(F) any additional facts requested by Lender.

**(b) Further Assurances.**

**(1) Other Documents As Lender May Require.**

Borrower shall execute, acknowledge and deliver, at its cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Loan Agreement and the other Loan Documents.

**(2) Corrective Actions.**

Borrower shall provide, or cause to be provided, to Lender, at Borrower's cost and expense, such further documentation or information deemed necessary or appropriate by Lender in the exercise of its rights under the related commitment letter between Borrower and Lender or to correct patent mistakes in the Loan Documents, the Title Policy or the funding of the Mortgage Loan.

**(c) Sale of Mortgage Loan.**

Borrower shall:

(1) do anything necessary to comply with the requirements of Lender or any Investor of the Mortgage Loan or provide, or cause to be provided, to Lender or any

Investor of the Mortgage Loan, at Borrower's cost and expense, such further documentation or information required by Lender or Investor, in order to enable:

- (A) Lender to sell the Mortgage Loan to such Investor;
- (B) Lender to obtain a refund of any commitment fee from any such Investor; or
- (C) any such Investor to further sell or securitize the Mortgage Loan;

(2) ratify and affirm in writing the representations and warranties set forth in any Loan Document as of such date specified by Lender modified as necessary to reflect changes that have occurred subsequent to the Effective Date;

(3) confirm that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Loan Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); and

(4) execute and deliver to Lender and/or any Investor such other documentation, including any amendments, corrections, deletions or additions to this Loan Agreement or other Loan Document(s) as is required by Lender or such Investor.

**(d) Limitations on Further Acts of Borrower.**

Nothing in Section 5.02(c) shall require Borrower to do any further act that has the effect of:

(1) changing the economic terms of the Mortgage Loan set forth in the related commitment letter between Borrower and Lender; or

(2) imposing on Borrower greater personal liability under the Loan Documents than that set forth in the related commitment letter between Borrower and Lender.

**(e) Financing Statements; Record Searches.**

(1) Borrower shall pay all filing costs and all costs and expenses associated with any filing or recording of:

(A) any financing statements, including all continuation statements, termination statements and amendments or any other filings related to security interests in or liens on collateral; and

(B) any record searches for financing statements that Lender may require.

(2) Borrower hereby authorizes Lender to file any financing statements, continuation statements, termination statements and amendments as Lender may require in order to protect and preserve Lender's lien priority and security interest in the Mortgaged Property (and to the extent Lender has filed any such financing statements,

continuation statements or amendments prior to the Effective Date, such filings by Lender are hereby authorized and ratified by Borrower).

## ARTICLE 6 - PROPERTY USE, PRESERVATION AND MAINTENANCE

### Section 6.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 6.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

#### (a) Compliance with Law; Permits and Licenses.

(1) To Borrower's knowledge, all improvements to the Land and the use of the Mortgaged Property comply with all applicable laws, ordinances, statutes, rules and regulations, including all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing and environmental protection.

(2) To Borrower's knowledge, there is no evidence of any illegal activities on the Mortgaged Property.

(3) To Borrower's knowledge, no permits or approvals from any Governmental Authority, other than those previously obtained and furnished to Lender, are necessary for the commencement and completion of the Repairs or Replacements, as applicable.

(4) All required permits, licenses and certificates to comply with all zoning and land use statutes, laws, ordinances, rules and regulations, and all applicable health, fire, safety and building codes, and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses or the equivalent, have been obtained and are in full force and effect.

(5) No portion of the Mortgaged Property has been purchased with the proceeds of any illegal activity.

#### (b) Property Characteristics.

(1) The Mortgaged Property contains not less than:

(A) the Property Square Footage;

(B) the Total Parking Spaces; and

(C) the Total Residential Units.

(2) No part of the Land is included or assessed under or as part of another tax lot or parcel, and no part of any other property is included or assessed under or as part of the tax lot or parcels for the Land.

**(c) Property Ownership.**

Borrower is sole owner of the Mortgaged Property.

Section 6.02 **Covenants**

**(a) Use of Property.**

From and after the Effective Date, Borrower shall not, unless required by applicable law or Governmental Authority:

- (1) allow changes in the use of all or any part of the Mortgaged Property;
- (2) convert any individual dwelling units or common areas to commercial use;
- (3) initiate or acquiesce in a change in the zoning classification of the Land;
- (4) establish any condominium or cooperative regime with respect to the Mortgaged Property; or
- (5) subdivide the Land.

**(b) Property Maintenance.**

Borrower shall:

(1) pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, Repairs and Replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added;

(2) keep the Mortgaged Property in good repair and marketable condition (including the replacement of Personalty and Fixtures with items of equal or better function and quality) and subject to Section 9.03(b) restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition or condition immediately prior to the damage (if improved after the Effective Date), whether or not insurance proceeds are or any condemnation award is available to cover any costs of such restoration or repair;

(3) commence all Required Repairs, Additional Lender Repairs and Additional Lender Replacements as follows:

(A) with respect to any Required Repairs, promptly following the Effective Date (subject to weather conditions, if applicable), in accordance with the timelines set forth on the Required Repair Schedule, or if no timelines are provided, as soon as practical following the Effective Date;

(B) with respect to Additional Lender Repairs, in the event that Lender determines that Additional Lender Repairs are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's notice of such Additional Lender Repairs (subject to weather conditions, if applicable),

commence any such Additional Lender Repairs in accordance with Lender's timelines, or if no timelines are provided, as soon as practical;

(C) with respect to Additional Lender Replacements, in the event that Lender determines that Additional Lender Replacements are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's notice of such Additional Lender Replacements (subject to weather conditions, if applicable), commence any such Additional Lender Replacements in accordance with Lender's timelines, or if no timelines are provided, as soon as practical;

(4) make, construct, install, diligently perform and complete all Replacements and Repairs:

(A) in a good and workmanlike manner as soon as practicable following the commencement thereof, free and clear of any Liens, including mechanics' or materialmen's liens and encumbrances (except for Permitted Encumbrances);

(B) in accordance with all applicable laws, ordinances, rules and regulations of any Governmental Authority including applicable building codes, special use permits and environmental regulations;

(C) in accordance with all applicable insurance requirements; and

(D) within all timeframes required by Lender, and Borrower acknowledges that it shall be an Event of Default if Borrower abandons or ceases work on any Repair at any time prior to the completion of the Repairs for a period of longer than twenty (20) days (except when such cessation results from causes beyond the control of Borrower and Borrower is diligently pursuing the reinstatement of such work, provided however any such abandonment or cessation shall not in any event allow the Repair to be completed after the Completion Period); and

(5) subject to the terms of Section 6.03(a) provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing;

(6) give notice to Lender of, and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security for the Mortgage Loan or Lender's rights under this Loan Agreement; and

(7) upon Lender's request, submit to Lender any contracts or work orders described in Section 13.02(b).

**(c) Property Preservation.**

Borrower shall:

(1) not commit waste, or abandon or permit impairment or deterioration of the Mortgaged Property;

(2) except as otherwise permitted herein in connection with Repairs and Replacements, not remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property (or permit any tenant or any other person to do the same) except in connection with the replacement of tangible Personalty or Fixtures (provided such Personalty and Fixtures are replaced with items of equal or better function and quality);

(3) not engage in or knowingly permit, and shall take appropriate measures to prevent and abate or cease and desist, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Land or otherwise materially impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property;

(4) not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage required by this Loan Agreement; or

(5) not subject the Mortgaged Property to any voluntary, elective or non-compulsory tax lien or assessment (or opt in to any voluntary, elective or non-compulsory special tax district or similar regime).

**(d) Property Inspections.**

Borrower shall:

(1) permit Lender, its agents, representatives and designees to enter upon and inspect the Mortgaged Property (including in connection with any replacement, repair or environmental inspections), and shall cooperate and provide access to all areas of the Mortgaged Property (subject to the rights of tenants under the Leases) during normal business hours or at such other reasonable time upon reasonable notice, and at any time after an Event of Default or when exigent circumstances exist; and

(2) pay for reasonable costs or expenses incurred by Lender or its agents in connection with any such inspections.

**(e) Compliance with Laws.**

Borrower shall:

(1) comply with all laws, ordinances, statutes, rules and regulations of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, statutes, rules and regulations and covenants pertaining to construction of improvements on the Land, fair housing and requirements for equal opportunity, anti-discrimination, environmental protection and Leases;

(2) maintain all required permits, licenses and certificates necessary to comply with all zoning and land use statutes, laws, ordinances, rules and regulations, and all applicable health, fire, safety and building codes and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses or the equivalent;

(3) comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits;

(4) at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 6.02 (e); and

(5) promptly after receipt or notification thereof, provide Lender copies of any building code or zoning violation from any Governmental Authority with respect to the Mortgaged Property.

Section 6.03 **Mortgage Loan Administration Matters Regarding the Property.**

**(a) Property Management.**

From and after the Effective Date, each property manager and each property management agreement must be approved by Lender. If, in connection with the making of the Mortgage Loan, or at any later date, Lender waives in writing the requirement that Borrower enter into a written contract for management of the Mortgaged Property, and Borrower later elects to enter into a written contract or change the management of the Mortgaged Property, such new property manager or the property management agreement must be approved by Lender. As a condition to any approval by Lender, Lender may require that Borrower and such new property manager enter into a collateral assignment of the property management agreement on a form approved by Lender.

**(b) Subordination of Fees to Affiliated Property Managers.**

Any Property Manager that is a Borrower Affiliate to whom fees are payable for the management of the Mortgaged Property must enter into a collateral agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require.

**(c) Physical Needs Assessment.**

If, in connection with any inspection of the Mortgaged Property, Lender determines that the condition of the Mortgaged Property has deteriorated since the Effective Date, Lender may obtain, at Borrower's expense, a physical needs assessment of the Mortgaged Property. Lender's right to obtain a physical needs assessment pursuant to this Section 6.03(c) shall be in addition to any other rights available to Lender under this Loan Agreement in connection with any such deterioration. Any such inspection or physical needs assessment may result in Lender requiring Additional Lender Repairs or Additional Lender Replacements as further described in Section 13.02(a)(9)(B).

**ARTICLE 7 - LEASES AND RENTS**

Section 7.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 7.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Prior Assignment of Rents.**

Borrower has not executed any:



- (1) prior assignment of Rents (other than an assignment of Rents securing prior indebtedness that has been paid off and discharged or will be paid off and discharged with the proceeds of the Mortgage Loan); or
- (2) instrument which would prevent Lender from exercising its rights under this Loan Agreement or the Security Instrument.

**(b) Prepaid Rents.**

Borrower has not accepted, and does not expect to receive prepayment of, any Rents for more than two (2) months prior to the due dates of such Rents.

Section 7.02 **Covenants.**

**(a) Leases.**

Borrower shall:

- (1) comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits;
- (2) surrender possession of the Mortgaged Property, including all Leases and all security deposits and prepaid Rents, immediately upon appointment of a receiver or Lender's entry upon and taking of possession and control of the Mortgaged Property, as applicable; and
- (3) promptly provide Lender a copy of any non-Residential Lease at the time such Lease is executed (subject to Lender's consent rights for Material Commercial Leases in Section 7.02(b)), and, upon Lender's request, promptly provide Lender a copy of any Residential Lease then in effect as requested by Lender.

**(b) Commercial Leases.**

- (1) With respect to Material Commercial Leases, Borrower shall not:
  - (A) enter into any Material Commercial Lease except with the prior written consent of Lender and Lender's written approval of such Material Commercial Lease; or
  - (B) modify the terms of, extend or terminate any Material Commercial Lease (including any Material Commercial Lease in existence on the Effective Date) without the prior written consent of Lender.
- (2) With respect to any non-Material Commercial Lease, Borrower shall not:
  - (A) enter into any non-Material Commercial Lease that materially alters the use and type of operation of the premises subject to the Lease in effect as of the Effective Date, reduces the number or size of residential units at the Mortgaged Property or causes such non-Material Commercial Lease to be deemed a Material Commercial Lease; or

(B) modify the terms of any non-Material Commercial Lease (including any non-Material Commercial Lease in existence on the Effective Date) in any way that materially alters the use and type of operation of the premises subject to such non-Material Commercial Lease in effect as of the Effective Date, reduces the number or size of residential units at the Mortgaged Property or causes such non-Material Commercial Lease to be deemed a Material Commercial Lease.

(3) With respect to any Material Commercial Lease or non-Material Commercial Lease, Borrower shall cause the applicable tenant to provide within ten (10) days of the request, a certificate of estoppel, or if not provided by tenant within such ten (10) day period, Borrower shall provide such certificate of estoppel, certifying:

(A) that such Material Commercial Lease or non-Material Commercial Lease is unmodified and in full force and effect (or if there have been modifications, that such Material Commercial Lease or non-Material Commercial Lease is in full force and effect as modified and stating the modifications);

(B) the term of the Lease including any extensions thereto;

(C) the dates to which the Rent and any other charges hereunder have been paid by tenant;

(D) the amount of any security deposit delivered to Borrower as landlord;

(E) whether or not Borrower is in default (or whether any event or condition exists which, with the passage of time, would constitute an event of default) under such Lease;

(F) the address to which notices to tenant should be sent; and

(G) any other information as may be reasonably required by Lender.

**(c) Payment of Rents.**

Borrower shall:

(1) pay to Lender upon demand all Rents after the occurrence of an Event of Default;

(2) shall cooperate with Lender's efforts in connection with the assignment of Rents set forth in the Security Instrument; and

(3) not accept Rent under any Lease (whether residential or non-residential) for more than two (2) months in advance.

**(d) Assignment of Rents.**

Borrower shall not:

- (1) perform any acts and shall not execute any instrument that would prevent Lender from exercising its rights under the assignment of Rents granted in the Security Instrument or in any other Loan Document; or
- (2) interfere with Lender's collection of such Rents.

**(e) Further Assignments of Leases and Rents.**

Borrower shall execute and deliver any further assignments of Leases and Rents as Lender may require.

**(f) Options to Purchase by Tenants.**

No Lease (whether a Residential Lease or a non-Residential Lease) shall contain an option to purchase, right of first refusal or right of first offer, except as required by applicable law.

Section 7.03 **Mortgage Loan Administration Regarding Leases and Rents.**

**(a) Material Commercial Lease Requirements.**

Each Material Commercial Lease, including any renewal or extension of any Material Commercial Lease in existence as of the Effective Date, shall provide, directly or pursuant to a subordination, non-disturbance and attornment agreement approved by Lender, that:

- (1) the tenant shall, upon written notice from Lender after the occurrence of an Event of Default, pay all Rents payable under such Lease to Lender;
- (2) such Lease is subordinate to the lien of the Security Instrument;
- (3) the tenant shall attorn to Lender and any purchaser at a Foreclosure Event (such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a Foreclosure Event or by Lender in any manner);
- (4) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a Foreclosure Event may from time to time request; and
- (5) such Lease shall not terminate as a result of a Foreclosure Event unless Lender or any other purchaser at such Foreclosure Event, but subject to the terms of the subordination, non-disturbance and attornment agreement, affirmatively elects to terminate such Lease.

**(b) Residential Lease Requirements.**

All Residential Leases shall be:

- (1) on forms approved by Lender; and
- (2) for initial lease terms of not less than six (6) months and not more than twenty-four (24) months (however, if customary in the applicable market, Residential

Leases with terms of less than six (6) months may be permitted with Lender's prior written consent).

## ARTICLE 8 - BOOKS AND RECORDS; FINANCIAL REPORTING

### Section 8.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 8.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

#### (a) Financial Information.

All financial statements and data, including statements of cash flow and income and operating expenses, that have been delivered to Lender in respect of the Mortgaged Property:

- (1) are true, complete and correct in all material respects; and
- (2) accurately represent the financial condition of the Mortgaged Property as of such date.

#### (b) No Change in Facts or Circumstances.

All information in the Loan Application and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

### Section 8.02 Covenants.

#### (a) Obligation to Maintain Accurate Books and Records.

Borrower shall keep and maintain at all times at the Mortgaged Property or the property management agent's offices or Borrower's General Business Address and, upon Lender's request, shall make available at the Land:

- (1) complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property; and
- (2) copies of all written contracts, Leases and other instruments that affect Borrower or the Mortgaged Property.

#### (b) Items to Furnish to Lender.

Borrower shall furnish to Lender the following, certified as true, complete and accurate by an individual having authority to bind Borrower (or Guarantor, as applicable), in such form and with such detail as Lender reasonably requires:

- (1) within forty-five (45) days after the end of each first, second and third calendar quarter, a statement of income and expenses for Borrower on a year-to-date basis as of the end of each calendar quarter, and

- (2) within one hundred twenty (120) days after the end of each calendar year:
- (A) a statement of income and expenses for Borrower and Guarantor for such calendar year;
  - (B) a statement of cash flows of Borrower and Guarantor for such calendar year;
  - (C) when requested by Lender, balance sheet(s) showing all assets and liabilities of Borrower and Guarantor as of the end of such calendar year; and
  - (D) a written certification ratifying and affirming that:
    - (i) Borrower has taken no action in violation of Section 4.02(d) regarding its single asset status;
    - (ii) Borrower has received no notice of any building code violation, or if Borrower has received such notice, evidence of remediation;
    - (iii) Borrower has made no application for rezoning nor received any notice that the Mortgaged Property has been or is being rezoned; and
    - (iv) Borrower has taken no action and has no knowledge of any action that would violate the provisions of Section 11.02(b)(1)(F) regarding liens encumbering the Mortgaged Property;
  - (E) an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts; and
  - (F) a statement that identifies all owners of any interest in Borrower and the interest held by each, and if Borrower is a corporation, the names of all officers and directors of Borrower, and if Borrower is a limited liability company, the names of all managers who are not members;
- (3) within forty-five (45) days after the end of each first, second and third calendar quarter and within one hundred twenty (120) days after the end of each calendar year, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid and any related information requested by Lender;
- (4) upon Lender's request (but, absent an Event of Default, no more frequently than once in any six (6) month period):

(A) any item described in Section 8.02(b)(1) or Section 8.02(b)(2) for Borrower, certified as true, complete and accurate by an individual having authority to bind Borrower;

(B) a property management or leasing report for the Mortgaged Property, showing the number of rental applications received from tenants or prospective tenants and deposits received from tenants or prospective tenants, and any other information requested by Lender; and

(C) a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each month for such period as requested by Lender, which statement shall be delivered within thirty (30) days after the end of such month requested by Lender.

**(c) Delivery of Books and Records.**

If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender, upon written demand, all books and records relating to the Mortgaged Property or its operation.

Section 8.03 **Mortgage Loan Administration Matters Regarding Books and Records and Financial Reporting.**

**(a) Right to Audit Books and Records.**

Lender may require that any or all of the statements, schedules and reports of Borrower or the Mortgaged Property be audited, at Borrower's expense, by independent certified public accountants acceptable to Lender; provided that such requirement shall be limited to not more than once per Borrower's fiscal year so long as no Event of Default has occurred (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing). If Borrower fails, in a timely manner, to provide any such required audited materials, Lender shall have the right, at Borrower's expense, to have such materials audited by independent certified public accountants selected by Lender. All related costs and expenses of Lender shall become immediately due and payable within ten (10) Business Days after demand therefor.

**(b) Credit Reports; Credit Score.**

No more often than once in any twelve (12) month period, Lender is authorized to obtain a credit report (if applicable) on Borrower or any Guarantor or any Key Principal, the cost of which report shall be paid by Borrower, Guarantor, and Key Principal. Lender is authorized to obtain a Credit Score (if applicable) for Borrower, any Guarantor or any Key Principal at any time at Lender's expense.

**ARTICLE 9 - INSURANCE**

Section 9.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 9.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Compliance with Insurance Requirements.**

Borrower is in compliance with Lender's insurance requirements (or has obtained a written waiver from Lender for any non-compliant coverage) and has timely paid all premiums on all required insurance policies.

**(b) Property Condition.**

- (1) The Mortgaged Property has not been damaged by fire, water, wind or other cause of loss; or
- (2) if previously damaged, any previous damage to the Mortgaged Property has been repaired and the Mortgaged Property has been fully restored.

Section 9.02 **Covenants.**

**(a) Insurance Requirements.**

- (1) As required by Lender and applicable law, and as may be modified from time to time, Borrower shall:
  - (A) keep the Improvements insured at all times against any hazards, which insurance shall include coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and flood (if any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor) as an area having special flood hazards and to the extent flood insurance is available in that area), and may include sinkhole insurance, mine subsidence insurance, earthquake insurance, terrorism insurance and, if the Mortgaged Property does not conform to applicable building, zoning or land use laws, ordinance and law coverage;
  - (B) maintain at all times commercial general liability insurance, workmen's compensation insurance and such other liability, errors and omissions and fidelity insurance coverage; and
  - (C) maintain workmen's compensation insurance, builder's risk and public liability insurance, and other insurance in connection with completing the Repairs or Replacements, as applicable.

**(b) Delivery of Policies, Renewals, Notices and Proceeds.**

Borrower shall:

- (1) cause all insurance policies (including any policies not otherwise required by Lender) which can be endorsed with standard non-contributing, non-reporting mortgagee clauses making loss payable to Lender (or Lender's assigns) to be so endorsed;
- (2) promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums;

- (3) deliver evidence, in form and content acceptable to Lender, that each existing insurance policy has been renewed not less than thirty (30) days prior to the applicable expiration date and (if such evidence is other than an original or duplicate original of a renewal policy) deliver the original or duplicate original of each renewal policy in form and content acceptable to Lender within ninety (90) days after the applicable expiration date of the original insurance policy);
- (4) provide immediate written notice to the insurance company and to Lender of any event of loss;
- (5) execute such further evidence of assignment of any insurance proceeds as Lender may require; and
- (6) provide immediate written notice to Lender of Borrower's receipt of any insurance proceeds under any insurance policy required by Section 9.02(a)(1)(A) above and, if requested by Lender, deliver to Lender all of such proceeds received by Borrower to be applied by Lender in accordance with this Article 9.

Section 9.03            **Mortgage Loan Administration Matters Regarding Insurance**

**(a) Lender's Ongoing Insurance Requirements.**

Borrower acknowledges that Lender's insurance requirements may change from time to time. All insurance policies and renewals of insurance policies required by this Loan Agreement shall be:

- (1) in the form and with the terms required by Lender;
- (2) in such amounts, with such maximum deductibles and for such periods required by Lender; and
- (3) issued by insurance companies satisfactory to Lender.

BORROWER ACKNOWLEDGES THAT ANY FAILURE TO COMPLY WITH INSURANCE PROVISIONS SHALL PERMIT LENDER TO PURCHASE SUCH INSURANCE AT BORROWER'S COST. SUCH INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE MORTGAGED PROPERTY. IF LENDER PURCHASES INSURANCE FOR THE MORTGAGED PROPERTY, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AT THE DEFAULT RATE AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR THE EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE SHALL BE ADDED TO BORROWER'S TOTAL OUTSTANDING BALANCE OR OBLIGATION AND SHALL CONSTITUTE ADDITIONAL INDEBTEDNESS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN. BORROWER MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.



**(b) Application of Proceeds on Event of Loss.**

(1) Upon an event of loss, Lender may, at Lender's option:

(A) hold such proceeds to be applied to reimburse Borrower for the cost of Restoration (in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily residential properties); or

(B) apply such proceeds to the payment of the Indebtedness, whether or not then due; provided, however, Lender shall not apply insurance proceeds to the payment of the Indebtedness and shall permit Restoration pursuant to Section 9.03(b)(1) if all of the following conditions are met:

(i) no Event of Default has occurred (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing);

(ii) Lender determines that there will be sufficient funds to complete the Restoration;

(iii) Lender determines that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the debt service coverage ratio immediately prior to the event of loss, but in no event less than 1.0x (the debt service coverage ratio shall be calculated on a thirty (30) year amortizing basis in all events) and shall include all operating costs and other expenses, Imposition Deposits, deposits to Collateral Accounts and Mortgage Loan repayment obligations);

(iv) Lender determines that the Restoration will be completed before the earlier of (x) one (1) year before the stated Maturity Date or (y) one (1) year after the date of the loss or casualty; and

(v) Borrower provides Lender, upon request, evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Loan Agreement.

After the completion of Restoration in accordance with the above requirements, as determined by Lender, the balance, if any, of such proceeds shall be returned to Borrower.

(2) Notwithstanding the foregoing, if any loss is estimated to be in an amount equal to or less than \$50,000, Lender shall not exercise its rights and remedies as power-of-attorney herein and shall allow Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such policies of property damage insurance, and to collect and receive the proceeds of property damage insurance; provided that each of the following conditions shall be satisfied:

(A) Borrower shall immediately notify Lender of the casualty giving rise to the claim;

(B) no Event of Default has occurred (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing);

(C) the Restoration will be completed before the earlier of (i) one (1) year before the stated Maturity Date or (ii) one (1) year after the date of the loss or casualty;

(D) there will be sufficient funds to complete the Restoration;

(E) all proceeds of property damage insurance shall be issued in the form of joint checks to Borrower and Lender;

(F) all proceeds of property damage insurance shall be applied to the Restoration;

(G) Borrower shall deliver to Lender evidence satisfactory to Lender of completion of the Restoration and obtainment of all lien releases;

(H) Borrower shall have complied to Lender's satisfaction with the foregoing requirements on any prior claims subject to this provision, if any; and

(I) Lender shall have the right to inspect the Mortgaged Property.

(3) If Lender elects to apply insurance proceeds to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to the damaged portion of the Mortgaged Property and, at its expense and regardless of whether such costs are covered by insurance, clean up any debris resulting from the casualty event, and, if required or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable and marketable condition. Nothing in this Section 9.03(b) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement.

**(c) Payment Obligations Unaffected.**

The application of any insurance proceeds to the Indebtedness shall not extend or postpone the Maturity Date or the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, any other installments referred to in this Loan Agreement or in any other Loan Document. Notwithstanding the foregoing, if Lender applies insurance proceeds to the Indebtedness in connection with a casualty of less than the entire Mortgaged Property, and after such application of proceeds the debt service coverage ratio (as determined by Lender) is less than 1.25x based on the then-applicable Monthly Debt Service Payment and the anticipated on-going net operating income of the Mortgaged Property after such casualty event, then Lender may, at its discretion, permit an adjustment to the Monthly Debt Service Payments that become due and owing thereafter, based on Lender's then-current underwriting requirements. In no event shall the preceding sentence obligate Lender to make any adjustment to the Monthly Debt Service Payments.

**(d) Foreclosure Sale.**

If the Mortgaged Property is transferred pursuant to a Foreclosure Event or Lender otherwise acquires title to the Mortgaged Property, Borrower acknowledges that Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums applicable to the Mortgaged Property and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such Foreclosure Event or such acquisition.

**(e) Appointment of Lender as Attorney-In-Fact.**

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

**ARTICLE 10 - CONDEMNATION**

Section 10.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 10.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Prior Condemnation Action.**

No part of the Mortgaged Property has been taken in connection with a Condemnation Action.

**(b) Pending Condemnation Actions.**

No Condemnation Action is pending nor, to Borrower's knowledge, is threatened for the partial or total condemnation or taking of the Mortgaged Property.

Section 10.02 **Covenants.**

**(a) Notice of Condemnation.**

Borrower shall:

- (1) promptly notify Lender of any Condemnation Action;
- (2) appear in and prosecute or defend, at its own cost and expense, any action or proceeding relating to any Condemnation Action, including any defense of Lender's interest in the Mortgaged Property tendered to Borrower by Lender, unless otherwise directed by Lender in writing; and
- (3) execute such further evidence of assignment of any condemnation award in connection with a Condemnation Action as Lender may require.

**(b) Condemnation Proceeds.**

Borrower shall pay to Lender all awards or proceeds of a Condemnation Action promptly upon receipt.

Section 10.03 **Mortgage Loan Administration Matters Regarding Condemnation.**

**(a) Application of Condemnation Awards.**

Lender may apply any awards or proceeds of a Condemnation Action, after the deduction of Lender's expenses incurred in the collection of such amounts, to:

- (1) the restoration or repair of the Mortgaged Property; or
- (2) the payment of the Indebtedness, with the balance, if any, paid to Borrower.

**(b) Payment Obligations Unaffected.**

The application of any awards or proceeds of a Condemnation Action to the Indebtedness shall not extend or postpone the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, any other installments referred to in this Loan Agreement or in any other Loan Document, or the Maturity Date.

**(c) Appointment of Lender as Attorney-In-Fact.**

Borrower authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

**(d) Application of Proceeds.**

If Lender elects to apply condemnation proceeds or awards to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to the damaged portion of the Mortgaged Property and, at its expense and regardless of whether such costs are covered by insurance, clean up any debris resulting from the casualty event, and, if required or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable and marketable condition. Nothing in this Section 10.03(d) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement.

**ARTICLE 11 - LIENS, TRANSFERS AND ASSUMPTIONS**

Section 11.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 11.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) No Labor or Materialmen's Claims.**

All parties furnishing labor and materials have been paid in full and there are no mechanics' or materialmen's liens or claims outstanding for work, labor or materials affecting the Mortgaged Property, whether prior to, equal with or subordinate to the lien of the Security Instrument.

**(b) No Other Interests.**

No Person:

(1) other than Borrower has any possessory ownership or interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of existing Leases, the material terms of all such Leases having been previously disclosed to Lender;

(2) has an option, right of first refusal, or right of first offer (except as required by applicable law) to purchase the Mortgaged Property, or any interest in the Mortgaged Property, except as may be disclosed to and approved in writing by Lender.

Section 11.02 **Covenants.**

**(a) Liens; Encumbrances.**

Other than Permitted Encumbrances and the lien of the Security Instrument and this Loan Agreement, Borrower shall not permit the grant, creation or existence of any Lien, whether voluntary, involuntary or by operation of law, on all or any portion of the Mortgaged Property (including any voluntary, elective or non-compulsory tax lien or assessment pursuant to a voluntary, elective or non-compulsory special tax district or similar regime).

**(b) Transfers.**

**(1) Mortgaged Property.**

Borrower shall not Transfer, or cause or permit a Transfer of, all or any part of the Mortgaged Property (including any interest in the Mortgaged Property) other than:

(A) a Transfer to which Lender has consented in writing;

(B) the grant of a Residential Lease for a term of two (2) years or less and not containing an option to purchase or right of first refusal (except as required by applicable law);

(C) the grant of a non-Material Commercial Lease provided the use and type of operation of such space is unchanged from the use and type of operation in effect as of the Effective Date and the number and size of residential units at the Mortgaged Property are not reduced;

(D) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality which are free of Liens (other than those created by the Loan Documents);

(E) the grant of an easement, servitude or restrictive covenant to which Lender has consented, and Borrower has paid to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; or

(F) the creation of any tax lien, municipal lien, utility lien, mechanics' lien, materialmen's lien, or judgment lien against the Mortgaged Property if

bonded off, released of record or otherwise remedied to Lender's satisfaction within sixty (60) days after the earlier of the date Borrower has actual notice or constructive notice of the existence of such lien.

**(2) Interests in Borrower and/or Key Principal and/or Guarantor.**

Other than a Transfer to which Lender has consented in writing, Borrower shall not Transfer, or cause or permit to be Transferred:

- (A) a direct or indirect Controlling Interest in Borrower, Key Principal or Guarantor (if applicable);
- (B) more than forty-nine percent (49%) of any Key Principal's or Guarantor's direct or indirect ownership interests in Borrower that existed on the Effective Date (individually or on an aggregate basis);
- (C) the economic benefits or rights to cash flows attributable to any ownership interests in Borrower, Key Principal or Guarantor (if applicable) separate from the Transfer of the underlying ownership interests if the Transfer of the underlying ownership interest is prohibited by this Loan Agreement; or
- (D) a Transfer to a new key principal or new guarantor (if such new key principal or guarantor is an entity) which entity has an organizational existence termination date that ends before the Maturity Date.

**(3) Entity Conversion.**

(A) Borrower shall not change its name, change its jurisdiction or organization, or cause or permit a conversion of Borrower from one type of entity into another type of entity if such conversion results in either:

- (i) a Transfer of a Controlling Interest; or
- (ii) a change in any assets, liabilities, legal rights or obligations of Borrower (or of Key Principal, Guarantor or any general partner, manager (if non-member managed) or managing member of Borrower, as applicable), by operation of law or otherwise.

(B) Notwithstanding the foregoing, Borrower may convert from one type of legal entity into another type of legal entity for tax or other structuring purposes, provided:

- (i) the provisions of Section 11.02(b)(2) are satisfied;
- (ii) Borrower provides Lender with at least ten (10) days prior written notice of such conversion;
- (iii) Borrower provides Lender any certificates evidencing such conversion filed with the appropriate Secretary of State within ten (10) days after filing such certificates;

(iv) Borrower provides Lender new certificates of good standing for such entity at least five (5) days prior to such conversion;

(v) Lender reserves the right to file UCC-3 amendments where necessary reflecting the conversion;

(vi) if required by Lender, Borrower executes an amendment to this Loan Agreement documenting the conversion; and

(vii) Borrower shall provide Lender with confirmation from the title company (via electronic mail or letter) that nothing is needed in the land records (of the appropriate Property Jurisdiction) at such time to evidence such conversion, and no endorsements to the Title Policy are necessary to maintain Lender's coverage; or if any endorsements are necessary, Borrower shall provide such endorsements at Borrower's cost.

Section 11.03 **Mortgage Loan Administration Matters Regarding Liens, Transfers and Assumptions**

**(a) Assumption of Mortgage Loan.**

Lender shall consent to a Transfer of the Mortgaged Property to and an assumption of the Mortgage Loan by a new borrower if each of the following conditions is satisfied prior to the Transfer:

(1) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(a);

(2) no Event of Default has occurred, and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing;

(3) Lender determines that:

(A) the proposed new borrower, new key principal and any other new guarantor fully satisfy all of Lender's then-applicable borrower, key principal or guarantor eligibility, credit, management and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new borrower, new key principal and new guarantor and the organization of the new borrower, new key principal and new guarantor (if applicable));

(B) none of the proposed new borrower, new key principal and any new guarantor, or any owners of the proposed new borrower, new key principal and any new guarantor, are a Prohibited Person; and

(C) none of the proposed new borrower, new key principal and any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(4) Lender determines that the Mortgaged Property satisfies all of Lender's then-applicable loan underwriting standards, including physical condition, occupancy and net operating income;

(5) the proposed new borrower has executed an assumption agreement acceptable to Lender that, among other things, requires the proposed new borrower to assume and perform all obligations of Borrower (or any other transferor), and that may require that the new borrower comply with any provisions of any Loan Document which previously may have been waived by Lender for Borrower, subject to the terms of Section 11.03(g);

(6) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(A) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(B) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender;

(7) Lender has reviewed and approved the Transfer documents; and

(8) Lender has received the fees described in Section 11.03(g).

**(b) Transfers to Key Principal-Owned Affiliates or Guarantor-Owned Affiliates.**

(1) Transfers of direct or indirect ownership interests in Borrower that are not otherwise permitted by this Loan Agreement but in which Key Principal or Guarantor, or an entity in which Key Principal or Guarantor, as applicable, owns a Controlling Interest, is the transferee shall be consented to by Lender if such Transfer satisfies the applicable requirements of Section 11.03(a), other than Section 11.03(a)(5).

(2) Transfers of direct or indirect interests in Borrower held by a Key Principal or Guarantor to other Key Principals or Guarantors, as applicable, shall be consented to by Lender if such Transfer satisfies the following conditions:

(A) the Transfer does not cause a change in the management and control of Borrower; and

(B) the transferor Key Principal or Guarantor maintains the same right and ability to manage and control Borrower as existed prior to the Transfer.

If the conditions set forth in this Section 11.03(b) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(c) Estate Planning.**

Notwithstanding the provisions of Section 11.02(b)(2), so long as (1) the Transfer does not cause a change in the management and control of Borrower and (2) the transferor Key Principal or Guarantor, as applicable, maintains the same right and ability to manage and control



Borrower as existed prior to the Transfer, Lender shall consent to Transfers of direct or indirect ownership interests in Borrower held by a Key Principal or Guarantor to, and Transfers of direct or indirect ownership interests, in an entity Key Principal or entity Guarantor to:

- (A) Immediate Family Members of such Key Principal or Guarantor;
- (B) United States domiciled trusts established for the benefit of the transferor Key Principal or transferor Guarantor, or Immediate Family Members of the transferor Key Principal or the transferor Guarantor; or
- (C) partnerships or limited liability companies of which the partners or members, respectively, are all Immediate Family Members of such Key Principal or Guarantor.

If the conditions set forth in this Section 11.03(c) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(d) Termination or Revocation of Trust.**

If any of Borrower, Guarantor or Key Principal is a trust, the termination or revocation of such trust is an unpermitted Transfer; provided that the termination or revocation of the trust due to the death of an individual trustor shall not be considered an unpermitted Transfer so long as:

- (1) Lender is notified within thirty (30) days of the death; and
- (2) such Borrower, Guarantor or Key Principal, as applicable, is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 11.03(a) within ninety (90) days of the date of death.

If the conditions set forth in this Section 11.03(d) are satisfied, the Transfer Fee shall be waived; provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(e) Death of Key Principal or Guarantor.**

(1) If Key Principal or Guarantor is a natural person, Borrower must notify Lender in writing within ninety (90) days in the event Key Principal or Guarantor dies. Unless waived in writing by Lender, the deceased Key Principal or Guarantor shall be replaced by an individual or entity within one hundred eighty (180) days, subject to Borrower's satisfaction of the following conditions:

- (A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(e);
- (B) Lender determines that:
  - (i) the proposed new key principal and any other new guarantor fully satisfies all of Lender's then-applicable key principal or guarantor eligibility, credit, management and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new key principal and new guarantor

and the organization of the new key principal and new guarantor (if applicable));

(ii) none of the proposed new key principal or any new guarantor, or any owners of the proposed new key principal or any new guarantor, is a Prohibited Person; and

(iii) none of the proposed new key principal or any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(C) if applicable, one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Key Principal or Guarantor is required by Lender due to the death described in this Section 11.03(e), and such replacement has not occurred within such period, the period for replacement may be extended by Lender to a date not more than one (1) year from the date of Key Principal's or Guarantor's death; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox or cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(e) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(f) Bankruptcy of Guarantor.**

(1) Upon the occurrence of any Guarantor Bankruptcy Event, unless waived in writing by Lender, the applicable Guarantor shall be replaced by an individual or entity within ninety (90) days of such Guarantor Bankruptcy Event, subject to Borrower's satisfaction of the following conditions:

(A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(f);

(B) Lender determines that

(i) the proposed new guarantor fully satisfies all of Lender's then-applicable guarantor eligibility, credit, management and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new guarantor and the organization of the new guarantor (if applicable));

(ii) no new guarantor is a Prohibited Person; and

(iii) no new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(C) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Guarantor is required by Lender due to the Guarantor Bankruptcy Event described in this Section 11.03(f), and such replacement has not occurred within such period, the period for replacement may be extended by Lender in its discretion; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox or cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(f) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(g) Further Conditions to Transfers and Assumption.**

(1) In connection with any Transfer of the Mortgaged Property, or an ownership interest in Borrower, Key Principal or Guarantor for which Lender's approval is required under this Loan Agreement, Lender may, as a condition to any such approval, require:

(A) additional collateral, guaranties or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property;

(B) amendment of the Loan Documents to delete or modify any specially negotiated terms or provisions previously granted for the exclusive benefit of original Borrower, Key Principal or Guarantor and to restore the original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified; or

(C) a modification to the amounts required to be deposited into the Reserve/Escrow Account pursuant to the terms of Section 13.02(a)(3)(B).

(2) In connection with any request by Borrower for consent to a Transfer, Borrower shall pay to Lender upon demand:

(A) the Transfer Fee (to the extent charged by Lender);

(B) the Review Fee (regardless of whether Lender approves or denies such request);

(C) all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such costs exceed the Review Fee; and

(3) Borrower shall provide Lender written notice of all Transfers whether or not such Transfers are permitted under this Loan Agreement or approved by Lender no later than ten (10) days prior to the date of the Transfer, provided that Borrower shall not be required to provide notice of Transfers of Residential Leases or of the replacement of Fixtures or Personalty performed pursuant to the terms of the Loan Documents.

**Section 11.04 Transaction Specific Transfers**

(1) Notwithstanding anything in Section 11.02(b) of the Loan Agreement to the contrary and in addition to, and without limiting, any Transfer that would otherwise be permitted under Section 11.02(b) of the Loan Agreement, a one-time Transfer of any or all of the interests in Borrower held by TRB Union Palm, LLC, to Elco Landmark at Garden Square Management, LLC ("Manager") pursuant to Article VII of Borrower's Limited Liability Company Agreement dated March 22, 2012 ("Operating Agreement") in effect as of the Effective Date (a "TRB Transfer"), shall be permitted without payment of the Transfer Fee provided that:

(a) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section;

(b) No Event of Default has occurred, and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing;

(c) Following the TRB Transfer, control and management of the day-to-day operations of Borrower continue to be held by Manager;

(d) Borrower delivers to Lender a certification from Manager that neither it nor its Principals has been  
(a) convicted of fraud or a crime

involving moral turpitude, and (b) involved in a bankruptcy or reorganization within the ten years preceding the Notice to Lender;

- (e) Manager meets all of the requirements for a Principal set forth in this Loan Agreement;
  - (f) Manager is not a Prohibited Person;
  - (g) Lender has reviewed and approved the TRB Transfer documents and received organizational charts reflecting the structure of Borrower prior to and after the TRB Transfer and copies of the then-current organizational documents of Borrower, including any amendments;
  - (h) Borrower provides Lender with at least 10 days prior written notice of the proposed TRB Transfer and pays the Review Fee in conjunction with the delivery of such prior written notice;
  - (i) Borrower pays or reimburses Lender, upon demand, for all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such costs exceed the Review Fee;
  - (j) Lender receives confirmation acceptable to Lender that the representations and warranties of Section 4.01 continue to be satisfied; and
  - (k) Lender receives confirmation acceptable to Lender that Section 4.02(d) continues to be satisfied.
- (2) Notwithstanding anything in Section 11.02(b) of the Loan Agreement to the contrary and in addition to, and without limiting, any Transfer that would otherwise be permitted under Section 11.02(b) of the Loan Agreement, a one-time Transfer of all or any of the interests in Borrower held by Manager to TRB Union Palm, LLC (an "Elco Landmark Transfer"), (either by purchase of the ownership interest of Manager pursuant to Article VII of the Operating Agreement or replacement of Manager as the managing member of Borrower pursuant to Article VII of the Operating Agreement), shall be permitted without payment of the Transfer Fee provided that:
- (a) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section;
  - (b) no Event of Default has occurred, and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing;
  - (c) Lender determines, in Lender's Discretion, that the BRT Realty Trust and TRB Union Palm, LLC ("New Guarantor/Key Principal"), satisfies all of Lender's then applicable key principal and guarantor eligibility, credit, management and other loan underwriting standards and New Guarantor/Key Principal, shall become the new key principal and guarantor for obligations arising after the Elco Landmark Transfer and shall have executed and delivered to Lender a substitute Non-

Recourse Guaranty or other substitute guaranty in a form acceptable to Lender and in similar form to the Guaranty executed by original Guarantor on the Effective Date, and Lender will release the original Guarantor for any guaranty obligations arising under the original Guaranty from and after the date of the Transfer (except for those obligations which explicitly survive the payoff and satisfaction of the Mortgage Loan);

- (d) Neither TRB Union Palm, LLC nor BRT Realty Trust is a Prohibited Person;
- (e) Lender has reviewed and approved the Elco Landmark Transfer documents and received organizational charts reflecting the structure of Borrower prior to and after the Elco Landmark Transfer and copies of the then-current organizational documents of Borrower, including any amendments;
- (f) Borrower provides Lender with at least 30 days prior written notice of the proposed Elco Landmark Transfer and pays a review fee in the amount of \$10,000 in conjunction with the delivery of such prior written notice;
- (g) Borrower pays or reimburses Lender, upon demand, for all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Elco Landmark Transfer request, to the extent such costs exceed \$10,000;
- (h) Lender receives confirmation acceptable to Lender that the representations and warranties of Section 4.01 continue to be satisfied; and
- (i) Lender receives confirmation acceptable to Lender that Section 4.02(d) continues to be satisfied.

## **ARTICLE 12 - IMPOSITIONS**

### **Section 12.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 12.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

#### **(a) Payment of Taxes, Assessments and Other Charges.**

Borrower has:

- (1) paid (or with the approval of Lender, established an escrow fund sufficient to pay when due and payable) all amounts and charges relating to the Mortgaged Property that have become due and payable, including Impositions, leasehold payments and ground rents;

(2) paid all Taxes for the Mortgaged Property that have become due pursuant to any notice of assessment received by Borrower and any and all taxes that have become due against Borrower;

(3) no knowledge of any basis for any additional assessments;

(4) no knowledge of any presently pending special assessments against all or any part of the Mortgaged Property, or any presently pending special assessments against Borrower; and

(5) not received any written notice of any contemplated special assessment against the Mortgaged Property, or any contemplated special assessment against Borrower.

Section 12.02      **Covenants.**

**(a) Imposition Deposits, Taxes, and Other Charges.**

Borrower shall:

(1) deposit the Imposition Deposits with Lender on each Payment Date (or on another day designated in writing by Lender) in amount sufficient, in Lender's discretion, to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added, plus an amount equal to no more than one-sixth (1/6) (or the amount permitted by applicable law) of the Impositions for the trailing twelve (12) months (calculated based on the aggregate annual Imposition costs divided by twelve (12) and multiplied by two (2));

(2) deposit with Lender, within ten (10) days after notice from Lender (subject to applicable law), such additional amounts estimated by Lender to be reasonably necessary to cure any deficiency in the amount of the Imposition Deposits held for payment of a specific Imposition;

(3) pay, or cause to be paid, all Impositions, leasehold payments, ground rents and Borrower taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment;

(4) promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and, if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments; and

(5) promptly deliver to Lender a copy of all notices of any special assessments and contemplated special assessments against the Mortgaged Property or Borrower.

Section 12.03      **Mortgage Loan Administration Matters Regarding Impositions.**

**(a) Maintenance of Records by Lender.**

Lender shall maintain records of the monthly and aggregate Imposition Deposits held by Lender for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required.

**(b) Imposition Accounts.**

All Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency and which accounts meet the standards for custodial accounts as required by Lender from time to time. Lender shall not be obligated to open additional accounts, or deposit Imposition Deposits in additional institutions, when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. No interest, earnings or profits on the Imposition Deposits shall be paid to Borrower unless applicable law so requires. Imposition Deposits shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose in accordance with this Loan Agreement. For the purposes of 9-104(a)(3) of the UCC, Lender is the owner of the Imposition Deposits and shall be deemed a “customer” with sole control of the account holding the Imposition Deposits.

**(c) Payment of Impositions; Sufficiency of Imposition Deposits.**

Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition. Imposition Deposits shall be required to be used by Lender to pay Taxes, insurance premiums and any other individual Imposition only if:

- (1) no Event of Default exists;
- (2) Borrower has timely delivered to Lender all applicable bills or premium notices that it has received; and
- (3) sufficient Imposition Deposits are held by Lender for each Imposition at the time such Imposition becomes due and payable.

Lender shall have no liability to Borrower for failing to pay any Imposition if any of the conditions are not satisfied. If at any time the amount of the Imposition Deposits held for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender to be held in connection with such Imposition, the excess may be credited against future installments of Imposition Deposits for such Imposition.

**(d) Imposition Deposits Upon Event of Default.**

If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in such amount and in such order as Lender determines, to pay any Impositions or as a credit against the Indebtedness.

**(e) Contesting Impositions.**

Other than insurance premiums, Borrower may contest, at its expense, by appropriate legal proceedings, the amount or validity of any Imposition if:

- (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings;
- (2) Lender determines that the Mortgaged Property is not in danger of being sold or forfeited;



(3) Borrower deposits with Lender (or the applicable Governmental Authority if required by applicable law) reserves sufficient to pay the contested Imposition, if required by Lender (or the applicable Governmental Authority);

(4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender; and

(5) Borrower commences, and at all times thereafter diligently prosecutes, such contest in good faith until a final determination is made by the applicable Governmental Authority.

**(f) Release to Borrower.**

Upon payment in full of all sums secured by the Security Instrument and this Loan Agreement and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower the balance of any Imposition Deposits then on deposit with Lender.

**ARTICLE 13 - REPLACEMENT RESERVE AND REPAIRS**

Section 13.01 **Covenants.**

**(a) Initial Deposits to Replacement Reserve Account and Repairs Escrow Account.**

On the Effective Date, Borrower shall pay to Lender:

(1) the Initial Replacement Reserve Deposit for deposit into the Replacement Reserve Account; and

(2) the Repairs Escrow Deposit for deposit into the Repairs Escrow Account.

**(b) Monthly Replacement Reserve Deposits.**

Borrower shall deposit the applicable Monthly Replacement Reserve Deposit into the Replacement Reserve Account on each Payment Date.

**(c) Payment for Replacements and Repairs.**

Borrower shall:

(1) pay all invoices for the Replacements and Repairs, regardless of whether funds on deposit in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, are sufficient, prior to any request for disbursement from the Replacement Reserve Account or the Repairs Escrow Account, as applicable (unless Lender has agreed to issue joint checks in connection with a particular Replacement or Repair);

(2) pay all applicable fees and charges of any Governmental Authority on account of the Replacements and Repairs, as applicable; and

(3) provide evidence satisfactory to Lender of completion of the Replacements and any Required Repairs (within the Completion Period or within such other period or by such other date set forth in the Required Repair Schedule and any

Borrower Requested Repairs and Additional Lender Repairs (by the date specified by Lender for any such Borrower Requested Repairs or Additional Lender Repairs)).

**(d) Assignment of Contracts for Replacements and Repairs.**

Borrower shall assign to Lender any contract or subcontract for Replacements or Repairs, upon Lender's request, on a form of assignment approved by Lender.

**(e) Indemnification.**

Borrower shall indemnify and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with the performance of the Replacements or Repairs or investment of the Reserve/Escrow Account Funds.

**(f) Amendments to Loan Documents.**

Borrower shall execute and/or deliver to Lender, upon request, an amendment to this Loan Agreement, the Security Instrument, any other Loan Document and/or the original financing statement necessary or desirable to perfect Lender's lien upon any portion of the Mortgaged Property for which Reserve/Escrow Account Funds were expended.

**(g) Administrative Fees and Expenses.**

Borrower shall pay to Lender:

(1) by the date specified in the applicable invoice, the Repairs Escrow Account Administrative Fee and the Replacement Reserve Account Administration Fee for Lender's services in administering the Repairs Escrow Account and Replacement Reserve Account and investing the funds on deposit in the Repairs Escrow Account and the Replacement Reserve Account, respectively;

(2) upon demand, a reasonable inspection fee, not exceeding the Maximum Inspection Fee, for each inspection of the Mortgaged Property by Lender in connection with a Repair or Replacement, plus all other reasonable costs and out-of-pocket expenses relating to such inspections; and

(3) upon demand, all reasonable fees charged by any engineer, architect, inspector or other person inspecting the Mortgaged Property on behalf of Lender for each inspection of the Mortgaged Property in connection with a Repair or Replacement, plus all other reasonable costs and out-of-pocket expenses relating to such inspections.

Section 13.02 **Mortgage Loan Administration Matters Regarding Reserves.**

**(a) Accounts, Deposits, and Disbursements.**

**(1) Custodial Accounts.**

(A) The Replacement Reserve Account shall be an interest-bearing account that meets the standards for custodial accounts as required by Lender from time to time. Lender shall not be responsible for any losses resulting from

the investment of the Replacement Reserve Deposits or for obtaining any specific level or percentage of earnings on such investment. All interest earned on the Replacement Reserve Deposits shall be added to and become part of the Replacement Reserve Account; provided, however, if applicable law requires, and so long as no Event of Default exists under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Replacement Reserve Account not less frequently than the Replacement Reserve Account Interest Disbursement Frequency. In no event shall Lender be obligated to disburse funds from the Reserve/Escrow Account if an Event of Default exists.

(B) Lender shall not be obligated to deposit the Repairs Escrow Deposits into an interest-bearing account.

**(2) Disbursements by Lender Only.**

Only Lender or a designated representative of Lender may make disbursements from the Replacement Reserve Account and the Repairs Escrow Account. Except as provided in Section 13.02(a)(8), disbursements shall only be made upon Borrower request and after satisfaction of all conditions for disbursement.

**(3) Adjustment of Deposits.**

**(A) Mortgage Loan Terms Exceeding Ten (10) Years.**

If the Loan Term exceeds ten (10) years, a physical needs assessment shall be ordered by Lender for the Mortgaged Property at the expense of Borrower (which expense may be paid of out of the Replacement Reserve Account if excess funds are available). The physical needs assessment shall be performed no earlier than the sixth (6<sup>th</sup>) month and no later than the ninth (9<sup>th</sup>) month of the tenth (10<sup>th</sup>) Loan Year (and of the twentieth (20<sup>th</sup>) Loan Year if the Loan Term exceeds twenty (20) years). After review of the physical needs assessment, the amount of the Monthly Replacement Reserve Deposit may be adjusted by Lender for the remaining Loan Term by written notice to Borrower so that the Monthly Replacement Reserve Deposits are sufficient to fund the Replacements as and when required and/or the amount to be held in the Repairs Escrow Account may be adjusted by Lender so that the Repairs Escrow Deposit is sufficient to fund the Repairs as and when required.

**(B) Transfers.**

In connection with any Transfer of the Mortgaged Property, or any Transfer of an ownership interest in Borrower, Guarantor or Key Principal which requires Lender's consent, Lender may review the amounts on deposit, if any, in the Replacement Reserve Account or the Repairs Escrow Account, the amount of the Monthly Replacement Reserve Deposit and the likely repairs and replacements required by the Mortgaged Property, and the related contingencies which may arise during the remaining Loan Term. Based upon that review, Lender may require an additional deposit to the Replacement Reserve Account or the Repairs Escrow Account, or an increase in the amount of the Monthly Replacement Reserve Deposit as a condition to Lender's consent to such Transfer. In all events, the transferee shall be required to assume Borrower's duties and obligations under this Loan Agreement.

**(4) Insufficient Funds.**

Lender may, upon thirty (30) days prior written notice to Borrower, require an additional deposit(s) to the Replacement Reserve Account or Repairs Escrow Account, or an increase in the amount of the Monthly Replacement Reserve Deposit, if Lender determines that the amounts on deposit in either the Replacement Reserve Account or the Repairs Escrow Account are not sufficient to cover the costs for Required Repairs or Required Replacements or, pursuant to the terms of Section 13.02(a)(9), not sufficient to cover the costs for Borrower Requested Repairs, Additional Lender Repairs, Borrower Requested Replacements or Additional Lender Replacements. Borrower's agreement to complete the Replacements or Repairs as required by this Loan Agreement shall not be affected by the insufficiency of any balance in the Replacement Reserve Account or the Repairs Escrow Account, as applicable.

**(5) Disbursements for Replacements and Repairs.**

(A) Disbursement requests may only be made after completion of the applicable Replacements and only to reimburse Borrower for the actual approved costs of the Replacements. Lender shall not disburse from the Replacement Reserve Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from the Repairs Escrow Account or any similar account. Disbursement from the Replacement Reserve Account and the Repairs Escrow Account shall not be made more frequently than the Maximum Replacement Reserve Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Replacement Reserve Account shall not be less than the Minimum Replacement Reserve Disbursement Amount.

(B) Disbursement requests may only be made after completion of the applicable Repairs and only to reimburse Borrower for the actual cost of the Repairs, up to the Maximum Repair Cost. Lender shall not disburse any amounts which would cause the funds remaining in the Repairs Escrow Account after any disbursement (other than with respect to the final disbursement) to be less than the Maximum Repair Cost of the then-current estimated cost of completing all remaining Repairs. Lender shall not disburse from the Repairs Escrow Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from the Replacement Reserve Account or any similar account. Disbursement from the Repairs Escrow Account shall not be made more frequently than the Maximum Repair Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Repairs Escrow Account shall not be less than the Minimum Repairs Disbursement Amount.

**(6) Disbursement Requests.**

Each request by Borrower for disbursement from the Replacement Reserve Account or the Repairs Escrow Account must be in writing, must specify the Replacement or Repair for which reimbursement is requested (provided that for any Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)), and must:

- (A) if applicable, specify the quantity and price of the items or materials purchased, grouped by type or category;
- (B) if applicable, specify the cost of all contracted labor or other services involved in the Replacement or Repair for which such request for disbursement is made;
- (C) if applicable, include copies of invoices for all items or materials purchased and all contracted labor or services provided;
- (D) include evidence of payment of such Replacement or Repair satisfactory to Lender (unless Lender has agreed to issue joint checks in connection with a particular Repair or Replacement as provided in this Loan Agreement); and
- (E) contain a certification by Borrower that the Repair or Replacement has been completed lien free and in a good and workmanlike manner, in accordance with any plans and specifications previously approved by Lender (if applicable) and in compliance with all applicable laws, ordinances, rules and regulations of any Governmental Authority having jurisdiction over the Mortgaged Property, and otherwise in accordance with the provisions of this Loan Agreement.

**(7) Conditions to Disbursement.**

Lender may require any or all of the following at the expense of Borrower as a condition to disbursement of funds from the Replacement Reserve Account or the Repairs Escrow Account (provided that for any Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)):

- (A) an inspection by Lender of the Mortgaged Property and the applicable Replacement or Repair;
- (B) an inspection or certificate of completion by an appropriate independent qualified professional (such as an architect, engineer or property inspector, depending on the nature of the Repair or Replacement) selected by Lender;
- (C) either:
  - (i) a search of title to the Mortgaged Property effective to the date of disbursement; or
  - (ii) a “date-down” endorsement to Lender’s Title Policy extending the effective date of such policy to the date of disbursement, and showing no Liens other than Permitted Encumbrances (or liens which Borrower is diligently contesting in good faith that have been bonded off to the satisfaction of Lender); and

(D) an acknowledgement of payment, waiver of claims and release of lien for work performed and materials supplied from each contractor, subcontractor or materialman in accordance with the requirements of applicable law and covering all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor or materialman through the date covered by the disbursement request (or, in the event that payment to such contractor, subcontractor or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous disbursement).

**(8) Joint Checks for Periodic Disbursements.**

Lender may issue joint checks, payable to Borrower and the applicable supplier, materialman, mechanic, contractor, subcontractor or other similar party, if:

(A) the cost of the Replacement or Repair exceeds the Replacement Threshold or the Repair Threshold, as applicable, and the contractor performing such Replacement or Repair requires periodic payments pursuant to the terms of the applicable written contract;

(B) the contract for such Repair or Replacement requires payment upon completion of the applicable portion of the work;

(C) Borrower makes the disbursement request after completion of the applicable portion of the work required to be completed under such contract;

(D) the materials for which the request for disbursement has been made are on site at the Mortgaged Property and are properly secured or installed;

(E) Lender determines that the remaining funds in the Replacement Reserve Account designated for such Replacement, or in the Repairs Escrow Account designated for such Repair, as applicable, are sufficient to complete the Replacement or Repair;

(F) each supplier, materialman, mechanic, contractor, subcontractor or other similar party receiving payments shall have provided, if requested by Lender, a waiver of liens with respect to amounts which have been previously paid to them; and

(G) all other conditions for disbursement have been satisfied.

**(9) Replacements and Repairs Other than Required Replacements and/or Required Repairs.**

**(A) Borrower Requested Replacements and Borrower Requested Repairs.**

In the event Borrower requests a disbursement from the Replacement Reserve Account or the Repairs Escrow Account to reimburse Borrower for any Borrower Requested Replacement or Borrower Requested Repair, any related disbursement request must also contain support for why Lender should allow such

disbursement. Lender may make disbursements for Borrower Requested Replacements or Borrower Requested Repairs if Lender determines that:

- (i) they are of the type intended to be covered by the Replacement Reserve Account or the Repairs Escrow Account, as applicable;
- (ii) the costs are reasonable;
- (iii) the amount of funds in the Replacement Reserve Account or Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements or Additional Lender Repairs that have been previously approved by Lender; and
- (iv) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit in connection with any such Borrower Requested Replacements, or an additional deposit to the Repairs Escrow Account for any such Borrower Requested Repairs.

**(B) Additional Lender Replacements and Additional Lender Repairs.**

Lender may require, as set forth in Section 6.02(b)(3), Section 6.03(c), or otherwise from time to time, upon written notice to Borrower, that Borrower make Additional Lender Replacements or Additional Lender Repairs. Lender may make disbursements from the Replacement Reserve Account for Additional Lender Replacements or from the Repairs Escrow Account for Additional Lender Repairs, as applicable, if Lender determines that:

- (i) the costs are reasonable;
- (ii) the amount of funds in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements or Additional Lender Repairs that have been previously approved by Lender; and
- (iii) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit for any such Additional Lender Replacements or an additional deposit to the Repairs Escrow Account for any such Additional Lender Repair.

**(10) Excess Costs.**

In the event any Replacement or Repair exceeds the approved cost set forth on the Required Replacement Schedule for Replacements, or the Maximum Repair Cost for Repairs, Borrower may submit a disbursement request to reimburse Borrower for such excess cost. The disbursement request must contain support for why Lender should allow such disbursement. Lender may make disbursements from the Replacement Reserve Account or the Repairs Escrow Account, as applicable, if:

(A) the excess cost is reasonable;

(B) the amount of funds in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, is sufficient to pay such excess cost and the then-current estimated cost of completing all remaining Replacements and Repairs at the Maximum Repair Cost; and

(C) all conditions for disbursement from the Replacement Reserve Account or the Repairs Escrow Account have been satisfied.

**(11) Final Disbursements.**

Upon completion of all Repairs in accordance with this Loan Agreement and so long as no Event of Default has occurred, Lender shall disburse to Borrower any amounts then remaining in the Repairs Escrow Account. Upon payment in full of the Indebtedness and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower any and all amounts then remaining in the Replacement Reserve Account and the Repairs Escrow Account (if not previously released).

**(b) Approvals of Contracts; Assignment of Claims.**

Lender retains the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements or Repairs. Notwithstanding Borrower's assignment (in the Security Instrument) of its rights and claims against all persons or entities supplying labor or materials in connection with the Replacement or Repairs, Lender will not pursue any such right or claim unless an Event of Default has occurred or as otherwise provided in Section 14.03(c).

**(c) Delays and Workmanship.**

If Lender determines that any work for any Replacement or Repair has not timely commenced, has not been timely performed in a workmanlike manner, or has not been timely completed in a workmanlike manner, Lender may, without notice to Borrower:

(1) withhold disbursements from the Replacement Reserve Account or Repairs Escrow Account for such unsatisfactory Replacement or Repair, as applicable;



- (2) proceed under existing contracts or contract with third parties to make or complete such Replacement or Repair;
- (3) apply the funds in the Replacement Reserve Account or Repairs Escrow Account toward the labor and materials necessary to make or complete such Replacement or Repair, as applicable; or
- (4) exercise any and all other remedies available to Lender under this Loan Agreement or any other Loan Document, including any remedies otherwise available upon an Event of Default pursuant to the terms of Section 14.02.

To facilitate Lender's completion or making of such Replacements or Repairs, Lender shall have the right to enter onto the Mortgaged Property and perform any and all work and labor necessary to make or complete the Replacements or Repairs and employ watchmen to protect the Mortgaged Property from damage. All funds so expended by Lender shall be deemed to have been advanced to Borrower, shall be part of the Indebtedness and shall be secured by the Security Instrument and this Loan Agreement.

**(d) Appointment of Lender as Attorney-In-Fact.**

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

**(e) No Lender Obligation.**

Nothing in this Loan Agreement shall:

- (1) make Lender responsible for making or completing the Replacements or Repairs;
- (2) require Lender to expend funds, whether from the Replacement Reserve Account, the Repairs Escrow Account or otherwise, to make or complete any Replacement or Repair;
- (3) obligate Lender to proceed with the Replacements or Repairs; or
- (4) obligate Lender to demand from Borrower additional sums to make or complete any Replacement or Repair.

**(f) No Lender Warranty.**

Lender's approval of any plans for any Replacement or Repair, release of funds from the Replacement Reserve Account or Repairs Escrow Account, inspection of the Mortgaged Property by Lender or its agents, representatives or designees, or other acknowledgment of completion of any Replacement or Repair in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any person that the Replacement or Repair has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental agency, such responsibility being at all times exclusively that of Borrower.

**ARTICLE 14 - DEFAULTS/REMEDIES**

**Section 14.01 Events of Default.**

The occurrence of any one or more of the following in this Section 14.01 shall constitute an Event of Default under this Loan Agreement.

**(a) Automatic Events of Default.**

The following shall constitute automatic Events of Default:

- (1) any failure by Borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document;
- (2) any failure by Borrower to maintain the insurance coverage required by any Loan Document;
- (3) any failure by Borrower to comply with the provisions of Section 4.02(d) relating to its single asset status;
- (4) any warranty, representation, certificate or statement of Borrower, Guarantor or Key Principal in this Loan Agreement or any of the other Loan Documents shall be false, inaccurate or misleading in any material respect when made;
- (5) fraud, gross negligence, willful misconduct or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, partners, members or managers, or any Guarantor, Key Principal or Principal or any of their employees, officers, directors, trustees, partners, members or managers in connection with:
  - (A) the application for, or creation of, the Indebtedness;
  - (B) any financial statement, rent roll or other report or information provided to Lender during the term of the Mortgage Loan;
  - (C) any request for Lender's consent to any proposed action, including a request for disbursement of Reserve/Escrow Account Funds or Collateral Account Funds;
- (6) the occurrence of any Transfer not permitted by the Loan Documents;
- (7) the occurrence of a Bankruptcy Event;
- (8) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Loan Agreement or the Security Instrument or Lender's interest in the Mortgaged Property;
- (9) any failure by Borrower, Key Principal or Guarantor to comply with the provisions of Section 5.02(b) and Section 5.02(c);

(10) if Borrower, Guarantor or Key Principal is a trust, the termination or revocation of such trust, except as set forth in Section 11.03(d);

(11) any failure by Borrower to complete any Repair related to fire, life or safety issues in accordance with the terms of this Loan Agreement within the Completion Period (or such other date set forth on the Required Repair Schedule or otherwise required by Lender in writing for such Repair); and

(12) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.

**(b) Events of Default Subject to a Specified Cure Period.**

The following shall constitute an Event of Default subject to the cure period set forth in the Loan Documents:

(1) if Key Principal or Guarantor is a natural person, the death of such individual, unless requirements of Section 11.03(e) are met;

(2) the occurrence of a Guarantor Bankruptcy Event, unless requirements of Section 11.03(f) are met; and

(3) any failure by Borrower to perform any obligation under this Loan Agreement or any Loan Document that is subject to a specified notice and cure period, which failure continues beyond such specified notice and cure period as set forth herein or in the applicable Loan Document.

**(c) Events of Default Subject to Extended Cure Period.**

The following shall constitute an Event of Default subject to the cure period set forth below:

(1) Any failure by Borrower to perform any of its obligations under this Loan Agreement or any Loan Document (other than those specified in Section 14.01(a) or Section 14.01(b) above) as and when required, which failure continues for a period of thirty (30) days after notice of such failure by Lender to Borrower, provided, however, such period may be extended for up to an additional thirty (30) days if Borrower, in the discretion of Lender, is diligently pursuing a cure of such; provided, further, however, no such notice, grace period or extension shall apply if, in Lender's discretion, immediate exercise by Lender of a right or remedy under this Loan Agreement or any Loan Document is required to avoid harm to Lender or impairment of the Mortgage Loan (including the Loan Documents), the Mortgaged Property or any other security given for the Mortgage Loan.

Section 14.02 **Remedies.**

**(a) Acceleration; Foreclosure.**

Upon the occurrence of an Event of Default, the entire unpaid principal balance of the Mortgage Loan, any Accrued Interest, interest accruing at the Default Rate, the Prepayment Premium (if applicable), and all other Indebtedness shall at once become due and payable, at the

option of Lender, without any prior notice to Borrower, unless applicable law requires otherwise (and in such case, after any required notice has been given). Lender may exercise this option to accelerate regardless of any prior forbearance. In addition, Lender shall have all rights and remedies afforded to it hereunder and under the other Loan Documents, including, foreclosure on and/or the power of sale of the Mortgaged Property, as provided in the Security Instrument, and any rights and remedies available to it at law or in equity (subject to Borrower's statutory rights of reinstatement, if any, prior to a Foreclosure Event). Any proceeds of a foreclosure or other sale under this Loan Agreement or any other Loan Document may be held and applied by Lender as additional collateral for the Indebtedness pursuant to this Loan Agreement. Notwithstanding the foregoing, the occurrence of any Bankruptcy Event shall automatically accelerate the Mortgage Loan and all obligations and Indebtedness shall be immediately due and payable without notice or further action by Lender.

**(b) Loss of Right to Receive Replacement Reserve Disbursements and Repairs Disbursements.**

Upon the occurrence of an Event of Default under this Loan Agreement, Borrower shall immediately lose all of its rights to receive disbursements from the Reserve/Escrow Accounts and any Collateral Accounts. Upon any such Event of Default, Lender may use the Reserve/Escrow Account Funds and any Collateral Account Funds (or any portion thereof) for any purpose, including:

- (1) repayment of the Indebtedness, including principal prepayments and the Prepayment Premium applicable to such full or partial prepayment, as applicable (however, such application of funds shall not cure or be deemed to cure any Event of Default);
- (2) reimbursement of Lender for all losses and expenses (including reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default;
- (3) completion of the Replacement or Repair or for any other replacement or repair to the Mortgaged Property;  
and
- (4) payment of any amount expended in exercising (and the exercise of) all rights and remedies available to Lender at law or in equity or under this Loan Agreement or under any of the other Loan Documents.

Nothing in this Loan Agreement shall obligate Lender to apply all or any portion of the Reserve/Escrow Account Funds or Collateral Account Funds on account of any Event of Default by Borrower or to repayment of the Indebtedness or in any specific order of priority.

**(c) Remedies Cumulative.**

Each right and remedy provided in this Loan Agreement is distinct from all other rights or remedies under this Loan Agreement or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently or successively, in any order. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default.

**(a) No Effect Upon Obligations.**

Lender may, but shall not be obligated to, agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any Guarantor, Key Principal or other third party obligor, to take any of the following actions:

- (1) the time for payment of the principal of or interest on the Indebtedness may be extended or the Indebtedness may be renewed in whole or in part;
- (2) the rate of interest on or period of amortization of the Mortgage Loan or the amount of the Monthly Debt Service Payments payable under the Loan Documents may be modified;
- (3) the time for Borrower's performance of or compliance with any covenant or agreement contained in any Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived;
- (4) the maturity of the Indebtedness may be accelerated as provided in the Loan Documents;
- (5) any or all payments due under the Loan Agreement or any other Loan Document may be reduced;
- (6) any Loan Document may be modified or amended by Lender and Borrower in any respect, including an increase in the principal amount of the Mortgage Loan;
- (7) any amounts under this Loan Agreement or any other Loan Document may be released;
- (8) any security for the Indebtedness may be modified, exchanged, released, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Indebtedness;
- (9) the payment of the Indebtedness or any security for the Indebtedness, or both, may be subordinated to the right to payment or the security, or both, of any other present or future creditor of Borrower;
- (10) any payments made by Borrower to Lender may be applied to the Indebtedness in such priority as Lender may determine in its discretion; or
- (11) any other terms of the Loan Documents may be modified.

**(b) No Waiver of Rights or Remedies.**

Any waiver of an Event of Default or forbearance by Lender in exercising any right or remedy under this Loan Agreement or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of any other Event of Default or preclude the exercise or failure to exercise of any other right or remedy. The acceptance by Lender of payment of all or

any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise or failure to exercise of any other right available to Lender. Lender's receipt of any condemnation awards or insurance proceeds shall not operate to cure or waive any Event of Default.

**(c) Appointment of Lender as Attorney-in-Fact.**

Borrower hereby irrevocably makes, constitutes and appoints Lender (and any officer of Lender or any Person designated by Lender for that purpose) as Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in Borrower's name, place and stead, with full power of substitution, to:

- (1) use any of the funds in the Replacement Reserve Account or Repairs Escrow Account for the purpose of making or completing the Replacements or Repairs;
- (2) make such additions, changes and corrections to the Replacements or Repairs as shall be necessary or desirable to complete the Replacements or Repairs;
- (3) employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes;
- (4) pay, settle or compromise all bills and claims for materials and work performed in connection with the Replacements or Repairs, or as may be necessary or desirable for the completion of the Replacements or Repairs, or for clearance of title;
- (5) adjust and compromise any claims under any and all policies of insurance required pursuant to this Loan Agreement and any other Loan Document;
- (6) appear in and prosecute any action arising from any insurance policies;
- (7) collect and receive the proceeds of insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds;
- (8) commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation;
- (9) settle or compromise any claim in connection with any condemnation;
- (10) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents;
- (11) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the rehabilitation and repair of the Mortgaged Property;
- (12) take such actions as are permitted in this Loan Agreement and any other Loan Documents;

(13) execute such financing statements and other documents and to do such other acts as Lender may require to perfect and preserve Lender's security interest in, and to enforce such interests in, the collateral; and

(14) carry out any remedy provided for in this Loan Agreement and any other Loan Documents, including endorsing Borrower's name to checks, drafts, instruments and other items of payment and proceeds of the collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of Borrower, changing the address of Borrower to that of Lender, opening all envelopes addressed to Borrower and applying any payments contained therein to the Indebtedness.

Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable and shall not be affected by the disability or incompetence of Borrower. Borrower specifically acknowledges and agrees that this power of attorney granted to Lender may be assigned by Lender to Lender's successors or assigns as holder of the Note (and the Mortgage Loan). However, the foregoing shall not require Lender to incur any expense or take any action. Borrower hereby ratifies and confirms all that such attorney-in-fact may do or cause to be done by virtue of any provision of this Loan Agreement and any other Loan Documents.

**Section 14.04 Waiver of Marshaling.**

Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Loan Agreement, any other Loan Document or applicable law. Lender shall have the right to determine the order in which all or any part of the Indebtedness is satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Loan Agreement waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Loan Agreement or any other Loan Documents.

**ARTICLE 15 - MISCELLANEOUS**

**Section 15.01 Governing Law; Consent to Jurisdiction and Venue.**

**(a) Governing Law.**

This Loan Agreement and any other Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction without regard to the application of choice of law principles.

**(b) Venue.**

Any controversy arising under or in relation to this Loan Agreement or any other Loan Document shall be litigated exclusively in the Property Jurisdiction without regard to conflicts of laws principles. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Loan Agreement or any other Loan Document. Borrower irrevocably consents to

service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

Section 15.02            **Notice.**

**(a)        Process of Serving Notice.**

Except as otherwise set forth herein or in any other Loan Document, all Notices under this Loan Agreement and any other Loan Document shall be:

- (1)        in writing and shall be:
  - (A)        delivered, in person;
  - (B)        mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
  - (C)        sent by overnight courier; or
  - (D)        sent by electronic mail with originals to follow by overnight courier;
- (2)        addressed to the intended recipient at Borrower's Notice Address and Lender's Notice Address, as applicable; and
- (3)        deemed given on the earlier to occur of:
  - (A)        the date when the Notice is received by the addressee; or
  - (B)        if the recipient refuses or rejects delivery, the date on which the Notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

**(b)        Change of Address.**

Any party to this Loan Agreement may change the address to which Notices intended for it are to be directed by means of Notice given to the other parties identified on the Summary of Loan Terms in accordance with this Section 15.02.

**(c)        Default Method of Notice.**

Any required Notice under this Loan Agreement or any other Loan Document which does not specify how Notices are to be given shall be given in accordance with this Section 15.02.

**(d)        Receipt of Notices.**

Neither Borrower nor Lender shall refuse or reject delivery of any Notice given in accordance with this Loan Agreement. Each party is required to acknowledge, in writing, the receipt of any Notice upon request by the other party.



Section 15.03            **Successors and Assigns Bound; Sale of Mortgage Loan.**

**(a)        Binding Agreement.**

This Loan Agreement shall bind, and the rights granted by this Loan Agreement shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower. However, a Transfer not permitted by this Loan Agreement shall be an Event of Default and shall be void ab initio.

**(b)        Sale of Mortgage Loan; Change of Servicer.**

Nothing in this Loan Agreement shall limit Lender's (including its successors and assigns) right to sell or transfer the Mortgage Loan or any interest in the Mortgage Loan. The Mortgage Loan or a partial interest in the Mortgage Loan (together with this Loan Agreement and the other Loan Documents) may be sold one (1) or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer.

Section 15.04            **Counterparts.**

This Loan Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document and all such counterparts shall be construed together and shall constitute one (1) instrument.

Section 15.05            **Joint and Several (or Solidary) Liability.**

If more than one Person signs this Loan Agreement as Borrower, the obligations of such Persons shall be joint and several (solidary instead for purposes of Louisiana law).

Section 15.06            **Relationship of Parties; No Third Party Beneficiary.**

**(a)        Solely Creditor and Debtor.**

The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Loan Agreement shall create any other relationship between Lender and Borrower. Nothing contained in this Loan Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

**(b)        No Third Party Beneficiaries.**

No creditor of any party to this Loan Agreement and no other person shall be a third party beneficiary of this Loan Agreement or any other Loan Document or any account created or contemplated under this Loan Agreement or any other Loan Document. Nothing contained in this Loan Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Loan Agreement. Without limiting the foregoing:

(1)        any Servicing Arrangement between Lender and any Loan Servicer shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness;

- (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement; and
- (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

**Section 15.07 Severability; Entire Agreement; Amendments.**

The invalidity or unenforceability of any provision of this Loan Agreement or any other Loan Document shall not affect the validity or enforceability of any other provision of this Loan Agreement or of any other Loan Document, all of which shall remain in full force and effect, including the Guaranty. This Loan Agreement contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Loan Agreement. This Loan Agreement may not be amended or modified except by written agreement signed by the parties hereto.

**Section 15.08 Construction.**

- (a) The captions and headings of the sections of this Loan Agreement and the Loan Documents are for convenience only and shall be disregarded in construing this Loan Agreement and the Loan Documents.
- (b) Any reference in this Loan Agreement to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Loan Agreement or to a Section or Article of this Loan Agreement.
- (c) Any reference in this Loan Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
- (d) Use of the singular in this Loan Agreement includes the plural and use of the plural includes the singular.
- (e) As used in this Loan Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
- (f) Whenever Borrower’s knowledge is implicated in this Loan Agreement or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Loan Agreement, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.
- (g) Unless otherwise provided in this Loan Agreement, if Lender’s approval is required for any matter hereunder, such approval may be granted or withheld in Lender’s sole and absolute discretion.
- (h) Unless otherwise provided in this Loan Agreement, if Lender’s designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.

(i) All references in this Loan Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(j) “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

**Section 15.09 Mortgage Loan Servicing.**

All actions regarding the servicing of the Mortgage Loan, including the collection of payments, the giving and receipt of notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern. The Loan Servicer may change from time to time (whether related or unrelated to a sale of the Mortgage Loan). If there is a change of the Loan Servicer, Borrower will be given notice of the change.

**Section 15.10 Disclosure of Information.**

Lender may furnish information regarding Borrower, Key Principal or Guarantor or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Mortgage Loan, including trustees, master servicers, special servicers, rating agencies and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

**Section 15.11 Waiver; Conflict.**

No specific waiver of any of the terms of this Loan Agreement shall be considered as a general waiver. If any provision of this Loan Agreement is in conflict with any provision of any other Loan Document, the provision contained in this Loan Agreement shall control.

**Section 15.12 Determinations by Lender.**

In any instance in this Loan Agreement where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Loan Agreement, except as otherwise provided herein, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender (or its designated representative) at its discretion.

**Section 15.13 Subrogation.**

If, and to the extent that, the proceeds of the Mortgage Loan are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property, such Mortgage Loan proceeds shall be deemed to have been advanced by Lender at Borrower’s request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by such prior lien, whether or not such prior lien is released.

Section 15.14           **Counting of Days.**

Except where otherwise specifically provided, any reference in this Loan Agreement to a period of “days” means calendar days, not Business Days. If the date on which Borrower is required to perform an obligation under this Loan Agreement is not a Business Day, Borrower shall be required to perform such obligation by the Business Day immediately preceding such date; provided, however, in respect of any Payment Date, or if the Maturity Date is other than a Business Day, Borrower shall be obligated to make such payment by the Business Day immediately following such date.

Section 15.15           **Revival and Reinstatement of Indebtedness.**

If the payment of all or any part of the Indebtedness by Borrower, Key Principal or any Guarantor or the transfer to Lender of any collateral or other property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors’ rights, including provisions of the Insolvency Laws relating to a Voidable Transfer, and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of its counsel, then the amount of such Voidable Transfer or the amount of such Voidable Transfer that Lender is required or elects to repay or restore, including all reasonable costs, expenses and attorneys’ fees incurred by Lender in connection therewith, and the Indebtedness shall automatically shall be revived, reinstated and restored by such amount and shall exist as though such Voidable Transfer had never been made.

Section 15.16           **Time is of the Essence.**

Borrower agrees that, with respect to each and every obligation and covenant contained in this Loan Agreement and the other Loan Documents, time is of the essence.

Section 15.17           **Final Agreement.**

THIS LOAN AGREEMENT ALONG WITH ALL OF THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Loan Agreement and the other Loan Documents. This Loan Agreement, the other Loan Documents and any of their provisions may not be waived, modified, amended, discharged or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in that agreement.

Section 15.18           **WAIVER OF TRIAL BY JURY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER, THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY,

KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**IN WITNESS WHEREOF**, Borrower and Lender have signed and delivered this Loan Agreement under seal (where applicable) or have caused this Loan Agreement to be signed and delivered under seal (where applicable) by their duly authorized representatives. Where applicable law so provides, Borrower and Lender intend that this Loan Agreement shall be deemed to be signed and delivered as a sealed instrument.

**[Remainder of Page Intentionally Blank]**

**Multifamily Loan and Security Agreement**  
**(Non-Recourse)**  
Article 15

**Form 6001.NR**  
**04-11**

**© 2011 Fannie Mae**

**BORROWER:**

**LANDMARK AT GARDEN SQUARE, LLC**, a  
Delaware limited liability company

By: Elco Landmark at Garden Square Management, LLC, a  
Delaware limited liability company, its Manager

By: Elco Landmark Residential Holdings, LLC, a  
Delaware limited liability company,  
its Manager

By: JLCo, LLC, a Florida limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Joseph G. Lubeck  
President

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Signature Page**

**Form 6001.NR  
04-11**

**© 2011 Fannie Mae**

**LENDER:**

**BERKADIA COMMERCIAL MORTGAGE LLC, a**  
Delaware limited liability company

By: \_\_\_\_\_  
Scott McIntyre  
Authorized Representative

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Signature Page**

**Form 6001.NR  
04-11**

**© 2011 Fannie Mae**

**SCHEDULE 1**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Definitions Schedule**  
**(Interest Rate Type — Fixed Rate)**

Capitalized terms used in the Loan Agreement have the meanings given to such terms in this Definitions Schedule.

“**Accrued Interest**” means unpaid interest, if any, on the Mortgage Loan that has not been added to the unpaid principal balance of the Mortgage Loan pursuant to Section 2.02(b) (Capitalization of Accrued But Unpaid Interest) of the Loan Agreement.

“**Additional Lender Repairs**” means repairs of the type listed on the Required Repair Schedule but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair and in good marketable condition or to prevent deterioration of the Mortgaged Property.

“**Additional Lender Replacements**” means replacements of the type listed on the Required Replacement Schedule but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair and in good marketable condition or to prevent deterioration of the Mortgaged Property.

“**Amortization Period**” has the meaning set forth in the Summary of Loan Terms.

“**Amortization Type**” has the meaning set forth in the Summary of Loan Terms.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970, as amended (e.g., 31 U.S.C. Sections 5311-5330).

“**Bankruptcy Event**” means any one or more of the following:

(a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Borrower;

(b) the acknowledgment in writing by Borrower (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;

(c) the making of a general assignment for the benefit of creditors by Borrower;

(d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Borrower; or

(e) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Borrower or any substantial part of the assets of Borrower;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Bankruptcy Event until the ninetieth (90th) day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of

**Schedule 1 to Multifamily Loan and  
Security Agreement - Definitions Schedule  
(Interest Rate - Fixed Rate)**  
**Fannie Mae**

**Form 6101.FR**  
**07-11**

**© 2011 Fannie Mae**



Borrower, Guarantor, Key Principal, Principal or any Borrower Affiliate (in which event such case or proceeding shall be a Bankruptcy Event immediately).

“**Borrower**” means, individually (and jointly and severally (solidarily instead for purposes of Louisiana law) if more than one), the entity (or entities) identified as “Borrower” in the first paragraph of the Loan Agreement.

“**Borrower Affiliate**” means, as to Borrower, Guarantor or Key Principal:

(a) any entity that directly or indirectly owns, controls or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of Borrower, Guarantor or Key Principal;

(b) any entity in which Borrower, Guarantor or Key Principal directly or indirectly owns, controls or holds with the power to vote, twenty percent (20%) or more of the outstanding voting securities of such entity;

(c) any entity controlled by or under common control with, or which controls Borrower, Guarantor or Key Principal (the term “control” for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of fifty percent (50%) or more of the equity interests);

(d) any partner, manager, member or shareholder of Borrower, Guarantor or Key Principal; or

(e) any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower, Guarantor or Key Principal.

“**Borrower Requested Repairs**” means repairs not listed on the Required Repair Schedule requested by Borrower to be reimbursed from the Repairs Escrow Account.

“**Borrower Requested Replacements**” means replacements not listed on the Required Replacement Schedule requested by Borrower to be reimbursed from the Replacement Reserve Account.

“**Borrower’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Borrower’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Business Day**” means any day other than Saturday, Sunday or any other day on which Lender is not open for business.

“**Collateral Account Funds**” means, collectively, the funds on deposit in any or all of the Collateral Accounts, including the Reserve/Escrow Account Funds.

“**Collateral Accounts**” means any account designated as such by Lender pursuant to a Collateral Agreement or as established pursuant to this Loan Agreement, including the Reserve/Escrow Account.

“**Collateral Agreement**” means any separate agreement between Borrower and Lender for the establishment of any other fund, reserve or account.

“**Completion Period**” has the meaning set forth in the Summary of Loan Terms.

“**Condemnation Action**” has the meaning set forth in the Security Instrument.

“**Controlling Interest**” means:

- (a) with respect to any entity, the following:
  - (1) if such entity is a general partnership or a joint venture, fifty-one percent (51%) of all general partnership or joint venture interests in such entity;
  - (2) if such entity is a limited partnership:
    - (A) any general partnership interest; or
    - (B) fifty-one percent (51%) of all limited partnership interests in such entity;
  - (3) if such entity is a limited liability company or a limited liability partnership:
    - (A) fifty-one percent (51%) of all membership or other ownership interests in such entity;
    - (B) the amount of membership or ownership interests sufficient to have the power to appoint or change any manager; or
    - (C) the interest of any manager;
  - (4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, fifty-one percent (51%) of voting stock in such corporation;
  - (5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, the amount of shares of voting stock sufficient to have the power to elect the majority of directors of such corporation;
  - (6) if such entity is a trust (other than a land trust or a Publicly-Held Trust), the trustee of such trust or the ability to remove, appoint or substitute the trustee of such trust (unless the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender); or

(b) the power or right in any agreement (including provisions contained in the organizational and/or governing documents of Borrower, Guarantor or Key Principal) to control or otherwise limit or modify, directly or indirectly, the management and operations of Borrower, Guarantor or Key Principal, including the power to:

- (1) cause a change in or replacement of the Person that controls the management and operations of Borrower, Guarantor or Key Principal; or
- (2) limit or otherwise modify the extent of such Person's control over the management and operations of Borrower, Guarantor or Key Principal.

“**Credit Score**” means a numerical value or a categorization derived from a statistical tool or modeling system used to measure credit risk and predict the likelihood of certain credit behaviors, including default.

“**Debt Service Amounts**” means the Monthly Debt Service Payments and all other amounts payable under the Loan Agreement, the Note, the Security Instrument or any other Loan Document.

“**Default Rate**” means an interest rate equal to the lesser of:

- (a) the sum of the Interest Rate plus four (4) percentage points; or
- (b) the maximum interest rate which may be collected from Borrower under applicable law.

“**Definitions Schedule**” means this Schedule 1 (Definitions Schedule) to the Loan Agreement.

“**Effective Date**” has the meaning set forth in the Summary of Loan Terms.

“**Employee Benefit Plan**” has the meaning as defined in Section 3(3) of ERISA.

“**Enforcement Costs**” has the meaning set forth in the Security Instrument.

“**Environmental Indemnity Agreement**” means that certain Environmental Indemnity Agreement dated as of the Effective Date made by Borrower to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Environmental Laws**” has the meaning set forth in the Environmental Indemnity Agreement.

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

“**Event of Default**” means the occurrence of any event listed in Section 14.01 (Events of Default) of the Loan Agreement.

“**Exceptions to Representations and Warranties**” means the exceptions to Borrower's representations and warranties set forth on Schedule 7 (Exceptions to Representations and Warranties Schedule) to the Loan Agreement.

“**First Payment Date**” has the meaning set forth in the Summary of Loan Terms.

**Schedule 1 to Multifamily Loan and  
Security Agreement - Definitions Schedule  
(Interest Rate - Fixed Rate)  
Fannie Mae**

**Form 6101.FR  
07-11**

**© 2011 Fannie Mae**

“**First Principal and Interest Payment Date**” has the meaning set forth in the Summary of Loan Terms, if applicable.

“**Fixed Rate**” has the meaning set forth in the Summary of Loan Terms.

“**Fixtures**” has the meaning set forth in the Security Instrument.

“**Foreclosure Event**” means:

- (a) foreclosure under the Security Instrument;
- (b) any other exercise by Lender of rights and remedies (whether under the Security Instrument or under applicable law, including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, as a result of which Lender (or its designee or nominee) or a third party purchaser becomes owner of the Mortgaged Property;
- (c) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower’s interest in the Mortgaged Property in lieu of any of the foregoing; or
- (d) in Louisiana, any dation en paiement.

“**Governmental Authority**” means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over Borrower or the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

“**Guarantor**” means any guarantor of the Indebtedness or any other obligation of Borrower under any Loan Document.

“**Guarantor Bankruptcy Event**” means any one or more of the following:

- (a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Guarantor;
- (b) the acknowledgment in writing by Guarantor (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;
- (c) the making of a general assignment for the benefit of creditors by Guarantor;
- (d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Guarantor; or
- (e) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Guarantor or any substantial part of the assets of Guarantor, as applicable;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Guarantor Bankruptcy Event until the ninetieth (90th) day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of Borrower, Guarantor, Key Principal, Principal, or any Borrower Affiliate (in which event such case or proceeding shall be a Guarantor Bankruptcy Event immediately).

“**Guarantor’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Guarantor’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Guaranty**” means, individually and collectively, any Payment Guaranty, Non-Recourse Guaranty or other guaranty executed by Guarantor in connection with the Mortgage Loan.

“**Immediate Family Members**” means a child, grandchild, spouse, sibling, or parent, each of whom must have obtained a legal age of majority.

“**Imposition Deposits**” has the meaning set forth in the Security Instrument.

“**Impositions**” has the meaning set forth in the Security Instrument.

“**Improvements**” has the meaning set forth in the Security Instrument.

“**Indebtedness**” has the meaning set forth in the Security Instrument.

“**Initial Replacement Reserve Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar laws, proceedings, or equitable principles affecting the enforcement of creditors’ rights, as amended from time to time.

“**Insolvent**” means:

(a) that the sum total of all of a specified Person’s liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of such Person’s non-exempt assets, i.e., all of the assets of such Person that are available to satisfy claims of creditors; or

(b) such Person’s inability to pay its debts as they become due.

“**Intended Prepayment Date**” means the date upon which Borrower intends to make a prepayment on the Mortgage Loan, as set forth in the Prepayment Notice.

“**Interest Accrual Method**” has the meaning set forth in the Summary of Loan Terms.

“**Interest Only Term**” has the meaning set forth in the Summary of Loan Terms.

“**Interest Rate**” means the Fixed Rate.

“**Interest Rate Type**” has the meaning set forth in the Summary of Loan Terms.

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

“**Investor**” means any Person to whom Lender intends to sell, transfer, deliver or assign the Mortgage Loan in the secondary mortgage market.

“**Key Principal**” means, collectively:

(a) the natural person(s) or entity that controls and manages Borrower that Lender determines is critical to the successful operation and management of Borrower and the Mortgaged Property, as identified as such in the Summary of Loan Terms; or

(b) any natural person or entity who becomes a Key Principal after the date of the Loan Agreement and is identified as such in an assumption agreement, or another amendment or supplement to the Loan Agreement.

“**Key Principal’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Key Principal’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Land**” means the land described in Exhibit A to the Security Instrument.

“**Last Interest Only Payment Date**” has the meaning set forth in the Summary of Loan Terms, if applicable.

“**Late Charge**” means an amount equal to the delinquent amount then due under the Loan Documents multiplied by five percent (5%).

“**Leases**” has the meaning set forth in the Security Instrument.

“**Lender**” means the entity identified as “Lender” in the first paragraph of the Loan Agreement and its transferees, successors and assigns, or any subsequent holder of the Note.

“**Lender’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lender’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lender’s Payment Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lien**” has the meaning set forth in the Security Instrument.

“**Loan Agreement**” means the Multifamily Loan and Security Agreement dated as of the Effective Date executed by and between Borrower and Lender to which this Definitions Schedule is attached, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Loan Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Loan Application**” means the application for the Mortgage Loan submitted by Borrower to Lender.

“**Loan Documents**” means the Note, the Loan Agreement, the Security Instrument, the Environmental Indemnity Agreement, the Guaranty, all guaranties, all indemnity agreements, all

Collateral Agreements, all O&M Programs, and any other documents now or in the future executed by Borrower, Guarantor, Key Principal, any guarantor or any other person in connection with the Mortgage Loan, as such documents may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Loan Servicer**” means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, the Loan Agreement, the Security Instrument and any other Loan Document, and otherwise to service the Mortgage Loan for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer shall be the Lender originally named on the Summary of Loan Terms.

“**Loan Term**” has the meaning set forth in the Summary of Loan Terms.

“**Loan Year**” has the meaning set forth in the Summary of Loan Terms.

“**Material Commercial Lease**” means any non-Residential Lease, including any master lease (which term “master lease” shall include any master lease to a single corporate tenant), other than:

- (a) a non-Residential Lease that comprises less than five percent (5%) of total gross income of the Mortgaged Property on an annualized basis, so long as the lease is not a cell tower lease or a solar (power) lease;
- (b) a cable television lease, so long as the lessee is not a Borrower Affiliate, Key Principal or Guarantor;
- (c) storage units leased pursuant to any Residential Lease; or
- (d) a laundry lease, so long as:
  - (1) the lessee is not a Borrower Affiliate, Key Principal or Guarantor;
  - (2) the rent payable is not below-market (as determined by Lender); and
  - (3) such laundry lease is terminable for cause by lessor.

“**Maturity Date**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Inspection Fee**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Repair Cost**” shall be the amount(s) set forth in the Required Repair Schedule, if any.

“**Maximum Repair Disbursement Interval**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Replacement Reserve Disbursement Interval**” has the meaning set forth in the Summary of Loan Terms.

“**Minimum Repairs Disbursement Amount**” has the meaning set forth in the Summary of Loan Terms.

**Schedule 1 to Multifamily Loan and  
Security Agreement - Definitions Schedule  
(Interest Rate - Fixed Rate)  
Fannie Mae**

**Form 6101.FR  
07-11**

**© 2011 Fannie Mae**

“**Minimum Replacement Reserve Disbursement Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Monthly Debt Service Payment**” has the meaning set forth in the Summary of Loan Terms.

“**Monthly Replacement Reserve Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Mortgage Loan**” means the mortgage loan made by Lender to Borrower in the principal amount of the Note made pursuant to the Loan Agreement, evidenced by the Note and secured by the Loan Documents that are expressly stated to be security for the Mortgage Loan.

“**Mortgaged Property**” has the meaning set forth in the Security Instrument.

“**Multifamily Project**” has the meaning set forth in the Summary of Loan Terms.

“**Multifamily Project Address**” has the meaning set forth in the Summary of Loan Terms.

“**Non-Recourse Guaranty**” means, if applicable, that certain Guaranty of Non-Recourse Obligations of even date herewith executed by Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note**” means that certain Multifamily Note of even date herewith in the original principal amount of the stated Loan Amount made by Borrower in favor of Lender, and all schedules, riders, allonges and addenda attached thereto, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Notice**” means any notices, requests, demands or other communications.

“**O&M Program**” has the meaning set forth in the Environmental Indemnity Agreement.

“**OFAC**” means the United States Treasury Department, Office of Foreign Assets Control, and any successor thereto.

“**Payment Date**” means the First Payment Date and the first day of each month thereafter until the Mortgage Loan is fully paid.

“**Payment Guaranty**” means, if applicable, that certain Guaranty (Payment) of even date herewith executed by Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Permitted Encumbrance**” has the meaning set forth in the Security Instrument.

“**Permitted Prepayment Date**” means the last Business Day of a calendar month.

“**Person**” means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

“**Personalty**” has the meaning set forth in the Security Instrument.

“**Prepayment Lockout Period**” has the meaning set forth in the Summary of Loan Terms.

**Schedule 1 to Multifamily Loan and  
Security Agreement - Definitions Schedule  
(Interest Rate - Fixed Rate)  
Fannie Mae**

**Form 6101.FR  
07-11**

**© 2011 Fannie Mae**



“**Prepayment Notice**” means the written notice that Borrower is required to provide to Lender in accordance with Section 2.03 (Lockout/Prepayment) of the Loan Agreement in order to make a prepayment on the Mortgage Loan, which shall include, at a minimum, the Intended Prepayment Date.

“**Prepayment Premium**” means the amount payable by Borrower in connection with a prepayment of the Mortgage Loan, as provided in Section 2.03 (Lockout/Prepayment) of the Loan Agreement and calculated in accordance with the Prepayment Premium Schedule.

“**Prepayment Premium Period End Date**” or “**Yield Maintenance Period End Date**” has the meaning set forth in the Summary of Loan Terms.

“**Prepayment Premium Period Term**” or “**Yield Maintenance Period Term**” has the meaning set forth in the Summary of Loan Terms.

“**Prepayment Premium Schedule**” means that certain Schedule 4 (Prepayment Premium) to the Loan Agreement.

“**Principal**” means any Person owning at least a twenty-five percent (25%) interest (direct or indirect) in Borrower, Guarantor or Key Principal.

“**Prohibited Person**” means:

(a) any Person with whom Lender or Fannie Mae is prohibited from doing business pursuant to any law, rule, regulation, judicial proceeding or administrative directive; or

(b) any Person identified on the United States Department of Housing and Urban Development’s “Limited Denial of Participation, HUD Funding Disqualifications and Voluntary Abstentions List,” or on the General Services Administration’s “Excluded Parties List System,” each of which may be amended from time to time, and any successor or replacement thereof; or

(c) any Person that is determined by Fannie Mae to pose an unacceptable credit risk due to the aggregate amount of debt of such Person owned or held by Fannie Mae; or

(d) any Person that has caused any unsatisfactory experience of a material nature with Fannie Mae or Lender, such as a default, fraud, intentional misrepresentation, litigation, arbitration or other similar act.

“**Property Jurisdiction**” has the meaning set forth in the Security Instrument.

“**Property Square Footage**” has the meaning set forth in the Summary of Loan Terms.

“**Publicly-Held Corporation**” means a corporation, the outstanding voting stock of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

“**Publicly-Held Trust**” means a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

“**Remedial Work**” means, in connection with the Mortgaged Property, any investigation, site monitoring, containment, clean-up, restoration or other remedial work necessary to comply with any Environmental Law or order of any Governmental Authority.

“**Rents**” has the meaning set forth in the Security Instrument.

“**Repair Threshold**” has the meaning set forth in the Summary of Loan Terms.

“**Repairs**” means, individually and collectively, the Required Repairs, Borrower Requested Repairs, and Additional Lender Repairs.

“**Repairs Escrow Account**” means the account established by Lender into which the Repairs Escrow Deposit is deposited to fund the Repairs.

“**Repairs Escrow Account Administrative Fee**” has the meaning set forth in the Summary of Loan Terms.

“**Repairs Escrow Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Replacement Reserve Account**” means the account established by Lender into which the Replacement Reserve Deposits are deposited to fund the Replacements.

“**Replacement Reserve Account Administration Fee**” has the meaning set forth in the Summary of Loan Terms.

“**Replacement Reserve Account Interest Disbursement Frequency**” has the meaning set forth in the Summary of Loan Terms.

“**Replacement Reserve Deposits**” means the Initial Replacement Reserve Deposit, Monthly Replacement Reserve Deposits and any other deposits to the Replacement Reserve Account required by the Loan Agreement.

“**Replacement Threshold**” has the meaning set forth in the Summary of Loan Terms.

“**Replacements**” means, individually and collectively, the Required Replacements, Borrower Requested Replacements and Additional Lender Replacements.

“**Required Repair Schedule**” means that certain Schedule 6 (Required Repairs) to the Loan Agreement.

“**Required Repairs**” means those items listed on the Required Repair Schedule.

“**Required Replacement Schedule**” means that certain Schedule 5 (Required Replacements) to the Loan Agreement.

“**Required Replacements**” means those items listed on the Required Replacement Schedule.

“**Reserve/Escrow Account Funds**” means, collectively, the funds on deposit in the Reserve/Escrow Accounts.

“**Reserve/Escrow Accounts**” means, together, the Replacement Reserve Account and the Repairs Escrow Account.

“**Residential Lease**” means a leasehold interest in an individual dwelling unit and shall not include any master lease.

“**Restoration**” means restoring and repairing the Mortgaged Property to the equivalent of its original economic and physical condition or to a condition approved by Lender following a casualty.

“**Review Fee**” means the non-refundable fee of Three Thousand Dollars (\$3,000) payable to Lender in connection with a Transfer for which Lender’s consent is required (including any assumption of the Mortgage Loan).

“**Schedule of Interest Rate Type Provisions**” means that certain Schedule 3 (Schedule of Interest Rate Type Provisions) to the Loan Agreement.

“**Security Instrument**” means that certain multifamily mortgage, deed to secure debt or deed of trust executed and delivered by Borrower as security for the Mortgage Loan and encumbering the Mortgaged Property, including all riders or schedules attached thereto, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicing Arrangement**” means any arrangement between Lender and the Loan Servicer for loss sharing or interim advancement of funds.

“**Summary of Loan Terms**” means that certain Schedule 2 (Summary of Loan Terms) to the Loan Agreement.

“**Taxes**” has the meaning set forth in the Security Instrument.

“**Title Policy**” means the mortgagee’s loan policy of title insurance issued in connection with the Mortgage Loan and insuring the lien of the Security Instrument as set forth therein, as approved by Lender.

“**Total Parking Spaces**” has the meaning set forth in the Summary of Loan Terms.

“**Total Residential Units**” has the meaning set forth in the Summary of Loan Terms.

“**Transfer**” means:

- (a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by operation of law);
- (b) a granting, pledging, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law);
- (c) an issuance or other creation of a direct or indirect ownership interest;
- (d) a withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity; or
- (e) a merger, consolidation, dissolution or liquidation of a legal entity.

“**Transfer Fee**” means a fee equal to one percent (1%) of the unpaid principal balance of the Mortgage Loan payable to Lender in connection with a Transfer of the Mortgaged Property or of an ownership interest in Borrower, Guarantor or Key Principal for which Lender’s consent is required (including in connection with an assumption of the Mortgage Loan).

“UCC” has the meaning set forth in the Security Instrument.

“UCC Collateral” has the meaning set forth in the Security Instrument.

“Voidable Transfer” means any fraudulent conveyance, preference or other voidable or recoverable payment of money or transfer of property.

“Yield Maintenance Period End Date” or “Prepayment Premium Period End Date” has the meaning set forth in the Summary of Loan Terms.

“Yield Maintenance Period Term” or “Prepayment Premium Period Term” has the meaning set forth in the Summary of Loan Terms.

**Schedule 1 to Multifamily Loan and  
Security Agreement - Definitions Schedule  
(Interest Rate - Fixed Rate)  
Fannie Mae**

**Form 6101.FR  
07-11**

**© 2011 Fannie Mae**

---

Borrower's Initials

**Schedule 1 to Multifamily Loan and  
Security Agreement - Definitions Schedule  
(Interest Rate - Fixed Rate)  
Fannie Mae**

**Form 6101.FR  
07-11**

**© 2011 Fannie Mae**

**SCHEDULE 2**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Summary of Loan Terms**  
**(Interest Rate Type - Fixed Rate)**

**I. GENERAL PARTY AND MULTIFAMILY PROJECT INFORMATION**

<b>Borrower</b>	<b>LANDMARK AT GARDEN SQUARE, LLC</b> , a Delaware limited liability company
<b>Lender</b>	<b>BERKADIA COMMERCIAL MORTGAGE LLC</b> , a Delaware limited liability company
<b>Key Principal</b>	Joseph G. Lubeck and MARLU Associates, Ltd.
<b>Guarantor</b>	Joseph G. Lubeck and MARLU Associates, Ltd.
<b>Multifamily Project</b>	Landmark at Garden Square

**ADDRESSES**

<b>Borrower's General Business Address</b>	c/o Landmark Residential 825 Parkway Street, Suite 4 Jupiter, Florida 33477
<b>Borrower's Notice Address</b>	c/o Landmark Residential 825 Parkway Street, Suite 4 Jupiter, Florida 33477
<b>Multifamily Project Address</b>	4205 Union Square Boulevard Palm Beach Gardens, FL 33410
<b>Multifamily Project County</b>	Palm Beach County
<b>Key Principal's General Business Address</b>	c/o Landmark Residential 825 Parkway Street, Suite 4 Jupiter, Florida 33477
<b>Key Principal's Notice Address</b>	c/o Landmark Residential 825 Parkway Street, Suite 4 Jupiter, Florida 33477
<b>Guarantor's General Business Address</b>	c/o Landmark Residential 825 Parkway Street, Suite 4

**Schedule 2 to Multifamily Loan and Security Agreement - Summary of Loan Terms (Interest Rate Type - Fixed Rate)**  
Fannie Mae

**Form 6102.FR**

**07-11**

**© 2011 Fannie Mae**

**Guarantor's Notice Address** Jupiter, Florida 33477  
c/o Landmark Residential  
825 Parkway Street, Suite 4  
Jupiter, Florida 33477

**Lender's General Business Address** 118 Welsh Road  
Horsham, Pennsylvania 19044  
Attn: Servicing - Executive Vice President

**Lender's Notice Address** 118 Welsh Road  
Horsham, Pennsylvania 19044  
Attn: Servicing - Executive Vice President  
tony.perez@berkadia.com

**Lender's Payment Address** 118 Welsh Road  
Horsham, Pennsylvania 19044  
Attn: Servicing - Account Manager

## II. MULTIFAMILY PROJECT INFORMATION

**Property Square Footage** 28.682 acres

**Total Parking Spaces** 863

**Total Residential Units** 542

## III. MORTGAGE LOAN INFORMATION

**Amortization Period** 360 months

**Amortization Type**  Amortizing  
 Full Term Interest Only  
 Partial Interest Only

**Effective Date** As of March 22, 2012

**First Payment Date** May 1, 2012

**Schedule 2 to Multifamily Loan and  
Security Agreement - Summary of Loan  
Terms (Interest Rate Type - Fixed Rate)  
Fannie Mae**

**Form 6102.FR**

07-11

© 2011 Fannie Mae

**First Principal and Interest Payment Date** May 1, 2014.

**Fixed Rate** 3.78%

**Interest Accrual Method** **[Select only one:]**  
 30/360 (computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months).  
or  
 Actual/360 (computed on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Mortgage Loan by the Interest Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month).

**Interest Only Term** 24 months

**Interest Rate** The Fixed Rate

**Interest Rate Type** Fixed Rate

**Last Interest Only Payment Date** April 1, 2014

**Loan Amount** \$45,200,000.00

**Loan Term** 84 months

**Loan Year** The period beginning on the Effective Date and ending on the last day of March, 2013, and each successive twelve (12) month period thereafter.

**Maturity Date** April 1, 2019, or any earlier date on which the unpaid principal balance of the Mortgage Loan becomes due and payable by acceleration or otherwise.

**Schedule 2 to Multifamily Loan and  
Security Agreement - Summary of Loan  
Terms (Interest Rate Type - Fixed Rate)  
Fannie Mae**

**Form 6102.FR**

07-11

© 2011 Fannie Mae



**Monthly Debt Service Payment**

*For Partial Interest Only (Actual/360):*

- (i) \$142,380.00 for the First Payment Date;
- (ii) for each Payment Date thereafter through and including the Last Interest Only Payment Date:
  - (a) \$132,888.00 if the prior month was a 28day month;
  - (b) \$137,634.00 if the prior month was a 29day month;
  - (c) \$142,380.00 if the prior month was a 30day month; and
  - (d) \$147,126.00 if the prior month was a 31day month; and
- (iii) \$210,098.44 for the First Principal and Interest Payment Date and each Payment Date thereafter until the Mortgage Loan is fully paid.

**Prepayment Lockout Period**

0 years from the Effective Date

**IV. YIELD MAINTENANCE/PREPAYMENT PREMIUM INFORMATION**

**Yield Maintenance Period End Date**

*or*

The last day of September, 2018.

**Prepayment Premium Period End Date**

**Yield Maintenance Period Term**

*or*

78 months

**Prepayment Premium Period Term**

**Schedule 2 to Multifamily Loan and  
Security Agreement - Summary of Loan  
Terms (Interest Rate Type - Fixed Rate)  
Fannie Mae**

**Form 6102.FR**

**07-11**

**© 2011Fannie Mae**

## V. RESERVE INFORMATION

<b>Completion Period</b>	Within twelve (12) months after the Effective Date or as otherwise shown on the Required Repair Schedule.
<b>Initial Replacement Reserve Deposit</b>	\$76,750.00
<b>Maximum Inspection Fee</b>	\$500.00
<b>Maximum Repair Disbursement Interval</b>	One time per calendar quarter
<b>Maximum Replacement Reserve Disbursement Interval</b>	One time per calendar quarter
<b>Minimum Repairs Disbursement Amount</b>	\$10,000.00
<b>Minimum Replacement Reserve Disbursement Amount</b>	\$5,000.00
<b>Monthly Replacement Reserve Deposit</b>	\$11,291.67
<b>Repair Threshold</b>	\$2,500.00
<b>Repairs Escrow Account Administrative Fee</b>	\$100.00, payable one time
<b>Repairs Escrow Deposit</b>	\$18,787.50
<b>Replacement Reserve Account Administration Fee</b>	\$100.00, payable annually
<b>Replacement Reserve Account Interest Disbursement Frequency</b>	Quarterly
<b>Replacement Threshold</b>	\$2,500.00

**Schedule 2 to Multifamily Loan and Security Agreement - Summary of Loan Terms (Interest Rate Type - Fixed Rate)**  
Fannie Mae

**Form 6102.FR**

**07-11**

**© 2011 Fannie Mae**

**Schedule 2 to Multifamily Loan and  
Security Agreement - Summary of Loan  
Terms (Interest Rate Type - Fixed Rate)  
Fannie Mae**

**Form 6102.FR**

**07-11**

**© 2011 Fannie Mae**

**SCHEDULE 3**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Schedule of Interest Rate Type Provisions**  
**(Fixed Rate)**

**1. Defined Terms.**

Capitalized terms not otherwise defined in this Schedule have the meanings given to such terms in the Definitions Schedule to the Loan Agreement.

**2. Interest Accrual.**

Except as otherwise provided in the Loan Agreement, interest shall accrue at the Interest Rate until fully paid.

**Schedule 3 to Multifamily Loan and  
Security Agreement - Interest Rate Type  
Provisions (Fixed Rate)**  
Fannie Mae

**Form 6103.FR**

**01-11**

**© 2011 Fannie Mae**

**Schedule 3 to Multifamily Loan and  
Security Agreement - Interest Rate Type  
Provisions (Fixed Rate)  
Fannie Mae**

**Form 6103.FR**

**01-11**

**© 2011 Fannie Mae**

**SCHEDULE 4**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Prepayment Premium Schedule**  
**(Standard Yield Maintenance — Fixed Rate)**

**1. Defined Terms.**

All capitalized terms used but not defined in this Prepayment Premium Schedule shall have the meanings assigned to them in the Loan Agreement.

**2. Prepayment Premium.**

Any Prepayment Premium payable under Section 2.03 (Lockout/Prepayment) of the Loan Agreement shall be computed as follows:

(a) If the prepayment is made at any time after the Effective Date and before the Yield Maintenance Period End Date, the Prepayment Premium shall be the greater of:

(1) one percent (1%) of the amount of principal being prepaid; or

(2) the product obtained by multiplying:

(A) the amount of principal being prepaid,

*by*

(B) the difference obtained by subtracting from the Fixed Rate on the Mortgage Loan, the Yield Rate (as defined below) on the twenty-fifth (25th) Business Day preceding (i) the Intended Prepayment Date, or (ii) the date Lender accelerates the Mortgage Loan or otherwise accepts a prepayment pursuant to Section 2.03(d) (Application of Collateral) of the Loan Agreement,

*by*

(C) the present value factor calculated using the following formula:

$$\frac{1 - (1 + r)^{-n/12}}{r}$$

[r = Yield Rate

n = the number of months remaining between (i) either of the following: (x) in the case of a voluntary prepayment, the last day of the month in which the prepayment is made, or (y) in any other case, the date on which Lender accelerates the unpaid principal balance of the Mortgage Loan and (ii) the Yield Maintenance Period End Date.

**Schedule 4 to Multifamily Loan and  
Security Agreement (Prepayment  
Premium Schedule — Standard Yield  
Maintenance — Fixed Rate)**  
**Fannie Mae**

**Form 6104.01**

**01-11**

**© 2011 Fannie Mae**

For purposes of this clause (ii), the “**Yield Rate**” means the yield calculated by interpolating the yields for the immediately shorter and longer term U.S. “Treasury constant maturities” (as reported in the Federal Reserve Statistical Release H.15 Selected Interest Rates (the “**Fed Release**”) under the heading “U.S. government securities”) closest to the remaining term of the Yield Maintenance Period Term, as follows (rounded to three (3) decimal places):

$$\left( \frac{(a - b)}{(x - y)} \times (z - y) \right) + b$$

$a$  = the yield for the longer U.S. Treasury constant maturity  
 $b$  = the yield for the shorter U.S. Treasury constant maturity  
 $x$  = the term of the longer U.S. Treasury constant maturity  
 $y$  = the term of the shorter U.S. Treasury constant maturity  
 $z$  = “ $n$ ” (as defined in the present value factor calculation above) divided by twelve (12).

Notwithstanding any provision to the contrary, if “ $z$ ” equals a term reported under the U.S. “Treasury constant maturities” subheading in the Fed Release, the yield for such term shall be used, and interpolation shall not be necessary. If publication of the Fed Release is discontinued by the Federal Reserve Board, Lender shall determine the Yield Rate from another source selected by Lender. Any determination of the Yield Rate by Lender will be binding absent manifest error.]

(b) If the prepayment is made on or after the Yield Maintenance Period End Date but before the last calendar day of the fourth (4th) month prior to the month in which the Maturity Date occurs, the Prepayment Premium shall be one percent (1%) of the amount of principal being prepaid.

(c) Notwithstanding the provisions of Section 2.03 (Lockout/Prepayment) of the Loan Agreement, no Prepayment Premium shall be payable with respect to any prepayment made on or after the last calendar day of the fourth (4th) month prior to the month in which the Maturity Date occurs.

**Schedule 4 to Multifamily Loan and  
Security Agreement (Prepayment  
Premium Schedule — Standard Yield  
Maintenance — Fixed Rate)  
Fannie Mae**

**Form 6104.01**

**01-11**

**© 2011 Fannie Mae**

---

Borrower's Initials

**Schedule 4 to Multifamily Loan and  
Security Agreement (Prepayment  
Premium Schedule — Standard Yield  
Maintenance — Fixed Rate)  
Fannie Mae**

**Form 6104.01**

**01-11**

**© 2011 Fannie Mae**



**SCHEDULE 5 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Required Replacement Schedule**

- Asphalt pavement
- Pool filtration
- Exterior wall paint
- Common area carpet
- Wall ceiling paint for common area
  - Unit carpet
  - Unit refrigerator
  - Unit range
  - Washer/dryers
  - Dishwashers
  - Water heaters
- Condensing units
  - Elevator

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Schedule 5**

**Form 6001.NR**

**04-11**

**© 2011 Fannie Mae**

---

Borrower's Initials

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Schedule 5**

**Form 6001.NR**

**04-11**

**© 2011 Fannie Mae**

**SCHEDULE 6 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Required Repair Schedule**

<b>Repair Description</b>	<b>Estimated Cost</b>	<b>Contingency</b>	<b>Total</b>
ADA compliance	\$ 2,925	150%	\$ 4,387.50
Clubhouse parking	\$ 1,200	150%	\$ 1,800.00
Roof repairs	\$ 5,800	150%	\$ 8,700.00
Maintenance building repairs	\$ 1,200	150%	\$ 1,800.00
Moisture damage Apt 353	\$ 800	150%	\$ 1,200.00
Pest Control Apt 346	\$ 600	150%	\$ 900.00
	\$ 12,525		\$ 18,787.50

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Schedule 6**

**Form 6001.NR**

**04-11**

**© 2011 Fannie Mae**

---

Borrower's Initials

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Schedule 6**

**Form 6001.NR**

**04-11**

**© 2011 Fannie Mae**

**SCHEDULE 7 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Exceptions to Representations and Warranties Schedule**

NONE

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Schedule 7**

**Form 6001.NR**

**04-11**

**© 2011 Fannie Mae**

---

Borrower's Initials

**Multifamily Loan and Security Agreement  
(Non-Recourse)  
Schedule 7**

**Form 6001.NR**

**04-11**

**© 2011 Fannie Mae**

**CONSOLIDATED, AMENDED AND RESTATED MULTIFAMILY NOTE**

This CONSOLIDATED, AMENDED AND RESTATED MULTIFAMILY NOTE is made and entered into as of March 22, 2012, by and between **LANDMARK AT GARDEN SQUARE, LLC**, a Delaware limited liability company ("**Borrower**") and **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company ("**Lender**").

**PRELIMINARY STATEMENTS:**

- A. A loan was made to CSC Union Square, Ltd., a Florida limited partnership ("**Original Borrower**") in the original principal amount of Fifty-Eight Million and 00/100 Dollars (\$58,000,000.00), the repayment of which is evidenced by an Amended and Restated Promissory Note dated October 26, 2005 (the "**Original Note**").
- B. The Original Note is secured by an Amended and Restated Mortgage and Security Agreement dated October 26, 2005, and recorded among the Public Records of Palm Beach County, Florida in Official Record Book 19480, Page 0019 (the "**Original Mortgage**"), on certain improved real property located in Palm Beach, Florida (the "**Land**" as defined in the Loan Agreement).
- C. Borrower has acquired all right, title and interest in the Land from Original Borrower.
- D. Original Borrower shall have no liability or obligation under this Consolidated, Amended and Restated Multifamily Note.
- E. Lender has purchased the Original Note from its holder.
- F. Borrower has requested and Lender has agreed to make certain amendments to the Original Note, including changing the interest rate and the terms of payment. The Original Note is being consolidated, amended and restated in its entirety, and Borrower is entering into that certain Loan Agreement (defined herein) to reflect such amendments.
- G. State of Florida Documentary Stamp Tax and Nonrecurring Intangible Tax were paid on the Original Note and are only due on this Consolidated, Amended and Restated Multifamily Note to the extent that the original principal amount of this Consolidated, Amended and Restated Multifamily Note exceeds the original principal amount of the Original Note.
- H. The Original Mortgage is concurrently being consolidated, amended and restated pursuant to the terms of that certain Consolidated, Amended and Restated Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (as so consolidated, amended and restated, the "**Security Instrument**").

**AGREEMENTS:**

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree that the Original Note is hereby consolidated, amended and restated in its entirety as follows (as consolidated, amended and restated, the "**Note**"):

**Consolidated, Amended and Restated  
Multifamily Note  
Fannie Mae**

**Form 6010.CAR.FL  
07-11**

**© 2011 Fannie Mae**

## MULTIFAMILY NOTE

US \$45,200,000.00

As of March 22, 2012

**FOR VALUE RECEIVED**, the undersigned (“**Borrower**”) promises to pay to the order of **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company (“**Lender**”), the principal amount of Forty-Five Million Two Hundred Thousand and 00/100 Dollars (US \$45,200,000.00) (the “**Mortgage Loan**”), together with interest thereon accruing at the Interest Rate on the unpaid principal balance from the Effective Date until fully paid in accordance with the terms hereof and of that certain Multifamily Loan and Security Agreement dated as of the date hereof, by and between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”).

### 1. Defined Terms.

Capitalized terms used and not specifically defined in this Multifamily Note (this “**Note**”) have the meanings given to such terms in the Loan Agreement.

### 2. Repayment.

Borrower agrees to pay the principal amount of the Mortgage Loan and interest on the principal amount of the Mortgage Loan from time to time outstanding at the Interest Rate or such other rate or rates and at the times specified in the Loan Agreement, together with all other amounts due to Lender under the Loan Documents. The outstanding balance of the Mortgage Loan and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date, together with all other amounts due to Lender under the Loan Documents.

### 3. Security.

The Mortgage Loan evidenced by this Note, together with all other Indebtedness is secured by, among other things, the Security Instrument, the Loan Agreement and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

### 4. Acceleration.

In accordance with the Loan Agreement, upon the occurrence of an Event of Default, the entire unpaid principal balance of the Mortgage Loan, any accrued and unpaid interest, including interest accruing at the Default Rate, the Prepayment Premium (if applicable), and all other amounts payable under this Note, the Loan Agreement and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower, unless applicable law requires otherwise (and in such case, after satisfactory notice has been given).

**Consolidated, Amended and Restated  
Multifamily Note  
Fannie Mae**

**Form 6010.CAR.FL  
07-11**

**© 2011 Fannie Mae**



**5. Personal Liability.**

The provisions of Article 3 (Personal Liability) of the Loan Agreement are hereby incorporated by reference into this Note to the same extent and with the same force as if fully set forth herein.

**6. Governing Law.**

This Note shall be governed in accordance with the terms and provisions of Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement.

**7. Waivers.**

Presentment, demand for payment, notice of nonpayment and dishonor, protest and notice of protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by Borrower, for and on behalf of itself, Guarantor and Key Principal, and all endorsers and guarantors of this Note and all other third party obligors or others who may become liable for the payment of all or any part of the Indebtedness.

**8. Commercial Purpose.**

Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise or activity, and not for agricultural, personal, family or household purposes.

**9. Construction; Joint and Several (or Solidary, as applicable) Liability.**

(a) Section 15.08 (Construction) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Note.

(b) If more than one Person executes this Note as Borrower, the obligations of such Person shall be joint and several (solidary instead for purposes of Louisiana law).

**10. Notices.**

All Notices required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with Section 15.02 (Notice) of the Loan Agreement.

**11. Time is of the Essence.**

Borrower agrees that, with respect to each and every obligation and covenant contained in this Note, time is of the essence.

**12. Loan Charges Savings Clause.**

Borrower agrees to pay an effective rate of interest equal to the sum of the Interest Rate and any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Mortgage Loan and any other fees or amounts to be paid by Borrower pursuant to any of the other Loan Documents. Neither this Note, the Loan Agreement nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the

maximum interest rate permitted to be charged under applicable law. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with all applicable laws governing the maximum rate or amount of interest payable on the Indebtedness evidenced by this Note and the other Loan Documents. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any interest or other charge or amount provided for in any Loan Document, whether considered separately or together with other charges or amounts provided for in any other Loan Document, or otherwise charged, taken, reserved or received in connection with the Mortgage Loan, or on acceleration of the maturity of the Mortgage Loan or as a result of any prepayment by Borrower or otherwise, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate any such violation. Amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of the Mortgage Loan without the payment of any prepayment premium (or, if the Mortgage Loan has been or would thereby be paid in full, shall be refunded to Borrower), and the provisions of the Loan Agreement and any other Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under the Loan Agreement and any other Loan Documents reduced, without the necessity of the execution of any new documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under the Loan Documents. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, and any amount paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness, shall be deemed to be allocated and spread ratably over the stated term of the Mortgage Loan. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Mortgage Loan.

**13. WAIVER OF TRIAL BY JURY.**

**EACH OF BORROWER AND LENDER (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**14. Receipt of Loan Documents.**

Borrower acknowledges receipt of a copy of each of the Loan Documents.

**15. Incorporation of Schedules.**

The schedules, if any, attached to this Note are incorporated fully into this Note by this reference and each constitutes a substantive part of this Note.

**16. No Novation.**

This Consolidated, Amended and Restated Multifamily Note does not extinguish the outstanding indebtedness evidenced by the Original Note or discharge or release the Original

Mortgage or any other security, and the parties do not intend this Consolidated, Amended and Restated Multifamily Note to be a substitution or novation of the original indebtedness or instruments securing the same.

**ATTACHED SCHEDULE.** The following Schedule is attached to this Note:

Schedule 1 Modifications to Note

**[Remainder of Page Intentionally Blank]**

**Consolidated, Amended and Restated  
Multifamily Note  
Fannie Mae**

**Form 6010.CAR.FL  
07-11**

**© 2011 Fannie Mae**

**IN WITNESS WHEREOF**, Borrower has signed and delivered this Note under seal (where applicable) or has caused this Note to be signed and delivered under seal (where applicable) by its duly authorized representative. Where applicable law so provides, Borrower intends that this Note shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**LANDMARK AT GARDEN SQUARE, LLC**, a Delaware limited liability company

By: Elco Landmark at Garden Square Management, LLC, a Delaware limited liability company, its Manager

By: Elco Landmark Residential Holdings, LLC, a Delaware limited liability company, its Manager

By: JLCO, LLC, a Florida limited liability company, its Managing Member

By: \_\_\_\_\_  
Joseph G. Lubeck  
President

**Consolidated, Amended and Restated  
Multifamily Note  
Fannie Mae**

**Form 6010.CAR.FL  
07-11**

**© 2011 Fannie Mae**

Berkadia Commercial Mortgage LLC, holder of the Original Note, signs below to acknowledge its consent to the terms of this Consolidated, Amended and Restated Multifamily Note.

**ORIGINAL LENDER:**

**BERKADIA COMMERCIAL MORTGAGE  
LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Scott McIntyre  
Authorized Representative

**Consolidated, Amended and Restated  
Multifamily Note  
Fannie Mae**

**Form 6010.CAR.FL  
07-11**

**© 2011 Fannie Mae**

PAY TO THE ORDER OF FANNIE MAE,  
WITHOUT RECOURSE

**BERKADIA COMMERCIAL MORTGAGE  
LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Scott McIntyre  
Authorized Representative

Fannie Mae Commitment No. 866939

**Consolidated, Amended and Restated  
Multifamily Note  
Fannie Mae**

**Form 6010.CAR.FL  
07-11**

**© 2011 Fannie Mae**

AMENDMENT NO. 1  
TO LOAN AND SECURITY AGREEMENT

THIS AMENDMENT NO. 1 TO LOAN AND SECURITY AGREEMENT (this "Amendment") is entered into as of April 17, 2012, by and among BRT RLOC LLC, a New York limited liability company ("Borrower"), BRT Realty Trust, a Massachusetts business trust, as guarantor (in such capacity, "Guarantor") and as servicer (in such capacity, "Servicer"), the Lenders hereto, Capital One, National Association, as agent for the Lenders (in such capacity, "Agent") and as custodian (in such capacity, "Custodian").

BACKGROUND

Borrower, Guarantor and Servicer entered into that certain Loan and Security Agreement, dated as of June 22, 2011, (as amended, restated, supplemented and/or otherwise modified from time to time, the "Loan Agreement") with the Lenders, Agent and Custodian, pursuant to which, the Lenders made available to Borrower, pursuant to the terms and conditions in the Loan Agreement, a credit facility.

In connection with the Loan Agreement, Borrower, Guarantor and Servicer entered into and delivered the other Transaction Documents.

Borrower has requested that Agent and Lenders amend the Loan Agreement to incorporate a sublimit pursuant to which Borrower can request Loans up to \$10,000,000 in the aggregate without first pledging Eligible Receivables and either (a) repay such Loans no later than ninety (90) days from the date such Loan is made or (ii) pledge to Agent therefor, for the benefit of itself and Lenders, Eligible Receivables no later than ninety (90) days from the date such Loan is made so that the aggregate Facility Amount outstanding at such time (including such Loan) does not exceed the lesser of the Borrowing Limit and the Borrowing Base, and Agent and Lenders are willing to do so on the terms and conditions hereafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

2. Amendments to the Loan Agreement. Subject to satisfaction of the conditions precedent set forth in Section 3 below, the Loan Agreement is hereby amended as follows:

(a) Section 1.01 is amended by adding the following defined terms in their appropriate alphabetical order:

"Bridge Loan" has the meaning assigned to that term in Section 2.02(b)(ii)."

"Bridge Loan Sublimit" means \$10,000,000."

(b) Section 2.01 is amended in its entirety to provide as follows:

---

“SECTION 2.01 Borrowings. On the terms and conditions hereinafter set forth and set forth in the Notes, if any, each Lender shall make loans (“Loans”) to Borrower in an amount equal to such Lender’s Commitment Percentage of the Loans from time to time during the period from the date of this Agreement until the earlier of the Early Amortization Commencement Date or the Commitment End Date. The obligations of each Lender hereunder shall be several and not joint. Under no circumstances shall Lenders make any Loan if (a) the principal amount of such Loan is less than \$1,000,000 or (b) after giving effect to the Borrowing of such Loan, any of the following is true: (i) an Early Amortization Event has occurred and is continuing, (ii) the aggregate Facility Amount would exceed the Borrowing Limit, (iii) except as respects the Bridge Loans, the aggregate Facility Amount would exceed the Borrowing Base at such time; or (iv) the aggregate Facility Amount of the Bridge Loans would exceed the Bridge Loan Sublimit.”

(c) Sections 2.02(a), (b) and (c) are amended in their entirety to provide as follows:

“SECTION 2.02 The Initial Borrowing and Subsequent Borrowings.

(a) Until the occurrence of the earlier of the Early Amortization Commencement Date and the Commitment End Date, each Lender will make Loans at the request of Borrower, subject to and in accordance with the terms and conditions of Section 2.01 and this Section 2.02 and subject to the provisions of Article III hereof.

(b) (i) No later than fifteen (15) Business Days before the related Borrowing Date for a Loan other than a Bridge Loan or the date on which Borrower would like to Pledge such Receivable hereunder, Borrower shall deliver to Agent copies of the documents in the Receivables File related to a Receivable which Borrower would like to Pledge to Agent hereunder. No later than three (3) Business Days before the related Borrowing Date, Agent shall indicate whether such Receivable would constitute an Eligible Receivable as of such date; provided that Agent’s failure to deliver an indication by such date shall be deemed an indication that such Receivable is not an Eligible Receivable. It is expressly agreed and acknowledged that Agent and Lenders are providing the Loans on the basis of all representations and warranties made by Borrower and Servicer hereunder and under the other Transaction Documents and on the completeness and accuracy of the information contained in the applicable Receivables File, and any incompleteness or inaccuracies in the related Receivables File will only be acceptable to Agent and Lenders if disclosed in writing to Agent by Borrower in advance of the related date on which the Notice of Borrowing is due, and then only if Agent opts to accept such Receivable as part of the Borrowing Base notwithstanding such incompleteness and inaccuracies.

(ii) Notwithstanding the foregoing clause (i), the Borrower shall be permitted, subject to and in accordance with the terms and conditions of Section 2.01 and this Section 2.02 and subject to the provisions of Article III hereof, request a Borrowing pursuant to a Notice of Borrowing without a corresponding Pledge of Eligible Receivables (such a Loan, a “Bridge Loan”). Borrower shall not permit, at any time, the aggregate unpaid principal balance of the Bridge Loans to exceed the Bridge Loan Sublimit. Notwithstanding anything to the



contrary in this Agreement, Borrower shall, no later than ninety (90) days after a Bridge Loan is made under this Agreement, either (A) repay such Bridge Loan in full (including, without limitation, any accrued and unpaid interest attributable to such Bridge Loan) or (B) Pledge additional Eligible Receivables under this Agreement in such amount as may be necessary so that the Borrowing Base is at least equal to or greater than the Facility Amount (in which case, such Bridge Loan shall no longer be deemed a Bridge Loan hereunder).

(c) (i) Each Borrowing shall be made upon irrevocable written notice from Borrower to Agent (any such written notice, a “Notice of Borrowing”), provided that, unless otherwise agreed by Agent and Lenders, such Notice of Borrowing is received by Agent no later than 3:00 P.M. (New York City time) on the date that is two (2) Business Days prior to the related Borrowing Date and, except in the case of a Bridge Loan, Agent has previously indicated that the related Receivable, if any, would constitute an Eligible Receivable as provided in clause (b)(i) above. Each such Notice of Borrowing shall be accompanied by a Borrowing Base Certificate, other than in the case of a Bridge Loan, as of the Business Day immediately preceding the date of such Notice of Borrowing and such Notice of Borrowing shall specify in detail (A) the aggregate amount of such Borrowing and the calculations supporting such Borrowing, (B) whether such Borrowing is a Bridge Loan, (C) the date of such Borrowing and the Fixed Period requested with respect to such Borrowing and (D) other than in the case of a Bridge Loan, the Eligible Receivables to be Pledged in connection with such Borrowing, if any (and upon such Borrowing other than in the case of a Bridge Loan, such Mortgage Loan Receivables shall be Pledged Receivables hereunder). On the date of each such Borrowing, each Lender shall, upon satisfaction of the applicable conditions set forth in this Article II and Article III, make available to Borrower on the applicable Borrowing Date, no later than 3:00 P.M. (New York City time) on such Borrowing Date, in same day funds, such Lender’s Commitment Percentage of the amount of such Borrowing (net of amounts payable to or for the benefit of such Lender), by payment into the Operating Account. For the avoidance of doubt, Lenders, unless consented to in writing by Agent in its sole discretion and pursuant to terms and advance rates as agreed between Borrower and Agent, shall not make any Loans under this Agreement with respect to Pledged Receivables that are not Eligible Receivables.

(ii) Each Notice of Borrowing other than as respects a Bridge Loan delivered to Agent pursuant to this Section 2.02(c) shall be accompanied by a copy of the Notice of Pledge (and the Receivables Schedule attached thereto), if any, which was sent to Custodian pursuant to the terms of the Custodial Agreement in connection with the pledge, if any, of Eligible Receivables to be made in connection therewith.

(iii) Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any Notice of Borrowing or similar notice purporting to have been sent to Agent by the proper party or parties. Agent may assume that each Person executing and delivering any notice in accordance herewith was duly authorized, unless the responsible individual acting thereon for Agent has actual knowledge to the contrary.”

(d) Section 2.05(b) is amended in its entirety to provide as follows:

“(b) Borrower Deficiency Payments. Notwithstanding anything to the contrary contained in this Section 2.05 or in any other provision in this Agreement, if, on any day prior to

the Collection Date, the Facility Amount shall exceed the Borrowing Limit, then Borrower shall either (i) remit to Agent a payment (to be applied by Agent to repay Loans selected by Agent, in its sole discretion), in such amount as may be necessary to reduce the Facility Amount to an amount less than or equal to the Borrowing Limit or (ii) pledge and grant a security interest to Agent for the benefit of Lenders in additional Pledged Receivables which would constitute Eligible Receivables sufficient to eliminate such excess, in each case, no later than two Business Days after Borrower first has Actual Knowledge of such excess or is notified by any Lender, Agent, Custodian or any other Person of such excess. Notwithstanding anything to the contrary contained in this Section 2.05 or in any other provision in this Agreement, if, on any day prior to the Collection Date, the Facility Amount (not including the aggregate unpaid principal amount of the Bridge Loans that have been outstanding under this Agreement for less than ninety (90) days) shall exceed the Borrowing Base, then Borrower shall either (i) remit to Agent a payment (to be applied by Agent to repay Loans selected by Agent, in its sole discretion), in such amount as may be necessary to reduce the Facility Amount to an amount less than or equal to the Borrowing Base or (ii) Pledge additional Eligible Receivables hereunder in such amount as may be necessary to increase the Borrowing Base to an amount equal to or greater than the Facility Amount, in each case, no later than two Business Days after Borrower first has Actual Knowledge of such excess or is notified by any Lender, Agent, Custodian or any other Person of such excess.”

3. Conditions of Effectiveness. This Amendment shall become effective upon receipt by the Agent of the following, each of which shall be in form and substance satisfactory to the Agent and its counsel:

- and
- (a) a copy of this Amendment duly executed by Borrower, Guarantor, Servicer, Agent, Lenders and Custodian:
  - (b) such other documents, instruments or agreements as Agent may reasonably require.

4. Representations and Warranties. Each of Borrower, Guarantor and Servicer hereby represents and warrants as follows:

- (a) This Amendment, the Loan Agreement and the other Transaction Documents, as amended hereby, constitute legal, valid and binding obligations of Borrower, Servicer and Guarantor and are enforceable against them in accordance with their respective terms.
- (b) No Event of Default or Early Amortization Event has occurred and is continuing or would exist after giving effect to this Amendment.
- (c) Neither Borrower, Servicer nor Guarantor has any defense, counterclaim or offset with respect to this Amendment, the Loan Agreement or any other Transaction Document.

5. Effect on the Loan Agreement and Other Transaction Documents.

(a) Upon the effectiveness of this Amendment, each reference in the Loan Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of like import shall mean and be a reference to the Loan Agreement as amended hereby. Upon the effectiveness of this Amendment, Borrower, Guarantor and Servicer hereby reaffirms all covenants, representations and warranties made in the Loan Agreement and the other Transaction Documents to the extent the same are not amended hereby and agree that all such covenants, representations and warranties shall be deemed to have been remade as of the effective date of this Amendment (except to the extent any such representation and warranty is expressly stated to have been made as of a specific date, in which case it shall be true and correct as of such specific date).

(b) Except as specifically amended herein, the Loan Agreement and all other Transaction Documents shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Agent or Lenders.

6. Governing Law. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed by and construed in accordance with the laws of the State of New York.

7. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

8. Counterparts: Signatures. This Amendment may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature hereto.

[Signature Pages to Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the date first written above.

BORROWER:

BRT RLOC LLC

By: /s/ Mark H. Lundy  
Name: Mark H. Lundy  
Title: Senior Vice President

SERVICER:

BRT REALTY TRUST

By: /s/ Mark H. Lundy  
Name: Mark H. Lundy  
Title: Senior Vice President

GUARANTOR:

BRT REALTY TRUST

By: /s/ Mark H. Lundy  
Name: Mark H. Lundy  
Title: Senior Vice President

SIGNATURE PAGE TO  
AMENDMENT NO 1 TO  
LOAN AND SECURITY AGREEMENT

---

AGENT:

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Kenneth Hund

Name: KENNETH HUND

Title: VICE PRESIDENT

LENDER:

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Kenneth Hund

Name: KENNETH HUND

Title: VICE PRESIDENT

CUSTODIAN:

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Kenneth Hund

Name: KENNETH HUND

Title: VICE PRESIDENT

SIGNATURE PAGE TO  
AMENDMENT NO 1 TO  
LOAN AND SECURITY AGREEMENT

---

**MORTGAGE AND SECURITY AGREEMENT**

Dated: February 3, 2012

in the amount of

\$22,748,000

from  
**RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC, Mortgagor**  
a New Jersey limited liability company,  
having an office at:  
c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor,  
Newark, New Jersey 07102

to

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**  
**and its assigns as set forth herein, Mortgagee**  
having an office at:  
36 West State Street  
Trenton, New Jersey 08625.

LOCATION OF PREMISES:

Street Address : Halsey Street, Pearl Street, Maiden Lane  
City of : Newark  
County of : Essex  
State of : New Jersey  
Block : 57.05 Lot 3.01;  
Block : 58 Lot 35.01; and  
Block : 95 Lots 1, 2, 3, 4, 8, 10, 16 and 31

After recording, please return to:  
Bernard S. Davis, Esq.  
WOLFF & SAMSON PC  
The Offices at Crystal Lake  
One Boland Drive  
West Orange, New Jersey 07052

---

**MORTGAGE AND SECURITY AGREEMENT** (the “**Mortgage**”), made as of February 3, 2012, given by **RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC**, a New Jersey limited liability company, having an address at c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (“**Mortgagor**”), in favor of **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a public body corporate and politic constituting an instrumentality of the State of New Jersey, having an office at 36 West State Street, PO Box 990, Trenton, New Jersey 08625 (the “**Authority**”).

**WITNESSETH :**

**WHEREAS**, the Authority has lent to the Mortgagor the aggregate sum of TWENTY-TWO MILLION SEVEN HUNDRED FORTY EIGHT THOUSAND DOLLARS (\$22,748,000) (the “**Mortgage Amount**”) in accordance with its Note dated December 29, 2011 (the “**Note**”); and

**WHEREAS**, the Loan evidenced by the Note was made available by the Authority to the Mortgagor pursuant to the terms and provisions set forth in that certain Bond Agreement dated as of December 1, 2011 (the “**Bond Agreement**”) executed by and among the Mortgagor, the Authority and TD Bank, N.A., as purchaser (the “**Purchaser**”), under which the Authority has agreed to provide the Mortgagor with funds to undertake financing the acquisition of land and construction of buildings located in the City of Newark, County of Essex and State of New Jersey;

**WHEREAS**, the Purchaser has agreed to purchase the Authority’s Bond (as defined in the Bond Agreement) in order to provide the Authority with the funds necessary to make the loan to the Mortgagor; and

**WHEREAS**, Mortgagor is the owner of, those certain parcels of real property in the City of Newark, in the County of Essex, State of New Jersey, as more particularly described in Schedule A attached hereto and made a part hereof;

**WHEREAS**, to secure the payment of the indebtedness under the Note in the Mortgage Amount, together with interest thereon at the interest rate or rates set forth in the Note, and together with any other sums that may become due and payable hereunder or under the Note or the other Loan Documents (as hereafter defined), and to secure the performance by Mortgagor of its obligations hereunder, under the Note and the other Loan Documents, Mortgagor has agreed to execute and deliver to Mortgagee (as hereafter defined) this Mortgage.

**Certain Definitions**

As used in this Mortgage, 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 to the plural forms of such terms.

“**Advance**” shall mean the advance of the loan proceeds from Mortgagee to Mortgagor.

---

“**Agreements**” shall mean all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications, warranties, guarantees, and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted at the Premises or any part thereof, or relating to any of the Chattels, and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of an Event of Default hereunder, to receive and collect any sums payable to Mortgagor thereunder.

“**Assignment of Leases and Rents**” shall mean that certain Assignment of Leases and Rents dated as of the date hereof by Mortgagor in favor of Mortgagee, as the same may be amended, restated, supplemented or otherwise modified.

“**Block 95 Parcels**” shall mean the portion of the Mortgaged Property comprising Block 95, Lots 1, 2, 3, 4, Lot 8, 10, 16 and 31, and, all on the current official tax maps of the City of Newark, County of Essex, New Jersey, as more particularly depicted on the diagram attached hereto as Exhibit A.

“**Bond Agreement**” shall mean that certain Bond Agreement dated as of December 1, 2011 by and among the Mortgagor, the Purchaser and the Authority as the same may be amended, restated, supplemented or otherwise modified.

“**Cash Management Agreement**” shall mean that certain Cash Management Agreement dated as of the date hereof by and among the Mortgagor and Leasehold Owner, as Debtor Parties, and Mortgagee, Casino Reinvestment Development Authority, Brick City Development Corporation, GS Halsey NMTC Investment Fund LLC, NJCC CDE Essex LLC and Gateway SUB-CDE I LLC, as Financing Parties and TD Bank, N.A. as initial Agent, as the same may be amended restated, supplemented or otherwise modified.

“**Chattels**” shall mean the Equipment, the Fixtures and the Personal Property.

“**Claim**” shall mean any action, claim, counterclaim, cross-claim, cause of action, suit, liability, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including, without limitation, all fees, costs and expenses incurred in connection therewith of attorneys, consultants, contractors and experts.

“**Code**” shall mean the Uniform Commercial Code in effect in the State of New Jersey, as amended from time to time.

“**Default Rate**” shall mean the Initial Rate or the Reset Rate (as each term is defined in the Note), as applicable, plus four (4%) percent per annum, but in no event to exceed the maximum rate allowed by law.

“**Easements**” shall mean all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights, mineral rights and development rights, and all estates,



rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and/or the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interest, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and/or the Improvements and every part and parcel thereof, with the appurtenances thereto.

“**Equipment**” shall mean all “**equipment**,” as such term is defined in Article 9 of the Code, now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishing, and electronic data-processing and other office equipment now owned or hereafter acquired by the Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto. Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases at the Premises, except to the extent that the Mortgagor shall have any rights or interest therein.

“**Events of Default**” shall mean the events and circumstances described as such in Section 2.01 hereof.

“**Expenses**” shall mean all out-of-pocket fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Mortgagee in making, funding, administering or modifying the Loan, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Loan Documents, including, without limitation, reasonable attorneys’ fees and expenses, court costs, receiver’s fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, all or any part of the Mortgaged Property.

“**Family Members**” shall mean the spouses, parents, children and grandchildren of the partners, members or other equity interest holders in Borrower and any trust established for estate planning purposes for the benefit of such partners, members or other equity interest holders in Borrower or any of the foregoing specified family members.

“**Fixtures**” shall mean all Equipment now owned, or the ownership of which is hereafter acquired, by Mortgagor which is so related to the Land and/or Improvements that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation at the Premises, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Premises, including, but not

limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of the Mortgagor's interest therein) and all other utilities whether or not situated in Easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof. Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases at the Premises, except to the extent that Mortgagor shall have any right or interest therein.

**"Ground Lease"** shall mean that certain ground lease, dated as of the date hereof between Mortgagor, as Lessor, and Teachers Village School QALICB Urban Renewal, LLC, as Lessee, together with any and all modifications, extensions, and renewals thereof.

**"Improvements"** shall mean all structures, buildings, additions, extensions, modifications, and all other improvements of any kind whatsoever, and replacements of any of the foregoing, now or hereafter located at or upon the Land.

**"Indebtedness"** shall have the meaning accorded such term in the Granting Clause of this Mortgage.

**"Intangibles"** shall mean all **"general intangibles"** (as such quoted term is defined in the Code) in any way relating to the Premises, or any part thereof, and that Mortgagor owns, including, without limitation, all intellectual property, goodwill and books and records relating to the business operated or to be operated on the Premises or any part thereof, together with all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by Mortgagor insuring the Mortgaged Property and all rights and interest of Mortgagor thereunder.

**"Intercreditor Agreement"** shall mean that certain Intercreditor, Escrow and Disbursement Agreement, of even date herewith, by and among Mortgagor, Mortgagee, the Casino Reinvestment Development Authority, Brick City Development Corporation, GS Halsey NMTC Investment Fund LLC, NJCC CDE Essex, LLC, Gateway Sub-CDE I, LLC and Leasehold Owner, together with any and all modifications, extensions, and renewals thereto.

**"Land"** shall mean the real property located in City of Newark as more particularly described in Schedule A attached hereto and by this reference made a part hereof, including, without limitation, all of the air space, easements, rights, privileges, royalties and appurtenances thereunto belonging or in anywise appertaining thereto, and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein

and in the streets, alleys and ways adjacent thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired.

“**Leasehold Owner**” shall mean Teacher’s Village School QALICB Urban Renewal, LLC.

“**Lease(s)**” shall mean the Ground Lease and any leases permitted under the Ground Lease.

“**Loan**” shall mean the loan from Mortgagee to Mortgagor evidenced by the Note, which is being secured by, among other things, this Mortgage.

“**Loan Documents**” shall mean the Bond Agreement, this Mortgage, the Note, Assignment of Leases and Rents, the Security Agreement, all Uniform Commercial Code financing statements in respect of the Mortgaged Property and all other security agreements, assignments, documents, agreements, instruments, certificates, title policies and the like securing and/or evidencing the Mortgage Amount and other Indebtedness and/or executed and/or delivered by or on behalf of the Mortgagor in connection with the closing of the Loan or at any time thereafter.

“**Mortgaged Property**” shall have the meaning accorded such term in the Granting Clause of this Mortgage.

“**Mortgagee**” shall mean the New Jersey Economic Development Authority or any subsequent holder of this Mortgage, which Mortgage is simultaneously herewith being assigned to TD Bank, N.A.; accordingly, as of the date hereof, the term “Mortgagee” means and refers to both (i) TD Bank, N.A. and (ii) to the extent of the Reserved Rights, the New Jersey Economic Development Authority

“**Permitted Encumbrances**” shall have the meaning accorded such term on Schedule B attached hereto.

“**Person**” shall mean an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any governmental authority or any other entity.

“**Personal Property**” subject to any tenant’s rights therein as set forth pursuant to each tenant’s respective Lease, shall mean all furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, contract rights, accounts, including, without limitation, all bank accounts maintained by or on behalf of Mortgagor, the Impound Account (as hereafter defined), if any, and any other accounts established pursuant to any of the Loan Documents, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Code), other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Premises, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof, and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to the lien of any security interest, as

defined in the Code, superior to the lien of this Mortgage, and all proceeds and products of the foregoing.

“**Power of Sale**” shall mean the right, power and authority of Mortgagee to sell or cause the sale of the Mortgaged Property and/or a part or parts thereof, at public sale or auction, after any Event of Default and in accordance with and pursuant to any statute or law of the state or jurisdiction in which the Premises are located permitting the sale of property subject to a mortgage or security agreement in a non-judicial foreclosure sale, as any such statute or law may be in effect on the date hereof, or may be hereinafter enacted and/or modified or amended, or any successor statute or statutes, and/or under and pursuant to any other laws or regulations now in effect and/or hereafter enacted, which provides for and/or enables the property encumbered by a mortgage to be sold by a mortgagee and/or their respective agents and/or representatives in a public and/or private non-judicial sale.

“**Premises**” shall mean, collectively, the Land and the Improvements.

“**Project**” shall have the meaning accorded such term in the Bond Agreement.

“**Releases**” shall mean the Block 57.05 and 58 Release together with the Block 95 Release defined in Article V.

“**Security Agreement**” shall mean that certain security agreement by and between Mortgagor and Purchaser entered into as of the date hereof, as the same may be amended, restated, modified, or supplemented.

“**Teacher’s Village Project**” shall mean the multiphase, mixed use project consisting of the Premises and other nearby property located in the City of Newark which is not owned by the Mortgagor and includes the following components: workforce housing A1 (residential housing and retail component), workforce housing A2 (residential housing and retail space), workforce housing B (residential housing and retail space), charter schools/retail (to be built on the Premises for charter school, day care center, and retail space) and related parking on Block 95 Parcels, block 93, lot 24, and block 94, lots 21, 23, and 27).

“**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.

All terms of this Mortgage not defined above shall have the respective meanings accorded such terms in this Mortgage and the Bond Agreement.

#### **Granting Clause**

**NOW, THEREFORE**, Mortgagor, in consideration of the premises and in order to secure payment of the principal of the Note and the interest and any and all other sums payable on the Note, under this Mortgage or the other Loan Documents, as well as, without

limitation, all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Mortgagor to the Mortgagee or any affiliate of Mortgagee any time, of each and every kind, nature and description, whether arising under this Mortgage or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Mortgagor to the Mortgagee or any affiliate thereof; or are due indirectly by the Mortgagor to the Mortgagee or any affiliate thereof as endorser, guarantor or other surety, or as borrower of obligations due third persons which have been endorsed or assigned to the Mortgagee or any affiliate thereof, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents (all of such obligations are hereinafter referred to, collectively, as the “**Indebtedness**”), and the performance and observance of all the other provisions hereof, of the Note and the other Loan Documents, hereby gives, grants, mortgages, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, 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 (collectively, the “**Mortgaged Property**”), whether now owned or held or hereafter acquired:

- (A) the Land;
- (B) the Improvements;
- (C) the Easements;
- (D) the Chattels;
- (E) the Intangibles;
- (F) the Agreements;

(G) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Premises, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Premises;

(H) all proceeds in respect of the Mortgaged Property under any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(I) all refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Premises as a result of tax appeal or any applications or proceedings for reduction or otherwise;

(J) all leases and other agreements affecting the use, enjoyment or occupancy of the Premises or any part thereof heretofore or hereafter entered into and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, cash, letters of credit or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, income, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases;

(K) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Mortgaged Property; and

(L) all proceeds of any of the foregoing converted into cash, property, claims or otherwise.

**TO HAVE AND TO HOLD** unto Mortgagee and its successors and assigns, forever to its and their own proper use and behoof; and Mortgagor also does for itself, its successors and assigns, covenant with the Mortgagee, and their successors and assigns, that at and until the ensembling of these presents, it is well seized of the Premises in fee simple, and has good right to mortgage, bargain and sell the same and that the same are free from all encumbrances whatsoever except for those permitted encumbrances and other matters set forth on Schedule B attached hereto (collectively, the “**Permitted Encumbrances**”).

## ARTICLE I

### Particular Covenants of Mortgagor

Mortgagor represents, warrants, covenants and agrees as follows:

SECTION 1.01 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, other than the Permitted Encumbrances; 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, subject only to the Permitted Encumbrances; that the execution and delivery of this Mortgage, the Note and the other Loan Documents has been duly authorized by Mortgagor and that there is no provision in any document relating to Mortgagor that evidences or establishes the existence of 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 organization; that it has (i) all necessary licenses, authorizations, registrations, permits and/or 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, the Note and the other Loan Documents will not result in Mortgagor being in default under any provisions of any document that evidences or establishes the existence of Mortgagor or of any mortgage, credit or other agreement to which Mortgagor is a party or by which it is bound or that affects Mortgagor or the Premises, or any part thereof; that it will preserve such title, and will forever warrant and defend the same unto Mortgagee and its

successors and assigns, and will forever warrant and defend the validity and priority of such lien hereof against the claims of all persons and parties whomsoever, subject only to the Permitted Encumbrances.

SECTION 1.02 (A) Mortgagor will, at the sole cost and expense of 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 reasonably require, for the better assuring, conveying, mortgaging, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or that Mortgagor may be or may hereafter become bound to convey, mortgage or assign to Mortgagee, or for more effectively carrying out the intention or facilitating the performance of the terms of this Mortgage, or for recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Mortgagee to execute and record in the name of Mortgagor to the extent it may be lawful to do so, chattel mortgages or comparable security instruments to evidence more effectively the lien hereof upon the Mortgaged Property or any part thereof. Mortgagor will also, at Mortgagee's request, sign any affidavits or other documents or instruments which may be necessary to maintain the priority of the lien of this Mortgage with respect to the Mortgaged Property or any part thereof, or to release or enforce such lien, including but not limited to any amendments, corrections, deletions or additions to this Mortgage.

(B) Mortgagor expressly agrees, intending that Mortgagee rely thereon, that this Mortgage shall also constitute a "**security agreement**," as such term is defined in the Code with respect to the Chattels, Intangibles and other Mortgaged Property. Mortgagor further expressly agrees, intending that Mortgagee rely thereon, that this Mortgage, to the extent permitted by law, shall also constitute a "**financing statement**," as such term is defined in the Code with respect to the Fixtures. By its execution of this Mortgage, Mortgagor hereby authorizes Mortgagee to file and/or record this Mortgage as a security instrument and fixture filing with respect to the Mortgaged Property or any part thereof, and authorizes Mortgagee to file one or more financing statements, amendments, fixture filings, renewals or continuation statements with respect to the Mortgaged Property or any part thereof, and authorizes Mortgagee to file any other document or instrument as may from time to time be permitted under the Code or which Mortgagee may otherwise deem desirable in connection with the Mortgaged Property or any part thereof. If requested by Mortgagee, Mortgagor agrees to sign all such financing statements, amendments, renewal or continuation statements and other instruments and documents or, at Mortgagee's option, Mortgagee is hereby authorized by Mortgagor to sign all such financing statements, amendments, renewals continuation statements, documents and instruments in Mortgagor's name as Mortgagor's attorney-in-fact.

SECTION 1.03 (A) Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage, and any other 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 and/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 rights of Mortgagor to in good faith contest such claims and demands, Mortgagor will pay all filing, registration or recording fees, taxes and other charges, and all costs and expenses incident to the execution, acknowledgment, delivery and recording and/or filing of this Mortgage, the other Loan Documents, 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, impositions, 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, any other Loan Document or any instrument of further assurance.

(C) Upon Mortgagor's full satisfaction of the Indebtedness and all of Mortgagor's other obligations under the Note, this Mortgage and the other Loan Documents, and termination of all obligations, if any, of Mortgagee to make future advances under the Note, at Mortgagor's request and at Mortgagor's sole cost and expense (including, without limitation, the payment of all reasonable legal fees and disbursements), Mortgagee shall execute and deliver to Mortgagor a release of the lien of this Mortgage and termination statements as to any Uniform Commercial Code financing statements filed by Mortgagee in respect of the Mortgaged Property. Mortgagor shall be responsible for the recordation and filing of such release and termination statements, and the cost thereof.

SECTION 1.04 Mortgagor will punctually pay the principal and interest and all other sums to become due in respect of the Note at the time and place and in the manner specified in the Note, and all such principal and interest due in respect of the Note is hereby deemed an obligation due under this Mortgage.

SECTION 1.05 Mortgagor will, so long as it is the 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 or entity under the laws of the state of its organization and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Mortgagor or to the Mortgaged Property or any part thereof.

SECTION 1.06 All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by, or released to, Mortgagor, or constructed, assembled or placed by Mortgagor on the Premises 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 Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the Granting Clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

SECTION 1.07 (A) 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 any part thereof, or arising in respect of the occupancy, use or possession thereof (collectively, the “**Impositions**”). Mortgagor will, upon the reasonable request of Mortgagee, deliver to Mortgagee receipts evidencing the payment of all such Impositions, or any part thereof, or the revenues, rents, issues, income or profits thereof.

(B) 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 claims and demands, 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 sole cost and expense of Mortgagor, without expense to Mortgagee.

(C) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon Mortgagor by this Section so long as Mortgagor shall in good faith and at its own cost and expense contest the same or the validity thereof by appropriate legal proceedings that 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 Mortgagor shall, at the option of Mortgagee, provide security reasonably satisfactory to Mortgagee, assuring the discharge of Mortgagor’s obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further that if, at any time, payment of any obligation imposed upon Mortgagor by subsection (a) of this Section shall become necessary to prevent the delivery of a tax deed, or its equivalent, conveying the Premises or any other part of the Mortgaged Property, or any part thereof, because of non payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or its equivalent.

SECTION 1.08 Mortgagor will pay any and all taxes, charges, fees and/or levies by reason of Mortgagee’s ownership of and interest in the Note, this Mortgage or the other Loan Documents 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. The obligations assumed by Mortgagor pursuant to this Section 1.08 shall survive the exercise by Mortgagee of any of its rights and/or remedies under this Mortgage.

SECTION 1.09 Insurance.

(A) Mortgagor shall keep the Mortgaged Property and machinery, furniture, fixtures and equipment continuously insured, to the extent of their full insurable replacement value and in such amounts in order to prevent the application of co-insurance and, in no event, less than the amount of the Note and other obligations outstanding, against loss or damage by fire, with extended coverage, and coverage against loss or damage by vandalism, malicious mischief and, if available and required against flood and against other hazards as Purchaser may require, from time to time. Mortgagor shall also maintain or cause to be maintained commercial general liability insurance and workers compensation insurance, in such total amounts as Authority and the Purchaser may require, from time to time naming the Authority

and the Purchaser as an additional insured (except for workers compensation insurance). All property insurance shall name the Purchaser as mortgagee and lender loss payee. At all times during the term of this Mortgage, such coverage as noted herein shall include the following:

(i) 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 each of the Authority and the Purchaser as an "Additional Insured", including both on-going and completed operations, by endorsements satisfactory to Authority and the Purchaser;

(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 Purchaser. 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 Purchaser 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 Purchaser, and shall be written with an unexpired term of at least one year, issued by an insurer acceptable to the Purchaser. 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 projects gross revenue, and shall be endorsed to include an extended period of indemnity of at least 180 days. The policy shall name the Purchaser on a standard mortgagee endorsement for real property and lender loss payee endorsement for loss of income coverage on forms acceptable to Purchaser. 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 Purchaser 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 Purchaser), will immediately cause the aggregate limits to be restored to 100% of the pre-loss aggregate limit;

- is maintained:
- (iii) 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 Purchaser. 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 Purchaser, naming Purchaser as Additional Insured (except with respect to workers’ compensation and employer’s liability), and evidencing all insurance required in this subsection. Purchaser shall be named as Additional Insured with respect to general contractor’s ongoing operations and completed operations by endorsements satisfactory

to Purchaser. 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 Purchaser as Additional Insured on a form acceptable to Purchaser.

(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 Purchaser. 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 Purchaser.

(iv) Mortgagor 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 Purchaser as an "Additional Named Insured" through an endorsement satisfactory to Purchaser. The carrier shall agree that the policy rights for the project shall be automatically assigned to Purchaser, with no further action required by any person, if control of the Mortgaged Property passes to Purchaser 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 Purchaser hereunder or under any of the Loan Documents (including, without limitation, the transfer of the property and/or Improvements or any interest therein to Purchaser or its designee through foreclosure, by deed-in-lieu of foreclosure or otherwise);

(v) Workers Compensation Insurance, if required by the appropriate local authority; and

(vi) such other insurance as any owner or operator of facilities similar to the Mortgagor's would, in the prudent management of its properties in such amounts and against such insurable hazards as the Purchaser from time to time may reasonably request, including changes to the coverage already outlined elsewhere in this agreement.

(B) All policies shall be in form satisfactory to Purchaser, shall be issued by companies reasonably satisfactory to Purchaser, shall be maintained in full force and effect, shall be delivered to the Purchaser and the Authority, as applicable, Certificates of insurance,

addressed to the Purchaser and the Authority, as applicable, together with copies of relevant endorsements and other documentation as required by the Purchaser and the Authority, evidencing such hazard insurance and liability insurance shall be delivered to the Purchaser and the Authority, as applicable, concurrently with the closing of this transaction, Mortgagor shall provide copies of all policies required herein no later than 60 days after the closing of this transaction. Such policies:

(i) shall be by such insurer (or insurers) as shall be financially responsible, qualified to do business in the State and of recognized standing, which shall be companies which have an A.M. Best Stability Rating of A- or better and a financial rating of IX or better, notwithstanding the above, any insurer having a rating of A- must have an Outlook of stable to positive according to AM Best;

(ii) may provide coverage under blanket insurance policies, provided that (a) any policy of blanket insurance hereunder shall comply in all respects with the other provisions of this Section 1.07; and (b) the protection afforded Mortgagor under any policy of blanket insurance hereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the Project;

(iii) shall be in such form and have such provisions as are generally considered standard provisions for the type of insurance involved, and reasonably acceptable to the Purchaser and the Authority;

(iv) shall prohibit cancellation or material modification, termination or lapse in coverage by the insurer without at least 30 days prior written notice to the Purchaser and the Authority; and

(v) prior to expiration of any such policy, the Mortgagor shall furnish the Purchaser and the Authority with evidence satisfactory to the Purchaser and the Authority that the policy or certificates has been renewed or replaced in compliance with this Mortgage.

(C) Each of the policies or certificates evidencing the insurance required above to be obtained shall:

(i) provide that all insurance proceeds with respect to loss or damage to Mortgaged Property be endorsed and made payable to the Purchaser and shall name the Purchaser and the Authority, as applicable, as mortgagee and lender loss payee with respect to business personal property coverage, additional insured as to all liability coverage and mortgagee under a standard mortgagee clause with respect to building and plant coverage;

(ii) provide that in respect of the interests of the Purchaser and the Authority in such policies, the insurance shall not be invalidated by any action or inaction of the Mortgagor or any other Person and shall insure the Purchaser and the Authority regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Purchaser and the Authority to the extent that such other insurance provides the Purchaser and the Authority, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such;

(iv) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there shall be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Purchaser and the Authority until at least thirty (30) days after receipt by the Purchaser and the Authority, respectively, of written notice by such insurers of such cancellation, lapse, expiration or change;

(v) 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

(vi) 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 Purchaser and the Authority with evidence that such policy has been renewed or replaced, in formats acceptable to the Purchaser and the Authority. Mortgagor shall provide copies of all renewal or replacement policies within 60 days of the renewal date.

(D) If the insurance, or any part thereof, shall expire, or be cancelled, or become void or voidable by reason of breach of any condition thereof, or if Purchaser and the Authority reasonably determines that such coverage is unsatisfactory by reason of the failure or impairment of the capital of any company in which the insurance may then be carried, or if for any reason whatsoever the insurance shall be unsatisfactory to Purchaser and the Authority, after providing twenty (20) days' notice to cure, Mortgagor shall cause new insurance coverages to be placed on the Mortgaged Property, reasonably satisfactory to Purchaser and the Authority. If Mortgagor should fail to maintain insurance policies as required hereunder, or allow such policies to lapse, Mortgagee, after providing 10 day's notice to Mortgagor to cure, shall cause new insurance coverage to be placed on the Mortgaged Property, reasonably satisfactory to Purchaser and the Authority, as applicable. All renewal policies or certificates of insurance, with premiums paid, shall be delivered to Purchaser and the Authority, as applicable, at least thirty (30) days before expiration of the old policies.

(E) In the event of loss greater than \$250,000, Mortgagor will give immediate notice thereof to Purchaser, and Purchaser may make proof of loss if not made promptly by Mortgagor; provided, however, that any adjustment of a proof of loss shall require the prior written consent of Purchaser. Each insurance company issuing fire, casualty and/or hazard insurance policies relating to the Mortgaged Property is hereby authorized and directed

to make payment under such insurance, including return of unearned premiums, directly to TD Bank, N.A. (or its successors and assigns) for application in accordance with the terms of the Bond Agreement, and Mortgagor appoints TD Bank, N.A. (or its successors and assigns), irrevocably, as Mortgagor's attorney in fact to apply for and endorse any draft therefor. Any and all proceeds of hazard and other policies of insurance which are payable to Mortgagor are hereby assigned to Purchaser as additional security for payment of the indebtedness hereby secured and Mortgagor hereby agrees that upon and during the continuance of an Event of Default any values available thereunder upon cancellation or termination of any of said policies or renewals, whether in the form of return of premiums or otherwise, shall be payable to TD Bank, N.A. (or its successors and assigns) as assignee thereof.

To the extent any such policy is not written under a blanket policy of insurance, if Purchaser becomes the owner of the Mortgaged Property or any part thereof by foreclosure or otherwise, such policies, including all right, title and interest of Mortgagor thereunder, shall become the absolute property of Purchaser and Mortgagor agrees that all policies of insurance required hereunder and all renewal thereof are hereby assigned to Lender to the extent permitted by their terms, and Mortgagor agrees to provide the consent of any issuer of any such policy to the assignment to Purchaser promptly upon the request of Purchaser.

SECTION 1.10 If Mortgagor shall fail to perform any of the covenants contained in Sections 1.01, 1.03, 1.05, 1.07, 1.08, 1.09, 1.12, 1.16 or 1.21 hereof, Purchaser may make advances to perform the same on its behalf upon ten (10) days' prior written notice to Mortgagor, and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. Mortgagor will repay on demand all sums so advanced on its behalf with interest at the Default Rate. The provisions of this Section shall not prevent any default in the observance of any covenant contained in said Sections 1.01, 1.03, 1.05, 1.07, 1.08, 1.09, 1.12, 1.16 or 1.21 from constituting an Event of Default.

SECTION 1.11 (A) Mortgagor will keep adequate records and books of account in accordance with generally accepted accounting principles ("GAAP") and will permit Mortgagee, by its 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 Mortgagor upon reasonable notice to Mortgagor, at such reasonable times as may be requested by Mortgagee.

(B) Mortgagor, within five (5) business days upon request in person, or within seven (7) business days upon request by mail, will 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.

SECTION 1.12 Mortgagor will not commit any physical waste on the Mortgaged Property, or any part thereof, or make any change in the use of the Mortgaged Property, or any part thereof, except with respect to the Block 95 Release set forth in Article V, that will in any way decrease the value of the Mortgaged Property or increase the risk of fire or other hazard or casualty arising out of construction or operation. Mortgagor will, or will cause, at all times, the Improvements to be maintained in good operating order and condition and will promptly and on a timely basis make or will cause to be made, from time to time, all repairs, renewals,

replacements, additions and improvements in connection therewith which are necessary or desirable to such end. The Improvements shall not be demolished or substantially altered, except for the Releases, nor shall any Chattels be removed without the prior written consent of Mortgagee, except where appropriate replacements free of superior title, liens and claims are immediately made having value at least equal to the value of the removed Chattels.

SECTION 1.13 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 Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation. In accordance with the Intercreditor Agreement, 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 or challenge the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. 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, and/or to the restoration of the Improvements (in the case of a partial condemnation that affects the Improvements in such a way that restoration is required to such Improvements). Other than as such rights as such awards or compensation may be subject to the Intercreditor Agreement, in the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, 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. Other than as such rights as such awards or compensation may be subject to the Intercreditor Agreement, subject to the Permitted Encumbrances, 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 Mortgagor of interest at the applicable rate provided for in the Note. In the event of a conflict between this Section 1.13 and Section 4.10 of the Bond Agreement, this Section 1.13 shall control.

SECTION 1.14 (A) The Mortgagor will not (i) execute an assignment of any leases affecting the Premises or any part thereon, or the Rents, or any part thereof, from the Premises, except in favor of Mortgagee, and except as included among the Permitted Encumbrances, or (ii) except where the lessee under any Lease is in default thereunder, terminate or consent to the cancellation or surrender of any such Lease, now existing or hereafter entered into, having an unexpired term of one (1) year or more, except that any Lease may be cancelled provided that promptly after the cancellation or surrender thereof a new Lease is entered into with a new lessee having a credit standing, in the reasonable judgment of the Mortgagee, at least equivalent to that of the lessee whose lease was cancelled, on substantially the same or better terms as the terminated or cancelled Lease, or (iii) modify any such Lease so as to shorten the unexpired term thereof or so as to decrease the amount of the Rents payable thereunder, 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, or (v) with respect to any Lease, in any other manner materially impair the value of the Mortgaged Property or the security of this Mortgage in the reasonable judgment of the Mortgagee.

(B) Other than the Leases, Mortgagor will not execute any lease of all or a substantial portion of the Premises, and will at all times promptly and faithfully perform, or cause to be performed promptly, all of the covenants, conditions and agreements contained in the Ground Lease of the Premises, or any part thereof, now or hereafter existing, on the part of the lessor thereunder to be kept and performed and will at all times do all things necessary to compel performance by the lessee under each Lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such Leases provide for the giving by the lessee of an estoppel certificate with respect to the status of any such Leases, Mortgagor shall exercise its right to request such certificates within ten (10) days of any demand therefor by Mortgagee.

(C) Mortgagor shall furnish to Mortgagee, within twenty (20) days after the end of each fiscal year, a written statement containing the names of all lessees of the Improvements and Premises or any part thereof, the terms of their respective leases, the space occupied and the rentals payable thereunder.

SECTION 1.15 Unless otherwise prohibited by applicable law, the Ground Lease, 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 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 Ground Lease; provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee of its obligations under said Ground Lease, or (ii) any material amendment or modification of the Ground Lease made without the consent of Mortgagee or such successor in interest. Each such Ground Lease shall provide that upon request by such successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.

SECTION 1.16 Mortgagor will prosecute, or cause to be prosecuted, construction of the Improvements with due diligence, and will permit no "Event of Default" as provided in this Mortgage.

SECTION 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 six cents (\$.06) for each dollar (\$1.00) so overdue shall become immediately due to Mortgagee for the purpose of defraying the expenses incidental to handling such delinquent payment, and such charge shall be deemed to be part of the Indebtedness and 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.

SECTION 1.18 Mortgagor will receive the Advance secured by this Mortgage, and will hold the right to receive such Advance, as a trust fund to be applied ultimately first for construction of the Improvements.

SECTION 1.19 Mortgagor agrees that it shall indemnify and hold Mortgagee and its successors and assigns 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 proceedings instituted by any contractor, subcontractor, materialman or other claimant alleging priority over the lien of this Mortgage by virtue of any work performed at the Premises or materials provided to Mortgagor or any other party in connection with the Premises.

SECTION 1.20 Mortgagor 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 in connection with the Premises, the Note and other Loan Documents and/or the business and affairs of Mortgagor.

SECTION 1.21 Mortgagor expressly covenants and agrees to pay in full the reasonable fees and expenses of Mortgagee's counsel, promptly upon the 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 that is evidenced by the Note and secured by this Mortgage and those fees and expenses that are incurred after the date hereof which fees and expenses arise in connection with the enforcement of any document executed in connection with the Loan.

SECTION 1.22 (A) Mortgagor represents and warrants that, except as set forth in the environmental reports listed in Schedule C, to the best of Mortgagor's knowledge, after due inquiry and investigation, the Premises are not now and have never been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process or in any manner deal with, except in accordance with applicable laws, Hazardous Materials (as hereinafter defined), and that to the best of Mortgagor's knowledge, no Hazardous Materials have ever been installed, placed, or in any manner dealt with on the Premises, and that no owner of the Premises or any tenant, subtenant, occupant, prior tenant, prior subtenant or prior occupant has received any notice or advice from any governmental agency or any tenant, subtenant or occupant with regard to Hazardous Materials on, from or affecting the Premises. Mortgagor covenants that it shall, cause the Premises to be kept free of Hazardous Materials, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process or in any manner deal with, Hazardous Materials, and Mortgagor shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant or occupant, the installation of Hazardous Materials at the Premises or onto any other property or affecting any "natural resources" (as such term is defined in CERCLA (as hereafter defined)) or suffer the presence of Hazardous Materials on the Premises. Mortgagor shall cause the Leasehold Owner to comply with all applicable Federal, state and local laws, ordinances, rules and regulations with respect to Hazardous Materials, including, without limitation, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., as amended, and the Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq., as amended (collectively, "**Environmental Laws**"), and shall cause the Leasehold Owner to keep the Premises and the other Mortgaged Property free and clear of any liens or assessments imposed pursuant to such Environmental Laws. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property or any part thereof in accordance with all applicable Environmental Laws and to the satisfaction of the New

Jersey Department of Environmental Protection, as may be required by Environmental Laws. For these purposes, “**Hazardous Materials**” shall include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, hazardous or toxic substances, or related or similar materials, asbestos or any material containing asbestos, or any other substance or material as defined by any Federal, state or local Environmental Law including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended, including, without limitation, the Superfund Amendments and Reauthorization Act of 1986 (“**CERCLA**”), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901, et seq., and those “hazardous substances” defined and set forth in N.J.S.A. 58:10-23.11b(k), as amended, and in the regulations adopted and publications promulgated pursuant thereto. Mortgagor and tenants of Mortgagor may store and use customary quantities of cleaning materials for use in operating the Mortgaged Property to the extent that such cleaning materials are stored and utilized in accordance with applicable Environmental Laws. These obligations and liabilities of Mortgagor shall survive any foreclosure involving the Mortgaged Property or the delivery of a deed in lieu of foreclosure.

(B) Mortgagor shall, to the extent it has notice or knowledge, give prompt written notice to Mortgagee of: (i) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Materials on the Mortgaged Property or the migration thereof from or to other property; (ii) all claims made or threatened by any party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Materials; (iii) the storage, production, release, discharge or disposal of any Hazardous Materials at the Premises other than in accordance with all applicable Environmental Laws; and/or (iv) Mortgagor’s discovery of any occurrence or condition that could cause the Mortgaged Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use under any Environmental Law.

(C) Mortgagor shall promptly provide to Mortgagee copies of all written notices or other communications received by Mortgagor from any governmental agency, tenant, subtenant or occupant with respect to Hazardous Materials at, in, on, under or otherwise affecting the Mortgaged Property or any part thereof, including without limitation, any notices or other communication relating to any actual or threatened inquiry, investigation, claim, proceeding or action concerning Hazardous Materials or other environmental conditions affecting the Premises.

(D) Mortgagor shall keep Mortgagee apprised of the status of any governmental inquiry or investigation relating to environmental matters at the Premises, any enforcement, clean-up, removal, remediation or other governmental proceedings or actions threatened, instituted or completed or pursuant to any Environmental Laws with respect to the Mortgaged Property or any part thereof, as well as any other claims, actions or proceedings with respect to the Premises relating to environmental matters. Mortgagor shall not enter into any settlement, agreement, consent decree, deed notice or other arrangement or compromise with respect to any governmental inquiry, investigation, proceeding or action, or other claim, action or proceeding relating to Hazardous Materials and/or the clean-up or remediation of the Premises without Mortgagee’s prior written consent unless Mortgagee is pursuing presumptive remedies pursuant to Environmental Law and which consent shall not be unreasonably withheld. Mortgagee may, but shall not be required to, participate in any inquiry,

investigation, or proceeding or action with respect to the Premises in connection with any Environmental Law or Hazardous Materials, and Mortgagor shall pay all reasonable attorneys' fees and disbursements incurred by Mortgagee in connection therewith.

(E) Mortgagor shall maintain an environmental insurance policy for the Mortgage Property with terms no less favorable than those set forth in the Environmental Insurance Policy provided by XL Insurance, Policy Numbers PEC0028666 and PEC0028667 dated June 5, 2009-June 5, 2014 and June 5, 2009 — June 5, 2019, respectively (collectively, the “**Environmental Insurance Policy**”) and shall name Mortgagor, as may be applicable, and Mortgagee as an additional insured.

SECTION 1.23 Mortgagor has not and shall not:

(A) engage in any business activity other than the ownership, operation and maintenance of the Premises, and those business activities in which Mortgagor is currently engaged, and activities in which Mortgagor is currently engaged and activities incidental thereto;

(B) acquire or own any material assets other than (i) the Premises, and (ii) such incidental Chattels and Intangibles as may be necessary for the operation of the Premises, and those business activities in which Mortgagor is currently engaged;

(C) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(D) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Mortgagee, amend, modify, terminate or fail to comply with the provisions of Mortgagor's Operating Agreement, Articles or Certificate of Incorporation or Formation and By-Laws, or certificate of partnership or limited partnership, partnership or trust agreement or any other similar or analogous organizational documents of Mortgagor, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Mortgagor to perform its obligations hereunder or under the Note and/or other Loan Documents.

(E) own any subsidiary or make any investment in, any person or entity without the consent of Mortgagee;

(F) commingle its assets with the assets of any of its members, stockholders, directors, officers, partners, trustees, affiliates, principals or of any other person or entity;

(G) incur any debt, secured or unsecured, direct or contingent, including guaranteeing any obligation, other than the Permitted Encumbrances set forth in Schedule B and Mortgagor's obligations under the Note and other Loan Documents in respect of the Indebtedness, except in the ordinary course of its business, provided that such debt is paid when due and is not a debt for borrowed money or evidenced by a promissory note;

(H) except for Permitted Encumbrances;

(I) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, stockholders, directors, officers, partners, trustees, principals and affiliates of Mortgagor, the affiliates of any member, stockholder, director, officer or partner of Mortgagor, and any other person or entity;

(J) enter into any contract or agreement with any member, stockholder, director, officer, general partner, trustee, principal or affiliate of Mortgagor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, shareholder, director, officer, partner, trustee, principal or affiliate of Mortgagor;

(K) seek the dissolution or winding up in whole, or in part, of Mortgagor;

(L) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any member, stockholder, director, officer, partner, trustee, principal or affiliate of Mortgagor, or of any member, stockholder, director, officer, partner, trustee, principal or affiliate thereof or of any other person or entity;

(M) hold itself out to be responsible for the debts of another person or entity;

(N) make any loans or advances to any third party, including any member, stockholder, director, officer, partner, trustee, principal or affiliate of Mortgagor, or to any member, stockholder, director, officer, partner, trustee, principal or affiliate thereof or of any other person or entity;

(O) fail to file its own tax returns;

(P) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Mortgagor is responsible for the debts of any third party (including any member, stockholder, director, officer, partner, trustee, principal or affiliate thereof); or

(Q) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

SECTION 1.24 Mortgagor agrees as follows:

(A) Mortgagor agrees that the Premises shall at all times comply, to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, as amended from time to time, the Fair Housing Amendments Act of 1988, as amended from time to time, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans

with Disabilities Act Accessibility Guidelines for Buildings and Facilities, as amended from time to time (collectively, “**Access Laws**”).

(B) Notwithstanding any provisions set forth herein or in any other documents regarding Mortgagee’s approval or alterations of the Premises, Mortgagor shall not alter the Premises in any manner that would increase Mortgagor’s responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee or without providing a certificate of Access Laws compliance from an architect, engineer, or other person reasonably acceptable to Mortgagee.

(C) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violations of any Access Laws and of commencement of any proceedings or investigations related to compliance with applicable Access Laws.

SECTION 1.25 (A) Except in connection with the Releases and the Leases as and when expressly permitted to occur in accordance with the terms and conditions of this Mortgage, Mortgagor shall not sell, convey, dispose of, alienate, hypothecate, lease (except to space tenants in accordance with the provisions of Section 1.14 hereof), assign, pledge, mortgage, encumber or otherwise transfer (each a “**Transfer**” and, collectively, “**Transfers**”) the Premises, or any part thereof or interest therein, in any manner or way, whether voluntarily or involuntarily, and any such Transfer if made without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld shall constitute an Event of Default hereunder giving Mortgagee the right, at its sole option, to declare any or all of the Indebtedness secured hereby immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article II hereof. For the purposes of this Section 1.25, each of the following events shall be deemed to be a Transfer by Mortgagor: (i) if Mortgagor shall enter into any installment sales agreement pursuant to which Mortgagor agrees to sell the Premises, or any part thereof or any interest therein; (ii) if Mortgagor shall lease or sublease all or a substantial part of the Premises to any person or entity for other than actual occupancy by such person or entity; (iii) if Mortgagor, or any of its direct or indirect members, shareholders, general or limited partners, or other beneficial or equity owners (and including, without limitation, the beneficiary of any trust that may hold a direct or indirect ownership interest in Mortgagor) (all such direct or indirect members, shareholders, general or limited partners or other beneficial or equity owners, individually, a “**Mortgagor Equity Owner**” and, collectively, “**Mortgagor Equity Owners**”), shall be an entity, the Transfer, either voluntarily or involuntarily, of any of the ownership interest of Mortgagor; (iv) any other Transfer of any direct or indirect ownership interest in Mortgagor; (v) the occurrence of any transaction pursuant to which any person or entity is granted an option to purchase all or any part of the Premises, or any direct, indirect or beneficial ownership interest in Mortgagor, or (vi) any transaction, agreement or arrangement occurs or is entered into pursuant to which any person or entity is given any right to control, direct or veto any material actions or decisions by Mortgagor, directly or indirectly, whether through an equity ownership interest, contract right or otherwise. Notwithstanding the foregoing, however, any involuntary Transfer of any direct or indirect equity interest in Mortgagor caused by the death, incompetency or dissolution of (x) any shareholder, member, or general or limited partner, (y) the beneficiary of a trust having an equity interest in Mortgagor, or (z) any other equity owner of Mortgagor, shall not be a default under this Mortgage or result in an Event of Default hereunder so long as Mortgagor shall be reconstituted, if required for the continued valid existence of Mortgagor following any such death, incompetency or dissolution, and so long as those persons

responsible for the management of the Mortgagor on the date hereof remain unchanged after such death, incompetency or dissolution, or any substitute or replacement management of the Mortgagor following any such death, incompetency or dissolution shall be approved by Mortgagee, such approval will not unreasonably withheld.

(B) No Transfer pursuant to this Section 1.25 will be permitted if immediately prior to such Transfer an Event of Default has occurred and is continuing. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer in violation of this Section 1.25. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous Transfer. All costs and expenses reasonably incurred by Mortgagee or Mortgagor in connection with any transaction described in this Section 1.25 shall be paid by Mortgagor.

(C) Notwithstanding anything contained herein or in the Loan Documents, the following Transfers shall be permitted hereunder:

(1) 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 or such transferred interest, including all voting and consent rights with respect thereto, and (2) the direct or indirect Transfer, in one or a series of transactions, in any Upper Tier Entity (defined below) provided, however, as a condition to each such Transfer set forth in (1) and (2) above;

(2) Bank shall receive not less than thirty (30) days prior written notice with respect to any direct Transfer by any Upper Tier Entity of their 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 Bank shall be informed of any indirect Transfer of any interests in the direct or indirect constituent members of any Upper Tier Entity which said 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 Bank,

(3) 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,

(4) 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

(5) 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.

SECTION 1.26 With respect to parking, Mortgagor represents and covenants that any parking requirement for the Improvements to the Mortgaged Property required pursuant to law, including but not limited to zoning regulation, and required under any contractual commitment made with respect to the use and operation of the Mortgaged Property including,

but not limited to, leases and subleases for the Mortgaged Property, may be fully satisfied out of the parking spaces to be established in the Block 95 Parcels, which Mortgagor represents are or will number 102 parking spaces. Mortgagor covenants that it will not itself, nor will it cause or permit the Ground Lessee, or any other affiliate of Mortgagor, to enter into contractual arrangements for the use of parking spaces in the Block 95 Parcels which would be in breach of this covenant, and represents that it has not done so. Borrower covenants that it will cause its affiliates to fulfill any obligation affecting any portion of Block 95 that could cause or entitle the City of Newark to exercise a right of reverter or repurchase of the Block 95 Parcels. Borrower represents that the only right of reverter or repurchase which exists with respect to the Block 95 Parcels is contained in the Redevelopment Agreement by and between the City of Newark and WKA Development dated as of August 10, 2011 including the documents referenced therein (the “**Redevelopment Agreement**”) and that Borrower has fully disclosed the terms and conditions for the exercise of such right to Lender.

SECTION 1.27 In the event that Mortgagee determines in its sole and absolute discretion that in order to satisfy zoning or other requirements with respect to the Mortgaged Property its owner and occupants must have the legal right and access to park in all parking lots which are part of the Teachers Village Project including the Block 95 Parcels and the lots located on Block 94 Lots 212, 23, and 27 and 93 Lot 24 (collectively, the “**Other Parking Lots**”), Mortgagor covenants and agrees to provide an easement in favor of the Mortgaged Property and the owners, invitees, tenants, permitted occupants, and mortgagees thereof granting rights to parking in the Other Parking Lots which easement shall be in form and substance satisfactory to Mortgagee.

SECTION 1.28 Upon the request of the Purchaser, Mortgagor shall execute and enter into a Lockbox Agreement by and between Mortgagor and the Purchaser (the “**Lockbox Agreement**”) in form acceptable to Purchaser into which Mortgagor shall cause and direct that all rents and other income from the Property be deposited into a segregated account in an institution acceptable to the Purchaser (the “**Lockbox Account**”). The Lockbox Agreement shall provide, inter alia, that the Lockbox Account is to be held by the Purchaser for the benefit of Mortgagor, and Mortgagor shall grant to the Purchaser a perfected first priority security interest in the Lockbox Account and all deposits at any time contained therein.

SECTION 1.29 If at any time Mortgagee shall deem it necessary to obtain a current appraisal of the Premises, Mortgagee may, at Mortgagor’s sole cost and expense, engage the services of an appraiser to provide a current appraisal of the Premises and Mortgagor shall timely pay to such appraiser all fees and expenses charged for such appraisal or if Mortgagee shall have paid for such appraisal, Mortgagor shall reimburse Mortgagee for same within ten (10) days of demand.

SECTION 1.30 Mortgagor represents, warrants and covenants as follows:

(A) Neither Mortgagor, nor Mortgagor’s principals, constituents, investors or affiliates is in violation of any legal requirements relating to terrorism or money laundering, 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 107-56, the “**Patriot Act**”).



(B) Neither Mortgagor, nor Mortgagor's principals, constituents, investors or affiliates is a "**Prohibited Person**" which is defined as follows:

- (i) a person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a person or entity with whom Mortgagor is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the Executive Order and the Patriot Act;
- (iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;
- (v) a person or entity 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; and
- (vi) a person or entity who is affiliated with a person or entity listed above.

(C) Neither Mortgagor, nor Mortgagor's principals, constituents, investors or affiliates will (i) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

SECTION 1.31 The parties hereto agree that all sums that may or shall become due and payable by the Mortgagor to the Mortgagee in accordance with any swap agreement, whether or not such swap agreement is directly between the Mortgagor and the Mortgagee or between the Mortgagor and Mortgagee's affiliates, assignors or assignees, and shall be evidenced by the Note, shall be secured by this Mortgage and shall constitute part of the Indebtedness. The lien of this Mortgage insofar as it secured payment of sums that may or shall become due and payable by the Mortgagor to the Mortgagee in accordance with the swap agreement is and shall continue to be equal in priority to the lien of this Mortgage insofar as it secures payment of the balance of the Indebtedness. The parties hereto agree that, if the Note shall be declared to be immediately due and payable as the result of an occurrence of an Event of Default or if the Note is not paid in full at maturity, then all sums that become available to the Mortgagee as a result of the foreclosure of this Mortgage shall not be applied to sums due under the swap agreement until such time as the balance of the Indebtedness has been paid in full.

SECTION 1.32 Mortgagor represents and covenants that the Premises will, when built, fully comply with any and all applicable laws and regulations, including but not limited to any and all applicable zoning approvals, and/or zoning laws or regulations, notwithstanding that some or all of the other projects in the Teacher's Village Project, including but not limited to the Residential Phase, may not be completed or fully comply with any and all applicable laws and regulations.

(End of Article I)

## ARTICLE II

### **Events of Default and Remedies**

SECTION 2.01 Each of the following shall constitute an Event of Default:

(A) if (i) Mortgagor shall default in making any payment of any principal or interest due under any Indebtedness when and as the same shall become due and payable, or (ii) Mortgagor shall default in timely making any payment of any tax required by Section 1.08 hereof to be paid; or

(B) if Mortgagor shall default in the due observance or performance of any covenant, term or agreement on the part of Mortgagor contained in Section 1.01, 1.03, 1.07 or 1.09 hereof and such default shall have continued for a period of fifteen (15) days after written notice has been given to Mortgagor by Mortgagee specifying such default (the provisions of Section 11.01(b) of the Bond Agreement granting additional time to cure shall not apply to the forgoing defaults); or

(C) if any representation or warranty of Mortgagor made in Section 1.01 shall now or hereafter be false; or

(D) if Mortgagor shall default in the due observance or performance of any other covenant or condition on the part of Mortgagor in the Note, or in this Mortgage, and Mortgagor shall fail to remedy such default within a commercially reasonable time, not to exceed fifteen (15) days, after notice by Mortgagee to Mortgagor of such default; provided, however, that if any such default cannot be cured within such fifteen (15) day period, Mortgagor shall be afforded up to an additional forty-five (45) days to cure such default so long as such time to cure does not require an extension of the Maturity Date of the Note and provided Mortgagor shall have commenced such cure within such initial fifteen (15) day period and shall thereafter diligently continue to cure such default; or

(E) 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 Mortgagor shall be appointed and such order shall not be discharged or dismissed within forty-five (45) days after such appointment; or

(F) if Mortgagor shall: (i) commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) 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 Mortgagor or of any substantial part of its property, (iii) make any general assignment for the benefit of creditors, (iv) fail generally to pay its debts as such debts become due, or (v) take any action in furtherance of any of the foregoing; or

(G) if any of the creditors of Mortgagor shall commence against 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 sixty (60) days after the date on which such case was commenced, or

(H) if final judgment for the payment of money in excess of \$100,000 shall be rendered against Mortgagor and Mortgagor shall not discharge the same or cause it to be discharged within forty-five (45) 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

(I) any of the events enumerated in clauses (e) through (h) of this Section 2.01 shall happen to any Guarantor or any of their property, provided that with respect to the events enumerated in clauses (e) through (h) of this Section 2.01 happening to Guarantor's property, such an event shall constitute an Event of Default only if, individually or in the aggregate, it (they) has a material adverse affect on the financial condition of such Guarantor; or

(J) if any Transfer prohibited by Section 1.25 hereof shall occur; or

(K) if a default by Mortgagor shall occur under any mortgage or deed of trust that is prior or subordinate to the lien of this Mortgage, or the mortgagee under any prior or subordinate mortgage or the trustee under any prior or subordinate deed of trust commences a foreclosure action in connection with said mortgage or deed of trust; or

(L) if any Guarantor defaults under or attempts to withdraw, cancel or disclaim liability under any guaranty issued to Mortgagee; or

(M) if Mortgagor terminates, revokes or attempts to terminate, or revoke and guaranty of indebtedness, or defaults under any other agreement with Mortgagee or any affiliate of Mortgagee; or

(N) if any person or entity having or claiming an interest in Mortgagor or the Mortgaged Property, or any part thereof, commences an action or proceeding against Mortgagor, the Mortgaged Property, or any part thereof; or

(O) the existence or occurrence at any time of one or more conditions or events, which, in the sole opinion of Mortgagee, has resulted, or is reasonably likely to result in a material adverse change in the assets or financial condition of Mortgagor; or

(P) if any default or Event of Default (however defined) shall have occurred under the Bond Agreement.

Upon the occurrence of an Event of Default:

I. Acceleration of the Indebtedness. During the continuance of any such Event of Default, Mortgagee, by written notice given to 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, notwithstanding anything to the contrary herein or in the Note or the other Loan Documents;

II. Possession of the Mortgaged Property. During the continuance of any such Event of Default, with or without the appointment of a receiver, or an application therefor, 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 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 Mortgagor, 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 any 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 Mortgagor, Mortgagee may procure title reports, title insurance, surveys, appraisals and such other reports as Mortgagee, in its sole discretion, shall deem necessary, and make all necessary or proper repairs, renewals and such useful alterations, additions, betterments and improvements thereto and thereon as to it may deem advisable; and in every such case Mortgagee shall have the right to manage and operate the Premises and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Premises it is entitled to and every part thereof, all of which shall for all purposes constitute property of Mortgagor; and in furtherance of such right Mortgagee may collect the Rents payable under all Leases of the Premises directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists hereunder accompanied by a demand on such lessee for the payment to Mortgagee of all Rents due and to become due under its Lease, and Mortgagor, for the benefit of Mortgagee and each such lessee hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee's statement of default and shall unequivocally be authorized to pay said Rents to Mortgagee without regard to the truth of Mortgagee's statement of default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default such that the payment of Rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the Lease for the payment of Rents by the lessee to Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly and reasonably engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, first to the payment of accrued interest under the Note, second, to the payment of the principal of the Note, when and as the same shall become payable, and finally to the payment of any other

Indebtedness and sums required to be paid by Mortgagor under this Mortgage or the other Loan Documents.

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

(i) sell (and in the case of any default by any purchaser, resell) the Mortgaged Property, or any part thereof, to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entirety or in parcels, and at such time and place upon such terms and after such notice thereof as may be determined by Mortgagee or as required or permitted by law; or

(ii) institute proceedings for the complete or partial foreclosure of this Mortgage; or

(iii) 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, this Mortgage or the other Loan Documents, 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. Power of Sale. Mortgagor hereby unconditionally and irrevocably gives, grants, sets over and confirms unto the Mortgagee the Power of Sale, to the fullest extent such remedy is then available from and after the date hereof under the laws of the State of New Jersey, which Power of Sale may be unconditionally exercised at any time or times after an Event of Default and in connection therewith, Mortgagor hereby (a) consents to any one or more adjournments of the sale date which Mortgagee may grant, consent to and/or schedule, whether or not Mortgagor is notified of such adjournment and (b) waives any and all objections Mortgagor may have to the date of sale, the place of sale, the terms of sale and any other matter selected by Mortgagee. The sale by Mortgagee of less than the whole of the Mortgaged Property shall not exhaust the right to sell any remainder of the Mortgaged Property, and Mortgagee is specifically empowered to make a successive sale or sales until the whole of the Mortgaged Property shall be sold. If the proceeds of the sale of less than the whole of the Mortgaged Property is less than the aggregate of the obligations secured hereby and payable under subsection (d) of Section 2.02, then this Mortgage and the lien hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale had been made.

V. Assent to Decree. Mortgagor hereby assents to the passage of a decree for the sale of the Mortgaged Property, or any part thereof, by any court having jurisdiction, without notice to Mortgagor (except as expressly required by applicable law).

VI. Appointment of Receiver. 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 a receiver or receivers in respect of the Premises and/or other Mortgaged Property, and Mortgagor hereby consents to the appointment of such receiver or receivers.

VII. Rights of a Secured Party. Mortgagee shall also have such other rights and/or remedies provided to a mortgagee and/or a secured party by the Code.

SECTION 2.02 Mortgagee shall have the following rights and obligations as set forth in this Section 2.02:

(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, of the State of New Jersey. As long as the Loan secured by this Mortgage remains unpaid, Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, including, without limitation, any affidavit, instrument, document or filing required pursuant to any applicable statute, rule or regulation of the State of New Jersey, as the same may be amended from time to time, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless Mortgagor, if 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 or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale or Power and Sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

(C) In the event of any sale made under or by virtue of this Article II (whether made under or by virtue of judicial proceedings, a judgment or decree of foreclosure or a Power of 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 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, its agents and counsel, 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 Default 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, interest, other indebtedness, and any other sums required to be paid thereunder with interest on the unpaid principal at the Default Rate from and after the happening of any Event of Default described in Section 2.01 from the due date of any such payment of principal until the same is paid.

Third: To the payment of the whole amount then due, owing or unpaid upon any other note made by Mortgagor held by Mortgagee for principal and interest, with interest on the unpaid principal at the default rate set forth in such other note, if applicable, from and after the happening of any Event of Default described in Section 2.01 from the due date of any such payment of principal until the same is paid.

Fourth: To the payment of any other Indebtedness and any other sums required to be paid by Mortgagor pursuant to any provision of this Mortgage, the Note or the other Loan Documents.

Fifth: To the payment of the surplus, if any, to Mortgagor.

(E) Upon any sale made under or by virtue of this Article II, whether made under or by virtue of judicial proceedings, a judgment or decree of foreclosure and sale, or a Power of 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 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.

SECTION 2.03 (A) In case an Event of Default described in Section 2.01 shall have occurred and be continuing, then, upon written demand of Mortgagee, 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 Default Rate on the then unpaid principal of the Note, and the sums required to be paid by 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 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 Mortgagor and collect, out of the property of Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, moneys adjudged or decreed to be payable.

(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 and costs due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest at the Default Rate. In case of the commencement of any case against Mortgagor under any applicable bankruptcy, insolvency, or other similar law now or hereafter 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 and costs 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 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 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 2.03 shall be applied by Mortgagee in accordance with the provisions of subsection (d) of Section 2.02.

SECTION 2.04 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 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, Mortgagor will (a) consent to the service of process as provided in Section 3.11 hereof 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.

SECTION 2.05 Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

SECTION 2.06 No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law 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 Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

SECTION 2.07 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 Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property, or any part thereof, marshaled upon any foreclosure hereof.

(End of Article II)

### ARTICLE III

#### MISCELLANEOUS

SECTION 3.01 In the event any one or more of the provisions contained in this Mortgage or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, 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.

SECTION 3.02 All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes three (3) days after being sent by registered or certified mail, return receipt requested, or one (1) day after being sent by nationally recognized overnight courier: in the case of the Authority, to its address above; in the case of the Purchaser to TD Bank, N.A. 317 Madison Avenue, New York, New York 10017, Attention: Matthew Schatz, Vice President, and (iii) in the case of Mortgagor at its address above stated, Attention: Executive Director, or at such other address of which any party shall have notified any other party giving such notice in writing as aforesaid.

SECTION 3.03 All covenants hereof shall be construed as affording to Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of the laws of N.J.S.A. 46:9-1, et seq., or any other applicable law including, without limitation, the right to release all or any part of the Mortgaged Property, take or release any other security or change any other terms or conditions of this Mortgage or the Note.

SECTION 3.04 All of the grants, terms, conditions, provisions and covenants of this Mortgage shall run with the land, shall be binding upon 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.

SECTION 3.05 The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State of New Jersey (without giving effect to New Jersey's principles of conflicts of law). Nothing in this Mortgage, the Note or in any other Loan Documents between Mortgagor and Mortgagee shall require Mortgagor to pay, or Mortgagee to accept, interest in an amount which would subject Mortgagee to 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 other Loan Documents, 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 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 principal balance of the Indebtedness.

SECTION 3.06 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.

SECTION 3.07 Mortgagor acknowledges that it has received a true copy of this Mortgage.

SECTION 3.08 Time is of the essence as to each of Mortgagor's obligations under this Mortgage.

SECTION 3.09 The information set forth on the cover hereof is hereby incorporated herein.

SECTION 3.10 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, by Mortgagor in, to and under the Mortgaged Property. By executing and delivering this Mortgage, 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. 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 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 2.02 (d) of this Mortgage.

SECTION 3.11 Mortgagor hereby irrevocably submits to the nonexclusive jurisdiction of any New Jersey state or Federal court sitting in the City of Newark, County of Essex, over any suit, action or proceeding arising out of or relating to this Mortgage and any other Loan Documents, 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, County of Essex, may be made by certified or registered mail, return receipt requested, directed to Mortgagor at the following address and service so made shall be complete five (5) days after the same shall have been so mailed: RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, L.L.C , c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102

SECTION 3.12 By inspecting the Premises or other Mortgaged Property, or by accepting or approving anything required to be observed, performed or fulfilled by Mortgagor or to be given to Mortgagee pursuant to this Mortgage or any of the other Loan Documents,

Mortgagee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Mortgagee.

SECTION 3.13 Mortgagor and Mortgagee shall upon a mutual agreement to do so execute such documents as may be necessary in order to effectuate the modification of this Mortgage, including the execution of substitute mortgages, so as to create two or more coordinate liens on the Mortgaged Property or a portion thereof in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount. Mortgagor shall pay all costs in connection with said modification, including, but not limited to, title examination costs, title insurance premiums, charges, and any mortgage recording taxes. Nothing contained herein shall require Mortgagee to execute said documents if the property encumbered by said coordinate mortgages shall be less than the property mortgaged hereby.

**SECTION 3.14 MORTGAGOR, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, 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 MORTGAGE, 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 MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGOR AND MORTGAGEE ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**SECTION 3.15 MORTGAGOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF MORTGAGEE ON THIS MORTGAGE, ANY AND EVERY RIGHT MORTGAGOR 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 MORTGAGOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST MORTGAGEE WITH RESPECT TO ANY ASSERTED CLAIM.**

SECTION 3.16 Mortgagee, in its sole discretion, shall have the right to announce and publicize relevant information with respect to the financing secured by this Mortgage, as it deems appropriate or desirable, by means and media selected by the Mortgagee, including, but not limited to, newspapers, magazines, trade publications and the like. Such publicity may, at Mortgagee's discretion, include all pertinent information relating to the Note, the Mortgage and the Premises including, without limitation, the term, purpose, interest rate, Mortgage Amount, name of Mortgagor and Mortgagee, location of the Premises and the nature of any Improvements. The form and content of the published information shall be in the sole discretion

of Mortgagee. All expenses related to such publicity shall be the sole responsibility of Mortgagee.

SECTION 3.17 Mortgagor hereby indemnifies Mortgagee and holds Mortgagee harmless from and against any and all Claims and Expenses directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Loan, the Mortgaged Property or the Loan Documents, including, without limitation, any Claim arising out of or resulting from any assertion or allegation that Mortgagee is liable for any act or omission of Mortgagor or any other Person in connection with the ownership, development, financing, operation or sale of the Mortgaged Property, or any part thereof; provided, however, that Mortgagor shall not be obligated to indemnify Mortgagee with respect to any Claim arising solely from the gross negligence or willful misconduct of Mortgagee or any of its respective agents or representatives. The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed in lieu thereof and any other action by Mortgagee to enforce the rights and remedies of Mortgagee hereunder or under the other Loan Documents.

SECTION 3.18 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.

(End of Article III)

#### ARTICLE IV

#### CONDITIONS PRECEDENT

SECTION 4.01 Closing under this Mortgage is subject to the following conditions precedent (all instruments, documents and agreements to be in form and substance satisfactory to Mortgagee and Mortgagee's counsel):

- (a) this Mortgage, the Note, and each of the Loan Documents all properly executed including, but not limited to, the Cash Management Agreement and the Intercreditor Agreement;
- (b) financing statements and each of the other documents to be executed and/or delivered by Mortgagor or any other Person pursuant to this Mortgage;
- (c) certified copies of (i) resolutions of Mortgagor's board of directors or managing members (as applicable) authorizing the execution, delivery and performance of this Agreement, the Note to be issued hereunder, as applicable and each of the other Loan Documents required to be delivered by any section hereof and (ii) Mortgagor's articles or certificate of incorporation and by-laws or certificate of formation and operating agreement, as applicable;
- (d) an incumbency certificate for Mortgagor identifying all individuals authorized to execute the Loan Documents, with specimen signatures;

(e) a written opinion of Mortgagor's independent counsel addressed to Mortgagee and opinions of such other counsel as Mortgagee deems reasonably necessary;

(f) such financial statements, reports, certifications and other operational information as Mortgagee may reasonably require, satisfactory in all respects to Mortgagee;

(g) payment by Mortgagor of all fees including, without limitation, expenses associated with the Loan Documents; and

(h) such other documents and due diligence reasonably required by Mortgagee in connection with the Loan, the Bond Agreement or any other document by and between the Mortgagor and the Mortgagee.

(End of Article IV)

## ARTICLE V

### RELEASES

#### SECTION 5.01 Block 95 Release.

(A) The Block 95 Parcels consist of Tax Lots 1, 2, 3, 4, 8, 10, 16, 31 all as shown on the current official tax maps of the City of Newark, County of Essex, New Jersey. The Block 95 Parcels are currently and will remain in use as a parking lot with 102 parking spaces for the benefit of the Mortgaged Property.

(B) Mortgagor represents to Mortgagee that lots 10 and 16 in Block 95 (as the same may be consolidated into a new tax lot, collectively, the "**Block 95 Release Parcels**") are intended by Mortgagor to be used in connection for the development of Building 7 as part of the residential phase ("**Residential Phase**") of the "Teachers Village Project". Mortgagee agrees, that provided that all Block 95 Release Parcels Conditions (defined below) have been met by Mortgagor to Mortgagee's satisfaction, at the time that the Block 95 Release Parcels are to be conveyed to an affiliate of Mortgagor and the intended owner and developer of the Building 7, Mortgagee shall release the Block 95 Release Parcels from the lien of the Mortgage. Mortgagor acknowledges that tax lots 1, 2, 3, 8, and 31 in Block 95 ("**Block 95 Retained Parcels**"), together with the balance of the Mortgaged Property, shall continue to be subject to the lien of the Mortgage and all requirements of the Loan Documents.

(C) The Block 95 Release Parcels Conditions are as follows:

(i) No Event of Default has occurred, and no default which, with the giving of notice and the expiration of any applicable cure period could ripen into an event of default has occurred.

(ii) The release is to occur only in connection with the conveyance of the Block 95 Release Parcels in conjunction with the closing of the acquisition and construction financing for Building 7.

(iii) A consolidation and subdivision of Block 95 has been completed and signed by the City of Newark and all relevant parties (and has been perfected by recording) such that the Block 95 Retained Parcels comprise one tax lot and the Block 95 Release Parcels are in a tax lot or lots which are separate and distinct from the Block 95 Retained Parcel tax lot. Such consolidation and subdivision shall be otherwise consistent with the terms of the "Final Subdivision Plat Teachers Village at Four Corners, Portion of Blocks 57, 58, 93, 94 & 95," prepared by Omland Engineering, Inc. dated January 19, 2011, and approved by the Central Planning Board of the City of Newark by Memorializing Resolution signed March 21, 2011, (the "**Subdivision Plat**").

(iv) All conveyance and release documents have been reviewed and approved by Mortgagee in advance of any conveyance, and all of Mortgagee's costs and expenses, including but not limited to attorneys fees, in connection with any actions taken by Mortgagee in connection with the Block 95 Release Parcels, shall have been fully paid for by Mortgagor.

(v) Mortgagee shall have received a title endorsement confirming to its satisfaction that, after release of the Block 95 Release Parcels, the lien of the Mortgage will continue to encumber the Retained Block 95 Parcel together with the balance of the Mortgage Property as a first mortgage lien subject to no other exceptions other than the Permitted Encumbrances.

(vi) Mortgagee shall have received a legal opinion confirming to its satisfaction that the Mortgaged Property, after the release of the Block 95 Release Parcels, will continue to conform to applicable law, including, but not limited to, all applicable zoning requirements.

(D) Mortgagee recognizes and acknowledges that Mortgagor has stated its intention to possibly develop the Block 95 Retained Parcels, and agrees to release the lien of the the Mortgage from the Block 95 Retained Parcels in connection with a closing for the financing for the development of the Block 95 Retained Parcels, provided that in addition to being in compliance with all of the other conditions of Subsection C above, Mortgagor complies with the following additional release conditions (the subsection C conditions, and the conditions contained in this section, collectively, the "**Block 95 Retained Parcels Release Conditions**"), which are as follows:

(i) provide to Mortgagee the payment of a release price agreed upon by both Mortgagor and Mortgagee for release of the lien of the Mortgage;

(ii) provide evidence to Mortgagee of site plan approval for the proposed development of the Block 95 Retained Parcels;

(iii) provide evidence to Mortgagee of immediately available alternative parking which satisfies statutory and contractual parking requirements for the Premises; and

(iv) provide a legal opinion from Mortgagor's counsel stating that the retained Premises, which remains after the release of the Block 95 Retained

Parcel will continue to satisfy all parking obligations set forth in (a) the Lease and (b) site plan approvals obtained for the Project as of the date hereof and all other applicable law and regulation, in form and substance reasonably satisfactory to Mortgagee.

Upon satisfaction of all conditions set forth herein, Mortgagee shall release the Block 95 Retained Parcels from the lien of the Mortgage; and the balance of the Mortgaged Property shall continue to be subject to the lien of the Mortgage and all requirements of the Loan Documents.

SECTION 5.02 Block 57.05 and 58 Partial Release.

(A) Pursuant to the Subdivision Plat, Mortgagor has proposed to offer to dedicate portions of the Mortgaged Property located in Blocks 57.05 and 58 which are adjacent to Maiden Lane and Halsey Streets (collectively, the “**Blocks 57.05-58 Release Parcels**”), to the City of Newark. The conveyance to the City of Newark is expected to take place at such time as is completed.

(B) Mortgagee agrees to release the Blocks 57.05-58 Release Parcels upon the satisfaction of the following conditions (collectively, the “**Release Conditions for Blocks 57.05-58 Release Parcels**”):

(i) No Event of Default has occurred, and no default which, with the giving of notice and the expiration of any applicable cure period could ripen into an event of default has occurred.

(ii) Construction of the Improvements has been completed.

(iii) The release is being granted in connection with the conveyance of the Blocks 57.05-58 Release Parcels to the City of Newark.

(iv) All conveyance and release documents have been reviewed and approved by Mortgagee in advance of any conveyance, and all of Mortgagee’s costs and expenses, including but not limited to attorneys fees, in connection with any actions taken by Mortgagee in connection with the Blocks 57.05-58 Release Parcels, are fully paid for by Mortgagor.

(v) Mortgagee shall have received a title endorsement confirming to its satisfaction that, after release of the Blocks 57.05-58 Release Parcels, the lien of the Mortgage will continue to encumber the remainder of the Mortgaged Property as a first mortgage lien subject to no other exceptions other than the Permitted Encumbrances.

(vi) Mortgagee shall have received a legal opinion confirming to its satisfaction that the Mortgaged Property, after the release of the release of the Blocks 57.05-58 Release Parcels, will continue to conform to applicable law, including, but not limited to, all applicable zoning requirements.



(C) In the event that the City of Newark elects not to acquire any or all of the parcels (such parcels or parcels, the “**Rejected Parcels**”) included in the Blocks 57.05-58 Release Parcels, Mortgagor covenants and agrees to obtain a resolution from the City of Newark and any other consents or approvals necessary in order to confirm that the offer of dedication is irrevocably rejected, and title to such Rejected Parcels is fully and irrevocably vested in the record owner thereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**[SIGNATURE PAGE TO MORTGAGE AND SECURITY AGREEMENT]**

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

**RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC**

By: /s/ Ron Beit-Halachmy  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF ESSEX )

I CERTIFY that on February , 2012, Ron Beit-Halachmy personally came before me and this person acknowledged under oath, to my satisfaction, that:

1. this person is the Authorized Signatory of the limited liability company named in this Mortgage (the "Company");
2. this person signed this Mortgage on behalf of the Company;
3. this person was authorized to execute this Mortgage on behalf of the Company and the person executed this instrument as the true and voluntary act of the Company duly authorized by all necessary action by the Company.

\_\_\_\_\_  
Name:  
Title: (Notary Public)  
(Attorney-at-law).



**SCHEDULE A**

**Legal Description**

---

**SCHEDULE B**

**Permitted Encumbrances**

---

**SCHEDULE C**

**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.
-

**GUARANTY OF COMPLETION**

**THIS GUARANTY OF COMPLETION** (this “**Guaranty**”) is made as of the 3<sup>rd</sup> day of February, 2012, by **RBH-TRB NEWARK HOLDINGS, LLC**, a New York limited liability company having an office at c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (“**RBH**”) and **RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC**, a New Jersey limited liability company having an office at c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 (“**Borrower**”) (as guarantor hereunder), and together with RBH, jointly and severally, “**Guarantor**”) in favor of **TD BANK, N.A.**, a national banking association, having an office at 317 Madison Avenue, New York, New York 10017 (the “**Bank**”).

**RECITALS:**

**WHEREAS**, RBH is affiliated with Borrower and Leasehold Owner (as herein defined), and will derive substantial benefit from the transactions contemplated by that certain Bond Agreement dated as of December 1, 2011 by and among Borrower, Bank and the New Jersey Economic Development Authority (the “**Issuer**”), (as the same may be amended, restated, modified or supplemented, the “**Bond Agreement**”; together with all documents entered into in connection therewith or pursuant thereto, the “**Bond Documents**”). All capitalized terms used herein and not otherwise defined shall have the same meanings assigned to such terms in the Bond Agreement; and

**WHEREAS**, pursuant to the Bond Agreement, the Issuer issued \$22,748,000 of its Qualified School Construction Bonds (the “**Bonds**”), and the Fee Owner requested and the Bank purchased the Bonds subject to certain conditions set forth in the Bond Agreement; and

**WHEREAS**, the Bonds are secured by, among other things, that certain Mortgage 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 Issuer and assigned to the Bank; and

**WHEREAS**, the premises secured by the Mortgage consists of that certain parcel of land situated in the City of Newark, County of Essex, State of New Jersey (the “**State**”), more particularly described on Exhibit A attached to the Mortgage (the “**Premises**”, and together with improvements thereon as set forth and defined in the Mortgage, the “**Mortgaged Property**”); and

**WHEREAS**, the Premises has been leased by the Fee Owner to Newark Teacher’s Village School QALICB Urban Renewal, LLC, a New Jersey limited liability company (“**Leasehold Owner**”) pursuant to that certain Ground Lease by and between Fee Owner and Leasehold Owner dated as of the date hereof (the “**Ground Lease**”); and

**WHEREAS**, each of NJCC CDE Essex LLC (“**NJCC Lender**”) and Gateway Sub-CDE I, LLC (“**Gateway Lender**”, and together with NJCC Lender, the “**CDE Lenders**”)

---

have made loans to Leasehold Owner as qualified low income community investments loans, the “**QLICIs**”); and

**WHEREAS**, Bank, Fee Owner, Leasehold Owner, the Brick City Development Corporation, the Casino Reinvestment Development Authority and the CDE Lenders as the same may be amended and supplemented (the “**Intercreditor Agreement**”), the Bank has agreed to accept this Guaranty subject to the Intercreditor Agreement; and

**WHEREAS**, as additional security for the full, timely and faithful repayment of the Bonds and the performance by Borrower of all of its obligations under the Bond Agreement and the Bond Documents, Bank required as a condition to entering into the Bond Agreement and purchasing the Bonds that Guarantor execute and deliver to the Bank this Guaranty for the benefit of the Bank.

**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 Bond Agreement and purchase the Bonds, each Guarantor hereby represents, warrants and covenants to Bank as to itself as follows:

1. Formation and Existence; Power and Authority. Guarantor 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 Guaranty and any Loan Document to which it is a party. Guarantor will preserve and maintain such legal existence and good standing.

2. Obligations Guaranteed. (a) Guarantor unconditionally guarantees to Bank, (i) the Substantial Completion of the Improvements pursuant to the Plans free and clear of all liens on or before the Completion Date (as such terms are defined in the Building Loan Agreement dated as of the date hereof by and among the Bank, as Administrative Agent, CDE Lenders and Leasehold Owner (the “**Building Loan Agreement**”)); (ii) subject to the Intercreditor Agreement, the complete and timely performance of Borrower’s obligations (A) if the Bank exercises Bank’s right under the Bond Agreement to take possession of the Premises and complete the construction of the Improvements in accordance with the Plans, to reimburse Bank for all costs and expenses incurred by Bank in so completing construction of the Improvements; (B) to pay the premiums for all policies of insurance required to be furnished by Borrower pursuant to the Bond Agreement and the Leasehold Owner pursuant to the Building Loan Agreement during the period of construction until Completion of the Improvements, if not paid when due by Borrower and Leasehold Owner, as applicable; (C) to pay all interest and fees on the Bonds accruing during the period of construction until Completion of the Improvements in accordance with the Plans, if not paid when due by Borrower; and (D) to pay all sewer and water rents, vault taxes, real estate taxes and assessments and payments in lieu of the foregoing, assessed or levied against the Premises and/or the Improvements during the period of construction until Completion of the Improvements in accordance with the Plans, if not paid when due by Borrower or Leasehold Owner; and (iii) payment in full of any and all expenses actually paid or incurred by the Bank in the collection of all or any portion of the Guarantor’s obligations hereunder or the exercise or enforcement of any one or more of the other rights, powers, privileges, remedies and interests of the Bank under the Loan Documents or 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 ((i), (ii) and (iii) collectively, the "**Liabilities**").

(b) Notwithstanding the foregoing, if none of the proceeds of the Bonds that are deposited into the QSCB Leverage Loan Account established under the Master Escrow Deposit Agreement are released pursuant to the terms thereof, the definition of "Improvements" hereunder and under the Building Loan Agreement shall not be deemed to refer to the Improvements relating to Building 6.1.

(c) If the Bank has sent Guarantor written notice to perform its obligations under Section 2 above, subject to the provisions of the Intercreditor Agreement, the Bank shall approve the disbursement of Bonds proceeds and any other construction funds held under and in accordance with the Intercreditor Agreement (collectively, the "Construction Funds") on the same terms and conditions as set forth in the Building Loan Agreement for the purposes of Guarantor completing the Improvements and fulfilling its other obligations under this Guaranty, so long as (i) Guarantor is not in default under this Guaranty; (ii) Guarantor cures any outstanding default under the Loan Documents (including any failure of the Loan to be "in balance") and thereafter performs all obligations assumed by Guarantor under this Guaranty up to the time of the lien-free completion of the Improvements; and (iii) all conditions of the Loan Documents, the Building Loan Agreement and the Intercreditor Agreement to the disbursement of the proceeds of the undisbursed Construction Funds are satisfied.

(d) Notwithstanding anything herein to the contrary, the Liabilities of the Guarantor hereunder shall be reduced by the amount of the undisbursed Construction Funds.

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 Borrower or upon any other condition or contingency; accordingly, Bank shall have the right to proceed against Guarantor immediately upon any Event of Default (as defined in the Bond Agreement) beyond applicable notice and cure periods under the Loan Documents 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. RBH hereby waives and releases any claim (within the meaning of 11 U.S.C. § 101) that it may have against Borrower or Leasehold Owner arising from a payment made by it under this Guaranty and agrees not to assert or take advantage of any subrogation rights of RBH or any right of RBH to proceed against Borrower or Leasehold Owner for reimbursement. It is expressly understood that the waivers and agreements of Guarantor constitute additional and cumulative benefits given to Bank for its security and as an inducement for the purchase of the Bonds. During the course of any construction of the Improvements undertaken by Bank or any other Person on behalf of Bank, Guarantor agrees that Guarantor shall pay on demand any amounts due to contractors, subcontractors, and material suppliers and for permits and licenses necessary or desirable in connection therewith. Guarantor's obligations in connection with such work shall not be affected by any errors or omissions of Borrower's Architect, the General Contractor, the



Construction Consultant, (as such terms are defined in the Building Loan Agreement) or any subcontractor or agent or employee of any of the foregoing in the design, supervision, and performance of the work; it being understood that such risk is assumed by Guarantor. Neither the completion of the Improvements nor failure to complete the Improvements shall relieve the Guarantor of any liabilities hereunder; rather, such liability shall be continuing and may be enforced by Bank to the end that the Improvements shall be completed in accordance with Section 4.2 of the Building Loan Agreement, lien free, without loss, cost, expense, injury or liability of any kind to Bank. 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 Guarantor any amounts then due and payable hereunder by Guarantor and/or to cause Guarantor to fulfill its obligations hereunder.

4. Liability Unimpaired. Guarantor's liability hereunder shall in no way be limited or impaired by, and Guarantor hereby consents to and agrees 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, Leasehold Owner or Guarantor, or any Person (as hereafter defined) who succeeds Leasehold Owner 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, Guarantor's 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 Note or Mortgage or any sale or transfer of all or part of the property covered 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 Bonds, (vi) Bank's failure to record the Mortgage or file any UCC financing statements (or Bank's improper recording or filing of same) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Bonds, (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 Bonds, 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 (viii) any amendment, modification or supplement to the Project Cost Statement, Hard Cost Statement, Loan Budget Amounts, the General Contract, any Major Subcontract (each defined in the Building 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 Building 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 Documents or any disbursement certificates or requests for disbursements made under the Building Loan Agreement, or (x) any other action or circumstance whatsoever which 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 Guarantor under this Guaranty; and, in any such case, whether with or without notice to Guarantor and with or without consideration. 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.

5. Preservation of Loan Documents. RBH 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 RBH has a defense to Guarantor's obligations hereunder.

6. Reserved.

7. Indemnification; Payments; Certain Waivers. 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 Bonds or for the obligations guaranteed hereby before proceeding against 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, 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 that Bank 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 Leasehold Owner, 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. Guarantor does not waive and hereby retains all rights of subrogation, contribution, indemnification, set-off or reimbursement against Leasehold Owner or any other Guarantor that 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 that 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 Bonds shall have been paid in full, Guarantor hereby postpones and subordinates (A) the exercise of any and all of the Undersigned's Rights to Bank's rights against 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 Bonds.

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, Leasehold Owner, 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, Leasehold Owner, Guarantor or any other person or for a substantial part of Borrower's, Leasehold Owner's 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. Guarantor further agrees 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 Guarantor pursuant to Paragraph 2 above and covered by Guarantor's indemnity pursuant to Paragraph 7 above.

9. Litigation, Compliance with Judgments. Each Guarantor represents and warrants with respect to itself that as of the date hereof there are no actions, suits or proceedings pending or, to the best of 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 obligations hereunder. To the best of Guarantor's knowledge, 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 its obligations under this Guaranty and this Guaranty is a legal, valid and binding instrument, enforceable against Guarantor in accordance with its terms. The execution, delivery and performance of this Guaranty has been authorized by all proper and necessary actions of the 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 do 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. Guarantor will comply promptly with all Laws now or hereafter in effect having applicability to Guarantor.

12. Accuracy of Information; Full Disclosure. As of the date hereof, each Guarantor represents and warrants with respect to itself and to its knowledge neither this Guaranty nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of 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 Guarantor, contains any untrue or misleading statement of a material fact; there is no fact which 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 Guarantor, or the ability of Guarantor to perform this Guaranty and the other Loan Documents to which 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. Mechanics' Liens. If Leasehold Owner and/or Guarantor shall have completed or caused the Substantial Completion of the construction and equipping of the Improvements on or before the Completion Date, free and clear of all liens and defects in construction and materials, materially in accordance with all Plans (as the same may be modified pursuant to the terms of the Loan Documents), Laws and the Building Loan Agreement, and satisfied the conditions set forth in the Building Loan Agreement and Guarantor shall have otherwise satisfied any and all of its obligations under this Guaranty, then upon the expiration of any time period beyond said completion of the construction and equipping of the Improvements in accordance with the Building Loan Agreement within which mechanics, materialmen or other Persons (collectively, "**Mechanics**") are entitled to file liens against the Premises for construction, materials or related work claims shall have expired (such completion and the expiration of such time period, is herein referred to as the "**Completion of the Project**"), Guarantor shall be released of any further obligations under this Guaranty; provided, however, if Bank shall have received after Completion of the Project, duly executed lien waivers from all Mechanics entitled to file liens against the Premises evidencing the payment in full for all of their work relating to the Premises, this Guaranty shall terminate upon receipt of such lien waivers. Bank agrees that upon Bank's receipt of evidence satisfactory to Bank of the Completion of the Project, and, provided, that no undischarged liens which have not been bonded over shall have been filed against the Premises by Mechanics, Bank shall deliver a written confirmation that this Guaranty is limited only to a guaranty against the filing of subsequent liens against the Premises by Mechanics with respect to which such duly executed lien waivers have not been received by Bank. Thereafter, this Guaranty shall continue as a guaranty against claims and liens by Mechanics that have not been waived until Mechanics are no longer legally entitled to file any such claims or liens against the Premises, whereupon Bank

shall deliver to Guarantor Bank's final written confirmation of termination of this Guaranty in full, provided that no undischarged Mechanics' liens have been filed against the Premises.

15. ADA Indemnification. Guarantor hereby agrees to indemnify and hold Bank, their respective successors and assigns and their respective members, officers, directors, employees, agents, representatives, contractors, subcontractors and attorneys harmless against any and all claims, suits, actions, proceedings, damages, expenses, demands, losses, costs, fines or liabilities of whatever kind or nature (including, without limitation, arising from personal injury, death or property damage) in any way related to or arising out of the violation or non-compliance by Leasehold Owner with, or Leasehold Owner's failure to use reasonable efforts to cause any person or entity operating, leasing, subleasing, possessing, using or controlling all or any portion of the Premises to comply with, any applicable federal, state or local law, rule, regulation or order related to the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 *et seq.*), as amended from time to time.

16. 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 Bonds 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 Guarantor 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 Bonds 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.

17. Transfers of Interests in Bonds. Guarantor acknowledges that Bank, at Bank's sole discretion, may sell, assign or transfer interests in the Bonds, 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, Guarantor, the Premises, the Project or the Bond Agreement, may be provided to and retained by any such purchaser or assignee or prospective purchaser or assignee. Guarantor agrees that Bank shall have no obligation to give Guarantor written notice of any sale, assignment or transfer of any interest in the Bonds or any part thereof.

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

19. 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.

20. 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.

21. Successors and Assigns. This Guaranty shall be binding upon and shall inure to the benefit of Bank and Guarantor 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 Guarantor 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 Guarantor hereunder to Bank with respect to any portion of the obligations guaranteed hereby retained by Bank.

22. WAIVER OF TRIAL BY JURY. GUARANTOR, 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 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. GUARANTOR AND BANK ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

23. ADDITIONAL WAIVERS IN THE EVENT OF ENFORCEMENT. 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 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 GUARANTOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST BANK WITH RESPECT TO ANY ASSERTED CLAIM.

24. 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 Guarantor 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 County of Essex may be made by certified or registered mail, return receipt requested, directed to the Guarantor at the address indicated below, with a copy to its counsel at the address set forth in Section 26 hereof, and service so made shall be complete five (5) days after the same shall have been so mailed.

25. Paragraph Headings. Any paragraph headings and captions in this Guaranty are for convenience only and shall not affect the interpretation or construction hereof.

26. 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 Guarantor hereunder.

27. Joint and Several Obligations. If more than one Person comprises Guarantor, then each such Person's obligations and liability under this Guaranty shall be joint and several.

28. Notices. Notices shall be given in the manner provided in the Bond Agreement and with respect to Guarantor at the address set forth below, with a copy of any such Notice to be given to Herrick Feinstein LLP, 2 Park Avenue, New York, NY, Attention: Laurie A. Grasso, Esq., Facsimile No.: (212) 545-3343.

29. 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.

30. Survival. All representations and warranties made by Guarantor herein shall survive the execution hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

**[SIGNATURE PAGE TO GUARANTY OF COMPLETION]**

**IN WITNESS WHEREOF**, Guarantor and Borrower have each caused this Guaranty to be duly executed and delivered by its respective duly authorized official as of the date first above stated.

**RBH-TRB NEWARK HOLDINGS, LLC**

By: RBH Capital LLC, its Manager

By: /s/ Ron Beit-Halachmy

Name: Ron Beit-Halachmy

Title: Authorized Signatory

**RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC**

By: /s/ Ron Beit-Halachmy

Name: Ron Beit-Halachmy

Title: Authorized Signatory

---



STATE OF NEW JERSEY :  
SS.:  
COUNTY OF ESSEX :

I CERTIFY that on February , 2012, Ron Beit-Halachmy personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

---

NOTARY PUBLIC OF NEW JERSEY

STATE OF NEW JERSEY :  
SS.:  
COUNTY OF ESSEX :

I CERTIFY that on February , 2012, Ron Beit-Halachmy personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

---

NOTARY PUBLIC OF NEW JERSEY

---

**SECURITY AGREEMENT**

This Security Agreement ("**Agreement**") is dated this 3<sup>rd</sup> day of February, 2012, by and between **RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC** ("**Debtor**"), a New Jersey limited liability company, and **TD BANK, N.A.**, a national banking association ("**Lender**").

**BACKGROUND**

**WHEREAS**, pursuant to the Ground Lease by and between Debtor and Teachers Village School QALICB Urban Renewal, LLC (the "**Leasehold Owner**"), the Leasehold Owner is obligated to, among other things, (i) improve by constructing structures and related amenities on the Premises (defined herein) and (ii) assign to the Debtor all of its right, title and interest in the Pledged Deposit Accounts (as such term is defined herein), which are held pursuant to the terms of the Intercreditor Agreement and which the Debtor has a security interest pursuant to the terms of the Deposit Account Security Agreement dated as of the date hereof by Leasehold Owner in favor of Debtor, as the same may be amended, restated, modified or supplemented from time to time (the "**Deposit Account Security Agreement**");

**WHEREAS**, Debtor will derive substantial benefit from the transactions contemplated by that certain Bond Agreement dated as of December 1, 2011 by and among Debtor, Lender and the New Jersey Economic Development Authority (the "**Issuer**") (as the same may be amended, restated, modified or supplemented, the "**Bond Agreement**");

**WHEREAS**, pursuant to the Bond Agreement, the Issuer issued \$22,748,000 of its Qualified School Construction Bonds (the "**Bonds**"), which were purchased by the Lender pursuant to the Bond Agreement; and

**WHEREAS**, as additional security for the full, timely and faithful repayment of the Bonds and the performance by Debtor of all of its obligations under the Bond Documents, (the "**Obligations**"), the Lender requires that the Debtor execute and deliver this Agreement for the benefit of the Lender.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, hereby agree as follows:

**SECTION 1. DEFINITIONS AND INTERPRETATION**

1.1 **Terms Defined:** As used in this Agreement, the following terms have the following respective meanings:

**Account** - All of the "accounts" (as that term is defined in the UCC) of Debtor, whether now existing or hereafter arising.

Account Debtor - Any Person obligated on any Account owing to Debtor.

Affiliate - With respect to any Person, (a) any Person which, directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, or (b) any Person who is a director or officer (i) of such Person, (ii) of any subsidiary of such Person, or (iii) any person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote 5% or more of the Capital Stock having ordinary voting power for the election of directors (or comparable equivalent) of such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Control may be by ownership, contract, or otherwise.

Assignment of Claims Act — The Federal Assignment of Claims Act, 31 U.S.C. § 3727 et seq., as amended from time to time.

Assignment of Contracts — Assignment of Contracts, Licenses and Permits dated as of the date hereof by Leasehold Owner to Debtor, as the same may be amended, restated, modified or supplemented from time to time.

Assignment of Leases — The Absolute Assignment of Leases and Rents dated as of the date hereof by Leasehold Owner to Debtor, as the same may be amended, restated, modified or supplemented from time to time.

Bond Documents — Collectively, the Bond Agreement, the Loan Documents and the Collateral Documents.

Business Day - A day other than Saturday or Sunday when Lender is open for business in New York, New York.

Capital Stock - Any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all other ownership interests in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing.

Cash Management Agreement — The Cash Management Agreement dated as of the date hereof by and among the Debtor, the Leasehold Owner, the Subordinate Lender, GS Halsey NMTC Investment Fund LLC, NJCC CDE Essex LLC, Gateway SUB-CDE I, LLC and Lender as the same may be amended, restated, modified or supplemented from time to time.

Collateral - All of the Property and interests in Property described in Section 2.1 of this Agreement and all other and interests in Property that now or hereafter secure payment of the Obligations and satisfaction by Debtor of all covenants and undertakings contained in this Agreement and the other Bond Documents.

Collateral Documents — The “Collateral Documents”, as defined in the Bond Agreement.

Construction Fund Proceeds — The Construction Fund Proceeds”, as such term is defined in the Intercreditor Agreement.

Construction Proceeds — The Construction Fund Proceeds pledged to Debtor by Leasehold Owner pursuant to the terms of the Ground Lease and the Deposit Account Security Agreement.

Default - Any event, act, condition or occurrence which with notice, or lapse of time or both, would constitute an Event of Default hereunder.

Event of Default - As defined in Section 5.1.

Excluded Property — Collectively, the Capitalized Interest Account #2, Capitalized Interest Account #3, RAB Capitalized Interest Account and the CDBG Account (all as such terms are defined in the Intercreditor Agreement).

Expenses - Section 6.6.

Governmental Authority - Any federal, state or local government or political subdivision, or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury, or arbitration.

Intercreditor Agreement — The Intercreditor, Escrow and Disbursement Agreement dated as of the date hereof, among Debtor, the Leasehold Owner, the Lender, the Subordinate Lender, GS Halsey NMTC Investment Fund LLC, NJCC CDE Essex LLC and Gateway Sub-CDE, I, LLC, as the same may be amended, restated, modified or supplemented from time to time.

Inventory - All of the “inventory” (as that term is defined in the UCC) of Debtor, whether now existing or hereafter acquired or created.

Lien - Any interest of any kind or nature in property securing an obligation owed to, or a claim of any kind or nature in property by, a Person other than the owner of the Property, whether such interest is based on the common law, statute, regulation or contract, and including, but not limited to, a security interest or lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt, a lease, consignment or bailment for security purposes, a trust, an escrow or an assignment. For the purposes of this Agreement, Debtor shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

Loan Documents – The “Loan Documents” as defined in the Bond Agreement.

Obligations - All existing and future debts, liabilities and obligations of every kind or nature at any time owing by Debtor to Lender or any other subsidiary of Lender or Lender Affiliate whether under this Agreement, or any other existing or future instrument, document or agreement, between Debtor and Lender or any other subsidiary of Lender or Lender

Affiliate, whether joint or several, related or unrelated, primary or secondary, matured or contingent, due or to become due (including debts, liabilities and obligations obtained by assignment), and whether principal, interest, fees, indemnification obligations hereunder or Expenses (specifically including interest accruing after the commencement of any bankruptcy, insolvency or similar proceeding with respect to Debtor, whether or not a claim for such post-commencement interest is allowed), including, without limitation, debts, liabilities and obligations in respect of the Bonds and the Bond Documents and any extensions, modifications, substitutions, increases and renewals thereof; the payment of all amounts advanced by Lender or any other subsidiary of Lender or Bank Affiliate to preserve, protect and enforce rights hereunder and in the Collateral; and all Expenses incurred by Lender or any other subsidiary of Lender or Bank Affiliate. Without limiting the generality of the foregoing, Obligations shall include any other debts, liabilities or obligations owing to Lender or any other subsidiary of Lender or Bank Affiliate in connection with any lockbox, cash management, or other services (including electronic funds transfers or automated clearing house transactions) provided by Lender or any other subsidiary of Lender or Bank Affiliate to Debtor.

Permitted Liens— Permitted Liens as further detailed in Section 3.3 and Schedule 3.3.

Person - An individual, partnership, corporation, trust, limited liability company, limited liability partnership, unincorporated association or organization, joint venture or any other entity.

Pledged Deposit Accounts — all the accounts set forth on Exhibit A hereto and made a part hereof.

Premises- All of that certain premises located in the City of Newark, County of Essex and State of New Jersey, more particularly described in the Bond Documents.

Property - Any interest of Debtor in any kind of personal property, whether tangible or intangible.

Subordinate Lender— Collectively, Casino Reinvestment Development Authority and Brick City Development Corporation.

“Subordination Agreements” - Collectively, each Subordination Agreement by and between Lender and each Subordinate Lender.

UCC - The Uniform Commercial Code as adopted in the State of New Jersey as the same may be amended from time to time.

Other Capitalized Terms - Any other capitalized terms used without further definition herein shall have the respective meaning set forth in the UCC.

1.2 Construction: No doctrine of construction of ambiguities in agreements or instruments against the interests of the party controlling the drafting shall apply to any Bond Documents.

SECTION 2. COLLATERAL

2.1 Collateral: As security for the payment of the Obligations, and satisfaction by Debtor of all covenants and undertakings contained in this Agreement and the other Bond Documents, Debtor hereby assigns and grants to Lender, a continuing Lien on and security interest in, upon and to all assets of Debtor, including Debtor's right, title and interest in, to the following Property, all whether now owned or hereafter acquired, created or arising and wherever located (excluding the Excluded Property) (collectively, the "Collateral"):

- (1) Accounts - All Accounts;
- (2) Chattel Paper - All Chattel Paper;
- (3) Documents - All Documents;
- (4) Instruments - All Instruments;
- (5) Inventory - All Inventory;
- (6) General Intangibles - All General Intangibles;
- (7) Equipment - All Equipment;
- (8) Fixtures - All Fixtures;
- (9) Deposit Accounts - All Deposit Accounts;
- (10) Goods - All Goods;
- (11) Letter of Credit Rights — All Letter of Credit Rights;
- (12) Supporting Obligations — All Supporting Obligations;
- (13) Investment Property - All Investment Property;
- (14) Commercial Tort Claims — All Commercial Tort Claims, provided that Lender acknowledges that the attachment of its security interest in any commercial tort claim as original collateral is subject to Debtor's compliance with Section 4.4 of this Agreement;
- (15) Pledged Deposit Accounts — All Pledged Deposit Accounts;
- (16) Property in Lender's Possession - All Property of Debtor, now or hereafter in Lender's possession;
- (17) Construction Proceeds — The Construction Proceeds;
- (18) Leasehold Owner's Assets - All of the Debtor's right, title and interest in any asset of the Leasehold Owner including but not limited to that which is

granted to Debtor pursuant to the Deposit Account Security Agreement, Assignment of Leases and the Assignment of Contracts (collectively, the "Leasehold Owner's Property"); and

(19) Proceeds - The Proceeds (including, without limitation, insurance proceeds), whether cash or non-cash, of all of the foregoing property described in clauses (1) through (18).

2.2 Perfection of Security Interest:

Debtor shall execute and/or deliver to Lender, or cause to be executed and delivered (all in form and substance satisfactory to Lender and its counsel):

(a) Financing statements pursuant to the UCC, which Lender may file in the jurisdiction where Debtor is organized and in any other jurisdiction that Lender deems appropriate; and

(b) Any other agreements, documents, instruments and writings, including, without limitation, intellectual property security agreements, required by Lender to evidence, perfect or protect the Liens and security interests in the Collateral or as Lender may reasonably request from time to time.

2.3 Other Actions:

(a) In addition to the foregoing, Debtor shall do anything further that may be reasonably required by Lender to secure Lender and effectuate the intentions and objects of this Agreement, including, without limitation, (i) the execution and delivery of security agreements, contracts, control agreements and any other documents required hereunder, including without limitation, Debtor shall cause Leasehold Owner to execute and deliver an account control agreement by and among Debtor, Leasehold Owner and TD Bank, N.A., as custodian, in connection with the Pledged Deposit Accounts and, (ii) with respect to amounts due to Debtor from the United States or any agency or instrumentality thereof, the execution and delivery of such documents as may be required to assign such amounts to Lender under the Assignment of Claims Act. At Lender's reasonable request, Debtor shall also immediately deliver (with execution by Debtor of all necessary documents or forms to reflect, implement or enforce the Liens described herein), or cause to be delivered to Lender all items for which Lender must receive possession to obtain a perfected security interest, including without limitation, all notes, stock powers, letters of credit, certificates and documents of title, Chattel Paper, Warehouse Receipts, Instruments, and any other similar instruments constituting Collateral.

(b) Lender is hereby authorized to file financing statements and amendments to financing statements without Debtor's signature, in accordance with the UCC. Debtor hereby authorizes Lender to file all such financing statements and amendments to financing statements describing the Collateral in any filing office as Lender, in its sole discretion may determine, including financing statements listing "All Assets" in the collateral description therein, excluding however, the Excluded Property. Debtor agrees to comply with the requests of Lender in order for Lender to have and maintain a valid and perfected first security interest in the Collateral including, without limitation, executing and causing any other Person to execute such documents

as Lender may require to obtain Control (as defined in the UCC) over all Deposit Accounts, including, without limitation, the Pledged Deposit Accounts, Letter of Credit Rights and Investment Property.

2.4 Searches, Certificates:

(a) Lender may from time to time, at Debtor's expense, obtain the following searches (the results of which are to be consistent with the warranties made by Debtor in this Agreement):

(1) UCC searches with the Secretary of State and local filing office of each state where Debtor is organized, maintains its executive office, a place of business, or assets; and

(2) Judgment, state and federal tax lien and corporate tax lien searches, in all applicable filing offices of each state searched under subparagraph (1) above.

(b) Debtor shall obtain and deliver to Lender good standing certificates showing Debtor to be in good standing in its state of organization and in each other state in which it is doing and presently intends to do business for which qualification is required.

2.5 Intentionally Omitted.

2.6 Filing Security Agreement: A carbon, photographic or other reproduction or other copy of this Agreement or of a financing statement is sufficient as and may be filed in lieu of a financing statement.

2.7 Power of Attorney: Each of the officers of Lender is hereby irrevocably made, constituted and appointed the true and lawful attorney for Debtor during such time as any Obligations are outstanding (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Debtor upon any and all checks, drafts, money orders and other instruments for the payment of monies that are payable to Debtor and constitute collections on Debtor's Accounts or proceeds of other Collateral; (b) execute and/or file in the name of Debtor any financing statements, schedules, assignments, instruments, documents and statements that Debtor is obligated to give Lender hereunder or is necessary to perfect (or continue or evidence the perfection of such security interest or Lien) Lender's security interest or Lien in the Collateral; and (c) during the continuance of an Event of Default, do such other and further acts and deeds in the name of Debtor that Lender may reasonably deem necessary or desirable to enforce any Account or other Collateral.

SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce Lender to purchase the Bonds, Debtor warrants and represents to Lender that:

3.1 Validity:

(a) Intentionally Omitted.



(b) The making and performance of this Agreement and the other Bond Documents will not violate any law, government rule or regulation, court or administrative order or other such order, or any of the provisions of Debtor's organizational documents, or violate or result in a default (immediately or with the passage of time) under any contract, agreement or instrument to which Debtor is a party, or by which Debtor is bound.

(c) Debtor has all requisite power and authority to enter into and perform this Agreement and to incur the obligations herein provided for, and has taken all proper and necessary action to authorize the execution, delivery and performance of this Agreement.

(d) This Agreement is valid and binding upon Debtor, and enforceable in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

3.2 Places of Business: The only places of business of Debtor, and the places where Debtor keeps and intends to keep its Property, are at the Premises or at the address of the Debtor set forth in Section 6.7 of this Agreement.

3.3 Title to Properties: Debtor has good and marketable title in fee simple (or its equivalent under applicable law) to all the Property it purports to own, free from Liens and free from the claims of any other Person, except for Permitted Liens as shown on Schedule 3.3. No other Person has control of any of the Collateral.

3.4 Governmental Authorizations; Consents: No authorization, approval or other action by, and no notice to or filing with, any domestic or foreign governmental authority or regulatory body or consent of any other person is required for (a) the grant by Debtor of the security interests granted hereby or for the execution, delivery or performance of this Agreement by Debtor; or (b) the perfection of the security interests granted hereby and pursuant to any other Bond Documents (except for the filing of UCC financing statements with the appropriate jurisdiction); or (c) the exercise by Lender of its rights and remedies hereunder.

3.5 Intentionally Omitted.

3.6 Names and Intellectual Property: Except as otherwise disclosed to Lender in writing, Debtor has not conducted business under or used any other name (whether corporate or assumed). Debtor is the sole owner of all such names and any and all business done and all invoices issued in such trade names are Debtor's sales, business and invoices. The chief executive office and mailing address of Debtor is presently located at 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102. The exact legal name of Debtor is that indicated on the signature page hereof. Debtor is an organization of the type, and is organized in the jurisdiction set forth herein.

3.7 Intentionally Omitted.

3.8 Perfection and Priority: This Agreement is effective to create in favor of Lender legal, valid and enforceable Liens in all right, title and interest of Debtor in the Collateral, and when financing statements have been filed in the offices of the jurisdictions shown on Schedule

3.8 attached hereto and made part hereof under Debtor's name, Debtor will have granted to Lender, and Lender will have perfected first priority Liens in the Collateral, superior in right to any and all other Liens, existing or future.

#### SECTION 4. COVENANTS

Debtor covenants that:

4.1 Payment of Taxes and Claims: Debtor shall pay and shall cause Leasehold Owner to pay, as applicable, before they become delinquent, all taxes, assessments and governmental charges, or levies imposed upon it, or upon Debtor's Property, and all claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other Persons, entitled to the benefit of statutory or common law Liens which, in any case, if unpaid, would result in the imposition of a Lien upon its Property; provided however, that Debtor shall not be required to pay any such tax, assessment, charge, levy, claim or demand if the amount, applicability or validity thereof, shall at the time, be contested in good faith and by appropriate proceedings by Debtor, and if Debtor shall have set aside on its books adequate reserves in respect thereof, if so required in accordance with GAAP; which deferment of payment is permissible so long as no Lien other than a Permitted Lien has been entered and Debtor's title to, and its right to use, its Property are not materially adversely affected thereby.

4.2 Maintenance of Properties: Debtor shall, and shall cause Leasehold Owner, to maintain its respective Property in good condition (normal wear and tear excepted) make all necessary renewals, replacements, additions, betterments and improvements thereto and will pay and discharge when due the cost of repairs and maintenance to its Property, and will pay all rentals when due for all real estate leased by Debtor.

4.3 Places of Business: Debtor shall give thirty (30) days prior written notice to Lender of any changes in the location of any of its respective places of business, of the places where records concerning its Accounts or where its Inventory are kept, or the establishment of any new, or the discontinuance of any existing place of business.

4.4 Commercial Tort Claims: Debtor will immediately notify Lender in writing in the event that Debtor or Leasehold Owner, becomes a party to or obtains any rights with respect to any Commercial Tort Claim. Such notification shall include information sufficient to describe such Commercial Tort Claim, including, but not limited to, the parties to the claim, the court in which the claim was commenced, the docket number assigned to such claim, if any, and a detailed explanation of the events that gave rise to the claim. Debtor shall, and shall cause Leasehold Owner, to execute and deliver to Lender all documents and/or agreements necessary to grant Lender a security interest in such Commercial Tort Claim to secure the Obligations. Debtor authorizes Lender to file (without Debtor's signature) initial financing statements or amendments, as Lender deems necessary to perfect its security interest in the Commercial Tort Claim.

4.5 Letter of Credit Rights: Debtor shall provide Lender with written notice of any Letters of Credit for which Debtor or Leasehold Owner is the beneficiary. Debtor shall execute and deliver (or cause to be executed or delivered) to Lender, all documents and agreements as

Lender may require in order to obtain and perfect its security interest in such Letter of Credit Rights.

4.6 Intentionally Omitted.

4.7 Liens and Encumbrances: Debtor shall not and shall not permit Leasehold Owner to: (i) execute a negative pledge agreement with any Person covering any of its respective Property, or (ii) cause or permit or agree or consent to cause or permit in the future (upon the happening of a contingency or otherwise), its respective Property (including, without limitation, the Collateral), whether now owned or hereafter acquired, to be subject to a Lien or be subject to any claim except for Permitted Liens.

4.8 Jurisdiction of Organization: Without providing at least 30 days' prior written notice to Lender, Debtor shall not change its name, its type of organization, jurisdiction of organization or other legal structure, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one.

## SECTION 5. DEFAULT

5.1 Events of Default: Each of the following events shall constitute an event of default ("Event of Default"):

(a) Payments - if Debtor fails to make any payment of principal interest, charges, fees, Expenses or other monetary obligations owing to Lender on the date such payment is due and payable; or

(b) Particular Covenant Defaults - if Debtor fails to perform, comply with or observe any covenant or undertaking contained in this Agreement; or

(c) Warranties or Representations - if any warranty, representation or other statement by or on behalf of Debtor contained in or pursuant to this Agreement is false, erroneous, or misleading in any material respect when made; or

(d) Other Agreements - if Debtor breaches or violates the terms of, or if a default (and expiration of any applicable cure period), or an Event of Default occurs and is continuing under any Bond Document or the Ground Lease; or

(e) Liens - if any Lien in favor of Lender shall cease to be valid, enforceable and perfected and prior to all other Liens other than Permitted Liens or if Debtor or any Governmental Authority shall assert any of the foregoing.

5.2 Cure: Nothing contained in this Agreement or the Bond Documents shall be deemed to compel Lender to accept a cure of any Event of Default hereunder.

5.3 Rights and Remedies on Default:

(a) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the Bond Documents (each of which is also then exercisable by

Lender), or otherwise available at law or in equity, upon or at any time after the occurrence and during the continuance of an Event of Default Lender may, in its discretion, terminate any obligation to extend credit to Debtor and declare all Obligations immediately due and payable, all without demand, notice, presentment or protest or further action of any kind.

(b) Intentionally Omitted.

(c) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the Bond Documents (each of which is also then exercisable by Lender), or otherwise available at law or in equity, upon or at any time after the acceleration of the Obligations following the occurrence of an Event of Default, Lender may, in its discretion, exercise all rights under the UCC and any other applicable law or in equity, and under all Bond Documents permitted to be exercised after the occurrence of an Event of Default, including the following rights and remedies (which list is given by way of example and is not intended to be an exhaustive list of all such rights and remedies):

(1) The right to take possession of, send notices regarding and collect directly the Collateral, with or without judicial process (including without limitation the right to notify the United States postal authorities to redirect mail addressed to Debtor to an address designated by Lender); or

(2) By its own means or with judicial assistance, enter Debtor's premises and take possession of the Collateral, or render it unusable, or dispose of the Collateral on such premises in compliance with subsection (e) below, without any liability for rent, storage, utilities or other sums, and Debtor shall not resist or interfere with such action; or

(3) Require Debtor at Debtor's expense to assemble all or any part of the Collateral (other than real estate or fixtures) and make it available to Lender at any place designated by Lender.

(d) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the Bond Documents (each of which is also then exercisable by Lender), or otherwise available at law or in equity, upon or at any time after the occurrence and during the continuance of an Event of Default, Debtor shall, at the request of Lender, notify Account Debtors and other persons obligated on any of the Collateral of the security interest of Debtor in any Account, Chattel Paper, General Intangible, Instrument or other Collateral and that payment thereof is to be made directly to Lender or to any financial institution designated by Lender as Lender's agent therefor, and Lender may itself, without notice to or demand upon Debtor, so notify Account Debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, Debtor shall hold any proceeds of collection of Accounts, Chattel Paper, General Intangibles, Instruments and other Collateral received by Debtor as trustee for Lender without commingling the same with other funds of Debtor and shall turn the same over to Lender in the identical form received, together with any necessary endorsements or assignments. Lender shall apply the proceeds of collection of Accounts, Chattel Paper, General Intangibles, Instruments and other Collateral received by

Lender to the Obligations, such proceeds to be immediately entered after final payment in cash or other immediately available funds of the items giving rise to them.

(e) Debtor hereby agrees that a notice received by it at least seven (7) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable inventory or Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Lender without prior notice to Debtor. Debtor covenants and agrees not to interfere with or impose any obstacle to Lender's exercise of its rights and remedies with respect to the Collateral, after the occurrence of an Event of Default hereunder. Lender shall have no obligation to clean up or prepare the Collateral for sale. If Lender sells any of the Collateral upon credit, Debtor will only be credited with payments actually made by the purchaser thereof, that are received by Lender. Lender may, in connection with any sale of the Collateral specifically disclaim any warranties of title or the like.

5.4 Nature of Remedies: All rights and remedies granted Lender hereunder and under the Bond Documents, or otherwise available at law or in equity, shall be deemed concurrent and cumulative, and not alternative remedies, and Lender may proceed with any number of remedies at the same time until all Obligations are satisfied in full. The exercise of any one right or remedy shall not be deemed a waiver or release of any other right or remedy, and Lender, upon or at any time after the occurrence of an Event of Default, may proceed against Debtor, at any time, under any agreement, with any available remedy and in any order.

5.5 Set-Off:

In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the Bond Documents (each of which is also then exercisable by Lender), upon or at any time after the occurrence and during the continuance of an Event of Default, Lender (and any participant) shall have and be deemed to have, without notice to Debtor, the immediate right of set-off against any bank account of Debtor with Lender or after exercising Lender's rights with respect to the Deposit Account Security Agreement, any bank account of Leasehold Owner with Lender or with any other subsidiary of Lender or Lender Affiliate or any participant or assigned by the Leasehold Owner to the Debtor including, without limitation, the Pledged Deposit Accounts and may apply the funds or amount thus set-off against any of Debtor's Obligations hereunder.

If any bank account of Debtor with Lender, any other subsidiary of Lender or Bank Affiliate or any participant is attached or otherwise liened or levied upon by any third party, Lender (and such participant) shall have and be deemed to have, without notice to Debtor, the immediate right of set-off and may apply the funds or amount thus set-off against any of Debtor's Obligations hereunder.

SECTION 6. MISCELLANEOUS

6.1 Governing Law: THIS AGREEMENT AND ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND ALL RELATED AGREEMENTS AND

DOCUMENTS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF NEW JERSEY. THE PROVISIONS OF THIS AGREEMENT AND ALL OTHER AGREEMENTS AND DOCUMENTS REFERRED TO HEREIN ARE TO BE DEEMED SEVERABLE, AND THE INVALIDITY OR UNENFORCEABILITY OF ANY PROVISION SHALL NOT AFFECT OR IMPAIR THE REMAINING PROVISIONS WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.

6.2 Intentionally Omitted.

6.3 Waiver: No omission or delay by Lender in exercising any right or power under this Agreement or any related agreements and documents will impair such right or power or be construed to be a waiver of any Default, or Event of Default or an acquiescence therein, and any single or partial exercise of any such right or power will not preclude other or further exercise thereof or the exercise of any other right, and as to Debtor no waiver will be valid unless in writing and signed by Lender and then only to the extent specified.

6.4 Indemnity.

(a) Debtor releases and shall indemnify, defend and hold harmless Lender and its respective officers, employees and agents, of and from any claims, demands, liabilities, obligations, judgments, injuries, losses, damages and costs and expenses (including, without limitation, reasonable legal fees) resulting from (i) acts or conduct of Debtor under, pursuant or related to this Agreement and the other Bond Documents, (ii) Debtor's breach or violation of any representation, warranty, covenant or undertaking contained in this Agreement or the other Bond Documents, and (iii) any claim by any other creditor of Debtor against Lender arising out of any transaction whether hereunder or in any way related to the Bond Documents and all costs, expenses, fines, penalties or other damages resulting therefrom, unless resulting solely from acts or conduct of Lender constituting willful misconduct or gross negligence.

(b) Promptly after receipt by an indemnified party under subsection (a) above of notice of the commencement of any action by a third party, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof. The omission so to notify the indemnifying party shall relieve the indemnifying party from any liability which it may have to any indemnified party under such subsection only if the indemnifying party is unable to defend such actions as a result of such failure to so notify. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnified party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation.

6.5 Time: Whenever Debtor shall be required to make any payment, or perform any act, on a day which is not a Business Day, such payment may be made, or such act may be performed, on the next succeeding Business Day. Time is of the essence in Debtor's performance under all provisions of this Agreement and all related agreements and documents.

6.6 Expenses of Lender: Debtor will pay upon demand of Lender all reasonable costs, fees and expenses of Lender in connection with (i) the analysis, negotiation, preparation, execution, administration, delivery and termination of this Agreement, and other Bond Documents and the documents and instruments referred to herein and therein, and any amendment, amendment and restatement, supplement, waiver or consent relating hereto or thereto, whether or not any such amendment, amendment and restatement, supplement, waiver or consent is executed or becomes effective, search costs, the reasonable fees, expenses and disbursements of counsel for Lender, and reasonable charges of any expert consultant to Lender, (ii) the enforcement of Lender's rights hereunder, or the collection of any payments owing from, Debtor under this Agreement and/or the other Bond Documents or the protection, preservation or defense of the rights of Lender hereunder and under the other Bond Documents, and (iii) any refinancing or restructuring of the credit arrangements provided under this Agreement and other Bond Documents in the nature of a "work-out" or of any insolvency or bankruptcy proceedings, or otherwise (including the reasonable fees and disbursements of counsel for Lender and, with respect to clauses (ii) and (iii), reasonable allocated costs of internal counsel) (collectively, the "Expenses").

6.7 Notices:

(a) Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed given if delivered in person to the person listed below or if sent by telecopy or by nationally recognized overnight courier, as follows, unless such address is changed by written notice hereunder:

If to Lender to: TD Bank, N.A.  
317 Madison Avenue  
New York, New York 10017  
Attention: Matthew Schatz, Vice President

With a copy to: Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attention: Michele Arbeeney, Esq.

If to Debtor to: RBH-TRB East Mezz Urban Renewal Entity, LLC  
c/o RBH Group  
89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102  
Attention: Ron Beit-Halachmy

With a copy to: Herrick Feinstein LLP

2 Park Avenue  
New York, New York 10016  
Attention: Laurie A. Grasso, Esq

(b) Any notice sent by Lender, or Debtor by any of the above methods shall be deemed to be given when so received.

(c) Lender shall be fully entitled to rely upon any telecopy transmission or other writing purported to be sent by any officer of Debtor as being genuine and authorized.

6.8 Headings: The headings of any paragraph or Section of this Agreement are for convenience only and shall not be used to interpret any provision of this Agreement.

6.9 Survival: All warranties, representations, and covenants made by Debtor herein, or in any agreement referred to herein or on any certificate, document or other instrument delivered by it or on its behalf under this Agreement, shall be considered to have been relied upon by Lender, and shall survive the delivery to Lender of the Notes, regardless of any investigation made by Lender or on its behalf. All statements in any such certificate or other instrument prepared and/or delivered for the benefit of Lender shall constitute warranties and representations by Debtor hereunder. Except as otherwise expressly provided herein, all covenants made by Debtor hereunder or under any other agreement or instrument shall be deemed continuing until all Obligations are satisfied in full. All indemnification obligations under this Agreement shall survive the termination of this Agreement and payment of the Obligations for a period of two (2) years.

6.10 Successors and Assigns: This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties. Debtor may not transfer, assign or delegate any of its duties or obligations hereunder. Debtor acknowledges and agrees that Lender may at any time, and from time to time, (a) sell participating interests in the Obligations, and Lender's rights hereunder to other financial institutions, and (b) sell, transfer, or assign the Obligations and Lender's rights hereunder, to any one or more additional banks or financial institutions.

6.11 Duplicate Originals: Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument.

6.12 Modification: No modification hereof or any agreement referred to herein shall be binding or enforceable unless in writing and signed by Debtor and Lender.

6.13 Signatories: Each individual signatory hereto represents and warrants that he is duly authorized to execute this Agreement on behalf of his principal and that he executes the Agreement in such capacity and not as a party.

6.14 Third Parties: No rights are intended to be created hereunder, or under any related agreements or documents for the benefit of any third party donee, creditor or incidental beneficiary of Debtor. Nothing contained in this Agreement shall be construed as a delegation to



Lender of Debtor's duty of performance, including, without limitation, Debtor's duties under any account or contract with any other Person.

6.15 Discharge of Taxes, Debtor's Obligations, Etc.: Lender, in its sole discretion, shall have the right at any time, and from time to time, with at least ten (10) days prior notice to Debtor if Debtor fail to do so, to: (a) pay for the performance of any of Debtor's obligations hereunder, and (b) discharge taxes or Liens, at any time levied or placed on Debtor's Property in violation of this Agreement unless Debtor is in good faith with due diligence by appropriate proceedings contesting such taxes or Liens and maintaining proper reserves therefor in accordance with GAAP. Expenses and advances shall be added to the Obligations and bear interest at the highest rate applicable to the Obligations, until reimbursed to Lender. Such payments and advances made by Lender shall not be construed as a waiver by Lender of a Default or Event of Default under this Agreement.

6.16 Consent to Jurisdiction: Debtor and Lender each hereby irrevocably consent to the non-exclusive jurisdiction of the Courts of the State of New Jersey or the federal courts sitting in the County of Essex or City of Newark in any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking. Debtor waives any objection which Debtor may have based upon lack of personal jurisdiction, improper venue or forum non conveniens. Debtor irrevocably agrees to service of process by certified mail, return receipt requested to the address of the appropriate party set forth herein.

6.17 Waiver of Jury Trial: DEBTOR AND LENDER EACH HEREBY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO OR UNDER THE BOND DOCUMENTS OR WITH RESPECT TO ANY CLAIMS ARISING OUT OF ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO ANY PROPOSED RENEWAL, EXTENSION, AMENDMENT, MODIFICATION, RESTRUCTURE, FORBEARANCE, WORKOUT, OR ENFORCEMENT OF THE TRANSACTIONS CONTEMPLATED BY THE BOND DOCUMENTS.

6.18 Consequential Damages: Neither Lender nor agent or attorney of Lender, shall be liable for any consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations.

**[SIGNATURES TO FOLLOW ON SEPARATE PAGE]**

**[SIGNATURE PAGE TO SECURITY AGREEMENT]**

IN WITNESS WHEREOF, the undersigned parties have executed this Security Agreement the day and year first above written.

**RBH-TRB EAST MEZZ URBAN RENEWAL  
ENTITY, LLC**

a Delaware limited liability company

By: /s/ Ron Beit-Halachmy  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

**TD BANK, N.A.**

By: /s/ Matthew Schatz  
Name: Matthew Schatz  
Title: Vice President

---

EXHIBIT A

Capitalized Interest Account #1— The Leasehold Owner’s “Capitalized Interest Account #1”, as such term is defined in the Intercreditor Agreement, identified as account no. 4267608269.

Construction Escrow Account — The Leasehold Owner’s “Construction Escrow Account”, as such term is defined in the Intercreditor Agreement, identified as account no. 4267608219.

CRDA Account — The Leasehold Owner’s “CRDA Account”, as such term is defined in the Intercreditor Agreement, identified as account no. 4267608235.

QSCB Account — The Leasehold Owner’s “QSCB Account”, as such term is defined in the Intercreditor Agreement, identified as account no. 4267608227.

Schedule 3.3

Permitted Liens

Liens permitted by the Subordination Agreement

---

Schedule 3.8

Filing Locations

New Jersey Secretary of State

---

**LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT**

Dated: February 3, 2012  
in the amount of  
\$32,700,000  
(the "*Mortgage Amount*")

From

**TEACHERS VILLAGE SCHOOL QALICB URBAN RENEWAL, 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  
Attention: Mr. Ron Beit

(the "*Mortgagor*")

To

**NJCC CDE ESSEX LLC,**  
a New Jersey limited liability company

having an office at:  
c/o New Jersey Community Capital  
108 Church Street, 3<sup>rd</sup> Floor  
New Brunswick, New Jersey 08901

(*"NJCC Lender"*)

And

**GATEWAY SUB-CDE I, LLC,**  
a Delaware limited liability company

having an office at:  
c/o 2 Gateway Center, 5th Floor  
Newark, New Jersey 07102  
Attention: Wendy Houston

(*"Gateway Lender"*)

LOCATION OF LEASEHOLD PREMISES:

Street  
Address: Halsey Street, Pearl Street, Maiden Lane

---

City of: Newark  
County of: Essex  
State of: New Jersey  
Block: 57.05, Lot 3.01  
Block: 58 Lot 35.01; and  
Block: 95 Lots 1, 2, 3, 4, 8 10,16 and 31

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:  
Nixon Peabody LLP  
401 9<sup>th</sup> Street NW, Suite 900  
Washington, D.C. 20004  
Attn: Michael J. Goldman, Esq.

This instrument was prepared by the above named attorney.

---

## Recital

Mortgagor is the owner of a leasehold interest in the premises described in Exhibit A hereto. The Mortgagor proposes to construct or rehabilitate improvements on the Leasehold 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 NJCC Lender and Gateway Lender pursuant to a Building Loan Agreement among the Mortgagor, NJCC Lender, Gateway Lender, and TD Bank, N.A., a national banking association, 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 to NJCC Lender and Gateway Lender the Loan A-2 Note, Loan A-4 Note, Loan B-2 Note, Loan B-4 Note, Loan C-2 Note, Loan C-4 Note, Loan D-2 Note, and Loan D-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, NJCC Lender, Gateway 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.

"**Block 95 Parcels**" shall mean the portion of the Mortgaged Property comprising Block 95, Lots 1, 2, 3, 4, Lot 8, 10, 16 and 31, and, all on the current official tax maps of the City of Newark, County of Essex, New Jersey.

"**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 Leasehold Premises.

"**Construction Period**" means the period from the date hereof to the completion of the improvements required to be built pursuant to the terms and conditions of the Loan Agreement.

"**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.

"**Ground Lease**" means that certain Ground Lease by and between Mortgagor and RBH-TRB East Mezz Urban Renewal Entity, L.L.C., a New Jersey limited liability company, dated as of the date hereof.

---



“**Improvements**” means all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon the Leasehold 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 Leasehold Premises are located) in any way relating to the Leasehold 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 Leasehold Premises, the Chattels and/or the Leasehold 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.

“**Leasehold Premises**” means the leasehold estate created pursuant to the Ground Lease with respect to certain 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, which Ground Lease, or a memorandum thereof, has been recorded on the date hereof in the Office of the Recorder of Deeds in and for Essex County, New Jersey, 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.

“**Mortgagee**” or “**Mortgagees**” means, collectively, NJCC Lender, Gateway Lender, and Administrative Agent on behalf of NJCC Lender and Gateway Lender.

“**Releases**” has the meaning set forth in Section 3.15 hereof.

“**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 Leasehold 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 Leasehold Premises, subject to the Releases;

(ii) the Improvements;

(iii) the Chattels;

(iv) the Intangibles;

(v) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (the "**Rents**"), the Lease (as such term is defined in the Loan Agreement) and all leases and lettings of the Leasehold 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 Mortgaged Property 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 Leasehold 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 Mortgaged Property;

(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 Leasehold 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 Mortgaged Property, 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 Mortgagee maintained at any Mortgagee; 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 a leasehold estate in the Leasehold 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 the Insured 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 subject only to the Releases 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 Leasehold 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 either 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 Leasehold Premises and all transactions related to the Leasehold 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 leasehold 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 Leasehold 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 Leasehold 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, including from the Ground Lease, and if applicable Mortgagor's income, with respect to subtenants under the Ground Lease, 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; (ii) 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 1.09 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. Subject to the Intercreditor Agreement, 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 Borrower'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 1.09, 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) Subject to the Intercreditor Agreement and, for so long as it is in effect, the Ground Lease, 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 Architect's Estimate (as defined below) of the cost of such restoration and the insurance proceeds received.

(e) Subject to the Intercreditor Agreement and, for so long as it is in effect, the Ground Lease, 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) Subject to the Intercreditor Agreement and, for so long as it is in effect, the Ground Lease, 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 Permitted Encumbrances, if any;

(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

(v) Upon completion of the Work and payment in full therefor, or upon failure on the part of Mortgagor to commence, as provided in Section 1.09(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. 1.10 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.

1.11 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.

1.12 (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 Leasehold 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 therefore, 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.

1.13 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 (with the exception of the development of Building 7 as set forth in Section 3.14 hereof), 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.

1.14 The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Leasehold 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 the 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.

1.15 (a) The Mortgagor will not (i) execute an assignment of the rents, or any part thereof, from the Leasehold Premises except for the assignment to the Fee Owner of the leases and rents from the Leasehold Premises pursuant to the terms of the Ground Lease (the "*Prior Assignment*"), (ii) terminate or consent to the cancellation or surrender of any lease of the Leasehold Premises, or any part thereof, now existing or hereafter to be made, (iii) modify or amend or consent to the modification or amendment of the Ground Lease or any other lease or sublease of the Leasehold Premises, or any part thereof, now existing or hereafter to be made, 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 each Mortgagee, which consent shall not be unreasonably withheld.

(b) Except for the Ground Lease and the Leases, the Mortgagor will not execute any lease of all or any portion of the Leasehold Premises, without first obtaining the written consent of each 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 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 any Mortgagee. Mortgagor shall furnish to any Mortgagee, within ten (10) business days after a request by such 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 each Mortgagee may require. Under no circumstances shall any 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 any 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 Leasehold Premises, the terms of their respective leases, the space occupied and the rentals payable thereunder.

1.16 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.

1.17 To the extent not so provided by applicable law each sublease of the Leasehold 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 sublessee thereunder will, upon request of any person succeeding to the interest of the Mortgagor as a result of such enforcement, automatically become the sublessee of said successor in interest, without change in the terms or other provisions of such sublease, 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 sublessee of its obligations under said sublease or (ii) any amendment or modification of the sublease made without the consent of each Mortgagee or such successor in interest. Each sublease shall also provide that, upon request by said successor in interest, such sublessee shall execute and deliver an instrument or instruments confirming such attornment.

1.18 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.

1.19 [RESERVED.]

1.20 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.

1.21 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.

1.22 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold Premises and any delivery by the Mortgagor and the acceptance by each Mortgagee of a deed in lieu of foreclosure of the Leasehold Premises.

1.23 Mortgagor will not consent to, join in, permit or allow any change in the zoning laws or ordinances relating to or affecting the Leasehold Premises, and will promptly notify each Mortgagee of any changes to the zoning laws affecting the Leasehold Premises of which it has received written notice thereof.

1.24 Except for the Prior Assignment, the Leases and the Releases, 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 Leasehold Premises, nor shall Mortgagor enter into any management and/or leasing agency or similar agreements with respect to the Leasehold 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, 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.

1.25 Except for the Releases, 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 Prior Assignment) any further assignment of rents from the Mortgaged Property, or (except for the Leases) any lease of all or substantially all of the Mortgaged Property, the Leasehold 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 1.25) 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.

1.26 In addition to making payment of all rent, additional rent, tax and other payments and charges required to be made by Mortgagor, Mortgagor, as tenant under and pursuant to the provisions of the Ground Lease, covenants that it will:

(a) Diligently perform and observe all of the material terms, conditions and covenants of the Ground Lease required to be performed and observed by Mortgagor, to the end that all things shall be done which are reasonably necessary to keep unimpaired Mortgagor's rights under the Ground Lease, and Mortgagor covenants that no release or forbearance of any of the obligations of Mortgagor under the Ground Lease, pursuant to the Ground Lease or otherwise shall release Mortgagor from any of its obligations under this Mortgage, including, without limitation, Mortgagor's obligations under this Section 1.26(a);

(b) Upon having actual knowledge thereof, promptly notify Mortgagees in writing of any default by any party in the performance and observance of any of the terms, conditions or covenants to be performed or observed under the Ground Lease;

(c) Promptly notify Mortgagees in writing of the giving of any notice under the Ground Lease of any default of Mortgagor in the observance of any terms, covenants or conditions of the Ground Lease and deliver to Mortgagees a true copy of each such notice; and

(d) Not surrender the Leasehold Premises nor terminate or cancel the Ground Lease or enter into any agreement (whether oral or written) modifying, supplementing or amending the Ground Lease without the prior written consent of Mortgagees, and as security for the repayment of the obligations secured hereby Mortgagor hereby assigns to Mortgagees all rights and options to extend, renew, terminate or modify the Ground Lease in any manner whatsoever.

(e) Mortgagees shall have the right (but shall not be obligated) to take any action Mortgagees deem necessary or desirable to prevent or to cure any default by Mortgagor in the performance of or compliance with any of Mortgagor's obligations under the Ground Lease. Upon receipt by Mortgagees of any written notice of default by Mortgagor under the Ground Lease, Mortgagees may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by Mortgagor or by any party on behalf of Mortgagor. Mortgagor hereby expressly grants to Mortgagees, and agrees that Mortgagees shall have, the absolute and immediate right to enter in and upon the Mortgaged Property or any part thereof to such extent and as often as Mortgagees, in their sole discretion, deem necessary or desirable in order to prevent or to cure any such default by Mortgagor. Mortgagees may pay and expend such sums of money as Mortgagees in their sole discretion deem necessary for any such purpose, and Mortgagor hereby agrees to pay to Mortgagees, immediately and without demand, all such sums so paid and expended by Mortgagees, together with interest thereon from the date of each such payment at the Involuntary Rate. All sums so paid and expended by Mortgagees, and the interest thereon, shall be added to and be secured by the lien of this Mortgage.

(f) As further security for the repayment of the obligations secured hereby and for the performance of the covenants contained herein and in the Ground Lease, Mortgagor hereby assigns to Mortgagees all of its rights, privileges and prerogatives as lessee under the

Ground Lease to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment by Mortgagor without the prior written consent thereto by Mortgagees shall be void and of no force and effect; provided, however, that so long as no Event of Default has occurred or is continuing under this Mortgage, Mortgagees shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease. Mortgagor represents and warrants that it has delivered to Mortgagees a true and accurate copy of the Ground Lease, together with all amendments thereto, if any.

(g) Unless Mortgagees shall otherwise expressly consent in writing, Mortgagor shall not cause or consent to the fee title to the Leasehold Premises merging with the leasehold estate in the Leasehold Premises and during Mortgagor's ownership of the Leasehold Premises shall endeavor to always keep such interests separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee under the Ground Lease, or in a third party by purchase or otherwise.

(h) Mortgagor shall, from time to time, use commercially reasonable efforts to obtain from the lessor under the Ground Leases such certificates of estoppel with respect to compliance by Mortgagor with the terms of the Ground Leases as may be requested by Mortgagees.

## 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*, 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 sixty (60) 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 for the Releases, 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 Prior

Assignment), or any lease of all or substantially all of the Mortgaged Property (except for the Leases), the Leasehold 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 incorporation; 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 Leasehold Premises or any portion thereof or if any easement in favor of the Leasehold Premises or any portion thereof shall be terminated or modified; or
- (l) if Mortgagor shall assign any lease or the rents from any lease for all or a part of the Leasehold Premises other than the Prior Assignment, 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
- (l) 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
- (m) if the Mortgaged Property or any material part thereof shall be condemned; or
- (n) if any material adverse change in the Mortgagor, any Guarantor, or the Mortgaged Property shall occur; or
- (o) 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 Leasehold 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 Leasehold 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 Leasehold 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, LLC, Attention: Glenn F. Scotland, Esq.; in the case of each Mortgagee, at its respective address above stated, with copy to Administrative Agent at 317 Madison Avenue, 2<sup>nd</sup> Floor, New York, New York 10017, Attention: Matthew Schatz, 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 Leasehold 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 Leasehold 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 2.2Artic(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 Block 95 Release.

(a) The Block 95 Parcels consist of Tax Lots 1, 2, 3, 4, 8, 10, 16, 31 all as shown on the current official tax maps of the City of Newark, County of Essex, New Jersey. The Block 95 Parcels are currently and will remain in use as a parking lot with 102 parking spaces for the benefit of the Mortgaged Property.

(b) Mortgagor represents to Mortgagee that lots 10 and 16 in Block 95 (as the same may be consolidated into a new tax lot, collectively, the "**Block 95 Release Parcels**") are intended by Mortgagor to be used in connection for the development of Building 7 as part of the residential phase ("**Residential Phase**") of the "Teachers Village Project". Mortgagee agrees, that provided that all Block 95 Release Parcels Conditions (defined below) have been met by Mortgagor to Mortgagee's satisfaction, at the time that the Block 95 Release Parcels are to be conveyed to an affiliate of Mortgagor and the intended owner and developer of the Building 7, Mortgagee shall release the Block 95 Release Parcels from the lien of the Mortgage (the "**Block 95 Release**"). Mortgagor acknowledges that tax lots 1, 2, 3, 8, and 31 in Block 95 ("**Block 95 Retained Parcels**"), together with the balance of the Mortgaged Property, shall continue to be subject to the lien of the Mortgage and all requirements of the Loan Documents.

(c) The Block 95 Release Parcels Conditions are as follows:

(i) No Event of Default has occurred, and no default which, with the giving of notice and the expiration of any applicable cure period could ripen into an event of default has occurred.

(ii) The release is to occur only in connection with the conveyance of the Block 95 Release Parcels in conjunction with the closing of the acquisition and construction financing for Building 7.

(iii) A consolidation and subdivision of Block 95 has been completed and signed by the City of Newark and all relevant parties (and has been perfected by recording) such that the Block 95 Retained Parcels comprise one tax lot and the Block 95 Release Parcels are in a tax lot or lots which are separate and distinct from the Block 95 Retained Parcel tax lot. Such consolidation and subdivision shall be otherwise consistent with the terms of the "Final Subdivision Plat Teachers Village at Four Corners, Portion of Blocks 57, 58, 93, 94 & 95," prepared by Omland Engineering, Inc. dated January 19, 2011, and approved by the Central Planning Board of the City of Newark by Memorializing Resolution signed March 21, 2011, (the "**Subdivision Plat**").

(iv) All conveyance and release documents have been reviewed and approved by Mortgagee, such approval not to be unreasonably withheld or delayed, in advance of any conveyance, and all of Mortgagee's costs and expenses, including but not limited to reasonable attorneys fees, in connection with any actions taken by Mortgagee

in connection with the Block 95 Release Parcels, shall have been fully paid for by Mortgagor.

(v) Mortgagee shall have received a title endorsement confirming that, after release of the Block 95 Release Parcels, the lien of the Mortgage will continue to encumber the Retained Block 95 Parcel together with the balance of the Mortgage Property as a first mortgage lien subject to no other exceptions other than the Permitted Encumbrances.

(vi) If such an opinion is being given to the holder of any first mortgage lien, Mortgagee shall have received a legal opinion confirming to its satisfaction that the Mortgaged Property, after the release of the Block 95 Release Parcels, will continue to conform to applicable law, including, but not limited to, all applicable zoning requirements.

(d) Mortgagee recognizes and acknowledges that Mortgagor has stated its intention to possibly develop the Block 95 Retained Parcels, and agrees to release the lien of the the Mortgage from the Block 95 Retained Parcels in connection with a closing for the financing for the development of the Block 95 Retained Parcels, provided that in addition to being in compliance with all of the other conditions of Subsection C above, Mortgagor complies with the following additional release conditions (the subsection C conditions, and the conditions contained in this section, collectively, the "**Block 95 Retained Parcels Release Conditions**"), which are as follows:

(i) provide evidence to Mortgagee of site plan approval for the proposed development of the Block 95 Retained Parcels;

(ii) provide evidence to Mortgagee of immediately available alternative parking which satisfies statutory and contractual parking requirements for the Premises; and

(iii) if such an opinion is being given to the holder of any first mortgage lien, provide a legal opinion from Mortgagor's counsel stating that the retained Premises, which remains after the release of the Block 95 Retained Parcel will continue to satisfy all parking obligations set forth in (a) the Lease and (b) site plan approvals obtained for the Project as of the date hereof and all other applicable law and regulation, in form and substance reasonably satisfactory to Mortgagee.

Upon satisfaction of all conditions set forth herein, Mortgagee shall release the Block 95 Retained Parcels from the lien of the Mortgage (the "**Block 95 Retained Parcels Release**"); and the balance of the Mortgaged Property shall continue to be subject to the lien of the Mortgage and all requirements of the Loan Documents.

3.15 Block 57.05 and 58 Partial Release.

(a) Pursuant to the Subdivision Plat, Mortgagor has proposed to offer to dedicate portions of the Mortgaged Property located in Blocks 57.05 and 58 which are adjacent to Maiden Lane and Halsey Streets (collectively, the “**Blocks 57.05-58 Release Parcels**”), to the City of Newark. The conveyance to the City of Newark is expected to take place at such time as is completed.

(b) Mortgagee agrees to release the Blocks 57.05-58 Release Parcels (the “**Blocks 57.05-58 Release**”, and together with the Block 95 Release and the Block 95 Retained Parcels Release, the “**Releases**”) upon the satisfaction of the following conditions (collectively, the “**Release Conditions for Blocks 57.05-58 Release Parcels**”):

(i) No Event of Default has occurred, and no default which, with the giving of notice and the expiration of any applicable cure period could ripen into an event of default has occurred.

(ii) Construction of the Improvements has been completed.

(iii) The release is being granted in connection with the conveyance of the Blocks 57.05-58 Release Parcels to the City of Newark.

(iv) All conveyance and release documents have been reviewed and approved by Mortgagee, such approval not to be unreasonably withheld or delayed, in advance of any conveyance, and all of Mortgagee’s costs and expenses, including but not limited to reasonable attorneys fees, in connection with any actions taken by Mortgagee in connection with the Blocks 57.05-58 Release Parcels, are fully paid for by Mortgagor.

(v) Mortgagee shall have received a title endorsement confirming that, after release of the Blocks 57.05-58 Release Parcels, the lien of the Mortgage will continue to encumber the remainder of the Mortgaged Property as a first mortgage lien subject to no other exceptions other than the Permitted Encumbrances.

(vi) If such an opinion is being given to the holder of any first mortgage lien, Mortgagee shall have received a legal opinion confirming to its satisfaction that the Mortgaged Property, after the release of the release of the Blocks 57.05-58 Release Parcels, will continue to conform to applicable law, including, but not limited to, all applicable zoning requirements.

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

3.17 The Mortgagor represents and warrants that it has no offsets, defenses or counterclaims to the payment of the Mortgage Amount.

3.18 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.

3.19 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.

3.20 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.

3.21 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.

3.22 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 SCHOOL QALICB URBAN  
RENEWAL, LLC**, a New Jersey limited liability company

By: /s/ Ron Beit-Halachmy  
Ron Beit-Halachmy  
Authorized Signatory

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_\_\_, 2012 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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 Leasehold Mortgage (Uninsured)

---

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

[Follows on Next Page]

---

**LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT**

Dated: February 3, 2012  
in the amount of  
\$27,000,000  
(the "*Mortgage Amount*")

From

**TEACHERS VILLAGE SCHOOL QALICB URBAN RENEWAL, 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  
Attention: Mr. Ron Beit

(the "*Mortgagor*")

To

**NJCC CDE ESSEX LLC,**  
a New Jersey limited liability company

having an office at:  
c/o New Jersey Community Capital  
108 Church Street, 3<sup>rd</sup> Floor  
New Brunswick, New Jersey 08901

(*"NJCC Lender"*)

And

**GATEWAY SUB-CDE I, LLC,**  
a Delaware limited liability company

having an office at:  
c/o 2 Gateway Center, 5th Floor  
Newark, New Jersey 07102  
Attention: Wendy Houston

(*"Gateway Lender"*)

LOCATION OF LEASEHOLD PREMISES:

Street                      Halsey Street, Pearl Street, Maiden Lane

---

Address:  
City of: Newark  
County of: Essex  
State of: New Jersey  
Block: 57.05, Lot 3.01  
Block: 58 Lot 35.01; and  
Block: 95 Lots 1, 2, 3, 4, 8 10,16 and 31

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:  
Nixon Peabody LLP  
401 9<sup>th</sup> Street NW, Suite 900  
Washington, D.C. 20004  
Attn: Michael J. Goldman, Esq.

This instrument was prepared by the above named attorney.

---

## Recital

Mortgagor is the owner of a leasehold interest in the premises described in Exhibit A hereto. The Mortgagor proposes to construct or rehabilitate improvements on the Leasehold 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 NJCC Lender and Gateway Lender pursuant to a Building Loan Agreement among the Mortgagor, NJCC Lender, Gateway Lender, and TD Bank, N.A., a national banking association, 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 to NJCC Lender and Gateway Lender the Loan A-1 Note, Loan A-3 Note, Loan B-1 Note, Loan B-3 Note, Loan C-1 Note, Loan C-3 Note, Loan D-1 Note, and Loan D-3 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, NJCC Lender, Gateway 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.

"**Block 95 Parcels**" shall mean the portion of the Mortgaged Property comprising Block 95, Lots 1, 2, 3, 4, Lot 8, 10, 16 and 31, and, all on the current official tax maps of the City of Newark, County of Essex, New Jersey.

"**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 Leasehold Premises.

"**Construction Period**" means the period from the date hereof to the completion of the improvements required to be built pursuant to the terms and conditions of the Loan Agreement.

"**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.

"**Ground Lease**" means that certain Ground Lease by and between Mortgagor and RBH-TRB East Mezz Urban Renewal Entity, L.L.C., a New Jersey limited liability company, dated as of the date hereof.

---

“**Improvements**” means all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon the Leasehold 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 Leasehold Premises are located) in any way relating to the Leasehold 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 Leasehold Premises, the Chattels and/or the Leasehold 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.

“**Leasehold Premises**” means the leasehold estate created pursuant to the Ground Lease with respect to certain 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, which Ground Lease, or a memorandum thereof, has been recorded on the date hereof in the Office of the Recorder of Deeds in and for Essex County, New Jersey, 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.

“**Mortgagee**” or “**Mortgagees**” means, collectively, NJCC Lender, Gateway Lender, and Administrative Agent on behalf of NJCC Lender and Gateway Lender.

“**Releases**” has the meaning set forth in Section 3.15 hereof.

“**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 Leasehold 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 Leasehold Premises, subject to the Releases;

(ii) the Improvements;

(iii) the Chattels;

(iv) the Intangibles;

(v) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (the “*Rents*”), the Lease (as such term is defined in the Loan Agreement) and all leases and lettings of the Leasehold 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 Mortgaged Property 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 Leasehold 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 Mortgaged Property;

(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 Leasehold 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 Mortgaged Property, 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

(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 a leasehold estate in the Leasehold 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 subject only to the Releases 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 Leasehold 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 either 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 Leasehold Premises and all transactions related to the Leasehold 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 leasehold 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 Leasehold 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 Leasehold 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, including from the Ground Lease, and if applicable Mortgagor's income, with respect to subtenants under the Ground Lease, 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; (ii) 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 1.09 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. Subject to the Intercreditor Agreement, 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 Borrower'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 1.09, 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) Subject to the Intercreditor Agreement and, for so long as it is in effect, the Ground Lease, 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 Architect's Estimate (as defined below) of the cost of such restoration and the insurance proceeds received.

(e) Subject to the Intercreditor Agreement and, for so long as it is in effect, the Ground Lease, 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) Subject to the Intercreditor Agreement and, for so long as it is in effect, the Ground Lease, 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 Permitted Encumbrances, if any;

(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 1.09(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.

1.10 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.

1.11 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.

1.12 (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 Leasehold 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 therefore, 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.

1.13 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 (with the exception of the development of Building 7 as set forth in Section 3.14 hereof), 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.

1.14 The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Leasehold 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 the 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.

1.15 (a) The Mortgagor will not (i) execute an assignment of the rents, or any part thereof, from the Leasehold Premises except for the assignment to the Fee Owner of the leases and rents from the Leasehold Premises pursuant to the terms of the Ground Lease (the "*Prior Assignment*"), (ii) terminate or consent to the cancellation or surrender of any lease of the Leasehold Premises, or any part thereof, now existing or hereafter to be made, (iii) modify or amend or consent to the modification or amendment of the Ground Lease or any other lease or sublease of the Leasehold Premises, or any part thereof, now existing or hereafter to be made, 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 each Mortgagee, which consent shall not be unreasonably withheld.

(b) Except for the Ground Lease and the Leases, the Mortgagor will not execute any lease of all or any portion of the Leasehold Premises, without first obtaining the written consent of each 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 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 any Mortgagee. Mortgagor shall furnish to any Mortgagee, within ten (10) business days after a request by such 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 each Mortgagee may require. Under no circumstances shall any 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 any 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 Leasehold Premises, the terms of their respective leases, the space occupied and the rentals payable thereunder.

1.16 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.

1.17 To the extent not so provided by applicable law each sublease of the Leasehold 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 sublessee thereunder will, upon request of any person succeeding to the interest of the Mortgagor as a result of such enforcement, automatically become the sublessee of said successor in interest, without change in the terms or other provisions of such sublease, 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 sublessee of its obligations under said sublease or (ii) any amendment or modification of the sublease made without the consent of each Mortgagee or such successor in interest. Each sublease shall also provide that, upon request by said successor in interest, such sublessee shall execute and deliver an instrument or instruments confirming such attornment.

1.18 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.

1.19 [RESERVED.]

1.20 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.

1.21 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.

1.22 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold 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 Leasehold Premises and any delivery by the Mortgagor and the acceptance by each Mortgagee of a deed in lieu of foreclosure of the Leasehold Premises.

1.23 Mortgagor will not consent to, join in, permit or allow any change in the zoning laws or ordinances relating to or affecting the Leasehold Premises, and will promptly notify each Mortgagee of any changes to the zoning laws affecting the Leasehold Premises of which it has received written notice thereof.

1.24 Except for the Prior Assignment, the Leases and the Releases, 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 Leasehold Premises, nor shall Mortgagor enter into any management and/or leasing agency or similar agreements with respect to the Leasehold 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, 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.

1.25 Except for the Releases, 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 Prior Assignment) any further assignment of rents from the Mortgaged Property, or (except for the Leases) any lease of all or substantially all of the Mortgaged Property, the Leasehold 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 1.25) 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.

1.26 In addition to making payment of all rent, additional rent, tax and other payments and charges required to be made by Mortgagor, Mortgagor, as tenant under and pursuant to the provisions of the Ground Lease, covenants that it will:

- (a) Diligently perform and observe all of the material terms, conditions and covenants of the Ground Lease required to be performed and observed by Mortgagor, to the end that all things shall be done which are reasonably necessary to keep unimpaired Mortgagor's rights under the Ground Lease, and Mortgagor covenants that no release or forbearance of any of the obligations of Mortgagor under the Ground Lease, pursuant to the Ground Lease or otherwise shall release Mortgagor from any of its obligations under this Mortgage, including, without limitation, Mortgagor's obligations under this Section 1.26(a);
- (b) Upon having actual knowledge thereof, promptly notify Mortgagees in writing of any default by any party in the performance and observance of any of the terms, conditions or covenants to be performed or observed under the Ground Lease;
- (c) Promptly notify Mortgagees in writing of the giving of any notice under the Ground Lease of any default of Mortgagor in the observance of any terms, covenants or conditions of the Ground Lease and deliver to Mortgagees a true copy of each such notice; and
- (d) Not surrender the Leasehold Premises nor terminate or cancel the Ground Lease or enter into any agreement (whether oral or written) modifying, supplementing or amending the Ground Lease without the prior written consent of Mortgagees, and as security for the repayment of the obligations secured hereby Mortgagor hereby assigns to Mortgagees all

rights and options to extend, renew, terminate or modify the Ground Lease in any manner whatsoever.

(e) Mortgagees shall have the right (but shall not be obligated) to take any action Mortgagees deem necessary or desirable to prevent or to cure any default by Mortgagor in the performance of or compliance with any of Mortgagor's obligations under the Ground Lease. Upon receipt by Mortgagees of any written notice of default by Mortgagor under the Ground Lease, Mortgagees may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by Mortgagor or by any party on behalf of Mortgagor. Mortgagor hereby expressly grants to Mortgagees, and agrees that Mortgagees shall have, the absolute and immediate right to enter in and upon the Mortgaged Property or any part thereof to such extent and as often as Mortgagees, in their sole discretion, deem necessary or desirable in order to prevent or to cure any such default by Mortgagor. Mortgagees may pay and expend such sums of money as Mortgagees in their sole discretion deem necessary for any such purpose, and Mortgagor hereby agrees to pay to Mortgagees, immediately and without demand, all such sums so paid and expended by Mortgagees, together with interest thereon from the date of each such payment at the Involuntary Rate. All sums so paid and expended by Mortgagees, and the interest thereon, shall be added to and be secured by the lien of this Mortgage.

(f) As further security for the repayment of the obligations secured hereby and for the performance of the covenants contained herein and in the Ground Lease, Mortgagor hereby assigns to Mortgagees all of its rights, privileges and prerogatives as lessee under the Ground Lease to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment by Mortgagor without the prior written consent thereto by Mortgagees shall be void and of no force and effect; provided, however, that so long as no Event of Default has occurred or is continuing under this Mortgage, Mortgagees shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease. Mortgagor represents and warrants that it has delivered to Mortgagees a true and accurate copy of the Ground Lease, together with all amendments thereto, if any.

(g) Unless Mortgagees shall otherwise expressly consent in writing, Mortgagor shall not cause or consent to the fee title to the Leasehold Premises merging with the leasehold estate in the Leasehold Premises and during Mortgagor's ownership of the Leasehold Premises shall endeavor to always keep such interests separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee under the Ground Lease, or in a third party by purchase or otherwise.

(h) Mortgagor shall, from time to time, use commercially reasonable efforts to obtain from the lessor under the Ground Leases such certificates of estoppel with respect to compliance by Mortgagor with the terms of the Ground Leases as may be requested by Mortgagees.

## 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, 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 sixty (60) 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 for the Releases, 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 Prior Assignment), or any lease of all or substantially all of the Mortgaged Property (except for the Leases), the Leasehold 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 incorporation; 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 Leasehold Premises or any portion thereof or if any easement in favor of the Leasehold Premises or any portion thereof shall be terminated or modified; or

(l) if Mortgagor shall assign any lease or the rents from any lease for all or a part of the Leasehold Premises other than the Prior Assignment, 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

- (l) 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
- (m) if the Mortgaged Property or any material part thereof shall be condemned; or
- (n) if any material adverse change in the Mortgagor, any Guarantor, or the Mortgaged Property shall occur; or
- (o) 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 Leasehold 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 Leasehold 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 Leasehold 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, LLC, Attention: Glenn F. Scotland, Esq.; in the case of each Mortgagee, at its respective address above stated, with copy to Administrative Agent at 317 Madison Avenue, 2<sup>nd</sup> Floor, New York, New York 10017, Attention: Matthew Schatz, 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 Leasehold 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 Leasehold 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 2.2Artic(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 Block 95 Release.

(a) The Block 95 Parcels consist of Tax Lots 1, 2, 3, 4, 8, 10, 16, 31 all as shown on the current official tax maps of the City of Newark, County of Essex, New Jersey. The Block 95 Parcels are currently and will remain in use as a parking lot with 102 parking spaces for the benefit of the Mortgaged Property.

(b) Mortgagor represents to Mortgagee that lots 10 and 16 in Block 95 (as the same may be consolidated into a new tax lot, collectively, the "**Block 95 Release Parcels**") are intended by Mortgagor to be used in connection for the development of Building 7 as part of the residential phase ("**Residential Phase**") of the "Teachers Village Project". Mortgagee agrees, that provided that all Block 95 Release Parcels Conditions (defined below) have been met by Mortgagor to Mortgagee's satisfaction, at the time that the Block 95 Release Parcels are to be conveyed to an affiliate of Mortgagor and the intended owner and developer of the Building 7, Mortgagee shall release the Block 95 Release Parcels from the lien of the Mortgage (the "**Block 95 Release**"). Mortgagor acknowledges that tax lots 1, 2, 3, 8, and 31 in Block 95 ("**Block 95 Retained Parcels**"), together with the balance of the Mortgaged Property, shall continue to be subject to the lien of the Mortgage and all requirements of the Loan Documents.

(c) The Block 95 Release Parcels Conditions are as follows:

(i) No Event of Default has occurred, and no default which, with the giving of notice and the expiration of any applicable cure period could ripen into an event of default has occurred.

(ii) The release is to occur only in connection with the conveyance of the Block 95 Release Parcels in conjunction with the closing of the acquisition and construction financing for Building 7.

(iii) A consolidation and subdivision of Block 95 has been completed and signed by the City of Newark and all relevant parties (and has been perfected by recording) such that the Block 95 Retained Parcels comprise one tax lot and the Block 95 Release Parcels are in a tax lot or lots which are separate and distinct from the Block 95 Retained Parcel tax lot. Such consolidation and subdivision shall be otherwise consistent with the terms of the "Final Subdivision Plat Teachers Village at Four Corners, Portion of Blocks 57, 58, 93, 94 & 95," prepared by Omland Engineering, Inc. dated January 19, 2011, and approved by the Central Planning Board of the City of Newark by Memorializing Resolution signed March 21, 2011, (the "**Subdivision Plat**").

(iv) All conveyance and release documents have been reviewed and approved by Mortgagee, such approval not to be unreasonably withheld or delayed, in advance of any conveyance, and all of Mortgagee's costs and expenses, including but not limited to reasonable attorneys fees, in connection with any actions taken by Mortgagee in connection with the Block 95 Release Parcels, shall have been fully paid for by Mortgagor.

(v) Mortgagee shall have received a title endorsement confirming that, after release of the Block 95 Release Parcels, the lien of the Mortgage will continue to encumber the Retained Block 95 Parcel together with the balance of the Mortgage Property as a first mortgage lien subject to no other exceptions other than the Permitted Encumbrances.

(vi) If such an opinion is being given to the holder of any first mortgage lien, Mortgagee shall have received a legal opinion confirming to its satisfaction that the Mortgaged Property, after the release of the Block 95 Release Parcels, will continue to conform to applicable law, including, but not limited to, all applicable zoning requirements.

(d) Mortgagee recognizes and acknowledges that Mortgagor has stated its intention to possibly develop the Block 95 Retained Parcels, and agrees to release the lien of the the Mortgage from the Block 95 Retained Parcels in connection with a closing for the financing for the development of the Block 95 Retained Parcels, provided that in addition to being in compliance with all of the other conditions of Subsection C above, Mortgagor complies with the following additional release conditions (the subsection C conditions, and the conditions contained in this section, collectively, the "**Block 95 Retained Parcels Release Conditions**"), which are as follows:

- (i) provide evidence to Mortgagee of site plan approval for the proposed development of the Block 95 Retained Parcels;
- (ii) provide evidence to Mortgagee of immediately available alternative parking which satisfies statutory and contractual parking requirements for the Premises; and
- (iii) if such an opinion is being given to the holder of any first mortgage lien, provide a legal opinion from Mortgagor's counsel stating that the retained Premises, which remains after the release of the Block 95 Retained Parcel will continue to satisfy all parking obligations set forth in (a) the Lease and (b) site plan approvals obtained for the Project as of the date hereof and all other applicable law and regulation, in form and substance reasonably satisfactory to Mortgagee.

Upon satisfaction of all conditions set forth herein, Mortgagee shall release the Block 95 Retained Parcels from the lien of the Mortgage (the "**Block 95 Retained Parcels Release**"); and the balance of the Mortgaged Property shall continue to be subject to the lien of the Mortgage and all requirements of the Loan Documents.

3.15 Block 57.05 and 58 Partial Release.

(a) Pursuant to the Subdivision Plat, Mortgagor has proposed to offer to dedicate portions of the Mortgaged Property located in Blocks 57.05 and 58 which are adjacent to Maiden Lane and Halsey Streets (collectively, the "**Blocks 57.05-58 Release Parcels**"), to the City of Newark. The conveyance to the City of Newark is expected to take place at such time as is completed.

(b) Mortgagee agrees to release the Blocks 57.05-58 Release Parcels (the "**Blocks 57.05-58 Release**"), and together with the Block 95 Release and the Block 95 Retained Parcels Release, the "**Releases**") upon the satisfaction of the following conditions (collectively, the "**Release Conditions for Blocks 57.05-58 Release Parcels**"):

- (i) No Event of Default has occurred, and no default which, with the giving of notice and the expiration of any applicable cure period could ripen into an event of default has occurred.
- (ii) Construction of the Improvements has been completed.
- (iii) The release is being granted in connection with the conveyance of the Blocks 57.05-58 Release Parcels to the City of Newark.
- (iv) All conveyance and release documents have been reviewed and approved by Mortgagee, such approval not to be unreasonably withheld or delayed, in advance of any conveyance, and all of Mortgagee's costs and expenses, including but not limited to reasonable attorneys fees, in connection

with any actions taken by Mortgagee in connection with the Blocks 57.05-58 Release Parcels, are fully paid for by Mortgagor.

(v) Mortgagee shall have received a title endorsement confirming that, after release of the Blocks 57.05-58 Release Parcels, the lien of the Mortgage will continue to encumber the remainder of the Mortgaged Property as a first mortgage lien subject to no other exceptions other than the Permitted Encumbrances.

(vi) If such an opinion is being given to the holder of any first mortgage lien, Mortgagee shall have received a legal opinion confirming to its satisfaction that the Mortgaged Property, after the release of the release of the Blocks 57.05-58 Release Parcels, will continue to conform to applicable law, including, but not limited to, all applicable zoning requirements.

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

3.17 The Mortgagor represents and warrants that it has no offsets, defenses or counterclaims to the payment of the Mortgage Amount.

3.18 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.

3.19 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.

3.20 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.

3.21 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.

3.22 THE MORTGAGOR ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE AND CORRECT COPY OF THIS MORTGAGE.

*[Signature Page Follows]*





**EXHIBIT A**

**DESCRIPTION OF PREMISES**

[Follows on Next Page]

---

**JOINT AND SEVERAL COMPLETION GUARANTY**

**THIS JOINT AND SEVERAL COMPLETION GUARANTY** (this "**Guaranty**"), dated as of February 3, 2012, is made on a joint and several basis by **TEACHERS VILLAGE SCHOOL QALICB URBAN RENEWAL, LLC**, a New Jersey limited liability company having an address at 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 at c/o RBH Group, 89 Market Street, 8<sup>th</sup> Floor, Newark, New Jersey 07102 ("**RBH**"), and together with Borrower, the "**Guarantors**" and each a "**Guarantor**", to **TD BANK, N.A.**, national banking association having an address at 317 Madison Avenue, 2<sup>nd</sup> Floor, New York, New York 10017, acting in its capacity as administrative agent (the "**Administrative Agent**"); **GATEWAY SUB-CDE I, LLC**, a New Jersey limited liability company, having an address of c/o Gateway CDE LLC, 2 Gateway Center, 5<sup>th</sup> Floor, Newark, New Jersey 07102 ("**Gateway Lender**"); and **NJCC CDE ESSEX LLC**, a New Jersey limited liability company having an address at c/o New Jersey Community Capital, 108 Church Street, 3rd Floor, New Brunswick, NJ 08901 ("**NJCC Lender**") and together with Gateway Lender, the "**Lenders**" and each a "**Lender**").

**WHEREAS**, NJCC Lender has agreed to make a loan in the original aggregate principal amount of up to Nine Million Seven Hundred Thousand and No/100 Dollars (\$9,700,000.00) (collectively, the "**NJCC Loan**") to Borrower, which NJCC Loan will be evidenced by the Loan A-1 Note, Loan A-2 Note, Loan B-1 Note, Loan B-2 Note, Loan C-1 Note, Loan C-2 Note, Loan D-1 Note, and Loan D-2 Note, which will be secured by the Mortgage; and Gateway Lender has agreed to make a loan in the original aggregate principal amount of up to Fifty Million and No/100 Dollars (\$50,000,000.00) (collectively, the "**Gateway Loan**", and together with the NJCC Loan, the "**Loan**") to Borrower, which Gateway Loan will be evidenced by the Loan A-3 Note, Loan A-4 Note, Loan B-3 Note, Loan B-4 Note, Loan C-3 Note, Loan C-4 Note, Loan D-3 Note, and Loan D-4 Note, which will also be secured by the Mortgage; and each of the Loans shall be advanced pursuant to the terms and provisions of the Loan Agreement (all as described and defined in Exhibit A attached hereto), and will be used to finance the costs of Borrower's acquisition of its leasehold interest in the Premises and the construction of the Improvements (all as described and defined in Exhibit A attached hereto);

**WHEREAS**, the Lenders are 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 Lenders 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 Administrative Agent on behalf of itself and the Lenders 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 Administrative Agent and the Lenders, 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 and expenses incurred in connection therewith, including, but not limited to, any Shortfall Amount (as such term is defined in the Loan Agreement);

(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 Administrative Agent) 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 Administrative Agent on behalf of any or both Lenders, 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 Administrative Agent to the Guarantors, the Guarantors shall reimburse the Administrative Agent and/or any and each 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 Administrative Agent's and/or any and each Lender's counsel, whether in-house staff, retained firms or otherwise (collectively, "**Legal Fees**")), to the extent not otherwise reimbursed to Administrative Agent and/or any and each 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 Administrative Agent for its own account or on behalf of the Lender(s), as may be applicable, by the Guarantors as hereinabove set forth, for such costs and expenses incurred by Administrative Agent and/or any 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 Administrative Agent and/or any Lender(s) 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 Administrative Agent and each 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 Administrative Agent (on behalf of itself and any Lender) and/or each and any 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 Administrative Agent and/or each 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 Administrative Agent and any 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 Administrative Agent and the Lender(s) and that neither Administrative Agent nor any Lender has an 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 Administrative Agent and each 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 Administrative Agent:

(a) furnish to Administrative Agent and Lenders, 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 Administrative Agent 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 Administrative Agent, 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 Administrative Agent, 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 Administrative Agent or any 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 Administrative Agent in such request, together with a Certification with respect thereto.

7. In addition to any right available to Administrative Agent and/or Lenders under applicable law or any other agreement, the Guarantors hereby give to Administrative Agent on behalf of the Lenders 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 Administrative Agent and/or each Lender, their correspondents, participants or agents from or for the Guarantors, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of the Administrative Agent and/or any 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 Administrative Agent and/or either 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 Administrative Agent and/or any Lender, whether joint, several, absolute, contingent, secured, matured or unmatured (collectively, the “**Liabilities**”), hereby authorizing Administrative Agent (on behalf of each Lender) and/or each 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 Administrative Agent (on behalf of each Lender) and each Lender, in addition to any right available to the Administrative Agent and/or each 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 Administrative Agent and/or each Lender in any capacity to any or all of the Guarantors, whether or not due, and Administrative Agent (on behalf of itself and each Lender) and each Lender shall, at the option of the Administrative Agent and/or such Lender, as may be applicable, 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 Administrative Agent and/or any 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, Administrative Agent (on behalf of any Lender) and/or any 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 Administrative Agent (for the benefit of either Lender) and/or either Lender for any obligation of the Borrower, or any security at any time held by or available to Administrative Agent (for the benefit of the Lender(s)) and/or either 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 (other than Administrative Agent or any Lender) 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 Administrative Agent and/or either Lender, as applicable, may see fit;

and the Guarantors shall remain bound in all respects under this Guaranty without any loss of any rights by Administrative Agent and/or any Lender and without affecting the liability of the Guarantors. Without limiting the generality of the foregoing, Administrative Agent (on behalf of Lenders) and each Lender are 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 Administrative Agent (on behalf of Lenders) and/or each 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 Administrative Agent and/or any Lender for application in payment or reduction of the Debt, the Liabilities and/or the Other Obligations may be applied by Administrative Agent and/or any Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as Administrative Agent and/or such 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 Guarantor;



(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 (d) 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, Administrative Agent on behalf of the Lenders may declare the Liabilities to be, and the same shall become, immediately due and payable.

11. Each reference herein to Administrative Agent and/or any Lender(s) shall be deemed to include their 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 Administrative Agent and any applicable 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. Administrative Agent and any 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 Administrative Agent and/or any 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 Administrative Agent and/or any Lender to take further action without notice or demand as provided in this Guaranty. No course of dealing between any of the Guarantors and Administrative Agent and/or any 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, changed by an agreement in writing signed by Administrative Agent, each Lender and the Guarantors. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by Administrative Agent and if so given by Administrative Agent shall only be effective in the specific instance in which given. The execution and delivery hereafter to Administrative Agent for the benefit of the Lenders 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 Administrative Agent and/or the Lender(s) hereunder or under any instrument of guaranty hereafter executed and delivered to Administrative Agent and/or such Lender(s) 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 Administrative Agent (on behalf of Lenders) or each 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 Administrative Agent, each 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 Administrative Agent and each 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 Administrative Agent and each 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 to Administrative Agent (on behalf of each Lender) or each 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 Administrative Agent:	TD Bank, N.A. 317 Madison Avenue, 2nd Floor New York, NY 10017 Attention: Matthew Schatz
with a copy to:	Windels Marx Lane & Mittendorf, LLP 156 West 56th Street New York, New York 10019 Attention: Michele Arbeeny
And with a copy to:	Gateway Sub-CDE I, LLC 2 Gateway Center, 5th Floor Newark, New Jersey 07102 Attention: Wendy Houston
with a copy to:	Nixon Peabody LLP 401 9 <sup>th</sup> Street, NW Washington, DC 20004 Attention: Michael J. Goldman, Esq.
And with a copy to:	NJCC CDE Essex LLC New Jersey Community Capital 108 Church Street, 3rd Floor New Brunswick, NJ 08901 Attention: Marie Mascherin
and to:	Duane Morris LLP 30 South 17th Street Philadelphia, PA 19103-4196 Attention: Arthur Momjian, Esq.
If to the Guarantors:	Teachers Village School QALICB Urban Renewal, LLC RBH-TRB Newark Holdings, LLC

c/o RBH Group  
89 Market Street, 8<sup>th</sup> Floor  
Newark, New Jersey 07102  
Attention: Mr. Ron Beit

And:

McManimon & Scotland, LLC  
1037 Raymond Boulevard, Suite 400  
Newark, New Jersey 07102  
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 Administrative Agent. 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 Administrative Agent and/or any 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 Administrative Agent and/or any 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 Administrative Agent (on behalf of each Lender) and/or each 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 Administrative Agent on behalf of itself and each 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.

28. 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 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 SCHOOL QALICB URBAN RENEWAL, LLC**, a New Jersey limited liability company

By: /s/ Ron Beit-Halachmy

Ron Beit-Halachmy  
Authorized Signatory

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

By: /s/ Ron Beit-Halachmy

Ron Beit-Halachmy  
Authorized Signatory

Signature Page  
QLICI Completion Guaranty

---



STATE OF )  
 )  
ss.:  
COUNTY OF )

On the      day of                      in the year 2012 before me, the undersigned, a notary public in and for said state, personally appeared                      , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that 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

STATE OF )  
 )  
ss.:  
COUNTY OF )

On the      day of                      in the year 2012 before me, the undersigned, a notary public in and for said state, personally appeared                      , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that 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

Signature Page  
QLICI Completion Guaranty

---

## 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 Administrative Agent and/or any 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 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, Administrative Agent and each Lender.

Mortgage: The term “**Mortgage**” as used in this Guaranty shall mean, collectively, (i) that certain Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement in the aggregate sum of \$27,000,000.00, dated as of the date hereof, given by the Borrower to each Lender and Administrative Agent for the benefit of the Lenders 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, and (ii) that certain Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement in the aggregate sum of \$32,700,000.00, dated as of the date hereof, given by the Borrower to each Lender and Administrative Agent for the benefit of the Lenders 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.

Premises: The term “**Premises**” as used in this Guaranty shall mean the real property located in Essex County, Newark, New Jersey, identified in the Mortgage.

---

**GUARANTY OF  
NEW MARKETS TAX CREDITS**

**THIS GUARANTY OF NEW MARKETS TAX CREDITS** (this "Guaranty"), is made as of February 3, 2012, by **TEACHERS VILLAGE SCHOOL QALICB URBAN RENEWAL, 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**, Gateway CDE, LLC, a Delaware limited liability company ("Gateway Allocatee"), has received an allocation of NMTCs (as hereinafter defined) under Section 45D of the Code (as hereinafter defined), in the amount of \$50,000,000 (the "Gateway Allocation"); and

**WHEREAS**, on the date hereof, Gateway Allocatee will make a sub-allocation of the Gateway Allocation to Gateway Sub-CDE I, LLC, a Delaware limited liability company (the "Gateway Sub-CDE"), in the amount of \$50,000,000 (the "Gateway Sub-Allocation"); and

**WHEREAS**, Community Loan Fund of New Jersey, Inc., a New Jersey not-for-profit corporation ("NJCC Allocatee" and together with Gateway Allocatee, collectively, the "Allocatee"), has received an allocation of NMTCs under Section 45D of the Code, in the amount of \$35,000,000 (the "NJCC Allocation" and together with the Gateway Allocation, collectively, the "Allocation"); and

**WHEREAS**, NJCC Allocatee will make a sub-allocation of the NJCC Allocation to NJCC CDE Essex, LLC, a New Jersey limited liability company (the "NJCC Sub-CDE" and together with the Gateway Sub-CDE, collectively, the "Sub-CDE"), in the amount of \$10,000,000 (the "NJCC Sub-Allocation" and together with the Gateway Sub-Allocation, collectively, the "Sub-Allocation"); and

**WHEREAS**, the Investor has made or agreed to make equity investments in GS Halsey NMTC Investment Fund LLC, a Delaware limited liability company (the "Fund"), in the amounts of \$30,000,000, \$5,689,766 and \$2,500,234 (collectively, the "Fund Capital Contribution") (although it is not certain that the equity investment in the amount of \$9,158,368 shall occur and if such equity investment does not occur, all references to the Fund Capital Contributions shall refer to only the amount of the Fund Capital Contributions that have been made) in exchange for a 100.00% ownership interest in the Fund; and

**WHEREAS**, the Fund will obtain a loan from RBH-TRB East Mezz Urban Renewal Entity, LLC, a New Jersey urban renewal limited liability company (the "Senior");

Leverage Lender”), in the amount of \$27,795,619 (the “Senior Leverage Loan”), which shall be evidenced by two promissory notes, one in the amount of \$17,550,000 and one in the amount of \$10,245,619; and

**WHEREAS**, the Fund will obtain a loan from Goldman Sachs Bank USA, a New York banking corporation (the “First Subordinate Leverage Lender”), in the amount of \$8,400,000 (the “First Subordinate Leverage Loan”);

**WHEREAS**, the Fund will obtain a second subordinate leverage loan from RBH-TRB Newark Holdings, LLC (the “Second Subordinate Leverage Lender”), in the amount of \$766,248 (the “Second Subordinate Leverage Loan” and together with the Senior Leverage Loan and the First Subordinate Leverage Loan, collectively, 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 NJCC Sub-CDE in the amount of \$5,000,000 and to the Gateway Sub-CDE in the amount of \$15,841,632 (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 NJCC Sub-CDE and a 100% equity interest in the Gateway Sub-CDE; and

**WHEREAS**, on or before May 4, 2012, the following may occur: (i) the Fund will obtain a leverage loan from the Senior Leverage Lender, in the aggregate principal amount of \$6,658,133 (the “Second Senior Leverage Loan”); and (ii) the Fund will use the proceeds of the Second Senior Leverage Loan to (a) make a second equity investment in the NJCC Sub-CDE in the amount of \$5,000,000 and a third equity investment in the Gateway Sub-CDE in the amount of \$4,158,368 (each such capital contribution shall be a QEI, although it is not certain that such capital contributions shall occur), and (b) pay certain operating expenses of the Fund. If such capital contributions do not occur, all the references to QEIs shall refer to the QEIs made on the date hereof; 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 School QALICB Urban Renewal, 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 Gateway Allocation Agreement and the NJCC Allocation Agreement.

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

“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 February 3, 2012 and attached hereto as *Exhibit A*.

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

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

“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 Community Loan Fund of New Jersey, Inc., as non-member manager, as amended from time to time.

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

“Gateway Allocation Agreement” means, collectively, that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 07NMA003142), with a Notice of Allocation date of September 20, 2007, by and among the Gateway Allocatee, the Gateway Sub-CDE, other Subsidiary Allocatees of the Gateway Allocatee, and the CDFI Fund, governing the Allocation and Sub-Allocation, dated February 24, 2008, as such agreement may be further amended from time to time.

“Gateway Sub-CDE Agreement” means that certain First Amended and Restated Operating Agreement of the Gateway Sub-CDE, effective as of the date hereof, by and between Gateway 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 the After-Tax Basis of 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 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 Gateway Sub-CDE, NJCC Sub-CDE, and Teachers Village School QALICB Urban Renewal, L.L.C, a New Jersey urban renewal limited liability company, dated as of the date hereof.

“NJCC Allocation Agreement” means, collectively, that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 08NMA000129), by and among the NJCC Allocatee, the NJCC Sub-CDE, other Subsidiary Allocatees of the NJCC Allocatee, and the CDFI Fund, governing the Allocation and Sub-Allocation, dated March 18, 2009, as amended by those certain Amendments of NMTC Allocation Agreement dated December 23, 2009, December 17, 2010, and October 27, 2011, as such agreement may be further amended from time to time.

“NJCC Sub-CDE Agreement” means that certain Amended and Restated Operating Agreement of the NJCC Sub-CDE, dated as of even date herewith, by and between NJCC Allocatee, as managing member 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).

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

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

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

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

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

“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 Gateway Sub-CDE Agreement and the NJCC 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 QEIs in the Sub-CDE) equal to 7.61%, 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 Federal Express for next Business Day delivery or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, 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
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, LLC  
1037 Raymond Boulevard, Suite 400  
Newark, New Jersey 07102  
Attn: Glenn Scotland, 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 SCHOOL QALICB URBAN  
RENEWAL, LLC,**  
a New Jersey Urban Renewal limited liability company

By: /s/ Ron Beit-Halachmy  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

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

By: /s/ Ron Beit-Halachmy  
Name: Ron Beit-Halachmy  
Title: Authorized Signatory

---

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

---

## CERTIFICATION

I, Jeffrey A. Gould, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended March 31, 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 control over financial reporting, to the registrant's auditors and the audit committee of 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: May 10, 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 Quarterly Report on Form 10-Q for the quarter ended March 31, 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 control over financial reporting, to the registrant's auditors and the audit committee of 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: May 10, 2012

/s/ David W. Kalish

David W. Kalish  
Senior Vice President - Finance

---

## CERTIFICATION

I, George Zweier, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended March 31, 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 control over financial reporting, to the registrant's auditors and the audit committee of 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: May 10, 2012

/s/ George Zweier  
George Zweier  
Vice President and  
Chief Financial Officer

---

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

I, Jeffrey A. Gould, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended March 31, 2012 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (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: May 10, 2012

/s/ Jeffrey A. Gould  
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)

I, David W. Kalish, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended March 31, 2012 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (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: May 10, 2012

/s/ David W. Kalish  
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)

I, George Zweier, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended March 31, 2012 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (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: May 10, 2012

/s/ George Zweier  
George Zweier  
Vice President and  
Chief Financial Officer

---

---

---

**brt-20120331.xml**

---

---

**brt-20120331.xsd**

---

---

**brt-20120331\_cal.xml**

---

---

**brt-20120331\_lab.xml**

---

---

**brt-20120331\_pre.xml**

---

---

**brt-20120331\_def.xml**