


15


 2009 00109276
 Bk: 52977 Pg: 41 Doc: MTG
 Page: 1 of 15 06/12/2009 11:18 AM

Return To:
 Middlesex Savings Bank
 Attn: Loan Servicing
 120 Flanders Road
 Westborough, MA 01851

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

This **MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT** (this "Mortgage") entered into as of June 2, 2009 between Concord Housing Authority, a public body politic and corporate duly established pursuant to Massachusetts General Laws Chapter 121B section 3, with an address of 34 Everett Street, Concord, Middlesex County, Massachusetts 01742 (the "Borrower") and Middlesex Savings Bank, which is organized and existing under the laws of the Commonwealth of Massachusetts, and whose address is 6 Main Street, Natick, Massachusetts 01760 (the "Lender").

Property: 405 Old Bedford Road, Concord, MA 01742

The real property, which is the subject matter of this Mortgage, has the following address: 405 Old Bedford Road, in said Concord. Said real property is more particularly described in Exhibit A attached hereto. This Mortgage secures all Obligations (as hereinafter defined) including without limitation all liabilities pursuant to (i) that certain Commercial Mortgage Note by Borrower in favor of the Lender with an original principal amount of Two Hundred and Sixty Thousand (\$260,000.00) even date herewith (the "Note") as such Note may be modified, extended and/or amended; and (ii) that certain Commercial Mortgage Loan Agreement between Borrower and Lender of even date herewith (the "Loan Agreement") as such Loan Agreement may be modified, extended and/or amended; and (iii) all other documents executed by Borrower in connection therewith. The Note, the Loan Agreement, and said other documents referred to in (iii) above are collectively referred to as the "Security Instruments".

1. Mortgage, Obligations, and Future Advances

1.1 Mortgage. For valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, the Borrower hereby grants to the Lender, with MORTGAGE COVENANTS, the "Property" described below, to secure the prompt payment and performance of the Obligations.

1.2 Property. The term "Property", as used in this Mortgage, shall mean: (a) the land described in Exhibit A attached hereto, and all easements, rights, privileges and appurtenances thereto, and including all of Borrower's right, title and interest in and to the rights-of-ways, streets, and alleys adjacent thereto, whether any of the same now exist or are hereafter acquired by reversion or otherwise; (b) the buildings and other structures and improvements now or hereafter upon the land, including all machinery, fixtures and equipment of every kind and nature whatsoever forming a part of said buildings or other structures (the "Improvements") including all materials

Concord Housing Authority

Initial: *NC M.J*

stored on the land for incorporation into the Improvements; (c) the lease or leases, now in existence or those which may be created in the future during the term of this Mortgage, which leases cover portions or all of the Property, and any extensions and renewals of any thereof and any guarantees of all present and future lessee's obligations under any thereof, and all rents, income and profits arising from the leases and extensions and renewals thereof, if any, and together with all rents, income and profits due or to become due from any and all other tenancies for the use or occupation of the Property or any part thereof which may be created in the future during the term of this Mortgage, whether or not recorded, specifically excluding all duties or obligations of the Lender of any kind arising there under (the "Leases"); (d) all of the licenses, permits, approvals, agreements, Special Permits, Orders of Condition, Certificates of Compliance, and all of the Lender's right, title and interest therein, whether now existing or hereafter acquired, related to the Property or the Improvements, either as constructed or to be constructed as part of any construction project contemplated in the Loan Agreement (the "Assigned Approvals"); and (e) all of the Borrower's right, title and interest in, to and under all architectural, design and construction agreements, and all other contracts, agreements, warranties, licenses, approvals, permits, plans and specifications whether now or hereafter existing and in any way relating, directly or indirectly to, or issued or prepared in connection with the Property, or in connection with any contemplated construction on the Property (the "Plans and Specifications").

1.3 Mortgage as Security Agreement and Financing Statement. This Mortgage shall be deemed to be a security agreement and financing statement pursuant to the terms of the Uniform Commercial Code of Massachusetts (M.G.L. c. 106). No modification to any other Security Instrument shall require modification of this Mortgage unless otherwise required by law, or unless there is a material change in the definition of "Property" hereunder.

1.4 Obligations. The term "Obligation(s)", as used in this Mortgage, shall mean, without limitation, all indebtedness, liabilities, commitments, and performances which the Borrower owes to the Lender, whether arising under this Mortgage, the Note, any other Security Instrument, or otherwise, now existing or hereafter arising, and whether direct or indirect, absolute or contingent, joint or several, due or not due; but only relating to the Property as defined in Section 1.2 above.

1.5 [INTENTIONALLY OMITTED]

2. Representations, Warranties, Covenants

2.1 Representations and Warranties. The Borrower represents and warrants that:

- (a) This Mortgage has been duly executed and delivered by the Borrower and is the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally;

Concord Housing Authority

2

Initial: 

- (b) The Borrower is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in Exhibit A attached hereto.
- (c) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction or otherwise subject to the provisions of M.G.L. Chapter 140D, the Federal Truth in Lending Act or Federal Reserve Board Regulation Z, or other such consumer statutes or regulations.

2.2 Recording Further Assurances. The Borrower covenants that it shall, at its sole cost and expense and upon the request of the Lender, cause the Mortgage, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations, as may be required by law in order to establish, preserve and protect the interest of the Lender in the Property and the rights of the Lender under this Mortgage. Upon the written request of the Lender, and at the sole expense of the Borrower, the Borrower will promptly execute and deliver such further instruments and documents and take such further actions as the Lender may deem desirable to obtain the full benefits of this Mortgage and of the rights and powers herein granted, including, without limitation, deliver of any certificate of title and filing any financing statement under the Uniform Commercial Code of Massachusetts (M.G.L. c. 106). The Borrower authorizes the Lender to file any such financing statement without the signature of the Borrower, to the extent permitted by applicable law, and to file a copy of this Agreement in lieu of a financing statement.

2.3 Restrictions on Sale by Borrower. The Borrower covenants that it will not, directly or indirectly, without the prior written approval of the Lender in each instance sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of the Security Instruments and except those transactions which are in the normal course of Borrower's business.

2.4 Provisions Regarding the Leases. Borrower shall not materially alter, modify or change any of the Leases or terminate the term thereof or accept a surrender thereof or cancel any of the Leases or waive or release any Lessee from the performance or observance by such Lessee of any obligation or condition thereof, which materially affects the collateral or security of the Lender, or execute an assignment of the Leases or the rents and profits there from, or agree, permit or consent to a subordination of any of the Leases to a mortgage or alter, amend or modify any guaranty of said Leases or cancel or terminate such guaranty or consent to an assignment or subletting under any Lease or anticipate rents, or any other payments there under for more than thirty (30) days prior to accrual without the prior written consent of the Lender. Notwithstanding the foregoing, the

Borrower may change the form of the tenant leases relating to the Property by giving prompt written notice to the Lender, but the consent of the Lender shall not be required for any such changes.

The foregoing requirement for written consent of the Lender shall not apply to the alteration, modification, change, termination, surrender or cancellation of individual leases entered into in the ordinary course of business in accordance with the provisions of the Regulatory Agreement and Declaration of Restrictive Covenants for Rental Property entered into among the Lender, the Borrower, the Town of Concord, and the Massachusetts Department of Housing and Community Development to be recorded herewith or prior hereto.

All subsequent Leases and tenancies for the use and occupation of the Property or any part thereof shall be and are hereby made subject to all of the terms of the assignment referred to in Section 1.2 above, and the Borrower shall further assign and transfer the same to the Lender by assignment satisfactory to Lender upon their creation, if Lender so requests.

Upon or at any time after an Event of Default, or any default in the covenants to be performed by Borrower as lessor under any Lease, the Lender may, at its option, without notice, and without regard to the adequacy of the security for the indebtedness hereby secured, in person or by agent, with or without bringing any action, suit or proceeding, enter upon and take possession of the Property, and have, hold, manage, lease and operate the same on such terms, employing such management agents and for such period of time as the Lender may deem proper; and may demand, collect and receive all rents, issues and profits of the Property, and to do all things required of or permitted to the Lender as lessor under the Leases. It is not the intention of the parties hereto that an entry by the Lender upon the Property under the terms of this instrument shall constitute the Lender a "mortgagee in possession" in contemplation of law, except at the option of the Lender.

Notwithstanding the foregoing, so long as there is no Event of Default, the Borrower shall have the right to collect, but not more than thirty (30) days prior to accrual, all rents, issues and profits from the Property and to retain, use and enjoy the same.

Nothing herein shall obligate Lender to perform the obligations of Landlord under any of the Leases or other tenancy arrangements, which obligations Borrower shall perform, and the Borrower hereby agrees to indemnify the Lender against and hold it harmless from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of the provisions hereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms of the Leases. Should the Lender incur any such liability, loss or damage under any Lease or under or by reason of the provisions hereof, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate set forth in the Note, shall be secured hereby and by the Mortgage, and the Borrower shall reimburse Lender therefor immediately upon demand and, upon failure to do so, the Lender may declare all sums evidenced by the Note and secured hereby immediately due and payable.

Concord Housing Authority

4

Initial: *NC S.M.J.*

Lender shall have the right, by the execution of suitable written instruments, from time to time, to subordinate this Mortgage and the right of Lender to any Lease from time to time in force with reference to the Property, and, on the execution of any such instrument, this Mortgage shall be subordinate to the Lease for which such subordination is applicable with the same force and effect as if such Lease had been executed and delivered prior to the execution, delivery and recording of this Mortgage.

2.5 Provisions Regarding Assigned Approvals. The Borrower covenants, warrants and represents that it is and shall be the sole owner of the Assigned Approvals free and clear of all pledges, liens, security interests and other encumbrances of every nature whatsoever except those in favor of the Lender, has the full right, power and authority to assign, and to grant the security interest in the Assigned Approvals as herein provided, shall not make any other assignment of, or permit any pledge, lien, security interest or other encumbrance to exist with respect to, the Assigned Approvals except in favor of the Lender, and shall not transfer, assign, sell or exchange the Borrower's interest in the Assigned Approvals. No Assigned Approvals shall be amended, modified or changed in any material respect, or cancelled or terminated, without the Lender's prior written consent in each instance.

So long as there is no Event of Default, Borrower shall have and may exercise all rights as the owner or holder of the Assigned Approvals, which are lawful and are not inconsistent with the provisions of any of the Security Instruments. Immediately upon the occurrence of any Event of Default, the right described in the preceding sentence shall cease and terminate, and in such event the Lender is hereby expressly and irrevocably authorized (but not required) to exercise every right, option, power or authority inuring to the Borrower under any one or more of the Assigned Approvals as fully as the Borrower could. In such event, the Borrower hereby irrevocably directs the grantor or licensor of, or the contracting party to, any such Assigned Approval, to the extent permitted by such Assigned Approval and under any recognition or other agreement executed by such grantor, licensor or contracting party, upon demand and after notice from the Lender of the Borrower's default, to recognize and accept the Lender as the holder of such as such grantor, licensor or contracting party would recognize and accept the Borrower and its performance there under.

Nothing contained herein shall operate to obligate or be construed to obligate the Lender to perform any of the terms, covenants or conditions contained in the Assigned Approvals or otherwise to impose any obligation upon the Lender with respect to the Assigned Approvals prior to written notice by the Lender to the Borrower of the Lender's election to assume the Borrower's obligations under one or more of the Assigned Approvals. Until such election, the payment, performance or observance of any obligation, requirement or condition under the Assigned Approvals is and shall be that of the Borrower.

Concord Housing Authority

5

Initial: 

2.6 Provisions Regarding Plans and Specifications. The Borrower hereby agrees to obtain consents to the assignment of Plans and Specifications provided for herein, and to obtain agreements to attorn directly to and recognize the Lender in place of the Borrower from and after an Event of Default from construction contractor and from such other parties as may be from time to time required by the Lender, such consents and agreements to be in form and substance reasonably satisfactory to the Lender. The Borrower hereby authorizes the Lender, at the Lender's option, from and after an Event of Default to act as owner in place of the Borrower under such contracts and permits and directs all such other parties to such contracts and permits to recognize and perform for the Lender thereafter as if the Lender were the Borrower hereunder and the Borrower hereby provides that such parties shall be fully protected from any liability to the Borrower in so doing.

2.7 Insurance. With respect to the Property and any tangible personal property comprising or intended to comprise any of the Collateral, Borrower shall obtain and maintain, and provide Lender with evidence of: (i) insurance coverages which meet all property, hazard and other insurance requirements of Lender (including but not limited to physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property and flood insurance if and as required by applicable federal law and as otherwise required by the Lender); and (ii) prepayment of the premiums for such insurance for at least one (1) year.

All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the Commonwealth of Massachusetts, be otherwise acceptable to the Lender, provide deductible amounts acceptable to the Lender, name the Lender as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least thirty (30) days' prior written notice to the Lender. Such policies shall include: (i) a mortgage endorsement determined by the Lender in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Lender, shall not be invalidated by any act or neglect of the Borrower or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Lender may request. The Borrower will furnish to the Lender upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Lender. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Borrower shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions.

The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Lender and, at the option of the Lender, be applied to the Obligations in such order as the Lender may determine, provided, however, that if the Lender shall require repair of the Property, the

Concord Housing Authority

6

Initial: 

Lender may release all or any portion of such proceeds to the Borrower for such purpose; and further provided that if the Borrower pays into escrow, or pays toward repairs, any funds required in addition to the insurance proceeds held by the Lender (without, in the sole judgment of the Lender, affecting the ability of the Borrower to fulfill its obligations under the Loan Documents), then the lender shall disburse the insurance proceeds to pay for said work as the same progresses, provided that: a) the Borrower provides the Lender with a satisfactory construction budget; b) the Borrower provides the Lender with satisfactory evidence of payment to contractors and subcontractors who provide the Lender with lien releases prior to each advance; c) such payments are made on a schedule approved by the Lender; and d) there are no liens or encumbrances placed against the Property between the date hereof and the date of any such advance. Any insurance proceeds paid to the Borrower shall be held in trust for the Lender and promptly paid to it.

2.8 Operation of Property. The Borrower covenants and agrees as follows:

(a) unless Lender has otherwise consented in writing, not to allow changes in the nature of the occupancy or use for which the Property was intended at the time this Mortgage was executed, shall not initiate or acquiesce in a change in the zoning classification of the Property, or subject the Property to restrictive or negative covenants;

(b) not to permit the Property to be used for any unlawful or improper purpose, and at all times comply with all Federal, state and local laws, ordinances and regulations, and to obtain and maintain all governmental or other approvals relating to the Borrower, the Property or the use thereof, including, without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and to provide prompt written notice to the Lender of: (i) any violation of any such law, ordinance or regulation by the Borrower or relating to the Property; (ii) receipt of notice from any Federal, state or local authority alleging any such violation; and (iii) the presence or release on the Property of any Hazardous Substances;

(c) at all times to keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and not to commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof; and

(d) to complete in a good and workmanlike manner, in accordance with all applicable governmental laws, regulations and requirements, all improvements to be made to the Property.

2.9 Inspection Rights. The Borrower hereby grants to the Lender and its representatives, agents, contractors and employees the right to from time to time: (i) enter upon the Property and conduct such inspections, testing, and studies of the Property as the Lender deems necessary or desirable; and (ii) examine all records and documents; including, without limitation, all test results or studies, reports, memoranda, licenses, permits and all other papers or materials relating to the Property.

Concord Housing Authority

7

Initial: MC SM

2.10 Payment of Real Estate Taxes etc. The Borrower shall pay when due all Federal, state, municipal or other taxes, betterment assessments and other governmental levies, water rates, sewer charges, insurance premiums and other charges on the Property, the Mortgage or any Obligation that could, if unpaid, result in a lien on the Property or on any interest therein. If and when requested by the Lender, the Borrower shall deposit from time to time with the Lender sums determined by the Lender to be sufficient to pay when due the amounts referred to in this paragraph. The Borrower shall furnish to the Lender the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. The Borrower shall also furnish to the Lender evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Lender.

2.11 Hazardous Waste. The Borrower warrants and represents that neither Borrower or any of the Borrower's agents or employees have, as of this date, caused, or are aware of a release or threat of release of any "oil", "hazardous material", "hazardous wastes" or "hazardous substances" (the "Materials") as those terms are defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9601 et seq., as amended, the Massachusetts Hazardous Waste Management Act, M.G.L., Chapter 21C, as amended, and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L., Chapter 21E, as amended, and regulations adopted there under (collectively the "Superfund and Hazardous Waste Laws") on the Property; or arranged for the transport of, or transported any Materials in such a manner as to violate, or result in potential liabilities under, any Superfund and Hazardous Waste Laws; or received any notification, order or demand from the Environmental Protection Agency or from the Commonwealth of Massachusetts (the "Commonwealth") Department of Environmental Quality Engineering under any of the Superfund and Hazardous Waste Laws; or incurred any liability under any Superfund and Hazardous Waste Laws in connection with the mismanagement, improper disposal, or release of any Materials; and, to the best of the Borrower's knowledge, no predecessor-in-title to the Property committed any act or omission which caused a release thereon which would give rise to a lien on the Property filed with the Commonwealth of Massachusetts or the Federal government; and that no statement of claim or lien affecting the Property has been recorded or filed by the Federal government or the Commonwealth of Massachusetts for costs incurred by such parties with respect to the Property or any other property owned by the undersigned; and that the Borrower is not aware of the presence of any Materials or the threat of a release of Materials on or in the Property which could give rise to liability under any Superfund and Hazardous Waste Laws or under any other applicable Federal, state or local law, rule or regulation.

2.12 Indemnification. The Borrower warrants and guaranties that all certifications made in Section 2.11 above are true and correct to the best of the Borrower's knowledge and belief. The Borrower hereby covenants and guaranties to protect, indemnify, and hold the Lender harmless from and against all loss, damage, and expense, including attorney's fees and costs of litigation, suffered or incurred by Lender under or on account of any circumstance subject to the Superfund

and Hazardous Waste Laws, including, without limitation, all loss, damage and expense incurred by the Lender on account of the filing of a lien against the Property by the Commonwealth of Massachusetts or the Federal government on account of the presence of any Materials located on or to be located on the Property. The obligations of the Borrower hereunder shall not cease or lapse unless and until all obligations, under all documents executed in connection with the above-captioned loan, including payment of indebtedness under the Note have been fully performed.

If in the event the Borrower shall receive notification of the presence of hazardous waste on the Property from any agency of the Commonwealth of Massachusetts or of the Government of the United States of America, then the Borrower shall within three (3) days of its receipt thereof forward to the Lender at its principal place of business a true and exact copy of the notice so received. Should the Borrower have reason to know that hazardous waste as defined in M.G.L. Chapter 21E, as amended, are present upon any or all of the Property, then the Borrower shall immediately notify the Lender as recited above of the presence of the said hazardous waste. The failure of the Borrower to notify the Lender of notice of hazardous waste shall be deemed to be a default by the Borrower and the Lender shall have the right to exercise its statutory powers relative to foreclosure and/or entrance upon the Property.

In the event that there shall be a release of oil or hazardous materials or substances on, upon or into the Property, the Lender shall have the right (but not the obligation), upon five (5) calendar days advance written notice to the Borrower (or without notice in the case of emergencies), to cause the release to be contained and/or removed on behalf of the Borrower. The contractor(s) selected by the Lender shall have the right to enter upon the Property with such men, machinery and equipment as they shall deem necessary for such purpose and shall undertake such remedial containment and clean-up actions as they shall deem appropriate, without thereby incurring any liability to the Borrower on account thereof. The Borrower agrees to cooperate with any such contractor(s) and to render such assistance to such contractor(s) as may be requested to facilitate the remedial containment and clean-up actions. The Borrower should be liable to the Lender for all costs and expenses, including all attorneys fees incurred on account of such remedial action undertaken on the Borrower's behalf and shall reimburse the Lender therefor on demand. In the event that the Borrower fails to so reimburse the Lender on demand, such failure shall constitute an event of default hereunder. The Borrower hereby agrees to indemnify, defend and hold harmless the Lender from and against any and all loss, liability, damage and expense, including costs associated with the administrative and judicial proceedings and attorney fees to which the Lender may become exposed, or which the Lender may incur, in exercising in whole or in part of failing or neglecting to exercise any of its rights under this section.

2.13 Lender as Secured Party. In addition to the rights and remedies otherwise provided for by law or in equity and in any of the Security Instruments, upon the occurrence of any Event of Default, (i) the Lender shall have the rights and remedies of a secured party under the Uniform Commercial Code, as enacted in Massachusetts (M.G.L. c. 106), with respect to any of the Property
 Concord Housing Authority 9 Initial: *NC M.J.*

which constitutes personal property, subject to the applicable terms of the Loan Agreement; and (ii) the Borrower shall be deemed to have constituted and appointed the Lender its true and lawful attorney-in-fact with full power of substitution in the Borrower's name to do any act or to execute any document or instrument deemed by such attorney-in-fact to be necessary or desirable to be done or to be executed in order to accomplish and effectuate any term of the collateral assignments set out here. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked.

3. Certain Rights of the Lender

3.1 Legal Proceedings. The Lender shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Lender's reasonable judgment, might affect the Property or any of the rights created or secured by this Mortgage. The Lender shall have such right whether or not there shall have occurred an Event of Default.

3.2 Appraisals/Assessments. If, at any time, the Lender believes that the collateral value of the Property may not be sufficient to secure the Obligations of the Borrower to the Lender within the applicable loan-to-value ratio, then, upon notice to the Borrower, the Lender shall have the right, at the Borrower's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at such times as the Lender deems necessary or as may be required by applicable law, or prevailing Lender credit or underwriting policies.

4. Defaults and Remedies

4.1 Events of Default. Event of Default shall mean the occurrence of any one or more of the Events of Default set forth in the Note or any of the Security Instruments.

4.2 Remedies. On the occurrence of any Event of Default the Lender may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the remedies set forth in the Note or any of the Security Instruments, as applicable.

4.3 Cumulative Rights and Remedies. All of the foregoing rights, remedies and options are cumulative and in addition to any rights the Lender might otherwise have, whether at law or by agreement and may be exercised separately or concurrently. The Borrower further agrees that the Lender may exercise any or all of its rights or remedies set forth herein without having to pay the Borrower any sums for use or occupancy of the Property.

4.4 Borrower's Waiver of Certain Rights. To the extent permitted by applicable law, the Borrower hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of all or any portion of the Property, or (ii) in any way extending the time for the

enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

5. Miscellaneous

5.1 Waiver of Homestead. The Borrower hereby waives and terminates any rights to any homestead exemptions on record as of the date of this Mortgage respecting the Property under the provisions of M.G.L. c. 188, § 1.

5.2 Severability. If any provision of this Mortgage or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Mortgage (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

5.3 Exercise of Rights. Borrower agrees that all rights of the holder hereof as to personal property security and real estate security may be exercised together or separately and further agrees that, in exercising its power of sale, such holder may sell the personal property security or any part thereof either separately from, or together with, the real estate security or any part thereof, in such order as such holder may, in its discretion, elect, and whether or not the aggregate proceeds thereof exceed the indebtedness secured by this Mortgage. At any sale, any combination of or all of the security may be offered for sale for one total price and the proceeds of such sale accounted for in one account without distinguishing between the items of security or assigning to the separate securities proportions of the proceeds of such sale accounted for in one account without distinguishing proportions of the proceeds; and, in case such holder, in the exercise of the power of sale herein given, elects to sell in parts or parcels, said sales may be held from time to time and the power shall not be fully executed until all of the personal property security and real estate security not previously sold shall have been sold.

5.4 Condominium Provisions. If, and to the extent that any of the Property includes a unit in a condominium project (the "Condominium Project") the Property shall include Borrower's undivided interest in the common elements of the Condominium Project, the title to which is held by a unit owner's association (the "Owners' Association") and the uses, proceeds and benefits of Borrower's interest therein. In such case, and in addition to the covenants and agreements made elsewhere in this Mortgage, Borrower further covenant and agree as follows:

- A. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the (i) Master Deed or any other document which creates the Condominium Project; (ii) declaration of trust, by-laws, and regulations (or other equivalent documents) of or by the Owners' Association") Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

- B. Borrower shall take such actions as may be reasonable to insure that the Owners' Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy which is satisfactory to the Lender and which provides hazard insurance coverage in the amounts, for the periods, and against the hazards the Lender requires, including fire hazards included within the term "extended coverage", and Borrower shall give the Lender prompt notice of any lapse in such required hazard insurance coverage. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to the Lender for application to the Obligations, with any excess paid to Borrower.
- C. Borrower shall take such actions as may be reasonable to insure that the Owners' Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to the Lender.
- D. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Lender. Such proceeds shall be applied by the Lender to the sums secured by the Mortgage as provided for in paragraph 2.7 of the Mortgage.
- E. Borrower shall not, except after notice to the Lender and with the Lender's prior written consent, either partition or subdivide the Property or consent to:
- (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
 - (ii) any amendment to any provision of the Constituent Documents if the provision is not for the express benefit of the Lender;
 - (iii) termination of professional management and assumption of self-management of the Owners Association; or
 - (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to the Lender.
- F. If Borrower does not pay condominium dues and assessments when due, then the Lender may pay them. Any amounts disbursed by the Lender under this paragraph F shall become additional debt of Borrower secured by the Mortgage. Unless Borrower and the Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from the Lender to Borrower requesting payment

5.5 JURY WAIVER. THE BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS MORTGAGE, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH. THE BORROWER CERTIFIES THAT NEITHER THE LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

This Mortgage is upon the STATUTORY CONDITION, for any breach of which the Lender shall have the STATUTORY POWER OF SALE and any other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof by deed, assignment or otherwise. The Borrower agrees and acknowledges that the acceptance by the Lender of any payments from either the Borrower or the Guarantor after the occurrence of any Event of Default, the exercise by the Lender of any remedy set forth herein or the commencement of foreclosure proceedings against the Property shall not waive the Lender's right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Lender. The Borrower agrees and acknowledges that the Lender, by making payments or incurring costs described herein, shall be subrogated to any right of the Borrower to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Borrower's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances.

EXECUTED under seal as of the date first above written.

CONCORD HOUSING AUTHORITY

By: Mary E. Johnson
Mary E. Johnson, Chairman

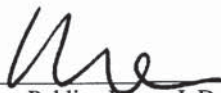
By: Nancy Crowley
Nancy Crowley, Treasurer

COMMONWEALTH OF MASSACHUSETTS

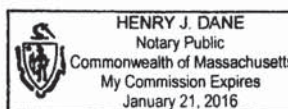
Middlesex, ss

June 2, 2009

On this 2nd day of June, 2009, before me, the undersigned Notary Public, personally appeared Mary B. Johnson, Chairman of Concord Housing Authority, and Nancy Crowley, Treasurer of Concord Housing Authority, proved to me through satisfactory evidence of identification which was a Massachusetts driver's license to be the persons whose names are signed on the preceding documents, and acknowledged to me that they signed it voluntarily for its stated purpose as their free act and deed on behalf of the within Concord Housing Authority.



Notary Public: Henry J. Dane
My Commission Expires: 01/21/2016



F:MSBComm/405bedford/mortandsecagree.10619(2)
rev. 6/2/09
cl. 10619

Concord Housing Authority

14

Initial: MC NJ

EXHIBIT A

**PROPERTY DESCRIPTION
405 Old Bedford Road**

The land now known as and numbered 405 Old Bedford Road, in Concord, Middlesex County, Massachusetts, shown as Lot 5B on a plan entitled "Plan of Land in Concord, Mass.," scale: 1' = 40", dated May 11, 2007, prepared for the Town of Concord Engineering Department, by Colonial Surveying Co, Inc., recorded as Plan No. 832 of 2007 (hereinafter referred to as the "Plan"); together with all the buildings and improvements now or hereafter placed thereon containing, according to said Plan, 20,062 s.f. of land, more or less.

Together with the benefit of a Declaration of Easement and Covenants over Lot 5A on the aforementioned Plan granted to the Mortgagor by the Town of Concord, said Declaration to be recorded herewith.

Intending to convey hereby all of the Mortgagors' right, title and interest in and to the foregoing together with the benefit of all rights, covenants, easements and rights-of-way appurtenant thereto.

TITLE INFORMATION ON
This property is available from:
DANE ERADY & HAYDON, LLP
CONCORD, MA 01742
(978) 361-8333

REGISTRY OF DEEDS
SOUTHERN DISTRICT
ATTEST:
Eugene C. Brune
REGISTER

Concord Housing Authority

15

Initial: *NC SMJ*