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MORTGAGE, SECURITY AGREEMENT AND CONDITIONAL ASSIGNMENT OF LEASES AND RENTS

Property Address:

115 Stow Street
Concord, Massachusetts



2012 00020664
Bk: 58398 Pg: 495 Doc: MTG
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This Mortgage, Security Agreement and Conditional Assignment of Leases and Rents ("Mortgage") is made as of the 24th day of January, 2012, by Concord Housing Authority, a Massachusetts a body politic and corporate organized under M.G.L. c. 121B with a mailing address at 34 Everett Street, Concord, Massachusetts 01742 (the "Borrower"), in favor of The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by its administrator Massachusetts Housing Finance Agency, with a mailing address at One Beacon Street, Boston, Massachusetts 02108.

SECTION 1. DEFINITIONS

Affordable Housing Restriction: The Affordable Housing Restriction granted by Borrower in favor of the Lender setting forth certain restrictions on use of the Property.

Event of Default: An Event of Default as defined in Section 7 below.

Lender: The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, by its administrator Massachusetts Housing Finance Agency

Loan: The Loan to the Borrower from the Lender pursuant to the Loan Agreement, evidenced and secured by the Note and other Loan Documents.

Loan Agreement: The agreement by and between the Lender and Borrower setting forth the terms and conditions of the Loan.

Loan Documents: The Note, the Loan Agreement, this Mortgage, the Affordable Housing Restriction and all other documents executed in connection with the Loan, as the same may be amended, modified, extended, renewed or restated.

Note: The promissory note of the Borrower in the amount of \$1,000,000.00, payable to the order of Lender under the Program (as defined in Exhibit K of the Loan Agreement), as the same may be amended, modified, extended, renewed or restated.

Other Lenders: The lenders set forth in Exhibit B hereto holding mortgages on the Property junior or senior to or pari passu with this Mortgage.

Permitted Encumbrances: The liens and encumbrances set forth on Exhibit C.

Project: The Project as defined in Section 3 of the Loan Agreement.

Property: The mortgaged property as defined in Section 2 hereof.

Senior Lender: An Other Lender who holds a mortgage senior to this Mortgage.

SECTION 2. GRANTING CLAUSE

The Borrower hereby irrevocably grants, mortgages, transfers and assigns to the Lender, with MORTGAGE COVENANTS, all the following property (the "Property"):

The parcel or parcels of land together with any improvements now or hereafter situated thereon, all as described in Exhibit A attached hereto and incorporated herein; together with all buildings and structures and fixtures owned by the Borrower erected or placed on such parcel or parcels or now or hereafter attached to or used in connection therewith, including without limitation to the extent such constitute fixtures, all pipes, lines, conduits and other facilities for public or private utilities or services, all elevators, screens, doors, awnings, blinds, shades, gas and electric fixtures, all heating, lighting, refrigerating, plumbing, ventilating, air conditioning and sprinkling equipment and all other items of whatsoever kind and nature reasonably necessary to the continued use and operation of the Property; together with all personal property owned by the Borrower and located on the Property; together with the entire interest of the Borrower in and to all and singular the tenements, hereditaments, easements, rights-of-way, rights, privileges and appurtenances to the Property, belonging or in any way appertaining thereto, and all right, title and interest of the Borrower in and to any streets, ways or alleys adjoining the Property or any part thereof; together with all proceeds paid for any damage to the Property or any part thereof, or for any portion thereof appropriated for any character of public or quasi-public use in accordance with the provisions, terms and conditions hereinafter set forth; together with all of the rents, issues, benefits and profits of the Property as provided herein and all of the records and books of account now or hereafter maintained by the Borrower in connection with the operation thereof.

SUBJECT, HOWEVER, to the Permitted Encumbrances.

This conveyance is made for the purpose of securing:

Performance of all obligations of the Borrower under the terms of the Note, including payment of all amounts due pursuant thereto.

Performance of each and every obligation of the Borrower contained in this Mortgage and payment of all sums due hereunder.

Performance of the obligations of the Borrower under all other Loan Documents.

SECTION 3. COVENANTS AND WARRANTIES

The Borrower covenants, warrants and agrees as follows:

3.1 The Borrower has and will maintain good record and marketable title to the Property in fee simple, free and clear of all liens and encumbrances except for the Permitted Encumbrances, and has the right to encumber the Property with the lien created by this instrument, which lien is subject only to the Permitted Encumbrances. The Borrower will defend the title hereto in any action affecting the rights of the Lender hereunder and pay all costs of any such action (including, but not limited to, attorneys' fees), whether or not such action (i) progresses to judgment, or (ii) is brought by or against the Lender.

3.2 The Borrower and each endorser or guarantor of the Note shall perform and observe all of the terms and conditions of the Loan Documents, including the obligation to make any payments as required therein.

3.3 The Borrower shall pay or cause to be paid prior to the time when interest or penalties would accrue thereon all taxes, water, sewer and other utility charges, and all other charges or assessments relating to the Property or the materials stored thereon or therein and other charges and encumbrances which are or may become a lien on the Property.

3.4 The Borrower shall keep the Property in good order, repair and condition, reasonable wear and tear thereof excepted, and will not permit, commit or suffer any waste, impairment, deterioration or environmental contamination of the Property or any part thereof.

3.5 The Borrower shall promptly repair, restore, rebuild, replace or alter as necessary any portion of the Property which may be damaged or destroyed by fire or other casualty, or taken by condemnation, as nearly as possible to the condition such improvements were in prior to such damage, destruction or taking, subject to the provisions of Sections 5 and 6 of this Mortgage. The Borrower shall give the Lender notice of any damage to the Property within five (5) business days of any such occurrence.

3.6 The Borrower shall comply with and observe its obligations as landlord under leases affecting the Property or any part thereof. The Borrower hereby assigns to the Lender as additional security, conditional upon default, any and all leases for housing units at the Property, whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Property from time to time accruing; and does agree that after an Event of Default and while such Event of Default continues, the Lender may modify and otherwise deal with all such leases or subleases with the same power and discretion which the Lender would have if the Lender were the owner of the Property

free from any trust; and, after an Event of Default, the Lender shall also have the power to make, execute and deliver new leases of all and any portion of the Property in the name of the Borrower, or in the name of any person or persons claiming under the Borrower on such terms and conditions as the Lender may in its reasonable judgment deem proper.

3.7 The Borrower shall cause the Property to be used only for the Permitted Uses, as defined in the Affordable Housing Restriction.

3.8 The Borrower hereby assigns to the Lender all of the Borrower's right, title and interest in all contracts, licenses, permits, financing commitments, guarantees, warranties, plans and other agreements or undertakings acquired by the Borrower (the "Project Documents") in connection with the development and operation of the Project. The Borrower hereby agrees to perform in a timely manner all its obligations under the Project Documents and to permit no default on its part to exist thereunder. So long as no Event of Default shall exist, the Borrower shall have the rights as the holder thereof in and with respect to the Project Documents as may be lawfully permitted. Immediately upon the occurrence of any Event of Default, the rights described in the preceding sentence shall cease, 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 Project Documents as fully as the Borrower could itself. Further, and without limitation of the foregoing remedies, upon the occurrence of any such Event of Default, the Lender shall have the rights and remedies of a secured party under the Uniform Commercial Code, as enacted in Massachusetts, with respect to each and every Project Document in which a security interest may be obtained.

3.9 With respect to any and all commercial leases of any portion of the Property, the Borrower shall, within thirty (30) days of the written request of the Lender made from time to time, deliver to the Lender a lease estoppel, in form and substance satisfactory to the Lender and executed by the tenant, setting forth the commencement and occupancy dates of such lease, and providing such information with respect thereto as the Lender may require, including, without limitation, confirmation that the lease is in full force and effect without modification, that the tenant is in possession and paying full rent, that no rental payments have been made in advance, and that there is no default, and no condition which, with the giving of notice and/or the passage of time could ripen into a default, by the Borrower or the tenant thereunder (or specifying such modifications of the foregoing as may be appropriate).

3.10 The Borrower shall, within thirty (30) days of the written request of the Lender made from time to time, execute and deliver a written statement, in the form required by the Lender, setting forth the amount of the indebtedness that Borrower acknowledges to be due on the Note and under this Mortgage and the other Loan Documents, specifying any claims of offset or defense which the Borrower asserts against the indebtedness or other obligations secured hereby, and a description of relevant facts regarding the condition of the Property and such other matters as may be requested by the Lender.

SECTION 4. INSURANCE

4.1 The Borrower will at all times (a) keep the Property insured, for the mutual benefit of the Borrower and the Lender, as their respective interests may appear, in amounts not less than 100% of the full replacement cost of the Property (plus 12 months' rent loss coverage), against loss or damage by (i)

fire, (ii) such other risks and hazards as now are or hereafter may be insured under standard "Extended Coverage" forms or endorsements, and (iii) such other risks of damage as the Lender shall from time to time reasonably require; (b) maintain comprehensive general liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about the Property, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or such higher limits as the Lender may reasonably require and which specifically names the Borrower and the Lender; (c) maintain or cause the Borrower's property manager to maintain worker's compensation coverage for all employees in statutorily mandated amounts and, if applicable, comprehensive automobile liability insurance, including hired vehicles, in an amount not less than \$1,000,000 combined single limit; and (d) with respect to any construction undertaken at the Property, obtain builder's risk insurance (100% completed value non-reporting form) in amounts reasonably satisfactory to the Lender, but never at any time less than full replacement value of the construction.

4.2 All insurance shall be evidenced by valid and enforceable policies in form and substance, and issued by such insurers, as are reasonably approved by the Lender. All policies of casualty insurance shall contain a standard non-contributory form of mortgage clause reasonably satisfactory to the Lender, which clause shall name the Lender as loss payee as its interest may appear and provide that such policies may not be canceled or amended without at least thirty (30) days' prior written notice to the Lender. Upon the occurrence of an Event of Default, the Lender may act either in its name or as attorney for the Borrower (for that purpose by these presents duly authorized and appointed with full power of substitution and revocation) in obtaining, adjusting, settling, and canceling such insurance and endorsing any drafts in payment of any loss.

SECTION 5. DAMAGE BY FIRE OR OTHER CASUALTY

If by reason of any damage or destruction to the Property, any sums are paid under any insurance policy mentioned in or contemplated by Section 4 hereof, such proceeds shall be paid to the Lender alone, as its interest may appear, to be applied toward reimbursement of all costs and expenses of the Lender in collecting such proceeds, and, at the option of the Lender, either toward payment of the indebtedness secured hereby or any portion thereof, whether or not due and payable, or to the repair, restoration, rebuilding or replacement of that part of the Property so damaged or destroyed; provided, however, the Lender shall consent to such application if all of the following conditions are met: (i) sufficient insurance proceeds are available or the Borrower deposits with the Lender sufficient funds to pay the entire cost of repair, restoration, rebuilding or replacement; (ii) the Lender approves in advance plans and schedule for such repair, restoration, rebuilding or replacement, such approval not to be unreasonably withheld; and (iii) the insurance proceeds, together with the Borrower's additional funds, if any, are held by the Lender and disbursed pursuant to customary construction disbursement procedures as work is completed.

SECTION 6. CONDEMNATION

The Borrower hereby assigns, transfers and sets over to the Lender, all rights of the Borrower to any award or payment in respect of (i) any taking of all or a portion of the Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain and (ii) any damage to the Property due to governmental action, but not resulting in a taking of any portion of the Property. The Borrower hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to the Lender, and hereby irrevocably authorizes and empowers the Lender, if the Borrower does not so prosecute its claim, in the name of the Borrower or otherwise, to collect and receive any such award or payment and to file and prosecute such claims. All proceeds received by the Lender with respect to such taking or damage shall be applied in the Lender's discretion and in such order as the Lender shall determine.

SECTION 7. DEFAULT PROVISIONS

An "Event of Default" shall arise under this Mortgage upon the occurrence of any one or more of the following events:

7.1 Failure of the Borrower to pay any amount due under the Note when due thereunder or failure of the Borrower to pay real estate taxes, utility charges or insurance premiums as required by Section 3.3 and Section 4 hereof and the continuation of such failure for ten (10) days after the date such payment is due.

7.2 Failure of the Borrower to perform any of its obligations, covenants, or agreements contained in this Mortgage (other than as described in Section 7.1) and the continuance of such failure for thirty (30) days after written notice thereof from the Lender to the Borrower; provided, however, that if the curing of such default cannot be accomplished with due diligence within the initial period of thirty (30) days, then Borrower shall have such additional reasonable period of time, not to exceed thirty (30) days, to cure such default as may be necessary provided the Borrower shall have commenced to cure such default within said thirty (30) day period, such cure shall have been diligently prosecuted by the Borrower thereafter to completion, and the Lender does not reasonably deem this Mortgage jeopardized by such further delay.

7.3 The occurrence of an Event of Default as defined in any other Loan Document.

SECTION 8. RIGHTS AND REMEDIES OF THE MORTGAGEE

8.1 Upon the occurrence of any Event of Default hereunder, the Lender, at its option, without presentment, demand, protest or notice of any kind, may declare the indebtedness evidenced by the Note and secured by this Mortgage immediately due and payable.

8.2 Upon the occurrence of any Event of Default hereunder, the Lender, at its option but without obligation to do so, without notice to or demand on the Borrower and without releasing the Borrower from any liability under the Loan Documents, may make any payment or perform any act which the Borrower is obligated to pay or do under the terms of this Mortgage past due. All amounts expended

hereunder shall, without notice or demand, be immediately due and payable to the Lender by the Borrower with interest thereon, to the extent permitted by law, at the Delinquency Rate (as defined in the Note), and shall be secured hereby.

8.3 Upon the occurrence of any Event of Default hereunder, the Lender at its option, without notice, without any liability to the Lender, and without regard to the adequacy of the security for the Loan, may, to the extent permitted by law:

8.3.1 Enter upon and take possession of the Property (with or without bringing any action or proceeding in court); or

8.3.2 Demand or receive payment of all rents, benefits and profits of the Property, including those past due and unpaid (whether or not the Lender has taken possession of the Property); or

8.3.3 Have a receiver immediately appointed for the Property and the earnings, revenues, rents, issues, profits and other income thereof and therefrom, with all such powers as the court making such appointment shall confer.

8.4 If the Lender enters upon and takes possession of the Property as provided in Section 8.3, the Lender may operate and manage the Property and perform any acts which the Lender, in its reasonable discretion, deems necessary or desirable to protect and preserve the rentability, increase the income, or conserve the value of the Property. The Lender shall have no liability for any action or inaction while in possession of the Property so long as such action or inaction is taken or refrained from being taken in good faith and in the absence of gross negligence.

8.5 Upon the occurrence of any Event of Default hereunder:

8.5.1 The Lender may, if and to the extent and in the manner permitted by law, itself, or by such agents and attorneys as it may appoint, with or without entry or taking possession, sell the Property as an entirety or in such separate lots, units or parcels as the Lender may determine, at public or private sale and, except as otherwise provided by law, at such place or places (whether or not the Borrower be present), at such time or times, upon such terms (including credit, whether secured or unsecured) and upon such notice (by publication or otherwise), if any, as the Lender in its discretion may determine.

8.5.2 The Lender is irrevocably appointed the agent and attorney-in-fact of the Borrower in its name and stead and on its behalf, for the purpose of effectuating any sale for the enforcement of this Mortgage, whether under the power of sale hereby given or pursuant to judicial proceedings or otherwise, to execute and deliver all such deeds, conveyances, bills of sale, assignments, transfers and other instruments as the Lender may consider necessary or appropriate, and to substitute one or more persons with like power, the Borrower hereby ratifying and confirming all that the Lender, or such substitute or substitutes, shall lawfully do by virtue thereof.

8.5.3 This Mortgage is upon the STATUTORY CONDITION and upon the occurrence of any Event of Default hereunder the Lender shall have the STATUTORY POWER OF SALE.

8.6 No remedy herein conferred upon the Lender shall be exclusive of any other remedy herein or by law provided or permitted, but such shall be cumulative and in addition to every other remedy given herein or now or hereafter existing at law.

SECTION 9. MISCELLANEOUS PROVISIONS

9.1 Without affecting the liability of the Borrower or any other person (except any person expressly released in writing) for the performance of any obligations set forth in the Loan Documents and without affecting the lien or other rights of the Lender with respect to any property or other security not expressly released in writing, the Lender at any time, and from time to time, either before or after maturity of the Note, and without notice or consent, may:

9.1.1 Make any agreement extending the time, or otherwise altering the terms of payment of the amounts due under the Note, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien securing payment of the Note;

9.1.2 Exercise or refrain from exercising, or waive any right the Lender may have;

9.1.3 Accept additional security of any kind;

9.1.4 Release or otherwise deal with any property, real or personal, securing the Loan, including all or any part of the Property.

9.2 In the event the Borrower conveys its interest in the Property to parties not appearing in this instrument (without implying any right of the Borrower to do so without the Lender's consent), the Lender may, without notice to the Borrower, deal with such successor or successors in interest with reference to this Mortgage and the Note secured hereby, either by way of forbearance on the part of the Borrower or extension of the time of payment of the debt or any sum hereby secured, without in any way modifying or affecting the conveyance under this Mortgage or the original liability of the Borrower or any other party on the Note secured hereby, either in whole or in part.

9.3 In case any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

9.4 All notices, requests, demands, consents or other communications given hereunder or in connection herewith shall be in writing and shall be deemed duly given if delivered by hand or by recognized overnight courier or if mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to receive such notice at its address first set forth above. Either party may, by notice given as aforesaid, change its address for all subsequent notices. Notices shall be deemed given upon receipt if hand delivered or, if mailed as aforesaid, three days after mailing or, if sent by overnight courier, on the day after delivered to such courier.

9.5 In accordance with Section 9-509 of the Uniform Commercial Code as in effect in The Commonwealth of Massachusetts (the "U.C.C."), the Borrower hereby authorizes the Lender to file any financing statements or amendments to such financing statements that may be required pursuant to the U.C.C. for the Lender to perfect its security interest in any of the Property. This Mortgage is to be recorded or filed with the registry of deeds or the registry district of the Land Court for the county in which the Property is located as a fixture filing pursuant to Section 9-502 of the U.C.C. and is intended to be a construction mortgage pursuant to Section 9-313 of the U.C.C.

MORTGAGE, SECURITY AGREEMENT AND CONDITIONAL ASSIGNMENT OF LEASES AND RENTS

9.6 This instrument shall inure to the benefit of and bind the successors and assigns of the parties hereto. This Mortgage may not be waived, changed or discharged orally, but only by an agreement in writing signed by the party against whom any waiver, change or discharge is sought.

9.7 It is understood and agreed that the validity, construction and interpretation of this Mortgage will be in accordance with the laws of The Commonwealth of Massachusetts.

9.8 This Mortgage is subject to the exculpation provisions set forth in the Note.

9.9 This Mortgage and the other Loan Documents collectively constitute the entire and final agreement among the parties hereto and there are no other agreements, understandings, warranties or representations among the parties with respect to the subject matter hereof except as expressly set forth herein or therein.

9.10 The Lender acknowledges and agrees that no provision of this Mortgage or any other Loan Document, nor the Lender's exercise of any or all of the rights or remedies granted the Lender hereunder, shall in any way alter or affect the status of the Property as public housing under the Public Housing Statute and Public Housing Regulations as defined in the Loan Agreement and that the Property shall remain in such status notwithstanding the Lender's exercise of remedies hereunder, including without limitation foreclosure of this Mortgage. The Lender agrees to send a copy of any notice of default given to the Borrower, and also to give written notice at least thirty (30) days prior to commencing legal action to foreclose this Mortgage, to: General Counsel, DHCD, 100 Cambridge Street, Suite 300, Boston, MA 02114.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

MORTGAGE, SECURITY AGREEMENT AND CONDITIONAL ASSIGNMENT OF LEASES AND RENTS

Witness our hands and seals as of the date first written above.

CONCORD HOUSING AUTHORITY

By: Mary B. Johnson
Mary B. Johnson
Its: Chair

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 24th day of January, 2012, before me, the undersigned notary public, personally appeared Mary B. Johnson, the Chair of Concord Housing Authority, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, in such capacity, for its stated purpose.

Peter B Farrow
Notary Public Peter B Farrow
My commission expires: 1/23/15



- Exhibit A:** Property Description
- Exhibit B:** Other Lenders
- Exhibit C:** Permitted Encumbrances

EXHIBIT A: PROPERTY DESCRIPTION

A certain parcel of land on Stow Street, Concord, Massachusetts shown as Parcel E on a plan entitled Plan of Land, 115 Stow Street, Concord, Mass. prepared by R. E. Cameron & Associates, Inc., Land Surveyors dated December 16, 2011 recorded with South Middlesex Registry of Deeds in Book of Plans 2012, Page 4, bounded and described as follows:

Beginning at the southerly corner of the parcel along Stow Street: thence
N 37° 07' 00" W a distance of three hundred and 58/100 (300.58) feet; thence
N 53° 21' 35" E a distance of ninety nine and 34/100 (99.34) feet, thence
N 53° 21' 35" E a distance of one hundred seventy six and 55/100 (176.55) feet;
thence
S 37° 11' 53" E a distance of three hundred and 30/100 (300.30) feet; thence
S 53° 08' 27" W a distance of sixty and 31/100 (60.31) feet, thence
S 53° 20' 47" W a distance of two hundred sixteen and 01/100 (216.01) feet to
the point of beginning.

Containing according to said plan 82,970 s.f., more or less.

For the mortgagor's title, see deed dated January 2, 1980 recorded in the Middlesex South Registry of Deeds at Book 13672, Page 467 and the plan recorded therewith. See also deed of Parcel F on said plan from the Concord Housing Authority to the Town of Concord dated January 6, 2012 recorded in the Middlesex South Registry of Deeds, Book 58242, Page 490.

EXHIBIT B: OTHER LENDERS

None

EXHIBIT C: PERMITTED ENCUMBRANCES

1. Exceptions listed in title insurance commitment no. 11-45606 issued by Commonwealth Land Title Insurance Company dated December 8, 2011.