

FIRST AMENDMENT TO LEASE

This First Amendment is made as of this 28th day of July, 2008, by and between the Town of Bedford, Massachusetts ("Town of Bedford") and 447 Concord Road LLC, a Massachusetts limited liability company ("Tenant") to that certain Lease (the "Lease") previously entered into between the Town of Bedford and Tenant as of July 25, 2005 with respect to leased Premises located at 447 Concord Road, Bedford, Middlesex County, Massachusetts. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease.

Background

A. At the time of the execution of the Lease, the parties had anticipated that permitting would be completed and that construction would begin by certain target dates set forth in the Lease. The parties were not able to meet such target dates but have agreed, nevertheless, to proceed with construction and completion of the Improvements, as set forth in the Lease.

B. Further, in connection with the construction loan financing for the Improvements, certain of Tenant's mortgage lenders have requested certain revisions and clarifications to Article 13 of the Lease, dealing with Tenant's ability to grant leasehold mortgages and the rights of permitted leasehold mortgagees.

C. The parties have otherwise agreed to ratify and confirm their respective rights and obligations under the Lease.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The last sentence of Section 2.1 of the Lease is deleted and replaced in its entirety with the following:

"If the Commencement Date shall not have occurred by December 1, 2008, either Landlord or Tenant shall have the option of terminating this Lease by notice to the other, in which case neither party shall have any further obligations to the other under the terms hereof."

2. The Town of Bedford and Tenant confirm that neither of them has exercised the termination right set forth in Section 2.1 of the Lease nor has the Town of Bedford exercised its early termination right as set forth in Section 2.2 of the Lease, such rights being hereby waived by the Town of Bedford and by Tenant through December 1, 2008.

3. The "Outside Construction Start Date" as defined in Section 3.1 of the Lease is hereby amended to be December 1, 2008.

4. Article 13 of the Lease is deleted in its entirety and is hereby replaced with the following:

“ARTICLE 13

TRANSFER OF TENANT’S INTEREST

13.1 Assignment by Tenant. Tenant will not assign this Lease or any interest in this Lease or sublet or permit any other person to occupy or use the Premises or any portion thereof without the prior written consent of the Town of Bedford, which consent shall not be unreasonably withheld, delayed or conditioned provided such assignee or transferee shall (i) have the management capabilities to own and operate the Premises, (ii) not then be in material default of any other obligations it or a related entity may have to the Massachusetts Department of Housing and Community Development and/or HUD with respect to any affordable housing projects, and (iii) use the Premises for the Permitted Uses. The foregoing prohibition on transfers shall include any reorganization, dissolution or merger of Tenant or its general partner, whether by operation of law or otherwise, the admission of any new general partner or managing member or the withdrawal of its current general partner or managing member, a transfer of ten percent (10%) or more of the ownership interests in Tenant (other than limited partnership interests or non-manager membership interests in a limited liability company) or any similar transaction. Any such consent to transfers shall not be unreasonably withheld, conditioned or delayed as provided above.

13.2 Leasehold Mortgages. (a) Notwithstanding anything to the contrary contained in this Lease, Tenant may, upon prior written notice to the Town of Bedford, from time to time, encumber, hypothecate or mortgage its interest in the Premises with one or more mortgages, assignments of leasehold interest or any other security instruments and affordable housing restrictions in favor of an institutional and/or governmental lender or lenders as partial security for a loan or loans (a “Permitted Institutional Mortgage” and the holder of such Permitted Institutional Mortgage, a “Permitted Institutional Mortgagee”). Each such Permitted Institutional Mortgage shall be expressly subject to the terms and conditions of this Lease. Tenant shall promptly deliver to the Town of Bedford a true copy of the Permitted Institutional Mortgage and any assignment thereof. Tenant shall notify the Town of Bedford of the address of the Permitted Institutional Mortgagee to which notices may be sent. The Town of Bedford and Tenant hereby agree that there shall be no cancellation, surrender or any amendment or modification of this Lease that would adversely affect such Permitted Institutional Mortgagee’s rights hereunder without the prior consent in writing of the holders of all then outstanding Permitted Institutional Mortgages. Any such attempted cancellation, surrender, amendment or modification without such consents shall be void.

(b) Permitted Institutional Mortgages not Assignment. For the purpose of this Section 13, the making of a Permitted Institutional Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Permitted Institutional

Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Permitted Institutional Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the foreclosure of any Permitted Institutional Mortgage, or the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Institutional Mortgage, shall be deemed to be an assignee or transferee (without requiring the consent of the Town of Bedford pursuant to Section 13.1) and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, and shall execute a written instrument assuming Tenant's obligations hereunder promptly upon request by the Town of Bedford.

(c) Permitted Institutional Mortgagee Cure Rights. The Town of Bedford agrees to give simultaneously to each Permitted Institutional Mortgagee a copy of all default notices and other communications regarding defaults and potential defaults sent by the Town of Bedford to the Tenant under this Lease, and no such notice of default or termination shall be effective until a copy shall be sent to each Permitted Institutional Mortgagee. In the event of any default in the payment of money, Permitted Institutional Mortgagee, without being under any obligation to do so, shall have the right to cure such monetary default within ninety (90) days after the giving of notice to it by the Town of Bedford. In the case of any default by the Tenant other than in the payment of money hereunder, the Town of Bedford will take no action pursuant to Article 14 hereunder by reason of any such default without first giving to the Permitted Institutional Mortgagee notice thereof simultaneously with notice given to Tenant, and the right, but not the obligation, for a period of the greater of sixty (60) days in excess of any applicable cure period afforded to Tenant or one hundred twenty (120) days after notice of such Tenant default, to cure such default, or, if such default cannot reasonably be cured within such sixty (60) or one hundred and twenty (120) days, such longer period as is required to cure such default, including such period of time as may reasonably be required for Permitted Institutional Mortgagee to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, provided, that the Permitted Institutional Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, within such one hundred and twenty (120) day period and thereafter continues diligently to effect such cure, or obtain such possession or title. The Permitted Institutional Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant or if the Permitted Institutional Mortgagee otherwise determines not to continue such proceedings; provided, further, that nothing herein shall preclude the Town of Bedford from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance, provided the exercise of such rights or remedies are subject to the same cure rights of the Permitted Institutional Mortgagee as set forth herein. Upon the expiration of any applicable cure period, the Town of Bedford shall notify the Permitted Institutional Mortgagee whether or not Tenant has effectuated a cure within said cure period. The provisions of this Section 13.2(c) are conditioned on the following provisions:

(i) Acquisition of Possession. Each Permitted Institutional Mortgagee, during the term of its mortgage, shall have the right to enter upon and take possession of the Premises, whether by foreclosure or otherwise, upon the happening of any default in or breach of the Tenant's obligations to such Permitted Institutional Mortgage or under this Lease, and shall send notice thereof to the Town of Bedford. Each Permitted Institutional Mortgagee shall, within sixty (60) days after notice of Tenant non-monetary default as set forth in paragraph (c) above, notify the Town of Bedford of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Institutional Mortgage or otherwise to obtain ownership of Tenant's interest in this Lease. Such notice from the Permitted Institutional Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Institutional Mortgagee agrees that:

(A) during the period that such Permitted Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall terminate or such proceeding shall be discontinued, it will pay or cause to be paid to the Town of Bedford, but only to the extent of Net Cash Flow all sums from time to time becoming due hereunder during such period; and

(B) if delivery of possession of the Premises shall be made to such Permitted Institutional Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Institutional Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements thereafter arising and herein contained on Tenant's part to be performed (including, but not limited to the Affordability Commitments and the payment of Rent, to the extent of Net Cash Flow) except such covenants and agreements which cannot with the exercise of due diligence be performed by such Permitted Institutional Mortgagee. Nothing in this subclause (B) shall be construed to require such Permitted Institutional Mortgagee to perform any of the Tenant's obligations hereunder accruing after such Permitted Institutional Mortgagee ceases to be in possession.

If a Permitted Institutional Mortgagee, through the operation of its Loan Documents, or by entry as a mortgagee in possession, or by foreclosure, or by acceptance of an assignment in lieu of foreclosure, takes possession of the Premises, such Permitted Institutional Mortgagee shall have the right, at its option, to operate the Premises itself and in all respects comply with the provisions of this Lease; and if such Permitted Institutional Mortgagee thereby acquires Tenant's interest in the Premises, such Permitted Institutional Mortgagee shall further have the rights, at its option (subject to any Intercreditor or Subordination Agreement by and among Permitted Institutional Mortgagees), to:

- i. assign or transfer Tenant's interest in the Premises or this Lease to (A) a subsidiary of such Permitted Institutional Mortgagee or (B) any other assignee or transferee, which subsidiary or other assignee or transferee shall assume performance of all of the terms, covenants, and conditions of the Tenant hereunder as set forth in paragraph 13.2(b) above; or

- ii. terminate the leasehold interest created by this Lease, thereby permitting the Town of Bedford to determine the future of the Premises, including the right to relet the Premises; in the event of such termination there shall be no obligation by the Town of Bedford to compensate such Permitted Institutional Mortgagee for any losses and no obligation by such Permitted Institutional Mortgagee to cure any default of Tenant.

No such action by a Permitted Institutional Mortgagee shall relieve Tenant of any of its obligations hereunder. Nothing contained herein shall limit or restrict any Permitted Institutional Mortgagee's right to exercise any other rights and remedies under its Loan Documents, in compliance with the provisions of this Lease.

No Permitted Institutional Mortgagee shall have any liability or obligation under this Lease unless it acquires Tenant's interest by foreclosure or acceptance of an assignment in lieu of foreclosure.

(d) Additional Rights of Permitted Institutional Mortgagee and Town of Bedford's Covenants. In addition to the matters set forth above, the Town of Bedford agrees, for so long as a Permitted Institutional Mortgage is outstanding, as follows:

(i) Notwithstanding anything to the contrary contained in this Lease, in the event that the Town of Bedford would otherwise have the right to terminate this Lease by reason of any Event of Default by Tenant which cannot be cured by a Permitted Institutional Mortgagee, e.g., an Event of Default under Section 14.2(e), or if a Permitted Institutional Mortgagee, its successors or assigns shall acquire Tenant's interest in this Lease, the Town of Bedford will enter into an amendment or a new lease or other agreement naming the Permitted Institutional Mortgagee or its nominee as Tenant hereunder for the remainder of the Term effective as of the date of such termination, upon the same terms, provisions, covenants, and agreements as herein contained, provided the Permitted Institutional Mortgagee or its nominee shall make written request upon the Town of Bedford for such amendment, new lease or other agreement within sixty (60) days after the later of (a) the date of such termination or acquisition, or (b) date of receipt of notice of the termination;

(ii) The Town of Bedford and Tenant shall not (i) consent to any action taken or to be taken, the result of which would diminish or impair the priority of a Permitted Institutional Mortgage; or (ii) subordinate or consent to the subordination of this Lease to any subsequent, underlying lease or mortgage. If this Lease is rejected or disaffirmed by the Town of Bedford or Tenant pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, the Town of Bedford shall offer the Permitted Institutional Mortgagee a new lease upon the same terms and conditions within ten (10) days after the date of such rejection; and

(iii) The fee title to the Premises and the leasehold estate of Tenant therein shall not merge but shall remain separate and distinct notwithstanding the acquisition of said fee title by the Town of Bedford, Tenant, or any third party by purchase or otherwise.

(iv) The Town of Bedford agrees that all insurance proceeds and all condemnation and eminent domain awards not used for repair of the improvements of the Premises, during the term of the Lease, shall be paid to the senior Permitted Institutional Mortgagee to the extent of the amount due on such Permitted Institutional Mortgagee's loan and the balance thereof shall be paid to the subordinate Permitted Institutional Mortgagees, to the extent of the amounts owed to them, in accordance with the terms of any Master Subordination Agreement entered into by and among the Permitted Institutional Mortgagees.

(v) The Town of Bedford acknowledges and agrees that, notwithstanding any contrary provision of the Lease, Tenant may entered into an affordable housing restriction for the benefit of one or more of the Permitted Institutional Mortgagees (the "Affordable Housing Restriction"), and the provisions of such Affordable Housing Restriction shall survive any termination of the Lease or other exercise of remedies by the Town of Bedford. If, pursuant to the terms hereof, this Lease is assigned to a Permitted Institutional Mortgagee or a third party approved by the Permitted Institutional Mortgagees, or if Town of Bedford enters into a new lease with any such party, the Affordable Housing Restriction shall remain in full force and effect, the same as if such party were the original named grantor therein; provided, however, that at the request of any holder under the Affordable Housing Restriction (as such term is defined therein), the Town of Bedford shall consent to an amendment or assignment of the Affordable Housing Restriction, or a new affordable housing restriction, for the remainder of the term of, the existing Affordable Housing Restriction, which shall have the same order of priority as the original Affordable Housing Restriction."

5. In all other respects, the Town of Bedford and Tenant confirm that the Lease remains unmodified and in full force and effect. Each of the Town of Bedford and Tenant represent and warrant to the other that, as of the date hereof and to the best of each others' knowledge, no Event of Default, as defined in Section 14.1 of the Lease, exists under the Lease nor any event which, with the passage of time and/or the giving of notice, would result in an Event of Default.

[signatures appears on next page]

IN WITNESS WHEREOF, the parties have executed this Amendment as an instrument under seal as of the date first above written.

TOWN OF BEDFORD

By: Catherine B Cordes
Name:
Title: Member, Board of Selectmen

By: [Signature]
Name:
Title: Member, Board of Selectmen

By: [Signature]
Name:
Title: Member, Board of Selectmen

By: [Signature]
Name:
Title: Member, Board of Selectmen

By: [Signature]
Name:
Title: Member, Board of Selectmen

TENANT:
447 CONCORD ROAD LLC
By: R&I Realty Corp., its manager

By: _____
Irma M. Schretter, Its President
Duly Authorized

