

STATE OF INDIANA  
LAKE COUNTY  
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MICHAEL H. BROWN  
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## PHASE II MORTGAGE AND SECURITY AGREEMENT (FINANCING STATEMENT)

This Phase II Mortgage and Security Agreement (Financing Statement) ("**Instrument**") is made as of June 12, 2013 by **UNIVERSITY PROMENADE LLC**, an Indiana limited liability company ("**Mortgagor**"), whose address is 2300 Cline Avenue, Schererville, Indiana 46375 and for the benefit of **CENTIER BANK**, an Indiana state bank (together with its successors and assigns, "**Bank**"), with offices at 600 East 84<sup>th</sup> Avenue, Merrillville, Indiana 46410.

Mortgagor is indebted to Bank in the aggregate maximum principal amount of Three Million Three Hundred Fifty Thousand Dollars (\$3,350,000.00), which indebtedness is evidenced by a Phase II Promissory Note in the principal amount of \$3,350,000.00, of even date herewith, drawn by Mortgagor to the order of Bank, with a final payment due on or before the fifth (5<sup>th</sup>) anniversary of the date of this Instrument (or such other date as may be determined pursuant to the Loan Agreement (as defined herein)) (the "**Note**"). **Notwithstanding any other provision contained herein to the contrary**, the maximum aggregate amount of principal, interest, premium, if any, future advances, other indebtedness sums (now owed or hereafter owed) advanced to protect the security of this Instrument and expenses of Bank secured by this Instrument is Six Million Seven Hundred Thousand Dollars (\$6,700,000.00).

**Grant to Bank.** To secure to Bank:

- (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions, rewrites, refinances, modifications, consolidations and replacements thereof and substitutions therefor;
- (b) the payment of all amounts otherwise payable by Mortgagor under or with respect to that certain Phase II Construction and Real Estate Loan Agreement dated as of June 12, 2013, executed by Mortgagor and by Bank (the "**Loan Agreement**") and/or any of the other Loan Documents (as defined in the Loan Agreement);
- (c) the repayment of any future advances, with interest thereon, made by Bank to Mortgagor, whether made as an obligation, made at the option of Bank, made after a reduction to a zero (0) or other balance, or made otherwise, provided that the total principal amount of future advances secured hereby (excluding all obligations evidenced by the Note and all other obligations existing as of the date of this Instrument) will not exceed \$3,350,000.00;

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(d) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument;

(e) the performance of the covenants and agreements of Mortgagor herein contained;

(f) the performance of the covenants and agreements under the Loan Agreement and/or any of the other Loan Documents to be performed by Mortgagor; and

(g) all other liabilities of Mortgagor in favor of the Bank, direct or indirect, absolute or contingent, primary or secondary, matured or unmatured, whether or not related to or of the same class as any specific debt secured hereby, now existing or hereafter arising

(collectively, the "**Obligations**"), Mortgagor hereby mortgages, warrants, grants, conveys and assigns to Bank, its successors and assigns, the property in Porter County, Indiana, as described on Exhibit A, which is attached hereto and made a part hereof, together with all buildings, improvements, and tenements now or hereafter erected on the property, and all easements, rights, right-of-ways, driveways, pavement, curb, and street front privileges, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, boilers, incinerators and building materials of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, attached floor coverings, furniture, antennas, signs, trees and plants; all of which, including improvements, replacements and additions thereto, will be deemed to be and remain a part of the real property covered by this Instrument, whether actually physically annexed to said property or not; and all of the foregoing, but excluding equipment that is leased by Mortgagor in the conduct of its business, to the extent that the leasehold interest therein is not assignable by Mortgagor under the applicable lease agreement, together with said property are herein referred to as the "**Property**".

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property, that, with the exception of the encumbrances listed on Exhibit B, which is attached hereto and made a part hereof, the Property is unencumbered, and that Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to any easements, covenants, conditions and restrictions of record listed in schedule of exceptions to coverage in any title insurance policy insuring Bank's interest in the Property.

**Covenants.** Mortgagor hereby covenants and agrees as follows:

1. **Payment of Principal and Interest.** Mortgagor will promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and charges thereon (if applicable) and late charges provided in the Note and all other Obligations.

2. **Mortgagor Breach; Right of Bank.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Bank may pay, in any amount and in any order as Bank may determine in Bank's sole discretion, any rents, taxes, assessments, insurance premiums, judgment liens, tax liens, mechanic's liens and other charges and impositions attributable to the Property which are now or will hereafter become due, which will then become immediately due and owing by the Mortgagor to the Bank, and secured by this Instrument pursuant to Paragraph 8 hereof.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Bank from Mortgagor under the Note or this Instrument will be applied by Bank in the following order of priority: (i) amounts payable to Bank by Mortgagor under Paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to Paragraph 8 hereof; (v) principal of advances made pursuant to Paragraph 8 hereof; (vi) interest payable on any future advance, provided that if more than one future advance is outstanding, Bank may apply payments received among the amounts of interest payable on the future advances in such order as Bank, in Bank's sole discretion, may determine; (vii) principal of any future advance, provided that if more than one future advance is outstanding, Bank may apply payments received among the principal balances of the future advances in such order as Bank, in Bank's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Bank, at Bank's option, may determine; provided, however, that Bank may, at Bank's option, apply any sums payable pursuant to Paragraph 8 hereof prior to interest on and principal of the Note, but such application will not otherwise affect the order of priority of application specified in this Paragraph 3.

4. **Charges; Liens.** Mortgagor will pay all utility, water and sewer charges, real property taxes, personal property taxes, assessments, income and franchise taxes, premiums, and other impositions attributable to the Property. Mortgagor will promptly furnish to Bank, upon request, all notices of amounts due under this Paragraph 4, and in the event Mortgagor makes payment directly, Mortgagor will, promptly furnish to Bank receipts evidencing such payments. Mortgagor will promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Mortgagor will pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property; provided that Mortgagor will not be required to discharge any such lien so long as Mortgagor agrees in writing to the payment of the obligation secured by such lien in a manner acceptable to Bank, or in good faith contests such lien by, or defends enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof, as determined by Bank.

5. **Hazard Insurance.** Mortgagor will provide insurance with respect to the Property as provided in the Loan Agreement.

6. **Preservation and Maintenance of Property.** Mortgagor (a) will not commit waste or permit impairment or deterioration of the Property, (b) will not abandon the Property,

(c) will keep the Property, including improvements thereon, in good repair and in slightly condition, (d) will comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (e) will give notice in writing to Bank of and, unless otherwise directed in writing by Bank, appear in and defend any action or proceeding purporting to affect the Property, the security to this Instrument or the rights or powers of Bank. Excepting demolitions and improvements pursuant to the Plans and Specifications (as defined in the Loan Agreement), Mortgagor will not remove, demolish or alter any improvement now existing or hereafter erected on the Property without the written consent of Bank.

7. **Use of Property.** Unless required by applicable law or unless Bank has otherwise agreed in writing, Mortgagor will not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Mortgagor will not initiate or acquiesce in a change in the zoning classification of the Property without Bank's prior written consent.

8. **Protection of Bank's Security.** If Mortgagor fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Bank therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Bank, at Bank's option, may make such appearances, disburse such sums and take such action as Bank deems necessary, in its sole discretion, to protect Bank's interest, including, but not limited to, (i) disbursement of reasonable attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in Paragraph 5 hereof.

Any amounts disbursed by Bank pursuant to this Paragraph 8, with interest thereon, will become additional indebtedness of Mortgagor secured by this Instrument. Unless Mortgagor and Bank agree to other terms of payment, such amounts will be immediately due and payable and will bear interest from the date of disbursement at the rate stated in the Note unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amounts will bear interest at the highest rate which may be collected from Mortgagor under applicable law. Mortgagor hereby covenants and agrees that Bank will be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this Paragraph 8 will require Bank to incur any expense or take any action hereunder.

9. **Inspection.** Bank may make or cause to be made reasonable entries upon and inspections of the Property.

10. **Books and Records.** Mortgagor will keep and maintain at all times at Mortgagor's address, or such other place as Bank may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments will be subject to examination and inspection at any reasonable time by Bank.

In addition, where applicable as determined by Bank, Mortgagor will submit a rent roll in form and substance satisfactory to Bank, and certified by Mortgagor, setting forth each tenant's name, the size by square footage of the unit, the suite or unit number, status of rental payments,



amount of rental payments, any common area maintenance expense reimbursed by tenant, any expense stops, expiration date of leases and any renewal options, and total rentable square footage of the Property at least on an annual basis.

11. **Condemnation.** Mortgagor will promptly notify Bank of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor will appear and prosecute any such action or proceeding unless otherwise directed by Bank in writing. Mortgagor authorizes Bank, but only during the continuance of any Default, at Bank's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Bank's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part hereof, or for conveyances in lieu of condemnation, are hereby assigned to and will be paid to Bank for application as set out below.

In the event of a total taking of the Property, Mortgagor authorizes Bank to apply such awards, payments, proceeds or damages, after the deduction of Bank's out-of-pocket expenses incurred in the collection of such amounts to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 3 hereof, with the balance, if any, to Mortgagor. In the event of a partial taking of the Property, unless Mortgagor and Bank otherwise agree in writing, there will be applied to the sums secured by this Instrument such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Instrument immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of proceeds paid to Mortgagor. Unless Mortgagor and Bank otherwise agree in writing, any application of proceeds to principal will not extend or postpone the due date of any monthly installments referred to in Paragraphs 1 and 2 hereof, or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Bank may require.

12. **Mortgagor and Lien Not Released.** From time to time, Bank may, at Bank's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns, or any junior lienholder or guarantors, without liability on Bank's part and notwithstanding Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, extend the time for payment of the indebtedness secured by this Instrument, or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefore, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Bank pursuant to the terms of this Paragraph 12 will not affect the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Mortgagor contained herein, will not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness

secured by this Instrument, and will not affect the lien or priority of lien hereof on the Property. Mortgagor will pay Bank a reasonable service charge, together with such title insurance premiums and reasonable attorney's fees as may be incurred at Bank's option, for any such action if taken at Mortgagor's request.

13. **Forbearance by Bank Not a Waiver.** Any forbearance by Bank in exercising any right or remedy hereunder, or otherwise afforded by applicable law, will not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Bank of payment of any sum secured by this Instrument after the due date of such payment will not be a waiver of Bank's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Bank will not be a waiver of Bank's right to accelerate the maturity of the indebtedness secured by this Instrument, nor will Bank's receipt of any awards, proceeds or damages under Paragraphs 5 and 11 hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Instrument.

14. **Estoppel Certificate.** Mortgagor will within ten days of written request from Bank furnish Bank with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

15. **Uniform Commercial Code Security Agreement.** This Instrument is intended to be a security agreement pursuant to the Indiana Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants and transfers to Bank a security interest in said items, now owned or hereafter acquired, whether or not presently within the contemplation of the Mortgagor and Bank, and the proceeds thereof, to include insurance proceeds and tort claims or settlements. Mortgagor agrees that Bank may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items which are a part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement will be sufficient as a financing statement. Mortgagor hereby authorizes the Bank at the expense of the Mortgagor to execute and file a financing statement or statements on its behalf in those public offices deemed necessary by Bank to protect its security interest. In addition, Mortgagor agrees to execute and deliver to Bank, upon Bank's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Bank may require to perfect a security interest with respect to said items. Mortgagor will pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and will pay all reasonable costs and expenses of any record searches for financing statements Bank may reasonably require. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Bank will have the remedies of a secured party under the Uniform Commercial Code and, at Bank's option, may also invoke the remedies provided in Paragraph 24 hereof as to such items. In exercising any of said remedies, Bank may proceed against the items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Bank's remedies under the Uniform Commercial Code or of the remedies provided in Paragraph 24 hereof.

16. **Remedies Cumulative.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. **Defaults.** The occurrence of any one or more of the following will constitute a "Default" under this Instrument:

(a) The occurrence of any "Event of Default" under the Loan Agreement;

(b) Default by Mortgagor in the payment and/or deposit of any sum due under this Instrument within ten (10) days after the due date therefor;

(c) Default on the part of Mortgagor in the performance of any matters to be performed under this Instrument (other than the payment or deposit of monies), and such default continues for more than thirty (30) days after notice of such default is given by Bank or, if such default cannot reasonably be cured within said 30-day period, if Mortgagor does not commence to cure such default within such 30-day period with a reasonable probability of success and diligently proceed to cure such default as quickly as reasonably possible, as reasonably determined by Bank;

(c) Mortgagor becomes insolvent or admits in writing its inability to pay debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee or receiver for Mortgagor and/or the Property or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Mortgagor; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Mortgagor and, if instituted against Mortgagor, is consented to or acquiesced in by Mortgagor, or remains undismissed for sixty (60) days; or Mortgagor makes an assignment for the benefit of creditors; and/or

(d) the Property (or any portion thereof) becomes subject to the jurisdiction of a United States Bankruptcy Court or similar state court.

Upon the occurrence of any Default, Bank may, at Bank's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Mortgagor, and Bank may invoke any remedies permitted by Paragraph 24 hereof. All reasonable attorney's fees and other expenses incurred by Bank in connection with Mortgagor's bankruptcy or any of the other aforesaid events will be additional indebtedness of Mortgagor secured by this Instrument pursuant to Paragraph 8 hereof.

18. **Transfers of the Property or Beneficial Interests in Mortgagor; Assumption.** On sale or transfer of all or any part of the Property, or any interest therein, Bank may, at Bank's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Bank may invoke any remedies permitted by Paragraph 24 hereof.



19. **Notice.** Except for any notice required under applicable law to be given in another manner, any notice to Mortgagor or to Bank hereunder will be made as provided in the Loan Agreement.

20. **Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.** The covenants and agreements herein contained will bind, and the rights hereunder will inure to, the respective heirs, personal representatives, successors and assigns of Bank and Mortgagor, subject to the provisions of Paragraph 18 hereof. All covenants and agreements of Mortgagor will be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Bank may act through its employees, agents or independent contractors as authorized by Bank. The captions and headings of the Paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

21. **Governing Law; Severability.** This Instrument will be governed by the laws of the State of Indiana. In the event that any provision of this Instrument or the Note conflicts with applicable law, such will not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Mortgagor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Bank in excess of the amounts payable to Bank pursuant to such charges as reduced will be applied by Bank to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as other charges levied in connection with such indebtedness which constitutes interest, will be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

22. **Waiver of Statute of Limitations.** Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

23. **Waiver of Marshalling.** Notwithstanding the existence of any other security interest in the Property held by Bank or by any other party, Bank will have the right to determine the order in which any or all of the Property and Mortgagor's general intangibles will be subjected to the remedies provided herein. Bank will have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property or Mortgagor's general intangibles and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.



24. **Acceleration; Remedies.**

(a) **Acceleration.** Upon the occurrence of any Default, Bank, at Bank's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceedings, and may invoke any other remedies permitted by applicable law or provided herein. Bank will be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorney's fees, appraisal fees, expert witness fees, costs of court reporters, travel expenses, costs of documentary evidence, abstracts and title reports.

(b) **Foreclosure.** When the Obligations become due, whether by acceleration or otherwise, Bank will have the right to foreclose the lien hereof in accordance with the laws of Indiana and to exercise any other remedies of Bank provided in this Instrument and/or any of the other Loan Documents or which Bank may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there will be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Bank for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Bank may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Property, and any other expenses and expenditures which may be paid or incurred by or on behalf of Bank and permitted by the laws of Indiana to be included in such decree. All expenditures and expenses of the nature mentioned in this paragraph 24, and such other expenses and fees as may be incurred in the protection of the Property and rents and income therefrom and the maintenance of the lien of this Instrument, including the fees of any attorney employed by Bank in any litigation or proceedings affecting this Instrument or the Property, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, will be so much additional Obligations and will be immediately due and payable by Mortgagor, with interest thereon at the applicable default rate until paid.

(c) **Right of Possession.** When the Obligations become due, whether by acceleration or otherwise, or if Bank otherwise has a right to institute foreclosure proceedings, Mortgagor will, forthwith upon demand of Bank, surrender to Bank, and Bank will be entitled to be placed in possession of, the Property as provided in the statutes relating to the foreclosure of mortgages, and Bank, in its discretion upon notice to Mortgagor, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Bank and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents;

(ii) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in

connection with the Property as may seem judicious to Bank, to insure and reinsure the Property and all risks incidental to Bank's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom; and/or

(iii) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of Taxes, Premiums and other charges applicable to the Property, or in reduction of the Obligations in such order and manner as Bank will select.

Without limiting the generality of the foregoing, Bank will have all power, authority and duties as provided in the statutes relating to the foreclosure of mortgages. Nothing herein contained will, be construed as constituting Bank a mortgagee in possession in the absence of the actual taking of possession of the Property.

(d) **Receiver.** Upon the institution of a foreclosure proceeding or at such later time as required by law, if any, or at any time thereafter, the court in which such proceeding is instituted may appoint upon petition of Bank, and at Bank's sole option, a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Property or whether the same will be then occupied as a homestead or not. Such receiver will have all powers and duties prescribed by law, including the power to make leases to be binding upon all parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Property after entry of a judgment of foreclosure. In addition, such receiver will also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the final date for payment of liabilities and performance of obligations set forth in the Note, this Instrument and the other Loan Documents and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, will be binding on Mortgagor and all the persons whose interest in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Obligations, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver will have the power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver will have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Property in payment in whole or in part of: (a) the Obligations or the indebtedness secured by a decree foreclosing this Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

(e) **Foreclosure Sale.** Except to the extent otherwise required by the statutes relating to the foreclosure of mortgages, the proceeds of any foreclosure sale of the Property will be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Obligations in such order as Bank elects, with interest thereon as herein provided; and lastly any surplus to Mortgagor and its successors and assigns, as their rights may appear.

(f) **Insurance During Foreclosure.** All rights and powers of Bank under paragraph 24(c) hereof of this Instrument will, from and after the entry of judgment of foreclosure, continue in the Bank as decree creditor until confirmation of sale. In case of an insured loss after foreclosure has been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, will be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, will be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, Bank may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Bank may deem advisable to protect the interest of such purchaser.

(g) **Waiver of Right of Redemption.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to redemption provided by law or equity on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and will be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Bank, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof will be subject to any defense which would not be good and valid in an action at law upon the other Loan Documents to which Mortgagor is a party. Mortgagor acknowledges that the Property do not constitute residential real estate.

25. **Release.** Upon payment of all sums secured by this Instrument, Bank will release this Instrument without charge to Mortgagor.



26. **Other Encumbrances.** Mortgagor will not further mortgage or encumber the Property or Mortgagor's general intangibles in any way (excepting only interests granted to the United States Small Business Administration pursuant to the SBA Financing (as defined in the Loan Agreement)) without the express written consent of the Bank.

27. **Waiver of Valuation and Appraisal.** Mortgagor hereby waives all right of valuation and appraisal.

28. **Future Advances.** Upon request of Mortgagor, Bank, at Bank's option so long as this Instrument secures indebtedness held by Bank, may make future advances to Mortgagor. Such future advances, with interest thereon, will be secured by this Instrument.

29. **Representation and Review.** Mortgagor acknowledges that Mortgagor is represented by legal counsel, and that before executing and delivering the Note, this Instrument and all other agreements, instruments and Loan Documents, such documents, and the rights of Mortgagor, were fully explained to Mortgagor by such counsel; and that Mortgagor understands the nature and extent of the obligations hereby and thereby undertaken.

30. **Rights under Other Loan Documents.** All rights, remedies and benefits of Bank under and with respect to this Instrument are in addition to, and not in limitation of, all rights, remedies and benefits of Bank arising under the Loan Agreement and/or any of the other Loan Documents

31. **WAIVER OF TRIAL BY JURY.** MORTGAGOR AND BANK EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS MORTGAGOR AND MORTGAGEE 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.

32. **Prior Grant.** Borrower acknowledges that Borrower granted to Bank a certain Mortgage and Security Agreement (Financing Statement) with respect to the Real Estate as of July 11, 2012, recorded in the Office of the Recorder of Porter County on July 16, 2012 as Document Number 2012-017149, as amended by that certain First Modification to Mortgage, Assignment of Rents and Security Agreement (Financing Statement) dated May 17, 2013, recorded in the Office of the Recorder of Porter County on May 22, 2013, as Document Number 2013-013332 and re-recorded or to be re-recorded to correct scrivener's errors (collectively, the "Prior Mortgage"). Borrower expressly acknowledges and agrees that all grants, undertakings, promises and agreements of Borrower in this Instrument are in addition to, and not in limitation of, all grants, undertakings, promises and agreements of Borrower in the Prior Mortgage.



IN WITNESS WHEREOF, Mortgagor has executed this Instrument, or has caused the same to be executed by its representatives thereunto duly authorized, on the date first written above.

Mortgagor:

UNIVERSITY PROMENADE LLC, an Indiana limited liability company

By:   
Alan D. Krygier, Manager/Member

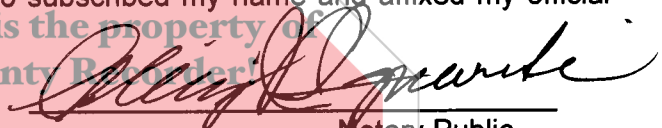
STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

JUN 12 2013

BEFORE ME, the undersigned, a Notary Public, on June \_\_, 2013, personally appeared Alan D. Krygier, personally known to me to be the same person whose name is subscribed to the foregoing Phase II Mortgage and Security Agreement (Financing Statement) as Manager/Member of University Promenade LLC, and being first duly sworn by me upon oath, acknowledged that such person has read and understands the foregoing and that such person has affixed such person's name to and delivered said document as such person's own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



  
Notary Public

Commission Expires: \_\_\_\_\_ County of Residence: \_\_\_\_\_

This instrument was prepared by: Demetri J. Retson  
Genetos Retson & Yoon LLP  
1000 East 80<sup>th</sup> Place, Suite 555 North  
Merrillville, Indiana 46410  
219-755-0400; fax: 219-755-0410

The foregoing preparer states as follows: I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

## EXHIBIT A

### Legal Description of Property

**Parcel 1:** Part of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 19, Township 35 North, Range 5 West of the Second principal meridian, in the City of Valparaiso, in Porter County, Indiana, being more particularly described as follows: Commencing at a pipe on the North line of LaPorte Road that is 445 feet West of the East line of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of said Section 19; thence North, a distance of 194.37 feet to an iron pipe that is 1328.72 feet South and 911.5 feet East of the West Quarter post of said Section 19; thence Westerly, a distance of 65.28 feet, more or less; thence South to the North line of LaPorte Road; thence Easterly along the North line of LaPorte Road, a distance of 66.05 feet, more or less, to the place of beginning.

**Parcel 2:** Part of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 19, Township 35 North, Range 5 West of the Second Principal Meridian, in the City of Valparaiso, in Porter County, Indiana, being more particularly described as follows: Commencing at a pipe on the North line of LaPorte Road that is 445 feet West of the East line of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of said Section 19 for the place of beginning; thence North, a distance of 145 feet; thence East, at right angles, a distance of 104.15 feet; thence South, a distance of 155 feet to a pipe on the North line of LaPorte Road; thence westerly, along the North line of said road, a distance of 104.53 feet to the place of beginning.

**Parcel 3:** Part of the Southwest  $\frac{1}{4}$  of Section 19, Township 35 North, Range 5 West of the Second Principal Meridian, in the City of Valparaiso, in Porter County, Indiana, being more particularly described as follows: Commencing at a point on the South right-of-way line of Lincolnway that is 1,144.3 feet South and 846.79 feet East of the West Quarter corner of said Section 19; thence South 89 degrees 59 minutes 18 seconds East (basis of bearings being the South right-of-way line of Lincolnway bearing North 89 degrees 59 minutes 18 seconds West, an assumed bearing), a distance of 55.0 feet, along the South right-of-way line of Lincolnway, to the place of beginning; thence South 0 degrees 09 minutes 36 seconds East, a distance of 183.86 feet; thence South 87 degrees 02 minutes 06 seconds East, a distance of 9.94 feet; thence South 0 degrees 13 minutes 36 seconds East, a distance of 39.37 feet; thence South 89 degrees 58 minutes 54 seconds East, a distance of 104.0 feet; thence North 0 degrees 13 minutes 45 seconds West, a distance of 223.75 feet to the South right-of-way line of Lincolnway; thence North 89 degrees 59 minutes 18 seconds West, a distance of 113.70 feet, along the South right-of-way line of Lincolnway, to the place of beginning.

**Parcel 4:** Part of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 19, Township 35 North, Range 5 West of the Second Principal Meridian, in the City of Valparaiso, in Porter County, Indiana, being more particularly described as follows: Commencing at a point on the South line of Lincolnway, formerly known as Main Street extension, that is located 340.77 feet West of the East line of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ ; thence South, a distance of 200 feet; thence East, parallel to the South line of said Lincolnway, a distance of 150 feet; thence North, a distance of 200 feet to the said South line of said Lincolnway; thence West, along the said South line of said Lincolnway, a distance of 150 feet to the place of beginning.

**Parcel 5:** Part of the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 19, Township 35 North, Range 5 West of the Second Principal Meridian, in the City of Valparaiso, in Porter County, Indiana,

being more particularly described as follows: Commencing at a point on the South line of Lincolnway, formerly known as Main Street extension, that is 340.77 feet West of the East line of said West ½ of the Southwest 1/4 of Section 19; thence South, a distance of 200 feet to the place of beginning; thence East, a distance of 150 feet, parallel to the South line of Lincolnway; thence South, a distance of 193.20 feet, more or less, to the North line of LaPorte Avenue; thence North 84 degrees 17 minutes West, along the North line of LaPorte Avenue, a distance of 150.84 feet, more or less; thence North, a distance of 178.75 feet to the place of beginning.

**Parcel 6:** Part of the Southwest 1/4 of Section 19, Township 35 North, Range 5 West of the Second Principal Meridian, in the City of Valparaiso, in Porter County, Indiana, being more particularly described as follows: Commencing at a point on the South right-of-way line of Lincolnway that is 1144.3 feet South and 846.79 East of the West quarter corner of said Section 19; thence South 0 degrees 09 minutes 6 seconds East (basis of bearing being the South right-of-way line of Lincolnway bearing North 89 degrees 59 minutes 18 seconds West, an assumed bearing), a distance of 181.04 feet; thence South 87 degrees 02 minutes 06 seconds East, a distance of 55.08 feet, more or less, to the West line of that certain tract of real estate described in Warranty Deed recorded July 26, 1996, in Deed Record 470 page 125; thence North 00 degrees 09 minutes 36 seconds West, along said West line, a distance of 183.86 feet to the South right-of-way line of Lincolnway; thence North 89 degrees 59 minutes 18 seconds West, along the South right-of-way line of Lincolnway, a distance of 55.0 feet to the place of beginning.



## EXHIBIT B

### Permitted Encumbrances

1. Mortgage and Security Agreement (Financing Statement), dated as of July 11, 2012, granted by Mortgagor to Bank, recorded in the Office of the Recorder of Porter County on July 16, 2012, as Documents Number 2012-017149.
2. Real property taxes for 2012 (payable 2013), second installment only, and subsequent years.
3. Rights of the public, the State of Indiana and/or the municipality, and others entitled thereto, in and to that part of the land taken for or lying within Lincolnway along the North said of the land.
4. Rights of the public, the State of Indiana and/or the municipality, and others entitled thereto, in and to that part of the land taken for or lying within LaPorte Avenue along the South side of the land.
5. Easement for general public utility purposes, and appurtenances thereto, in favor of the City of Valparaiso, its successors and assigns, dated October 24, 2006, and recorded October 25, 2006, as Document No. 2006-032292.
6. Easement for general public utility purposes, and appurtenances thereto, in favor of the City of Valparaiso, its successors and assigns, dated October 24, 2006, and recorded October 25, 2006, as Document No. 2006-032293.
7. Terms and provisions of Resolution No. 2-9-2005-1 Resolution of the City of Valparaiso Redevelopment Commission Expanding the Consolidated Valparaiso Allocation Area and Amending the Economic Development Plan for the Consolidated Valparaiso Economic Development Area, recorded April 25, 2005, as Document No. 2005-010945.
8. Terms and provisions of Resolution No. 10-11-2007-1, Resolution of the City of Valparaiso Redevelopment Commission Amending the Economic Development Plan for the Consolidated Valparaiso Economic Development Area and Expanding the Consolidated Valparaiso Allocation Area, recorded October 16, 2007, as Document No. 2005-031416.
9. Terms and provisions of Resolution No. 2-21-2008-01, Resolution of the city of Valparaiso Redevelopment Commission Amending the Economic Development Plan for the Consolidated Valparaiso Economic Development Area and Expanding the Consolidated Valparaiso Allocation Area, recorded February 28, 2008, as Document No. 208-005453.
10. Terms and provisions of Resolution No. 6-12-2008-02, Resolution of the City of Valparaiso Redevelopment Commission Confirming the Amended Declaratory Resolution that Expanded the consolidated Valparaiso Economic Development Area and



Expanding the Consolidated Valparaiso Allocation Area, as amended, recorded June 19, 2008, as Document No. 2008-016767.

11. Easement for electric and communication line in favor of The City of Valparaiso dated November 1, 2006 and recorded November 9, 2006 as Document No. 2006-033780.
12. Perpetual Easement and right of way made by La-Porter Federal Credit Union n/k/a First Trust Credit Union to The City of Valparaiso, Indiana dated August 31, 2007 and recorded October 3, 2007 as Document No. 2007-030093.

