



August 23, 2023

His Excellency Governor Christopher T. Sununu
and
The Honorable Council

Dear Governor and Councilors:

REQUESTED ACTION

Holding of a public hearing and passage of a Resolution entitled: A RESOLUTION UNDER RSA 162-I:9 WITH RESPECT TO THE FINANCING OF AN UP TO \$72,500,000 LOAN FOR A COMMERCIAL FACILITY BY THE BUSINESS FINANCE AUTHORITY FOR NEW BALANCE ATHLETICS, INC. IN LONDONDERRY AND THE AWARD OF AN UNCONDITIONAL STATE GUARANTEE OF UP TO \$50,000,000 PRINCIPAL AMOUNT REVENUE BOND (For the text of the requested Resolution see Tab #1 below this letter of transmittal.)

The Business Finance Authority (the "Authority") respectfully requests that you hold a hearing, and, if you consider such action appropriate, make the statutory findings under RSA 162-I:9 with respect the proposed financing by the Authority of an up to \$72,500,000 loan, comprised of two revenue bonds ("Bond No. 1" and "Bond No. 2," and together, the "Bonds"), which Bond No. 2 is to be supported by the award of a guarantee of up to \$50,000,000 by the State of New Hampshire (the "State"), which Bonds will finance the acquisition and improvements by the Authority of an approximately 17.8 acre parcel of land improved by a building structure of approximately 102,000 square feet and related appurtenances located in the Town of Londonderry (the "Project") and the lease to and use by New Balance Athletics, Inc. (the "Borrower"). The Authority recommends your favorable action and submits in support thereof the following materials with item numbers the same as the tab numbers for the attached documents.

1. A suggested form of resolution for adoption by the Governor and Council.
2. A letter from Hinckley, Allen & Snyder LLP, bond counsel, explaining this transaction.
3. The Application for Financing with respect to the Borrower and the facility submitted by the Borrower.

Financing for New Hampshire's Future

135 N. State Street, Concord, NH 03301

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4. The TERM SHEET from Service Federal Credit Union as to its purchase of the Bonds.
5. The proposed BOND PURCHASE AND LOAN AGREEMENT.
6. The proposed AGREEMENT OF LEASE.
7. The proposed MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, ASSIGNMENT OF PLANS AND PERMITS, SECURITY AGREEMENT AND FIXTURE FILING (BOND NO. 1).
8. The proposed MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, ASSIGNMENT OF PLANS AND PERMITS, SECURITY AGREEMENT AND FIXTURE FILING (BOND NO. 2).
9. The proposed GUARANTEE AGREEMENT.
10. Information from the New Hampshire Employment Security, Economic and Labor Market Information Bureau as to unemployment in Londonderry.
11. The resolution adopted by the Authority.
12. A summary of required statutory findings of the Governor and Council with reference to materials supporting each finding.

The Authority will be glad to furnish any additional documentation and information that you may request.

Respectfully submitted,

BUSINESS FINANCE AUTHORITY OF
THE STATE OF NEW HAMPSHIRE

By: 
James Key-Wallace
Executive Director

A RESOLUTION UNDER RSA 162-I:9 WITH RESPECT TO THE FINANCING OF
A COMMERCIAL FACILITY BY THE BUSINESS FINANCE AUTHORITY FOR NEW
BALANCE ATHLETICS, INC. IN THE TOWN OF LONDONDERRY, NEW HAMPSHIRE
AND THE AWARD OF AN UNCONDITIONAL STATE GUARANTEE OF UP TO
\$50,000,000 OF PRINCIPAL OF AND INTEREST ON THE FINANCING

WHEREAS, the Governor and Council have received from the Business Finance Authority (the "Authority") its written recommendation that the Governor and Council make certain findings and a determination pursuant to RSA 162-I:9 with respect to the financing of a commercial facility for New Balance Athletics, Inc. (the "Borrower") in the Town of Londonderry, New Hampshire (the "Location"), by the Authority's purchase and lease of an approximately 17.8-acre parcel of land to be improved with a building structure thereon and related appurtenances through an up to \$72,500,000 taxable loan under RSA 162-I (the "Act"), comprised of two revenue bonds to be issued by the Authority ("Bond No. 1" and "Bond No. 2," and together, the "Bonds"), which Bond No. 2 is to be supported by a State guarantee (the "State Guarantee"), and the award of an unconditional State Guarantee of up to \$50,000,000 of principal of and interest on Bond No. 2 under RSA 162-I:9-b;

WHEREAS, the Governor and Council have received all the documentation and information with respect to the transaction that they have requested; and

WHEREAS, further action by the Authority with respect to the transaction is subject to the passage of this resolution and cannot be taken until after its passage;

IT IS HEREBY RESOLVED THAT:

Section 1. Findings. On the basis of the Authority's recommendation and the documentation and information received by the Governor and Council, and after a public hearing, the Governor and Council find:

(a) Special findings:

(1) The Project (as completed, the "Facility") consists of an approximately 17.8-acre parcel of land improved by a building structure of approximately 102,000 square feet and related appurtenances located in the Town of Londonderry. The Facility will be owned by the Authority and used by the Borrower for manufacturing of apparel, including shoes, and the performance of related internal business support services.

The Project is within the definition of "commercial facility" in the Act and may be financed under the Act.

(2) The establishment and operation of the Facility creates and preserves employment opportunities directly and indirectly within the State of New Hampshire (the "State") and will likely be of general benefit to the community as a whole.

(b) General findings:

(1) The Project and the proposed financing of the Project are feasible;

(2) The Borrower has the skills and financial resources necessary to operate the Facility successfully;

(3) The Bonds, the Bond Purchase and Loan Agreement, the Guarantee Agreement, the Agreement of Lease, the First Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Bond No. 1) and the Second Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Bond No. 2) (collectively, the "Agreements") contain provisions so that under no circumstances will the Authority be obligated directly or indirectly to pay Project costs, debt service or expenses of operation, maintenance and upkeep of the Facility except from funds received under the Agreements, exclusive of funds received thereunder by the Authority for its own use; and

(4) The proposed financing of the Project by the Authority and the proposed operation and use of the Facility will serve one or more needs and implement one or more purposes set forth in RSA 162-I:1, will preserve or increase the social or economic prosperity of the State and one or more of its political subdivisions, and will promote the general welfare of the State's citizens.

(c) Findings with respect to the State Guarantee:

(1) The award of the State Guarantee will contribute significantly to the success of the financing; and

(2) Reasonable and appropriate measures have been taken to minimize the risk of loss to the State and to ensure that any private benefit from an award of a State Guarantee will be only incidental to the public purpose served thereby.

Section 2. Award of State Guarantee. The Governor and Council hereby award an unconditional guarantee of \$50,000,000 principal of and interest on Bond No. 2, the principal amount of which shall not exceed \$50,000,000, pursuant to RSA 162-I:9-b and authorize the State Treasurer to execute by her manual or facsimile signature the endorsement appearing on the Bond Purchase and Loan Agreement and/or Bond No. 2 to evidence such guarantee.

Section 3. Authorization of Guarantee Agreement. The State shall be a party to the Guarantee Agreement between the Authority and the State (the "Guarantee Agreement") and the Governor and the State Treasurer are together authorized to execute and deliver the Guarantee Agreement on behalf of the State substantially in the form presented to this meeting but subject to such changes as the Governor and State Treasurer may approve, their signatures being conclusive identification of the Guarantee Agreement, with approved changes, if any, authorized by this resolution.

Section 4. Ultimate Finding and Determination. The Governor and Council find that the proposed financing, operation and use of the Facility and award of the State Guarantee will serve a public use and provide a public benefit; and the Governor and Council determine that the Authority's financing of the Project and the State's Guarantee of up to \$50,000,000 of principal of and interest on Bond No. 2 will be within the policy of, and the authority conferred by, the Act.

Section 5. Approval. The Governor and Council approve the Authority's, the Governor's and State Treasurer's taking such further action under the Act with respect to the transaction as may be required.

Section 6. Effective Date. This resolution shall take effect upon its passage.

Passed and Agreed to August 23, 2023.

Governor Christopher T. Sununu

Councilor Joseph D. Kenney

Councilor Cinde Warmington

Councilor Janet Stevens

Councilor Theodore L. Gatsas

Councilor David K. Wheeler



28 State Street
Boston, MA 02109

p: 617-345-9000 f: 617-345-9020
hinckleyallen.com

August 23, 2023

His Excellency Governor Christopher T. Sununu
and
The Honorable Council

Dear Governor and Councilors:

(BFA – New Balance Athletics, Inc.)

In this transaction Service Federal Credit Union (together with other financial institutions, the “Lender”) will lend up to \$72,500,000 via the Business Finance Authority of the State of New Hampshire (the “Authority”) to New Balance Athletics, Inc. (the “Borrower”) to finance the acquisition and improvements of an approximately 17.8-acre parcel of land improved by a building structure of approximately 102,000 square feet and related appurtenances located in the Town of Londonderry, New Hampshire (the “Project”), which will be owned by the Authority and leased to the Borrower to be used by the Borrower for the manufacturing of apparel, including shoes, and the performance of related internal business support services. Pursuant to a Bond Purchase and Loan Agreement to be dated as of September 1, 2023 (the “Loan Agreement”), included as Tab #5, two revenue bonds in the aggregate principal amount of up to \$72,500,000 (“Bond No. 1” and “Bond No. 2,” and together, the “Bonds”) will be issued. The Authority will also enter into a First Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Bond No. 1) (the “First Mortgage”), included as Tab #7, and a Second Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Bond No. 2) (the “Second Mortgage”), included as Tab #8, for the benefit of the State of New Hampshire (the “State”) in connection with the financing. The Authority will lease the Project to the Borrower pursuant to an Agreement of Lease to be dated as of September 1, 2023 (the “Lease Agreement”), included as Tab #6, by and between the Authority and the Borrower. The Authority and the State will enter into a Guarantee Agreement (the “Guarantee Agreement”), included as Tab #9, pursuant to which the State will guarantee (the “State Guarantee”) the payment of Bond No. 2, as described in the Guarantee Agreement.

The Lender is prepared to purchase the Bonds on the terms set forth in the Term Sheet, which is included in Tab #4. The Bonds will be secured by the Loan Agreement. In addition, Bond No. 1 will be secured by the First Mortgage and Bond No. 2 will be secured by the Second Mortgage and the State Guarantee of up to \$50,000,000. The term of the Bonds is ten (10) years and may be prepaid at any time without penalty. The Borrower is obligated to make debt service payments to the Authority in amounts sufficient to repay the Bonds.

The Bonds are expected to be fixed interest rate bonds, with an anticipated interest rate of five and seventy-five hundredths percent (5.75%); interest on the Bonds, however, will not exceed ten percent (10.00%). The Borrower may prepay principal of the Bonds at its option without penalty.

Other than as provided by the State Guarantee, the Authority's obligation to pay the Bonds is actually to be performed by the Borrower, which is unconditionally responsible for that performance. As in all transactions under RSA 162-I, neither the Authority's money nor other public funds will or can be used to pay the Bonds (other than as provided for by the State Guarantee). Provisions appropriate for achieving this result, as required by RSA 162-I, are contained in the Loan Agreement and the Lease Agreement.

In addition, the Bonds will be repaid by the Borrower through lease payments made by the Borrower to the Authority pursuant to the Lease Agreement.

Hinckley, Allen & Snyder LLP

HINCKLEY, ALLEN & SNYDER LLP

James Key-Wallace

To: Jeremy Stanizzi
Subject: RE: New Bond Financing Application from New Balance Athletics, Inc. for Land/Building Acquisition, New Construction

From: jeremys@nhbfa.com <JeremyS@NHBFA.com>

Sent: Wednesday, July 19, 2023 1:28 PM

To: Jeremy Stanizzi <jeremys@nhbfa.com>

Subject: New Bond Financing Application from New Balance Athletics, Inc. for Land/Building Acquisition, New Construction

Project Type

What type of project are you inquiring about?

- Land/Building Acquisition
- New Construction

Applicant/Contact Information

Name of Business

New Balance Athletics, Inc.

Address

221 N Beacon Street
Boston, Massachusetts 02135
United States
[Map It](#)

Contact Name

Jim Halliday

Contact Title

President, NB Development Group

Contact Phone

(617) 999-9964

Contact Email

jim.halliday@newbalance.com

Address of Owner of Project (if different)

100 Guest Street
Boston, Massachusetts 02135
United States
[Map It](#)

Address of Lessees of Project (if different)

100 Guest Street
Boston, Massachusetts 02135
United States
[Map It](#)

Project Information

Describe the Applicant (and if applicable the owner and the lessees). Include a brief history of the Applicant, its principal products and its consumers

Applicant, Owner, and Lessee are all the same, New Balance Athletics, Inc.

New Balance was founded in 1906 and has evolved into a global leader in athletic shoe and apparel manufacturing and sales.

Briefly describe the Applicant's key management personnel (and if applicable the owner and the lessees)

- James Davis (Chairman)
- Joe Preston (CEO & President)
- Kevin Doyle (CFO)
- Dave Wheeler (COO)
- Paul Gauron (General Council)
- James Halliday (President, NB Development Group)

Amount of Bond Issue

\$72,500,000.00

Address of Project Site

55 Pettengill Road
 Londonderry, New Hampshire 03053
 United States
[Map It](#)

Briefly Describe the Project

Undeveloped 17.8 acre land site.
 To be constructed 102,000 SF Manufacturing facility

Land Acquisition Estimated Cost

\$8,928,000.00

Acquisition Size (acres)

17.8

Building Construction Estimated Cost

\$63,572,000.00

Construction Size (square feet)

102,000

Describe the effect the project has on the environment

Environment and Sustainability are important to New Balance. The project provides for the following:

- The Building will be 100% electric with no gas service ensures that greenhouse gas emissions are minimized over the lifespan of the building
- Building employs a white EPDM roof to reduce heat island effects caused by black or dark roofs
- All interior lighting will be high efficacy LED fixtures
- All plumbing fixture are low flow
- Interior finishes are specified with high recycled content, cradle to cradle, and low or no VOC's
- Building insulation specified to be recycled denim in lieu of Fiberglass insulation
- Overall design embraces the LEED Certifiable min requirements(ownership not looking to go through the LEED process)
- Solar panel are being incorporated within the base building to minimize future modifications and adaptations provide
- Solar panels array at 778KW system producing approx. 996kwh annually
- Landscaping providing a majority of site be conservation mix with minimal mowable lawn area to alleviate sprinkler requirements as well as increase maintenance that comes with lawn area.

Estimated Project Start Date

08/25/2023

Estimated Project Completion Date

12/01/2024

Please provide all known names of contractors and subcontractors of the project

NB Development Group, LLC
Mulrooney Architecture & Design
Consigli Construction
Hayner-Swanson
Geoengineers
Kevin Smith Consulting
Vanasse
Construction Subcontractors to be awarded

New Hampshire Employment Impact

Current Number of New Hampshire Employees

0

Estimated Number of New Hampshire Jobs Maintained

0

Estimated Number of New Hampshire Jobs Created

240

Applicant is equal opportunity employer

Yes

Owner is equal opportunity employer

Yes

Lessee is equal opportunity employer

Yes

Describe the types of jobs created or preserved, their wage and salary levels, and, if applicable, when the jobs will be created

238 jobs will be created during calendar year 2024 and 2025. 147 associates by end of 2024 with an additional 91 by end of 2025.

200 Makers at \$19.19-\$21.27 Per Hour
16 Team Leaders at \$69K-\$74K Per Year
5 Supervisors at \$82K-\$88K Per Year
4 Engineers at 480K-\$90K Per Year
1 Plant Manager at \$128K-\$135 Per Year
12 Support Staff at TBD Payrate



July 7, 2023

James Key-Wallace
Executive Director, New Hampshire Business Finance Authority
135 North State Street
Concord, NH 03301

RE: Term Sheet for purchase and construction of 55 Pettengill Road, Londonderry, NH

Dear James:

The following is not a commitment to lend but based on initial underwriting is an estimate of the terms and conditions that Service Credit Union (the "Lender") could offer to finance 55 Pettengill Road, Londonderry, NH led by the New Hampshire Business Finance Authority (the "Borrower"). Final approval would be subject to satisfactory final underwriting and presentation for approval after you have decided to move forward with Service Credit Union. Service Credit Union reserves the right to withdraw its interest in providing financing should any additional due diligence or other conditions warrant. **This term sheet and the conditions contained within will expire on July 31, 2023.**

Borrower: The New Hampshire Business Finance Authority

Amount/Purpose:

Loan # 1 Up to 50% of the project cost(s) of \$72,500,000 or appraised value, whichever amount is lower. Estimated to be approximately \$36.250 million loan construction to permanent financing for the construction of a 102,000 SF manufacturing building together with 17.8 acre parcel of land. This loan will be subject to a participation interest being sold to a separate financial institution. Service Credit Union will remain as primary contact for all dealings with the proposed participant.

Loan # 2 Up to the project cost(s) of \$72,500,000. Estimated to be a \$36.250 million loan for purchase of a bond to be issued by the New Hampshire Business Finance Authority and guaranteed by the State of New Hampshire for the construction of a 102,000 SF manufacturing building together with 17.8 acre parcel of land.

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Interest Rate/Term:

Loan # 1 & 2

Interest Rate Monthly Pmt	Term/Amortization	Est.
5.75% fixed	10-Year Term	Interest due monthly on amounts advanced

Origination Fee: None

Collateral: Secured by a first & second mortgages on loan # 1 and loan # 2, respectively, satisfactory to Service Credit Union on 55 Pettingill Road, Londonderry, NH and all improvements described as :

102,000 SF facility comprised of 80,000 SF of manufacturing floor areas to house 5 value streams for production and 20,000 SF of associates amenity support / office support area as well as a 17.8 acre parcel.

First and second security, respectively on loan # 1 and loan # 2, interest and fixture filing on premises and valid assignment of all contracts and chattel paper. Such lease to be in satisfactory form and content to Service Credit Union.

An assignment by Borrower(s) to Lender of right, title and interest as landlord or tenant in all leases and subleases and any and all rental income ("Assignment of Leases and Rents").

Title Insurance: Lender will require Title Insurance with a National Title Insurance Company reflecting Lender's interest with no unapproved exceptions noted in the policy.

Assignment of all plans and permits for the proposed subjects and its improvements.

Prepayment Penalty: None

Insurance: Service Credit Union will require an insurance binder with the standard New Hampshire Liability and Property Mortgagee Clause Endorsement all acceptable to Service Credit Union prior to loan closing.

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Appraisal:

An "As-Is", "As Complete", and "As Stabilized" appraisal will be required on the subject property prior to loan closing. Said appraisal to be reviewed by Lender and indicating a maximum value loan-to-value ratio not to exceed the 50% the lower of the appraised value or project cost of \$72,500,000 on loan # 1 and limited to 100% of the project costs on Loan 2. Borrower/Guarantor will be responsible for the cost of the appraisal.

Environmental Site
Assessment:

Satisfactory environmental due diligence will be required prior to closing. A minimum of a Phase I environmental study will be required. Should that study indicate anything other than low risk, Service Credit Union reserves the right to require additional environmental due diligence up to and including a Phase II study. All environmental due diligence will be reviewed by Service Credit Union's environmental counsel. Borrower to be responsible for all costs associated with the environmental due diligence.

Guarantor(s):

State of New Hampshire – loan # 2. Said guaranty to be approved by Governor and Counsel as a condition of closing.

Debt Service Coverage:

Service Credit Union will subject approval of this loan to a minimum acceptable debt coverage ratio (DCR) of 1.00x (Project Specific on 55 Pettengill Road, Londonderry, NH). Service Credit Union will require that this debt coverage ratio be maintained for the duration of the loan and measure this calculation on an annual basis upon submission of financial statement information. Debt coverage calculation will include payments on all debt associated with the project. Should DCR covenant not be met, borrower has the option to fund three (3) months of debt service into a reserve account to be held until DCR is achieved at the next year-end. However, only if no other material default has occurred.

Financial Statements: Service Credit Union will require annual financial information to include:

1. Financial Statements from tenant and borrower
2. Annual rent roll and lease amendments on the subject property



Other:

The following additional terms will be a condition of the proposed loans:

- 1) The rate and term proposed assume the establishment and maintenance of an account of the subject entity at Service Credit Union for the life of the loan.
- 2) Loan documents to be prepared by counsel to Service Credit Union in form acceptable to it, with all fees and loan costs paid by Borrower.
- 3) No additional debt associated with the property without written approval by Service Credit Union.
- 4) Subject to receipt and satisfactory review of a construction contract with a general contractor ("Contractor"). Said contract to be a firm fixed price contract. All construction contracts and sub-contractors are subject to a satisfactory review by independent firm to be hired as the construction manager representing Lender.
- 5) During construction an independent firm will be hired as the construction manager representing the Lender. Said firm will perform on site reviews and inspections as well as approval of all construction draw request(s); with fees payable by Borrower.
- 6) Contractor and all sub-contractors will be required to provide lien waivers and mechanics lien compliance at the time of payments for all paid invoices approved by hired construction manager firm.
- 7) Lender will require 5% retainage holdback for all construction advances. This 5% retainage will be disbursed to the Contractor after project completion, Certificate of Occupancy has been issued, and all other issues have been addressed to the satisfaction of the construction manager firm and Lender.
- 8) **Service Credit Union Reserves the right to require additional terms and conditions based on additional underwriting and due diligence at its sole discretion.**

Service Credit Union will require the following financial information to be submitted:

- Completed Business Loan Application
- Copy of proposed lease with tenant
- Copies of any current appraisals or environmental reports



We look forward to working with you on this project.

Sincerely,

David A. Weed
AVP - Business Services

Borrower: New Hampshire Business Finance Authority

By:

James Key Wallace, Executive Director

Date:

7-13-2023

BOND PURCHASE AND LOAN AGREEMENT

by and between

the BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW
HAMPSHIRE, as Borrower and Bond Issuer

- and -

SERVICE FEDERAL CREDIT UNION, as Lender

Dated as of _____, 2023

EXCEPT AS EXPRESSLY PROVIDED IN THE STATE GUARANTEE, THIS AGREEMENT DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE STATE OF NEW HAMPSHIRE OR OF THE BUSINESS FINANCE AUTHORITY EXCEPT TO THE EXTENT PERMITTED BY NEW HAMPSHIRE RSA CHAPTER 162-I. ALL AMOUNTS OWED HEREUNDER ARE PAYABLE ONLY FROM THE SOURCES EXPRESSLY PROVIDED HEREIN, AND NO PUBLIC FUNDS MAY BE USED FOR THAT PURPOSE.

BOND PURCHASE AND LOAN AGREEMENT

THIS BOND PURCHASE AND LOAN AGREEMENT (as it may be amended, restated, replaced, or supplemented from time to time, this “**Agreement**”) is entered into as of the ___ day of _____, 2023 (the “**Effective Date**”) by the **BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE**, a body corporate and politic of the State of New Hampshire with a principal office at 135 N. State Street, Concord, NH 03301 (the “**Authority**”), and **SERVICE FEDERAL CREDIT UNION**, a commercial banking institution with offices at 14 Colby Court, Bedford, NH 03110 (“**Lender**”).

WHEREAS, the Authority is authorized and empowered under the laws of the State of New Hampshire (the “**State**”), including RSA Chapter 162-I (the “**Act**”), to enter into financing documents and security documents with respect to indebtedness of the Authority to be used to finance eligible projects as described in the Act;

WHEREAS, in furtherance of the purposes of the Act, the Authority proposes to sell bonds to Lender in the amount of up to _____ 00/100 Dollars (\$_____.00) (“**Bond Loan 1**”) and up to _____ 00/100 Dollars (\$_____.00) (“**Bond Loan 2**,” and together with Bond Loan 1, the “**Bond Loans**”) to finance the Authority’s purchase of and construction of improvements to commercial real estate located at 55 Pettengill Road, Londonderry, New Hampshire (the “**Property**,” as more particularly defined in Schedule 1.1), which Property will be leased by the Authority to New Balance Athletics, Inc. (“**New Balance**”), with payments due from New Balance under the Lease (as defined in Schedule 1.1) to be used by the Authority to repay the Bond Loans;

WHEREAS, repayment of the Bond Loans will be secured by first (with respect to Bond Loan 1) and second (with respect to Bond Loan 2) mortgages, assignments of rents, security agreements, assignments of the Lease, and assignments of plans and permits granted to Lender with respect to the Property;

WHEREAS, Bond Loan 2 will be further secured by a State Guarantee as described in Section 2.3 hereof;

WHEREAS, to further induce Lender to make the loan, the Authority will cause the promissory note, note financing documents and security instruments with respect to the Bond Loans to constitute Authority-issued bond obligations under the Act, with the State to guarantee repayment of the principal of and interest due on Bond Loan 2, as specified below; and

WHEREAS, except as provided in Section 2.3 hereof, this Agreement shall not be deemed to constitute a debt or liability or moral obligation of the State or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any political subdivision thereof but shall be a special obligation of the Authority payable from the payments received by the Authority under the Lease.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the promises contained in this Agreement, the Authority and Lender hereby agree as follows:

1. DEFINITIONS

1.1. **Defined Terms.** As used in this Agreement, unless previously defined above or elsewhere in the body of this Agreement, all capitalized terms shall be as defined in Schedule 1.1 (the "Definitions"). The Definitions shall be applicable to both the singulars and plurals of the items therein defined.

1.2. **Other Terms.** Any accounting term used but not specifically described in the Definitions shall be construed in accordance with GAAP, as defined. The definition of each agreement, document, and instrument set forth shall be deemed to mean and include such agreement, document, or instrument as amended, restated, or modified from time to time. Any term from the New Hampshire Uniform Commercial Code, RSA 382-A ("UCC") used herein and not otherwise defined herein shall have the meaning ascribed to such term in the UCC.

2. BOND LOANS; STATE GUARANTEE OF BOND LOAN 2

2.1. **The Bond Loans.** Lender hereby agrees, subject to the terms and conditions of this Agreement, to extend to Authority the following loans:

A loan in the amount of up to _____ 00/100 Dollars (\$_____.00), on the terms set forth herein and in Schedule 2 and the Bond Note of even date herewith ("Bond Note 1").

A loan in the amount of up to _____ 00/100 Dollars (\$_____.00), on the terms set forth herein and in Schedule 2 and the Bond Note of even date herewith ("Bond Note 2" and together with Bond Note 1, the "Bond Notes").

2.2. **Treatment as Bond.** Each Bond Loan and the payment obligations under each Bond Note, together with all provisions of this Agreement and the security instruments related thereto shall, pursuant to the Authority's issuing powers under the Act, be deemed and treated as "financing documents," "security documents," and a "bond" as defined in the Act and purchased by and issued for the benefit of Lender.

2.3 **State Guarantee of Bond Loan 2.** Pursuant to RSA 162-I:9-b, the State has guaranteed payment of all principal and interest (other than default interest) payable under Bond Note 2, which guarantee (the "State Guarantee") is endorsed thereon. Under no circumstances shall the Authority be obligated directly or indirectly to pay expenses of operation, maintenance and upkeep of the Property or the improvements thereon other than from Bond Loan 2 proceeds, payments received by the Authority under the Lease, exclusive of funds received hereunder by the Authority for its own use. Except as expressly provided in the State Guarantee, this Agreement does not create any debt of the State with respect to the Property other than a special obligation of the Authority acting on behalf of the State pursuant to the

Act. Except as expressly provided in the State Guarantee, nothing contained herein shall in any way obligate the State to raise any money by taxation or use other public funds for any purpose in relation to the Property. Except as expressly provided in the State Guarantee, neither the State nor the Authority shall pay or promise to pay any debt or meet any financial obligation to any person at any time in relation to the Property except (i) from monies received or to be received under the provisions hereof or derived from the exercise of the Authority's rights under the Lease, other than monies received for its own purposes, or (ii) as may be required by law other than the provisions of the Act. Nothing contained in this Agreement shall be construed to require the Authority to operate the Property itself or to conduct any business enterprise in connection therewith. Funding of Bond Loan 2 is contingent upon the issuance of the State Guarantee.

2A. CLOSING AND FUNDING OF THE BOND LOANS

[To be inserted as soon as practicable after Governor & Council approval]

3. GENERAL BOND LOAN PROVISIONS

3.1. **Bond Loan Accounts.** Lender shall maintain on its books a record of account in which Lender shall make entries for each repayment made in connection with each Bond Loan. Lender shall provide Authority with monthly statements of Authority's account, which statement shall be considered correct and conclusively binding on Authority unless Authority notifies Lender to the contrary within thirty (30) days after Authority's receipt of any such statement which Authority deems to be incorrect.

3.2. **Use of Bond Loan Proceeds.** A portion of the Bond Loan proceeds will be disbursed to the Authority to fund the Authority's purchase of the Property and reimbursement of New Balance's verified construction costs to date, and the remainder of the Bond Loan proceeds will be advanced to fund completion of ongoing construction at the Property in one or more requisitions, in accordance with the Construction Loan Agreement to be executed herewith.

3.3. **Auto-Debit of Bond Loan Payments.** Authority hereby authorizes Lender to automatically deduct from any deposit account of Authority the amount of any Bond Loan payment ("Automatic Payments"). If the funds in the account are insufficient to cover any Automatic Payment, Lender shall not be obligated to advance funds to cover the payment. Lender may terminate Automatic Payments at any time for any reason or for no reason and will give Authority written notice of such termination. The Automatic Payment will be processed on the date Authority's payment is due, but if the due date falls on a non-Business Day, then the Automatic Payment will be processed on the first Business Day AFTER the payment due date. Lender will not process any Automatic Payment if it would cause the Authority's account to become overdrawn.

3.4. **Application of Payments.** All payments shall be applied first to the payment of all fees, reasonable out-of-pocket expenses and other amounts earned, due and owing to the Lender (excluding principal and interest), second to accrued interest and third to outstanding principal

balance; provided, however, that following an Event of Default, payments will be applied to the obligations of Authority to Lender as Lender determines in its sole discretion.

3.5. Bond Loan Purpose. No Bond Loan proceeds shall be used for any purpose other than the Authority's purchase of the Property, construction of improvements thereon, and customary and reasonable closing expenses in connection with the transactions contemplated by this Agreement.

3.6. Interest Rate Calculation. Interest on each Bond Loan shall be computed pursuant to a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.

3.7. Additional charges for Late Payment. Authority shall pay to Lender, for each payment of principal or interest not paid in full within fifteen (15) days after its due date, a late fee ("Late Fee") equal to five percent (5%) of the amount of such payment. The Late Fee, and the period of time from the due date through fifteen (15) days, shall not be considered a grace period, or a waiver by Lender of any of its other rights with respect to this Agreement and the Bond Loan Documents.

3.8. RSA 399-B Disclosures. Pursuant to RSA 399-B, requiring a written disclosure from Lender to Authority of financing and other loan charges, reference is made to Schedule 2, the other provisions of this Agreement, the Settlement Statement, and the Bond Loan Documents. Authority acknowledges that said statutory disclosure requirements have been satisfied, and that Authority has had a full opportunity to review all financing provisions and accepts such. Authority shall also sign a 399-B Disclosure form reflecting the provisions as referenced herein.

3.9. Bond Loan Commitment Letter. The terms of the Commitment Letter from Lender to Authority dated _____, 2023 and revised on _____, 2023, as executed by the Authority on _____, 2023 (the "**Commitment Letter**") shall survive the Closing. In the event of any conflict between any provision of the Commitment Letter, this Agreement, and any Bond Loan Document, the provisions of this Agreement and any Bond Loan Document shall control, with this Agreement being primary.

4. REPRESENTATIONS AND WARRANTIES

Authority represents and warrants to Lender (which representations and warranties will survive the Closing) that:

4.1. Existence and Legal Authority. Authority is a statutory agency of the State, validly existing as a body corporate and politic under the laws of the State and has all requisite power and authority under the Act to own property and to carry on its business as now being conducted, to enter into the Bond Loan Documents to which it is a party and the other agreements referred to herein and transactions contemplated thereby, and to carry out the provisions and conditions of such Bond Loan Documents to which it is a party.

4.2. Due Execution and Delivery. Authority has full power, authority, and legal right to incur the obligations provided for herein, and to execute and deliver and to perform and observe the terms and provisions of the Bond Loan Documents to which it is a party, each of which has been duly executed and delivered and authorized by all required action; the Authority has obtained all requisite consents to the transactions contemplated thereby and under any instrument to which it is a party; and the Bond Loan Documents constitute the legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by the Act, Insolvency Laws or other similar laws affecting creditors' rights generally.

4.3. No Breach of Other Instruments. Neither the execution and delivery of the Bond Loan Documents, nor the compliance by Authority with the terms and conditions of the Bond Loan Documents, nor the consummation of the transactions contemplated thereby, will conflict with or result in a breach of the terms, conditions or provisions of any agreement or instrument or law, regulation, rule or order of any governmental body or agency to which Authority is now a party or is subject to, or the imposition of a lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Authority pursuant to the terms of any such agreement or instrument.

4.4. Government Authorization. Other than the requisite approval of the New Hampshire Governor and Council, no consent, approval, authorization or order of any court or governmental agency or body is required for the consummation by the Authority of the transactions contemplated by the Bond Loan Documents.

4.5. Ownership of Property. As a condition of the Bond Loans, Lender's counsel shall issue a title insurance loan policy from a national title insurance company (the "Title Policy"), with only such exceptions as are acceptable to Lender, with the survey exception removed based upon an ALTA survey plan to be provided by the Authority. Except for Permitted Encumbrances or as otherwise permitted in the Bond Loan Documents or this Agreement, Authority has and will have good and marketable fee title to the Property, subject, however, to title defects and restrictions which do not materially interfere with the operations conducted thereon by Authority or New Balance as are included in the Title Policy that are acceptable to Lender or affirmatively covered in a manner acceptable to Lender. Except for Permitted Encumbrances, the Property is free from any liens or encumbrance securing Indebtedness and from any other liens, encumbrances, charges or security interests of any kind. The Lease is in full force and effect, and no material default on the part of Authority or, to its knowledge, any other party thereto exists.

4.6. Absence of Defaults, Etc. Except as previously disclosed to Lender, Authority is not (i) in material default under any indenture or contract or agreement to which it is a party or by which it is bound, (ii) in violation of the Act, (iii) in default with respect to any order, writ, injunction or decree of any court, or (iv) in default under any order or license of any federal or state governmental department. There exists no condition, event or act which constitutes, or after notice or lapse of time or both would constitute, an Event of Default.

4.7. Lessee Financial Condition. Authority has furnished to the Lender the Financial Statements of New Balance which, to the best of Authority's knowledge, fairly and accurately

reflect the financial condition and assumptions for the operations of New Balance. Authority has no knowledge of a material adverse change in New Balance's financial condition or prospects since that date which would require revision of the same.

4.8. No Litigation. There are no actions, suits or proceedings pending, or to the best of Authority's knowledge, threatened against or affecting Authority or its assets in any court, or before or by any federal, state or municipal or other governmental department, commission, board, bureau, agency or other instrumentality, domestic or foreign, and no claim that Authority has asserted against any other party is subject to a counterclaim or cross-claim against Authority.

4.9. Environmental Matters. To the best of its knowledge, Authority is in compliance with all Environmental Laws and all applicable federal, state and local health and safety laws, regulations, ordinances or rules, and affirms and represents compliance and agreement as to all terms and conditions of the Environmental Indemnification Agreement executed by the Authority contemporaneously herewith.

4.10. Solvency. Authority is not insolvent as defined under any Insolvency Laws, nor will Authority be rendered insolvent by the execution and delivery of this Agreement or any of the Bond Loan Documents to Lender. Authority is not engaged or about to engage in any business or transaction for which the assets retained by it shall constitute an unreasonably small capital, taking into consideration the obligations to Lender incurred hereunder. Authority does not intend to, nor does it believe that it will, incur debts beyond its ability to pay them as they mature. Authority is not contemplating filing of a petition under any federal or state Insolvency Laws, nor does Authority have any knowledge of any Person contemplating filing any claim against it. If any condition should arise that might render the representations of this Section 4.10 untrue, Authority shall forthwith give Lender notice as to such.

4.11. Federal Reserve Regulations; Use of Bond Loan Proceeds. Authority is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Bond Loans will be used, directly or indirectly, for a purpose which violates any law, rule or regulation of any governmental body, including without limitation the provisions of Regulations T, U, or X of the Board of Governors of the Federal Reserve System, as amended. No part of the proceeds of the Bond Loans will be used, directly or indirectly, to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

4.12. OFAC/USA PATRIOT Act Restrictions. To the best of its knowledge, neither Authority nor any of its officers:

- (a) is in violation of:
 - (i) any applicable anti-money laundering laws, including, without limitation, those contained in the PATRIOT Act and/or the Bank Secrecy Act (Titles I and II of Pub. L. No. 91-508, 84 Stat. 1114 (1970));

- (ii) any applicable economic sanction laws administered by OFAC, including, without limitation, Executive Order No. 13224; or
 - (iii) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal; or
- (b) is a person that:
- (i) is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws;
 - (ii) has been convicted of any violation of, been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws;
 - (iii) is named on the list of "Specially Designated Nationals or Blocked Persons" maintained by the OFAC (or any successor U.S. government office or list);
 - (iv) is otherwise identified by any U.S. government office or legal authority as a person with whom a U.S. person is prohibited from transacting business under any other applicable law;
 - (v) is owned, controlled by, or affiliated with any person identified in clause (i), (ii), (iii) and/or (iv) hereof; or
 - (vi) is engaged in any dealings or transactions for or on behalf of or otherwise associated with any person identified in clause (i), (ii), (iii) and/or (iv) hereof.

4.13. Not a Foreign Person. Authority is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code and confirms that any affidavit as to such submittal as a Bond Loan Document is true and correct.

4.14. No Bankruptcies or Judgments. The Authority is not currently:

- (a) the subject of or a party to any Bankruptcy Event;
- (b) preparing or intending to voluntarily commence a Bankruptcy Event; or
- (c) the subject of any judgment unsatisfied of record or docketed in any court.

4.15. No Brokers. Authority has not utilized a real estate or other broker in connection with the purchase and leaseback transactions to be funded by the Bond Loans, and the making, execution or delivery of the Bond Loan Documents, and any funding thereof, will not subject Lender to any claim for a brokerage commission or similar fee, and no such fee is due from

Authority or New Balance to any person or party. In the event that any claim is made against Lender for a broker's or similar commission arising out of the Obligations, Authority shall defend and hold Lender harmless with respect to any such claims and indemnify, to the extent permitted by law, Lender in full for any and all damages or losses in connection therewith, including costs and attorneys' fees.

5. CONDITIONS OF LENDING

5.1. Bond Loan Funding. The obligation of Lender to close the transactions contemplated by this Agreement shall be subject to satisfaction of the following conditions, unless waived in writing by Lender: (a) all legal matters and Bond Loan Documents incident to the transactions contemplated hereby shall be reasonably satisfactory, in form and substance, to Lender's counsel; (b) Lender shall have received (i) certificates by an authorized officer or representative of Authority upon which Lender may conclusively rely until superseded by similar certificates delivered to Lender, certifying (1) that all requisite action taken in connection with the transactions contemplated hereby has been duly authorized and (2) the names, signatures, and authority of Authority's authorized signers executing the Bond Loan Documents, and (ii) such other documents as Lender may reasonably require to be executed by, or delivered on behalf of, Authority; (c) Lender shall have received the Bond Loan Documents, with all blanks appropriately completed, executed by an authorized signer for Authority; (d) the Authority shall have paid to Lender the fee(s) then due and payable under this Agreement and the other Bond Loan Documents, including all filing fees, recording fees, due diligence costs of Lender, and all legal and professional fees associated with the Obligations; (e) Authority shall have maintained its financial condition in a manner satisfactory to Lender, and no material adverse change shall have occurred in Authority's financial condition or prospects; (f) Lender shall have received the written opinion(s) of legal counsel for the Authority selected by the Authority and satisfactory to Lender, dated the date of this Agreement, confirming the validity and enforceability of the Bond Loan Documents and such other matter(s) as Lender may reasonably require; (g) Lender shall have received written instructions from the Authority with respect to disbursement of the proceeds of the Bond Loans consistent with this Agreement; and (h) Lender shall have received all Security Instruments duly executed by all parties thereto, in form satisfactory for recording or filing, as may apply. For any advances from the Bond Loans for construction improvements to the Property, the Authority shall in addition comply with the requirements of the Construction Loan Agreement as may apply.

5.2. Conditions to Funding. The obligation of Lender to fund the Bond Loans shall be subject to Authority's compliance with Section 5.1 herein and contingent upon (a) there being no Event of Default and (b) each representation and warranty set forth in Section 4 and elsewhere in this Agreement and the Bond Loan Documents being true and correct.

6. COVENANTS AND CERTAIN REQUIREMENTS

6.1. Financial Statements and Other Information. As long as credit is available hereunder or until all principal, interest, costs, and charges outstanding under the Bond Loans have been paid, Authority covenants and agrees that it will comply with the reporting requirements set forth in Schedule 6.1.

(a) **No Assignment.** Authority will not pledge, mortgage or assign this Agreement or the State Guarantee (except for the pledge, mortgage or assignment of rights or privileges not assigned to Lender) or its duties and obligations hereunder to any person, firm or corporation without Lender's prior written consent; and

(b) **Lessee Financials.** Authority shall cause New Balance to provide to Lender such financial information concerning the Property or certifications as to New Balance's financial condition as Lender may reasonably request.

6.2. Insurance; Maintenance of Properties.

(a) **Insurance Requirements.** Authority shall require New Balance, in the Lease:

- (i) to keep all Collateral insured at all times with financially sound and reputable insurers with coverage and limits as may be required by law and of such character and amounts as are usually maintained by companies engaged in like business against such hazards and in such coverage amounts as Lender may from time to time require, which insurance may include, but not be limited to; coverage against loss by fire and allied perils, builders' risk, general boiler and machinery coverage, business income coverage and flood (if any of the Collateral is located in an area identified by the Federal Emergency Management Agency (or any successor) as an area having special flood hazards and to the extent flood insurance is available in that area), and may include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Collateral does not conform to applicable building, zoning or land use laws, ordinance and law coverage;
- (ii) to maintain at all times commercial general liability insurance, product liability insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require;
- (iii) to maintain workers' compensation insurance, builder's risk, and public liability insurance and other insurance required by Lender and/or applicable law; and
- (iv) cause Lender to be named as additional insured on all liability insurance policies.

(b) **Delivery of Policies, Renewals and Notices.** Authority shall promptly provide to Lender copies of all proof of insurance and renewals or modifications thereof that New Balance is required to provide to Authority under the Lease.

6.3. Existence; Business. Authority shall cause to be done all things necessary to preserve and keep in full force and effect its existence and rights as a body politic and agency of the State,

to conduct its business in a prudent manner, to maintain in full force and effect, and renew from time to time, all franchises, permits, licenses, and trademarks, if any, that are necessary to operate its business. Authority will comply in all material respects with all valid laws and regulations now in effect or hereafter promulgated by any properly constituted governmental authority having jurisdiction; provided, however, that Authority shall not be required to comply with any law or regulation which it is contesting in good faith by appropriate proceedings as long as either the effect of such law or regulation is stayed pending the resolution of such proceedings or the effect of not complying with such law or regulation would not reasonably be expected to result in a Material Adverse Change.

6.4. Dispositions. While the Obligations remain unpaid or unsatisfied Authority shall not convey, sell, lease, license, transfer or otherwise dispose of all or any part of the Property or move cash balances on deposit with Lender to accounts at another financial institution without Lender's prior written consent.

6.5. Encumbrances. While the Obligations remain unpaid or unsatisfied Authority shall not create, incur, assume, or allow any Lien with respect to the Property, except for Permitted Liens, without Lender's prior written consent.

6.6. Payment of Taxes. While the Obligations remain unpaid or unsatisfied Authority shall cause to be timely paid all taxes, assessments, and other governmental charges levied upon the Property, except that no such taxes, assessments, or other charges need be paid if contested in good faith and by appropriate proceedings promptly initiated and diligently conducted and if proper amounts, determined in accordance with GAAP, have been set aside for the payment of all such taxes, charges, and assessments, including but not limited to any tax payments due the Town of Londonderry with respect to the Property.

6.7. Adverse Changes. While the Obligations remain unpaid or unsatisfied Authority shall not fail to notify the Lender in writing of (a) the occurrence of any event which, if it had existed on the date of this Agreement, would have required qualification of the representations and warranties set forth in Section 3 hereof and (b) any Material Adverse Change.

6.8. Notice of Default. While the Obligations remain unpaid or unsatisfied Authority shall promptly notify Lender of any Event of Default under the Bond Loan Documents.

6.9. Inspection. While the Obligations remain unpaid or unsatisfied Authority shall make available for inspection by duly authorized representatives of the Lender, or its designated agent, Authority's books, records, and properties upon Lender's reasonable request, and shall furnish to Lender such information regarding its business affairs and financial condition within a reasonable time after written request therefor.

6.10. Environmental Matters. Authority shall include in the Lease environmental indemnities from New Balance acceptable to Lender and shall at all times comply with the Environmental Indemnification Agreement.

6.11. Health and Safety. Authority shall require in the Lease that New Balance maintain compliance with all requirements of applicable federal, state, and local environmental, health and safety and workplace laws, regulations, ordinances or rules with respect to the Property which would, in the aggregate, if not complied with, result in a Material Adverse Change.

6.12. Extraordinary Services. In the event extraordinary circumstances arise due to an Event of Default or Lender's reasonable belief that an Event of Default is in prospect which require post-closing Lender follow up, Bond Loan review and monitoring and related due diligence other than routine Bond Loan servicing ("**Extraordinary Services**"), Lender may conduct or require such for inspections, appraisals, tests or reviews, or other due diligence as it then reasonably deems necessary, upon which Lender may deduct the reasonable expense of such Extraordinary Services ("**Extraordinary Expenses**") from any account maintained by Authority with Lender and available for such purpose, or charge Authority for such, which upon request Authority shall pay in full, or add to the principal of the Bond Loans, with such duty to pay Extraordinary Expenses being included in the Obligations.

6.13. Authority Membership in and Operating Account with Lender. To the extent permitted by law, the Authority shall take all steps necessary to become a Member of Lender. So long as credit is available hereunder or until all principal, interest, and other outstanding amounts under the Bond Loans have been paid in full, Authority shall establish and maintain with Lender an operating account (the "**BFA Lender Account**"), into which the Authority shall deposit all Lease and other revenues from the Property. At the option of Lender, all Bond Loan payments and fees will automatically be debited from the BFA Lender Account and all disbursements of any Bond Loan proceeds shall be made by the Lender's crediting of such disbursements directly into the BFA Lender Account.

6.14. Further Assurances.

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

(b) **Corrective Actions.** Authority shall provide, or cause to be provided, to Lender, at Authority's cost and expense, such further documentation or information deemed necessary or appropriate by Lender in the exercise of its rights under the Commitment Letter to correct patent mistakes in the Bond Loan Documents or Bond Loan funding.

6.15. Mortgages, Security Interests and Liens. Authority shall not, directly or indirectly, create, incur, assume, or permit to exist or, under the terms of the Lease, allow New Balance to permit any Lien with respect to the Property other than:

A. Liens for taxes, assessments, or governmental charges or levies the payment of which is not at the time required by Section 6.9 hereof;

B. Liens imposed by law, such as Liens of landlords, carriers, warehousemen, mechanics, and materialmen arising in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted, provided other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

C. Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance, and other types of social security, or to secure the performance of tenders, statutory obligations, and surety and appeal bonds, or to secure the performance and return of money bonds and other similar obligations, excluding obligations for the payment of borrowed money;

D. Any judgment Lien, provided that the judgment it secures shall, within thirty (30) days after the entry thereof, have been discharged or execution therefor stayed pending appeal, or shall have been discharged within thirty (30) days after the expiration of any such stay;

E. Liens that secure the repayment of any Authority's Indebtedness to Lender; or

F. Liens evidenced by or permitted under the terms of the Bond Loan Documents, Permitted Encumbrances, or the Title Policy.

7. EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:

7.1. **Payments.** If (a) the interest on any Bond Note or any commitment or other fee shall not be paid in full punctually when due and payable or within fifteen (15) days thereof, or (b) the principal of any Bond Note shall not be paid in full punctually when due and payable, or within fifteen (15) days thereafter.

7.2. **Covenants.** If Authority fails to perform or observe any covenant or agreement contained in this Agreement or in any other of the Bond Loan Documents.

7.3. **Representations and Warranties.** If any representation, warranty or statement made in or pursuant to this Agreement or any Bond Loan Document or any other material information furnished by Authority shall be false or materially erroneous or fraudulent.

7.4. **Validity of Bond Loan Documents.** If (a) any material provision, in the sole opinion of Lender, of any Bond Loan Document shall at any time for any reason cease to be valid, binding and enforceable against Authority; (b) the validity, binding effect or enforceability of any Bond Loan Document against Authority shall be contested by Authority; (c) Authority shall deny that it has any or further liability or obligation thereunder; or (d) any Bond Loan Document shall be terminated, invalidated or set aside, or be declared ineffective or inoperative or in any way cease to give or provide to Lender the benefits contemplated thereby.

7.5. **Bond Loan Document Default.** If any Event of Default or default shall occur under any other Bond Loan Document, or if under any Bond Loan Document any payment is required to be made by Authority on demand of Lender, and such demand is made.

7.6. **Material Adverse Change.** There shall have occurred any Material Adverse Change without compliance with any notice or consent requirement of this Agreement.

7.7. **Bankruptcy Event.** The occurrence of a Bankruptcy Event.

7.8. **Transfer.** The occurrence of any Transfer not permitted by this Agreement.

7.9. **Fraud; Material Misrepresentation.** Fraud or material misrepresentation or material omission by Authority, or any of its officers, in connection with:

- (a) the application for or funding of the Bond Loans;
- (b) any financial statement, rent roll, or other report or information provided to Lender while any amount is outstanding under the Bond Loans; or
- (c) any request for Lender's consent to any proposed action.

7.10 **Further Default Provision.** Notwithstanding the foregoing, in the event that an Event of Default with respect to Bond Loan 2 authorizes Lender to accelerate the maturity of and demand payment of Bond Loan 2 and Lender makes such demand, the Authority shall have the right to continue making monthly interest payments on Bond Note 2, and provided that such interest payments are timely made, Lender, notwithstanding its right to immediate payment in full of all outstanding principal and interest on Bond Note 2 pursuant to the State Guarantee, shall defer the exercise of its right to require payment in full of all outstanding principal and interest on Bond Note 2 until Lender has completed (or has made, in its sole discretion, reasonable efforts to complete) any Lien Enforcement Action; and provided further that in the event any remaining principal amount of Bond Note 2 remains outstanding following the exercise of any Lien Enforcement Action, such amount shall not be subject to acceleration as long as interest payments are made when due and such principal amount is paid at maturity of Bond Note 2 or prepaid in accordance with its terms.

7.11 **Insecure.** If as a result of any action or inaction by Authority, or any condition relative to the Obligations, Lender, in good faith, reasonably determines that the Obligations cannot be repaid according to the terms of the Bond Loan Documents, or that such action, inaction or condition renders the Lender insecure as Lender may reasonably determine based upon its review under the then available facts and circumstances of Authority's ability to repay, Lender shall give Authority notice of its determination, with the written basis for such determination and means of curing such, and Authority shall have thirty (30) Business Days to cure such situation or provide information to Lender sufficient to demonstrate said determination is incorrect, or provide a corrective plan, acceptable to Lender in its reasonable discretion, to cure such situation. If Authority provides such a plan that is reasonably acceptable to Lender, the failure of Authority to comply therewith shall be an Event of Default. Upon Lender giving notice as above, Lender shall be entitled to withhold the advance of any Bond Loan funds until the

determination of Lender is satisfied by one of the above means. The right to cure in Section 7.12 below shall not apply to this Section 7.11.

7.12 Non-Monetary Default. Any failure by Authority to perform any of its non-monetary obligations under this Agreement (including but not limited to those set forth in Sections 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, and 7.9) as and when required, which failure continues for a period of thirty (30) days after written notice of such failure by Lender to Authority; provided, however, such period may be extended for up to an additional sixty (60) days if Lender determines, in its discretion, that the Authority is diligently pursuing a cure of such; provided, further, however, no such notice, grace period or extension shall apply if, in Lender's discretion, immediate exercise by Lender of a right or remedy under this Agreement is required to avoid actual and material harm to Lender or material impairment of repayment of the Obligation or of the Collateral given as security therefore

7.13 Subrogation. At any time after the State has made any payments to the Lender under the State Guarantee that have not been reimbursed to the State (the "Guaranty Payments"), the State shall be subrogated to the rights of the Lender with respect to such Guaranty Payments, and such Guaranty Payments shall be secured by all Collateral securing the Authority's obligations to the Lender; provided, however, that any outstanding amounts due Lender under the Bond Loan Documents that are not included in the Guaranty Payments (including but not limited to any unpaid Late Fees, Extraordinary Expenses, or Related Expenses) shall remain secured by the Collateral and have priority over the State's subrogated rights with respect to recoveries from any Lien Enforcement Action.

8. REMEDIES UPON DEFAULT

8.1. Rights of Lender. If any Event of Default shall occur, Lender may, at its election, and without demand or notice of any kind, do any one or more of the following:

A. Declare all of the Authority's Obligations to Lender to be immediately due and payable, whereupon, subject to Section 7.10 hereof, all unpaid principal, interest and fees in respect of such Obligations, together with all of Lender's costs, expenses and attorneys' fees and professionals related thereto, under the terms of the Bond Loan Documents or otherwise, shall be immediately due and payable;

B. Exercise any and all rights and remedies available to Lender under any applicable law;

C. Exercise any and all rights and remedies granted to Lender under the terms of this Agreement, the Bond Notes, the Security Instruments or any of the other Bond Loan Documents;

D. Set off the unpaid balance of the Obligations against any debt owing to Authority by Lender, or in any time or demand deposit account maintained by Authority with Lender; and/or

8.2. No Waiver. The remedies in this Section 8 are in addition to, not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which the Lender may be entitled. No failure or delay on the part of the Lender in exercising any right, power, or remedy will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. The remedies in this Agreement are in addition to, not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which the Lender may be entitled. All Lender's rights and remedies, whether evidenced by this Agreement or by any other agreement, instrument or document shall be cumulative and may be exercised singularly or concurrently.

9. MISCELLANEOUS

9.1. Remedies; Waiver; Amendments. No waiver of any provision of this Agreement or the Bond Loan Documents, or consent to departure therefrom, shall be effective unless in writing and signed by the Lender. No such consent or waiver extends beyond the particular case and purpose involved. No amendment to this Agreement is effective unless in writing and signed by the Authority and the Lender, provided, however, that no amendment, modification or waiver of Section 7.13 hereof may occur without the prior written consent of the State. If at any time or times, by assignment or otherwise, Lender transfers any of the Obligations or any part of the Collateral to another person, such transfer shall include Lender's powers and rights under this Agreement with respect to the Obligation or Collateral so transferred and the transferee shall have said powers and rights, whether or not they are specifically referred to in the transfer. To the extent that Lender retains any other of the Obligations or any part of the Collateral, Lender will continue to have the rights and powers with respect to the Obligations and the Collateral as set forth in this Agreement.

9.2. Expenses, Costs and Taxes. The Authority shall pay on demand all costs and expenses of Lender, and all Related Expenses, including but not limited to, (a) administration, travel and out-of-pocket expenses, including but not limited to attorneys' fees and expenses, of Lender in connection with the preparation, negotiation and closing of the Bond Loan Documents and the administration of the Bond Loan Documents, the collection and disbursement of all funds hereunder (including construction requisition and inspection costs) and the other instruments and documents to be delivered hereunder, (b) Extraordinary Expenses of Lender in connection with the administration of this Agreement, the Obligations, or the other instruments and documents to be delivered hereunder, (c) the reasonable fees and out-of-pocket expenses of counsel for Lender, with respect to the foregoing, (d) all fees due hereunder or in any other Bond Loan Documents, and (e) all costs and expenses, including reasonable attorneys' fees, in connection with the determination of Lender's lien priority in the Collateral securing the Obligations, or the restructuring or enforcement of the Obligations or any other Bond Loan Document. In addition, Authority shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery of any Bond Loan Document, and the other instruments and documents to be delivered hereunder, and agrees to hold Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes or fees. Authority after notice of at least five (5) Business Days, and

after all right to cure periods have expired, authorizes Lender to debit such expenses, costs and taxes directly to Authority's Bond Loan accounts or the BFA Lender Account.

9.3. Indemnification and Release. To the extent permitted by law, Authority shall indemnify and hold the Lender harmless against any and all liabilities, losses, damages, costs, and expenses of any kind (including, without limitation, the reasonable fees and disbursements of counsel in connection with any investigative, administrative or judicial proceeding, whether or not the Lender shall be designated a party thereto) which may be incurred by the Lender relating to or arising out of this Agreement or any actual or proposed use of proceeds of any Bond Loan hereunder; provided, that the Lender shall have no right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction. Authority agrees that this Agreement and the Bond Loan Documents are the lawful exercise of Lender's rights and conditions with respect to the credit facilities provided and described herein, freely accepted by Authority, and Authority shall make no assertion to the contrary, and hereby releases Lender with respect to any such claim or assertion.

9.4. Jurisdiction; Construction. The provisions of this Agreement and the respective rights and duties of Authority and Lender hereunder shall be governed by and construed in accordance with New Hampshire law and any applicable federal laws. Authority hereby irrevocably submits to the exclusive jurisdiction of any state or federal court sitting in New Hampshire over any action or proceeding arising out of or relating to this Agreement, or any document related to the Obligations, and Authority hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined only in such New Hampshire state or federal court. The several captions to different Sections of this Agreement are inserted for convenience only and shall be ignored in interpreting the provisions hereof. In this Agreement, unless the context otherwise requires, words in the singular number include the plural, and in the plural number include the singular.

9.5. Time is of the Essence. Time is of the essence in the performance of all acts and obligations under this Agreement. All grace periods in this Agreement and all other Bond Loan Documents shall run concurrently.

9.6. Notices. All notices, requests, demands or other communications provided for hereunder shall be in writing and, if to Authority, mailed, delivered, or sent via a recognized overnight delivery service to it, addressed to it at the address specified at the beginning of this Agreement, or if to Lender, mailed, delivered, or sent via a recognized overnight delivery service to it, addressed to the address of Lender specified at the beginning of this Agreement. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made (i) when delivered by hand, (ii) forty-eight (48) hours after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or (iii) upon recipient's acknowledgement of receipt if sent by facsimile or email.

Notices given shall be in accordance with the following:

If to Lender:

Service Federal Credit Union
14 Colby Court
Bedford, NH 03110
Attention: David Weed, VP, Business Development

With a copy to:

Preti, Flaherty, Beliveau & Pachios, PLLP
57 North Main Street, P.O. Box 1318
Concord, NH 03302-1318
Attention: Daniel P. Luker, Esq.

If to Authority:

Business Finance Authority of the State of New Hampshire
135 N. State Street
Concord, NH 03301
Attention: James Key-Wallace, Executive Director

With a copy to:

Hinckley, Allen & Snyder LLP
28 State Street
Boston, MA 02109
Attention: Kris A. Moussette, Esq.

State of New Hampshire Treasury
25 Capitol Street, Room 121
Concord, NH 03301
Attention: Monica Mezzapelle, State Treasurer

9.7. Assignment Rights; Relationship. Lender may transfer and assign this Agreement, and the Obligations, and deliver the Collateral to the assignee, who shall thereupon have all of the rights of the Lender, as assigned. Authority may not assign this Agreement or the right to receive any disbursements hereunder or any interest herein. The rights and powers given in this Agreement to the Lender are in addition to those otherwise created or existing in the other Bond Loan Documents. The relationship between Authority and Lender with respect to this Agreement, the Obligations and any other Bond Loan Document is and shall be solely that of debtor and creditor, respectively, and not in any other capacity, including as a joint venture, partner or any such similar capacity.

9.8. Severability. If any provision of this Agreement or any Bond Loan Document, or any action taken hereunder, or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or the Obligations, each of which shall be construed and enforced without reference to such illegal or

invalid portion and shall be deemed to be effective or taken in the manner and to the full extent permitted by law.

9.9. Entire Agreement. This Agreement and the Bond Loan Documents executed in connection herewith, including the Commitment Letter, constitute the entire agreement of the parties hereto and supersede and replace all oral representations, negotiations, and prior writings with respect to the subject matter hereof.

9.10. Right of Participation. Authority acknowledges that the Lender reserves the right to participate its interest in the Bond Loans and Authority agrees to, at Lender's request, execute such additional instruments as may be appropriate to evidence the Obligations to such participant lenders as may commit, in the future, to fund a portion of either Bond Loan in accordance with the terms of this Agreement.

9.11. Pledge to Federal Reserve. Lender may at any time pledge all or any portion of its rights under the Bond Loan Documents, including any portion of either Bond Note, to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. § 341. No such pledge or enforcement thereof shall release Lender from its obligations under any of the Bond Loan Documents.

9.12. Waiver of Counterclaims. Authority waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto with respect to the time period prior to the Effective Date.

9.13. Statute of Frauds Notice. The Authority cannot enforce any oral promise unless it is contained in any of the Bond Loan Documents signed by Lender, nor can any change, forbearance, or other accommodation relating to the Obligations, this Agreement or any of the Bond Loan Documents be enforced unless it is in writing and signed by Lender.

9.14. Counterparts. This Agreement may be signed in two or more counterparts, including execution by electronic mail or facsimile transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, but Lender shall have the right to require executed originals of all Bond Loan Documents.

9.15. Binding Effect. This Agreement shall be binding upon Authority and its successors and assigns, and shall inure to the benefit of Lender and its successors, endorsees and assigns.

9.16. Amendments. Any amendment hereof must be in writing and signed by the party against whom enforcement is sought. Unenforceability of any provision hereof shall not affect the enforceability of any other provision. Lender's photographic or other reproduction of this Agreement and any other Bond Loan Document shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

9.17. No Waiver. None of the following will be a course of dealing, estoppel, waiver, or implied amendment on which any party to this Agreement or any Bond Loan Document may rely: (1) Lender's acceptance of one or more late or partial payments; (2) Lender's forbearance from exercising any right or remedy under this Agreement, or any other Bond Loan Document; or (3) Lender's forbearance from exercising any right or remedy under this Agreement or any Bond Loan Document on any one or more occasions. Lender's exercise of any rights or remedies or a part of a right or remedy on one or more occasions shall not preclude Lender from exercising the right or remedy at any other time. Lender's rights and remedies under this Agreement, the Bond Loan Documents, and the law and in equity are cumulative to, but independent of, each other. Authority waives presentment, demand, notice, protest, and all other demands and notices in connection with delivery, acceptance, performance, default, or enforcement of this Agreement.

9.18. Determinations by Lender. Unless otherwise set forth herein, in any instance in this Agreement where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender (or its designated representative) in its reasonable discretion.

9.19. Counting of Days. Except where otherwise specifically provided, any reference to a period of "days" means calendar days, not Business Days. If the date on which Authority is required to perform an obligation under this Agreement is not a Business Day, Authority shall be required to perform such obligation by the Business Day immediately preceding such date; provided, however, in respect of any payment date, or if the Maturity Date is other than a Business Day, Authority shall be obligated to perform by the Business Day immediately following.

9.20. WAIVER OF JURY TRIAL. AUTHORITY AND LENDER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY CLAIM BASED HEREON ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INSTRUMENT OR ANY OTHER BOND LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF LENDER RELATING TO THE ADMINISTRATION OF THE OBLIGATIONS SECURED HEREBY OR ENFORCEMENT OF THE BOND LOAN DOCUMENTS, AND AGREE THAT NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, AUTHORITY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. AUTHORITY CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY FOR LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER.

THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR LENDER TO ACCEPT THIS INSTRUMENT AND MAKE THE OBLIGATIONS SECURED HEREBY.

[NO FURTHER TEXT. SIGNATURE PAGES, AND SCHEDULES FOLLOW.]

IN WITNESS WHEREOF, the Authority and Lender have each caused this Agreement to be executed by their duly authorized officers on the date first set forth above, intending to be bound hereby as of the Effective Date.

**BUSINESS FINANCE AUTHORITY OF
THE STATE OF NEW HAMPSHIRE**

Witness

By: _____
Dick Anagnost
Chairman, Duly Authorized

Witness

By: _____
James Key-Wallace
Executive Director, Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

_____, 2023

On this ____ day of ____ 2023 before me, the undersigned notary public, personally appeared Dick Anagnost as the Chairman of the Business Finance Authority of the State of New Hampshire, proved to me through satisfactory evidence of identification, which were _____ (source of identification) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, in said capacity.

Notary Public/Justice of the Peace

Name: _____

My Commission Expires:

SEAL

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

_____, 2023

On this ____ day of _____, 2023 before me, the undersigned notary public, personally appeared James Key-Wallace as the Executive Director of the Business Finance Authority of the State of New Hampshire, proved to me through satisfactory evidence of identification, which were _____ (source of identification) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, in said capacity.

Notary Public/Justice of the Peace

Name: _____

My Commission Expires: _____

SEAL

IN WITNESS WHEREOF, the Authority and Lender have each caused this Bond Loan Agreement to be executed by their duly authorized officers on the date first set forth above.

LENDER:
SERVICE FEDERAL CREDIT UNION

Witness

By: _____
David Weed
VP, Business Development
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF _____, 2023

Then personally appeared the above-named _____, being the duly authorized _____ of Service Federal Credit Union, known to me or satisfactorily proven to be the same, who executed the above as his free act and deed, on behalf of Service Federal Credit Union, for the purposes stated therein. Before me,

Notary Public/Justice of the Peace
Name: _____
My Commission Expires: _____

The State of New Hampshire hereby acknowledges and agrees to the provisions of Sections 7.10 and 7.13 of this Agreement.

**Monica Mezzapelle, State Treasurer,
State of New Hampshire**

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

_____, 2023

Then personally appeared the above-named Monica Mezzapelle, being the duly authorized State Treasurer of the State of New Hampshire, known to me or satisfactorily proven to be the same, who executed the above as her free act and deed, on behalf of the State of New Hampshire, for the purposes stated therein. Before me,

Notary Public/Justice of the Peace

Name: _____

My Commission Expires: _____

SCHEDULE 1.1

Definitions

1.1.1 “Affiliate” of any specified entity means any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified entity and “control”, when used with respect to any specified entity, means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

1.1.2 “Bankruptcy Event” means any one or more of the following:

(a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Authority or Guarantor;

(b) the acknowledgment in writing by Authority or Guarantor (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;

(c) the making of a general assignment for the benefit of creditors by Authority or Guarantor;

(d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Authority or Guarantor; or

(e) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Authority or Guarantor or any substantial part of the assets of Authority or Guarantor;

provided, however, that any proceeding or case under (d) or (e), above, shall not be a Bankruptcy Event until the ninetieth (90th) day after the filing thereof (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of Authority.

1.1.3 “Bank Secrecy Act” means the Bank Secrecy Act of 1970, as amended (31 U.S.C. Sections 5311-5330).

1.1.4 “Bond Loan Documents” means the collective reference to this Agreement and all other security instruments, undertakings, and documents entered into from time to time, evidencing or securing the Obligations or any obligation of payment thereof or performance of Authority’s or Guarantor’s obligations in connection with the transaction contemplated hereby.

1.1.5 “Bond Loans” means the credit facilities extended to the Authority by the Lender in accordance with this Agreement, as evidenced by the Bond Notes and other Bond Loan Documents.

1.1.6 “**Bond Note 1**” means the promissory note signed and delivered by the Authority to evidence its Indebtedness to Lender with respect to Bond Loan 1, as described on Schedule 2.

1.1.7 “**Bond Note 2**” means the promissory note signed and delivered by the Authority to evidence its Indebtedness to Lender with respect to Bond Loan 2, as described on Schedule 2.

1.1.8 “**Bond Notes**” means Bond Note 1 and Bond Note 2.

1.1.9 “**Business Day**” means a day of the year on which banks are not required or authorized to close in Portsmouth, New Hampshire; provided, however, that the term “Business Day” shall not include a day on which Lender is not actually open for business.

1.1.10 “**Closing**” means the date, to be agreed upon by Authority and Lender, on which all Bond Loan Documents are to be executed and the initial funding of the Bond Loans shall occur.

1.1.11 “**Closing Agenda**” means the document listing the parties, the Bond Loan Documents, and other documents and materials Lender includes as necessary to the Obligations.

1.1.12 “**Collateral**” means the Property and any other collateral in which Authority has given the Lender a mortgage or security interest pursuant to the Security Instruments and any other instrument given to Lender to secure the Indebtedness and/or this Agreement.

1.1.13 “**Environmental Law**” means any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability upon a Person in connection with the use, release or disposal of any hazardous, toxic or dangerous substance, waste or material.

1.1.14 “**Event of Default**” means any one or more of the occurrences described in Section 7 hereof.

1.1.15 “**Financial Statements**” means all financial records and analysis, prepared by or for the Authority, as may be submitted to Lender, in support of the Obligations.

1.1.16 “**First Mortgage**” refers to the Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing with respect to the Property granted by the Authority to Lender of even date herewith as security for repayment of Bond Loan 1.

1.1.17 “**GAAP**” means generally accepted accounting principles as in effect, which shall include the official interpretations thereof by the Financial Accounting Standards Board, consistently applied.

1.1.18 “**Indebtedness**” shall mean, for any Person (excluding in all cases trade payables payable in the ordinary course of business by such Person), (a) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed, (b) all obligations for the deferred purchase price of capital assets, (c) all obligations under conditional sales or other title retention agreements, (d) all obligations (contingent or otherwise) under any letter of credit, banker’s acceptance, currency swap agreement, or Interest Rate Agreement, (e) all synthetic leases, (f) all lease obligations that have been or should be capitalized on the books of such Person in

accordance with GAAP, (g) all obligations of such Person with respect to asset securitization financing programs to the extent that there is recourse against such Person or such Person is liable (contingent or otherwise) under any such program, (h) all obligations to advance funds to, or to purchase assets, property or services from, any other Person in order to maintain the financial condition of such Person, and (i) any other transaction (including forward sale or purchase agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements.

1.1.19 “Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, moratorium, readjustment of debt, dissolution, receivership, liquidation or similar laws, assignment for the benefit of creditors, or other proceedings or equitable remedies affecting the enforcement of creditors’ rights.

1.1.20 “Insolvency Proceeding” shall mean (a) any voluntary or involuntary case or proceeding under Insolvency Laws respect to the Authority, New Balance, or any other tenant under the Lease.

1.1.21 “Insolvent” means:

(a) that the sum total of all of a specified Person’s liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of such Person’s non-exempt assets (i.e., all of the assets of such Person that are available to satisfy claims of creditors); or

(b) such Person’s inability to pay its debts as they become due.

1.1.22 “Lease” means the Agreement of Lease between the Authority and New Balance dated as of the Effective Date.

1.1.23 “Lessee” shall mean any lessee under a Lease.

1.1.24 “Lien” means any mortgage, security interest, lien, charge, encumbrance on, pledge or deposit of, or conditional sale or other title retention agreement with respect to any property or asset.

1.1.25 “Lien Enforcement Action” shall mean (a) any action by Lender to foreclose on the Property under a Mortgage or exercise rights against a tenant under the Lease or exercise any right of repossession, assignment of rents or lease rights, levy, attachment, setoff or liquidation against the Property or Lease, (b) any action by the Lender to take possession of, sell or otherwise realize (judicially or non-judicially) upon all or a material portion of the Property subject to the Mortgage or Lease, (c) the commencement by the Lender of any legal proceedings against the Authority with respect to the Mortgage or against any lessee to facilitate the actions described in (a) or (b) above, or (d) any action to seek or request relief from or modification of the automatic stay or any other stay in any Insolvency Proceeding, or to recover from the proceeds of the Lease

1.1.26 “Material Adverse Change” shall mean (i) an Event of Default, (ii) the termination of any material agreement to which the Authority is a party which has a material adverse effect on the operations or condition of the Authority, taken as a whole, or (iii) material impairment of the validity or enforceability of the rights of, or the benefits available to, the holder of the Bond Loan. A Material Adverse Change shall be deemed to have occurred if the cumulative effect of an individual event and all other then-existing events would result in a Material Adverse Change.

1.1.27 “Mortgage” refers to each of the First Mortgage and the Second Mortgage.

1.1.28 “Obligation” or **“Obligations”** means, collectively, (a) all Indebtedness and other obligations incurred by Authority to Lender pursuant to this Agreement and includes the principal of and interest on the Bond Notes; (b) each extension, renewal or refinancing thereof in whole or in part; (c) the commitment and other fees, and any prepayment fees payable under this Agreement or any other Bond Loan Document; (d) every other liability, now or hereafter owing to Lender or any Lender Affiliate by Authority, and includes, without limitation, and every other liability, whether owing by only Authority or by Authority with one or more others in a several, joint or joint and several capacity, whether owing absolutely or contingently, whether created by note, overdraft, guaranty of payment or other contract or by quasi-contract, tort, statute or other operation of law, whether incurred directly to Lender or acquired by Lender by purchase, pledge or otherwise and whether participated to or from Lender in whole or in part; and (e) all Related Expenses.

1.1.29 “Obligor” shall mean (a) a Person whose credit or any of whose property is pledged to the payment of the Obligations and includes, without limitation, any guarantor, and (b) any signatory to a Bond Loan Document.

1.1.30 “Organization” means a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, two or more Persons having a joint or common interest, and any other legal or commercial entity.

1.1.31 “Permitted Encumbrances” means, as of any particular time, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) this Agreement, and any security interest or other lien created thereby, (c) any Permitted Encumbrances defined in any of the Bond Loan Documents, including, without limitation, as defined in any Security Instrument, (d) any liens permitted by Section 6.15 hereof, and (e) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property similar in character to the Collateral and as do not materially interfere with or impair the use or value of the property affected thereby.

1.1.32 “Person” means an individual or an Organization.

1.1.33 “Potential Default” means any condition, action, or failure to act which, with the passage of time, service of notice, or both, will constitute an Event of Default under this Agreement.

1.1.34 “Property” means that certain parcel of land with all buildings and other improvements now or hereafter thereon situated at 55 Pettengill Road, Londonderry, New Hampshire and more particularly described in Exhibit A to the Lease.

1.1.35 “Related Expenses” means any and all costs, liabilities, and expenses (including, without limitation, losses, damages, penalties, claims, actions, reasonable attorney’s fees, legal expenses, judgments, suits and disbursements) reasonably incurred by, or imposed upon, or asserted against, Lender in any attempt by Lender:

A. to obtain, preserve, perfect, or enforce any security interest evidenced by (i) this Agreement, or (ii) any other pledge agreement, mortgage, deed of trust, hypothecation agreement, guaranty, security agreement, assignment, or security instrument executed or given by Authority to or in favor of Lender;

B. to obtain payment, performance, and observance of any and all of the Obligations;

C. to maintain, insure, audit, inspect, collect, preserve, repossess, and dispose of any of the Collateral, including, without limitation, costs and expenses for appraisals, assessments, and audits of Authority or the Collateral; or

D. incidental or related to (a) through (c) above, including, without limitation, interest thereupon from the date incurred, imposed, or asserted until paid at the rate payable as set forth in the Bond Note, but in no event greater than the highest rate permitted by law.

1.1.36 “Second Mortgage” refers to the Second Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing with respect to the Property granted by the Authority to Lender of even date herewith as security for repayment of Bond Loan 2.

1.1.37 “Security Instruments” means each Mortgage, each Assignment of Lease and Subleases, and each Assignment of Plans and Permits to be granted to Lender as security for repayment of the Bond Loans.

1.1.38 “Settlement Statement” means the Bond Loan Documents consisting of a summary of settlement charges necessary to the Obligations, as of Closing, along with flow of funds, and authorization by the parties.

1.1.39 “Transfer” means:

(a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by operation of law);

(b) a granting, pledging, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law);

(c) an issuance or other creation of a direct or indirect ownership interest;

(d) a withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity; or

(e) a merger, consolidation, dissolution or liquidation of a legal entity.

The foregoing definitions shall be applicable to the singulars and plurals of the foregoing defined terms.

Schedule 2(a)
Bond Loan 1

1.1. Terms and Conditions. This Schedule sets forth the terms and conditions for Bond Loan 1 in the principal amount of up to _____ Dollars (\$_____).

1.2. Bond Loan Terms.

As of Closing, the total Bond Loan Amount shall be advanced as shown on the Settlement Statement.

Repayment terms for Bond Loan 1 are as set forth in Bond Note 1, which is by reference incorporated herein and includes the following provisions:

- i. Bond Loan Amount: a maximum of _____ Dollars (\$_____).
- ii. Bond Loan Purpose: Bond Loan 1 is to provide acquisition and construction financing for improvements to the Property at 55 Pettengill Road (Tax Map __ Lot __), Londonderry, NH, 03053 as described in Exhibit A to the First Mortgage.
- iii. Maturity Date: The Maturity Date or Bond Loan Term shall be the ten (10) year anniversary of the Effective Date.
- iv. Interest Rate: From the Effective Date until the Maturity Date or payment in full, whichever first occurs, interest on Bond Loan 1 shall accrue at ___% per annum, fixed.
- v. Advances: Bond Loan 1, at the time of the Closing Date shall be partially advanced, as shown in the Settlement Statement and then as authorized by Bond Note 1 and the Bond Loan Documents. A portion of the Bond Loan Amount will be disbursed to the Authority for payment of Lessee's verified construction costs to date, and the remainder of the Bond Loan Amount will be advanced to fund completion of construction at the Property in one or more requisitions from a construction fund held by _____. New Balance shall be required to escrow funds with Lender sufficient to ensure payment of any costs in excess of the Bond Loan Amount that may be necessary to complete construction of the planned improvements to the Property.
- vi. Repayment: Authority shall make monthly payments of Interest only on the outstanding principal balance of Bond Note 1. At the Maturity Date, Authority shall make a balloon payment of all unpaid principal, accrued interest, and other costs and charges then outstanding under Bond Loan 1.

vii. Bond Loan Fees:

1. Bond Loan Fees are waived but are not in limitation of all other fees shown on the Settlement Statement and required under this Agreement.

viii. Prepayment Penalty: None, unless repaid with financing from another lender in years 1, 2, 3, 4 or 5 of Bond Loan 1, in which event 5, 4, 3, 2 or 1% of the amount, respectively, of the repaid principal balance shall be due Lender as a prepayment penalty.

ix. Late Charge. Any payment received more than fifteen (15) days after the due date shall include a late charge of ___% of the amount then due.

1.3. Collateral.

i. Security Interests.

(a) First Mortgage. Payment of the indebtedness of Authority resulting from this Agreement and Bond Loan 1, and any and all other indebtedness, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising under the Bond Loan Documents, shall be secured by the First Mortgage to which reference is made, incorporated herein, securing the Property, and all improvements and appurtenant rights, benefits and easements.

(b) Specific Assignment of Lease. Authority shall separately assign to Lender, as additional Collateral, the Lease with New Balance, which shall be in form acceptable to Lender and fully executed at closing.

(c) Assignment of Property Plans and Permits. The Authority shall assign to Lender, as additional Collateral, rights to all plans, permits, and approvals with respect to the Property.

Initial

Initial

Schedule 2(b)
Bond Loan 2

1.1. Terms and Conditions. This Schedule sets forth the terms and conditions for Bond Loan 2 in the principal amount of up to _____ Dollars (\$_____).

1.2. Bond Loan Terms.

As of Closing, the total Bond Loan Amount shall be advanced as shown on the Settlement Statement.

Repayment terms for Bond Loan 2 are as set forth in Bond Note 2, which is by reference incorporated herein and includes the following provisions:

- i. Bond Loan Amount: a maximum of _____ Dollars (\$_____).
- ii. Bond Loan Purpose: Bond Loan 2 is to provide acquisition and construction financing for improvements to the Property at 55 Pettengill Road (Tax Map __ Lot __), Londonderry, NH, 03053 as described in Exhibit A to the Second Mortgage.
- iii. Maturity Date: The Maturity Date or Bond Loan Term shall be the ten (10) year anniversary of the Effective Date.
- iv. Interest Rate: From the Effective Date until the Maturity Date or payment in full, whichever first occurs, interest on the Bond Loan shall accrue at ___% per annum, fixed.
- v. Advances: Bond Loan 2, at the time of the Closing Date shall be partially advanced, as shown in the Settlement Statement and then as authorized by Bond Note 2 and the Bond Loan Documents. A portion of the Bond Loan Amount will be disbursed to the Authority for payment of Lessee's verified construction costs to date, and the remainder of the Bond Loan Amount will be advanced to fund completion of construction at the Property in one or more requisitions from a construction fund held by _____. New Balance shall be required to escrow funds with Lender sufficient to ensure payment of any costs in excess of the Bond Loan Amount that may be necessary to complete construction of the planned improvements to the Property.
- vi. Repayment: Authority shall make monthly payments of Interest only on the outstanding principal balance of Bond Note 2. At the Maturity Date, Authority shall make a balloon payment of all unpaid principal, accrued interest, and other costs and charges then outstanding under Bond Loan 2.

vii. Bond Loan Fees:

2. Bond Loan Fees are waived but are not in limitation of all other fees shown on the Settlement Statement and required under this Agreement.

viii. Prepayment Penalty: None, unless repaid with financing from another lender in years 1, 2, 3, 4 or 5 of Bond Loan 2, in which event 5, 4, 3, 2 or 1% of the amount, respectively, of the repaid principal balance shall be due Lender as a prepayment penalty.

ix. Late Charge. Any payment received more than fifteen (15) days after the due date shall include a late charge of __% of the amount then due.

1.3. Collateral.

i. Security Interests.

(a) Second Mortgage. Payment of the indebtedness of Authority resulting from this Agreement and Bond Loan 2, and any and all other indebtedness, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising under the Bond Loan Documents, shall be secured by the Second Mortgage to which reference is made, incorporated herein, securing the Property, and all improvements and appurtenant rights, benefits and easements.

(b) Specific Assignment of Lease. Authority shall separately assign to Lender, as additional Collateral, the Lease with New Balance, which shall be in form acceptable to Lender and fully executed at closing.

(c) Assignment of Property Plans and Permits. The Authority shall assign to Lender, as additional Collateral, rights to all plans, permits, and approvals with respect to the Property.

Initial

Initial

SCHEDULE 6.1

Financial Statements and Other Information. As long as credit is available hereunder or until all principal, interest, costs, and charges on the Obligations have been paid, Authority covenants and agrees that it will comply with the following financial reports:

- (a) Annually, CPA-prepared audited year-end financial statements from Authority within one hundred twenty (120) days following each fiscal year end.
- (b) If Lender determines there is a material adverse change in Authority's financial condition, Lender shall have the right to require financial information from Authority on a more frequent basis.
- (c) Authority shall provide to Lender the State of New Hampshire's Annual or Bi-Annual State Ratings Report upon release.

Initial

Initial

AGREEMENT OF LEASE

This Agreement of Lease (“Lease” or “Agreement”) is entered into as of this first day of _____, 2023, by and between BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE, a body corporate and agency of the State of New Hampshire with a principal office at 135 North State Street, Concord, New Hampshire 03301 (the “Landlord” or “BFA”) and NEW BALANCE ATHLETICS, INC., a Massachusetts corporation having an address of 100 Guest Street, Boston, Massachusetts 02135 (the “Tenant”).

R E C I T A L S

WHEREAS, the BFA is authorized and empowered under the laws of the State of New Hampshire (the “State”), including New Hampshire RSA Chapters 162-I and 162-A, as supplemented and amended (the “Act”), to issue bonds and to enter into loan agreements, contracts and other instruments and documents necessary to obtain loans for the purpose of facilitating the financing of certain projects as described in the Act;

WHEREAS, the aforesaid Act further authorizes the BFA to purchase and lease real property on such terms and conditions as it deems advisable;

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid Act, the BFA was created and is empowered under the Act to purchase the Premises, as herein defined, and undertake this Lease;

WHEREAS, by deed of near or even date herewith the BFA acquired fee title interest in and to that certain parcel of land with all buildings and improvements now or hereafter thereon situated located at 55 Pettengill Road, Londonderry, New Hampshire and more particularly described in Exhibit A attached hereto (collectively, the “Premises”); and

WHEREAS, the Tenant desires to lease, and requests the exclusive right and option to purchase, the Premises from the Landlord and the Landlord desires to lease the Premises to the Tenant and to grant the Tenant the exclusive right and option to purchase the Premises, all as more fully described herein.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant, intending to be legally bound, hereby covenant and agree as follows:

1. **Grant of Lease.** For the consideration and subject to the terms and conditions hereof, the Landlord does hereby lease, let and demise unto the Tenant the Premises, and the Tenant hereby agrees to accept, subject to the terms and conditions hereinafter set forth, the Premises.

2. **Term.** The term (the “Term”) of this Lease shall commence on the date hereof (“Commencement Date”) and shall end on the tenth (10th) anniversary of the Commencement Date (“Expiration Date”).

3. **Rent During Term.** During the Term the Tenant agrees to pay without any offset or reduction whatsoever (except as made in accordance with the express provisions of this Lease) to the Landlord an annual rent ("Rent") in the initial amount of [_____ and ___/100 Dollars (\$ _____)] to be paid in equal monthly installments in advance on the first day of each month during the Term, subject to adjustment for construction disbursements made by Landlord as set forth in Section 4 below and prepayments made by Tenant as set forth in Section 6 below. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or the fees hereunder, as the case may be.

4. **Construction.**

4.1 **Construction of Premises.** The Tenant shall have the right to construct improvements to the Premises, as designed in Tenant's sole discretion, which construction may include the work identified on the preliminary budget attached hereto as Exhibit B (the "Construction"). The Construction shall be performed by the Tenant at the Tenant's cost and expense, subject to payment by the Landlord of the Tenant Allowance as set forth in Section 4.2 hereof.

With respect to the Construction, upon written request by Landlord, the Tenant shall deliver to Landlord the architectural, electrical and mechanical construction drawings, plans and specifications for the Construction (collectively, "Tenant Plans"). Tenant agrees to remain solely responsible for the timely preparation and submission of all such Tenant Plans. Notwithstanding any review of Tenant's Plans by the Landlord, the Tenant acknowledges and agrees that the Landlord has made no warranty or representation as to the accuracy of the structural, mechanical or legal compliance or sufficiency of the Tenant's Plans as may be required by applicable law. The Landlord shall, at no cost or expense to the Landlord, reasonably cooperate in the Tenant's application for a building permit and other permits and approvals necessary to allow the Tenant to proceed with the Construction. Furthermore, the Landlord shall, at no cost or expense to the Landlord, reasonably cooperate with Tenant and join in or enter into agreements or easements for any public utilities and facilities, access roads, or other facilities useful or necessary to the use and operation of the building or other improvements or the construction thereof, all on commercially reasonable terms and conditions.

The Construction shall be performed by contractors engaged by the Tenant at Tenant's sole expense, subject to payment by the Landlord of the Tenant Allowance as set forth in Section 4.2 hereof. Tenant shall require that all construction work required or permitted by this Lease by or on behalf of the Tenant be done in a good and workmanlike manner, free of substantial defects and in substantial compliance with applicable laws and all lawful ordinances, regulations and orders of governmental authority and insurers of the Premises.

Subject to extensions due to Force Majeure (as hereinafter defined), the initial Construction will be completed within _____ (_____) months of the Commencement Date, as extended for delays attributable to the following items (collectively, "Force Majeure"): (i) acts

of God (including, without limitation, adverse weather, floods, earthquake, hurricanes, tornado, wind storm or other natural disasters); (ii) riots, civil unrest, disturbances, protests, insurrections, sabotage, war, terrorism, or national, state or local emergency; (iii) strikes, slowdowns, picketing, or other labor actions or disputes; (iv) fire or other accident or casualty; (v) subsurface and other unforeseen conditions; (vi) epidemics, pandemics, disease, quarantine, or other public health emergencies, or any restriction or executive order related thereto; (vii) delays or shortages encountered in the supply or transportation of fuel, materials, equipment, labor or other items; (viii) delays in securing required permits or approvals, and any challenges to issued permits or approvals; (ix) litigation or other disputes; (x) changes in, or in interpretations or enforcement of, any statute, law, regulation, ordinance, code, or other legal requirement; (xi) any other action, inaction or delay of any governmental authority (including, without limitation, tariffs, moratoriums or quarantines); (xii) any action, inaction or delay by any utility provider, (xiii) acts or omissions of, or disputes with, or defaults by, architects, engineers, consultants, contractors, subcontractors, suppliers or other parties providing labor, materials, equipment services or other items; or (xiv) any other causes beyond Tenant's reasonable control.

4.2 **Tenant Allowance.** As an inducement to the Tenant to enter into this Lease, the Landlord shall pay to the Tenant an allowance of up to Seventy Two Million Five Hundred Thousand Dollars (\$72,500,000.00) (the "Tenant Allowance"). Upon execution of this Lease, Landlord shall make an initial disbursement of the Tenant Allowance to Tenant in the amount of \$ _____ Million Dollars (\$ _____) for reimbursement of acquisition, design and predevelopment costs incurred by Tenant prior to the date hereof with respect to the Premises (the "Initial Disbursement"). The Landlord shall disburse the remainder of the Tenant Allowance (the Tenant Allowance less the Initial Disbursement is herein referred as the "Construction Allowance") to the Tenant in accordance with the disbursement schedule and process set forth in Exhibit C attached hereto ("Construction Conditions").

Landlord shall not be required to disburse any such portion of the Construction Allowance at any time during which an Event of Default exists and remains uncured after applicable notice and cure periods, including without limitation any such default arising from the existence of a lien on the Premises due to the Construction which lien is not bonded or discharged within thirty (30) days after the date Tenant obtain actual knowledge of the filing thereof. Furthermore, upon reasonable prior notice to Tenant and at Landlord's sole cost and expense, the Landlord shall have the right to undertake inspections and reviews to ensure that the Construction is being performed in accordance with the Tenant Plans.

4.3 **Rent Adjustment.**

The Tenant has the right to request disbursements of the Construction Allowance as set forth in Section 4.2 hereof, and all such disbursements shall be debited against the Purchase Option Amount:

Each \$1.00 in disbursements shall increase the Adjusted Purchase Option Amount (as hereinafter defined) by the same amount. Adjusted Rent due during the immediately following month is calculated by multiplying the resulting Adjusted Purchase Option Amount by 6.75%, and dividing by 12 for a monthly Rent payment.

By way of example, if the outstanding Adjusted Purchase Option Amount is \$10,000,000.00, the monthly Rent due during the immediately following month is calculated as \$10,000,000.00 multiplied by 6.75%, equaling \$675,000.00 divided by 12, for a monthly Rent payment due of \$56,250.00.

5. **Purchase Option.** Subject to the terms and conditions hereof, the Landlord hereby grants unto the Tenant the right and option (the "Purchase Option") to purchase the Premises for the purchase price (the "Purchase Option Amount") equal to the lesser of: (i) Seventy-Two Million Five Hundred Thousand Dollars (\$72,500,000.00) or (ii) the then outstanding Adjusted Purchase Option Amount (as defined herein). The Purchase Option shall be deemed exercised upon the receipt by the Landlord of a writing executed by the Tenant (the "Purchase Option Exercise Notice") and delivered to the Landlord in accordance with the notice provisions of this Agreement not less than sixty (60) days prior to the proposed Closing Date (as defined herein). If the Tenant has delivered the Purchase Option Exercise Notice, then, on a mutually agreeable date (the "Closing Date") that occurs on or prior to the Expiration Date, the Tenant shall purchase the Premises free and clear of all liens, but subject to all existing matters of record and any future matters of record not created by Landlord or created by Landlord at Tenant's request. In consideration for the payment to the Landlord of the Purchase Option Amount, together with all Rent and other sums then due on such date, plus all taxes and charges due upon sale and all other reasonable and documented expenses incurred by the Landlord in connection with such sale, and upon receipt of the aforesaid payments, the Landlord will immediately transfer, AS IS, WHERE IS, with all faults, without recourse or warranty, express or implied, of any kind whatsoever, all of the Landlord's right, title and interest in and to the Premises free and clear of all liens by delivering to the Tenant a fully executed New Hampshire statutory form of limited warranty deed in recordable form along with any and all executed transfer tax forms and affidavits necessary to record such deed. The Landlord shall not be required to make and may specifically disclaim any representation or warranty as to the condition of the Premises. Failure to close by the Closing Date shall not be deemed to be a default by either party provided that the parties are working in good faith to effectuate a closing in which event Tenant shall continue to occupy the Premises until closing pursuant to the terms of this Lease. Tenant's failure to close by the Expiration Date shall be an Event of Default. For purposes herein, the "Adjusted Purchase Option Amount" shall be deemed to be all capital provided by the Landlord for the Construction pursuant to Section 4.2 of the Premises not to exceed Seventy Two Million Five Hundred Thousand and 00/100 Dollars (\$72,500,000.00), as adjusted pursuant to the applicable provisions of this Lease (including Sections 4.2 and 6).

6. **Prepayment.** The Tenant has the right to make prepayments towards the Purchase Option Amount, defined as any payment made above the current rent due at any time during the term of the Lease, and all prepayments shall also be credited against the Adjusted Purchase Option Amount:

Each \$1.00 in prepayment shall reduce the Adjusted Purchase Option Amount by the same amount. Adjusted Rent due during the immediately following month is calculated by multiplying the remaining Adjusted Purchase Option Amount by 6.75%, and dividing by 12 for a monthly Rent payment.

By way of example, if the outstanding Adjusted Purchase Option Amount is \$10,000,000.00, the monthly Rent due during the immediately following month is calculated as \$10,000,000.00 multiplied by 6.75%, equaling \$675,000.00 divided by 12, for a monthly Rent payment due of \$56,250.00

7. **Lease Expiration.** In the event that Tenant has not exercised the Purchase Option on or before the date that is sixty (60) days prior to the Expiration Date, Tenant shall be deemed without further notice to have exercised the Purchase Option as of the date that is sixty (60) days prior to the Expiration Date as if Tenant had delivered to Landlord a Purchase Option Exercise Notice, and Landlord shall convey all of its right, title and interest in and to the Premises on a mutually acceptable Closing Date in accordance with and subject to the terms and conditions of Section 5 above, including but not limited to, payment of the Purchase Option Amount, together with all Rent and other sums then due on such date.

8. **Title and Condition.**

(a) The Premises are demised and let subject to all encumbrances of record, and the condition of the Premises as of the commencement of the Term without representation or warranty by the Landlord.

(b) LANDLORD HAS NOT MADE AND WILL NOT MAKE ANY INSPECTION OF ANY OF THE PREMISES, AND LANDLORD LEASES AND WILL LEASE AND TENANT TAKES AND WILL TAKE THE PREMISES "AS IS", AND TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY OF THE PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR USE OR PURPOSE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO LANDLORD'S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH SPECIFICATIONS, LOCATION, USE, CONDITION, MERCHANTABILITY, QUALITY, DESCRIPTION, DURABILITY OR OPERATION, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY TENANT. Tenant acknowledges that the Premises are of its selection and to its specifications, and that the Premises have been inspected by the Tenant and are satisfactory to it. In the event of any defect or deficiency in any of the Premises of any nature, whether patent or latent, Landlord shall not have any responsibility or liability with respect thereto or for any incidental or consequential damages (including strict liability in tort). The provisions of this Section 8(b) have been negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any warranties by Landlord, express or implied, with respect to any of the Premises, arising pursuant to the Uniform Commercial Code or any other law now or hereafter in effect or otherwise.

(c) The Tenant acknowledges and agrees that the Tenant has examined the title to the Premises prior to the execution and delivery of this Lease and has found such title to be satisfactory for the purposes contemplated by this Lease.

(d) The Landlord hereby assigns, without recourse or warranty whatsoever, to the Tenant, all warranties, guaranties and indemnities, express or implied, and similar rights which Landlord may have against any manufacturer, seller, engineer, contractor or builder in respect of any of the Premises, including, but not limited to, any right and remedies existing under contract or pursuant to the Uniform Commercial Code (collectively, the "Guaranties"). Such an assignment shall remain in effect after the termination of the Lease unless the Tenant fails to exercise the Purchase Option or otherwise acquire fee title to the Premises at the expiration or earlier termination of this Lease. Landlord shall also retain the right to enforce any Guaranties assigned in the name of the Tenant upon the occurrence of an Event of Default. Landlord hereby agrees to execute and deliver at the Tenant's expense such further documents, including powers of attorney, as the Tenant may reasonably request in order that the Tenant may have the full benefit of the assignment effected or intended to be effected by this Section 8(d). In the event the Tenant fails to exercise the Purchase Option or otherwise acquire fee title to the Premises at the expiration or earlier termination of this Lease, the Guaranties shall automatically revert to Landlord. The foregoing provision of reversion shall be self-operative and no further instrument of reassignment shall be required. In confirmation of such reassignment the Tenant shall execute and deliver promptly any certificate or other instrument which Landlord may request. Any monies collected by the Tenant under any of the Guaranties after the occurrence of and during the continuation of an Event of Default shall be held in trust by the Tenant and if the Tenant fails to exercise the Purchase Option or otherwise acquire fee title to the Premises at the expiration or earlier termination of this Lease, promptly paid over to Landlord.

9. **Net Lease: Non-Terminability.**

(a) This is an absolute triple net Lease and Rent and all other sums payable hereunder by the Tenant shall be paid, except as otherwise expressly set forth in this Lease, without notice, demand, setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense. The Tenant shall pay all costs of every kind and nature relating to the operation, maintenance, repair, or replacement of all or any portion of the Premises, without deduction or offset.

(b) Except as otherwise expressly provided in this Lease, this Lease shall not terminate, and the Tenant shall not have any right to terminate this Lease, during the Term. Except as otherwise expressly provided in this Lease, the Tenant shall not be entitled to any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction, or defense of or to Rent or any other sums payable under this Lease. It is the intention of the parties hereto that the obligations of the Tenant under this Lease shall be separate and independent covenants and agreements, and that Rent and all other sums payable by the Tenant hereunder shall continue to be payable in all events (or, in lieu thereof, the Tenant shall pay amounts equal thereto), and that the obligations of Tenant under this Lease shall continue unaffected, unless this Lease shall have been terminated pursuant to an express provision of this Lease.

10. **Remittance of Rent; Late Payment Fee.** All Rent shall be paid at the address of the Landlord or such other place or places as the Landlord may designate in writing to Tenant from time to time. A late payment fee of five percent (5%) of the Rent shall be assessed and paid together with any rental payment that is paid more than ten (10) days after its due date.

11. **Covenant of Quiet Enjoyment.** Provided the Tenant shall not be in default in the payment of Rent and Additional Rent or in performance of its obligations under this Lease, the Tenant shall at all times during the Term peaceably and quietly enjoy the Premises without any disturbances from the Landlord or from any other persons claiming by, through or under the Landlord.

12. **Representations and Warranties of Landlord.** The Landlord represents and warrants:

(a) **Valid Existence.** The Landlord is validly organized and existing as a public body corporate and agency of the State of New Hampshire.

(b) **Due Authorization: No Violation.** The execution, delivery and performance by the Landlord of this Lease are within the Landlord's powers, have been duly authorized by all action necessary on the part of the Landlord and do not and will not contravene any law or legal or contractual restriction binding upon or affecting the Landlord.

(c) **Validity.** This Lease and the obligations contained herein are the legal, valid and binding obligations of the Landlord enforceable against the Landlord in accordance with its terms.

13. **Representations and Warranties of Tenant.** The Tenant represents and warrants:

(a) **Valid Existence and Qualification.** The Tenant is a corporation organized and validly existing under the laws of the Commonwealth of Massachusetts and is qualified to do business within the State of New Hampshire.

(b) **Due Authorization: No Violation.** The execution, delivery and performance by the Tenant of this Lease are within the Tenant's powers, have been duly authorized by all necessary action of the Tenant, do not and will not contravene the Tenant's Articles of Organization or any law or legal or contractual restriction binding upon or affecting the Tenant.

(c) **Validity.** This Lease is the legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its respective terms.

14. **Real Property Taxes.**

(a) **Payment.** The Tenant shall pay all real property taxes, betterment charges and levies, and charges and governmental impositions, duties and discharges of like kind and nature, or make agreed payments in lieu of such taxes, charges and levies, and general and special

assessments (taxes) levied and assessed against the Premises during the Term or agreed payments in lieu thereof. The Landlord shall furnish the Tenant with a copy of the tax bill promptly if it receives the bill for taxes. The Tenant shall pay all taxes not later than the date before the taxing authority's delinquency date. Upon request by the Landlord, the Tenant shall provide Landlord with proof of payment of taxes. The Tenant shall also punctually pay and discharge all taxes which shall or may during the Term be charged, laid, levied or imposed upon or become a lien upon the stock in trade or other personal property of the Tenant attached to or used in connection with the Tenant's business conducted on the Premises. Nothing herein contained shall require the Tenant to pay the Landlord's income or business profits taxes or any taxes on the rents reserved to the Landlord hereunder.

(b) Prorating of Taxes. The Tenant's liability to pay taxes shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Term at its commencement and expiration.

(c) Right to Contest. The Tenant, at its cost, shall have the right, at any time, to seek a reduction in the assessed valuation of the Premises or to contest any taxes that are to be paid by the Tenant, but only after payment of such amount and/or item in question unless said payment would operate as a bar to such contest or interfere materially with the prosecution thereof. The Landlord shall not be required to join in any proceeding or contest brought by the Tenant unless the provisions of any law require that the proceeding or contest be brought by or in the name of the Landlord, in which case the Landlord shall join in the proceeding or contest or permit it to be brought in the Landlord's name, provided that the Landlord shall not be required to bear any cost of such proceeding or contest. The Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered, together with all costs, charges, interest, and penalties incidental to the decision or judgment and shall be entitled to receive and retain any refund payment by the taxing authority with respect thereto. The Landlord, at its option may, but shall not be obligated to, contest or review by any appropriate proceedings, and at the Landlord's expense, any tax, charge or other governmental imposition aforementioned which shall not be contested or reviewed as aforesaid by the Tenant, and unless the Tenant shall promptly join with the Landlord in such contest or review, the Landlord shall be entitled to receive and retain any refund payment by the taxing authority with respect thereto unless the Tenant thereafter reimburses the Landlord for the Landlord's actual out of pocket expenses incurred in contesting any such tax, charge or governmental imposition in which case Tenant shall be entitled to receive and retain any refund payment by the taxing authority with respect thereto. The Landlord appoints Tenant as its agent for the sole purpose of making payment to the tax collector, obtaining information and other data from the county or city assessor, and instituting and maintaining any proceeding or contest allowed under this section, with respect to all taxes assessed against the Premises.

15. Utilities. The Tenant shall make all arrangements for and pay for all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewer, telephone service, internet access, and trash collection.

16. Repairs by the Tenant.

(a) The Tenant shall, at the Tenant's sole cost and expense, maintain the Premises and all structures, mechanical and non-mechanical installations therein and the exterior (including the roof) and interior of the building which is a part of the Premises, in good condition and repair, and at the expiration of this Lease or earlier termination hereof for any cause herein provided for shall deliver up the Premises to the Landlord in the same condition and state of repair as at the beginning of the Term hereof, reasonable wear and tear, taking by eminent domain and damage by fire or casualty excepted.

(b) The Tenant shall make normal repairs to and perform normal maintenance to the Premises as needed, including, without limitation, the replacement of broken glass, interior repainting, the repair of floors, the keeping of windows and doors water tight and the maintenance in good operating condition of all plumbing, electrical, heating, air conditioning, sprinkling and other utility systems, it being understood that the Tenant may make any further repairs and replacements which the Tenant may desire although neither party shall be under obligation to do so.

(c) The Tenant shall keep in good repair and free from obstructions or encumbrances all surfaced roadways, walks, loading, unloading and parking areas which are part of or which serve the Premises; shall keep clear of dirt, snow and ice all such roadways, walks and areas; shall remove snow and ice from roof of building on the Premises when necessary; and shall keep the exterior of the Premises clean and neat, including cutting and proper care of lawns and shrubbery.

(d) The Tenant shall at its expense make any alterations or changes in the Premises which may be necessary to meet the regulations and standards promulgated and established under the Occupational Safety and Health Act of 1970.

(e) During the Term, the Tenant shall be responsible for any repairs or alterations to the Premises deemed necessary by local, state or federal officials, in order to meet compliance with existing and future local, state or federal regulations during the Term.

(f) During the Term, in the event of a claim brought under the Americans with Disabilities Act, the Tenant shall be responsible for such claim.

If the Tenant shall fail to perform its obligations hereunder (a through f above) thirty (30) days after the giving of notice of such failure by the Landlord, or in the event of an emergency, after an attempt by the Landlord to give written notice to the Tenant, then the Landlord may, at its expense perform the same and charge the Tenant the reasonable expense of performing said obligation; provided, however, if such failure is of a type which cannot reasonably be remedied within such thirty (30) day period, the Tenant shall have a reasonable time thereafter to remedy such failure so long as the Tenant has commenced such remedy within such thirty (30) days and is diligently prosecuting such remedy to completion.

17. **Alterations and Additions.** The Tenant shall have the right and privilege to make, at the Tenant's expense, and without Landlord's consent, any and all alterations, additions, and/or improvements to the Premises ("Alterations"), provided that the Tenant shall not, in any event,

commit, suffer or permit waste upon the Premises. All alterations, additions or improvements erected by the Tenant shall be and remain the property of the Tenant during the Term and the Tenant shall in no event be required to remove any such Alterations in order to restore the Premises to its original configuration upon the expiration or earlier termination of this Agreement. In making any alterations, the Tenant shall comply with the following:

(a) The alterations shall be approved by all appropriate government agencies, and all applicable permits and authorizations shall be obtained before commencement of the alterations.

(b) All alterations shall be completed with due diligence in compliance with all applicable laws and in a good and workmanlike manner.

(c) Before commencing the alterations and at all times during construction, the Tenant's contractor shall maintain or be covered by liability insurance with coverages and limits not less than those that the Tenant is required to maintain pursuant to Section 24.

18. **Removal of Improvements.** Notwithstanding anything to the contrary, at the expiration of this Lease, or at its earlier termination for any cause herein provided for, the Tenant may at its election, but shall not be responsible to, remove any alterations, additions and improvements to the Premises made by it during the Term hereof. If the Tenant fails to exercise the Purchase Option or otherwise acquire fee title to the Premises at the expiration or earlier termination of this Lease then Tenant shall not remove any alterations, additions or improvements to the Premises (unless directed to do so by the Landlord) any such alterations, additions and improvements shall be deemed abandoned by the Tenant and shall become and remain property of the Landlord.

19. **Machinery and Equipment - Trade Fixtures.** The Tenant agrees that all machinery and equipment, and appurtenances thereto, installed in the Premises by it or by any employee, agent or subcontractor of the Tenant, which cannot or is not removed from the Premises shall be and become part of the realty and shall be and become the property of the Landlord if the Tenant fails to exercise the Purchase Option or otherwise acquire fee title to the Premises at the expiration or earlier termination of this Lease. The Landlord agrees that (a) all machinery and equipment, and appurtenances thereto, installed in the Premises by the Tenant, or by any employee, agent or subcontractor of the Tenant, which may be removed from the Premises without permanent and substantial damage to the Premises and (b) all furniture, furnishings and movable trade fixtures ("Trade Fixtures") installed in the Premises shall be deemed to remain personal property and that all such machinery, equipment, appurtenances, furniture, furnishings and movable Trade Fixtures of the Tenant or of any employee, agent or subcontractor of the Tenant, may be removed not later than thirty (30) days after termination of the Lease; but the Tenant shall repair any damage occasioned by such removal and shall restore the facility on the Premises to their condition as at the beginning of the Term hereof, reasonable wear and tear, taking by eminent domain, and damage by fire or casualty excepted. Any such property which may be removed pursuant to the preceding sentence and which is not so removed within thirty (30) days after the expiration or earlier termination of this Lease may be removed from the Premises by the Landlord and stored for the account of the Tenant; and if the Tenant shall fail to reclaim such property within sixty (60) days

following such expiration or earlier termination of this Lease such property shall be deemed to have been abandoned by the Tenant, and may be appropriated, sold, destroyed or otherwise disposed of by the Landlord without notice to the Tenant and without obligation to account therefor. This removal period may be extended by written consent of the parties to this Lease. The Tenant shall pay to the Landlord a reasonable cost incurred by the Landlord in removing, storing, selling, destroying or otherwise disposing of any such property.

20. **Mechanics Liens.** The Tenant shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted by this Lease. Should any mechanics lien resulting from construction done by the Tenant be placed upon the Premises, the Tenant shall or shall require a contractor or other responsible party to bond or discharge such lien within thirty (30) days after the date Tenant is served notice of the filing of such lien.

21. **Use of the Premises.**

(a) The Tenant shall comply with all statutes, ordinances and regulations applicable to the use of the Premises and shall use the Premises for any lawfully permitted purpose.

(b) The Tenant shall not injure or deface the Premises nor occupy or use, or permit or suffer the Premises or any part thereof to be occupied or used, for any unlawful or illegal business, use or purpose, nor for any business, use or purpose which is disreputable or extra-hazardous, nor in such manner as to constitute a nuisance of any kind nor for any purpose nor in any manner which would increase the premiums for fire insurance with extended coverage for the Premises. The Tenant shall, immediately upon discovery of any such unlawful, illegal, disreputable or extra-hazardous use, taking all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any sublessee, occupants or other persons guilty of such unlawful, illegal, disreputable or extra-hazardous use.

(c) The Tenant shall procure any licenses or permits required by any use of the Premises by the Tenant.

(d) The Tenant shall indemnify and save the Landlord harmless from and against any and all claims, demands, liabilities, costs and expenses, including reasonable counsel fees, asserted by third parties and arising out of or by reason of any breach or violation by the Tenant of the provisions of this Section.

22. **Indemnification.**

(a) The Tenant agrees to defend, pay, protect, indemnify, save and hold harmless Landlord from and against any and all liabilities, losses, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, asserted by third parties to the extent arising from: (i) the Premises or the use, non-use, occupancy, condition, design, construction, maintenance, repair or rebuilding of the Premises, and any injury to or death of any person or person or any loss of or damage to any property, real or personal, in any manner arising therefrom connected therewith or occurring thereon, whether or not the Landlord has or should

have knowledge or notice of the defect or conditions, if any, causing or contributing to said injury, death, loss, damage or other claim, except to the extent that any such liability, loss, damage, penalty, cost, expense, cause of action, suit, claim, demand or judgment is the result of the negligence of the Landlord or the intentional wrongful act of the Landlord, (ii) arising out of any breach or default within any term, covenant or condition on the part of Tenant to be performed or observed hereunder, except to the extent that any such liability, loss, damage, penalty, cost, expense, cause of action, suit, claim, demand or judgment is the result of the gross negligence of the Landlord or the intentional wrongful act of the Landlord, or (iii) arising out of or in connection with any sublease, except to the extent that any such liability, loss, damage, penalty, cost, expense, cause of action, suit, claim, demand or judgment is the result of the gross negligence of the Landlord or the intentional wrongful act of the Landlord. In case any action or proceeding is brought against the Landlord by reason of any such claim against which the Tenant has agreed to defend, pay, protect, indemnify, save and hold harmless pursuant to the preceding sentence, the Tenant covenants and agrees upon notice from the Landlord to take all reasonable available steps necessary to have the Landlord removed as a named party to the lawsuit and to resist or defend the Landlord in such action, with the expenses of such defense paid by the Tenant, and the Landlord will cooperate and assist in the removal of the Landlord as a party to such lawsuit and any defense of such action or proceeding if reasonably requested so to do by the Tenant.

(b) The Landlord, to the fullest extent permitted by law, shall indemnify, defend and save the Tenant and its members, managers, managing members, successors and assigns and the employees and agents of any of same (collectively, the "Tenant Indemnitees") harmless from and against any and all liabilities, losses, damages, penalties, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused, (i) arising from or out of the negligence of the Landlord, its agents and employees, or (ii) arising from or out of any breach of, or default under, any term, covenant or condition of this Lease on the part of the Landlord to be performed and observed hereunder. In case any action or proceeding is brought against the Tenant by reason of any such claim against which the Landlord has agreed to defend, pay, protect, indemnify, save and hold harmless pursuant to the preceding sentence, the Landlord covenants upon notice from the Tenant to resist or defend the Tenant in such action, with the expenses of such defense paid by the Landlord, and the Tenant will cooperate and assist in the defense of such action or proceeding if reasonably requested so to do by the Landlord.

(c) The obligations of the Landlord and the Tenant under this Section 22 shall survive any termination of this Lease.

23. **Hazardous Materials Indemnification.**

(a) The term Hazardous Materials shall mean and include asbestos, polychlorinated biphenyls ("PCBs"), other carcinogens, oil and other petroleum products, and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such under RSA Chapters 146 and 147, CERCLA, or any other applicable federal, state or local laws, rules, codes or regulations or any judicial or administrative interpretation thereof.

(b) The term Legal Requirements shall mean all federal, state or local, laws, rules, codes or regulations, or any judicial or administrative interpretation thereof, including, without limitation, all orders, decrees, judgments and rulings imposed through any public or private enforcement proceedings, relating to Hazardous Materials or the existence, use, discharge, release, containment, transportation or disposal thereof.

(c) The Tenant covenants and agrees to indemnify, defend, and hold the Landlord harmless from and against any and all actual claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind or nature, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be asserted by third parties and imposed upon, incurred by or asserted or awarded against the Landlord and relating directly or indirectly to the violation of or compliance with any Legal Requirements and affecting all or any portion of the Premises. This duty to indemnify, defend, and hold harmless shall survive any termination of this Lease and in the event the Tenant exercises its Purchase Option shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon the Tenant's successors, assigns, and transferees.

24. Insurance.

(a) Liability. The Tenant shall, throughout the Term and any renewals, modifications or extensions hereof, carry, at its expense, comprehensive liability insurance on the Premises and its use and occupation thereof with an insurance company authorized to do business in New Hampshire and acceptable to the Landlord. Such insurance shall be written on an occurrence basis; shall provide a combined single limit of not less than \$1,000,000 in the case of death, injury or property damage, with a combined umbrella policy limit of not less than \$4,000,000 and the Landlord and Landlord's Credit Facility Lender (as hereinafter defined) each shall be named as an additional insured. Landlord's Credit Facility Lender is Service Federal Credit Union (Service Federal Credit Union and its successors and assigns, are referred to herein as "Lender").

(b) Contents. The Tenant shall carry, at its expense, such fire and casualty insurance as Tenant deems necessary or desirable for the value of all contents, specifically including Tenant's business inventory, goods, equipment and other leasehold improvements.

(c) All Risks. The Tenant, at its cost, shall procure and maintain for the Tenant, Landlord and Lender as named insureds, as their interests may appear, a policy of standard fire special form property insurance, covering the building and other improvements that are a part of the Premises in an amount equal to the full replacement value thereof.

(d) Worker's Compensation Insurance. The Tenant shall carry, at its expense, worker's compensation insurance covering all persons employed by the Tenant on the Premises in connection with any work done on or about any of the Premises for which claims for death or bodily injury could be asserted against the Landlord, Lender, the Tenant or the Premises or shall self-insure therefor in accordance with New Hampshire law.

(e) Flood Insurance. In the event that the building that is part of the Premises is determined to be located in zone AE as determined by the Federal Emergency Management Agency ("FEMA") under the National Flood Insurance Program ("NFIP"), the Tenant shall carry, at its expense, flood insurance backed by NFIP covering up to \$500,000 of coverage on such building, with Landlord and Lender as additional insureds.

(f) Other. The Tenant shall carry such additional and/or other insurance with respect to alterations and additions located on the Premises and in such amounts as Tenant may from time to time elect. At Tenant's option, Tenant may self-insure for some or all of the insurance required by this Lease through a program of self-insurance, provided that any election by Tenant to self-insure pursuant to this section shall not relieve Tenant from any of Tenant's other obligations under this Lease.

(g) Proof. The Tenant shall furnish to the Landlord certification or proof of insurance coverages required by this Section 24 prior to the commencement date of this Lease and thereafter, promptly following the expiration of the term of and any replacements or renewals of such policies.

25. **Assignment and Subletting.**

(a) The Tenant shall not pledge or assign this Lease or sublet all or any part of the Premises without the prior written consent of the Landlord which consent shall not be unreasonably withheld, conditioned or delayed, and in the event of an assignment or subletting of the Premises, the obligation of the Tenant shall not be relieved or diminished. Notwithstanding the foregoing, an assignment of this Lease or subletting of all or any part of the Premises to an entity into which or with which the Tenant merges or consolidates or which the Tenant controls, is controlled by or is under common control with the Tenant, shall be permitted without the express consent of the Landlord.

Notwithstanding anything provided herein, in the event of subtenancy or assignment, the Tenant shall provide the Landlord with the correct and updated name and mailing address of every assignee or subtenant and the requirements if any of all Notice to Tenant in this Lease shall be sufficiently satisfied if forwarded in writing to the Tenant and subtenant or assignee at the address given. If the Tenant defaults hereunder, should subtenant or assignee, at its option, cure such defect or default, the Tenant shall not be relieved of future obligations hereunder.

(b) Each sublease of the Premises or any part thereof shall be subject and subordinate to the provisions of this Lease. No assignment or sublease shall affect or reduce any of the obligations of the Tenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. Notwithstanding any assignment or subletting the Tenant shall continue to remain liable and responsible for the payment of the Rent and the performance of all its other obligations under this Lease. No assignment or sublease shall impose any obligations on Landlord under this Lease and Tenant shall be responsible for the performance of all of the obligations of the assignor or sublessor under any such assignment or sublease. The Tenant agrees that in the

case of an assignment of the Lease, the Tenant shall, within fifteen (15) days after the execution and delivery of any such assignment, deliver to the Landlord (i) a duplicate original of such assignment in recordable form, and (ii) an agreement executed and acknowledged by the assignee in recordable form wherein the assignee shall agree to assume all of the terms and provisions of this Lease on the part of the Tenant to be observed and performed from and after the date of such assignment. In the case of a sublease, the Tenant shall, within fifteen (15) days after the execution and delivery of such sublease, deliver to Landlord a duplicate original of such sublease .

(c) Upon the occurrence and during the continuance of an Event of Default under this Lease, the Landlord shall have the right to collect and enjoy all rents and other sums of money payable under any sublease of any of the Premises, and the Tenant hereby irrevocably and unconditionally assigns such rents and money to Landlord, which assignment may be exercised upon and after (but not before) the occurrence and during the continuance of an Event of Default.

(d) In the event the Tenant exercises the Purchase Option or upon the expiration or earlier termination of this Lease, the Tenant may assign its right to purchase the Premises or otherwise direct the Landlord to convey the Premises to a third-party by written notice to the Landlord delivered at least ten (10) days prior to closing of title.

26. **Subordination and Power of Attorney.** Subject to receipt of a SNDA (as hereinafter defined), the Tenant agrees that this Lease shall be subordinate to any mortgage held by Lender encumbering the Premises as of the Commencement Date (the "Mortgage") and agrees, at the request of the Landlord, to subordinate this Lease to the Mortgage and to any renewal, extension or modification of the Mortgage. The Tenant shall execute and deliver, upon demand, to the Landlord, at the Landlord's expense, a commercially reasonable subordination, non-disturbance and attornment agreement ("SNDA") consistent with this Section 26 that is mutually acceptable to the Tenant, Landlord and Lender. The Landlord agrees that it will not mortgage the Premises except pursuant to the Mortgage and any renewal, extension or modification thereof, without the consent of the Tenant. The Landlord agrees, provided there is no Event of Default that remains uncured after expiration of applicable notice and cure periods, that during the Term it will not sell, transfer or otherwise convey the Premises to a third party other than the Lender in the exercise of Lender's rights under the Mortgage but subject to the SNDA, without the consent of the Tenant.

Subject to the terms of the SNDA, the Tenant's tenancy and the Tenant's rights under this Lease shall not be disturbed, terminated or otherwise adversely affected, nor shall this Lease be affected, by any default under the Mortgage or any other mortgage which may now exist or hereafter be executed, and in the event of a foreclosure or other enforcement of the Mortgage or any other mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale shall be bound to the Tenant for the Term and any renewal term, the rights of the Tenant under this Lease shall expressly survive, and this Lease shall in all respects continue in full force and effect so long as no Event of Default has occurred and is continuing. The Tenant shall not be named as a party defendant in any such foreclosure suit, except as may be required by law. Any mortgage to which this Lease is now or hereafter subordinate shall provide, in effect, that during the time this Lease is in force, insurance proceeds and condemnation award shall be permitted to be used for restoration of the Premises in accordance with the provisions of this Lease. Notwithstanding an

Event of Default, but provided no Event of Default has occurred under a sublease, the provisions of this Section 26 shall continue to apply for the benefit of any subtenant referred to in Section 25 herein.

27. **Landlord's Right to Enter.** Subject to compliance with Tenant's security procedures, and, except in the event of an emergency, upon at least forty-eight (48) hours' prior notice, the Tenant agrees that the Landlord may enter the Premises from time to time, when reasonable under the circumstances, to inspect the Premises and, during the continuance of an Event of Default, to make any necessary repairs or replacements therein that Tenant is required to perform hereunder. The preceding sentence does not impose upon the Landlord any obligation to make repairs. Any entry shall be done by Landlord in such reasonable manner as to minimize any disruption of Tenant's business operation.

28. **Landlord's Right to Remedy Default.** If an Event of Default has occurred and is continuing, the Landlord, without being bound to do so and without thereby waiving such default, after expiration of applicable notice and cure periods hereunder, may remedy such default for the account and at the expense of the Tenant. If the Landlord makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of 10% per annum and costs, shall be paid to the Landlord by the Tenant upon demand.

29. **Estoppel Certificate.** Each party agrees at any time and from time to time, within twenty (20) days after written request by the other party, to execute, acknowledge and deliver to and in favor of any proposed mortgagee or purchaser of the property of which the Premises are a part, an estoppel certificate, in the form customarily used by such proposed mortgagee or purchaser, stating among other things: (i) whether this Lease is in full force and effect; (ii) whether this Lease has been modified or amended and, if so, identifying and describing any such modification or amendment; (iii) the date to which rent and any other charge has been paid; (iv) whether such party knows of any default on the part of the other party or has any claim against other party and, if so, specifying the nature of such default or claim, and (v) such other matters as may reasonably be requested.

30. **Redelivery of Premises.** Provided that the Tenant fails to exercise the Purchase Option or otherwise acquire fee title to the Premises at the expiration or earlier termination of this Lease, the Tenant will peaceably and quietly quit and deliver up to the Landlord or its attorney, or other duly authorized agent, the Premises (together with all alterations, additions, improvements, mechanical installations, equipment and appurtenances thereto not removed from the Premises pursuant to Sections 18 and 19) at the expiration or other termination of this Lease or any renewal thereof, leaving the Premises in as good condition as they now are or may be placed in during the Term, reasonable and ordinary wear and damage by fire or other casualty excepted. Such delivery shall include all keys to the Premises and failure to deliver such keys shall make the Tenant responsible for the expense of lock changes. The Tenant covenants and agrees that at the time of delivery of possession to the Landlord at the expiration of this Lease, any and all alterations, additions, improvements, mechanical installations, equipment and appurtenances constructed or installed on or in the Premises at its expense after the beginning of the Term hereof and which

have become the property of the Landlord pursuant to this Lease shall be free and clear of any mortgage, lien, pledge or other encumbrances or charges.

31. **Default.**

(a) The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Lease:

(i) any installment of Rent shall not be paid within five (5) days after the Landlord shall have notified the Tenant in writing that the same is due and payable hereunder; or

(ii) the Tenant defaults in the performance or observation of any covenant or condition in this Lease (other than the payment of Rent or other sums due hereunder) and such default remains unremedied for twenty (20) days after written notice thereof has been given to the Tenant by the Landlord, unless the Tenant establishes to the reasonable satisfaction of the Landlord that it is duly pursuing a remedy of any such default and such default does not cause additional damage to the Premises, in which case Tenant shall have such time as is reasonably necessary to remedy such default;

(iii) the Tenant makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any receiver or any trustee of or for the Tenant or any substantial part of its property, commenced any proceeding relating to the part of its property, commences any proceeding relating to the Tenant or any substantial part of its property under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or there is commenced against the Tenant any such proceeding which remains undismissed for a period of sixty (60) days, or any order approving the petition in any such proceeding is entered, or the Tenant by any act indicates its consent to, or acquiescence in, any such proceeding or the appointment of any receiver or trustee for the Tenant or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of sixty (60) days; or

(iv) the Tenant fails to close on the acquisition of the Premises under the Purchase Option by the Expiration Date as required by Section 5 hereunder or under subsection (b), below.

(b) If any Event of Default shall have occurred, the Landlord shall have the right at its option, then or at any time thereafter until such Event of Default is cured, in addition to any other remedy or right set forth in this Lease or available at law or in equity, to give the Tenant notice ("Landlord's Notice of Termination") of the Landlord's intention to terminate this Lease on a date specified in such notice (which date shall be no sooner than sixty (60) days after the date of the notice) and the Tenant shall be deemed without further notice to have exercised the Purchase Option as if the Tenant had delivered to Landlord a Purchase Option Exercise Notice as of the date of Landlord's Notice of Termination, and Landlord shall convey all of its right, title and interest in and to the Premises in accordance with and subject to the terms and conditions of Section 5

above, including but not limited to, payment by Tenant of the Purchase Option Amount, together with all Rent and other sums then due on such date.

32. **Risk of Damage.** All property on the Premises not placed there or owned by the Landlord shall be at the sole risk of the Tenant.

33. **Damage or Destruction.** If the Premises or any part thereof shall be partially or wholly damaged or destroyed by fire, flood, war or other casualty, then the Tenant may, but shall not be obligated to, restore the Premises with such changes as Tenant may elect following the occurrence of such damage (and subject to extension due to Force Majeure). It is expressly understood that the Tenant shall be afforded access to and may use available insurance proceeds to restore the Premises with such changes as Tenant may elect. Following Tenant's completion of such restoration, all remaining insurance proceeds shall be released to Tenant. Further, in the event that Tenant exercises or is deemed to exercise the Purchase Option at any time when some or all property insurance proceeds have not been released to Tenant, the remaining insurance proceeds shall be released to Tenant at the closing of Tenant's purchase of the Premises.

34. **Condemnation.** If the Premises are totally taken by the exercise of any governmental power or any private corporation or individual having the power of condemnation, the Tenant shall be deemed without further notice to have exercised the Purchase Option as if the Tenant had delivered to the Landlord a Purchase Option Exercise Notice as of the date of the Landlord's receipt of final notice of such taking by such governmental power or private corporation or individual having the power of condemnation. In such event, prior to the date of such taking this Lease shall terminate and simultaneously with such termination the Landlord shall convey to the Tenant all of its right, title and interest in and to the Premises in accordance with and subject to the terms and conditions of Section 5 above, including but not limited to, payment of the Purchase Option Amount, together with all Rent and other sums then due on such date and the Tenant shall receive the condemnation award therefor and each party hereto shall be relieved of any further obligation to the other (except as otherwise provided in this Lease). The provisions of this section shall also apply in the event of a voluntary sale or transfer of the Premises to any such entity having the power of condemnation either under a threat of condemnation or while legal proceedings for condemnation are pending. In the event of a partial taking of the Premises by condemnation, this Lease shall remain in effect, except that the Tenant may terminate this Lease and exercise the Purchase Option if by reason of such partial taking, regardless of the amounts so taken, if the Tenant determines that the Premises are rendered unsuitable for the Tenant's continued use of the Premises or the Tenant's continued use of the Premises is materially impaired. If the Tenant elects to terminate the Lease and exercise the Purchase Option, the Tenant must exercise its right to terminate and exercise the Purchase Option pursuant to this section by giving notice to the Landlord within thirty (30) days after the Tenant receives written notice of the final determination of the nature and extent of the condemnation in which event, prior to the date of such taking, this Lease shall terminate and simultaneously with such termination the Landlord shall convey to the Tenant all of its right, title and interest in and to the Premises in accordance with and subject to the terms and conditions of Section 5 above, including but not limited to, payment of the Purchase Option Amount, together with all Rent and other sums then due on such date, and the Tenant shall receive the condemnation award therefor and each party hereto shall be relieved of any further obligation to the other (except as otherwise provided in this Lease). If a

partial taking does not result in termination of the Lease, the Tenant may elect to restore the Premises remaining to a complete unit in such a manner and with such changes as Tenant elects, and may use the amount of the condemnation award therefor. Notwithstanding anything to the contrary contained in this Section 34, if any separate award is made to the Tenant for its moving and relocation expenses or loss of equipment paid for by the Tenant, it shall be paid by the taking authority directly to, and shall be retained by, the Tenant and the Tenant shall have no obligation to deliver any such funds to Landlord. Following Tenant's completion of such restoration, all remaining condemnation proceeds shall be released to Tenant. Further, in the event that Tenant exercises or is deemed to exercise the Purchase Option at any time when some or all condemnation proceeds have not been released to Tenant, then Tenant shall have the right to receive the remaining condemnation following the closing of Tenant's purchase of the Premises.

35. **Waiver of Subrogation.** Each of the Landlord and the Tenant hereby releases the other (and each person and legal entity claiming through each of them) from any and all liability or responsibility to the other (and each person and legal entity claiming through the other) by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties, or by sprinkler leakage, even if such fire or other casualty or such leakage shall have been caused by the fault or negligence of the other party, or anyone for which such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasors policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair the coverage of said policies or prejudice the right of the releasor to recover thereunder. Each of the Landlord and the Tenant agrees that its policies will include such clause or endorsement, provided, however, that if extra cost shall be charged therefor, the party shall obtain such clause or endorsement so long as the other party pays such extra cost.

36. **Surrender and Holdover.** Provided that if the Tenant fails to exercise the Purchase Option or otherwise acquire fee title to the Premises at the expiration or earlier termination of this Lease, or as otherwise provided hereunder, then upon the expiration or earlier termination of this Lease, the Tenant shall peaceably leave and surrender the Premises to the Landlord, and if the Tenant thereafter holds over or remains in the possession or occupancy of the Premises, without any written lease of the Premises having been made and entered into between the Landlord and the Tenant, such holding over or continued possession or occupancy shall, if the rent is paid by the Tenant and accepted by the Landlord for or during any period of time it so holds over or remains in possession or occupancy, create only a tenancy from month to month at the last monthly rental and upon the terms herein specified which may at any time be terminated by either the Landlord or the Tenant giving to the other party thirty (30) days' notice of such intention to determine the same.

37. **Waiver.** The parties covenant with one another that the failure of either to insist in any one or more instances upon the strict and literal performance of any of the covenants, terms or conditions of this Lease, or to exercise any option of the Landlord or the Tenant herein contained, shall not be construed as a waiver or a relinquishment for the future, of such covenant, term, condition or option, but the same shall continue and remain in full force and effect. The receipt by the Landlord of rent, with knowledge of the breach of any covenant, term or condition hereof, shall not be deemed to be a waiver of such breach, and no waiver by the Landlord of any covenant,

term, condition or provision of this Lease, or of the breach thereof, shall be deemed to have been made by the Landlord, unless expressly acknowledged in writing by the Landlord over its signature.

(a) No right or remedy conferred upon or reserved to the Landlord in this Lease is intended to be exclusive of any right or remedy; and each and every right and remedy shall be cumulative and in addition to any other right of remedy available to Landlord under this Lease or at law or in equity with respect to any obligations of Tenant or breach by Tenant under this Lease. No delay or failure by the Landlord or the Tenant to enforce its rights under this Lease shall be construed as a waiver, modification or relinquishment thereof. In addition to the other remedies provided in this Lease, the Landlord and the Tenant shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation or attempted or threatened violation of any of the provisions of this Lease, or to specific performance of any of the provisions of this Lease.

(b) The Landlord hereby waives any right to distrain or levy upon Trade Fixtures or any property of the Tenant and any Landlord's lien or similar lien upon Trade Fixtures and any other property of the Tenant regardless of whether such lien is created or otherwise. The Landlord agrees at the request of the Tenant to execute a waiver of any of the Landlord's liens or similar lien for the benefit of any present or future holder of security interest in or lessor of any of Trade Fixtures or any other personal property of the Tenant.

(c) The Landlord acknowledges and agrees in the future to acknowledge (in a written form reasonably satisfactory to the Tenant) to such persons and entities at such times and for such purposes as the Tenant may reasonably request that the Trade Fixtures and the Tenant's property are not part of the Improvements (regardless of whether or to what extent such Trade Fixtures are affixed to the Improvements) or otherwise subject to the terms of this Lease.

(d) Each of the Tenant and the Landlord (herein called "Paying Party") agrees to pay to the other party (herein called "Demanding Party") any and all reasonable costs and expenses incurred by the Demanding Party in connection with any litigation or other action instituted by the Demand Party to enforce the obligations of the Paying Party under this Lease, to the extent that the Demanding Party has prevailed in any such litigation or other action. Any amount payable by Tenant to Landlord pursuant to this Section 37 shall be due and payable by Tenant to Landlord as Rent, over and above any other obligations then owing. As used in this Section, "costs and expenses" shall include, without limitation, reasonable attorneys' fees at trial, on appeal and on any petition for review, and in any proceeding in bankruptcy, in addition to all other sums provided by law.

38. Limitation of Liability; Definition of Landlord.

(a) Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of the Landlord under this Lease shall be enforced only against the Landlord's interest in the Premises and shall not be enforced against the Landlord individually or personally. In no event shall either party ever be liable to the other for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits.

(b) The term Landlord as used in this Lease so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners of the Premises and in the event of any transfer or transfers of the title of the Premises, the Landlord herein named (and in the case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of the Landlord contained in this Lease thereafter to be performed.

39. **Notices.** All notices hereunder by the Landlord to the Tenant shall be given in hand, sent by nationally recognized overnight delivery service, or sent by registered or certified mail, addressed to the Tenant at 100 Guest Street, Boston, MA 02135 Attention: General Counsel, with a copy to Goodwin Procter LLP, 100 Northern Avenue, Boston, MA 02210 Attention: Bruce Tribush, Esq., or to such other address as the Tenant may from time to time give to the Landlord for this purpose. All notices by the Tenant to the Landlord shall be given in hand, sent by nationally recognized overnight delivery service, or sent by registered or certified mail, addressed to the Landlord at 135 North State Street, Concord, New Hampshire 03301, or to such other address as the Landlord may from time to time give in writing to the Tenant for this purpose.

40. **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of New Hampshire.

41. **Successors.** The obligations and benefits of this Lease shall run with the land, and shall be binding upon and shall inure to the benefit of the successors and assigns of the Landlord, and the successors and permitted assigns of the Tenant.

42. **Counterparts; Electronic Signatures.** This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together constitute one and the same instrument. Any electronic signature hereto shall have the same legal validity and enforceability as an original signature.

43. **Separability.** Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by the Landlord shall not discharge or relieve the Tenant from its obligation to perform the same. If any term or provision of this Lease or the application thereof to any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

44. **Information.** Upon Landlord's written request given not more than once per calendar year, the Tenant shall furnish to the Landlord a copy of Tenant's unaudited financial statements, which statements shall be treated as Confidential Information (as hereinafter defined) pursuant to Section 46.

45. **Recordation of Memorandum of Lease/Option Agreement.** The parties agree that an option agreement or a memorandum of lease with respect to this Agreement, that expressly includes a description of the Purchase Option contained herein, shall be recorded in the appropriate land records simultaneously with the execution of this Agreement.

46. **Confidentiality.**

(a) Landlord recognizes that the terms of this Lease require Tenant to deliver to Landlord, and Tenant may disclose to Landlord, certain confidential, financial and business information that Tenant desires Landlord to treat as confidential. As used herein, "Confidential Information" means all non-public, confidential or proprietary information disclosed by Tenant, its affiliates, legal representatives, employees, consultants and those acting with the foregoing's permission or authority (collectively, "Disclosing Party") to Landlord, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," including, without limitation, information relating to its audited and unaudited financial statements and business plans. All rights, title and interest in and to any intellectual property and Confidential Information disclosed by Disclosing Party shall remain the property of Disclosing Party and nothing contained herein shall be construed as granting or implying to Landlord any transfer or ownership rights in the Confidential Information. Upon Disclosing Party's request, to the extent permitted by NH RSA 91:A and NH RSA 5:38, all Confidential Information in tangible form and copies thereof shall be returned or destroyed and Landlord shall certify to such destruction. Confidential Information does not include information that was already known to Landlord prior to its contact with Disclosing Party as established by Landlord's records and/or information which becomes generally available to the public other than as a result of a breach hereof.

(b) To the extent permitted by NH RSA 91:A, Landlord agrees that it shall take steps to protect the Confidential Information at least equal to those used to protect its own confidential information and further agrees that it shall not (1) use the Confidential Information other than with respect to the business transactions contemplated hereby, (2) disclose to any non-employee and only to those employees and/or board members and/or relevant governmental officials involved in the approval of the business transactions contemplated hereby that have a "need to know", and have notified such employees, board members, and governmental officials of the confidential nature of the Confidential Information and obligations set forth in this Section 46, and (3) allow third parties access to (in whole or in part) Confidential Information without the prior written approval of Tenant, except that Landlord may disclose Confidential Information to Lender if Lender covenants and agrees in a written instrument reasonably satisfactory to Tenant to comply with the obligations applicable to Landlord under this Section 46.

(c) Landlord represents and warrants that its actions with respect to Disclosing Party are not in conflict with any obligations to third parties. To the extent permitted by NH RSA 91:A, Landlord agrees not to disclose to or use on behalf of Disclosing Party any confidential information belonging to third parties unless written authorization from such party is obtained in form satisfactory to Disclosing Party.

(d) No subsequent agreement between Landlord and Tenant shall be deemed to amend, terminate or supersede this Section 46 unless this Section 46 is specifically referred to therein. Landlord shall not use any Disclosing Party trademark or trade name without the express prior written consent of Disclosing Party.

(e) Landlord acknowledges that were Landlord to breach the provisions of this Section 46, the harm to Disclosing Party may be irreparable. Landlord therefore agrees that in the event of such a breach or threat of such a breach, Disclosing Party shall have, in addition to any other remedies available to it, the right to seek preliminary injunctive relief against any such breach or threat of such breach.

47. **Miscellaneous.**

(a) The Section headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

(b) Any act which the Landlord is permitted to perform under this Lease may be performed at any time and from time to time by the Landlord or any person or entity designated by the Landlord. Any act which the Tenant is required to perform under this Lease shall be performed at the Tenant's sole cost and expense, subject to payment by the Landlord of the Tenant Allowance as set forth in Section 4.2 hereof.

(c) This Lease constitutes the entire agreement between the Landlord and the Tenant regarding this subject matter. This Lease may be modified, amended, discharged, or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

(d) The covenants of this Lease shall run with the Land and bind the Tenant, the successors and assigns or the Tenant and all present and subsequent encumbrances and subtenants of any of the Premises, and shall inure to the benefit of and bind the Landlord, its successors and assigns.

(e) The Tenant shall pay all reasonable expenses incurred by the Landlord in connection with the consummation of this Lease, including reasonable attorneys' fees.

[end of text: signatures on next page]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Agreement as of the day and year first above written.

LANDLORD:
BUSINESS FINANCE AUTHORITY OF
THE STATE OF NEW HAMPSHIRE

BY: _____
ITS: _____

TENANT:
NEW BALANCE ATHLETICS, INC.

BY: _____
ITS: _____

EXHIBIT A
PREMISES LEGAL DESCRIPTION

EXHIBIT B

CONSTRUCTION

(follows on next page)

EXHIBIT C
CONSTRUCTION CONDITIONS

Summary of Construction Build-out Requisition Procedures

[**Parties to Confirm that time periods for responding to Requisitions are sufficient to allow payment to Contractor and other vendors/consultants within 22 days following submission.**]

The Construction Build-out requisition procedures are as follows, which are general in nature, and subject to variance by such further agreed terms between _____ Bank ("Lender"), [ASI Management Companies ("ASI")]¹, Landlord and Tenant as may subsequently apply.

- i) Each requisition ("Requisition") will cover the period from the prior month's Requisition to the 15th ***[**confirm that pay periods will run through the 15th of each month rather than on a calendar month basis**]*** of the month applied for.
- ii) Tenant will complete submission which shall include as part of the Requisition the total amount requested, with a breakdown showing the identities and amount for each contractor, subcontractor, manufacturer or supplier to be paid therefrom, together with appropriate backup thereto, with no mechanics lien waivers or releases then due.
- iii) Tenant shall submit the Requisition to Landlord which, within three (3) days of receipt thereof, will submit it to Lender and ASI, with a certification from the Landlord that the submission is accurate to the best of its information and belief.
- iv) Within ten (10) days after receipt of the Requisition and certifications from Landlord, ASI will first confirm if the Requisition is in order and then inspect the Premises to confirm the work requisitioned is done and stored materials on site and to the extent possible offsite materials and equipment to be paid are accounted for, and that the amount of the Requisition does not exceed the percentage of completion then achieved. ASI will further post such notices as may be required by the New Hampshire Mechanics Lien statute, NH RSA 447.
- v) Within three (3) days of ASI satisfying all provisions under (iv), ASI will notify Lender and Lender will request a title update and Title Policy Endorsement from Lender's counsel, to bring the title forward and update the amount advanced in the Endorsement and Lender's counsel will submit such to Lender.
- vi) Within three (3) days after Lender's receipt of the requirements of Sections (iii) and (iv), without unacceptable title objections, the Requisition amount will be issued to Landlord or Tenant, as they may agree, less 5% retainage on items other than general conditions items, general requirements items, insurance, directly purchased items, and amounts payable for soft costs (including fees and charges payable to architects,

¹ To be updated as necessary.

engineers, consultants, attorneys and others providing non-construction services). Retainage shall be released at Tenant's request with respect to any amounts owed to trade subcontractors, vendors or suppliers who have completed their individual work or provided their individual materials.

- vii) Within five (5) days after completion of the Construction Build-Out, and issuance by the Town of Londonderry of a Certificate of Occupancy (temporary or permanent) or Certificate of Completion, and the provisions by Tenant of a final release and mechanics lien waiver and certification (conditioned on receipt of final payment) reasonably acceptable to Landlord and Lender ("**Final Certificate**"), Lender shall release to Landlord, or as Landlord may direct, the retainage monies held and any unexpended construction funds.
- viii) Tenant shall agree in writing with each Requisition and in the Final Certificate, that to Tenant's knowledge all work and installation is compliant with all local, state and federal permits, approvals, codes and requirements and that the Construction Build-Out has been completed in substantial accordance with applicable plans and specifications, with Tenant at each such submission reaffirming any provisions previously agreed to indemnifying and holding Lender, Landlord and Title Insurer harmless.

Preti Flaherty
P.O. Box 1318
Concord, NH 03302-1318
DPL

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF PLANS AND PERMITS, SECURITY AGREEMENT, AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF PLANS AND PERMITS, SECURITY AGREEMENT, AND FIXTURE FILING (this "**Mortgage**") is made as of _____, 2023 ("**Effective Date**"), by the **BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE**, a body corporate and agency of the State of New Hampshire with a principal office at 135 North State Street, Concord, New Hampshire 03301 ("**Mortgagor**"), in favor of **SERVICE FEDERAL CREDIT UNION**, a financial institution, its successors and assigns ("**Mortgagee**") with an address of 14 Colby Court, Bedford, NH 03110. Terms used in this Mortgage which are defined in the Bond Purchase and Loan Agreement as of the Effective Date between Mortgagor and Mortgagee ("**Bond Loan Agreement**") shall have such defined meanings unless otherwise defined herein. In the event of any discrepancy between a term in this Mortgage and the Bond Loan Agreement, the term as defined in the Bond Loan Agreement shall control.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Mortgagor hereby grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, with MORTGAGE COVENANTS, upon the statutory conditions and with statutory power of sale, all estate, right, title and interest which Mortgagor now has or may later acquire in and to the following property (collectively, or any part thereof, as the context may require, the "**Property**"):

(a) The real property located at or near 55 Pettengill Road (Tax Map 014, Lot 049/3), Londonderry, NH, 03053 together with all rights appurtenant thereto (the "**Premises**"), all as more particularly described in Exhibit A attached.

(b) All buildings, structures and improvements now located or hereafter constructed on the Premises, together with any plans, surveys, licenses, permits approvals, and warranties related thereto (collectively, the "**Improvements**"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian,

appropriate or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions, including but not limited to the Agreement of Lease with respect to the Property between New Balance Athletics, Inc. ("**New Balance**") and any subleases thereunder (the "**New Balance Lease**," and collectively with any sublease with the New Balance Lease, the "**Leases**") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with the Leases; together with

(e) All Improvements, and all appurtenances and other property and interests of any kind or character affixed to the Premises, or necessary to the Premises and its operation and its compliance with law, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, fixtures, equipment and machinery now affixed to or necessary to the Premises, and its operation and its compliance with law, or hereafter attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage and any manufacturer's warranties with respect thereto; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into, or installed in or about the Premises or Improvements; together with

(h) All of Mortgagor's interest in and to all accounts with Mortgagee, and the Bond Loan (as defined below) funds, whether disbursed or not; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) in connection with the Property deposited by Mortgagor with Mortgagee (including all utility deposits); together with

(j) All insurance policies pertaining to the Property and all proceeds, including all claims to and demands thereunder for the voluntary or involuntary conversion of any of the Property into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent

domain proceeding, and all causes of action and their proceeds for any damage or injury to the Property, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All of Mortgagor's rights in any agreements relating to the use of the Property; together with

(l) All construction plans, permits, and approvals with respect to the Property; together with

(m) All books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

(n) All proceeds of additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Secured Obligations.

(a) Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under Bond Note 1 of even date herewith payable by Mortgagor in the stated total principal amount of up to _____ Dollars (\$_____) to the order of Mortgagee, together with all interest and other amounts payable under said Bond Note 1 (the "**Bond Loan**"). For the avoidance of doubt, the obligations at any time owing under Bond Note 2 are not secured by this Mortgage;

(ii) Payment and performance of all obligations of Mortgagor under this Mortgage, including future advances under Section 7.11 below;

(iii) Payment and performance of any obligations of Mortgagor under any Bond Loan Documents;

(iv) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and

(v) Payment and performance of all modifications, amendments, restatements, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and their interest in the Property will be subject to the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations.

2. Assignment of Rents.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, including but not limited to those arising under the Leases, whether now due, past due or to become due, including all prepaid rents and security deposits (to the extent permitted by law) (some or all collectively, as the context may require, “Rents”). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license (“License”) to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.1 below, shall exist and be continuing. Such License shall be revocable in Lender’s sole discretion, only if an Event of Default has occurred and is continuing beyond any applicable notice and cure period, and without further notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee’s security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License, Mortgagee has the right, power, and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, but only during such time that an Event of Default is continuing, if and at the times when Mortgagee in its sole discretion may so choose:

- (a) Demand, receive, and enforce payment of any and all Rents;
- (b) Give receipts, releases, and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee and Mortgagor agree that the recordation of the assignment granted herein entitles Mortgagee upon prior written notice to Mortgagor to immediately collect and receive rents upon the occurrence of an Event of Default, beyond all applicable cure periods, as defined in Section 6.1, without first taking any acts of enforcement under applicable law, such as, but not limited to, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Mortgagee’s right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Subsection 6.2(f). In Mortgagee’s sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.5. If an Event of Default occurs and is continuing while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether Mortgagee, in person or by agent, takes actual possession of the Property, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose;
- (b) Responsible for performing any of the obligations of the lessor under any lease;
- (c) Responsible for any waste committed by lessees or any other parties or any dangerous or defective condition of the Property; or
- (d) Liable in any manner for damage or loss to the Property or the loss of use, occupancy, enjoyment, or operation of all or any part thereof unless such damage or loss is caused by the gross negligence or misconduct of the Mortgagee.

2.5 Leasing. Upon the reasonable request of Mortgagee, Mortgagor shall comply with and observe Mortgagor's obligations under any Leases of the Property or any part thereof, and all Leases and all amendments or modifications thereto shall be subject to Mortgagee's prior written approval. Unless otherwise directed by Mortgagee, all Leases of the Property made after the date hereof shall specifically provide that such Leases are subordinate to this Mortgage; that (subject to reasonable and customary non-disturbance provisions) the tenant attorns to Mortgagee, with such attornment to be effective upon Mortgagee's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; and that the attornment of the tenant shall not be terminated by foreclosure. Mortgagor shall not, without Mortgagee's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, execute, modify, surrender or terminate, either orally or in writing, any Lease hereafter made of all or any part of the Property, permit an assignment or sublease of such a Lease, or request or consent to the subordination of any Lease of all or any part of the Property to any lien subordinate to this Mortgage. If Mortgagor becomes aware that any tenant proposes to do, or is doing, any act or thing that may give rise to any right to set-off against rent, Mortgagor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) notify Mortgagee thereof and of the amount of said set-offs, and (c) within twenty (20) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

3. **Grant of Security Interest.**

3.1 **Security Agreement.** The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the New Hampshire Uniform Commercial Code (“UCC”) covering all such Property and Rents.

3.2 **Financing Statements.** Mortgagor hereby authorizes Mortgagee to file one or more financing statements. In addition, Mortgagor shall execute such other documents as Mortgagee may from time to time reasonably require to perfect or continue the perfection of Mortgagee’s security interest in any Property or Rents. As provided in Section 5.13 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In the event that Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed in any way as derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

4. **Fixture Filing.**

This Mortgage constitutes (separate from and in addition to any financing statements with respect to personal Property as filed pursuant to Section 3.2 above) a financing statement filed as a fixture filing under Article 9 of the UCC covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the preamble of this Mortgage. To the extent that any interest is to be filed in any other State filing agency to perfect Mortgagee’s secured rights, Mortgagor authorizes Mortgagee to make said filing.

5. **Rights and Duties of the Parties.**

5.1 **Representations and Warranties.** Mortgagor represents and warrants that:

(a) Mortgagor lawfully holds fee simple title to all of the Property free from all encumbrances, except as noted on Exhibit B (the “**Permitted Encumbrances**”), and shall and will warrant and defend the Premises to Mortgagee against the claims and demands of all persons for so long as the Secured Obligations are outstanding and unpaid;

(b) Mortgagor has good title to all Property;

(c) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(d) This Mortgage creates a first priority mortgage interest and lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present use and enjoyment of the Premises and Improvements; and

(f) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address set forth at the beginning of this Mortgage.

5.2 Taxes and Assessments. Mortgagor shall pay or cause its tenants to pay all real estate taxes and assessments and charges of every kind upon the Premises before the same become delinquent, provided, however, that Mortgagor shall have the right to pay such tax under protest or to otherwise contest any such tax or assessment, but only if (a) such contest has the effect of preventing the collection of such taxes so contested and also of preventing the sale or forfeiture of the Property or any part thereof or any interest therein, (b) Mortgagor has notified Mortgagee of Mortgagor's intent to contest such taxes, and (c) Mortgagor has deposited security in form and amount satisfactory to Mortgagee, in its sole discretion, and has increased the amount of such security so deposited promptly after Mortgagee's request therefor. If Mortgagor fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Mortgagee for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such tax, assessment or charge, Mortgagee may, at its election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Mortgagee shall be deemed to constitute disbursements of the Bond Loan proceeds hereunder. Mortgagor shall furnish to Mortgagee evidence that taxes are paid before imposition of any penalty or accrual of interest.

5.3 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Funds for Taxes, Insurance and Other Charges. [Reserved]

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

5.6 Liens, Charges and Encumbrances.

(a) Mortgagor shall pay or shall cause the tenant to pay all water and sewer rates, rents, taxes, assessments premiums, charges and impositions, attributable to the Property. Subject to Mortgagor's right to contest set forth in Section 5.6(b) below, Mortgagor shall promptly discharge any lien that has, or may have, priority over or equality with, the lien of this Mortgage, other than Permitted Encumbrances.

(b) If a mechanic's lien is filed against the Property and remains undischarged for a period of thirty (30) days, Mortgagor shall promptly notify Mortgagee and, at Mortgagee's request, shall, at Mortgagor's option, either (i) escrow with Mortgagee or, with the consent of Mortgagee, deposit in a court of competent jurisdiction a sum of money equal to the amount of the lien, or (ii) provide a bond against the lien in such amount and in such manner as to discharge the lien as an encumbrance against the Property. Without Mortgagee's prior written consent, Mortgagor shall not allow any lien, encumbrance, or other interest in the Property to be perfected against the Property, other than Permitted Encumbrances, unless Mortgagor is then diligently contesting same and has, as to the lien, encumbrance or interest being contested, complied with (i) or (ii) of the preceding sentence, and with all provisions of the Bond Loan Documents with respect thereto, with any conflict between the rights of Mortgagor under this Mortgage, and the Bond Loan Documents to be determined by Mortgagee, within its discretion.

5.7 Insurance. Mortgagor shall or shall cause any tenant under the New Balance Lease, or any other tenant under the Leases, to keep all Improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies and in such amounts as Mortgagee may require from time to time with financially sound and reputable insurers, and Mortgagor will pay promptly when due any premiums on such insurance. All policies of insurance shall be delivered to and held by Mortgagee and have loss-payable clauses in favor of and in form acceptable to Mortgagee. Not less than fifteen (15) days before the expiration of any such policies, Mortgagor will deliver to Mortgagee new or renewal policies in like amounts covering the same risks. The policies shall provide that no cancellation shall occur without thirty (30) days prior written notice to Mortgagee. Should any loss occur to the insured property, Mortgagor will give immediate written notice to Mortgagee and will not adjust nor settle such loss without the written consent of Mortgagee, which may make proof of loss if not made promptly by Mortgagor. The insurance proceeds or any part thereof shall be applied in accordance with the terms of the New Balance Lease. Subject to the terms of the New Balance Lease, in the event of foreclosure of this Mortgage, all right, title, and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at foreclosure sale, and Mortgagee is hereby appointed attorney in fact for Mortgagor for the purpose of assigning and transferring such policies and receiving all or any part of the proceeds therefrom.

5.8 Condemnation.

(a) Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee'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 thereof, or for conveyances in lieu of condemnation, shall be paid or disbursed pursuant to the New Balance Lease.

(b) Subject to the terms of the New Balance Lease, with the consent of Mortgagee, which consent may be withheld in Mortgagee's reasonable discretion, Mortgagor may apply such

awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, to restoration or repair of the Property. Otherwise such sums so received shall be applied to payment of the Secured Obligations. 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 Mortgagee may reasonably require.

5.9 Preservation and Maintenance of Property. Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property, reasonable wear and tear excluded; (b) shall not abandon the Property; (c) shall, unless Mortgagee withholds insurance proceeds as security for or application to the Secured Obligations, restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair unless the improvements constituting the Property are (i) totally destroyed, (ii) insurance has been maintained thereon as required by this Mortgage, and (iii) Mortgagee applies the proceeds of such insurance to payment of the Secured Obligations; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Mortgagor when necessary to keep such items in good repair; (e) shall comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, including, without limitation, the Americans with Disabilities Act, as it may be amended from time to time; and (f) shall give notice in writing to Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Mortgage or the rights or powers of Mortgagee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Mortgagee. Unless required by applicable law or unless Mortgagee has otherwise consented in writing, neither Mortgagor nor any tenant or other Person shall remove, demolish or alter any improvement erected on the Property or any fixture (other than trade fixtures and alterations for tenant improvements and in the ordinary course), equipment, machinery or appliance in or on the Property owned by Mortgagor and used or intended to be used in connection with the Property.

5.10 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment or otherwise agree with Mortgagor to alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

- (f) Join in granting any easement or creating any restriction affecting the Property;
- or
- (g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or
- (h) Release the Property or any part of it.

5.11 Protection of Mortgagee's Security.

(a) If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Mortgagee therein, including, but not limited to, eminent domain, insolvency, enforcement of local laws, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee, at Mortgagee's option, may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its reasonable discretion, to protect Mortgagee's interests, including, but not limited to, (a) disbursement of reasonable attorneys' fees; (b) entry upon the Property to remedy any failure of Mortgagor to perform hereunder; and (c) procurement of satisfactory insurance.

(b) Any amounts disbursed by Mortgagee pursuant to this Section 5.11, with interest thereon, shall become part of the Secured Obligations and shall be secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate as defined in Bond Note 1. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Secured Obligations. Nothing contained in this Section 5.11 shall require Mortgagee to incur any expense or take any action hereunder.

(c) The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of the right of Mortgagee to accelerate the maturity of any of the Secured Obligations secured by this Mortgage. Mortgagee's receipt of any awards, proceeds or damages under the insurance or condemnation provisions of this Mortgage shall not operate to cure or waive any default in payment of sums secured by this Mortgage.

5.12 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under this Mortgage and the other Bond Loan Documents have been received, Mortgagee shall release this Mortgage, the mortgage interest and lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any reasonable and customary costs of preparation and recordation of such release.

5.13 Compensation, Exculpation and Indemnification.

(a) Mortgagor agrees to pay reasonable and customary fees as may be charged by Mortgagee, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.12 above. Mortgagor shall also pay or reimburse all of Mortgagee's reasonable costs and expenses which may be incurred in rendering any such services. Mortgagor

further agrees to pay or reimburse Mortgagee for all reasonable, out-of-pocket costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.2, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including reasonable attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.2(k) below) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all reasonable costs, expenses or other advances that may be incurred or made by Mortgagee in each of such Foreclosure Sales. In any foreclosure of the lien hereof or enforcement of any other remedy of Mortgagee under this Mortgage, mortgage interest or lien, or the Bond Note, there shall be allowed and included as additional indebtedness all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and 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 assurances with respect to title as reasonably necessary at any sale which may be had. All expenditures and expenses of the nature herein mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the mortgage interest and lien of this Mortgage, including the reasonable fees of any attorney (including the costs and fees of paralegals) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Bond Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's reasonable exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the gross negligence or willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and

other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Bond Loan Documents or by law, except in cases involving the gross negligence or willful misconduct of Mortgagee;

(ii) Because of any failure of Mortgagor to perform any of its obligations except in cases involving the gross negligence or willful misconduct of Mortgagee; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Bond Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.13 within thirty (30) days of written demand by Mortgagee. Each such obligation shall be an additional Secured Obligation under this Mortgage.

5.14 Hazardous Waste Covenants and Indemnification.

(a) Mortgagor covenants and warrants that Mortgagor's use of the Property shall at all times comply with and conform in all material respects to all laws, statutes, ordinances, rules and regulations of any governmental, quasi-governmental or regulatory authority now or hereafter in effect ("Laws") which relate to the transportation, storage, placement, handling, treatment, discharge, release, generation, production or disposal (collectively "Treatment") of any waste, waste products, petroleum or petroleum based products, radioactive materials, poly-chlorinated biphenyls, asbestos, hazardous materials or substances of any kind, pollutants, contaminants and any substance which is regulated by any law, statute, ordinance, rule or regulation (collectively "Waste"). Mortgagor further covenants that it shall not engage in or permit any Person to engage in any Treatment of any Waste on or that affects the Property except for activities which comply with all Laws in all material respects. "Person" means any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, institution, trust, estate, government or other agency or political subdivision thereof or any other entity.

(b) Except as specifically disclosed to Mortgagee in writing, including those reports and submissions by and from [], Mortgagor has no actual knowledge that the Property is the subject of any Notice, as hereinafter defined, from any governmental authority or Person.

(c) Promptly upon receipt of any Notice from any Person, Mortgagor shall deliver to Mortgagee a true, correct and complete copy of any written Notice or a true, correct and complete

report of any non-written Notice. Additionally, Mortgagor shall notify Mortgagee immediately after having knowledge or receiving Notice of any Waste upon or affecting the Property. "Notice" shall mean any note, oral or written notice, information, knowledge, or report of any of the following:

(i) any suit, proceeding, investigation, order, consent order, injunction, writ, award or action related to or affecting or indicating the Treatment of any Waste in or affecting the Property;

(ii) any spill, contamination, discharge, leakage, release, threatened release, or escape of any Waste in or affecting the Property, whether sudden or gradual, accidental or anticipated, or of any other nature, in violation of applicable Law ("Spill");

(iii) any dispute relating to Mortgagor's or any other Person's Treatment of any Waste or any Spill in or affecting the Property;

(iv) any claims by or against any insurer related to or arising out of any Waste or Spill in or affecting the Property;

(v) any recommendations or requirements of any governmental or regulatory authority, insurer or board of underwriters relating to any Treatment of Waste or a Spill in or affecting the Property;

(vi) violation any legal requirement or deficiency related to the Treatment of Waste or any Spill in or affecting the Property; or

(vii) any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property or any part thereof which has engaged in or engages in the Treatment of any Waste in or affecting the Property in violation of applicable Laws.

(d) In the event that (i) Mortgagor has caused, suffered or permitted, directly or indirectly, any Spill in or affecting the Property during the term of this Mortgage, or (ii) any Spill of any Waste has occurred on the Property during the term of this Mortgage, then Mortgagor shall immediately take or cause New Balance to so act in tandem, or in addition, the following actions:

(A) notify Mortgagee, as provided herein;

(B) take all steps necessary or appropriate to clean up such Spill and any contamination related to the Spill, all in accordance with Laws; provided that Mortgagor may cause New Balance to contest any such requirement, rule or regulation by appropriate proceedings diligently and in good faith, so long as (1) Mortgagor provide or causes New Balance to provide Mortgagee, at New Balance's cost, such sureties, performance bonds and other assurances as Mortgagee may from time to time request in respect of such Spill and contamination and the cleanup thereof, (2) any governmental or other action

against Mortgagor and the Property is effectively stayed during Mortgagor's efforts so to contest, and (3) in Mortgagee's determination, a delay in such clean-up will not result in or increase any loss or liability to Mortgagee;

(C) subject to Section (B) above, restore the Property, provided that such restoration shall be no less than, but need not be more than, what is otherwise required by Law;

(D) allow any local, state or federal governmental or regulatory authority or agency having jurisdiction thereof to monitor and inspect all cleanup and restoration related to such Spill; and

(E) at the written request of Mortgagee, post a bond or obtain a letter of credit for the benefit of Mortgagee by itself or by New Balance, (drawn upon a company or bank satisfactory to Mortgagee) or deposit an amount of money in an escrow account under Mortgagee's name upon which bond, letter of credit or escrow Mortgagor may draw, and which bond, letter of credit or escrow shall be in an amount sufficient to meet all of Mortgagor's obligations under this Section 5.14; and Mortgagee shall have the unfettered right to draw against the bond, letter of credit or escrow in its discretion in the event that either Mortgagor or New Balance is unable or unwilling to meet its obligation under this Section 5.14 or, if Mortgagor fails to cause New Balance to post a bond or obtain a letter of credit or deposit such cash as is required herein, then Mortgagee, at Mortgagor's cost and expense, may, but shall have no obligation to do so for the benefit of Mortgagor and do those things that Mortgagor is required to do under clauses (B), (C) and (D) of this subsection (d).

(e) Mortgagor hereby agrees that it shall indemnify, defend, save and hold harmless Mortgagee and Mortgagee's officers, directors employees, agents, successors, assigns and affiliates (collectively, "**Indemnified Parties**") against and from, and to reimburse the Indemnified Parties with respect to, any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys', engineers' and consultants' fees and expenses, court costs, administrative costs, costs of appeals and all clean up, administrative, fines, penalties and enforcement costs of applicable governmental agencies) that are incurred by or asserted against the Indemnified Parties by reason or arising out of: (i) the breach of any representation, warranty or undertaking of Mortgagor under this Section 5.14, or (ii) the Treatment of any Waste by Mortgagor or any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property, upon or affecting the Property, or (iii) any Spill governed by the terms of this Section 5.14; except to the extent the events described in subsections (i), (ii) or (iii) are caused by the gross negligence or willful misconduct of Mortgagee or occur after Mortgagee has taken possession of the Property through foreclosure or a deed in lieu thereof.

5.15 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if

any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.16 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any bond loan secured by this Mortgage.

5.17 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right subject to the rights of tenants of the Property, at any reasonable time and upon reasonable advance notice, to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives unless such liability arises out of the gross negligence or willful misconduct of Mortgagee or its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Waste are or are not present in, on or under the Property, or that there has been or shall be compliance with any Law, regulation or ordinance pertaining to Waste or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Waste or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's (and Mortgagor's tenants') use of the Property in exercising any rights provided in this Section 5.17.

5.18 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name, business structure and/or state of organization. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

5.19 Transfers. Except as expressly permitted hereunder or under any of the other Bond Loan Documents, it is an additional condition of this Mortgage, for breach of which the Secured Obligations shall become immediately due and payable and foreclosure may be commenced, that Mortgagor shall not (a) voluntarily or involuntarily sell, exchange, assign, convey, transfer or otherwise dispose of all or any portion of the Property (or any interest therein, legal or equitable), or all or any of the ownership interest in Mortgagor, or (b) convey to any Person, other than Mortgagee, a security interest in the Property or any part thereof or voluntarily or involuntarily permit or suffer the Property to be further encumbered, without the consent in writing of the Mortgagee.

6. Default and Remedies.

6.1 **Events of Default.** Mortgagor will be in default under this Mortgage upon the occurrence of an Event of Default as defined in the Bond Loan Agreement, including, but not limited to the following events of default (some or all collectively, “**Events of Default;**” any one singly, an “**Event of Default**”).

(a) If any payment on the Bond Loan shall not be paid in full within fifteen (15) days of the date when due and payable.

(b) If Mortgagor fails to perform or observe any covenant or agreement contained in this Mortgage or in any other of the Bond Loan Documents, and such failure remains unremedied in accordance within the cure provisions of the Bond Loan Agreement, as may apply, if at all.

(c) If any material representation or warranty made in or pursuant to this Mortgage or any Bond Loan Document shall be false when made.

(d) If any Event of Default shall occur under any other Loan Document, or if under any Bond Loan Document in which payment is required to be made by Mortgagor or any Guarantor on demand of Mortgagee, such demand for payment is not satisfied, after any applicable cure period has elapsed.

(e) If Mortgagor shall abandon any of the Property or shall sell, lease, convey or transfer (or contract to sell, lease, convey or transfer) all or any part of the Property without first obtaining Mortgagee’s written consent.

(f) If Mortgagor shall assign any part of the rents or profits of the Property other than to Mortgagee without first obtaining Mortgagee’s written consent.

6.2 **Remedies.** At any time after an Event of Default has occurred and is continuing for a period of 120 days thereafter, and subject to the terms of the New Balance Lease, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Declare all of the Secured Obligations to be immediately due and payable, whereupon all unpaid principal, interest and fees in respect of such Secured Obligations, together with all of Mortgagee’s costs, expenses and attorneys’ fees related thereto, under the terms of the Bond Loan Documents or otherwise, shall be immediately due and payable;

(b) Terminate any commitment to make any additional advances under the Bond Loan;

(c) Exercise any and all rights and remedies available to Mortgagee under any applicable Law;

(d) Exercise any and all rights and remedies granted to Mortgagee under the terms of this Mortgage and any of the other Bond Loan Documents;

(e) Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (g) below.

(f) Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may reasonably consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Mortgagee at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(g) Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage in the event that Mortgagor fails to do so; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's reasonable judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Any amounts expended by Mortgagee under this Subsection 6.2(g) shall be secured by this Mortgage.

(h) Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the mortgage interest and/or lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and enter successive bids, and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Subsection 6.2(a), upon, or at any time after the commencement of foreclosure of this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the property by the Superior Court for the county in which the property is located, and Mortgagor hereby consents to such appointment.

(i) Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(j) If the Property consists of more than one unit, lot, parcel or item of property, Mortgagee may:

(i) Designate the order in which the units, lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the units, lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with the foreclosure thereof and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

(iii) If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the mortgage interest and/or liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.3 Credit Bids. At any Foreclosure Sale, any person, including Mortgagee (but not Mortgagor) may bid for, enter successive bids on, and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee

may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.13 of this Mortgage; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

6.4 Application of Foreclosure Sale Proceeds. Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.13 of this Mortgage;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, or if Lender so determines, paying into a court of competent jurisdiction on an interpleader action, naming parties with an interest therein, and retaining costs and attorney's fees for bringing and filing and maintaining said action.

6.5 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.2 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

7. Miscellaneous Provisions.

7.1 Additional Provisions. The Bond Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Bond Loan Documents also grant further rights to Mortgagee and contain further

agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

7.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Bond Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage. None of the below provisions shall be deemed to remove any right to cure, if such exists as to such, within the Bond Loan Documents or this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.2 (f).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.5 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee hereunder.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.17 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.10 or Subsection 6.2(d) of this Mortgage, that act alone shall not release or change the liability of Borrower for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.2(e) and/or 6.2(f) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 Applicable Law. The creation, perfection and enforcement of the mortgage interest and/or lien of this Mortgage shall be governed by the law of the State of New Hampshire.

7.6 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.6 does not waive the provisions of Section 5.19 above.

7.7 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.8 Waiver of Statutory Rights. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the mortgage interest and/or lien hereof and agrees that any court having jurisdiction to foreclose such mortgage interest and/or lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

7.9 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.10 Notices. All notices, requests, demands or other communications provided for hereunder shall be in writing and mailed or delivered to any party hereto in accordance with the Bond Loan Agreement.

7.11 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Bond Loan proceeds have been disbursed, this Mortgage secures (in addition to any Bond Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee.

7.12 WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN MORTGAGEE AND MORTGAGOR ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS MORTGAGE OR ANY BOND NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED THERETO.

7.13 UCC Financing Statements. In addition, Mortgagor agrees to sign any and all other documents that Mortgagee deems necessary in its sole discretion to perfect, protect, and continue Mortgagee's lien and security interest on the Property.

7.14 Condominium Development of Premises. Mortgagor further covenants and agrees that, without the prior written consent of Mortgagee herein, no part of the Premises herein mortgaged shall be declared, or become the subject of, a condominium under the New Hampshire Condominium Act, as it may be amended or supplemented, or become the subject of any covenants or restrictions, or any planned unit development, or any other type of development that would control or restrict the uses to which the Premises may be put or the scheme or

arrangement of its development or the design, location or character of its buildings or improvements, or which would impose obligations or assessments of any type upon any owners or tenants of the Premises, or upon any other parties who may use or enjoy the Premises.

7.15 Construction Provisions. [A portion of the proceeds of the Bond Loan are for construction improvements to the Property, so that in addition to the provisions of this Mortgage and the Bond Loan Agreement, the provisions of the Construction Loan Agreement (“CLA”) and of the applicable Bond Loan Documents, shall also specifically apply, with the CLA incorporated herein by reference.]

7.16 Variable Interest Rate. [Not applicable, intentionally deleted.]

7.17 Statutory Power of Sale. This Mortgage is given upon THE STATUTORY CONDITION and with MORTGAGE COVENANTS, as aforesaid, and upon the further condition of full and seasonable compliance by the Mortgagor of all of the preceding terms, conditions, covenants and agreements, for any breach of which: (a) an Event of Default occurs hereunder; (b) Mortgagee shall have the right of foreclosure and any and all other rights and remedies given to a mortgagee and secured party under the law of New Hampshire, this Mortgage and any instrument it secures; and (c) Mortgagee, its successors and assigns, subject to compliance with New Hampshire law, shall have, to the full extent now or hereafter available, “THE STATUTORY POWER OF SALE” pursuant to New Hampshire Revised Statutes Annotated Chapter 479, as said Statutes have been and shall be amended, all of which are expressly incorporated herein by reference. In connection with the foregoing, Mortgagor acknowledges and agrees that this Mortgage is given primarily for a business, commercial or agricultural purpose. Mortgagor hereby represents that the Premises and all other collateral or security granted herein are not used for residential purposes whatsoever, and that the Premises contain no residential units or dwelling facilities. Such Statutory Power of Sale shall be in addition to all rights and remedies set forth herein or available under applicable law. Upon the occurrence of an Event of Default under this Mortgage, Mortgagee, its successors and assigns or its or their agent or attorney, may sell the Premises or such portion thereof as may remain subject to the Mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by a public sale on or near any part of the Premises then subject to this Mortgage or at Mortgagee's principal place of business or at any other office of Mortgagee or any attorney or agent thereof located in the same county in which any part of the Premises is located, first complying with the terms of this Mortgage and the statutes relating to the foreclosure of mortgage by the exercise of a Power of Sale, and Mortgagee, its successors and assigns, may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar the Mortgagor and all persons claiming under it from all right and interest in the Premises, whether at law or in equity.

7.18 Qualification.

Under no circumstances shall Mortgagor be obligated directly or indirectly to pay expenses of operation, maintenance and upkeep of the Property except from Bond Loan Proceeds or Lease payments. Except as expressly permitted pursuant to RSA 162-I:9-b, nothing contained herein shall in any way obligate the State to raise any money by taxation or use other public funds for any purpose in relation to the Property. Except as expressly permitted pursuant to RSA 162-I:9-b, neither the State nor Mortgagor shall pay or promise to pay any debt or meet any financial obligation to any person at any time in relation to the Property except (i) from monies received or to be received under the provisions of the Bond Loan Agreement or derived from the exercise of Mortgagor's rights under the New Balance Lease, other than moneys received for its own purposes, or (ii) as may be required by law other than the provisions of the Act. Nothing contained in this Agreement shall be construed to require Mortgagor to operate the Property itself or to conduct any business enterprise in connection therewith.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Mortgagor has executed or has caused this Mortgage to be executed this ____ day of _____, 2023 to be effective as of the Effective Date.

Business Finance Authority of the State of New Hampshire

Witness

By:
James Key-Wallace
Executive Director, Duly Authorized

STATE OF NEW HAMPSHIRE
_____, ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by James Key-Wallace, Executive Director, duly authorized for the Business Finance Authority of the State of New Hampshire, on behalf of the same.

Notary Public/Justice of the Peace
My Commission Expires:

EXHIBIT A

Property Description

EXHIBIT B

Permitted Encumbrances

[Those shown on the loan title insurance policy to Mortgagee, issued with this Mortgage, and no others.]

Preti Flaherty
P.O. Box 1318
Concord, NH 03302-1318
DPL

SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF PLANS AND PERMITS, SECURITY AGREEMENT, AND FIXTURE FILING

THIS SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF PLANS AND PERMITS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Mortgage") is made as of _____, 2023 ("Effective Date"), by the **BUSINESS FINANCE AUTHORITY OF THE STATE OF NEW HAMPSHIRE**, a body corporate and agency of the State of New Hampshire with a principal office at 135 North State Street, Concord, New Hampshire 03301 ("Mortgagor"), in favor of **SERVICE FEDERAL CREDIT UNION**, a financial institution, its successors and assigns ("Mortgagee") with an address of 14 Colby Court, Bedford, NH 03110. Terms used in this Mortgage which are defined in the Bond Purchase and Loan Agreement as of the Effective Date between Mortgagor and Mortgagee ("**Bond Loan Agreement**") shall have such defined meanings unless otherwise defined herein. In the event of any discrepancy between a term in this Mortgage and the Bond Loan Agreement, the term as defined in the Bond Loan Agreement shall control.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Mortgagor hereby grants, bargains, sells, conveys, mortgages and warrants to Mortgagee, with MORTGAGE COVENANTS, upon the statutory conditions and with statutory power of sale, all estate, right, title and interest which Mortgagor now has or may later acquire in and to the following property (collectively, or any part thereof, as the context may require, the "**Property**"):

(a) The real property located at or near 55 Pettengill Road (Tax Map 014 Lot 049/3), Londonderry, NH, 03053 together with all rights appurtenant thereto (the "**Premises**"), all as more particularly described in Exhibit A attached.

(b) All buildings, structures and improvements now located or hereafter constructed on the Premises, together with any plans, surveys, licenses, permits approvals, and warranties related thereto (collectively, the "**Improvements**"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises,

all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions, including but not limited to the Agreement of Lease with respect to the Property between New Balance Athletics, Inc. ("**New Balance**") and any subleases thereunder (the "**New Balance Lease**," and collectively with any sublease with the New Balance Lease, the "**Leases**") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with the Leases; together with

(e) All Improvements, and all appurtenances and other property and interests of any kind or character affixed to the Premises, or necessary to the Premises and its operation and its compliance with law, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, fixtures, equipment and machinery now affixed to or necessary to the Premises, and its operation and its compliance with law, or hereafter attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage and any manufacturer's warranties with respect thereto; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into, or installed in or about the Premises or Improvements; together with

(h) All of Mortgagor's interest in and to all accounts with Mortgagee, and the Bond Loan (as defined below) funds, whether disbursed or not; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) in connection with the Property deposited by Mortgagor with Mortgagee (including all utility deposits); together with

(j) All insurance policies pertaining to the Property and all proceeds, including all claims to and demands thereunder for the voluntary or involuntary conversion of any of the Property, into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of

competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Property, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All of Mortgagor's rights in any agreements relating to the use of the Premises; together with

(l) All construction plans, permits, and approvals with respect to the Property; together with

(m) All books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

(n) All proceeds of additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Secured Obligations.

(a) Mortgagor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Mortgagee may choose:

(i) Payment of all obligations at any time owing under Bond Note 2 of even date herewith, payable by Mortgagor in the stated total principal amount of up to _____ Dollars (\$_____) to the order of Mortgagee, together with all interest and other amounts payable under said Bond Note 1, (the "**Bond Loan**"). For the avoidance of doubt, the obligations at any time owing under Bond Note 1 are not secured by this Mortgage;

(ii) Payment and performance of all obligations of Mortgagor under this Mortgage, including future advances under Section 7.11 below;

(iii) Payment and performance of any obligations of Mortgagor under any Bond Loan Documents; and

(iv) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage;

(v) Payment and performance of all modifications, amendments, restatements, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and their interest in the Property will be subject to the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations.

2. Assignment of Rents.

2.1 Assignment. Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, including but not limited to those arising under the Leases, whether now due, past due or to become due, including all prepaid rents and security deposits (to the extent permitted by law) (some or all collectively, as the context may require, "**Rents**"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Mortgagee hereby confers upon Mortgagor a license ("**License**") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.1 below, shall exist and be continuing. Such License shall be revocable in Lender's sole discretion, only if an Event of Default has occurred and is continuing beyond any applicable notice and cure period, and without further notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

2.3 Collection and Application of Rents. Subject to the License, , Mortgagee has the right, power, and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, but only during such time that an Event of Default is continuing, , if and at the times when Mortgagee in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents;
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Mortgagee and Mortgagor agree that the recordation of the assignment granted herein entitles Mortgagee upon prior written notice to Mortgagor to immediately collect and receive rents upon the occurrence of an Event of Default, beyond all applicable cure periods, as defined in Section 6.1, without first taking any acts of enforcement under applicable law, such as, but not limited to, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Property as permitted under Subsection 6.2(f). In Mortgagee's sole discretion, Mortgagee may choose to collect Rents either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.5. If an Event of Default occurs and is continuing while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity.

2.4 Mortgagee Not Responsible. Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether Mortgagee, in person or by agent, takes actual possession of the Property, unless Mortgagee agrees in writing to the contrary, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose;
- (b) Responsible for performing any of the obligations of the lessor under any lease;
- (c) Responsible for any waste committed by lessees or any other parties or any dangerous or defective condition of the Property; or
- (d) Liable in any manner for damage or loss to the Property or the loss of use, occupancy, enjoyment or operation of all or any part thereof, unless such damage or loss is caused by the gross negligence or misconduct of the Mortgagee.

2.5 Leasing. Upon the reasonable request of Mortgagee, Mortgagor shall comply with and observe Mortgagor's obligations, under any Leases of the Property or any part thereof, and all Leases and all amendments or modifications thereto shall be subject to Mortgagee's prior written approval. Unless otherwise directed by Mortgagee, all Leases of the Property made after the date hereof shall specifically provide that such Leases are subordinate to this Mortgage; that (subject to reasonable and customary non-disturbance provisions) the tenant attorns to Mortgagee, with such attornment to be effective upon Mortgagee's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; and that the attornment of the tenant shall not be terminated by foreclosure. Mortgagor shall not, without Mortgagee's prior written consent which shall not be unreasonably withheld, delayed or conditioned, execute, modify, surrender or terminate, either orally or in writing, any Lease hereafter made of all or any part of the Property, permit an assignment or sublease of such a Lease, or request or consent to the subordination of any Lease of all or any part of the Property to any lien subordinate to this Mortgage,. If Mortgagor becomes aware that any tenant proposes to do, or is doing, any act or thing that may give rise to any right to set-off against rent, Mortgagor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) notify Mortgagee thereof and of the amount of said set-offs, and (c) within twenty (20) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the New Hampshire Uniform Commercial Code ("UCC") covering all such Property and Rents.

3.2 Financing Statements. Mortgagor hereby authorizes Mortgagee to file one or more financing statements. In addition, Mortgagor shall execute such other documents as Mortgagee may from time to time reasonably require to perfect or continue the perfection of Mortgagee's security interest in any Property or Rents. As provided in Section 5.13 below, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In the event that Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed in any way as derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

4. Fixture Filing.

This Mortgage constitutes (separate from and in addition to any financing statements with respect to personal Property as filed pursuant to Section 3.2 above) a financing statement filed as a fixture filing under Article 9 of the UCC covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party, are as set forth in the preambles of this Mortgage. To the extent that any interest is to be filed in any other State filing agency to perfect Mortgagee's secured rights, Mortgagor authorizes Mortgagee to make said filing.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Mortgagor represents and warrants that:

(a) Mortgagor lawfully holds fee simple title to all of the Property free from all encumbrances, except as noted on Exhibit B (the "Permitted Encumbrances"), and shall and will warrant and defend the Premises to Mortgagee against the claims and demands of all persons for so long as the Secured Obligations are outstanding and unpaid;

(b) Mortgagor has good title to all Property;

(c) Mortgagor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(d) This Mortgage creates a first priority mortgage interest and lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present use and enjoyment of the Premises and Improvements; and

(f) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address set forth at the beginning of this Mortgage.

5.2 Taxes and Assessments. Mortgagor shall pay or cause its tenants to pay all real estate taxes and assessments and charges of every kind upon the Premises before the same become delinquent, provided, however, that Mortgagor shall have the right to pay such tax under protest or to otherwise contest any such tax or assessment, but only if (a) such contest has the effect of preventing the collection of such taxes so contested and also of preventing the sale or forfeiture of the Property or any part thereof or any interest therein, (b) Mortgagor has notified Mortgagee of Mortgagor's intent to contest such taxes, and (c) Mortgagor has deposited security in form and amount satisfactory to Mortgagee, in its sole discretion, and has increased the amount of such security so deposited promptly after Mortgagee's request therefor. If Mortgagor fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Mortgagee for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such tax, assessment or charge, Mortgagee may, at its election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Mortgagee shall be deemed to constitute disbursements of the Bond Loan proceeds hereunder. Mortgagor shall furnish to Mortgagee evidence that taxes are paid before imposition of any penalty or accrual of interest.

5.3 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Funds for Taxes, Insurance and Other Charges. [Reserved]

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

5.6 Liens, Charges and Encumbrances.

(a) Mortgagor shall pay or shall cause the tenant to pay all water and sewer rates, rents, taxes, assessments premiums, charges and impositions, attributable to the Property. Subject to Mortgagor's right to contest set forth in Section 5.6(b) below, Mortgagor shall promptly discharge any lien that has, or may have, priority over or equality with, the lien of this Mortgage, other than Permitted Encumbrances.

(b) If a mechanic's lien is filed against the Property and remains undischarged for a period of thirty (30) days, Mortgagor shall promptly notify Mortgagee and, at Mortgagee's request, shall, at Mortgagor's option, either (i) escrow with Mortgagee or, with the consent of Mortgagee, deposit in a court of competent jurisdiction a sum of money equal to the amount of the lien, or (ii) provide a bond against the lien in such amount and in such manner as to discharge the lien as an encumbrance against the Property. Without Mortgagee's prior written consent, Mortgagor shall not allow any lien, encumbrance, or other interest in the Property to be perfected against the Property, other than Permitted Encumbrances, unless Mortgagor is then diligently contesting same and has, as to the lien, encumbrance or interest being contested, complied with (i) or (ii) of the preceding sentence, and with all provisions of the Bond Loan Documents with respect thereto, with any conflict between the rights of Mortgagor under this Mortgage, and the Bond Loan Documents to be determined by Mortgagee, within its discretion.

5.7 Insurance. Mortgagor shall or shall cause any tenant under the New Balance Lease, or any other tenant under the Leases, to keep all Improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies and in such amounts as Mortgagee may require from time to time with financially sound and reputable insurers, and Mortgagor will pay promptly when due any premiums on such insurance. All policies of insurance shall be delivered to and held by Mortgagee and have loss-payable clauses in favor of and in form acceptable to Mortgagee. Not less than fifteen (15) days before the expiration of any such policies, Mortgagor will deliver to Mortgagee new or renewal policies in like amounts covering the same risks. The policies shall provide that no cancellation shall occur without thirty (30) days prior written notice to Mortgagee. Should any loss occur to the insured property, Mortgagor will give immediate written notice to Mortgagee and will not adjust nor settle such loss without the written consent of Mortgagee, which may make proof of loss if not made promptly by Mortgagor. The insurance proceeds or any part thereof shall be applied in accordance with the terms of the New Balance Lease. Subject to the terms of the New Balance Lease, in the event of foreclosure of this Mortgage, all right, title, and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at foreclosure sale, and Mortgagee is hereby appointed attorney in fact for Mortgagor for the purpose of assigning and transferring such policies and receiving all or any part of the proceeds therefrom.

5.8 Condemnation.

(a) Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee'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 thereof, or for conveyances in lieu of condemnation, shall be paid or disbursed pursuant to the New Balance Lease.

(b) Subject to the terms of the New Balance Lease, with the consent of Mortgagee, which consent may be withheld in Mortgagee's reasonable discretion, Mortgagor may apply such

awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, to restoration or repair of the Property. Otherwise such sums so received shall be applied to payment of the Secured Obligations. 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 Mortgagee may reasonably require.

5.9 Preservation and Maintenance of Property. Mortgagor (a) shall not commit waste or permit impairment or deterioration of the Property, reasonable wear and tear excluded; (b) shall not abandon the Property; (c) shall, unless Mortgagee withholds insurance proceeds as security for or application to the Secured Obligations, restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair unless the improvements constituting the Property are (i) totally destroyed, (ii) insurance has been maintained thereon as required by this Mortgage, and (iii) Mortgagee applies the proceeds of such insurance to payment of the Secured Obligations; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Mortgagor when necessary to keep such items in good repair; (e) shall comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, including, without limitation, the Americans with Disabilities Act, as it may be amended from time to time; and (f) shall give notice in writing to Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security of this Mortgage or the rights or powers of Mortgagee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Mortgagee. Unless required by applicable law or unless Mortgagee has otherwise consented in writing, neither Mortgagor nor any tenant or other Person shall remove, demolish or alter any improvement erected on the Property or any fixture (other than trade fixtures and alterations for tenant improvements and in the ordinary course), equipment, machinery or appliance in or on the Property owned by Mortgagor and used or intended to be used in connection with the Property.

5.10 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise agree with Mortgagor to alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property;
or

(g) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or

(h) Release the Property or any part of it.

5.11 Protection of Mortgagee's Security.

(a) If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Mortgagee therein, including, but not limited to, eminent domain, insolvency, enforcement of local laws, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee, at Mortgagee's option, may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its reasonable discretion, to protect Mortgagee's interests, including, but not limited to, (a) disbursement of reasonable attorneys' fees; (b) entry upon the Property to remedy any failure of Mortgagor to perform hereunder; and (c) procurement of satisfactory insurance.

(b) Any amounts disbursed by Mortgagee pursuant to this Section 5.11, with interest thereon, shall become part of the Secured Obligations and shall be secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate as defined in Bond Note 2. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Secured Obligations. Nothing contained in this Section 5.11 shall require Mortgagee to incur any expense or take any action hereunder.

(c) The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of the right of Mortgagee to accelerate the maturity of any of the Secured Obligations secured by this Mortgage. Mortgagee's receipt of any awards, proceeds or damages under the insurance or condemnation provisions of this Mortgage shall not operate to cure or waive any default in payment of sums secured by this Mortgage.

5.12 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Mortgagor under this Mortgage and the other Bond Loan Documents have been received, Mortgagee shall release this Mortgage, the mortgage interest and lien created thereby, and all notes and instruments evidencing the Secured Obligations. Mortgagor shall pay any reasonable and customary costs of preparation and recordation of such release.

5.13 Compensation, Exculpation and Indemnification.

(a) Mortgagor agrees to pay reasonable and customary fees as may be charged by Mortgagee, for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or providing the release pursuant to Section 5.12 above. Mortgagor shall also pay or reimburse all of Mortgagee's reasonable costs and expenses which may be incurred in rendering any such services. Mortgagor

further agrees to pay or reimburse Mortgagee for all reasonable, out-of-pocket costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under Section 6.2, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including reasonable attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.2(k) below) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Mortgagor shall pay all reasonable costs, expenses or other advances that may be incurred or made by Mortgagee in each of such Foreclosure Sales. In any foreclosure of the lien hereof or enforcement of any other remedy of Mortgagee under this Mortgage, mortgage interest or lien, or the Bond Note, there shall be allowed and included as additional indebtedness all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and 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 assurances with respect to title as reasonably necessary at any sale which may be had. All expenditures and expenses of the nature herein mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the mortgage interest and lien of this Mortgage, including the reasonable fees of any attorney (including the costs and fees of paralegals) employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Bond Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

(i) Mortgagee's reasonable exercise of or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage;

(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the gross negligence or willful misconduct and bad faith of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and

other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which it may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Bond Loan Documents or by law, except in cases involving the gross negligence or willful misconduct of Mortgagee;

(ii) Because of any failure of Mortgagor to perform any of its obligations except in cases involving the gross negligence or willful misconduct of Mortgagee; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Bond Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section 5.13 within thirty (30) days of written demand by Mortgagee. Each such obligation shall be an additional Secured Obligation under this Mortgage.

5.14 Hazardous Waste Covenants and Indemnification.

(a) Mortgagor covenants and warrants that Mortgagor's use of the Property shall at all times comply with and conform in all material respects to all laws, statutes, ordinances, rules and regulations of any governmental, quasi-governmental or regulatory authority now or hereafter in effect ("Laws") which relate to the transportation, storage, placement, handling, treatment, discharge, release, generation, production or disposal (collectively "Treatment") of any waste, waste products, petroleum or petroleum based products, radioactive materials, poly-chlorinated biphenyls, asbestos, hazardous materials or substances of any kind, pollutants, contaminants and any substance which is regulated by any law, statute, ordinance, rule or regulation (collectively "Waste"). Mortgagor further covenants that it shall not engage in or permit any Person to engage in any Treatment of any Waste on or that affects the Property except for activities which comply with all Laws in all material respects. "Person" means any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, institution, trust, estate, government or other agency or political subdivision thereof or any other entity.

(b) Except as specifically disclosed to Mortgagee in writing, including those reports and submissions by and from [GZA GeoEnvironmental, Inc.], Mortgagor has no actual knowledge that the Property is the subject of any Notice, as hereinafter defined, from any governmental authority or Person.

(c) Promptly upon receipt of any Notice from any Person, Mortgagor shall deliver to Mortgagee a true, correct and complete copy of any written Notice or a true, correct and complete

report of any non-written Notice. Additionally, Mortgagor shall notify Mortgagee immediately after having knowledge or receiving Notice of any Waste upon or affecting the Property. "Notice" shall mean any note, oral or written notice, information, knowledge, or report of any of the following:

(i) any suit, proceeding, investigation, order, consent order, injunction, writ, award or action related to or affecting or indicating the Treatment of any Waste in or affecting the Property;

(ii) any spill, contamination, discharge, leakage, release, threatened release, or escape of any Waste in or affecting the Property, whether sudden or gradual, accidental or anticipated, or of any other nature, in violation of applicable Law ("Spill");

(iii) any dispute relating to Mortgagor's or any other Person's Treatment of any Waste or any Spill in or affecting the Property;

(iv) any claims by or against any insurer related to or arising out of any Waste or Spill in or affecting the Property;

(v) any recommendations or requirements of any governmental or regulatory authority, insurer or board of underwriters relating to any Treatment of Waste or a Spill in or affecting the Property;

(vi) violation any legal requirement or deficiency related to the Treatment of Waste or any Spill in or affecting the Property; or

(vii) any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property or any part thereof which has engaged in or engages in the Treatment of any Waste in or affecting the Property in violation of applicable Laws.

(d) In the event that (i) Mortgagor has caused, suffered or permitted, directly or indirectly, any Spill in or affecting the Property during the term of this Mortgage, or (ii) any Spill of any Waste has occurred on the Property during the term of this Mortgage, then Mortgagor shall immediately take or cause New Balance to so act in tandem, or in addition, the following actions:

(A) notify Mortgagee, as provided herein;

(B) take all steps necessary or appropriate to clean up such Spill and any contamination related to the Spill, all in accordance with Laws; provided that Mortgagor may cause New Balance to contest any such requirement, rule or regulation by appropriate proceedings diligently and in good faith, so long as (1) Mortgagor provide or causes New Balance to provide Mortgagee, at New Balance's cost, such sureties, performance bonds and other assurances as Mortgagee may from time to time request in respect of such Spill and contamination and the cleanup thereof, (2) any governmental or other action

against Mortgagor and the Property is effectively stayed during Mortgagor's efforts so to contest, and (3) in Mortgagee's determination, a delay in such clean-up will not result in or increase any loss or liability to Mortgagee;

(C) subject to Section (B) above, restore the Property, provided that such restoration shall be no less than, but need not be more than, what is otherwise required by Law;

(D) allow any local, state or federal governmental or regulatory authority or agency having jurisdiction thereof to monitor and inspect all cleanup and restoration related to such Spill; and

(E) at the written request of Mortgagee, post a bond or obtain a letter of credit for the benefit of Mortgagee by itself or by New Balance, (drawn upon a company or bank satisfactory to Mortgagee) or deposit an amount of money in an escrow account under Mortgagee's name upon which bond, letter of credit or escrow Mortgagor may draw, and which bond, letter of credit or escrow shall be in an amount sufficient to meet all of Mortgagor's obligations under this Section 5.14; and Mortgagee shall have the unfettered right to draw against the bond, letter of credit or escrow in its discretion in the event that either Mortgagor or New Balance is unable or unwilling to meet its obligation under this Section 5.14 or, if Mortgagor fails to cause New Balance to post a bond or obtain a letter of credit or deposit such cash as is required herein, then Mortgagee, at Mortgagor's cost and expense, may, but shall have no obligation to do so for the benefit of Mortgagor and do those things that Mortgagor is required to do under clauses (B), (C) and (D) of this subsection (d).

(e) Mortgagor hereby agrees that it shall indemnify, defend, save and hold harmless Mortgagee and Mortgagee's officers, directors employees, agents, successors, assigns and affiliates (collectively, "**Indemnified Parties**") against and from, and to reimburse the Indemnified Parties with respect to, any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys', engineers' and consultants' fees and expenses, court costs, administrative costs, costs of appeals and all clean up, administrative, fines, penalties and enforcement costs of applicable governmental agencies) that are incurred by or asserted against the Indemnified Parties by reason or arising out of: (i) the breach of any representation, warranty or undertaking of Mortgagor under this Section 5.14, or (ii) the Treatment of any Waste by Mortgagor or any tenant, licensee, concessionaire, manager, or other Person occupying or using the Property, upon or affecting the Property, or (iii) any Spill governed by the terms of this Section 5.14; except to the extent the events described in subsections (i), (ii) or (iii) are caused by the gross negligence or willful misconduct of Mortgagee or occur after Mortgagee has taken possession of the Property through foreclosure or a deed in lieu thereof.

5.15 Defense and Notice of Claims and Actions. At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if

any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.16 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any bond loan secured by this Mortgage.

5.17 Site Visits, Observation and Testing. Mortgagee and its agents and representatives shall have the right subject to the rights of tenants of the Property, at any reasonable time and upon reasonable advance notice, to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Mortgagee has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Mortgagee, its agents or representatives shall impose any liability on any of Mortgagee, its agents or representatives unless such liability arises out of the gross negligence or willful misconduct of Mortgagee or its agents or representatives. In no event shall any site visit, observation or testing by Mortgagee, its agents or representatives be a representation that Waste are or are not present in, on or under the Property, or that there has been or shall be compliance with any Law, regulation or ordinance pertaining to Waste or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation or testing by any of Mortgagee, its agents or representatives. Neither Mortgagee, its agents or representatives owe any duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Waste or any other adverse condition affecting the Property. Mortgagee shall give Mortgagor reasonable notice before entering the Property. Mortgagee shall make reasonable efforts to avoid interfering with Mortgagor's (and Mortgagor's tenants') use of the Property in exercising any rights provided in this Section 5.17.

5.18 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name, business structure and/or state of organization. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

5.19 Transfers. Except as expressly permitted hereunder or under any of the other Bond Loan Documents, it is an additional condition of this Mortgage, for breach of which the Secured Obligations shall become immediately due and payable and foreclosure may be commenced, that Mortgagor shall not (a) voluntarily or involuntarily sell, exchange, assign, convey, transfer or otherwise dispose of all or any portion of the Property (or any interest therein, legal or equitable), or all or any of the ownership interest in Mortgagor, or (b) convey to any Person, other than Mortgagee, a security interest in the Property or any part thereof or voluntarily or involuntarily permit or suffer the Property to be further encumbered, without the consent in writing of the Mortgagee.

6. Default and Remedies.

6.1 Events of Default. Mortgagor will be in default under this Mortgage upon the occurrence of an Event of Default as defined in the Bond Loan Agreement, including, but not limited to the following events of default (some or all collectively, “**Events of Default;**” any one singly, an “**Event of Default**”).

(a) If any payment on the Bond Loan shall not be paid in full within fifteen (15) days of the date when due and payable.

(b) If Mortgagor fails to perform or observe any covenant or agreement contained in this Mortgage or in any other of the Bond Loan Documents, and such failure remains unremedied in accordance within the cure provisions of the Bond Loan Agreement, as may apply, if at all.

(c) If any material representation or warranty made in or pursuant to this Mortgage or any Bond Loan Document shall be false when made.

(d) If any Event of Default shall occur under any other Loan Document, or if under any Bond Loan Document in which payment is required to be made by Mortgagor or any Guarantor on demand of Mortgagee, such demand for payment is not satisfied, after any applicable cure period has elapsed.

(e) If Mortgagor shall abandon any of the Property or shall sell, lease, convey or transfer (or contract to sell, lease, convey or transfer) all or any part of the Property without first obtaining Mortgagee’s written consent.

(f) If Mortgagor shall assign any part of the rents or profits of the Property other than to Mortgagee without first obtaining Mortgagee’s written consent.

6.2 Remedies. At any time after an Event of Default has occurred and is continuing for a period of 120 days thereafter, and subject to the terms of the New Balance Lease, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Declare all of the Secured Obligations to be immediately due and payable, whereupon all unpaid principal, interest and fees in respect of such Secured Obligations, together with all of Mortgagee’s costs, expenses and attorneys’ fees related thereto, under the terms of the Bond Loan Documents or otherwise, shall be immediately due and payable;

(b) Terminate any commitment to make any additional advances under the Bond Loan;

(c) Exercise any and all rights and remedies available to Mortgagee under any applicable Law;

(d) Exercise any and all rights and remedies granted to Mortgagee under the terms of this Mortgage and any of the other Bond Loan Documents;

(e) Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under subsection (g) below.

(f) Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may reasonably consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagee; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Premises and make all of it available to Mortgagee at the site of the Premises. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(g) Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage in the event that Mortgagor fails to do so; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's reasonable judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee or to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Any amounts expended by Mortgagee under this Subsection 6.2(g) shall be secured by this Mortgage.

(h) Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the mortgage interest and/or lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagee or its nominee may bid and enter successive bids, and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Subsection 6.2(a), upon, or at any time after the commencement of foreclosure of this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the property by the Superior Court for the county in which the property is located, and Mortgagor hereby consents to such appointment.

(i) Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(j) If the Property consists of more than one unit, lot, parcel or item of property, Mortgagee may:

(i) Designate the order in which the units, lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the units, lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with the foreclosure thereof and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

(iii) If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the mortgage interest and/or liens of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.3 Credit Bids. At any Foreclosure Sale, any person, including Mortgagee (but not Mortgagor) may bid for, enter successive bids on, and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee

may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.13 of this Mortgage; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose.

6.4 Application of Foreclosure Sale Proceeds. Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under Section 5.13 of this Mortgage;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, or if Lender so determines, paying into a court of competent jurisdiction on an interpleader action, naming parties with an interest therein, and retaining costs and attorney's fees for bringing and filing and maintaining said action.

6.5 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 6.2 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

7. Miscellaneous Provisions.

7.1 Additional Provisions. The Bond Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Bond Loan Documents also grant further rights to Mortgagee and contain further

agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

7.2 No Waiver or Cure.

(a) Each waiver by Mortgagee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Bond Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage. None of the below provisions shall be deemed to remove any right to cure, if such exists as to such, within the Bond Loan Documents or this Mortgage.

(i) Mortgagee, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.2 (f).

(ii) Mortgagee collects and applies Rents as permitted under Sections 2.3 and 6.5 above, either with or without taking possession of all or any part of the Property.

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee hereunder.

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.17 above.

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

7.3 Powers of Mortgagee.

(a) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.10 or Subsection 6.2(d) of this Mortgage, that act alone shall not release or change the liability of Borrower for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Mortgagee may take any of the actions permitted under Subsections 6.2(e) and/or 6.2(f) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(c) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

7.4 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

7.5 Applicable Law. The creation, perfection and enforcement of the mortgage interest and/or lien of this Mortgage shall be governed by the law of the State of New Hampshire.

7.6 Successors in Interest. The terms, covenants and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.6 does not waive the provisions of Section 5.19 above.

7.7 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.

7.8 Waiver of Statutory Rights. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the mortgage interest and/or lien hereof and agrees that any court having jurisdiction to foreclose such mortgage interest and/or lien may order the Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

7.9 Severability. If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

7.10 Notices. All notices, requests, demands or other communications provided for hereunder shall be in writing and mailed or delivered to any party hereto in accordance with the Bond Loan Agreement.

7.11 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any Bond Loan proceeds have been disbursed, this Mortgage secures (in addition to any Bond Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee.

7.12 WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN MORTGAGEE AND MORTGAGOR ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS MORTGAGE OR ANY BOND NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO.

7.13 UCC Financing Statements. In addition, Mortgagor agrees to sign any and all other documents that Mortgagee deems necessary in its sole discretion to perfect, protect, and continue Mortgagee's lien and security interest on the Property.

7.14 Condominium Development of Premises. Mortgagor further covenants and agrees that, without the prior written consent of Mortgagee herein, no part of the Premises herein mortgaged shall be declared, or become the subject of, a condominium under the New Hampshire Condominium Act, as it may be amended or supplemented, or become the subject of any covenants or restrictions, or any planned unit development, or any other type of development that would control or restrict the uses to which the Premises may be put or the scheme or

arrangement of its development or the design, location or character of its buildings or improvements, or which would impose obligations or assessments of any type upon any owners or tenants of the Premises, or upon any other parties who may use or enjoy the Premises.

7.15 Construction Provisions. [A portion of the proceeds of the Bond Loan are for construction improvements to the Property, so that in addition to the provisions of this Mortgage and the Bond Loan Agreement, the provisions of the Construction Loan Agreement (“CLA”) and of the applicable Bond Loan Documents, shall also specifically apply, with the CLA incorporated herein by reference.]

7.16 Variable Interest Rate. [Not applicable, intentionally deleted.]

7.17 Statutory Power of Sale. This Mortgage is given upon THE STATUTORY CONDITION and with MORTGAGE COVENANTS, as aforesaid, and upon the further condition of full and seasonable compliance by the Mortgagor of all of the preceding terms, conditions, covenants and agreements, for any breach of which: (a) an Event of Default occurs hereunder; (b) Mortgagee shall have the right of foreclosure and any and all other rights and remedies given to a mortgagee and secured party under the law of New Hampshire, this Mortgage and any instrument it secures; and (c) Mortgagee, its successors and assigns, subject to compliance with New Hampshire law, shall have, to the full extent now or hereafter available, “THE STATUTORY POWER OF SALE” pursuant to New Hampshire Revised Statutes Annotated Chapter 479, as said Statutes have been and shall be amended, all of which are expressly incorporated herein by reference. In connection with the foregoing, Mortgagor acknowledges and agrees that this Mortgage is given primarily for a business, commercial or agricultural purpose. Mortgagor hereby represents that the Premises and all other collateral or security granted herein are not used for residential purposes whatsoever, and that the Premises contain no residential units or dwelling facilities. Such Statutory Power of Sale shall be in addition to all rights and remedies set forth herein or available under applicable law. Upon the occurrence of an Event of Default under this Mortgage, Mortgagee, its successors and assigns or its or their agent or attorney, may sell the Premises or such portion thereof as may remain subject to the Mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by a public sale on or near any part of the Premises then subject to this Mortgage or at Mortgagee's principal place of business or at any other office of Mortgagee or any attorney or agent thereof located in the same county in which any part of the Premises is located, first complying with the terms of this Mortgage and the statutes relating to the foreclosure of mortgage by the exercise of a Power of Sale, and Mortgagee, its successors and assigns, may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar the Mortgagor and all persons claiming under it from all right and interest in the Premises, whether at law or in equity.

7.18 Qualification.

Under no circumstances shall Mortgagor be obligated directly or indirectly to pay expenses of operation, maintenance and upkeep of the Property except from Bond Loan Proceeds or Lease payments. Except as expressly permitted pursuant to RSA 162-I:9-b, nothing contained herein shall in any way obligate the State to raise any money by taxation or use other public funds for any purpose in relation to the Property. Except as expressly permitted pursuant to RSA 162-I:9-b, neither the State nor Mortgagor shall pay or promise to pay any debt or meet any financial obligation to any person at any time in relation to the Property except (i) from monies received or to be received under the provisions of the Bond Loan Agreement or derived from the exercise of Mortgagor's rights under the New Balance Lease, other than moneys received for its own purposes, or (ii) as may be required by law other than the provisions of the Act. Nothing contained in this Agreement shall be construed to require Mortgagor to operate the Property itself or to conduct any business enterprise in connection therewith.

7.19 Subordination. This Mortgage, and the lien hereof and the rights and interests of Mortgagee hereunder, are subject and subordinate in all respects to that certain Mortgage, Assignment of Leases and Rents, Assignment of Plans and Permits, Security Agreement, and Fixture Filing of even date separately granted by Mortgagor to Mortgagee and recorded prior hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Mortgagor has executed or has caused this Mortgage to be executed this ____ day of _____, 2023 to be effective as of the Effective Date.

Business Finance Authority of the State of New Hampshire

Witness

By: _____
James Key-Wallace
Executive Director, Duly Authorized

STATE OF NEW HAMPSHIRE
_____, ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by James Key-Wallace, Executive Director, duly authorized for the Business Finance Authority of the State of New Hampshire, on behalf of the same.

Notary Public/Justice of the Peace
My Commission Expires:

EXHIBIT A

Property Description

EXHIBIT B

Permitted Encumbrances

[Those shown on the loan title insurance policy to Mortgagee, issued with this Mortgage, and no others.]

GUARANTEE AGREEMENT

This Guarantee Agreement dated _____, 2023 (this "Agreement") is between the State of New Hampshire (the "State") and the Business Finance Authority of the State of New Hampshire (with its successors, the "Authority"). Pursuant to a Bond Purchase and Loan Agreement dated as of _____, 2023 (the "Bond Agreement"), between the Authority and Service Federal Credit Union (with its successors and assigns, the "Bond Purchaser"), the Authority is issuing a bond (the "Guaranteed Bond") in the principal amount of up to [Fifty Million] Dollars (\$[50,000,000.00]), which is being purchased by the Bond Purchaser, and the Authority is applying the proceeds of the Guaranteed Bond together with the proceeds of another bond (the "Non-Guaranteed Bond," and together with the Guaranteed Bond, the "Bonds"), in the principal amount of up to \$ _____ and which is also being purchased by the Bond Purchaser, to finance the acquisition and improvements by the Authority of a 17.8-acre parcel of land to be improved by a building structure of approximately 102,000 square feet and related appurtenances thereon located in the Town of Londonderry, New Hampshire (the "Project") to be leased by the Authority to New Balance Athletics, Inc. (the "Lessee") pursuant to an Agreement of Lease dated as of _____, 2023 (the "Lease"). Pursuant to the Lease, the Lessee will make payments to the Authority in amounts sufficient to provide funds to pay the principal of and accrued interest thereon, when due, on the Guaranteed Bond and the Non-Guaranteed Bond. In order to facilitate the sale of the Guaranteed Bond to the Bond Purchaser, the Authority has requested the State to guarantee payment of the principal of and interest on the Guaranteed Bond in the amount of up to Fifty Million Dollars (\$50,000,000.00) pursuant to New Hampshire Revised Statutes Annotated ("RSA") 162-I:9-b (the "State Guarantee"). The State is willing to issue the State Guarantee subject to the terms and conditions of this Agreement.

In consideration of the premises and in order to induce the State to issue the State Guarantee, the parties hereto agree as follows:

SECTION 1. ISSUANCE OF STATE GUARANTEE

1.1 Issuance. The State agrees, on the terms and conditions set forth in this Agreement, to issue the State Guarantee at the time of the closing for the issuance and sale of the Guaranteed Bond, which is _____, 2023 (the "Closing Date").

1.2 Reimbursement; Interest. To the extent permitted by law and subject to Sections 1.3 and 1.4 hereof, the Authority hereby agrees to pay to the State on demand, (i) on and after each date on which the State shall make a payment under the State Guarantee, an amount equal to the amount so paid by the State, and (ii) interest on any such amount or any portion thereof remaining unpaid until payment in full, and interest or any other amount that may become payable under this Guarantee Agreement remaining unpaid from the date such amount becomes payable on demand until payment in full, at an interest rate per annum equal to [_____] percent ([_____]%), which is the guaranteed interest rate payable on the Guaranteed Bond.

1.3 Mortgages; Subrogation; Limitation of Obligations. The Non-Guaranteed Bond is secured by a First Mortgage, Assignment of Rents, Security Agreement and Fixture Filing Loan 1 from the Authority to the Bond Purchaser (the "First Mortgage") and the Guaranteed Bond is secured by a Second Mortgage, Assignment of Rents, Security Agreement and Fixture Filing Loan 2 from the Authority to the Bond Purchaser (the "Second Mortgage," and together with the First Mortgage, the "Mortgages"). As provided in the Bond Agreement, at any time after the State makes any payment to the Bond Purchaser under the State Guarantee that have not been reimbursed to the State (the "Guaranty Payments"), the State shall be subrogated to the rights of the Bond Purchaser with respect to such Guaranty Payments. The State recognizes that the Lessee is obligated to make payments to the Authority pursuant to the Lease and that the Authority's obligation to make payments to the State pursuant to this Agreement and to the Bond Purchaser pursuant to the Bond Agreement and the Mortgages are limited to amounts received by the Authority for such purpose pursuant to the Lease.

1.4 Loan Loss Reserve. The Authority shall establish a Loan Loss Reserve with respect to the Guaranteed Bond. The amount of the reserve shall initially be in an amount equal to twenty-five percent (25%) of the outstanding principal amount of the Guaranteed Bond. Changes to the reserve amount may be made consistent with the Authority's Loan Loss Reserve policy, provided that the Authority shall promptly notify the State Treasurer of any reduction in the reserve amount. Notwithstanding any other provision of this Agreement, the Authority shall apply the Loan Loss Reserve, as necessary, to reimburse the State for any unreimbursed Guaranty Payments, upon written request of the State Treasurer.

1.5 Obligations Absolute. Subject to Sections 1.2, 1.3 and 1.4, the obligations of the Authority under this Agreement shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(i) any lack of validity or enforceability of the State Guarantee, the Bond Agreement, the Mortgages, the Lease, the Bonds and other documents executed in connection therewith (as such documents are in effect from time to time, the "Financing Documents");

(ii) any amendment or waiver of or any consent to or departure from any Financing Document;

(iii) the existence of any claim, set-off, defense or other right that the Authority may have at any time against the Bond Purchaser, the Lessee, the State, or any other person whether in connection with this Agreement, the transactions contemplated herein or in the Financing Documents, or any unrelated transactions; or

(iv) any payment by the State under the State Guarantee that does not strictly comply with the terms of the State Guarantee.

SECTION 2. CONDITIONS OF ISSUANCE

2.1 Conditions Precedent to Issuance of State Guarantee. The obligation of the State to issue the State Guarantee is subject to the conditions precedent that the State shall have received on or before the Closing Date the following, each dated the Closing Date (unless otherwise stated), in form and substance satisfactory to the State:

- (a) Fully executed versions of each of the Financing Documents;
- (b) An opinion of counsel to the Lessee in form and substance satisfactory to the State.
- (c) Such other opinions and documents as the State may reasonably request.

SECTION 3. REPRESENTATIONS AND WARRANTIES

3.1 Authorization. This Agreement, the Bond Agreement, the Lease and the Bonds are valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms. The execution, delivery and performance of this Agreement, the Bond Agreement and the Bonds have been duly authorized by the Authority.

3.2 No Breach. The execution, delivery and performance by the Authority of this Agreement and the other Financing Documents to which it is a party will not violate the provisions of any law, regulation or order of any governmental or regulatory authority applicable to the Authority, or the bylaws of the Authority, and will not result in a breach of, or constitute a default under, or require any consent which has not been obtained or create any lien, charge or encumbrance under, any agreement, instrument or document, or the provisions of any order, writ, judgment, injunction, decree, determination or award of any court, governmental or regulatory authority affecting the Authority or its properties.

3.3 Litigation. There are no suits or proceedings pending or, to the best knowledge of the Authority, threatened against or affecting the Authority or its properties, or by or before any governmental authority which bring into question the validity or enforceability of this Agreement or the Bonds or other Financing Documents.

3.4 No Default. No Default or Event of Default has occurred or is continuing hereunder or under any Financing Document.

SECTION 4. AFFIRMATIVE COVENANTS

So long as the State Guarantee remains outstanding or the Authority shall have any obligation to pay any amount to the State hereunder, the Authority shall, unless the State Treasurer, on behalf of the State, shall otherwise consent in writing:

4.1 Compliance with Financing Documents. Punctually pay or cause to be paid its obligations hereunder and all amounts to become due in respect of the Bonds in strict conformity with the terms of the Bonds, the Bond Agreement and this Agreement and it shall perform and comply in all material respects with each and every obligation, covenant and agreement required

to be performed or observed by it in or pursuant to the Financing Documents to which it is a party.

4.2 Furnish Documents. Upon request, promptly furnish to the State Treasurer copies of (i) all documents required to be furnished to Bond Purchaser or Lessee under any Financing Document and (ii) all notices, information or other documents received by it from any other party to any Financing Document.

4.3 Amendments. Not cause or permit the Financing Documents to be amended, modified or otherwise supplemented in a manner that adversely affects the rights, interests, security, remedies or obligations of the State without the prior written consent of the State.

4.4 Insurance. Cause the Lessee to maintain insurance in such amounts and against such risks as is required by the Lease or customarily maintained by comparable enterprises operating in the area, and promptly file with the State upon request, from time to time, certificates of all such insurance.

4.5 Maintenance of Properties. Maintain the property and improvements thereon that is the subject of the Lease in accordance with the terms of the Lease and the Mortgages and otherwise in good repair.

4.6 Accounting Practices. Keep proper books of account with respect to the transactions contemplated by the Financing Documents in which complete and accurate entries will be made of all transactions.

4.7 Compliance with Laws. Comply with all applicable statutes and regulations of each governmental authority having jurisdiction over it.

4.8 Financial and Other Information. Furnish to the State Treasurer promptly upon request, such information regarding the financial condition, business, properties and operations of the Authority with respect to the Project, as the State may reasonably request from time to time.

4.9 Notice of Default. Promptly upon becoming aware of the existence of any condition or event that constitutes an Event of Default under this Agreement or under any other Financing Document, or any condition or event that would upon notice or lapse of time or both constitute such an event, or of any other event or condition that would have material adverse effect on the financial condition, business or properties of the Lessee, give written notice to the State specifying the nature and duration thereof and the action proposed to be taken with respect thereto.

SECTION 5. INDEMNIFICATION

To the extent permitted by law, the Authority hereby indemnifies and holds harmless the State from and against any and all claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys' fees and expenses, that the State may incur or that may be claimed against the State by any person or entity by reason of or in connection with the execution and delivery of this Agreement, the Financing Documents or the State Guarantee, or

the issuance, sale or transfer of the Guaranteed Bond; provided, however, that the Authority shall not be required to indemnify the State for any claims, damages, losses, liabilities, costs or expenses to the extent caused by the bad faith, willful misconduct or gross negligence of the State.

SECTION 6. COSTS, EXPENSES AND TAXES

To the extent permitted by law, the Authority agrees to pay on demand all reasonable costs and expenses (including reasonable counsel fees and expenses) incurred by the State in connection with (i) the enforcement of this Agreement and the Bond Agreement and such other documents that may be delivered in connection therewith or (ii) any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the State from paying any amount under the State Guarantee. In addition, to the extent permitted by law, the Authority shall pay any and all stamp and other taxes and fees payable in connection with the execution, delivery, filing and recording of this Agreement, the Bond Agreement, the State Guarantee and any such other documents, and agrees to hold the State harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. The Authority hereby agrees to pay to the State on demand any amounts payable under Sections 5 and 6 hereof and interest on any such amount and any other amount that may become payable under this Agreement remaining unpaid from the date such amount becomes payable on demand until payment in full, at an interest rate of per annum of [] percent ([]%) (computed on the basis of a year of 365 or 366 days, as the case may be, for the actual days elapsed, including the first day but excluding the last day).

SECTION 7. MISCELLANEOUS

7.1 Amendments and Waivers. No amendment of any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the State and the Authority. Any requests for waivers by the State or consents to departure by the Lessee from the terms of the Lease shall be submitted in writing by the Authority to the State Treasurer. The State Treasurer, on behalf of the State, shall not unreasonably withhold or delay any such waiver or consent. In the event the State has not responded in writing within twenty (20) Business Days of receipt of a request for consent or waiver, such consent or waiver shall be deemed to have been given. Any waiver or consent given shall be effective only in the specific instance and for the specific purpose for which given.

7.2 No Waiver; Remedies Cumulative. Except as provided in Section 7.1 above, no failure to exercise and no delay in exercising on the part of the State any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

7.3 Notices. All notices and other communications hereunder shall in writing (including telegraphic or telefax communication) and mailed, telegraphed, telefaxed or delivered:

- (a) if to the State: 25 Capitol Street

State House Annex, Room 121
Concord, NH 03301
Fax: (603) 271-3922
Attention: Office of the Treasurer

(b) if to the Authority: 135 North State Street
Concord, NH 03301
Fax: (603) 415-0194
Attention: Executive Director

or, as to each party, at such other address as such party shall designate by written notice to the other party. Except as otherwise specified herein, all such notices or other communications shall be effective upon receipt.

7.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the State and the Authority and their respective successors and assigns.

7.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of any provision in any other jurisdiction.

7.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement in electronic (i.e., "pdf" or "tif") form by email shall be effective as delivery of a manually executed counterpart of this Agreement.

7.7 Headings. The headings of the various sections and paragraphs of this Agreement are for convenience of reference only, do not constitute a part hereof and shall not affect the meaning or construction of any provision hereof.

7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

STATE OF NEW HAMPSHIRE

By: _____
Governor

By: _____
State Treasurer

BUSINESS FINANCE AUTHORITY OF THE
THE STATE OF NEW HAMPSHIRE

By: _____
Title: Executive Director

By: _____
Title: Chief Financial Officer or Senior Credit
Officer

NOT SEASONALLY ADJUSTED ESTIMATES BY PLACE OF RESIDENCE

Labor Force Estimates

New Hampshire	Apr-23	Mar-23	Apr-22
Total Civilian Labor Force	752,680	758,890	758,140
Employed	743,820	742,230	741,420
Unemployed	8,860	16,660	16,720
Unemployment Rate	1.2%	2.2%	2.2%

United States (# in thousands)	Apr-23	Mar-23	Apr-22
Total Civilian Labor Force	166,221	166,783	163,449
Employed	161,075	160,741	157,991
Unemployed	5,146	6,043	5,458
Unemployment Rate	3.1%	3.6%	3.3%

Unemployment Rates by Area

Counties	Apr-23	Mar-23	Apr-22
Belknap	1.2%	2.2%	2.2%
Carroll	1.2%	2.2%	2.4%
Cheshire	1.2%	2.3%	2.4%
Coös	1.8%	3.0%	3.3%
Grafton	1.0%	1.8%	2.0%
Hillsborough	1.2%	2.3%	2.3%
Merrimack	0.9%	1.8%	1.9%
Rockingham	1.3%	2.4%	2.3%
Strafford	1.0%	1.8%	2.0%
Sullivan	1.0%	1.7%	2.1%

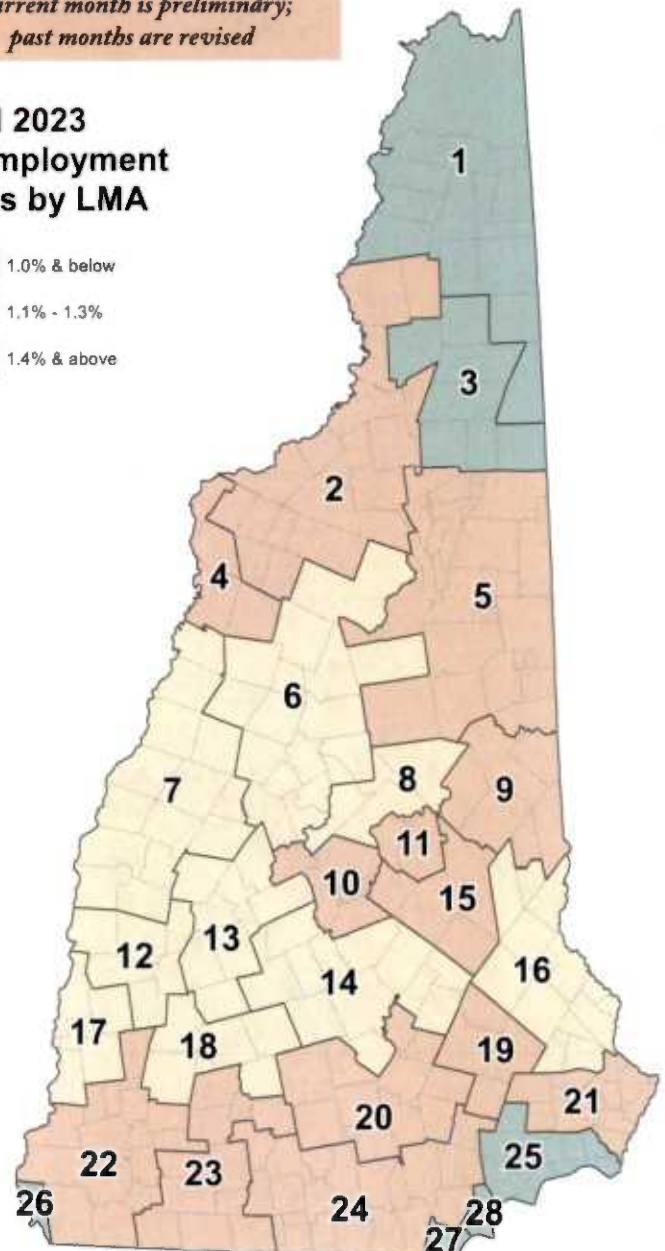
Map Key	Labor Market Areas	Apr-23	Mar-23	Apr-22
1	Colebrook, NH-VT LMA, NH Portion	3.1%	4.0%	4.2%
2	Littleton, NH-VT LMA, NH Portion	1.1%	2.1%	2.3%
3	Berlin NH Micropolitan NECTA	1.7%	3.3%	3.1%
4	Haverhill, NH LMA	1.2%	2.9%	2.9%
5	Conway, NH-ME LMA, NH Portion	1.2%	2.1%	2.2%
6	Plymouth, NH LMA	1.0%	1.9%	2.0%
7	Lebanon, NH-VT Micropolitan NECTA, NH Portion	0.9%	1.5%	2.0%
8	Meredith, NH LMA	1.0%	1.9%	2.0%
9	Wolfeboro, NH LMA	1.3%	2.6%	2.7%
10	Franklin, NH LMA	1.1%	2.2%	2.2%
11	Laconia, NH Micropolitan NECTA	1.3%	2.3%	2.3%
12	Expanded Claremont, NH estimating area	1.0%	1.8%	2.1%
13	New London, NH LMA	1.0%	1.8%	2.1%
14	Concord, NH Micropolitan NECTA	0.9%	1.7%	1.9%
15	Belmont, NH LMA	1.1%	2.2%	2.2%
16	Dover-Durham, NH-ME Metropolitan NECTA, NH Portion	1.0%	1.8%	2.0%
17	Charlestown, NH LMA	1.0%	1.9%	2.3%
18	Hillsborough, NH LMA	1.0%	1.8%	2.1%
19	Raymond, NH LMA	1.1%	2.3%	2.0%
20	Manchester, NH Metropolitan NECTA	1.1%	2.0%	2.1%
21	Portsmouth, NH-ME Metropolitan NECTA, NH Portion	1.1%	2.0%	2.0%
22	Keene, NH Micropolitan NECTA	1.1%	2.0%	2.2%
23	Peterborough, NH LMA	1.3%	2.3%	2.3%
24	Nashua, NH-MA NECTA Division, NH Portion	1.3%	2.5%	2.3%
25	Seabrook-Hampstead Area, NH Portion, Haverhill-Newburyport-Amesbury MA-NH NECTA Division	1.5%	2.9%	2.6%
26	Hinsdale Town, NH Portion, Brattleboro, VT-NH LMA	1.8%	3.5%	3.4%
27	Pelham Town, NH Portion, Lowell-Billerica-Cheimsford, MA-NH NECTA Division	2.0%	3.5%	3.0%
28	Salem Town, NH Portion, Lawrence-Methuen-Salem, MA-NH NECTA Division	1.7%	3.0%	2.7%

Unemployment Rates by Region

Not Seasonally Adjusted	Apr-23	Mar-23	Apr-22
United States	3.1%	3.6%	3.3%
Northeast	3.1%	3.8%	3.8%
New England	2.5%	3.6%	3.4%
Connecticut	3.0%	4.3%	4.0%
Maine	2.3%	3.0%	3.0%
Massachusetts	2.6%	3.9%	3.5%
New Hampshire	1.2%	2.2%	2.2%
Rhode Island	2.4%	3.6%	2.8%
Vermont	1.9%	2.4%	2.5%
Mid Atlantic	3.4%	3.9%	4.0%
New Jersey	3.0%	3.8%	3.7%
New York	3.7%	4.0%	4.1%
Pennsylvania	3.2%	3.8%	4.0%

Current month is preliminary; past months are revised

April 2023 Unemployment Rates by LMA



A RESOLUTION AUTHORIZING UP TO \$72,500,000 LOAN FOR A PROJECT FOR NEW
BALANCE ATHLETICS, INC.
IN THE CITY OF LONDONDERRY, NEW HAMPSHIRE

WHEREAS, the Business Finance Authority (the "Authority") of the State of New Hampshire (the "State") has been requested by New Balance Athletics, Inc. (with any successors or assigns, the "Borrower") to purchase and lease an approximately 17.8 acre parcel of land to be improved by a building structure of approximately 102,000 square foot building and related appurtenances located in the City of Londonderry, New Hampshire (the "Project") by providing financing in an up to \$72,500,000 aggregate loan comprised of any or all of the following singularly or in the aggregate: a revenue bond (the "Bond") that may be supported by a State guarantee, a commercial loan (the "Commercial Loan"), and a loan of certain funds of the Authority (the "Authority Loan" and collectively with the Bond and the Commercial Loan, the "Loan"), which shall be taxable under RSA 162-I (the "Act");

WHEREAS, the Authority has been furnished with (a) information and materials about the Borrower and the Project, the Project and unemployment in the Londonderry area, (b) evidence that lenders (together with other financial institutions, the "Lender" or the "Purchaser") are willing to make the Commercial Loan and to purchase the Bond, and (c) the proposed LEASE AGREEMENT (the "Lease Agreement") between the Authority and the Borrower pursuant to which the Borrower is obligated to make debt service payments to the Authority in amounts sufficient to repay the Loan. In addition, the Authority may, but is not obligated to enter into (d) a GUARANTEE AGREEMENT (the "Guarantee") between the Authority and the State; (e) a LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") from the Authority to the State and/or the Lender; (f) other financing documents and security agreements necessary to evidence the Lease, the Commercial Loan, the Bond and the Authority Loan (collectively with the Lease Agreement, Guarantee and the Mortgage, the "Agreements"); and (g) other information, materials and assurances deemed relevant by the Authority;

WHEREAS, the Commercial Loan, the Bond and the Lease will constitute evidence of indebtedness of the Authority under the Act to finance the Project, which will be repaid to the Authority by the Borrower under the Lease; and

WHEREAS, the Authority is using its own moneys to fund the Authority Loan, which will be repaid to the Authority by the Borrower under the Lease;

IT IS HEREBY RESOLVED THAT:

Section 1. Findings. On the basis of the information, materials and assurances received by the Authority and considered by it at an open meeting, the Authority finds:

(a) Special Findings:

(1) The Project (as completed, the "Facility") consists of an approximately 17.8 acre parcel of land improved by a building structure of approximately 102,000 square foot building and related appurtenances. The Facility will be owned by the Authority and used by the Borrower for the manufacturing of apparel including shoes, and the performance of related internal business support services. The Project is within the definition of "commercial facility" within the Act and may be financed under the Act; and

(2) The establishment and operation of the Facility will either create or preserve employment opportunities directly and indirectly within the State and will likely be of general benefit to the community as a whole.

(b) General Findings:

(1) The Project and the proposed financing of the Project are feasible;

(2) The Borrower has the skills and financial resources necessary to operate the Facility successfully;

(3) The Agreements contain provisions so that under no circumstances will the Authority be obligated directly or indirectly to pay Project costs, debt service or expenses of operation, maintenance and upkeep of the Facility except from Loan proceeds or from funds received under the Agreements, exclusive of funds received thereunder by the Authority for its own use;

(4) The Agreements do not purport to create any debt of the State with respect to the Facility, other than a special obligation of the Authority acting on behalf of the State under the Act and except for the requested State guarantee; and

(5) The proposed financing of the Project by the Authority and the proposed operation and use of the Facility will serve one or more needs and implement one or more purposes set forth in RSA 162-I:1, will preserve or increase the social or economic prosperity of the State and one or more of its political subdivisions, and will promote the general welfare of the State's citizens.

Section 2. Determination and Recommendation. The Authority finds that the proposed financing, operation and use of the Facility will serve a public use and provide a public benefit and determines that the Authority's financing of the Project will be within the policy of, and the authority conferred by, the Act. The Authority recommends to His Excellency, the Governor, and The Honorable Council that (i) the State provide its guarantee on the Bond pursuant to RSA Section 162-I:9-b and (ii) they make findings and a determination similar to those set forth above and those required by RSA Section 162-I:9-b to provide a State guarantee, and for that purpose the Executive Director is directed to transmit to the Governor and Council copies of this resolution, the materials received by the Authority with respect to the Project and any other documentation and information the Governor and Council may request.

Section 3. Authorization of the Agreements. The Authority shall be a party to the Agreements and the Chairman, Vice Chairman, Treasurer and Executive Director are each

authorized to singly (except as otherwise required by the Act) execute and deliver (i) the Lease Agreement on behalf of the Authority; (ii) the Guarantee Agreement; and (iii) a Mortgage, but subject to such changes as the person so signing may approve, his or her signature being conclusive identification of the documents as the Agreements (with approved changes, if any) authorized by this resolution. The Authority is also hereby authorized to provide the Authority Loan and to execute and deliver any of the Agreements for such purpose.

Section 4. Actions Not to Be Taken Until After Approval by Governor and Council. The actions authorized by Section 3 above (meaning specifically the execution of the Agreements) shall not be taken until such time as the Governor and Council have made the findings and determination required by Section 9 of the Act, it being the intent of the Authority that the various actions on its behalf that are authorized above are subject to the action of the Governor and Council as required by the Act.

Section 5. Loan Proceeds. The proceeds of the Loan shall be deposited in accordance with the Agreements, and checks, if any, for such Loan proceeds may be appropriately endorsed by the Chairman, Vice Chairman, Treasurer or the Executive Director.

Section 6. Approval of Project. The establishment of the Project, all in accordance with the provisions of the Agreements, is hereby approved for the purposes of, and to the extent required by, the Act.

Section 7. Other Actions by Officers. The Chairman, Vice Chairman, Treasurer and the Executive Director are each singly (except as otherwise required by the Act) authorized to take all other actions and execute, deliver or receive such instruments or certificates as they determine are necessary on behalf of the Authority in connection with the whole transaction authorized by the preceding sections of this resolution, but subject in all events to Section 4 hereof. Without limiting the generality of the foregoing, such officers may execute and deliver: receipts; financing statement forms under the Uniform Commercial Code; certificates as to facts, estimates and circumstances; information returns for governmental bond issues for the purposes of federal income taxes; and certificates as to proceedings taken, incumbency of officers or any other facts for any other purposes.

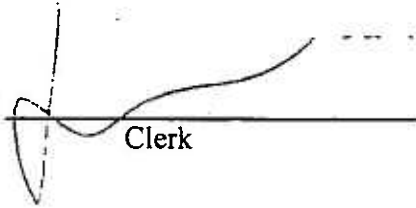
Section 8. Discharge of Lien. The Chairman, Vice Chairman, Treasurer or Executive Director, whenever requested by the owners of the Loan, may join in the partial release or final discharge of the lien of the applicable Agreements.

Section 9. Authorization of Change of Dates. Without limiting any other discretion conferred in this resolution, the date of the Agreements as executed may be any date or dates acceptable to the Borrower, the State and the Purchaser and the officers of the Authority executing the Agreements.

Section 10. Effective Date. This resolution shall take effect upon its passage.

Passed: June 19, 2023

Attest:

A handwritten signature in black ink, consisting of a large loop on the left and a series of connected strokes extending to the right, crossing a horizontal line.

Clerk

SUMMARY OF REQUIRED STATUTORY FINDINGS OF THE
GOVERNOR AND COUNCIL UNDER RSA 162-I.

(The materials appearing in quotations below are extracts from RSA 162-I:9. Ellipses indicate deleted provisions relating to pollution control projects or other matters that are not relevant to this transaction.)

* * *

Special Findings

“(1) For any project, the governor and council shall specify the type of facility and shall find that the project to be financed is within the definition of the commercial facility and may be financed under this chapter;”

The Project consists of an approximately 17.8-acre parcel of land to be improved by a building structure of approximately 102,000 square feet and related appurtenances located in the Town of Londonderry, New Hampshire (the “Project”) that will be owned by the Business Finance Authority of the State of New Hampshire (the “Authority”) and leased to and used by New Balance Athletics, Inc. (with any successors or assigns, the “Borrower”) for the purpose of manufacturing of apparel, including shoes, and the performance of related internal support services. The Project is within the definition of “commercial facility” in the Act and may be financed under the Act; and

* * *

“(2) If the facility is a commercial facility, the governor and council shall find that the establishment and operation of the facility will create or preserve employment opportunities directly or indirectly within the state. . .”

The Borrower expects the Project to enable it to create 240 new jobs. (Please see Tab #3.) The information from the New Hampshire Employment Security, Economic and Labor Market Information Bureau (Tab #10) shows that there is unemployment in the Londonderry area.

* * *

General Findings

“For any project, the governor and council shall find that:

(1) The project and the proposed financing of the project are feasible;” Service Federal Credit Union, together with other financial institutions, has agreed to purchase the bonds (Tab #4). The application of the Borrower also supports the finding (Tab #3).

* * *

“(2) The proposed user has the skills and financial resources necessary to operate the facility successfully;”

The materials relating to the Borrower under Tab #3 support this finding.

* * *

“(3) The financing and security documents contain provisions so that under no circumstances will the authority be obligated directly or indirectly to pay project costs, debt service or expenses of operation, maintenance and upkeep of the facility except from loan proceeds or from funds received under the financing or security documents, exclusive of funds received under the documents by the authority for its own use;”

The Bond Purchase and Loan Agreement (Tab #5) (the “Agreement”) is a combined financing and security document. Section 2.2 of the Agreement contains an express statement to the effect required; Section 2.3 of the Agreement obligates the Authority to pay all debt service on the Bonds when due from loan proceeds, lease payments or proceeds of the State guarantee; Section 7.18 of each Mortgage (Tab #s 7 and 8) limits the Authority’s payment obligations from loan proceeds or lease payments; Section 3 of the Agreement of Lease (the “Lease”) (Tab #6) requires the Borrower to pay rent, which is in an amount sufficient to pay debt service on the Bonds when due; Section 9 of the Lease requires the Borrower to pay costs of operation, maintenance and upkeep; and Section 14 of the Lease requires the Borrower to pay taxes.

* * *

“(4) Neither the financing documents nor the security documents purport to create any debt of the state with respect to the facility, other than a special obligation of the authority acting on behalf of the state under this chapter; and”

Express language to this effect is found in the Agreement under Tab #5 in Section 2.3.

* * *

“(5) The proposed financing of the project by the authority and the proposed operation and use of the facility will serve one or more needs and implement one or more purposes set forth in RSA 162-I:1, will preserve or increase the social or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state’s citizens.”

This finding can be based on all the materials as well as facts which are matters of general knowledge.

* * *

Ultimate Finding and Determination Required by the
First Paragraph of RSA 162-I:9

“ . . . the proposed financing, operation and use of the facility will serve a public use and provide a public benefit and . . . the authority’s financing of the project will be within the policy of, and the authority conferred by, this chapter.”

The materials and information furnished and the preliminary findings described above support, and enable the making of, the ultimate finding and determination.

Special Findings Required by RSA 162-I:9-b with respect to a State guarantee

“The award of a State guarantee will contribute significantly to the success of the financing; and . . . Reasonable and appropriate measures have been taken to minimize the risk of loss to the State and to ensure that any private benefit from the award of a State guarantee will be only incidental to the public purpose served thereby.”

The Borrower has requested the State guarantee as an essential part of the structure of the financing. The Bond Purchase and Loan Agreement, Lease and the Guarantee Agreement are responsive to the requirement to minimize the risk of loss.

Ultimate Finding and Determination Required by RSA 162-I: 9-b

“ . . . such guarantee will serve a public use and provide a public benefit and . . . the authority’s financing of the project and the State’s guarantee of the bonds will be within the policy of, and the authority conferred, by this chapter.”

The materials and information furnished and the preliminary findings described above support, and enable the making of, the ultimate finding and determination.