

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

LEVEL ACRES, LLC

Debtor.

BK No. 17-10333

Chapter 11

**MOTION FOR ORDER AUTHORIZING USE OF CASH COLLATERAL AND
ADEQUATE PROTECTION PAYMENTS**

The Debtor-in-Possession, LEVEL ACRES, LLC, (the “Debtor”) by and through its counsel, Dibble & Miller, P.C., and in support of its Motion for Final Order Authorizing Use of Cash Collateral and Adequate Protection Payments pursuant to 11 U.S.C. §§ 361 and 363 and Bankruptcy Rule 4001(d), states as follows:

JURISDICTION AND VENUE

1. The Debtor filed a Voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Code on February 24, 2017. The Debtor continues to conduct its business and affairs as a debtor-in-possession.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. This Motion is a "core" proceeding as the term is defined under 28 U.S.C. § 157(b)(2).

BACKGROUND

5. The Debtor is a New York corporation with a principal place of business located at 2129 Stannards Rd., Wellsville, New York 14895. The Debtor is engaged in business as a camp resort and trailer park.

6. Prior to the filing of the Debtor's Chapter 11 Petition, the Debtor obtained financing from the Comptroller of the State of New York, as Trustee of the New York State Common Retirement Fund, serviced by The Community Preservation Corporation (the "Secured Creditor"). Subsequent to the filing of Debtor's Chapter 11 Petition, the Debtor and the Secured Creditor worked out a Stipulation to govern the Debtor's use of cash collateral in this case, which is attached hereto.

7. The Debtor granted the Secured Creditor mortgages, assignment of rents and UCC security interests in all of the Debtor's present and future right, title and interest in and to all collateral owned by the Debtor, including but not limited to, real and personal property, fixtures, rents, leases, claims, rights, awards, etc. as set forth in the attached Stipulation.

USE OF CASH COLLATERAL AND ADEQUATE PROTECTION PAYMENTS

8. Pursuant to 11 U.S.C. § 363(a), cash collateral is defined as, inter alia, cash, deposit accounts, or other cash equivalents, whenever acquired in which the estate and an entity other than the estate have an interest, and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in § 552(b) of the Bankruptcy Code, whether existing before or after the commencement of a case under Title 11.

9. Pursuant to 11 U.S.C. § 361, when adequate protection is required, it may be provided by, inter alia, (1) requiring periodic cash payments by the Debtor to the Secured Creditor, and (2) providing the Secured Creditor an additional or replacement lien.

10. Pursuant to 11 U.S.C. § 363(c)(2)(B), a Debtor-in-Possession may use cash collateral if the court, after notice and a hearing, authorizes such use in accordance with the provision of § 363.

11. Pursuant to § 363(e) of the Bankruptcy Code, on request of a party with an interest in property used, sold or leased, or proposed to be used, sold or leased, the court shall prohibit or condition such use sale or lease in order to provide adequate protection to such party in interest.

12. In order to maintain operations it is necessary that the Debtor have the use of cash collateral.

13. In order to provide the Secured Creditor with adequate protection, the Debtor will resume the pre-petition, non-default principal and interest payments to Secured Creditor as set forth in the attached Stipulation.

14. In order to provide further adequate protection to the Secured Creditor, the Debtor is willing to grant a replacement lien in post-petition property of the Debtor of the same nature and to the same extent as the Secured Creditor had in pre-petition property of the Debtor.

15. The proposed stipulation is attached hereto.

WHEREFORE, the Debtor respectfully requests that this Court grant an Order approving the attached stipulation and authorizing the Debtor to use cash collateral as set forth therein and for such other and further relief as is just and proper.

Dated: March 29, 2017

DIBBLE & MILLER, P.C.

BY: /s/ Mike Krueger
Mike Krueger, Esq.
55 Canterbury Rd.
Rochester, NY 14607
(585) 271-1500

ALLONGE

THIS ALLONGE to that certain Consolidated, Amended and Restated Multifamily Note given by LEVEL ACRES LLC to THE COMMUNITY PRESERVATION CORPORATION dated May 21, 2010, which is secured by that certain Consolidation, Extension and Modification Agreement with Consolidated Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement attached thereto between the same parties dated as of May 21, 2010, creating a single first lien in the principal amount of \$1,417,806.00.

FOR VALUE RECEIVED, pay to the order of the COMPTROLLER OF THE STATE OF NEW YORK, as Trustee of the New York State Common Retirement Fund, without recourse and without any representation or warranty either express or implied in fact or by law.

Dated as of May 20, 2010, in New York, New York.

THE COMMUNITY PRESERVATION CORPORATION

By: *Carolyn Au*
Name: Carolyn Au
Title: Senior Vice President

State of New York :
: ss.:
County of New York :

On the 20th day of May, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared CAROLYN AU, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jessica Mui
Notary Public
State of New York

JESSICA MUI
Notary Public, State of New York
No. 01MU6219886
Qualified in New York County
Commission Expires April 5, 2014

COPY

CONSOLIDATED, AMENDED AND RESTATED MULTIFAMILY NOTE
(New York)

US \$1,417,806.00

Effective Date: May 21, 2010

THIS CONSOLIDATED, AMENDED AND RESTATED MULTIFAMILY NOTE, is made and entered into as of the Effective Date by the undersigned (together with such party's or parties' successors and assigns, "**Borrower**") to THE COMMUNITY PRESERVATION CORPORATION, a not-for-profit corporation organized and existing under the laws of New York ("**Lender**").

PRELIMINARY STATEMENTS

A. Lender made a loan to Borrower in the original principal amount of One Million Four Hundred Seventeen Thousand Eight Hundred Six and 00/100 Dollars (\$1,417,806.00), the repayment of which is evidenced by those certain promissory notes (the "**Existing Notes**") described on Exhibit B-1, evidencing the indebtedness from Borrower, as maker, to Lender, as payee.

B. The Existing Notes are secured by those certain mortgages described on Exhibit B-2 (the "**Existing Mortgages**"), on certain improved real property located in Allegany County, New York.

C. Borrower has confirmed to Lender that Borrower has no defenses to or offsets of any kind against any of the indebtedness due under the Existing Notes.

D. Borrower and Lender desire to consolidate and amend the Existing Notes and to restate the terms and conditions of the Existing Notes. The Existing Notes are hereby being consolidated, amended and restated in their entirety to reflect such amendments.

E. The Existing Mortgages are concurrently being consolidated, amended and restated pursuant to the terms of that certain Consolidation, Extension and Modification Agreement of even date herewith (the Existing Mortgages as consolidated, modified and amended thereby, the "**Security Instrument**").

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree that the Existing Notes are hereby consolidated, amended and restated in their entirety as follows (as consolidated, amended and restated, this "**Note**"):

FOR VALUE RECEIVED, the undersigned (together with such party's or parties' successors and assigns, "**Borrower**") jointly and severally (if more than one) promises to pay to the order of THE COMMUNITY PRESERVATION CORPORATION, a not-for-profit corporation organized and existing under the laws of New York, the principal sum of One Million Four Hundred Seventeen Thousand Eight Hundred Six and 00/100 Dollars (US \$1,417,806.00), with interest on the unpaid principal balance, as hereinafter provided.

1. **Defined Terms.**

(a) As used in this Note:

"Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

"Default Rate" means an annual interest rate equal to four (4) percentage points above the Interest Rate. However, at no time will the Default Rate exceed the Maximum Interest Rate.

"Installment Due Date" means, for any monthly installment of interest only or principal and interest, the date on which such monthly installment is due and payable pursuant to Section 3 of this Note. The "First Installment Due Date" under this Note is July 1, 2010.

"Interest Rate" means an interest rate equal to six and seventy-seven one-hundredths percent (6.77%) per annum.

"Lender" means the holder from time to time of this Note.

"Loan" means the loan evidenced by this Note.

"Maturity Date" means the earlier of (i) February 1, 2028 (the "**Scheduled Maturity Date**"), and (ii) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document.

"Maximum Interest Rate" means the rate of interest that results in the maximum amount of interest allowed by applicable law.

"Monthly Installment Payment Amount" means:

\$11,483.00 for the period commencing on the First Installment Due Date and continuing to the Maturity Date.

"Security Instrument" means the Consolidated Multifamily Mortgage, Assignment of Rents and Security Agreement effective as of the effective date of this Note, from Borrower to or for the benefit of Lender and securing this Note.

(b) Other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. **Address for Payment.** All payments due under this Note shall be payable at 28 East 28th Street, 9th Floor, New York, New York 10016-7943, or such other place as may be designated by Notice to Borrower from or on behalf of Lender.

3. Payments.

(a) Interest will accrue on the outstanding principal balance of this Note at the Interest Rate, subject to the provisions of Section 8 of this Note.

(b) Interest under this Note shall be computed, payable and allocated on the basis of a 360-day year consisting of twelve 30-day months.

(c) Unless disbursement of principal is made by Lender to Borrower on the first day of a calendar month, interest for the period beginning on the date of disbursement and ending on and including the last day of such calendar month shall be payable by Borrower simultaneously with the execution of this Note. If disbursement of principal is made by Lender to Borrower on the first day of a calendar month, then no payment will be due from Borrower at the time of the execution of this Note and the Installment Due Date for the first monthly installment payment under Section 3(d) will be the First Installment Due Date set forth in Section 1(a) of this Note. Except as provided in this Section 3(c) and in Section 10, accrued interest will be payable in arrears.

(d) Beginning on the First Installment Due Date, and continuing until and including the monthly installment due on the Maturity Date, principal and accrued interest shall be payable by Borrower in consecutive monthly installments due and payable on the first day of each calendar month in the amount of the Monthly Installment Payment Amount.

(e) All remaining Indebtedness, including all principal and interest, shall be due and payable by Borrower on the Maturity Date.

(f) All payments under this Note shall be made in immediately available U.S. funds.

(g) Any regularly scheduled monthly installment of interest only or principal and interest payable pursuant to this Section 3 that is received by Lender before the date it is due shall be deemed to have been received on the due date for the purpose of calculating interest due.

(h) Any accrued interest remaining past due for 30 days or more, at Lender's discretion, may be added to and become part of the unpaid principal balance of this Note and any reference to "accrued interest" shall refer to accrued interest which has not become part of the unpaid principal balance. Any amount added to principal pursuant to the Loan Documents shall bear interest at the applicable rate or rates specified in this Note and shall be payable with such interest upon demand by Lender and absent such demand, as provided in this Note for the payment of principal and interest.

4. Application of Payments. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply the amount received to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, any prepayment premium payable under Section 10, and all other amounts payable under this Note and any other Loan Document, shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance. For purposes of exercising such option, Lender shall calculate the prepayment premium as if prepayment occurred on the date of acceleration. If prepayment occurs thereafter, Lender shall recalculate the prepayment premium as of the actual prepayment date.

7. **Late Charge.**

(a) If any monthly installment of interest or principal and interest or other amount payable under this Note or under the Security Instrument or any other Loan Document is not received in full by Lender within fifteen (15) days after the installment or other amount is due, counting from and including the date such installment or other amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to four percent (4%) of such installment or other amount due (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted).

(b) Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8.

8. **Default Rate.**

(a) So long as (i) any monthly installment under this Note remains past due for thirty (30) days or more or (ii) any other Event of Default has occurred and is continuing, then notwithstanding anything in Section 3 of this Note to the contrary, interest under this Note shall accrue on the unpaid principal balance from the Installment Due Date of the first such unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate.

(b) From and after the Maturity Date, the unpaid principal balance shall continue to bear interest at the Default Rate until and including the date on which the entire principal balance is paid in full.

(c) Borrower acknowledges that (i) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, (ii) during the time that any monthly installment under this Note is delinquent for thirty (30) days or more, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities; and (iii) it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for thirty (30) days or more or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. Limits on Personal Liability.

(a) Except as otherwise provided in this Section 9, Borrower shall have no personal liability under this Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness and Lender's only recourse for the satisfaction of the Indebtedness shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and to any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any other obligations of Borrower.

(b) Borrower shall be personally liable to Lender for any other amounts for which Borrower has personal liability under this Section 9.

(c) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of the occurrence of any of the following events:

- (i) Borrower fails to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this subsection (i) if Borrower is unable to pay to Lender all Rents and security deposits as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.
- (ii) Borrower fails to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument. However, Borrower will not be personally liable for any failure described in this subsection (ii) if Borrower is unable to apply insurance or condemnation proceeds as required by the

Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.

(iii) Borrower fails to comply with Section 14(g) or (h) of the Security Instrument relating to the delivery of books and records, statements, schedules and reports.

(iv) Borrower fails to pay when due in accordance with the terms of the Security Instrument the amount of any item below marked "Deferred"; provided however, that if no item is marked "Deferred", this Section 9(c)(iv) shall be of no force or effect.

[Collect]	Hazard Insurance premiums or other insurance premiums,
[Collect]	Taxes,
[Deferred]	water and sewer charges (that could become a lien on the Mortgaged Property),
[N/A]	ground rents,
[Deferred]	assessments or other charges (that could become a lien on the Mortgaged Property)

(v) Borrower fails to pay any Transfer Taxes required to be paid by Borrower under the terms of the Security Instrument.

(d) In addition to the foregoing, Borrower shall be personally liable to Lender for:

(i) the performance of all of Borrower's obligations under Section 18 of the Security Instrument (relating to environmental matters);

(ii) the costs of any audit under Section 14(g) of the Security Instrument;

(iii) any costs and expenses incurred by Lender in connection with the collection of any amount for which Borrower is personally liable under this Section 9, including Attorneys' Fees and Costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability;

(iv) any and all costs, expenses and obligations for which Borrower is liable under Section 11 of this Note and under Section 45 of the Security Instrument; and

(v) the amount of, and any loss or damage suffered by Lender by reason of any failure to fully and timely pay, all recordation, transfer, or similar taxes, if any, imposed in connection with the Loan or any advances thereof, the Original Note, this Amended and Restated Note, the Original Security Instrument, the Instrument, any default under any Loan Document, or any other transaction relating to or arising out of the Loan, plus all interest, penalties and fines that may be or may become due.

(e) All payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument and the other Loan Documents shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(f) Borrower shall become personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default:

- (i) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or
- (ii) fraud or written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender.

(g) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

10. Voluntary and Involuntary Prepayments.

(a) Any receipt by Lender of principal due under this Note prior to the Maturity Date, other than principal required to be paid in monthly installments pursuant to Section 3, constitutes a prepayment of principal under this Note. Without limiting the foregoing, any application by Lender, prior to the Maturity Date, of any proceeds of collateral or other security to the repayment of any portion of the unpaid principal balance of this Note constitutes a prepayment under this Note.

(b) Borrower may voluntarily prepay the unpaid principal balance of this Note in whole only on a Business Day designated as the date for such prepayment in a Notice from Borrower to Lender given at least 30 days prior to the date of such prepayment.

(c) Borrower acknowledges that Lender has agreed that principal may be prepaid other than on the last calendar day of a month only because, for the purposes of the accrual of interest, any prepayment received by Lender on any day other than the last calendar day of the month shall be deemed to have been received on the last calendar day of the month in which the prepayment occurs.

(d) In order to voluntarily prepay the principal of this Note, Borrower must also pay to Lender, together with the amount of principal being prepaid, (i) all accrued and unpaid interest due under this Note, plus (ii) all other sums due to Lender at the time of such prepayment, plus (iii) any prepayment premium ("Prepayment Premium"), if any, calculated pursuant to Section 10(e).

(e) As used in this Note, the "Prepayment Premium" shall mean an amount equal to (1) five percent (5%) of the amount so prepaid, if such prepayment shall occur from the date hereof through and including the day preceding the first (1st) anniversary of the date hereof, (2) four and one-half percent (4-1/2%) of the amount so prepaid, if such prepayment shall occur from the first (1st) anniversary of the date hereof through and including the day preceding the second (2nd) anniversary of the date hereof, (3) four percent (4%) of the amount so prepaid, if such prepayment shall occur from the second (2nd) anniversary of the date hereof through and including the day preceding the third (3rd) anniversary of the date hereof, (4) three and one-half percent (3 1/2%) of the amount so prepaid, if such prepayment shall occur from the third (3rd) anniversary of the date hereof through and including the day preceding the fourth (4th) anniversary of the date hereof, (5) three percent (3%) of the amount so prepaid, if such prepayment shall occur from the fourth (4th) anniversary of the date hereof through and including the day preceding the fifth (5th) anniversary of the date hereof, (6) two and one-half percent (2 1/2%) of the amount so prepaid, if such prepayment shall occur from the fifth (5th) anniversary of the date hereof through and including the day preceding the sixth (6th) anniversary of the date hereof, (7) two percent (2%) of the amount so prepaid, if such prepayment shall occur from the sixth (6th) anniversary of the date hereof through and including the day preceding the seventh (7th) anniversary of the date hereof, (8) one and one-half percent (1 1/2%) of the amount so prepaid, if such prepayment shall occur from the seventh (7th) anniversary of the date hereof through and including the day preceding the eighth (8th) anniversary of the date hereof, (9) one percent (1%) of the amount so prepaid, if such prepayment shall occur from the eighth (8th) anniversary of the date hereof through and including the day preceding the ninth (9th) anniversary of the date hereof, and (10) one-half percent (1/2%) of the amount so prepaid, if such prepayment shall occur from the ninth (9th) anniversary of the date hereof through and including the tenth (10th) anniversary of the date hereof. From and after the tenth (10th) anniversary of the date hereof, no Prepayment Premium shall be payable. Partial prepayments shall be applied to unpaid installments of principal due under this Note in the inverse order of maturity and shall not, in any event, reduce the regular monthly payment required hereunder unless and until the obligations evidenced hereby are paid in full.

(f) Intentionally deleted.

(g) Unless Lender agrees otherwise in writing, a permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments.

(h) Borrower recognizes that any prepayment of any of the unpaid principal balance of this Note, whether voluntary or involuntary or resulting from an Event of Default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender's ability to meet its commitments to third parties.

Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth in this Note represents a reasonable estimate of the damages Lender will incur because of a prepayment. Borrower further acknowledges that the prepayment premium provisions of this Note are a material part of the consideration for the Loan, and that the terms of this Note are in other respects more favorable to Borrower as a result of the Borrower's voluntary agreement to the prepayment premium provisions.

11. Costs and Expenses. To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including Attorneys' Fees and Costs incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. Waivers. Borrower and all endorsers and guarantors of this Note and all other third party obligors waive presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness.

14. Loan Charges. Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the Maximum Interest Rate. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable

law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. Commercial Purpose. Borrower represents that Borrower is incurring the Indebtedness solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

16. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

17. Governing Law. This Note shall be governed by the law of the Property Jurisdiction.

18. Captions. The captions of the Sections of this Note are for convenience only and shall be disregarded in construing this Note.

19. Notices; Written Modifications.

(a) All Notices, demands and other communications required or permitted to be given pursuant to this Note shall be given in accordance with Section 31 of the Security Instrument.

(b) Any modification or amendment to this Note shall be ineffective unless in writing signed by the party sought to be charged with such modification or amendment; provided, however, in the event of a Transfer under the terms of the Security Instrument that requires Lender's consent, any or some or all of the Modifications to Multifamily Note set forth in Exhibit A to this Note may be modified or rendered void by Lender at Lender's option, by Notice to Borrower and the transferee, as a condition of Lender's consent.

20. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Note may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Note is intended to limit any right that Lender may have to bring any suit, action or proceeding relating to matters arising under this Note in any court of any other jurisdiction.

21. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

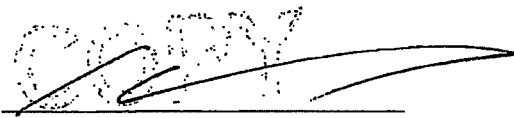
22. Effect of this Note. This Note consolidates the Existing Notes, without impairing the debt evidenced by the Existing Notes. This Note does not create any new or additional indebtedness but evidences the outstanding indebtedness established by the Existing Notes so that this Note evidences a single consolidated debt in the principal amount of One Million Four Hundred Seventeen Thousand Eight Hundred Six and 00/100 (\$1,417,806.00) Dollars. This Note amends and restates in their entirety the terms, obligations, agreements, covenants and conditions set forth in the Existing Notes and all other agreements that previously consolidated, modified and extended the Existing Notes so that the terms of this Note supersede the terms, obligations, agreements, covenants and conditions of the Existing Notes. Borrower assumes and agrees to pay the indebtedness evidenced by the Existing Notes as modified by this Note.

ATTACHED EXHIBITS. The Exhibits noted below, if marked with an "X" in the space provided, are attached to this Note:

- Exhibit A - Modifications to Multifamily Note
- Exhibit B-1 - Existing Notes
- Exhibit B-2 - Existing Mortgages

IN WITNESS WHEREOF, and in consideration of the Lender's agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Note under seal or has caused this Note to be signed and delivered under seal by its duly authorized representative.


LEVEL ACRES LLC,
a New York limited liability company

By: 
Name: Kevin P. Clark
Title: Manager

26-1547443
Borrower's Employer ID Number

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

On May 21, 2010, before me, the undersigned, personally appeared KEVIN P. CLARK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

DAVID BERLOWITZ
Notary Public, State of New York
No. 02BE6142481
Qualified in Monroe County
Commission Expires February 27, 2014

EXHIBIT A

MODIFICATIONS TO MULTIFAMILY NOTE

The following modifications are made to the text of the Note that precedes this Exhibit.

N/A

EXHIBIT B-1

EXISTING NOTES

- (i) Multifamily Note dated January 11, 2008 in the original principal amount of \$1,345,000.00 made by Borrower in favor of Lender, as endorsed.
- (ii) Gap Multifamily Note dated May 21, 2010 in the original principal amount of \$150,000.00 made by Borrower in favor of Lender.

EXHIBIT B-2

EXISTING MORTGAGES

- (i) Multifamily Mortgage, Assignment of Rents and Security Agreement dated January 11, 2008, made by Level Acres LLC to The Community Preservation Corporation in the original principal amount of \$1,345,000.00 and recorded in the Office of the Allegany County Clerk on January 11, 2008 in Liber 1709 of Mortgages at Page 54, as assigned by Assignment of Mortgage dated July 30, 2008 to the Comptroller of the State of New York, as Trustee for the New York State Common Retirement Fund and recorded in the Office of the Allegany County Clerk on August 8, 2008 in Liber 1764 of Mortgages at Page 138, as assigned by Assignment of Mortgage dated May 21, 2008 by the Comptroller of the State of New York, as Trustee for the New York State Common Retirement Fund in favor of The Community Preservation Corporation and to be recorded in the Allegany County Clerk's Office.
- (ii) Gap Multifamily Mortgage, Assignment of Rents and Security Agreement from Borrower in favor of Lender dated May 21, 2010, in the original principal amount of \$150,000.00 and to be recorded in the Allegany County Clerk's Office.
- (iii) Mortgages 1 and 2 above were consolidated, modified and extended by a Consolidation, Extension and Modification Agreement dated May 21, 2010, in the original principal amount of \$1,417,806.00 by and between Borrower and Lender and to be recorded in the Allegany County Clerk's Office.

13. QUIT CLAIM DEED

Beulah K. Babbitt (n/k/a Beulah K. Howe) and
Robert L. Babbitt, as Trustees of the
Beulah K. Babbitt Revocable Trust Agreement
dated October 14, 1992

TO

Beulah K. Howe, or her successor, as Trustee of
the Beulah K. Howe Family Trust II dated
October 14, 1992, and amended on
August 8, 2001

Instrument Date: 01-02-2008
Acknowledged Date: 01-02-2008
Record Date: 1-11-2008
Instrument Location: Liber 1709 of Index; Page 45

Conveys: Same premises as described at No. 8, with same recitals as No. 8.

The within deed is given to such valid and existing easements and rights-of-way recorded heretofore given for public utility purposes and any appropriations previously taken for highway purposes.

Subject to all covenants, easements and restrictions of record affecting the above described premises as recorded in the Allegany County Clerk's Office.

Recites: Being the same premises described in a deed recorded in Liber 1045 of Deeds, page 274.

14. WARRANTY DEED WITH LIEN COVENANT

Beulah K. Howe, or her successor, as Trustee
of the Beulah K. Howe Living Trust II
dated October 14, 1992, and amended
on August 8, 2001

TO

Level Acres LLC

Instrument Date: 12-31-2007
Acknowledged Date: 12-31-2007
Record Date: 1-11-2008
Instrument Location: Liber 1709 of Index; Page 49

Conveys: See Schedule A description at next page.

Subject to any rights-of-way, easements and/or encumbrances visible or of record.

NOTE: Schedule A description includes other lands not certified by this Abstract of Title.

REST OF PAGE BLANK.

SCHEDULE A

ALL THAT TRACT OR PARCEL situate in the Town of Wellsville, County of Allegany, and State of New York. Being a portion of Great Lot No. 11, Township No. 2, Range No. 1 of the Willing and Francis Tract-Morris Reserve, bounded and described as follows:

BEGINNING at a capped ½ inch rebar set, located on the north bounds of Great Lot No. 11, at the northwest corner of lands once deeded to Kenneth and Myrtle Olson as per a deed recorded in the Allegany County Clerk's Office in Liber 503 of Deeds at Page 527. Said rebar at the point of beginning is also 223.30 feet as measured west along the north line of Great Lot No. 11 from its intersection with the centerline of New York State Route No. 19-Wellsville-Hallsport, S.H. No. 945;

THENCE along the southwestern line of the lands once deeded to Olson as aforesaid, South 33 Degrees 33' 26" East, a measured distance of 296.12 feet to a capped ½ inch rebar set;

THENCE continuing along the south line of the lands now or formerly deeded to Kenneth and Myrtle Olson, North 85 Degrees 46' 34" East, a measured distance of 17.47 feet to a capped ½ inch rebar set on the west bounds of New York State Route No. 19;

THENCE along the bounds of New York State Route No. 19, State Highway No. 945; Wellsville-Hallsport Road the following five courses;

- 1.) South 04 Degrees 13' 26" East, a measured distance of 235.02 feet to an iron pin found;
- 2.) South 83 Degrees 17' 43" East, a measured distance of 14.40 feet to a concrete monument;
- 3.) South 06 Degrees 11' 02" East, a measured distance of 23.74 feet to an iron pin found;
- 4.) North 88 Degrees 39' 29" West, a measured distance of 15.02 feet to a concrete monument;
- 5.) South 04 Degrees 13' 26" East, a measured distance of 628.95 feet to a point and corner, which is located at the southeastern most corner of lands once deeded to the Beulah K. Babbitt Revocable Trust, dated October 14, 1992, as per a deed recorded in the Allegany County Clerk's Office in Liber 1043 of Deeds at Page 274, on December 3, 1992;

THENCE along the southern line of the lands once deeded to the Beulah K. Babbitt Revocable Trust, dated October 14, 1992, and the southern line of a parcel surveyed for Glade D. Weimer by Manley C. Ackerman, L.S. as shown as a survey plat filed in the Allegany County Clerk's Office in the Town of Wellsville Large Map File @ Map No. 101, North 89 Degrees 16' 36" West, a distance of 3487.00 feet to a point located in the thread of the Genesee River at low water in July 1987;

THENCE along the thread of the stream channel for the Genesee River as it was in July, 1987, the following six courses:

- 1.) North 47 Degrees 56' 51" West, a measured distance of 245.87 feet to a point;
- 2.) North 15 Degrees 10' 59" West, a measured distance of 232.37 feet to a point;
- 3.) North 25 Degrees 12' 36" East, a measured distance of 352.00 feet to a point;
- 4.) North 25 Degrees 04' 31" West, a measured distance of 222.00 feet to a point;
- 5.) North 73 Degrees 49' 35" West, a measured distance of 170.80 feet to a point;
- 6.) North 46 Degrees 44' 40" West, a measured distance of 133.95 feet to a point and corner. Said point being the northwest corner of lands herein described and a point on the great lot line between Lot Nos. 11 and/or 14 on the south and Lot Nos. 10 and/or 15 on the north;

THENCE along the great lot line as aforesaid, South 89 Degrees 16' 36" East, a measured distance of 3649.00 feet to the **POINT AND/OR PLACE OF BEGINNING, CONTAINING 93.047 ACRES +/-.**

SUBJECT to any rights-of-way, easements and/or encumbrances visible or of record.

44th
2400th T.T.

CRG - Robert Walker, Atty.

WELLSVILLE ✓
B ✓
H ✓
H ✓

15. MULTIFAMILY MORTGAGE

Level Acres LLC
TO
The Community Preservation Corporation

Instrument Date: 01-11-2008
Acknowledged Date: 01-11-2008
Record Date: 1-11-2008
Instrument Location: Liber 1709 of Index; Page 54
Amount: \$1,345,000.00

Covers: Same premises as described at No. 14.

NOTE: Said description includes other lands not certified by this Abstract of Title.

16. FINANCING STATEMENT

Level Acres LLC
One Country Meadow Way, Hilton, NY 14468
TO
Comptroller of the State of New York, as Trustee
of the New York State Common Retirement Fund
59 Maiden Lane - 30th Floor, New York, NY 10038

Record Date: 1-11-2008
Instrument Location: Case# 08-0389

See copy of instrument at next page.

REST OF PAGE BLANK.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

The Community Preservation Corporation
 28 East 28th Street - 9th Floor
 New York, New York 10016-7943
 Attention: Dianna Look, Servicing Department

2008 JAN 11 PM 4:13
 ROBERT L. CHRISTMAN
 CLERK
 ALLEGANY COUNTY

08 0389

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
 LEVEL ACRES LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 One Country Meadow Way Hilton NY 14468 USA

1c. TAX ID #: SSN OR EIN **ADDITIONAL INFO RE ORGANIZATION DEBTOR** **1e. TYPE OF ORGANIZATION** **1f. JURISDICTION OF ORGANIZATION** **1g. ORGANIZATIONAL ID #, if any**
 26-1547443 Limited Liability Co. New York NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN **ADDITIONAL INFO RE ORGANIZATION DEBTOR** **2e. TYPE OF ORGANIZATION** **2f. JURISDICTION OF ORGANIZATION** **2g. ORGANIZATIONAL ID #, if any**
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
 COMPTROLLER OF THE STATE OF NEW YORK, AS TRUSTEE OF THE NEW YORK STATE COMMON RETIREMENT FUND

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 59 Maiden Lane - 30th Floor New York NY 10038 USA

4. This FINANCING STATEMENT covers the following collateral:

SEE "SCHEDULE A" LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.
SEE "EXHIBIT A" COLLATERAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOB SELLER/BUYER AG. LIEN NON-UCC FILING

This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA Filing office: Allegany County CPC Loan # 70184

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

Chg. Robert Hutter, Atty
 CPC/4/2005
 Hand to - Level Acres, LLC

4D⁰⁰

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UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME LEVEL ACRES LLC		
OR 9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME				
OR 11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - Insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME THE COMMUNITY PRESERVATION CORPORATION				
OR 12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c. MAILING ADDRESS 28 East 28th Street - 9th Floor		CITY New York	STATE NY	POSTAL CODE COUNTRY 10016-7943 USA

13. This FINANCING STATEMENT covers timber to be cut or ss-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

2093, 2102 and 2117 Stannards Road, Town of Wellsville, Allegany County, State of New York

Tax Map Nos. 252.1-80, 252.1-1-79, 252.15-1-13

See "Exhibit A" Legal Description attached hereto and made a part hereof.

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction — effective 30 years
 Filed in connection with a Public-Finance Transaction — effective 30 years

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SCHEDULE "A"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Wellsville, County of Allegany and State of New York, being a portion of Great Lot No. 11, Township No. 2, Range No. 1 of the Willing and Francis Tract-Morris Reserve, bounded and described as follows:

BEGINNING at a capped 1/2 inch rebar set, located on the north bounds of Great Lot No. 11, at the northwest corner of lands once deeded to Kenneth and Myrtle Olson as per a deed recorded in the Allegany County Clerk's Office in Liber 503 of Deeds at Page 527. Said rebar at the point of beginning is also 223.3 feet as measured west along the north line of Great Lot No. 11 from its intersection with the centerline of New York State Route No. 19-Wellsville-Hallsport, S.H. No. 945.

THENCE along the southwestern line of the lands once deeded to Olson as aforesaid, S 33° 33' 26" E a measured distance of 296.12 feet to a capped-1/2 inch rebar set.

THENCE continuing along the south line of the lands now or formerly deeded to Kenneth and Myrtle Olson, N 85° 46' 34" E a measured distance of 17.47 feet to a capped-1/2 inch rebar set on the west bounds of New York State Route No. 19.

THENCE along the bounds of New York State Route No. 19, State Highway No. 945; Wellsville-Hallsport Road the following five courses:

- 1). S 04° 13' 26" E a measured distance of 235.02 feet to an iron pin found.
- 2). S 83° 17' 43" E a measured distance of 14.40 feet to a concrete monument.
- 3). S 06° 11' 02" E a measured distance of 23.74 feet to an iron pin found.
- 4). N 88° 39' 29" W a measured distance of 15.02 feet to a concrete monument.
- 5). S 04° 13' 26" E a measured distance of 628.95 feet to a point and corner, which is located at the southeastern most corner of lands once deeded to the Beulah K. Babbitt Revocable Trust, Dated October 14, 1992 as per a deed recorded in the Allegany County Clerk's Office in Liber 1043 of Deeds at Page 274 on December 3, 1992.

THENCE along the southern line of the lands once deeded to the Beulah K. Babbitt Revocable Trust, Dated October 14, 1992 and the southern line of a parcel surveyed for Glade D. Welmer by Manley C. Ackerman, L.S. as shown on a survey-plat filed in the Allegany County Clerk's Office in the Town of Wellsville-Large Map File at Map No. 101, N 89° 16' 36" W a distance of 3487 feet to a point located in the thread of the Genesee River at low water in July 1987.

THENCE along the thread of the stream channel for the Genesee River as it was in July, 1987 the following six courses:

- 1). N 47° 56' 51" W a measured distance of 245.87 feet to a point.
- 2). N 15° 10' 59" W a measured distance of 232.37 feet to a point.

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- 3). N 25° 12' 36" E a measured distance of 447.30 feet to a point.
- 4). N 25° 04' 31" W a measured distance of 222.00 feet to a point.
- 5). N 73° 49' 35" W a measured distance of 170.80 feet to a point.
- 6). N 46° 44' 40" W a measured distance of 133.95 feet to a point and corner.

Said point being the northwest corner of the lands herein described and a point on the great lot line between Lots #11 and/or #14 on the south and Lots #10 and/or #15 on the north.

THENCE along the great lot line as aforesaid, S 89° 16' 36" E a measured distance of 3649 feet to the point and/or place of beginning.

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**Exhibit A
Description of Collateral**

**Debtor: LEVEL ACRES LLC
Secured Party: The Community Preservation Corporation**

All of Debtor's present and future right, title and interest in and to all of the following:

- (1) All of the following which are used now or in the future in connection with the ownership, management or operation of the real property described in Schedule A and/or the improvements on such real property (the "Property"): mobile homes, machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment (any of the foregoing that are so attached to the Property as to constitute fixtures under applicable law are referred to below as the "Fixtures");
- (2) All furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Property or are located on the Property, and any operating agreements relating to the Property, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Property and all other intangible property and rights relating to the operation of, or used in connection with, the Property, including all governmental permits relating to any activities on the Property (the "Personalty");
- (3) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Property, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (4) All proceeds paid or to be paid by any insurer of the Property, the Fixtures, the Personalty or any other item listed in this Exhibit A;

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- (5) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Property, the Fixtures, the Personalty or any other item listed in this Exhibit A, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Property, the Fixtures, the Personalty or any other item listed in this Exhibit A under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (6) All contracts, options and other agreements for the sale of the Property, the Fixtures, the Personalty or any other item listed in this Exhibit A entered into by Debtor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (7) All present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Property, or any portion of the Property (including proprietary leases or occupancy agreements if Debtor is a cooperative housing corporation), and all modifications, extensions or renewals (the "Leases");
- (8) All earnings, royalties, accounts receivable (including accounts receivable for all rents, revenues and other income of the Property, including parking fees, charges for food, health care and other services), issues and profits from the Property, or any other item listed in this Exhibit A, and all undisbursed proceeds of the loan secured by the security interests to which this financing statement relates and, if Debtor is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (9) All refunds (other than real property tax refunds applicable to periods before the real property tax year in which the loan secured by the security interests to which this financing statement relates was made) or rebates of (a) water and sewer charges, (b) premiums for fire and other hazard insurance, rent loss insurance and any other insurance required by Secured Party, (c) taxes, assessments, vault rentals, and (d) other charges or expenses required by Secured Party to protect the Property, to prevent the imposition of liens on the Property, or otherwise to protect Secured Party's interests (collectively, the "Impositions") by any municipal, state or federal authority or insurance company;
- (10) All tenant security deposits which have not been forfeited by any tenant under any Lease;
- (11) All names under or by which the Property or any part of it may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Property or any part of it;
- (12) All proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds.

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CPC 4/2005

17. ASSIGNMENT OF MORTGAGE

The Community Preservation Corporation
TO
Comptroller of the State of New York, as Trustee
for the New York State Common Retirement Fund

Instrument Date: 07-30-2008
Acknowledged Date: 07-30-2008
Record Date: 8-8-2008
Instrument Location: Liber 1764 of Index; Page 138

Assigns Mortgage (at No. 15) recorded in Liber 1709, page 54.

***** END OF PAGE *****

ABSTRACT CERTIFICATE

STEWART TITLE INSURANCE COMPANY, a New York Corporation, for good consideration paid, CERTIFIES AND GUARANTEES to the current record owner(s) of an interest in or specific lien upon the premises described at Set-Out 8 immediately preceding this Certificate (the "Subject Premises") and their successors in interest of record that:

1. It has searched the Federal Tax Liens (10 years), Financing Statements (5 years), Grantor/Grantee, Incompetency/Conservatee, In Rem Proceedings, Judgments (10 years), Mechanics Liens (1 year), Mortgagor, Notices of Pendency, Order Appointing Receiver, Surety Bond, Welfare Liens indices maintained in the County Clerk's Office and the Surrogate indices maintained in the Surrogate's Court, for the county in which the Subject Premises is located, against the names of the parties appearing in the Abstract as owning or having an interest in the Subject Premises during the record periods of such ownership from and including the date 11-20-2007 to the date of this Certificate.
2. It has searched the bankruptcy indices in the office of the clerk of the United States Bankruptcy Court for the Federal District in which the Subject Premises is located against the names of all record owners of an interest in the Subject Premises for six (6) months prior and subsequent to their respective period of ownership for twenty (20) years last past.
3. It has searched the Inactive Hazardous Waste Disposal Site Registry Index maintained in the County Clerk's Office for the County in which the Subject Premises is located against the tax map parcel number or the section, block and lot number of the Subject Premises.
4. It found the matters set forth in the Abstract at Set-Outs 10 through 17; said matters are correctly set forth therein, and there is nothing more in those indices which appears to affect the Subject Premises, or any part thereof.
5. This search does not set forth mortgages, judgments, liens, notices of pendency or encumbrances recorded or filed prior to or during the period of this search for which cancellations, discharges or satisfactions have been recorded or filed.
6. If any covenant or restriction referenced or appearing in this search violates any provision of the Federal Fair Housing Act (42 U.S.C. § 3601 et seq.), as amended, it is set forth herein solely in the interest of complete and accurate reporting.
7. The Guaranty under this Certificate shall not be limited by time.

IN WITNESS WHEREOF, STEWART TITLE INSURANCE COMPANY has caused this Certificate to be signed by its Authorized Officer this 12th day of March, 2010 at 8:59 o'clock A.M.

STEWART TITLE INSURANCE COMPANY

By *Heggy L. Wood*
Authorized Officer

Order number: 538555

Certificate number: 10971AC

1. Subject Premises Description

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Wellsville, County of Allegany and State of New York, being a portion of Great Lot No. 11, Township No. 2, Range No. 1 of the Willing and Francis Tract-Morris Reserve, bounded and described as follows:

BEGINNING at a capped 1/2 inch rebar set, located on the north bounds of Great Lot No. 11, at the northwest corner of lands once deeded to Kenneth and Myrtle Olson as per a deed recorded in the Allegany County Clerk's Office in Liber 503 of Deeds at Page 527. Said rebar at the point of beginning is also 223.3 feet as measured west along the north line of Great Lot No. 11 from its intersection with the centerline of New York State Route No. 19-Wellsville-Hallsport, S.H. No. 945.

THENCE along the southwestern line of the lands once deeded to Olson as aforesaid, S 33° 33' 26" E a measured distance of 296.12 feet to a capped-1/2 inch rebar set.

THENCE continuing along the south line of the lands now or formerly deeded to Kenneth and Myrtle Olson, N 85° 46' 34" E a measured distance of 17.47 feet to a capped-1/2 inch rebar set on the west bounds of New York State Route No. 19.

THENCE along the bounds of New York State Route No. 19, State Highway No. 945; Wellsville-Hallsport Road the following five courses:

- 1). S 04° 13' 26" E a measured distance of 235.02 feet to an Iron pin found.
- 2). S 83° 17' 43" E a measured distance of 14.40 feet to a concrete monument.
- 3). S 06° 11' 02" E a measured distance of 23.74 feet to an Iron pin found.
- 4). N 88° 39' 29" W a measured distance of 15.02 feet to a concrete monument.
- 5). S 04° 13' 26" E a measured distance of 628.95 feet to a point and corner, which is located at the southeastern most corner of lands once deeded to the Beulah K. Babbitt Revocable Trust, Dated October 14, 1992 as per a deed recorded in the Allegany County Clerk's Office in Liber 1043 of Deeds at Page 274 on December 3, 1992.

THENCE along the southern line of the lands once deeded to the Beulah K. Babbitt Revocable Trust, Dated October 14, 1992 and the southern line of a parcel surveyed for Glade D. Welmer by Manley C. Ackerman, L.S. as shown on a survey-plat filed in the Allegany County Clerk's Office in the Town of Wellsville-Large Map File at Map No. 101, N 89° 16' 36" W a distance of 3487 feet to a point located in the thread of the Genesee River at low water in July 1987.

THENCE along the thread of the stream channel for the Genesee River as it was in July, 1987 the following six courses:

- 1). N 47° 56' 51" W a measured distance of 245.87 feet to a point.
- 2). N 15° 10' 59" W a measured distance of 232.37 feet to a point.
- 3). N 25° 12' 36" E a measured distance of 447.30 feet to a point.
- 4). N 25° 04' 31" W a measured distance of 222.00 feet to a point.
- 5). N 73° 49' 35" W a measured distance of 170.80 feet to a point.
- 6). N 46° 44' 40" W a measured distance of 133.95 feet to a point and corner.

Said point being the northwest corner of the lands herein described and a point on the great lot line between Lots #11 and/or #14 on the south and Lots #10 and/or #15 on the north.

THENCE along the great lot line as aforesaid, S 89° 16' 36" E a measured distance of 3649 feet to the point and/or place of beginning.

2. ASSIGNMENT OF MORTGAGE

Comptroller of the State of New York,
as Trustee for the New York State
Common Retirement Fund
TO
The Community Preservation Corporation

Instrument Date: 05-19-2010
Acknowledged Date: 05-19-2010
Record Date: 5-24-2010
Document # : 2010-43223

Assigns Mortgage recorded in Liber 1709 of Index, page 54, as assigned by Assignment of Mortgage recorded in Liber 1764 of Index, page 138.

3. GAP MULTIFAMILY MORTGAGE ASSIGNMENT OF RENTS & SECURITY AGREEMENT

Level Acres LLC
TO
The Community Preservation Corporation

Instrument Date: 05-21-2010
Acknowledged Date: 05-21-2010
Record Date: 5-24-2010
Document # : 2010-43224
Amount: \$150,000.00

Covers: Subject Premises described at No. 1.

4. CONSOLIDATION EXTENSION AND MODIFICATION AGREEMENT

Between:
The Community Preservation Corporation
AND
Level Acres LLC

Instrument Date: 05-21-2010
Acknowledged Date: 05-21-2010
Record Date: 5-24-2010
Document # : 2010-43225

Consolidates Mortgage recorded in Liber 1709 of Index, page 54 as assigned by Assignment of Mortgage recorded in Liber 1764 of Index, page 138, and as further assigned by the Comptroller of the State of New York, as Trustee for the New York State Common Retirement Fund in favor of the Community Preservation Corporation and to be recorded in Allegany County Clerk's Office, and Gap Multifamily Mortgage, Assignment of Rents and Security Agreement from Borrower in favor of Lender dated May 21, 2010, in the original principal amount of \$150,000.00 to be recorded in the Allegany County Clerk's Office. Said Consolidated Mortgages to form a single lien of \$1,417,806.00.

4 (continued)

Modifies and extends the first recited Mortgage according to the terms and conditions set forth therein.

5. ASSIGNMENT OF MORTGAGE

The Community Preservation Corporation
TO
Comptroller of the State of New York, as Trustee
for the New York State Common Retirement Fund

Instrument Date: 05-28-2010
Acknowledged Date: 05-28-2010
Record Date: 6-14-2010
Document # : 2010-43681

Assigns Mortgage recorded in Liber 1709 of Index, page 54 as assigned by Assignment of Mortgage recorded in Liber 1764 of Index, page 138, and as further assigned by the Comptroller of the State of New York, as Trustee for the New York State Common Retirement Fund in favor of the Community Preservation Corporation and previously recorded in Allegany County Clerk's Office.

Also assigns Gap Multifamily Mortgage, Assignment of Rents and Security Agreement from Borrower in favor of Lender dated May 21, 2010, in the original principal amount of \$150,000.00 recorded as Instrument No. 2010-43224.

6. UCC FINANCING STATEMENT AMENDMENT

Level Acres LLC
TO
Comptroller of the State of New York, as Trustee
of the New York State Common Retirement Fund

Record Date: 12-20-2012
Instrument Location: Case# 2012-821

Continues UCC Financing Statement #08-0389 filed 1/11/2008 - see copy at next pages.

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2012115100



2012-821
12/20/2012 11:07:16 AM
2 Pages
UCC

Robert L. Christman, Allegany County Clerk

Clerk:LY

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

The Community Preservation Corporation
28 East 28th Street, 9th Floor
New York, NY 10016
Attn: Jessica Underwood, UCC Department

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # **08-0389 FILED: 01/11/2008**

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c, and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7

CHANGE name and/or address. Please refer to the detailed instructions in regards to changing the name/address of a party.

DELETE name. Give record name to be deleted in item 6a or 6b.

ADD name. Complete item 7a or 7b, and also item 7c, also complete items 7e-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME
Level Acres LLC

OR 6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID #, if any NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

2093, 2102 and 2117 Stannards Road
Wellsville, NY

SBL Nos: 252.1-80, 252.1-1-79, 252.15-1-13

County of Allegany

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME
Comptroller of the State of New York, as Trustee of the New York State Common Retirement Fund

OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA
CPC# 70184 - ALLEGANY

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11 ORIGINAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)

08-0389 1-11-08 Allegany County

12 NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 9 on Amendment form)

12a ORGANIZATION'S NAME

Comptroller of the State of New York

OR

12b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13 Use this space for additional information

Real Estate Record:
2093, 2102 and 2117 Stannards Road
Town of Wellsville, NY
SBL Nos: 252.1-1-79, 252.1-1-80, 252.15-1-13

County of Allegany

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

7. LIS PENDENS

Comptroller of the State of New York, as Trustee
of the New York State Common Retirement Fund,

Plaintiff

VS

Level Acres LLC

"John Doe" and "Jane Doe", being fictitious and
intended to be persons, tenants, occupants or
corporations, if any, having or claiming an
interest in or lien upon the premises described
in the complaint,

Defendants

Perfected Date: 07-10-2013
Record Date: 7-16-2013
Case # 42177
Document # : 2013-64382
Court: Supreme Court - Allegany County

Object of Action: To foreclose Mortgage recorded in Liber 1709, page 54 as assigned by Assignment recorded in Liber 1764, page 138 and further assigned by Assignment recorded as Instrument No. 2010-43223; and Mortgage recorded as Instrument No. 2010-43224, as consolidated by Agreement recorded as Instrument No. 2010-43225; said consolidated Mortgages being further assigned by Assignment recorded as Instrument No. 2010-43681.

Covers: Subject Premises described at No. 1.

NOTE: See list of filings at next pages.

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Allegany County
Robert L. Christman, Allegany County Clerk
Printed: 05/11/2016 10:13:47 AM

Case #: 42177
Court: SUPREME

Rec Date: 07/16/2013 09:07:09 AM
Doc Grp/Desc: CIV / CIVIL

Plaintiff: NEW YORK STATE COMPTROLLER OF
NEW YORK STATE COMMON RETIREMENT FUND

Defendant: LEVEL ACRES LLC
DOE JOHN
DOE JANE

Plaintiff Attorney: MCNAMEE LOCHNER TITUS & WILLIAMS PC

---- DOCKET ITEMS ----
Rec Date Description

07/16/2013	SUMMONS (2)
07/16/2013	^VERIFIED COMPLAINT
07/16/2013	^SCHEDULE A
07/16/2013	NOTICE OF PENDENCY (3)
07/25/2013	AFFIDAVIT OF SERVICE (4)
04/24/2014	NOTICE OF MOTION (5)
04/24/2014	^AFFIRMATION
04/24/2014	^AFFIDAVIT
04/24/2014	^EXHIBITS A THRU L
04/24/2014	MEMORANDUM OF LAW (6)
04/24/2014	AFFIDAVIT OF SERVICE BY MAIL (7)
04/24/2014	REQUEST FOR JUDICIAL INTERVENTION (8)
06/16/2014	NOTICE OF APPEARANCE (9)
06/16/2014	^AFFIDAVIT OF SERVICE BY MAIL
06/19/2014	MEMORANDUM OF LAW (10)
06/19/2014	^AFFIDAVIT OF SERVICE BY MAIL
06/19/2014	^EXHIBIT A
06/19/2014	^AFFIDAVIT OF SERVICE BY MAIL
06/23/2014	REPLY AFFIDAVIT (11)
06/23/2014	^EXHIBIT A
06/23/2014	AFFIDAVIT OF SERVICE BY MAIL (12)
08/06/2014	DECISION AND ORDER (13)
08/18/2014	AFFIDAVIT OF MAILING (14)
09/08/2014	NOTICE OF APPEAL (15)
09/08/2014	AFFIDAVIT OF SERVICE BY MAIL (16)
09/24/2014	NOTICE OF MOTION (17)

09/24/2014 ^AFFIRMATION
09/24/2014 ^AFFIDAVIT
09/24/2014 ^AFFIDAVIT
09/24/2014 ^EXHIBITS A THROUGH N
09/24/2014 MEMORANDUM OF LAW (18)
09/24/2014 AFFIDAVIT OF SERVICE BY MAIL (19)
10/09/2014 MEMORANDUM OF LAW (20)
10/09/2014 ^EXHIBIT A
10/09/2014 ^AFFIDAVIT OF SERVICE BY MAIL
10/16/2014 AFFIRMATION (21)
10/16/2014 ^EXHIBITS A AND B
10/16/2014 AFFIDAVIT OF SERVICE BY MAIL (22)
11/06/2014 DECISION AND ORDER (23)
11/14/2014 AFFIDAVIT OF SERVICE BY MAIL (24)
12/11/2014 NOTICE OF APPEAL (25)
12/11/2014 AFFIDAVIT OF SERVICE BY MAIL (26)
01/06/2016 CONSOLIDATED RECORD ON APPEAL (27)
01/06/2016 TRUE COPY OF MEMORANDUM AND ORDER (28)
01/06/2016 TRUE COPY OF MEMORANDUM AND ORDER (29)
01/07/2016 NOTICE OF MOTION (30)
01/07/2016 ^AFFIRMATION
01/07/2016 ^EXHIBITS A THROUGH G
01/07/2016 AFFIDAVIT OF MAILING (31)
02/05/2016 COPY OF ORDER (32)
02/11/2016 ORDER (33)
02/19/2016 AFFIDAVIT OF SERVICE BY MAIL (34)
04/25/2016 NOTICE OF MOTION (35)
04/25/2016 ^AFFIRMATION
04/25/2016 ^EXHIBIT A B C AND D
04/25/2016 AFFIDAVIT OF SERVICE BY MAIL (36)
04/27/2016 AFFIRMATION IN SUPPORT (37)
04/27/2016 ^EXHIBIT 1 2 AND 3
04/27/2016 ^AFFIRMATION OF SERVICE BY MAIL
04/27/2016 NOTICE OF MOTION (38)

8. TRANSCRIPT OF JUDGMENT

Ronald Wainwright
44 Pine View Drive, Delevan, NY 14042-9424
VS
Level Acres LLC
1 Country Meadow Way, Hilton, NY 14468-9585
Kevin Clark
1 Country Meadow Way, Hilton, NY 14468-9585

Record Date: 5-15-2015
Instrument Location: Case# 40847
Court: Supreme Court - Cattaraugus County
Amount: \$3,440.00

See copy of instrument at next page.

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END OF PAGE

Transcript of Judgment

Tuesday, May 12, 2015

Judgment Debtor 1 LEVEL ACRES LLC
1 COUNTRY MEADOW WAY
HILTON NY 14468-9585

Judgment Debtor 2 CLARK KEVIN
1 COUNTRY MEADOW WAY
HILTON NY 14468-9585

Judgment Creditor 1 WAINWRIGHT RONALD

44 PINE VIEW DRIVE
DELEVAN NY 14042-9424

Judgment Creditor 2

ALLEGANY COUNTY CLERK
FILED & ENTERED
MAY 15 2015
AT 9:59 O'CLOCK AM
ROBERT L. CHRISTMAN
CLERK

2015140886



J-40847
05/15/2015 09:59:48 AM
1 Pages
TRANSCRIPT OF JUDGMI

Robert L. Christman, Allegany County Clerk

Clerk:LY

Court: SUPREME
County: CATTARAUGUS
Index Number: 82224
Judgment Rendered: 05/12/2015
Judgment Docketed: 05/12/2015
Fully Satisfied:
Partially Satisfied:
Execution Returned Satisfied:
Execution Returned Unsatisfied:

Damages: \$3,020.00
Costs: \$420.00
Interest: \$0.00
Less Payment: \$0.00
Judgment: \$3,440.00

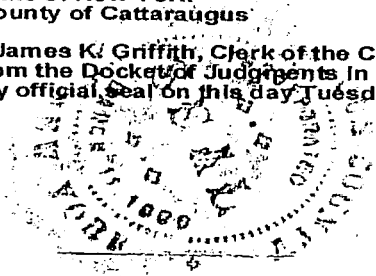
Creditor's Attorney: J KIRBY COLLING PC
PO BOX 26
ARCADE NY 14009

Transcripts Filed:

Remarks: TIME: 11:30 AM

State of New York
County of Cattaraugus

I, James K. Griffith, Clerk of the County of Cattaraugus, hereby certify that the above is a correct transcript from the Docket of Judgments in my office. IN TESTIMONY WHEREOF, I have hereunto set my name and affix my official seal on this day Tuesday, May 12, 2015



James K. Griffith
County Clerk, Cattaraugus County

ABSTRACT CERTIFICATE

STEWART TITLE INSURANCE COMPANY, a New York Corporation, for good consideration paid, CERTIFIES AND GUARANTEES (pursuant to New York Insurance Law section 6403(b)(1)) to the current record owner(s) of an interest in or specific lien upon the **premises described at Set-Out 1** immediately preceding this Certificate (the "Subject Premises") and their successors in interest of record that:

1. It has searched the Federal Tax Liens (10 years), Financing Statements (5 years), Grantor/Grantee, Incompetency/Conservatee, In Rem Proceedings, Judgments (10 years), Mechanics Liens (1 year), Mortgagor, Notices of Pendency, Order Appointing Receiver, Surety Bond, Welfare Liens indices maintained in the County Clerk's Office and the Surrogate indices maintained in the Surrogate's Court, for the county in which the Subject Premises is located, against the names of the parties appearing in the Abstract as owning or having an interest in the Subject Premises during the record periods of such ownership from and including the date **3-12-2010** to the date of this Certificate.
2. It has searched the bankruptcy indices in the office of the clerk of the United States Bankruptcy Court for the Federal District in which the Subject Premises is located against the names of all record owners of an interest in the Subject Premises for six (6) months prior and subsequent to their respective period of ownership for twenty (20) years last past.
3. It has searched the Inactive Hazardous Waste Disposal Site Registry Index maintained in the County Clerk's Office for the County in which the Subject Premises is located against the tax map parcel number or the section, block and lot number of the Subject Premises.
4. It found the matters set forth in the Abstract at **Set-Outs 2 through 8**; said matters are correctly set forth therein, and there is nothing more in those indices which appears to affect the Subject Premises, or any part thereof.
5. This search does not set forth mortgages, judgments, liens, notices of pendency or encumbrances recorded or filed prior to or during the period of this search for which cancellations, discharges or satisfactions have been recorded or filed.
6. If any covenant or restriction referenced or appearing in this search violates any provision of the Federal Fair Housing Act (42 U.S.C. § 3601 et seq.), as amended, it is set forth herein solely in the interest of complete and accurate reporting.
7. The Guaranty under this Certificate shall not be limited by time.

IN WITNESS WHEREOF, STEWART TITLE INSURANCE COMPANY has caused this Certificate to be signed by its Authorized Officer this **5th day of May, 2016 at 8:29 o'clock A.M.**

STEWART TITLE INSURANCE COMPANY
By Mark E. Reesor
Authorized Officer

Order number: 23-313989

Certificate number: 19409

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

LEVEL ACRES, LLC

BK No. 17-10333

Chapter 11

Debtor.

**STIPULATION AUTHORIZING USE OF CASH COLLATERAL
AND GRANTING ADEQUATE PROTECTION PAYMENTS**

It is hereby stipulated between the Debtor-in-Possession, Level Acres, LLC, (the "Debtor") and Comptroller of the State of New York, as Trustee of the New York State Common Retirement Fund, (the "Secured Creditor"), pursuant to §§ 361, 362 and 363 of the Bankruptcy Code, and Federal Rules of Bankruptcy Procedure 2002, 4001, and 9014, that the Debtor is authorized to use Cash Collateral (as defined in § 363(a) of the Bankruptcy Code) and to provide Adequate Protection (as defined in § 361 of the Bankruptcy Code) to the Secured Creditor, on the following terms.

On February 24, 2017 (the "Filing Date"), the Debtor commenced this Chapter 11 case under case number 17-10333 (the "Chapter 11 Case") by filing a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor is continuing in possession of its property and operating and managing its business as debtor in Debtor-in-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

The terms of this Stipulation, the use by the Debtor of Cash Collateral, and the terms of Adequate Protection as set forth herein have been negotiated in good faith and at arm's length between the Debtor and the Secured Creditor within the meaning of § 363(m) of the Bankruptcy Code.

The Court has jurisdiction over the Chapter 11 Case pursuant to §§ 157(b) and 1334 of the Judicial Code.

INDEBTEDNESS

1. The Debtor acknowledges that it is indebted to the Secured Creditor under the terms and conditions of the Notes and related documents (the "Notes") attached hereto as Exhibit "A".
2. The Debtor acknowledges that, as of February 24, 2017, it was indebted to the Secured Creditor in the approximate amount of \$2,161,938.58, pursuant to the Notes (the "Indebtedness"), said amount is subject to proper review by the Debtor.

COLLATERAL

3. As security for the repayment of the Indebtedness to the Secured Creditor, the Debtor executed collateral security agreements including mortgages, UCC Financing Statements, assignment of rents and security agreements as summarized in the Abstract attached hereto as Exhibit "B" (the "Collateral").
4. Secured Creditor asserts that its interests in the Debtor's property are valid first perfected security interests, enforceable in accordance with their terms. The Collateral secures repayment of the Indebtedness.
5. Subject to § 362 of the Bankruptcy Code, the secured creditor has the present right to enforce its rights in the Collateral.
6. The Collateral includes Cash Collateral as defined in § 363(a) of the Bankruptcy Code. The Debtor's use, sale or lease of the Cash Collateral without Secured Creditor's consent or an Order of the Bankruptcy Court is prohibited.

DEBTOR'S REPRESENTATIONS

7. Debtor is a New York limited liability corporation in good standing.
8. Debtor has taken all necessary actions to authorize the execution and delivery of this Stipulation and the performance of its terms.
9. Debtor has all franchises, permits, licenses, and other authority necessary to enable it to perform its obligations under this Stipulation.

COVENANTS

Debtor covenants and agrees with the Secured Creditor as follows:

10. As adequate protection to the Secured Creditor of its interests in the Collateral, including Cash Collateral, with respect to (a) the imposition of the automatic stay pursuant to § 362 of the Bankruptcy Code, and (b) any diminution in the value of the Collateral, including as a result of the use by the Debtor of Cash Collateral and any other Collateral from and after the Petition Date:

(A) Secured Creditor is granted the right to receive, and the Debtor is hereby directed to pay, as adequate protection to the Secured Creditor: Payments of contractual non-default principal and interest on the Indebtedness in the amount of **\$11,483.00** per month (the "Adequate Protection Payments"). Said payments are due on the Fifteenth (15th) of each month, including any grace period provided by the Notes, commencing March 15, 2017 and each and every month thereafter.

(B) Secured Creditor is hereby granted valid and perfected security interests in and liens upon (the "Adequate Protection Liens") all of the Debtor's right, title and interest in, to and under all of the post petition assets and property of the Debtor, of the same kind and type in which the Secured Creditor had a lien on/in pre-petition (collectively the "Replacement Collateral"), subject only to: (1) valid perfected liens in existence on the Petition Date, (2) the Administrative Carve Out set forth below in paragraph number 18, and (3) recoveries from avoided preferential transfers, fraudulent conveyances, and fraudulent transfers under Chapter 5 of the Bankruptcy Code (the "Avoidance Actions"). Notwithstanding any other language, the post-petition liens are only valid to the same extent, validity and priority that existed in favor of the Secured Creditor pre-petition.

11. Debtor shall keep the Collateral fully insured against fire, theft or other casualty under policies of insurance containing loss payable clauses naming Secured Creditor as loss payee as its interest may appear. Copies of each policy shall be provided to the Secured Creditor.

12. Debtor shall not use, sell or lease any Collateral outside the ordinary course of its business without prior written consent of the Secured Creditor, or Bankruptcy Court order, if such Order is required under the Bankruptcy Code.

13. Debtor shall remain solely liable for any tax liabilities, including but not limited to real property taxes. Secured Creditor is not obligated to fund any of the Debtor's liabilities. Debtor shall provide Secured Creditor with proof of timely payment of all real property taxes.

14. Upon reasonable prior notice, the Debtor shall provide to the Secured Creditor and/or its agents access during regular business hours to Debtor's business premises, books, records, and employees responsible for the preparation and maintenance of Debtor's books, records and financial information.

15. Subject to valid, existing liens and encumbrances, the Adequate Protection Liens shall be prior and senior to all liens and encumbrances of all other secured creditors in and to the Replacement Collateral granted or arising after the Petition Date and liens and security interests, if any, granted or arising in favor of any federal, state, municipal or other governmental unit for any liability of the Debtor, except for real property taxes. The Adequate Protection Liens granted pursuant to this Stipulation shall constitute valid and duly perfected security interests and liens, and Secured Creditor shall not be required to file or serve mortgages, UCC financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such security interest and liens. Notwithstanding any other language, the post-petition liens are valid only to the same extent, validity and priority that existed in favor of the Secured Creditor pre-petition.

16. Except as otherwise set forth in this Stipulation, the provisions of this Stipulation and any actions taken pursuant hereto shall survive entry of any Order which may be entered (a) converting this Case to a Case under Chapter 7; (b) dismissing this Case; or (c) appointing or electing any Chapter 11 Trustee or Examiner. The terms and provisions of this Stipulation as well as the Adequate Protection Liens shall continue in full force and effect notwithstanding the entry of such Order, and such Adequate Protection Liens shall maintain their priority until all of the obligations of the Debtor to the Secured Creditor is paid and discharged.

17. Notwithstanding the forgoing, upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code, if this Stipulation is not sooner terminated by its terms herein, the Chapter 7 Trustee shall have a period of thirty (30) days to discuss the terms of this Stipulation with the Secured Creditor and to request any necessary amendments, during which time the provisions of this Stipulation remain in effect. If the Chapter 7 Trustee and Secured

Creditor are unable to agree to amendments, then this Stipulation shall terminate, subject to the conditions contained herein. Notwithstanding the termination of this Stipulation, all of the rights, remedies, benefits, protections and obligations of the Secured Creditor and the Debtor shall survive the Termination Date.

18. Administrative Carve Out: Notwithstanding any provisions and restrictions contained herein, Secured Creditor consents to the use of Cash Collateral by Debtor to pay quarterly fees to the United States Trustee pursuant to 28 U.S.C. §1930, and to pay all fees and expenses imposed by the United States Code or the Bankruptcy Rules that in each case are payable to the Bankruptcy Court Clerk. Such fees and expenses are hereinafter referred to as the "Administrative Carve Out".

19. Notwithstanding any provisions and restrictions contained herein, nothing limits the power of any Chapter 7 trustee or Chapter 11 trustee to bring any action to challenge the extent, validity or priority of the secured creditor's security interest and liens as of the petition date.

TERM

20. Provided that Debtor is at all times in compliance with this Stipulation and that no Event of Default has occurred, Secured Creditor agrees that Debtor may use Cash Collateral in the ordinary course of its business during the term of the Chapter 11 Case, provided that the Court enters a final Order approving this Stipulation.

DEFAULT

21. Upon the occurrence of one or more of the following event, Debtor shall be in default and an "Event of Default" shall be deemed to have occurred:

- (a) Failure to make a payment to Secured Creditor when due;
- (b) Failure of the Debtor to perform any other term, condition or covenant of this Stipulation;
- (c) Failure to pay when due any sums due for either post-petition insurance or post-petition property taxes;
- (d) Dismissal or Conversion of the Chapter 11 Case.

REMEDIES

22. Secured Creditor shall notify the Debtor, Debtor's Counsel and the United States Trustee in writing if it reasonably believes that there has been an Event of Default and specify the nature and extent of the alleged Event of Default. The Debtor shall have five (5) business days to either: (a) cure the Default, or (b) to respond in writing to Secured Creditor, it's Counsel and the United States Trustee as to why the Debtor does not believe an Event of Default has occurred.

23. Should the parties be unable to agree as to whether: (a) the Default has been cured within the five (5) business day period, or (b) the alleged Event of Default actually occurred, then the terms and conditions of this stipulation shall remain in effect while either party may bring the dispute before the Bankruptcy Court for a hearing on notice to the United States Trustee.

COURT APPROVAL

24. The Debtor shall file a motion on notice and in accord with Bankruptcy Rule 4001(d) and Local Bankruptcy Rule 4001 for approval of this Stipulation.

MISCELLANEOUS

25. This Stipulation contains the entire understanding of the parties with respect to the matters addressed. This Stipulation may be modified only by a subsequent writing signed by the Secured Creditor and the Debtor.

26. No delay or failure of either party to exercise any right, remedy, power or privilege hereunder shall impair the same or be construed to be a waiver of the same, or an Event of Default.

27. Any notice or demand hereunder shall be in writing and sent by first class mail or courier to the party and its Counsel.

28. This stipulation is without prejudice to a motion for dismissal, conversion or relief from stay.

29. In the event that any provision contained in this Stipulation shall be held invalid or unenforceable, such invalidity or unenforceability of that provision shall not affect any other provision of this Stipulation.

30. This Stipulation may be executed in any number of counterparts, and each counterpart shall be deemed an original instrument, but all such counterparts together shall, for all purposes, constitute but one and the same document. Facsimile signatures shall be treated as original signatures.

IN WITNESS WHEREOF, the parties have executed this Stipulation as of the last date signed below.

Dated: _____

LEVEL ACRES, LLC

By: Kevin Clark

Its: Managing Member

Dated: 3/22/17

Comptroller of the State of New York, as
Trustee of the New York State Common
Retirement Fund, by its Servicer, The
Community Preservation Corporation

By: Wanda Chin

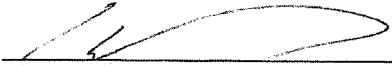
Its: SVP

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IN WITNESS WHEREOF, the parties have executed this Stipulation as of the last date signed below.

Dated: 3/23/17


LEVEL ACRES, LLC

By: Kevin Clark
Its: Managing Member

Dated: 3/12/17

Comptroller of the State of New York, as
Trustee of the New York State Common
Retirement Fund, by its Servicer, The
Community Preservation Corporation

By: Wanda Chin
Its: SVP