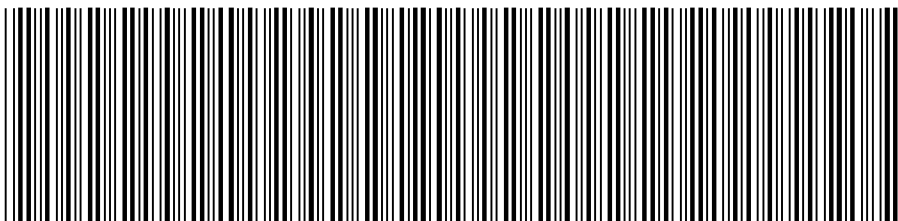


**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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2008061100451002001EEABE

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 15

Document ID: 2008061100451002

Document Date: 06-03-2008

Preparation Date: 06-11-2008

Document Type: MORTGAGE

Document Page Count: 14

PRESENTER:

BARRISTER LAND, LLC (BR30671NY)
AGENTS FOR FIDELITY NATIONAL TITLE
975 FRANKLIN AVENUE (PICK-UP BY U S T A)
GARDEN CITY, NY 11530
516-877-5050
john@blstitle.com

RETURN TO:

TO BE PICKED UP BY USTA
2250 E. 4TH STREET
SUITE 7F
BROOKLYN, NY 11223

PROPERTY DATA

| Borough | Block | Lot | Unit | Address |
|--|--------------|------------|-------------|---------------------|
| MANHATTAN | 1198 | 15 | Entire Lot | 29 WEST 84TH STREET |
| Property Type: APARTMENT BUILDING | | | | |

CROSS REFERENCE DATA

CRFN _____ or Document ID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

MORTGAGOR/BORROWER:

BIRBACH FAMILY GROUP, LLC
C/O CARLTON MANAGEMENT, 136 GLENWOOD
ROAD
GLENWOOD LANDING, NY 11547

MORTGAGEE/LENDER:

NEW YORK COMMUNITY BANK
ONE JERICHO PLAZA
JERICHO, NY 11743

FEES AND TAXES

| | | | |
|--------------------------|-----------------|---------------------------------|---------|
| Mortgage | | Filing Fee: | |
| Mortgage Amount: | \$ 1,431,598.59 | | \$ 0.00 |
| Taxable Mortgage Amount: | \$ 1,431,598.59 | NYC Real Property Transfer Tax: | |
| Exemption: | | | \$ 0.00 |
| TAXES: County (Basic): | \$ 7,158.00 | NYS Real Estate Transfer Tax: | |
| City (Additional): | \$ 16,105.50 | | \$ 0.00 |
| Spec (Additional): | \$ 3,579.00 | | |
| TASF: | \$ 0.00 | | |
| MTA: | \$ 4,294.80 | | |
| NYCTA: | \$ 8,947.50 | | |
| Additional MRT: | \$ 0.00 | | |
| TOTAL: | \$ 40,084.80 | | |
| Recording Fee: | \$ 107.00 | | |
| Affidavit Fee: | \$ 0.00 | | |

**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**

Recorded/Filed 07-08-2008 11:30

City Register File No.(CRFN):

2008000269679



Annette McMill

City Register Official Signature

B. 1198
C. 15

MORTGAGE

MORTGAGE, made this June 3, 2008, between **BIRBACH FAMILY GROUP, LLC**, whose principal place of business is located at c/o Carlton Management, 136 Glenwood Road, Glenwood Landing, New York 11547, hereinafter referred to as "the mortgagor", and **NEW YORK COMMUNITY BANK**, a Corporation organized and existing under the laws of the State of New York and having its principal place of business at One Jericho Plaza, Jericho, in the County of Nassau, State of New York, ¹¹⁷⁴³hereinafter referred to as "the mortgagee".

WITNESSETH, that to secure the payment of an indebtedness in the sum of **One Million Four Hundred Thirty One Thousand Five Hundred Ninety Eight and 59/100 (\$1,431,598.59) Dollars** lawful money of the United States, to be paid with interest thereon, according to a certain bond, note or obligation bearing even date herewith, the mortgagor hereby Mortgages to the mortgagee, and to its successors and assigns,

See Schedule "A" Attached

TOGETHER with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

TOGETHER with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fittings, and fixtures of every kind in or used in the operation of the buildings standing on said premises, together with any and all replacements thereof and additions thereto;

TOGETHER with all awards heretofore and hereafter made to the mortgagor for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind of nature whatsoever.

AND the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

ALL that certain plot, piece or parcel of land situate lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 84th Street, distant 425 feet 6 inches westerly from the corner formed by the intersection of the northerly side of 84th Street and the westerly side of Central Park West;

RUNNING THENCE Northerly parallel with Central Park West and part of the distance through a party wall, 102 feet 2 inches to the center line of the block;

RUNNING THENCE Westerly along said center line of the Block 24 feet 6 inches;

RUNNING THENCE Southerly parallel with Central Park West, 102 feet 2 inches to the northerly side of 84th Street;

RUNNING THENCE Easterly along the northerly side of 84th Street, 24 feet 6 inches to the point or place of BEGINNING.

2. That the mortgagor will keep the buildings on the premises insured against loss by fire and any other hazard that may be required by the mortgagee for the benefit of the mortgagee; that the mortgagor will assign and deliver the policies to the mortgagee; and that the mortgagor will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies. The mortgagor shall have the right to use the insurance proceeds received as a result of any fire or casualty or condemnation for restoration of the property provided the mortgagor is not in default of the loan documents. These proceeds will be disbursed as the work progresses.
3. That no building on the Premises shall be altered, removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum and interest shall become due at the option of the mortgagee; after default in the payment of any installment of principal or of interest for thirty days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided; or after failure to establish a lease security or reserve account, if same is required, within 120 days of the date hereof. An assessment which has been made payable in installments at the application of the mortgagor or lessee of the Premises shall nevertheless, for the purpose of this paragraph, be deemed due and payable in its entirety on the day the first installment becomes due or payable or a lien.
5. That the holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.
6. That the mortgagor within five days upon request in person or within ten days upon request by mail will furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the mortgage debt.
7. That notice and demand or request may be in writing and may be served in person or by mail.
8. That the mortgagor warrants the title to the Premises.

9. That the fire insurance policy required by paragraph #2 above shall contain the usual extended coverage endorsement: that in addition thereto the mortgagor, within thirty days after notice and demand, will keep the Premises insured against war risk and any other hazard that may reasonably be required by the mortgagee. All of the provisions of paragraph #2 and #4 above relating to fire insurance and the provisions of Section 254 of the Real Property Law construing the same shall apply to the additional insurance required by this paragraph.
10. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may pay the same.
11. That in case of a foreclosure sale, said premises, or so much thereof as may be affected by this Mortgage, may be sold in one parcel.
12. That if any action or proceeding be commenced to which action or proceeding the mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this Mortgage (including reasonable counsel fees) shall be paid by the mortgagor, together with interest thereon at the rate of twenty (20%) percent per annum, or the maximum rate allowed by law whichever is less and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of said Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the debts secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail, except that interest shall be paid after the initial default at the rate stated in the Note, or the highest rate permitted by law together with reasonable attorney's fees which in no event shall be less than \$1,500.00.
13. That the mortgagor hereby assigns to the mortgagee the rents, issues and profits of the Premises as further security for the payment of said indebtedness, and the mortgagor grants to the mortgagee the right to enter upon the Premises for the purpose of collecting the same and to let the Premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses on account of said indebtedness. This assignment grant shall continue in effect until this Mortgage is paid. The mortgagee hereby waives the right to enter upon said premises for the purpose of collecting said rents, issues and profits and the mortgagor shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this Mortgage, and agrees to use such rents, issues and profits in payment of principal and interest becoming due on this Mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against said premises, but such right of the mortgagor may be revoked by the mortgagee upon any default on five days' written notice. That in reference to Section 291-f of the Real Property Law of the State of New York, the mortgagor agrees that it will not cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases of the real property mortgaged herein in existence at the date of this

Mortgage or accept prepayments of installments of rent to become due thereunder without the consent of the holder of this Mortgage; and in the event of any default under this Mortgage will pay monthly in advance to the mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said premises or of such part thereof as may be in the possession of the mortgagor, and upon default in any such payment will vacate and surrender the possession of said premises to the mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

14. That the whole of said principal sum and the interest shall become due at the option of the mortgagee: (a) after failure to exhibit to the mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (b) after the actual or threatened alteration, demolition or removal of any building on the Premises without the written consent of the mortgagee; or (c) after the assignment of the rents of the Premises or any part thereof without the written consent of the mortgagee; or (d) if the buildings on said premises are not maintained in reasonably good repair; or (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Premises within three months from the issuance thereof; or (f) if on application of the mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue policies insuring the buildings on the Premises; or (g) in the event of the removal demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel Mortgages or other encumbrances thereon and free from any reservation of title thereto; or (h) after thirty days' notice to the mortgagor in the event of the passage of any law deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the taxation of Mortgages or debts secured thereby for state or local purposes; (i) if any proceeding is commenced to foreclose a lien upon the Premises or any portion thereof or if any other action is taken to enforce any such lien and, within twenty days after the commencement of such proceeding or taking of such action, said lien is not discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; and (j) if mortgagor fails fully, faithfully or punctually perform or comply with any other obligation on the part of the mortgagor to be performed or complied with pursuant to any Loan Document after the expiration of any applicable notice, grace or cure period, and such failure continues for the lesser of (i) thirty days after mortgagee has given mortgagor written notice thereof (unless such default cannot with due diligence be cured within thirty days but can be cured within a reasonable period, in which case no default shall be deemed to exist so long as mortgagor shall have commenced to cure the default within thirty days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion), or (ii) such period of time, if any, is as set forth with respect to such failure in any other Loan Document.

15. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.
16. That the execution of this Mortgage, if made by a corporation, has been duly consented to by the stockholders of the mortgagor as required by Section 911 of the Business Corporation Law and has been duly authorized by its board of directors.
17. That the mortgagor is now the owner of the Premises upon which said mortgage is a valid lien for the amount above specified with interest thereon at the rate above set forth, and that there are no defenses or offsets to said mortgage or to the debt which it secures.
18. In the event that any payment shall become overdue for a period in excess of fifteen (15) days, a "late charge" of 4¢ for each dollar (\$1) so overdue may be charged by the holder hereof for the purpose of defraying the expense incident to handling such delinquent payment.
19. The fire insurance policy and all replacements during the term of the loan must be issued by a company satisfactory to the mortgagee.
20. The note or other obligations hereby secured shall become due and payable at the option of the mortgagee herein upon any transfer of title or transfer of stock or transfers of interests to the premises herein mortgaged, except for transfer of interests of the entity to family members and family owned entities without the obligation to obtain the mortgagee's consent or pay a fee to the mortgagee, subject to the OFAC requirement herein.
21. The mortgagor herein expressly agrees that in the event of a default under the terms of this Note, Mortgage and Agreement a foreclosure by power of sale pursuant to Article 14 of the Real Property Action and Proceeding Law may be brought by the mortgagee at its sole option.
22. The mortgagor hereby consents to the review by the mortgagee of all D.H.C.R. registrations, if applicable for the term of the loan herewith. The mortgagor agrees to timely file for additional rent increases whenever allowed by applicable rent regulations and whenever commercially prudent.

23. The privilege to prepay this Mortgage loan during the **first year** of the loan shall be computed for that purpose from July 1, 2008, is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration for the exercise of said privilege, a sum equal to five (5%) percent of the amount of the principal balance being prepaid. Thereafter and during the **second year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration for the exercise of said privilege, a sum equal to four (4%) percent of the amount of the principal balance being prepaid. Thereafter and during the **third year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration of the exercise of said privilege, a sum equal to three (3%) percent of the amount of the principal balance being prepaid. Thereafter and during the **fourth year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration of the exercise of said privilege, a sum equal to two (2%) percent of the amount of the principal balance being prepaid. Thereafter and during the **fifth year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration of the exercise of said privilege, a sum equal to one (1%) percent of the amount of the principal balance being prepaid. Thereafter, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay the principal balance then remaining unpaid, without consideration for the exercise of said privilege. There will be a sixty (60) day period prior to the expiration of the fifth year to prepay without penalty. There shall be no prepayment penalty assessed in connection with any prepayment of the loan with condemnation, or insurance proceeds.

In the event that the mortgagor did exercise its option for the next five year period with a fixed rate then the penalty provisions shall be as follows:

The privilege to prepay this Mortgage loan during the **sixth year** of the loan shall be computed for that purpose from July 1, 2008, is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration for the exercise of said privilege, a sum equal to five (5%) percent of the amount of the principal balance being prepaid. Thereafter and during the **seventh year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration for the exercise of said privilege, a sum equal to four (4%) percent of the amount of the principal balance being prepaid. Thereafter and during the **eighth year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration of the exercise of said privilege, a sum equal to three (3%) percent of the amount of the principal balance being prepaid. Thereafter and during the **ninth year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration of the exercise of said privilege, a sum equal to two (2%) percent of the amount of the principal balance being prepaid. Thereafter and during the **tenth year** of the loan as computed pursuant to the language contained in the first sentence of this paragraph, the privilege is reserved upon giving thirty (30) days prior written notice to the mortgagee to prepay principal in part or in full provided there is also paid to the mortgagee as consideration of the exercise of said privilege, a sum equal to one (1%) percent of the amount of the principal balance being prepaid. There will be a sixty (60) day period prior to the expiration of the tenth year to prepay without penalty. There shall be no prepayment penalty assessed in connection with any prepayment of the loan with condemnation, or insurance proceeds.

24. Any form of secondary financing, including but not limited to a pledge of ownership interests and/or mezzanine financing, is prohibited without the mortgagee's approval.

25. Irrespective of the above, during the term of the loan hereof, provided the loan is not in default, and upon thirty (30) days prior written notice to the mortgagee, the principal amount of this loan may be increased to an amount equal to seventy-five (75%) percent of the economic or market value of the premises, whichever is less (the "Loan Increase") and a minimum 1.20X DSCR (as determined solely by the Bank) based upon a 30 year amortization schedule, as indicated in an updated appraisal to be performed by an appraiser engaged by the mortgagee, provided that the additional funds are used for capital improvements to the premises. The interest rate for the Loan Increase shall be set at 37.5 basis points above New York Community Bank's prevailing "5 Year" First Mortgage Loan interest rate for comparable properties and shall "blend" and run co-terminus with the original Indebtedness evidenced by this loan. In no event shall the interest rate be less than the interest rate then in effect pursuant to this loan. At the time of closing of the Loan Increase, the mortgagor shall pay to the mortgagee a fee equal to one (1%) percent of the Loan Increase. Additionally, the mortgagor shall pay all costs related to the updated appraisal and any and all costs related to closing of the Loan Increase, including legal fees related to documentation required to properly evidence the Loan Increase, including but not limited to An Amended and Restated Note and Mortgage Modification Agreement. The mortgagee's obligation to provide any Loan Increase under the terms of this clause is subject to the following:
1. The mortgagee is currently providing mortgage loans of this nature;
 2. The mortgagor can only exercise this within the first five (5) years of the loan term;
 3. The collateral will be re-inspected and must be acceptable to the mortgagee's in all respects;
 4. The credit of the borrowing entity and all principals thereof is subject to review and acceptance by the mortgagee at the time of the Loan Increase;
 5. This is a "one-time only" availability and shall not survive a transfer of title; and
 6. The existing loan shall not be in default, declared or undeclared.
26. The mortgagor shall be required to deposit the tenant lease security accounts for the subject premises with the mortgagee within 120 days of closing. The accounts must be maintained with the mortgagee for the term of the loan. In the event the account is not opened within the prescribed time period and maintained with the mortgagee for the loan term, the mortgage loan interest rate shall be increased to fourteen (14%) percent.
27. The mortgagor shall submit financial information to the mortgagee at regular intervals as follows: (i) Income and Expense Statements, annually and (ii) Rent Roll, annually. These items must be signed and certified by the principals of the mortgagor. The failure to comply with this provision shall be considered a default of the Mortgage resulting in an interest rate increase by two (2%) percent annually until such time as said default is cured to the mortgagee's satisfaction.

28. Upon request of the mortgagor, the mortgagee will, in the future, assign its mortgage, without a fee and without recourse rather than deliver a satisfaction when it receives full payment of the debt due providing, however, any legal fees and a \$750.00 bank's processing fee shall be paid by the mortgagor.
29. The mortgagor will promptly comply, or cause compliance with all present and future laws, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or with respect to the mortgaged premises or any portion thereof with respect to any prior or future condition involving hazardous and/or toxic substances therein, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et. seq. or such law, ordinance, rule, regulation, or other requirement of the Environmental Protection Agency of the Federal, State or local government or subdivision thereof which has authority to enact such law, ordinance, rule, regulation or other requirement dealing with a condition involving hazardous and/or toxic substances and the cleanup and removal thereof.

The mortgagor represents and warrants that the property is not used in any manner which violates applicable Federal, state or local environmental laws, that neither the mortgagor nor any tenant has received any notice from a governmental agency for violation of such laws and, if such notice is received, the mortgagee will be notified immediately and there is no intention to use the property in violation of any environmental law. The mortgagor further warrants that it will not cause any environmental violation nor permit any tenants to cause any such violation or allow any environmental liens to be placed upon the mortgaged premises.

If the mortgagor or mortgagee shall be compelled to perform or have performed a cleanup and/or removal of hazardous and/or toxic substances or to conduct a study to determine if the premises is in fact a hazardous and/or toxic waste site as that term or similar term is defined under the pertinent law, ordinance, rule, regulation or other requirement of any governmental agency, whether federal, state or local, the costs of such cleanup and/or removal or study shall be the sole responsibility of the mortgagor.

The mortgagor will indemnify, defend and hold mortgagee harmless from any actual or threatened liability and any costs incurred by the mortgagee in connection with the existence, mitigation or removal of any toxic, hazardous, dangerous, unsafe, unhealthy or environmentally detrimental materials on or from the Premises.

If the mortgagor shall fail to perform a cleanup and/or removal of the hazardous and/or toxic substances or conduct a study as aforesaid, such failure shall be deemed to be an event of default, as that term is defined in this Mortgage, and the mortgagee may exercise any and all rights granted to it hereunder.

30. Upon any default by the mortgagor and following the acceleration of maturity as provided herein or in the evidence of debt, tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to consummation of a foreclosure sale, by the mortgagor, its successor or assigns or by anyone on behalf of the mortgagor, its successor or assigns shall constitute an evasion of the prepayment terms of the evidence of debt and shall be deemed to be a voluntary prepayment thereunder and any such payment to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in the evidence of debt.
31. Notwithstanding any of the provisions contained herein to the contrary, the mortgagee shall provide the mortgagor written notice of any default herein. If the mortgagor is in default in the payment to the mortgagee of any sum or amount of money which may fall due or be payable from time to time under the term of the Mortgage hereunder ("a monetary default"), the mortgagor shall have a period of ten (10) days after the mortgagee's giving of such notice within which time such default must be cured. If the mortgagor is in default other than a monetary default, the mortgagor shall have a period of thirty (30) days after the mortgagee's giving of such notice within which time such default must be cured. However, in the event such default cannot, in the sole determination of the mortgagee, be cured within such thirty (30) day period, and provided the mortgagor has immediately commenced to take all action necessary to cure said default and continues to proceed diligently, without interruption and in good faith, to cure such default, the mortgagee may in its sole discretion grant the mortgagor an additional thirty (30) day period within which time all actions required as set forth in the mortgagee's notice of default under this paragraph shall be completed. Any such default not cured within said thirty (30) day period shall be subject to all of the other terms and provisions contained in this Mortgage.
32. Notwithstanding any term, provision, obligation, covenant or agreement contained herein or in the note secured hereby or the Consolidated Notes or the Consolidated Mortgages, the covenants, obligations and liabilities of the mortgagor to the mortgagee or any holder of the notes secured hereby, whether under any of the foregoing documents or instruments or otherwise, shall not be the personal liability of the mortgagor. The mortgagee as well as any holder of the notes secured hereby shall not seek or be entitled to any personal judgment against the mortgagor or any successor or assigns of the mortgagor and the sole remedies of the mortgagee or any holder of the notes secured hereby, in the event of any default shall be to proceed against the Premises, except for environmental issues, fraud and/or misrepresentation.
33. This Mortgage may not be changed or terminated orally. The covenants contained in this Mortgage shall run with the land and bind the mortgagor, the heirs, personal representatives, successors and of the mortgagor and all subsequent owners, encumbrances, tenants and subtenants of the Premises, and shall enure to the benefit of the mortgagee, the personal representatives, successors and assigns of the mortgagee and all subsequent holders of this Mortgage. The word "mortgagor" shall be construed as if it read "mortgagors" whenever the sense of this Mortgage so requires.

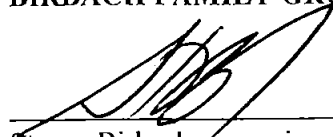
34. This Mortgage shall be construed and enforced according to and governed by the Laws of the State of New York.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the mortgagor.

IN PRESENCE OF:

BIRBACH FAMILY GROUP, LLC

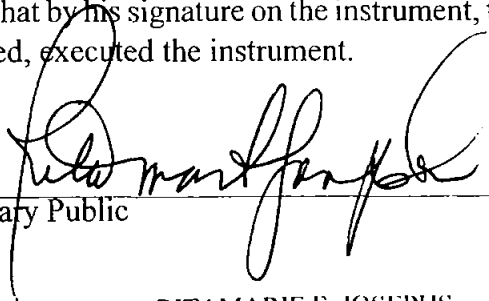
by:



Steven Birbach, managing member

STATE OF NEW YORK)
) SS.:
COUNTY OF QUEENS)

On June 3, 2008, before me the undersigned, a Notary Public in and for said state, personally appeared **Steven Birbach**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.



Notary Public

RITAMARIE F. JOSEPHS
NOTARY PUBLIC STATE OF NEW YORK
NO. 4874654 SUFFOLK COUNTY
TERMS EXPIRES OCTOBER 27, 20 10

SEAL

RECORD AND RETURN TO:

Section: 4

Block: 1198

Lot: 15

County: New York

Premise: 29 West 84th Street
New York, New York 10024

NEW YORK COMMUNITY BANK
ONE JERICO PLAZA
JERICO, NEW YORK 11753
(516) 942-6054

MORTGAGE NO.: 11-059991-0

Property type: Apartment building