

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

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2008061100451003002EDA83

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 31

Document ID: 2008061100451003

Document Date: 06-03-2008

Preparation Date: 06-11-2008

Document Type: AGREEMENT

Document Page Count: 29

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

MANHATTAN **Year:** 1970 **Reel:** 162 **Page:** 542
x Additional Cross References on Continuation Page

PARTIES

PARTY 1:

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

PARTY 2:

NEW YORK COMMUNITY BANK
ONE JERICHO PLAZA
JERICHO, NY 11743

FEES AND TAXES

Mortgage

Mortgage Amount: \$ 2,435,000.00

Taxable Mortgage Amount: \$ 0.00

Exemption: 255

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 182.00

Affidavit Fee: \$ 8.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 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):

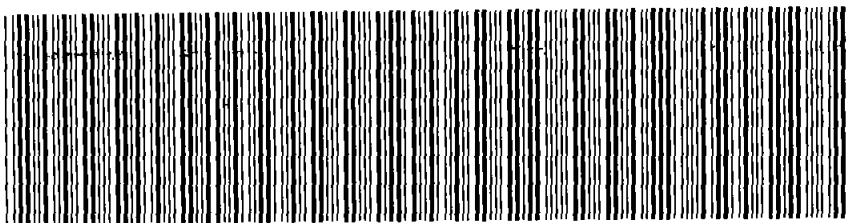
2008000269680



Annette McMill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2008061100451003002CD803

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 31

Document ID: 2008061100451003

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CROSS REFERENCE DATA

MANHATTAN Year: 1972	Reel: 250	Page: 1857
MANHATTAN Year: 1983	Reel: 681	Page: 146
MANHATTAN Year: 1986	Reel: 1132	Page: 1534
MANHATTAN Year: 1995	Reel: 2255	Page: 1494
MANHATTAN Year: 2000	Reel: 3131	Page: 959

CRFN: 2003000143059

Document ID: 2008061100451002

B. 1198
L. 15

CONSOLIDATION, MODIFICATION, EXTENSION AND SECURITY AGREEMENT

THIS CONSOLIDATION, MODIFICATION, EXTENSION AND SECURITY AGREEMENT ("Agreement"), made this June 3, 2008, between **NEW YORK COMMUNITY BANK**, a Corporation organized and existing under the laws of the State of New York, having its principal place of business at One Jericho Plaza, Jericho, in the County of Nassau, State of New York, hereinafter referred to as "the Mortgagee," and **BIRBACH FAMILY GROUP, LLC**, having an address at c/o Carlton Management, 136 Glenwood Road, Glenwood Landing, New York 11547, in the State of New York, hereinafter referred to as "the Mortgagor,"

WITNESSETH THAT

WHEREAS, the Mortgagor is now the owner in fee simple of the Premises more particularly described on Schedule A attached hereto and made a part hereof, and

WHEREAS, Mortgagee is the holder of the following:

- (a) Mortgages and the notes secured thereby, which Mortgages are set forth on Schedule B attached hereto and made a part hereof;

The above mortgages as consolidated, are being assigned by an Assignment of Mortgage made by RIDGEWOOD SAVINGS BANK, SUCCESSOR BY MERGER TO CITY & SUBURBAN FEDERAL SAVINGS BANK to NEW YORK COMMUNITY BANK effective June 3, 2008. This Assignment of Mortgage will be recorded together with this Agreement. Upon which Mortgages there is now due and owing the principal amount of **One Million Three Thousand Four Hundred One and 41/100 (\$1,003,401.41) Dollars**, and;

- (b) The mortgage made by BIRBACH FAMILY GROUP, LLC dated June 3, 2008, in favor of NEW YORK COMMUNITY BANK, securing the original principal amount of **One Million Four Hundred Thirty One Thousand Five Hundred Ninety Eight and 59/100 (\$1,431,598.59) Dollars**. This mortgage will be recorded together with this Agreement. (The Mortgages described in (a) and (b) of this paragraph are collectively referred to as the "Mortgages") (the Mortgages, the note(s) secured thereby, as amended and restated by the Note as hereinafter defined, this Agreement, Assignment of Leases and Rents, together with all documents evidencing and securing the loan made by Mortgagee to Mortgage are sometimes collectively referred to as the "Loan Documents").

WHEREAS, the Mortgagor is now indebted to the Mortgagee in the principal amount of **Two Million Four Hundred Thirty Five Thousand and 00/100 (\$2,435,000.00) Dollars** lawful money of the United States, with interest thereon as provided in and as evidenced by a Substitute and Restated Promissory Note executed and delivered by Mortgagor to Mortgagee in said amount dated even date herewith (the "Note"), which Note is secured by the Mortgages held by the Mortgagee, and

WHEREAS, the parties hereto desire to modify said Mortgages, above described, so as to consolidate and coordinate the liens of each of the aforesaid Mortgages so that the same shall together constitute in law but one joint lien and first mortgage upon the Premises hereinafter described securing the payment of Note in the principal amount of **Two Million Four Hundred Thirty Five Thousand and 00/100 (\$2,435,000.00) Dollars** and interest, to be paid as provided in the Note; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties herein contained, and of other good and valuable consideration, and of the sum of one (\$1.00) Dollar lawful money of the United States, to each party by the other in hand paid, receipt whereof is hereby duly severally acknowledged, and for the purpose of carrying out the intentions above expressed, the parties hereto covenant and agree as follows:

That the liens of the Mortgages, above described, be and the same hereby are consolidated and coordinated so that the same shall and now do constitute a valid single first mortgage lien securing the principal amount of **Two Million Four Hundred Thirty Five Thousand and 00/100 (\$2,435,000.00) Dollars** and interest to be paid as provided in the Note, which Mortgages encumber the Premises described in attached "Schedule A" which Premises together with the following described property are collectively referred to as the "Premises":

TOGETHER with all right, title and interest of, in and to any streets and roads abutting the above described 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.

That the provisions of said Mortgages, as so consolidated and coordinated, shall be deemed and construed from the date hereof to run concurrently as one mortgage and lawfully constitute a valid, single, first mortgage lien upon the Premises hereinabove described, securing the payment of the Note in the principal amount of **Two Million Four Hundred Thirty Five Thousand and 00/100 (\$2,435,000.00) Dollars** with interest thereon as provided in the Note, with the same force and effect as if the Mortgagee were the holder of a single first mortgage made, executed and delivered by the Mortgagor herein to the Mortgagee herein and securing the payment of said principal sum with interest thereon as aforesaid, to be paid as provided in the Note.

UPON the aforesaid consideration the Mortgagee hereby extends the time of payment of the Mortgages described herein and hereby modifies the manner of payment of said principal amount of **Two Million Four Hundred Thirty Five Thousand and 00/100 (\$2,435,000.00) Dollars** lawful money of the United States, secured by the aforesaid Mortgages, as consolidated by this Agreement, so that the same shall become consolidated by this Agreement, so that the same shall become due and payable on **July 1, 2018** and the said payment shall be made at the principal office of the Mortgagee, during business hours with interest thereon to be computed as stated as follows.

- (A) Starting on the date hereof, the interest rate of **5.50%** percent, per annum will be payable from the date hereof until June 30, 2010. The monthly payments will be interest only.
- (B) From July 1, 2010 until June 30, 2013, the interest rate of **5.50%**, per annum will be payable. The monthly payments of principal and interest will be based upon a thirty (30) year amortization schedule.
- (C) From July 1, 2013 until June 30, 2018 (the "Adjustable Rate Period"), the annual interest rate to be charged on the unpaid principal balance, with amortization based on the remaining amortization period, shall be two and one-half (2.5%) percent plus the Prime Rate as published in the New York Times or in the event, more than one Prime Rate is published, the highest rate shall prevail or such comparable Prime Rate in the event the New York Times ceases to publish a Prime Rate or, if said Prime Rate is not published on **July 1st** then the next date said Prime Rate is published (each such **July 1st** is referred to as a "Change Date") during the Adjustable Rate Period. Interest shall remain unchanged for the twelve (12) month period following each Change Date. At no time shall the interest rate pursuant to this paragraph be less than **5.50%** or more than **16.00%** per annum.

- (D) Subject to the terms and conditions hereinafter set forth the Mortgagor at its option may elect prior to expiration of the initial term stated above to fix the interest rate of this loan for the next five (5) years. The annual interest rate to be charged on the unpaid principal balance will be at a rate equal to 275 basis points over the published weekly average yield of the Five Year United States Treasury Note constant Maturities as published in the Federal Reserve statistical release H.15(519) as of ninety (90) days prior to the expiration of the first five (5) years of the mortgage term but in no event will said rate of interest be less than **5.50%** per annum or more than **16.00%** per annum. The Mortgagee will notify the Mortgagor of the proposed rate of interest sixty (60) to seventy-five (75) days prior to the end of the preceding five (5) year period.

The exercise of this option is contingent upon the Mortgagor meeting the following precedent conditions:

- i. The Mortgagor did not breach the terms and conditions of this Note, the Mortgage and the other Loan Documents, as defined in the Mortgage/Consolidation, Modification, Extension and Security Agreement, during the preceding five (5) year period including but not limited to the obligations to make timely monthly mortgage payments.
- ii. The Mortgagor must give written notice to the Mortgagee of its election to exercise the option at least thirty (30) days prior to the end of the preceding five (5) year period.
- iii. The Mortgagor must pay to the Mortgagee an amount equal to one (1%) percent of the outstanding Principal balance as of the time of its election to exercise the option.
- iv. The Mortgagor agrees the prepayment penalty for the ensuing five (5) year period shall be the penalty set forth in paragraph 23.

This is a Balloon Payment Loan, payable in full at the end of ten (10) years.

- (E) The Mortgagor will make monthly payments to the Mortgagee on the first day of each month beginning **August, 2008**. Each of the initial monthly payments of interest will be in the amount of U.S. \$ **11,160.42**. This amount may change.

The Mortgagor will deposit with the Mortgagee on the first day of each and every month hereafter, in addition to the payments on account of interest or principal and interest on said Principal, an amount equal to one-twelfth of the annual charges for real estate taxes, water and sewer charges, flood insurance (if applicable), at the Mortgagee's option fire insurance premiums (all as estimated by the Mortgagee) affecting the Premises mortgaged as security for the Note at least one month before they become due and payable, current bills for which shall be furnished by the Mortgagor. These escrows will be held in a non-interest bearing account. In the event of a deficiency or negative balance in the Mortgagor's escrow account, the Mortgagee may, at its sole option, permit the Mortgagor to make monthly installment payments in an amount necessary to cure said condition, which payments shall bear interest on the unpaid amount due at a rate of twenty (20%) percent.

AND the Mortgagor covenants with the Mortgagee as follows:

1. That the Mortgagor will pay the indebtedness as provided in the Note secured by the Mortgages as consolidated by this Agreement.
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 Note secured by the Mortgages as consolidated by this Agreement and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided; or after failure to establish 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 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 improvements and will pay the cost of improvements before using any part of the total of the same for any other purpose.
6. That the execution of this Agreement, 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.
7. That the holder of the Mortgages and this Agreement, in any action to foreclose it, shall be deemed entitled to the appointment of a receiver, as a matter of right, without the giving of notice to the Mortgagor or to any other party and without regard to the adequacy of the security for the indebtedness evidenced by the Note, either before or after declaring the unpaid principal of the Note to be due and payable, and of all the Rents thereof. Mortgagor hereby irrevocably and unconditionally consents to the appointment of such receiver or receivers (and to the exercise by such receiver or receivers of such powers as may be requested by Mortgagee of the court that is empowered to make such appointment) waives any and all defenses to such appointment and agrees not to oppose Mortgagee's application thereof.
8. 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.
9. That notice and demand or request will be in writing and may be served in person or by mail.
10. That the Mortgagor warrants the title to the Premises.
11. That the fire insurance policy required by paragraph number 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 paragraphs number 2 and number 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.
12. That in case of a foreclosure sale, the Premises or so much thereof as may be affected by the Mortgages, as consolidated by this Agreement, may be sold in one parcel. Further, Mortgagee may sell the Premises and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels in such manner, at such time and place, for such price and upon such other terms and after such notice thereof as Mortgagee may in its sole discretion determine, or as may be required by law. Mortgagee may from time to time adjourn any such sale by announcement at the time and place appointed for such sale, as same may previously have been adjourned.

13. 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 said Mortgages and this Agreement, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by said Mortgages and this Agreement (including reasonable counsel fees), shall be paid by the Mortgagor, together with interest thereon at the rate of twenty (20%) percent per annum and any such sum and the interest thereon shall be a lien on the Premises, prior to any right, or title to, interest in or claim upon said Premises attaching or accruing subsequent to the lien of the Mortgages and this Agreement, and shall be deemed to be secured by the Mortgages and this Agreement. In any action or proceeding to foreclose the Mortgages as consolidated by this Agreement, or to recover or collect the debt 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 attorneys fees which in no event shall be less than \$1,500.00.
14. That the Mortgagor hereby assigns to the Mortgagee all the rents, issues and profits of the Premises as further security for the payment of said indebtedness evidenced by the Note and secured by the Mortgages as consolidated by this Agreement, 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 and grant shall continue in effect until said principal with interest evidenced by the Note as secured by the Mortgages and this Agreement are paid in full. 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 granted a license agreement entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in the Note, Mortgages and/or this Agreement and agrees to use such rents, issues and profits in payment of principal and interest becoming due on the Note, Mortgages and this Agreement and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against the Premises, but such right of the Mortgagor may be revoked by the Mortgagee upon any default, on five days' written notice. The Mortgagor will not, without the written consent of the Mortgagee, receive or collect rent from any tenant of said Premises or any part thereof for a period of more than one month in advance, and in the event of any default under the Note, the Mortgages and/or this Agreement, the Mortgagor 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.

15. That the whole of said Principal amount 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 building or 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.
16. This Agreement shall constitute a security agreement with respect to such components of the Premises as to which a security interest may attach under the Uniform Commercial Code and, with respect to such of the chattels as a any time may be fixtures, a fixture filing under the Uniform Commercial Code. The Premises consists of both real and personal property. The filing of UCC-1 financing statements ("UCC-1s") in the records customarily pertaining to personal property shall not be construed as in any way derogating from the intention of the parties hereto that all chattels and other property used in connection with the production of Rents or which are referred to in this Agreement are, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be, regarded as real estate whether or not (a) any such item physically attached to the Premises or any of the Improvements, (b) serial

numbers are used for the better identification of certain of the chattels capable of being thus identified in a recital contained herein or (c) any such item is referred to in any UCC-1 so filed at any time. Similarly, the mention in the UCC-1s of (x) the rights in the proceeds of any fire and/or hazard insurance policy, (y) any award in condemnation or eminent domain proceedings for a taking or for loss of value, or (z) the debtor's interest as lessor in any present or future Lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to a Lease or otherwise, shall never be construed as in any way derogating from, or altering, any of the rights of Mortgagee set forth in this Agreement or impugning the priority of Mortgagee's lien granted hereby or by any other recorded instrument, but such mention in the UCC-1s is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (x), (y) or (z) above that notice of Mortgagee's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth on page 1 of this Agreement. This Agreement is to be filed for record with the recorder of deeds of the county or counties in which the Premises are situated. Mortgagor is the record owner of the Premises.

17. That the Mortgagor does hereby irrevocably assign to the Mortgagee all awards heretofore and hereafter made to the Mortgagor for taking by eminent domain the whole or any part of said Premises or any easements 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 acquittance 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 or nature whatsoever.
18. That the Mortgagor is now the owner of the Premises upon which said Mortgages, as consolidated by this Agreement is a valid lien for the amount above specified with interest thereon at the rate set forth in the Note, and that there are no defenses or offsets to this Agreement, the Mortgages and/or to the Note.
19. That the principal and interest hereby agreed to be paid shall be a lien on the mortgaged Premises and be evidenced said bond and notes as consolidated and modified by the Note and secured by the Mortgages as consolidated by this Agreement, and that when the terms and provisions contained in said bonds or notes and Mortgages in any way conflict with the terms and provisions contained in this Agreement, the terms and provisions herein contained shall prevail, and that as modified by this Agreement the said bond or note and Mortgages are hereby ratified and confirmed.

20. In the event that any payment shall become overdue for a period in excess of fifteen (15) days, a "late charge" of four cents (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.
21. The fire insurance policy and all replacements during the term of the loan must be issued by a company satisfactory to the Mortgagee.
22. In the event of a default by the Mortgagor by failing to pay a monthly interest or principal and interest payment as provided for in the Note and herein or in the further event that the Mortgagor has failed to pay the final payment of the entire indebtedness which, if not sooner paid, shall be due and payable on the **1st day of July, 2018**, then and in either event, interest shall continue to be payable at the annual rate as follows:

In the event the principal indebtedness becomes due and payable by the terms hereof or by reason of the holder hereof exercising its option to call the same due, interest thereafter shall accrue at the lower of (a) the highest rate permitted by applicable law or (b) twenty (20%) percent interest rate and such interest shall continue to accrue and be payable at the rate or rates herein specified and the same shall be collectible in any action to enforce this Agreement.

23. The privilege to prepay the indebtedness evidenced by the loan and secured by the Mortgages, as consolidated by this Agreement 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 for 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 for 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 amount of the principal balance being prepaid, 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 the indebtedness evidenced by the loan and secured by the Mortgages, as consolidated by this Agreement 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 for 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 for 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. 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 Agreement resulting in an interest rate increase by two (2%) percent annually until such time as said default is cured to the Mortgagee's satisfaction.
25. 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.
26. The Mortgagor herein expressly agrees that in the event of a default under the terms of this Note, Mortgages and/or this 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.
27. The Mortgagor hereby consents to the review by the Mortgagee of all D.H.C.R. registrations, if applicable for the term of this Agreement. The Mortgagor agrees to timely file for additional rent increases whenever allowed by applicable rent regulations and whenever commercially prudent.
28. Any form of secondary financing, including but not limited to a pledge of ownership interests and/or mezzanine financing, is prohibited without Mortgagee's prior written consent.
29. 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.
30. The Mortgagor shall be required to deposit the tenant lease security accounts for the subject Premises with the Mortgagee within 120 days of the date hereof. The accounts must be maintained with the Mortgagee for the term of this Agreement. In the event the account is not opened within the prescribed time period and maintained with the Mortgagee for the term of this Agreement, the interest rate shall be increased to fourteen (14%) percent.
31. 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.
32. Mortgagor, to further secure Mortgagor's full, faithful and punctual compliance with the obligations imposed upon it in the Loan Documents, hereby (i) pledges and grants to Mortgagee, and grants to Mortgagee a security interest in and to, any and all deposits (general or special, time or demands, provisional or final) at any time held and other indebtedness at any time owing by Mortgagee to or for the credit or account of Mortgagor (collectively, "Deposits") and (ii) irrevocably authorizes and directs Mortgagee at any time and from time to time upon the occurrence of a Default, without notice to Mortgagor (any such notice being expressly waived by Mortgagor) and to the fullest extent permitted by law, to set off and apply any Deposits against any and all obligations of Mortgagor now or hereafter existing under the Loan Documents, irrespective of whether or not Mortgagee shall have made any demand under the Loan Documents and although such obligations may be contingent or

unmatured. From and after the date of the occurrence of any Default, Mortgagee shall have dominion and control over such Deposits and shall have the sole ability to make withdrawals with respect to such Deposits. The rights of Mortgagee under this section are in addition to such other rights and remedies (including, without limitation, other rights or set-off) as may be available to Mortgagee under the Loan Documents, at law or in equity.

33. The Mortgagor represents and warrants to the Mortgagee that none of the Credit Parties, their Affiliates or any of their respective agents acting or benefitting in any capacity in connection with the transactions contemplated by the Loan Documents is (i) in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) a Blocked Person, or is controlled by a Blocked Person, (iv) acting or will act for or on behalf of a Blocked Person, (v) associated with, or will become associated with, a Blocked Person or (vi) providing, or will provide, material, financial or technological support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefitting in any capacity in connection with the transactions contemplated by the Loan Documents, (vii) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (viii) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

“Affiliate” means with respect to any Person (i) any Person that directly or indirectly controls such Person, (ii) any Person which is controlled by or is under common control with such controlling Person, (iii) each of such Person’s (other than, with respect to the Mortgagee, the Mortgagee’s) officers or directors (or Persons functioning in substantially similar roles). As used in this definition, the term “control” of a Person means the possession, directly or indirectly, of the power to vote five (5%) percent or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Anti-Terrorism Laws” means any Laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“Blocked Person” means any Person: (i) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (iii) a Person with which the Mortgagee is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; or (v) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“Credit Party” means the Mortgagor and any subsidiary of the Mortgagor, whether now existing or hereafter acquired or formed; and “Credit Parties” means all such Persons, collectively.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“Laws” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, guidances, guidelines, ordinances, rules, judgements, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect.

“OFAC” means the U.S. Department of Treasury Office of Foreign Assets Control.

“OFAC Lists” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“Person” means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

34. 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 Premise 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 Premises 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 the 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 the 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 Agreement, and the Mortgagee may exercise any and all rights granted to it hereunder.


35. Upon any default by the Mortgagor and following the acceleration of maturity as provided herein or in the Note which 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.
36. 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 Agreement 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 Agreement.
37. Notwithstanding any term, provision, obligation, covenant or agreement contained herein or in the Note secured by the Mortgages as consolidated by this Agreement, 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.
38. It is understood and agreed that wherever the terms and conditions of this Agreement are inconsistent with the terms and conditions of the prior Mortgages hereinbefore described, the provisions of this Agreement shall control.

39. This Agreement may not be changed or terminated orally. The covenants contained in this Agreement shall run with the land and bind the Mortgagor, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent owners, encumbrances, tenants the sub-tenants of the Premises, and shall enure to the benefit of the Mortgagee, the personal representatives, successors and assigns for the Mortgagee and all subsequent holders of the Mortgages and this Agreement. The word "party" shall be construed as if it read "parties" whenever the sense of this Agreement so requires.
40. This Agreement shall be construed and enforced according to and governed by the Laws of the State of New York.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto the day and year first above written.

IN PRESENCE OF:

BIRBACH FAMILY GROUP, LLC

by: 
Steven Birbach, managing member

NEW YORK COMMUNITY BANK

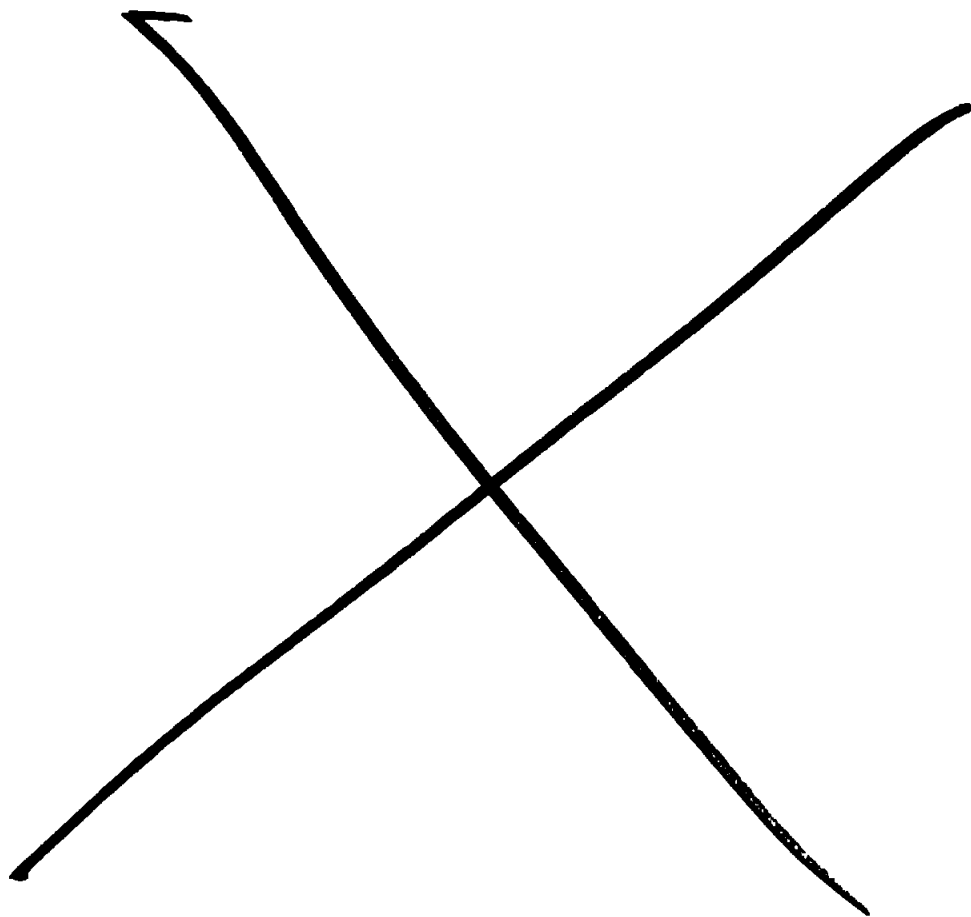
by: 
Donna DiGirolamo Senior Vice President

Attachments:

Schedule A: Legal Description of Premises

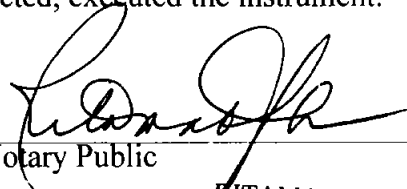
Schedule B: Consolidated Mortgages

Acknowledgments



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

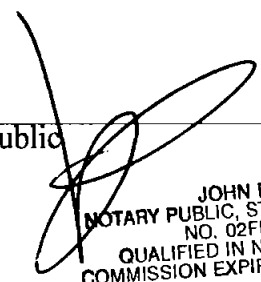
On June 3, 2008, before me the undersigned, a Notary Public in and for said state, personally appeared **Steven Birbach**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed 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

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

On June 3, 2008, before me the undersigned, a Notary Public in and for said state, personally appeared **Donna DiGirolamo**, 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 she executed the same in her capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.



Notary Public
JOHN FEIJOO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02FE5022279
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES JANUARY 3, 20 10

SEAL

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.

Mortgages

Mortgage Number 1 of 7

Mortgagor Marlow Enterprises, Inc.

Mortgagee Woodside Savings and Loan Association

Amount \$ 180,000.00 Mortgage Tax Paid \$ 1,350.00

Dated 01/06/1970

Recorded 01/08/1970

Liber 162

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Mortgages - continued

Mortgage Number 2 of 7

Mortgagor Marlow Enterprises, Inc.

Mortgagee Woodside Savings and Loan Association

Amount \$ 87,736.43 Mortgage Tax Paid \$ 1,096.25

Dated 08/25/1972

Recorded 08/30/1972

Liber 250

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This Mortgage and Mortgage 1 and 2 are hereby consolidated to form a single lien of \$265,000.00

Assignment of Mortgage

2a

Assignor Astoria Federal Savings and Loan Association, as successor in interest by merger with Citizens Savings and Loan Association, formerly Woodside Savings and Loan Association

Assignee Columbia Savings, F.A.

Dated 04/05/1983

Recorded 04/20/1983

Liber 680

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