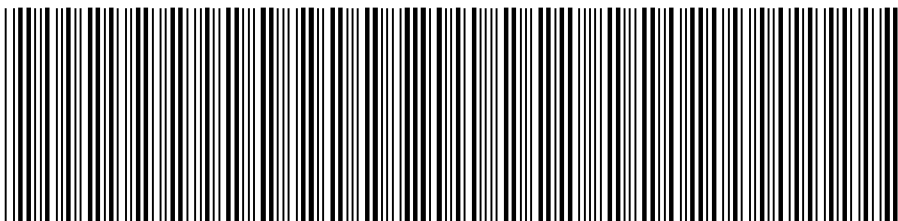


**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2011100700755003002E1DBB

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 60

Document ID: 2011100700755003

Document Date: 10-06-2011

Preparation Date: 11-02-2011

Document Type: AGREEMENT

Document Page Count: 58

PRESENTER:

SELECT LAND SERVICES, LLC
5314 16TH AVENUE, #420
HOLD FOR PICKUP
BROOKLYN, NY 11204
718-435-0808
miriam@selectlandservices.com

RETURN TO:

SELECT LAND SERVICES, LLC
5314 16TH AVENUE, #420
HOLD FOR PICKUP
BROOKLYN, NY 11204
718-435-0808
miriam@selectlandservices.com

PROPERTY DATA

Borough	Block	Lot	Unit	Address
MANHATTAN	1585	34	Entire Lot	538 EAST 89TH STREET
Property Type: APARTMENT BUILDING				

CROSS REFERENCE DATA

MANHATTAN Year: 1998 Reel: 2613 Page: 965
x Additional Cross References on Continuation Page

PARTIES

PARTY 1:

538 EAST 89TH LLC
538 EAST 89TH STREET, APT. #5
NEW YORK, NY 10128

PARTY 2:

SOVEREIGN BANK
195 MONTAGUE STREET
BROOKLYN, NY 11201

FEES AND TAXES

Mortgage

Mortgage Amount: \$ 2,100,000.00

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: \$ 327.00

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 12-02-2011 16:13

City Register File No.(CRFN):

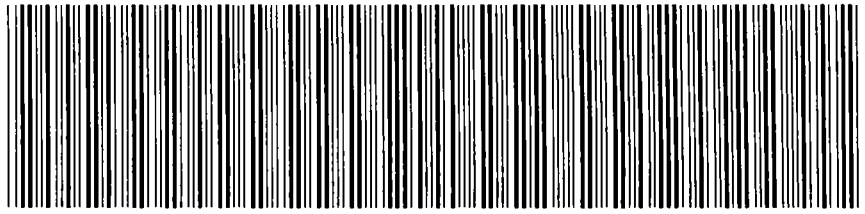
2011000421467



Annette McMill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2011100700755003002C1F3B

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 60

Document ID: 2011100700755003

Document Date: 10-06-2011

Preparation Date: 11-02-2011

Document Type: AGREEMENT

CROSS REFERENCE DATA

MANHATTAN Year: 1998	Reel: 2613	Page: 985
MANHATTAN Year: 2002	Reel: 3442	Page: 2138
MANHATTAN Year: 1999	Reel: 2846	Page: 1509
MANHATTAN Year: 2001	Reel: 3415	Page: 482
MANHATTAN Year: 2001	Reel: 3415	Page: 496

CRFN: 2004000129467

CRFN: 2004000129468

CRFN: 2003000129469

CRFN: 2008000350447

CRFN: 2008000350448

Document ID: 2011100700755001

Document ID: 2011100700755002



7213468 - 146 Cons Agmt

Mortgage Number: 7213468
Borrower: 538 East 89th, LLC
File Number: D11-0314
Loan Amount: \$2,100,000.00
Premises Address: 538 East 89th Street
New York, New York 10128

Prepared by, and after recording
return to:

Cullen and Dykman LLP
44 Wall Street - 19th Floor
New York, New York 10005-2407
Attn: Crystal Kay

Consolidation, Extension and Modification Agreement

=====

Section: 5
Block: 1585
Lot: 34
County: New York
Premises: 538 East 89th Street
New York, New York 10128

CONSOLIDATION, EXTENSION AND MODIFICATION AGREEMENT
(Multifamily)

THIS CONSOLIDATION, EXTENSION AND MODIFICATION AGREEMENT (herein "Agreement") is made this 6th day of October, 2011, between 538 East 89th, LLC, a Limited Liability Company, organized and existing under the laws of New York, with a principal place of business at 538 East 89th Street, Apt. #5, New York, New York 10128 (herein "Borrower") and Sovereign Bank, a federal savings bank, with a place of business at 195 Montague Street, Brooklyn, New York 11201 (herein "Lender"). WHEREAS Borrower is indebted to Lender in the principal sum of Two Million One Hundred Thousand and 00/100 Dollars (US \$2,100,000.00) and Borrower and Lender desire to secure (a) the repayment of that indebtedness, with interest, and all renewals, extensions and modifications thereof, (b) the repayment of any future advances, with interest thereon made by Lender to Borrower, and (c) the performance of all of Borrower's obligations, covenants and agreements stated herein and consolidated herewith; and

WHEREAS Borrower has a fee interest in the real property located at 538 East 89th Street, New York, New York 10128, in New York County, State of New York, having the legal description set out in Exhibit A hereto (herein "Property").

Borrower hereby covenants and agrees with Lender as follows:

1. BORROWER'S ASSUMPTION OF OBLIGATIONS UNDER NOTES AND MORTGAGES.

Borrower assumes all of the obligations and agreements of the notes (herein, "Notes") and mortgages, deeds of trust or other security instruments (herein "Mortgages") listed on Exhibit B attached hereto. Borrower also assumes all of the obligations in all agreements, whether or not listed in Exhibit B, which consolidate, modify or extend such Notes and Mortgages.

2. AGREEMENT TO CONSOLIDATE AND MODIFY THE NOTES.

The Borrower agrees that the obligations under the Notes (and under all other agreements which consolidated, modified or extended the obligations under the Notes) shall be and are hereby consolidated. To that end, Borrower has concurrently herewith executed and delivered to Lender an Amended and Restated Multifamily Note (herein, "Consolidated Note") which consolidates, amends and restates in their entirety the terms and provisions of the Notes.

3. AGREEMENT TO CONSOLIDATE AND MODIFY THE MORTGAGES.

Borrower agrees that the rights and obligations under the Mortgages (and under all other agreements which consolidated, modified or extended rights and obligations under the Mortgages) shall be and are hereby consolidated and that Lender's rights in the Property shall be and are hereby combined so that Lender has one real estate security interest (herein,

"Consolidated Mortgage") securing the Consolidated Note evidencing Borrower's indebtedness to Lender. Borrower and Lender agree that the terms of the Consolidated Mortgage are hereby amended and restated in their entirety to be the terms which are set out in Exhibit C hereto. As consolidated and restated hereby, the terms and provisions of the Mortgages shall remain in full force and effect and are hereby ratified and confirmed by Borrower in all respects. For purposes of the Consolidated Mortgage, Borrower's address stated above and Lender's address stated above shall be the addresses of Borrower and Lender, respectively, unless and until modified in accordance with the terms of the Consolidated Mortgage.

4. BORROWER'S WARRANTIES.

Borrower covenants that Borrower is lawfully seized of a fee estate in the property and has the right to consolidate, modify and extend the Notes and Mortgages (and, if this Agreement is on a leasehold, that the ground lease is in full force and effect without modification except as noted in Exhibit D, if any, attached hereto and without default on the part of either lessor or lessee thereunder) and that Borrower will defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Borrower also covenants and warrants that there are no offsets, counterclaims or defenses against the indebtedness now unpaid or against the Consolidated Note or the Consolidated Mortgage.

5. TERMINATION; CHANGE; AMENDMENTS.

This Agreement may not be terminated, changed or amended except by a written agreement signed by the party whose rights or obligations are being changed by that Agreement.

6. LOST NOTE(S).

In the event that any of the notes secured by mortgages set forth in Exhibit B (the "Lost Notes"), were lost or misplaced by the current owner or its predecessor in interest and have not been delivered to the Lender with the assignment of the mortgages hereinabove set forth, the Borrower hereby agrees that, notwithstanding the fact that the Lost Notes have not been delivered to the Lender, the Borrower remains indebted to the Lender in the full amount of Two Million One Hundred Thousand and 00/100 Dollars (US \$2,100,000.00) as set forth hereinabove and as set forth in and evidenced by the Amended and Restated Multifamily Note executed by the Borrower of even date herewith, which amount includes the principal balance now remaining unpaid on the Lost Notes. The Borrower further agrees and hereby waives any and all claims and/or rights in any way relating to or arising from the Lost Notes whether as a defense in any action brought by the Lender to enforce any of the terms of this Instrument or collect the full amount due and owing under this Instrument or the Amended and Restated Multifamily Note or otherwise. Borrower hereby indemnifies and holds the Lender harmless from and against any and all costs, liabilities, claims, damages, loss and expenses, including attorney's fees and expenses which at any time may be made, suffered or

incurred by the Lender based upon the failure of the Lender to hold, obtain or deliver the Lost Notes.

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement or caused the same to be executed by their representatives thereunto duly authorized.

Sovereign Bank

By: 

Name: Margaret M. Fahy

Title: Authorized Signatory

538 East 89th, LLC

By: 

Name: Hugh Smyser

Title: Sole Member and Managing Member

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

On the 6th day of October, 2011, before me, the undersigned, personally appeared Hugh Smyser, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SEAL

Notary Public

DAVIDA STEIN
Notary Public, State of New York
No. 01ST6129347
Qualified in Nassau County
Commission Expires 06/20/20 *B*

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

On the 6th day of October, 2011, before me, the undersigned, personally appeared Margaret M. Fahy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

SEAL

TARA M. PUGLISI
Notary Public, State of New York
No. 01PU6059465
Qualified in Richmond County
Commission Expires May 29, 20 *15*

EXHIBIT "A" (Metes)

All that certain plot, piece, or parcel of land with the buildings and improvements thereon erected, 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 Southerly side of East 89th Street, distant 171 feet Westerly from the corner formed by the intersection of the Westerly side of East End Avenue with said Southerly side of East 89th Street;

RUNNING THENCE Southerly parallel with the Westerly side of East End Avenue and part of the way through a party wall, 100 feet 8 ½ inches to the center line of the block;

THENCE Westerly along the center line of the block, 25 feet;

THENCE Northerly parallel with the Westerly side of East End Avenue and part of the way through another party wall; 100 feet 8 ½ inches to the Southerly side of East 89th Street; and

THENCE Easterly along the Southerly side of East 89th Street, 25 feet to the point or place of BEGINNING.

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

SAID PREMISES being known as and by the street number 538 East 89th Street, New York, New York 10128.

EXHIBIT "B" (Mortgages)

1. (a) Mortgage dated February 4, 1998, made by 538 East 89th LLC to CFS Bank formerly known as Columbia Federal Savings Bank, in the principal sum of \$1,300,000.00, and interest, and duly recorded in said Register's Office on July 8, 1998, in Reel 2613 at Page 965 (upon which a mortgage tax of \$35,750.00 was paid, Receipt Number CP 3491);
2. which said mortgage, (a), above described, was thereafter duly spread by the terms of a Mortgage Spreader Agreement dated February 4, 1998, between 538 East 89th, LLC, 322 W. 87 LLC and CFS Bank formerly known as Columbia Federal Savings Bank, and duly recorded in said Register's Office on July 8, 1998, in Reel 2613 at Page 985;
3. Release Agreement dated November 15, 2001 between New York Community Bank successor to CFS Bank and 538 East 89th LLC and duly recorded in said Register's Office on February 1, 2002, in Reel 3442 at Page 2138, which released a portion of the premises described in the Mortgage Spreader Agreement in Reel 2613 at Page 985;
4. (b) Mortgage dated December 29, 1998, made by 538 East 89th, LLC to CFS Bank, in the principal sum of \$125,000.00, and interest, and duly recorded in said Register's Office on March 30, 1999, in Reel 2846 at Page 1509 (upon which a mortgage tax of \$2,500.00 was paid, Receipt Number CP15993);
5. (c) Mortgage dated November 2, 2001, made by 538 East 89th LLC to New York Community Bank, successor to CFS Bank, in the principal sum of \$52,125.99, and interest, and duly recorded in said Register's Office on December 26, 2001, in Reel 3415 at Page 482 (upon which a mortgage tax of \$1,042.00 was paid, Receipt Number CS 8056);
6. which said three (3) mortgages, (a), (b), and (c), above described, were thereafter duly consolidated into one joint lien and first mortgage in the principal sum of \$1,405,000.00, and interest, by the terms of a Consolidation, Extension and Modification Agreement dated November 2, 2001, between 538 East 89th LLC and New York Community Bank, successor to CFS Bank, and duly recorded in said Register's Office on December 26, 2001, in Reel 3415 at Page 496;
7. which said three (3) mortgages, (a), (b), and (c), above described, as consolidated, were thereafter duly assigned by New York Community Bank to Atlantic Bank of New York by instrument of assignment dated November 6, 2003, and duly recorded in said Register's Office on March 3, 2004, as City Register File Number 2004000129467;
8. (d) Mortgage dated November 6, 2003, made by 538 East 89th, LLC to Atlantic Bank of New York, in the principal sum of \$472,366.12, and interest, and duly recorded in said Register's Office on March 3, 2004, as City Register File Number 2004000129468 (upon which a mortgage tax of \$9,448.00 was paid);

9. which said four (4) mortgages, (a), (b), (c), and (d), above described, were thereafter duly consolidated into one joint lien and first mortgage in the principal sum of \$1,850,000.00, and interest, by the terms of a Consolidation, Extension and Modification Agreement dated November 6, 2003, between 538 East 89th, LLC and Atlantic Bank of New York, and duly recorded in said Register's Office on March 3, 2004, as City Register File Number 2003000129469;

10. (e) Mortgage dated August 7, 2008, made by 538 East 89th, LLC to New York Commercial Bank, successor in interest to Atlantic Bank of New York, in the principal sum of \$387,557.72, and interest, and duly recorded in said Register's Office on September 3, 2008, as City Register File Number 2008000350447 (upon which a mortgage tax of \$7,945.80 was paid);

11. which said five (5) mortgages, (a), (b), (c), (d), and (e), above described, were thereafter duly consolidated into one joint lien and first mortgage in the principal sum of \$2,100,000.00, and interest, by the terms of a Consolidation, Extension and Modification Agreement dated August 7, 2008, between 538 East 89th, LLC and New York Commercial Bank, successor in interest to Atlantic Bank of New York, and duly recorded in said Register's Office on September 3, 2008, as City Register File Number 2008000240448;

on which said five (5) mortgages, (a), (b), (c), (d), and (e), above described, there now remains unpaid the principal sum of \$2,009,526.17, and interest;

12. which said five (5) mortgages, (a), (b), (c), (d), and (e), above described, were thereafter duly assigned by New York Commercial Bank, as successor in interest to Atlantic Bank of New York to Sovereign Bank, by instrument of assignment dated October 3, 2011, and intended to be recorded simultaneously herewith;

13. (f) Mortgage dated October 6, 2011, made by 538 East 89th, LLC to Sovereign Bank, in the principal sum of \$90,473.83, and interest, and intended to be recorded simultaneously herewith (upon which a mortgage tax of \$1,855.25 is to be paid);

EXHIBIT "C"
SECURITY AGREEMENT

**MULTIFAMILY MORTGAGE,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

THIS MULTIFAMILY MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "**Instrument**") is dated this 6th day of October, 2011, between 538 East 89th LLC, a Limited Liability Company, organized and existing under the laws of New York, with a principal place of business at 538 East 89th Street, Apt. #5, New York, New York 10128, as mortgagor ("**Borrower**"), and Sovereign Bank, a federal savings bank, with a place of business at 195 Montague Street, Brooklyn, New York 11201, as mortgagee ("**Lender**").

Borrower is indebted to Lender in the principal amount of Two Million One Hundred Thousand and 00/100 Dollars (US \$2,100,000.00), as evidenced by Borrower's Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on November 1, 2016.

TO SECURE TO LENDER the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in New York County, State of New York and described in Exhibit A attached to this Instrument.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Mortgaged Property.

Covenants. Borrower and Lender covenant and agree as follows:

1. Definitions.

The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(b) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(c) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(d) **"Event of Default"** means the occurrence of any event listed in Section 22.

(e) **"Fixtures"** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(f) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(g) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state

or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(h) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs.

(i) **"Impositions"** and **"Imposition Deposits"** are defined in Section 7(a).

(j) **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(k) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument.

(l) [Intentionally omitted]

(m) **"Key Principal"** means (A) the natural person(s) or entity identified as such at the foot of this Instrument; (B) the natural person or entity who signed either the Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability or the Exceptions to Non-Recourse Guaranty (or is otherwise a guarantor on the Indebtedness); and (C) any person or entity who becomes a Key Principal after the date of this Instrument and is identified as such in an assumption agreement, or another amendment or supplement to this Instrument or who otherwise signs either the Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability or Exceptions to Non-Recourse Guaranty (or any other guaranty of the Indebtedness).

(n) **"Land"** means the land described in Exhibit A.

(o) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(p) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.

(q) **"Loan Documents"** means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, and any other documents now or in the future executed by Borrower, Key Principal, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(r) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.

(s) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

- (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
- (10) all Rents and Leases;
- (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all Imposition Deposits;
- (13) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (14) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
- (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(t) "Note" means the Multifamily Note described on page 1 of this Instrument, including the Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability (if any), and all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.

(u) **"O&M Program"** is defined in Section 18(a).

(v) **"Personalty"** means all equipment, inventory, general intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

(w) **"Property Jurisdiction"** is defined in Section 30(a).

(x) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(y) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(z) **"Transfer"** means (A) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (B) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of a direct or indirect ownership interest; or (D) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

(aa) **"Bankruptcy Event"** means any one or more of the following: (i) the commencement of a voluntary case under one or more of the Insolvency Laws by the Borrower; (ii) the acknowledgment in writing by the Borrower that it is unable to pay its debts generally as they mature; (iii) the making of a general assignment for the benefit of creditors by the Borrower; (iv) an involuntary case under one or more Insolvency Laws against the Borrower; (v) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who

exercises control over the Borrower or any substantial part of the assets of the Borrower provided that any proceeding or case under (iv) or (v) above is not dismissed within 90 days after filing.

(bb) **"Borrower Affiliate"** means, as to either Borrower or Key Principal, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower or of Key Principal, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by Borrower or by Key Principal, (iii) any partner, shareholder or, if a limited liability company, member of Borrower or Key Principal, or (iv) any other entity that is related (to the third degree of consanguinity) by blood or marriage to Borrower or Key Principal.

(cc) **"Insolvency Laws"** means the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding, as amended from time to time, to the extent applicable to the Borrower.

2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, **"UCC Collateral"**), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

3. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish

a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(s). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not

performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(s). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or

persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. EXCULPATION.

Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19, (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "**Imposition Deposits**". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "**Impositions**". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon notice to Borrower.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay

Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Instrument and the other Loan Documents. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

8. COLLATERAL AGREEMENTS.

Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

9. APPLICATION OF PAYMENTS.

If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. COMPLIANCE WITH LAWS.

Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding (including a Bankruptcy Event) is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately