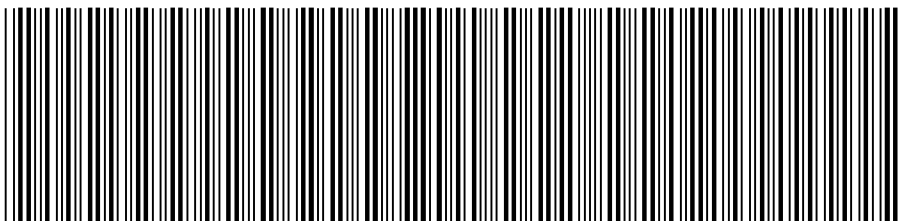


**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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):

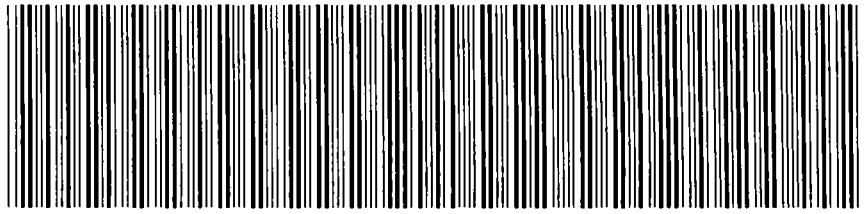
2011000421467



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.

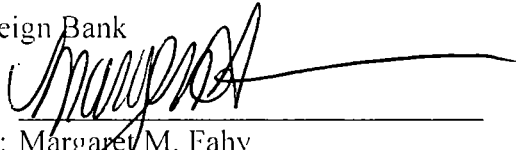
6. LOST NOTE(S).

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

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an "**O&M Program**") or matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (3) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and
- (3) any representation or warranty in this Section 18 becomes untrue after the date of this Agreement.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the

Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (1) any breach of any representation or warranty of Borrower in this Section 18;
- (2) any failure by Borrower to perform any of its obligations under this Section 18;

- (3) the existence or alleged existence of any Prohibited Activity or Condition;
- (4) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and
- (5) the actual or alleged violation of any Hazardous Materials Law.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Lender agrees that the indemnity under this Section 18 shall be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any natural persons who are general partners of Borrower.

(n) Borrower shall, at its own cost and expense, do all of the following:

- (1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnites in any legal or administrative proceeding incident to any matters against which Indemnites are entitled to be indemnified under this Section 18;
- (2) reimburse Indemnites for any expenses paid or incurred in connection with any matters against which Indemnites are entitled to be indemnified under this Section 18; and
- (3) reimburse Indemnites for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnites of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which

shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out-of-pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the greater of (A) the debt service coverage ratio as of the date of this Instrument (based on the final underwriting of the Mortgaged Property) or (B) the debt service coverage ratio immediately prior to the loss (in each case, Lender's determination shall include all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property); (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 19.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to

any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "**Condemnation**"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

(1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;

(2) a Transfer of a Controlling Interest in Borrower;

(3) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;

(4) a Transfer of all or any part of a Key Principal's ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower (other than a Transfer of an aggregate beneficial ownership interest in the Borrower of 49% or less of such Key Principal's original ownership interest in the Borrower and which does not otherwise result in a Transfer of the Key Principal's Controlling Interest in such intermediate entities or in the Borrower);

(5) if Key Principal is an entity, (A) a Transfer of a Controlling Interest in Key Principal, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Key Principal;

(6) if Borrower or Key Principal is a trust, the termination or revocation of such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Key Principal must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);

(7) if Key Principal is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);

(8) the merger, dissolution, liquidation, or consolidation of (i) Borrower, (ii) any Key Principal that is a legal entity, or (iii) any legal entity holding, directly or indirectly, a Controlling Interest in the Borrower or in any Key Principal that is an entity;

(9) conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer; if such conversion results in a change in any assets, liabilities, legal rights or obligations of Borrower (or of Key Principal, guarantor, or any general partner of Borrower, as applicable), by operation of law or otherwise; and

(10) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Borrower and/or, if Key Principal is an entity, Key Principal, separate from the Transfer of the underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Agreement

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary:

(1) a Transfer to which Lender has consented;

(2) except as provided in Section 21(a)(6) and (7), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;

(3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

(4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;

(5) the grant of an easement, servitude, or restrictive covenant if, before the grant, Lender determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request;

(6) the creation of a tax lien or a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is bonded off, released of record, or otherwise remedied to Lender's satisfaction within 45 days after Borrower has actual or constructive notice of the existence of such lien; and

(7) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument.

(c) Lender shall consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

(1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);

(2) the absence of any Event of Default;

(3) the transferee meets all of the eligibility, credit, management, and other standards (including any standards with respect to previous relationships between Lender

and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(5) if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement (including, if applicable, an Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability) that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender;

(6) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a substitute guaranty in a form acceptable to Lender;

(7) Lender's receipt of all of the following:

(A) a non-refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer; and

(B) Borrower's reimbursement of all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000; and

(8) Borrower has agreed to Lender's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (i) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (ii) restore to original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

(1) **"Initial Owners"** means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note, directly or indirectly, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(2) A Transfer of a **"Controlling Interest"** shall mean:

(A) with respect to any entity, the following:

(i) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;

(ii) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any partnership interests which would cause the Initial Owners to own less than 51% of all limited partnership interests in such entity;

(iii) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(iv) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

(v) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(vi) if such entity is a trust (other than a Publicly-Held Trust), the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such

removal, appointment, or substitution is a trustee identified in the trust agreement approved by Lender; and/or

(B) any agreement (including provisions contained in the organizational and/or governing documents of Borrower or Key Principal) or Transfer not specified in clause (A), the effect of which, either immediately or after the passage of time or occurrence of a specified event or condition, including the failure of a specified event or condition to occur or be satisfied, would (i) cause a change in or replacement of the Person that controls the management and operations of the Borrower or Key Principal or (ii) limit or otherwise modify the extent of such Person's control over the management and operations of Borrower or Key Principal.

(3) **"Publicly-Held Corporation"** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

(4) **"Publicly-Held Trust"** shall mean a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Section 12 (b) or 12 (g) of the Securities Exchange Act of 1934, as amended.

(e) Lender shall be provided with written notice of all Transfers under this Section 21, whether or not such Transfers are permitted under Section 21(b) or approved by Lender under Section 21(c), no later than 10 days prior to the date of the Transfer."

22. EVENTS OF DEFAULT.

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

(a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 33;

(d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, Key Principal or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any (i) Event of Default under Section 21 and/or (ii) occurrence of a Bankruptcy Event;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(g) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (f)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(h) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document; and

(i) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.

23. REMEDIES CUMULATIVE.

Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement;

release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. LOAN CHARGES.

If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

26. WAIVER OF STATUTE OF LIMITATIONS.

Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

27. WAIVER OF MARSHALLING.

Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon

the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

28. FURTHER ASSURANCES.

Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

29. ESTOPPEL CERTIFICATE.

Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

31. NOTICE.

(a) All notices, demands and other communications ("**notice**") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 31.

32. SALE OF NOTE; CHANGE IN SERVICER.

The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change.

33. SINGLE ASSET BORROWER.

Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

34. SUCCESSORS AND ASSIGNS BOUND.

This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 21 shall be an Event of Default.

35. JOINT AND SEVERAL LIABILITY.

If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "**Servicing Arrangement**") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

37. SEVERABILITY; AMENDMENTS.

The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

38. CONSTRUCTION.

The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of

the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

39. LOAN SERVICING.

All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

40. DISCLOSURE OF INFORMATION.

Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES.

All information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

42. SUBROGATION.

If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "**Prior Lien**"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

43. ACCELERATION; REMEDIES.

At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceeding, shall be entitled to the appointment of a receiver,

without notice, and may invoke any other remedies permitted by New York law or provided in this Instrument or in any other Loan Document. Lender may, at Lender's option, also foreclose this Instrument for any portion of the Indebtedness which is then due and payable, subject to the continuing lien of this Instrument for the balance of the Indebtedness. Lender shall be entitled to collect all costs and expenses allowed by New York law, including attorneys' fees, costs of documentary evidence, abstracts, title reports statutory costs and any additional allowance made pursuant to Section 8303 of the Civil Practice Law and Rules. The rights and remedies of Lender specified in this Instrument shall be in addition to Lender's rights and remedies under New York law, specifically including Section 254 of the Real Property Law. In the event of any conflict between the provision of this Instrument and the provisions of Section 254 of the Real Property Law, the provisions of this Instrument shall control.

44. SATISFACTION OF DEBT.

Upon payment of the Indebtedness, Lender shall discharge this Instrument. Borrower shall pay Lender's reasonable costs incurred in discharging this Instrument.

45. LIEN LAW.

Borrower will receive advances under this Instrument subject to the trust fund provisions of Section 13 of the Lien Law.

46. WAIVER OF TRIAL BY JURY.

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

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ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

☒	Exhibit A	Description of the Land (required).
☒	Exhibit B	Modifications to Instrument

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

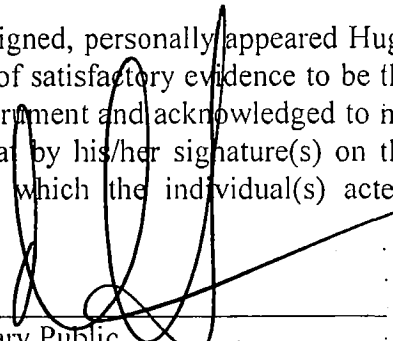
538 East 89th, LLC

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

KEY PRINCIPAL

Key Principal(s):

Name: Hugh Smyser
Address: 538 East 89th Street, Apt. #5
New York, New York 10128

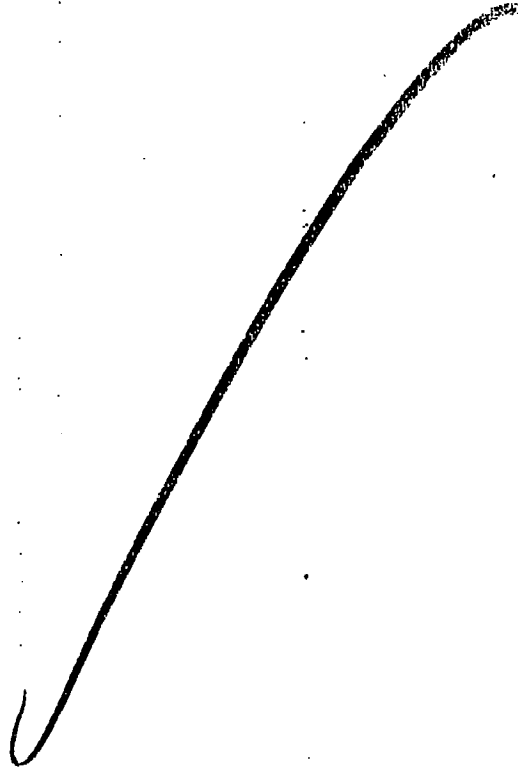


EXHIBIT A

[DESCRIPTION OF THE LAND]

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

MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

A. AMENDED DEFINITIONS.

Section 1(z) of the Instrument is hereby amended by:

- (i) deleting the "or" at the end of part (C); and
- (ii) deleting the period at the end of part (D) and substituting ";" therefor; and
- (iii) adding the following as new parts (E) through (H):

"(E) an installment sales contract; (F) a lease with an option to buy; (G) any lease for more than three (3) years including renewal terms (other than renewals required by applicable law); and (H) the creation of any other lien or encumbrance involving a transfer of rights of occupancy and not otherwise permitted under the Loan Documents."

B. MODIFICATIONS TO SECTION 7.

The following Sections 7(f), 7(g), 7(h), and 7(i) shall be added to Section 7 of the Instrument:

" (f) Notwithstanding anything contained in this Section 7, or in Sections 15(a) or 15(d) to the contrary, Lender shall conditionally waive the collection of Impositions for any "metered" water and sewer charges required under Section 7(a)(1) ("Conditional Waiver of Impositions") and Borrower shall pay, or cause to be paid such Impositions so long as the following conditions (collectively, "Waiver Conditions") are met: (1) Borrower shall provide Lender with (A) proof of payment, satisfactory to Lender, of all such Impositions not later than five (5) business days prior to the due date of such Impositions and, with respect to such metered water and sewer charges, prior to the imposition of any interest, fines, late charges, penalties, or other costs of nonpayment and (B) such other documentation as Lender may require in connection with the payment of such Impositions within five (5) business days after Lender's request, (2) no Fannie-Mae tier-dropping second lien loan shall have been originated with respect to the Mortgaged Property, and (3) no Event of Default shall have occurred. At any time that any of the Waiver Conditions are not met, then, at Lender's discretion, the Conditional Waiver of Impositions shall become null and void, the requirements of Section 7(a)(1) of this Instrument with respect to the payment of Imposition Deposits to Lender shall automatically become effective, and Borrower shall, within five (5) business days after

written demand by Lender, deposit with Lender such amounts as Lender deems necessary to sufficiently enable Lender to pay such Impositions pursuant to this Section 7.

(g) The Conditional Waiver of Impositions shall become null and void upon any Transfer requiring the consent of Lender pursuant to the terms and provisions of Section 21(c) of this Instrument.

(h) Borrower agrees that the Conditional Waiver of Impositions shall in no way modify any other terms of this Instrument, including, but not limited to, the requirements of Section 19 hereof.

(i) The Conditional Waiver of Impositions shall not result in any rebates of or reductions to the cost of a tax service contract and Borrower shall immediately, upon demand by Lender, reimburse Lender for the costs thereof or such costs shall become an additional part of the Indebtedness as provided in Section 12 of this Instrument. "

C. MODIFICATIONS TO SECTION 14.

Section 14 of the Instrument is hereby modified by:

(i) adding the following to the end of Section 14(b)(1):

"As of the date of this Instrument, and so long as (i) the Borrower remains a housing cooperative or (ii) the original principal balance of the Note is \$3,000,000 or less (or \$5,000,000 or less if the Mortgaged Property is located in an eligible "high-cost" metropolitan statistical area as specified by Lender from time to time), Borrower shall not be required to furnish Lender the quarterly statements of income and expense and the quarterly rent roll pursuant to Sections 14(b)(1)(i) and 14(b)(2)(i) of the Instrument, (i) until such time as Lender provides written notification to Borrower that compliance with such Sections are required or (ii) upon the occurrence of an Event of Default (in which event no written notice by Lender shall be required)." and

(ii) deleting the contents of Section 14(d) and substituting in its place the following:

"(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Borrower shall be immediately assessed a fee of not less than \$500.00 for such failure and Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and said fine as well as all related costs and expenses of Lender shall become immediately due and payable, without any further notice or demand, and shall become an additional part of the Indebtedness as provided in Section 12."

D. MODIFICATIONS TO SECTION 16.

Section 16 of the Instrument is hereby modified by adding the following as a new paragraph to the end thereof:

"Notwithstanding the above, subject exclusively to the Lender's policies and procedures at the time of Borrower's written request and not prior to the third year of the term of the loan secured hereby, the Lender may, at Borrower's written request, agree to make a loan secured by a subordinate lien against the Mortgaged Property in compliance with Fannie Mae's Supplemental Loan Program in effect at that time (the "Subordinate Mortgage") in an amount which when added to the then unpaid balance of the Indebtedness shall have a loan-to-value ratio of not greater than 75% nor debt service coverage ratio of less than 1.35 based on the underwriting of the Lender at the time of Borrower's request (provided, however, that if the loan-to-value and/or debt service coverage ratios then required by Fannie Mae under its Supplemental Loan Program differ from the above limitations, the above limitations shall be amended so as to equal the limitations as then set forth under the Supplemental Loan Program). The loan-to-value and debt service coverage will be computed by the Lender after review of (i) a current appraisal of the Mortgaged Property; (ii) a current income and expense statement for the Mortgaged Property and financial statements for the Borrower and all Key Principals as required under Section 14 of this Instrument and such additional information as the Lender may request. The Subordinate Mortgage is further subject to the following conditions: (a) no Event of Default has occurred and is continuing; (b) there has been no adverse change in the environmental status of the Mortgaged Property based on a then current Phase I report; (c) the proceeds of the Subordinate Mortgage shall be expended solely for capital improvements to the Mortgaged Property; (d) all costs and expenses of such underwriting, appraisal, environmental review, and closing of the Subordinate Mortgage loan shall be paid by the Borrower; (e) the Subordinate Mortgage shall be and remain subject and subordinate in all respects to the lien of this Instrument and to any modifications, extensions, or renewals hereof; (f) the Borrower shall not be permitted to increase, amend, modify, extend or renew such Subordinate Mortgage without the prior written consent of the Lender; and (g) any default by the Borrower under any of the terms of the Subordinate Mortgage shall be deemed an Event of Default under the terms of this Instrument and any Event of Default under the terms of this Instrument shall be deemed a default under the terms of the Subordinate Mortgage."

E. MODIFICATIONS TO SECTION 18.

Section 18 of the Instrument is hereby modified by:

- (i) deleting Section 18(m); and
- (ii) deleting the contents of Section 18(e)(3) and substituting in its place the following:

“(3) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws and Borrower shall deliver, on an annual basis, a pressure testing certificate acceptable to the Lender in its sole determination for any underground storage tank at the Mortgaged Property;

F. MODIFICATIONS TO SECTION 21.

Section 21 of the Instrument is hereby modified by:

(i) deleting the contents of Section 21(a)(4) and substituting in its place the following:

“(4) a Transfer of all or any part of a Key Principal's ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower;”;

(ii) deleting Section 21(a)(7) in its entirety and substituting in its place the following:

“(7) if Key Principal is a natural person, the death of such individual unless (i) Lender is notified in writing within 90 days after such individual's death and (ii) such individual is replaced, if required by Lender, with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 180 days after such individual's death (the “Replacement Period”). Notwithstanding the foregoing, the Replacement Period may be extended, at Lender's discretion, for a period not to exceed 185 days from the last day of the initial Replacement Period (the “Extended Replacement Period”), provided:

(I) Borrower, if required by Lender, either (i) replaces the current property manager with a property manager reasonably acceptable to Lender, or, (ii) engages a property manager reasonably acceptable to Lender if a property manager has not been previously engaged; and/or

(II) Borrower (and the property manager), if required by Lender, institutes a lockbox or cash management arrangement reasonably acceptable to Lender during the Extended Replacement Period.

No property inspection shall be required and the 1% transfer fee will not be charged if the foregoing requirements are timely satisfied;”

(iii) deleting Section 21(a)(9);

(iv) amending Section 21(b) by deleting the word "and" following sub-section "(6)", deleting the period at the end of sub-section "(7)" and replacing it with "; and" and adding the following as sub-sections "21(b) (8)", "21(b) (9)", and "21(b) (10)":

"(8) A Transfer of ownership interests of the Borrower between and among the Initial Owners;

(9) A Transfer of ownership interests of an Initial Owner to his/her spouse and/or non minor child or children and/or to trusts of which the Initial Owner, the spouse of the Initial Owner or their child or children are the sole beneficiaries; and

(10) A Transfer of the Mortgaged Property to a partnership, a corporation, a limited liability company, or to any other entity, solely for the purpose of Borrower changing its organizational structure, provided the Initial Owners and/or the parties permitted under subsections "(8)" and "(9)" above continue to hold a 100% equity interest in said entity."

(v) deleting the introductory paragraph of Section 21(c) and substituting in its place the following:

"Lender shall consent to a one-time Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:"

(vi) deleting Section 21(c)(4) and substituting in its place the following:

"(4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties, including but not limited to loan to value ratios, debt service coverage ratios, and environmental condition, unless partially waived by Lender in exchange for such additional conditions as Lender may require;"

(vii) deleting Section 21(c)(7)(B) and substituting in its place the following:

"(B) Borrower's reimbursement of all of Lender's out-of-pocket costs (including but not limited to environmental reports and reasonable attorneys' fees) incurred in reviewing the Transfer request."

(viii) amending Sections 21(d)(2)(A)(i), 21(d)(2)(A)(ii), 21(d)(2)(A)(iii), and 21(d)(2)(A)(iv) by deleting the words "Initial Owners to own less than 51% of" and replacing same in all instances with the words "Initial Owners to own less than 100% of".

G. MODIFICATIONS TO SECTION 22.

Section 22(g) of this Instrument is deleted and the following is substituted in its place:

"(g) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (f)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, however, in the event such failure cannot, in the sole determination of the Lender, be cured within such thirty (30) day period, and provided the Borrower has immediately commenced to take all action necessary to cure such failure and continues to proceed diligently, without interruption and in good faith to cure such failure, Lender may in its sole discretion grant the Borrower an additional thirty (30) day period within which time all actions required as set forth in the Lender's notice of such failure shall be completed, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;"

H. ASSIGNMENT OF MORTGAGE.

The following is added to Section 44 of the Instrument:

"So long as no Event of Default has occurred and is continuing, Lender agrees that, upon payment in full of the Indebtedness, Lender shall execute a satisfaction of mortgage or, upon the written request of the Borrower, an assignment of mortgage, the form and content of which shall be in the sole discretion of the Lender, subject, however in the case of an assignment of mortgage to the following: (i) the delivery of an assignment of mortgage is in accordance with and permitted under the laws of the State of New York existing at that time, and (ii) the delivery of an assignment of mortgage and/or the agreement to deliver same hereby shall not adversely affect Lender. Borrower agrees to pay all costs in connection with such satisfaction or assignment including, but not limited to, an assignment of mortgage processing fee to the Lender and the fees of Lender's attorneys and the Borrower further agrees that Lender shall not be responsible for any fees, costs, or expenses incurred by reason of Lender's inability, for whatever reason, to comply herewith. "

I. FEES, COSTS AND EXPENSES.

The Instrument is amended by adding the following provision to be known as Section 47.

“(a) Borrower shall pay all costs and expenses in connection with the Indebtedness and the preparation, execution, and delivery of the Loan Documents including, but not limited to, fees and disbursements of counsel appointed by Lender, and all recording costs and expenses, documentary stamp tax and intangible tax on the entire amount of funds disbursed under the Loan Documents, and other taxes, surveys, appraisals, premiums for policies of title and other insurance, fees for the establishment of and the annual service for any realty tax contracts, and all other fees, costs and expenses, if any, connected with this loan transaction.

(b) Borrower shall pay or reimburse Lender for all costs, charges, expenses, and reasonable attorneys' fees paid or incurred by Lender pursuant to this Instrument including but not limited to those costs, charges, expenses and fees paid or incurred in connection with the payment of the Impositions, insurance, completion of construction, repairs, or in any action, proceeding or dispute of any kind in which Lender is a party, including, but not limited to, the foreclosure or other enforcement of this Instrument, any condemnation or eminent domain action involving the Mortgaged Property or any part thereof, any action to protect the security hereof, or any proceeding in probate, reorganization, bankruptcy, or forfeiture in rem. All such amounts paid or incurred by Lender, together with interest thereon at the Default Rate (as defined in the Note) from the date incurred by Lender, shall be secured by this Instrument and shall be due and payable by Borrower immediately, whether or not there be notice or demand therefor.

(c) Any reference in this Instrument to attorneys' or counsels' fees paid or incurred by Lender shall be deemed to include paralegals' fees and legal assistants' fees. Moreover, wherever provision is made herein for payment of attorneys' or counsels' fees or expenses incurred by the Lender, said provision shall include, but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

(d) In addition to any other provisions herein with respect to the payment of fees, costs and expenses, Borrower covenants to pay to Lender the charge(s), including the fees and charges of Lender's attorneys, which Lender may, at its option, impose and/or incur for (a) the processing on its records of any change of ownership or substitution of bondsman which may have been permitted or approved by Lender in accordance with this Instrument, (b) any letter advice as to the amount of principal and interest owing on the Indebtedness, (c) any inspection(s) of the Mortgaged Property, including without limitation any inspection(s) of the Mortgaged Property permitted hereunder or required in connection with any escrow(s) that may be held by Lender or in connection with payment of insurance loss proceeds or condemnation award(s), or (d) any and all other matters, documents, inquiries or agreements relating to, in connection with or arising as a result of approvals given by Lender in accordance with this Instrument, including without limitation, any modification, extension, advance, additional loan, future advance, lease, consent (including without limitation, any consents to a lease, replacement lease, lease modification, subordination and non-disturbance agreement, change in tenant(s), subletting and/or assignment of any lease), escrow agreement, subordination, waiver, easement, special agreement, reduction certificate, estoppel, assignment, satisfaction or discharge.

Any such costs, charges, expenses, and/or fees paid or incurred by Lender pursuant to this Section 47 which Borrower fails to pay promptly shall immediately and without any further notice or demand become an additional part of the Indebtedness as provided in Section 12."

J. NO REPRESENTATION BY LENDER.

The Instrument is amended by adding the following provision to be known as Section 48.

"By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Lender, pursuant to this Instrument, or the other Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement, survey or appraisal, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Lender."

K. ACCOUNT(S).

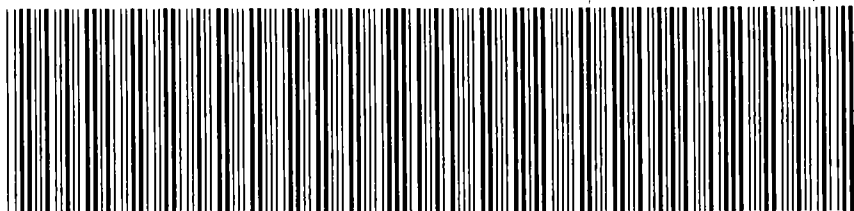
The Instrument is amended by adding the following provision(s) to be known as Section 49.

"The Borrower covenants and agrees that it has opened a Master Tenant Lease Security Account with the Lender (the "Security Deposit Account"), covering all lease security deposits for all leases for the Mortgaged Property, if any. The Borrower further agrees that it shall maintain the Security Deposit Account until repayment of the Indebtedness."

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Note or the Instrument that precedes this Exhibit.


BORROWER'S INITIALS

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



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SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2011100700755003

Document Date: 10-06-2011

Preparation Date: 11-02-2011

Document Type: AGMT

SUPPORTING DOCUMENTS SUBMITTED:

255 MORTGAGE TAX EXEMPT AFFIDAVIT

Page Count
10



7213468 - 145 Affidavit 255

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

Premises known as and by the street number:

538 East 89th Street

New York, New York 10128

x

: 255

: Affidavit

: Consolidation

: Agreement

x

State of New York)

: ss.:

County of New York)

Hugh Smyser, being duly sworn, deposes and says:

I am the Sole Member and Managing Member of 538 East 89th, LLC, the owner ("Owner") of the captioned premises. Deponent is familiar with the mortgages covering the captioned premises.

Sovereign Bank, with offices at 195 Montague Street, Brooklyn, New York 11201, is entering into a Consolidation, Extension and Modification Agreement with Owner, which agreement dated October 6, 2011 (hereinafter "Consolidation Agreement"), is herewith submitted for recording. Said Consolidation Agreement extends the time and modifies the manner of payment of the mortgages hereinafter described.

All applicable mortgage recording taxes were duly paid at the time of recording all mortgages (including the mortgage of even date herewith) as shown by the endorsement to such effect thereon, as summarized below and specifically set forth on the attached Schedule.

Unpaid principal of First Mortgage(s) prior to this transaction:	\$2,009,526.17
New Mortgage made this day as part of this transaction:	\$90,473.83

The total sum secured under said mortgages, as consolidated, is the sum of \$2,100,000.00. That said amount of \$2,100,000.00 was loaned thereon and became secured thereby.

That after said amount became secured thereby, no reloans or re-advances have become secured thereunder to the date of execution of the above mentioned Consolidation Agreement submitted herewith for recording.

There is presently owing on the aforesaid mortgages, as consolidated, the principal sum of \$2,100,000.00 with interest thereon, as recited in said Consolidation Agreement.

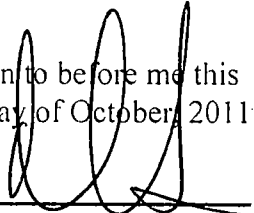
The aforesaid Consolidation Agreement does not create or secure any new or further indebtedness or obligation other than the original indebtedness or obligation secured by or which under any contingency may be secured by the aforesaid mortgages.

WHEREFORE, deponent respectfully requests that said Consolidation Agreement dated October 6, 2011 be otherwise declared exempt from taxation pursuant to the provisions of Section 255 of Article II of the Tax Law.



Hugh Smyser

Sworn to before me this
6th day of October, 2011



Notary Public

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

SEAL

Schedule of Mortgages and Mortgage Taxes

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;

13. 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;

14. (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);

15. which said six (6) mortgages, (a), (b), (c), (d), (e), (f), 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 October 6, 2011, between 538 East 89th, LLC and Sovereign Bank, and intended to be recorded simultaneously herewith.



7213468 - 145 Affidavit 255

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

-----	X
Premises known as and by the street number:	: 255
538 East 89th Street	: Affidavit
New York, New York 10128	: Consolidation
-----	: Agreement
	X

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

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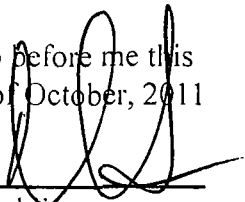
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Hugh Smyser

Sworn to before me this
6th day of October, 2011



Notary Public

DAVIDA STEIN
Notary Public, State of New York
No. 01ST6129347
Qualified in Nassau County
Commission Expires 06/20/20 **13**

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