

KEY PRINCIPAL

Key Principal(s):

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

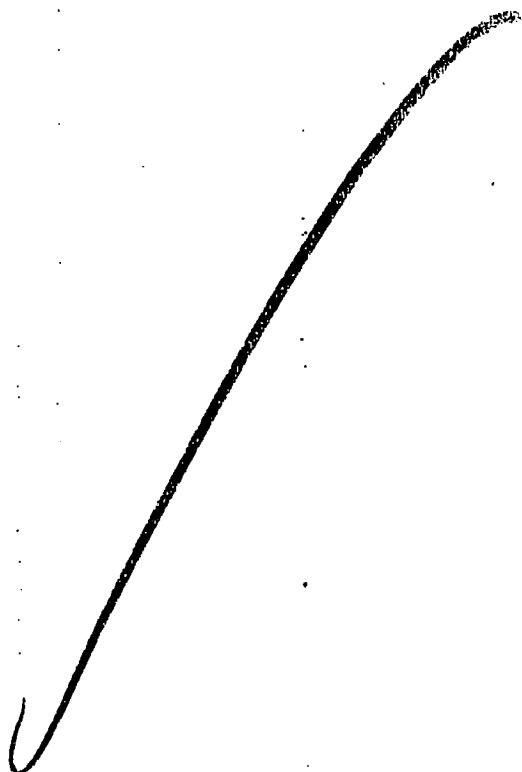


EXHIBIT A

[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 1/2 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 1/2 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.

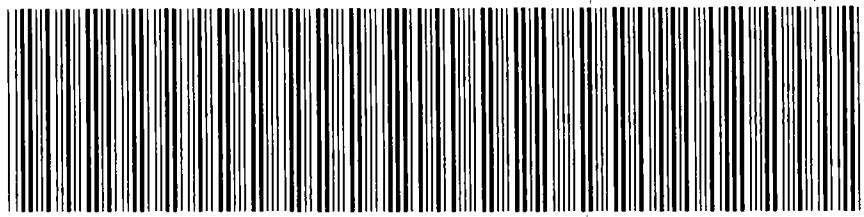
"The Borrower covenants and agrees that it has opened a Master Tenant Lease Security Account with the Lender (the "Security Deposit Account"), covering all lease security deposits for all leases for the Mortgaged Property, if any. The Borrower further agrees that it shall maintain the Security Deposit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



2011100700755003002SD33A

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.

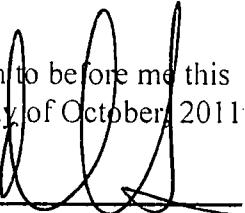
There is presently owing on the aforesaid mortgages, as consolidated, the principal sum of \$2,100,000.00 with interest thereon, as recited in said Consolidation Agreement.

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 13

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

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

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

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.

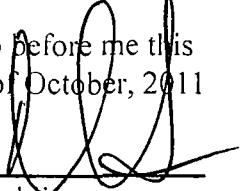
There is presently owing on the aforesaid mortgages, as consolidated, the principal sum of \$2,100,000.00 with interest thereon, as recited in said Consolidation Agreement.

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.