

“(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