

Hearing Date and Time:

January 15, 2026 @ 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

BROADWAY REALTY I CO., LLC., *et al.*,

Debtors.

-----X

Chapter 11

Case No. 25-11050 (DSJ)

(Jointly Administered)

**DECLARATION IN SUPPORT OF RESTATED  
SUPPLEMENTAL OBJECTION TO CONFIRMATION OF  
PLAN AND TO SALE OF PROPERTIES**

BRENT MELTZER declares and says as follows:

1. I am the Chief of the Housing Protection Unit in the Office of the New York State Attorney General (“OAG”).

2. The OAG is New York State’s chief law enforcement agency. The Attorney General serves the public interest of all New Yorkers in matters affecting their daily lives, enforcing laws to protect consumers, tenants, patients, workers, investors, and charitable donors. The office coordinates statewide civil and criminal investigations and promote economic and social justice. In 2019, OAG created the Housing Protection Unit to focus specifically on protecting tenants and encouraging the preservation of affordable housing.

3. I submit this declaration in support of the City of New York’s objection to confirmation of the Plan and to the sale of the debtor’s properties to Summit Gold Inc. As the chief law enforcement agency in New York State, the OAG has an interest in enforcing the laws of New York State and protecting the rights of its residents.

4. The OAG has significant concerns about Summit Gold Inc. and its ability to manage the buildings due to its track record as owner of poorly maintained and dangerous residential buildings in New York evidenced by its buildings having thousands of Housing Maintenance Code violations for hazardous conditions.

5. By way of this declaration, the OAG seeks to provide the Court with information relevant to whether to grant the City's request.

**A. Summit's History in the New York Residential Market**

6. Upon information and belief, Summit Gold Inc. is a holding company for Summit Properties USA. *See* ECF No. 946. Summit Properties USA is a real estate investment company led by Zohar Levy, who is identified as the managing director. *See* <https://www.summit-properties.com/company.html> (last checked Jan. 11, 2026). Summit Properties USA is a subsidiary and holding company of Summit Properties Ltd (collectively identified as "Summit"). *Id.*

7. Prior to 2021, Summit had no experience owning or managing New York City residential rental properties. *See* Summit Properties Ltd, Annual Report and Accounts 2024, available at [https://www.summit-properties.com/downloads/2025-04-24\\_SPL\\_FS\\_2024.pdf](https://www.summit-properties.com/downloads/2025-04-24_SPL_FS_2024.pdf), at 29, Note 5C. In 2021, Summit decided to break into the New York City residential rental market and had a business plan to partner with a local New York City real estate company to jointly acquire properties in New York City through special purpose entity LLCs ("SPE"). *Id.* Summit funded 85-95% of the capital while the local partner contributed the remaining capital. *Id.* The local partner was responsible for the ongoing operation of the properties and the SPEs. *Id.*

8. Summit reports purchasing 90 residential properties in New York City in 2021 and 2022 comprising approximately 3000 housing units. *Id.* As will be discussed below, these properties have an inordinate number of Housing Maintenance Code violations and are associated with

Chestnut Holdings of New York, Inc and Joel Wiener, who the OAG sued for violation of the lead paint prevention laws.

**B. Summit's Relationship to Denali Management, Chestnut Holdings, and Joel Wiener and The High Violation Count Found in Their Buildings**

9. Deed and Mortgage records show that Summit's local partner is Denali Management ("Denali"). Upon information and belief, Denali is owned by Jonathan Wiener, who also owns Chestnut Holdings of New York, Inc. ("Chestnut").<sup>1</sup> See Exhibit A (Certificate of Incorporation of Chestnut Holdings of New York, Inc.).

10. Landlords and their property managing agents are required to file Multiple Dwelling Registrations with the New York City Department of Housing Preservation and Development ("HPD"). See New York State Multiple Dwelling Law § 325. For Summit buildings, the owners registered David Tennenbaum as an officer of the individual SPE. They also registered either Tennenbaum or Denali as the property managing agent. Tennenbaum and Denali registered their address as either 20 South Broadway, Suite 300, Yonkers or 49 West 27<sup>th</sup> Street, New York each of which are in buildings owned by Chestnut Commercial, which, upon information and belief, is owned by Jonathan Wiener. See <https://chestnutcommercial.com/our-properties/> ((last checked Jan. 11, 2026)).

11. David Tennenbaum identifies himself on LinkedIn as Senior Legal Coordinator at Chestnut Holdings. See <https://www.linkedin.com/in/david-tennenbaum-a3a55a17/> (last checked Jan. 11, 2026).

12. Other employees of Chestnut have also worked on behalf of the SPE and Denali. For instance, 776 Crown Street is a 53 unit building in Brooklyn that Summit lists as part of its portfolio. See <https://www.summit-us.com/properties/776-crown-street> (last checked Jan. 11,

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<sup>1</sup> Upon information and belief, Jonathan Wiener is the brother of the principal of the Debtor, Joel Wiener.

2026). According to HPD online records, the building has 258 open Housing Maintenance Code violations, 95 of which are immediately hazardous.<sup>2</sup>

13. The deed for 776 Crown Street identifies the owner of the property as 776 C LLC with an address of c/o Denali Management Inc, 20 South Broadway, Suite 300, Yonkers. *See* Exhibit B (776 Crown Street Deed). As discussed previously, the Yonkers building is owned by Chestnut Commercial.

14. An individual named Ben Rieder signed the mortgage on behalf of 776 C LLC as the Chief Operating Officer. *See* Exhibit C (776 Crown Street Mortgage). At the time Rieder signed the mortgage, he was also the Chief Operating Officer of Chestnut and “responsible for providing exclusive, full-time services to [Chestnut] . . .” *See* Exhibit D (Rieder Lawsuit) at ¶¶ 13-14).

15. Jonathan Wiener has also signed mortgages on behalf of Summit entities and those buildings also have a high violation count.

16. For instance, 2390 Creston Avenue is a 21 unit building in the Bronx that Summit lists as part of its portfolio. *See* <https://www.summit-us.com/properties/2390-creston-avenue> (last checked Jan. 11, 2026). According to HPD online records, the building has 193 open Housing Maintenance Code violations, 94 of which are immediately hazardous.

17. The deed for 2390 Creston Avenue identifies 2390 C LLC as the owner and lists its address c/o Denali at the Yonkers address. *See* Exhibit E (2390 Creston Avenue Deed). Jonathan

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<sup>2</sup> These violations and the Multiple Dwelling Registration information are prima facie evidence of the data and conditions therein. New York Multiple Dwelling Law § 328(3) allows New York City Housing Court to take judicial notice of HPD online records as if they were certified true under the seal and signature of HPD.



Wiener signed the mortgage on behalf of the SPE owner.<sup>3</sup> *See* Exhibit F (2390 Creston Avenue Mortgage).

18. Similarly, 1025 Longwood Avenue aka 801 Southern Blvd is a 20 unit building in the Bronx that Summit lists as part of its portfolio. *See* <https://www.summit-us.com/properties/801-southern-boulevard> (last checked Jan. 11, 2026). According to HPD Online records, the building has 139 open Housing Maintenance Code violations, 47 of which are immediately hazardous. The deed for 1025 Longwood again lists the owner with an address c/o Denali at the same Yonkers address and Jonathan Wiener signed the mortgage. *See* Exhibit G (1025 Longwood Avenue Deed); Exhibit H (1025 Longwood Avenue Mortgage).

19. The building at 344 East 209<sup>th</sup> Street is a 32 unit building in the Bronx that Summit lists as part of its portfolio. *See* <https://www.summit-us.com/properties/344-east-209th-street> (last checked Jan. 11, 2026). HPD's online records show there are 173 open Housing Maintenance Code violations, 76 of which are immediately hazardous. The deed again lists the owner with an address c/o Denali at the Yonkers address and the mortgage is signed by Jonathan Wiener. *See* Exhibit I (344 East 209<sup>th</sup> Street Deed); Exhibit J (344 East 209<sup>th</sup> Street Mortgage).

20. The building at 2961 Marion Avenue is a 79 unit building in the Bronx that Summit lists as part of its portfolio. *See* <https://www.summit-us.com/properties/344-east-209th-street> (last checked Jan. 11, 2026). HPD's online records show that there are 229 open Housing Maintenance Code violations at the building, of which 67 are immediately hazardous. The deed again lists the owner with an address c/o Denali at the Yonkers address and the mortgage was signed by Jonathan Wiener. *See* Exhibit K (2961 Marion Avenue Deed), Exhibit L (2961 Marion Avenue Mortgage).

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<sup>3</sup> Technically, Wiener signed as the managing member of 2390 C S 36 LLC, which in turn is identified as the managing member of 2390 C Holding LLC, and which is identified as the sole member of the SPE owner.

21. OAG's Research and Analytics Division has compiled a list of properties owned by Summit using HPD Multiple Dwelling Registration data. *See Exhibit M (List of Properties)*. A non-exhaustive review of the deeds for these properties show that almost all listed the SPE with an address of C/O Denali Management, 20 S. Broadway, Suite 300, Yonkers, NY 10701 and the mortgages were signed either by Jonathan Wiener or Ben Rieder. The list of properties also shows that the portfolio has an incredibly high violation count which is evidence of neglect, disrepair and failure to comply with housing law and habitability requirements.

22. The high violation count in these buildings is in line with facts developed in a separate OAG enforcement action against Summit's partner Jonathan Wiener and Chestnut. In February 2020, the OAG sued Chestnut for failing to comply with provisions of New York City's lead poisoning prevention law. *See OAG Chestnut Complaint* available at [https://ag.ny.gov/sites/default/files/22837\\_2020e\\_the\\_people\\_of\\_the\\_stat\\_v\\_the\\_people\\_of\\_the\\_stat\\_summons\\_complaint\\_1.pdf](https://ag.ny.gov/sites/default/files/22837_2020e_the_people_of_the_stat_v_the_people_of_the_stat_summons_complaint_1.pdf). The suit alleged that Chestnut had put the health of its tenants at risk by repeatedly violating the New York City Childhood Lead Poisoning Prevention Act, which requires property owners to take several critical measures to prevent children under six from being exposed to lead paint. After a year and a half of litigation, Chestnut settled with the OAG. *See OAG Chestnut Consent Order and Judgment* available at [https://ag.ny.gov/sites/default/files/22837\\_2020e\\_the\\_people\\_of\\_the\\_stat\\_v\\_the\\_people\\_of\\_the\\_stat\\_judgment\\_to\\_court\\_24-1.pdf](https://ag.ny.gov/sites/default/files/22837_2020e_the_people_of_the_stat_v_the_people_of_the_stat_judgment_to_court_24-1.pdf)

23. The OAG is concerned that Summit, through its partnership with Jonathan Wiener and Chestnut, allowed such a high violation count to accumulate in their buildings. Summit has owned its portfolio since 2021 and yet still has over 4000 open violations in a portfolio of 3000 units in 90 buildings.

24. To provide context for the high violation count in the portfolio, the Court should be aware of comparable enforcement actions by the OAG against other landlords in the real estate market. The OAG recently settled a case with Lilmor Management along with the US Attorney's Office for the Southern District of New York for \$6.5 million in restitution and penalties. *See* OAG Lilmor Consent Decree available at <https://ag.ny.gov/sites/default/files/court-filings/lilmor-combined-consent-decree-complaint.pdf>. At the time of settlement, Lilmor's portfolio had 880 open violations in a portfolio of 2500 units in 49 buildings.

25. Summit claims it will "retain new residential management firms to be responsible for day-to-day property operations" without identifying who these firms will be or whether they have the capacity to manage what would be one of the largest portfolios in New York City.<sup>4</sup> *See* ECF No. [946](#).

26. The OAG has concerns about Summit independent of its partnership with Jonathan Wiener and Denali. Summit's portfolio has a higher violation count per building than Lilmor Management and yet it is proposing to more than double its portfolio from 3000 units to a total of almost 8000 units. Summit itself has no experience managing residential real estate in New York City and its track record in its existing portfolio is troubling.

27. The OAG agrees with the City that the Bankruptcy court should not confirm a plan to sell the Pinnacle properties to Summit where Summit has provided no indication it will own and manage the Pinnacle buildings any better than its current portfolio. Instead, the City should be given an opportunity to come up with a partner who will be a better steward of these properties. Summit's track record in its current portfolio indicates that it has no capacity to adequately oversee a management company and a sale will result in these properties falling into disrepair

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<sup>4</sup> If it partners with Denali, the OAG strongly objects since Wiener and Denali have allowed the portfolio to accumulate an incredibly high violation count and Wiener has a history of non-compliance with housing laws.

requiring the city and state to expend resources to correct conditions and potentially commence enforcement actions to ensure compliance with habitability laws.

28. Even if the Court is not inclined to outright reject Summit's bid, which the OAG believes is the appropriate course, it should at the least require Summit to provide a much more detailed explanation about how it intends to reverse its history of purchasing buildings that accrue high levels of violations, its plan to address the capital needs of the Pinnacle portfolio, and what management firm will accomplish this on their behalf. To the extent the Court believes a fact-finding hearing is required, the OAG is available to appear to offer its expertise in assessing Summit's true intentions with this portfolio and whether it actually has the capacity to be a good steward for the 5000 families that call these buildings home.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated: New York, New York  
January 12, 2026



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Brent Meltzer  
Chief, Housing Protection Unit

New York State Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
**COPY REQUEST/CERTIFICATE OF STATUS RECEIPT**

BRENT MELTZER | UNIT CHIEF  
HOUSING PROTECTION UNIT  
OFFICE OF THE NYS ATTORNEY GENERAL  
NEW YORK NY 10005

**DATE:** 01/09/2026 **TRANSACTION NUMBER:** 202601090003717

**ENTITY INFORMATION:**

**ENTITY NAME:** CHESTNUT HOLDINGS OF NEW YORK, INC.  
**DOS ID:** 2083808  
**DATE OF INITIAL DOS FILING:** 11/13/1996

| <b><u>REQUESTED SERVICES:</u></b>           | <b><u>NUMBER REQUESTED:</u></b> | <b><u>FEE:</u></b> |
|---|---------------------------------|--------------------|
| UNCERTIFIED COPY(\$5.00)                    | 0                               | \$0.00             |
| CERTIFIED COPY(\$10.00)                     | 2                               | \$0.00             |
| CERTIFICATE OF STATUS - SHORT FORM(\$25.00) |                                 | \$0.00             |
| CERTIFICATE OF STATUS - LONG FORM(\$25.00)  |                                 | \$0.00             |
| EXPEDITED HANDLING                          |                                 | \$0.00             |

|  |        |
|--|--------|
| <b><u>TOTAL PAYMENTS RECEIVED:</u></b> | \$0.00 |
| CASH:                                  | \$0.00 |
| CHECK/MONEY ORDER:                     | \$0.00 |
| CREDIT CARD:                           | \$0.00 |
| DRAWDOWN ACCOUNT:                      | \$0.00 |
| REFUND DUE:                            | \$0.00 |

| <b><u>REQUESTED COPY</u></b> | <b><u>FILE DATE</u></b> | <b><u>FILE NUMBER</u></b> |
|------------------------------|-------------------------|---------------------------|
| CERTIFICATE OF INCORPORATION | 11/13/1996              | 961113000159              |
| CERTIFICATE OF CHANGE        | 06/01/2011              | 110601000082              |

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy for CHESTNUT HOLDINGS OF NEW YORK, INC., File Number 961113000159 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on January 09, 2026.

WALTER T. MOSLEY  
Secretary of State



BRENDAN C. HUGHES  
Executive Deputy Secretary of State



CERTIFICATE OF INCORPORATION

OF

CHESTNUT HOLDINGS OF NEW YORK, INC.

(Under Section 402 of the Business Corporation Law.)

IT IS HEREBY CERTIFIED THAT:

✓ 961113000 159

(1) The name of the proposed corporation is CHESTNUT HOLDINGS OF NEW YORK, INC.

(2) The purpose or purposes for which this corporation is formed are as follows, to wit:

(a) To purchase, lease, exchange, hire or otherwise acquire lands with or without buildings thereon, or any interest therein, whatsoever and wheresoever situated; to erect, construct, rebuild, enlarge, alter, improve, maintain, manage and operate houses, buildings or other works of any description on any lands owned or leased by the corporation or upon any other lands; to sell, lease, sublet, mortgage, exchange or otherwise dispose of any lands or any interest therein, or any houses, buildings or other works owned by the corporation; to engage generally in the real estate business as principal, agent, broker or otherwise, and generally to buy, sell, lease, mortgage, exchange, manage, operate and deal in lands or interests in lands, houses, buildings or other works; and to purchase, acquire, hold, exchange, pledge, hypothecate, sell, deal in, and dispose of tax liens on real estate.

(b) To make, enter into, perform and carry out contracts for constructing, building, altering, improving, repairing, decorating, maintaining, furnishing, and fitting up buildings, tenements and structures of every description, and to advance money to and enter into agreements of all kinds with builders, contractors, property owners and others for said purpose.

(3) The corporation, in furtherance of its corporate purposes above set forth, shall have all the powers enumerated in Section 202 of the Business Corporation Law, subject to any limitations provided in the Business Corporation Law or any other statute of the State of New York.

(4) The office of the corporation is located in New York County.

(5) The aggregate number of shares which the corporation shall have the authority to issue is 200 shares of common stock, which shares are to be without par value.

1

(6) The Secretary of State is hereby designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against it served on him is care of Jonathan Wiener, 1500 Broadway, 9th floor, New York, New York 10036.

I, the undersigned, being over 21 years of age, incorporator of the corporation above named, for the purpose of forming a corporation in pursuance of Section 402 of the Business Corporation Law of the State of New York, do make this Certificate hereby declaring and certifying that the facts herein stated are true and accordingly have hereunto set my hand and seal this 6th day of November, 1996.

*Lorraine Couch*

LORRAINE COUCH  
c/o Rosenbloom & Hofflich  
130 Cedar Street  
New York, New York 10006

STATE OF NEW YORK )  
; ss.:  
COUNTY OF NEW YORK )

On the 6th day of November, 1996, before me personally came LORRAINE COUCH, to me known to be the individual described in and who executed the foregoing Certificate of Incorporation of Chestnut Holdings of New York, Inc. and acknowledged to me that she executed the same.

S:\CORP\CERTINC.CHE

*Jerald Rosenbloom*

GERALD ROSENBLUM  
NOTARY PUBLIC, State of New York  
No. 24-8653080  
Qualified in Kings County  
Commission Expires November 30, 1998

2



*1*  
**961113000159**  
CERTIFICATE OF

INCORPORATION

OF

CHESTNUT HOLDINGS OF NEW YORK, INC.

RECEIVED

Nov 12 2 28 PM '96

RECEIVED

Nov 7 2 17 PM '96

Nov 13 9 55 AM '96

FILED

*ICC*  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED NOV 13 1996

TAX \$ 10

BY: *djn*

*new york*

**BILLED**

*Q/n 10/*  
Filed by:

Ruth A. Dennehey  
Colby Attorneys Service Co.  
107 Washington Avenue  
Albany, NY 12210

**D.C.-08**

*3*

**961113000163**

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy for CHESTNUT HOLDINGS OF NEW YORK, INC., File Number 110601000082 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on January 09, 2026.

WALTER T. MOSLEY  
Secretary of State



BRENDAN C. HUGHES  
Executive Deputy Secretary of State



1106010000 02

New York State Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231  
www.dos.state.ny.us

## CERTIFICATE OF CHANGE OF

CHESTNUT HOLDINGS OF NEW YORK, INC.  
(Insert Name of Domestic Corporation)

Under Section 805-A of the Business Corporation Law

FIRST: The name of the corporation is:

CHESTNUT HOLDINGS OF NEW YORK, INC.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed by the Department of State on:

11/13/1996

THIRD: The change(s) effected hereby are: (Check appropriate statement(s))

☐ The county location, within this state, in which the office of the corporation is located, is changed to: \_\_\_\_\_

☒ The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:

C/O CHESTNUT HOLDINGS OF NEW YORK, INC., ATTN: JONATHAN WIENER  
5676 RIVERDALE AVENUE, RIVERDALE NY 10471

☐ The corporation hereby: (Check one)

☐ Designates \_\_\_\_\_  
as its registered agent upon whom process against the corporation may be served.  
The street address of the registered agent is:

☐ Changes the designation of its registered agent to:

\_\_\_\_\_  
The street address of the registered agent is:

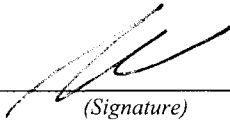
110601000082

1106010000 6B

☐ Changes the address of its registered agent to:

☐ Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

  
(Signature)

JONATHAN WIENER  
(Name of Signer)

PRESIDENT  
(Title of Signer)

### CERTIFICATE OF CHANGE

OF

CHESTNUT HOLDINGS OF NEW YORK, INC.  
(Insert Name of Domestic Corporation)

Under Section 805-A of the Business Corporation Law

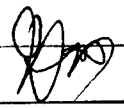
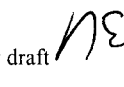
Filer's Name CHESTNUT HOLDINGS OF NEW YORK, INC.

Address 5676 RIVERDALE AVENUE

City, State and Zip Code RIVERDALE, NY 10471

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUN 01 2011

TAXES   
BY: 

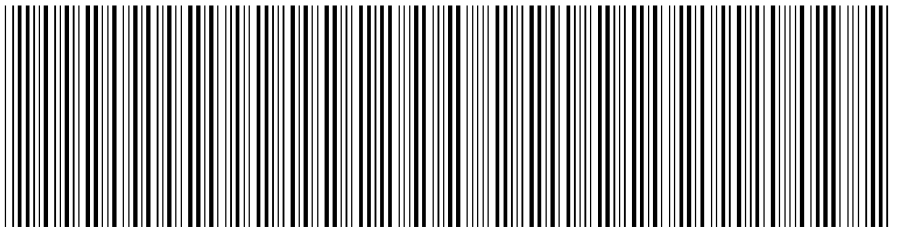
NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$30 filing fee.

For Office Use Only

1106010000 013

**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.



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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 4**

**Document ID: 2022010400333005**

Document Date: 12-27-2021

Preparation Date: 01-04-2022

Document Type: DEED

Document Page Count: 3

**PRESENTER:**

MADISON ABSTRACT, INC. ( K 21 21215 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**RETURN TO:**

MADISON ABSTRACT, INC. ( K 21 21215 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address          |
|--|-------|-----|------------|------------------|
| BROOKLYN                                 | 1419  | 39  | Entire Lot | 776 CROWN STREET |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                  |

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

776 CROWN STREET REALTY LLC  
2003 AVENUE J, SUITE 1C  
BROOKLYN, NY 11210

**GRANTEE/BUYER:**

776 C LLC  
C/O: DENALI MANAGEMENT INC., 20 SOUTH  
BROADWAY, SUITE 300  
YONKERS, NY 10701

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

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: \$ 52.00

Affidavit Fee: \$ 0.00

**Filing Fee:**

\$ 250.00

NYC Real Property Transfer Tax:

\$ 208,818.75

NYS Real Estate Transfer Tax:

\$ 51,707.50

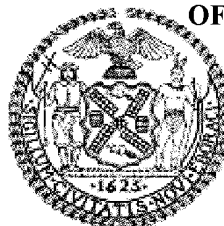
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 01-04-2022 17:28

City Register File No.(CRFN):

**2022000004616**



*Annette McMill*

**City Register Official Signature**

**BARGAIN AND SALE DEED  
WITH COVENANT'S AGAINST GRANTOR'S ACTS**

**THIS INDENTURE**, made as of the 27<sup>th</sup> day of December, 2021 between 776 CROWN STREET REALTY LLC having an address at 2003 Avenue J, Suite 1C, Brooklyn, NY 11210 (hereinafter collectively referred to as the "Grantor"), and 776 C LLC, having an address at c/o Denali Management Inc., 20 South Broadway, Suite 300, Yonkers, NY 10701 (hereinafter referred to as the "Grantee").

**WITNESSETH**, that Grantor, in consideration of Ten Dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and release unto Grantee and the heirs, executors, administrators, successors and assigns of Grantee forever,

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the County of Kings, City and the State of New York, known as Block 1419 Lot 39, being more particularly described in Exhibit A attached hereto and made a part hereof,

**TOGETHER** with all right, title and interest, if any, of the party of the Grantor in and to any streets and roads abutting the above described premises, to the center line thereof; **TOGETHER** with the appurtenances and all the estate and rights of Grantor in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto Grantee and the heirs, executors, administrators, successors and assigns of Grantee forever.

Being the same Premises as conveyed to the Grantor herein by deed from 776 Crown Street Realty Co. L.P., dated November 13<sup>th</sup>, 1996 and recorded December 13, 1996 in Reel 3850 page 2089 in the Office of the New York City Register, Kings County, New York.

**AND** the Grantor covenants that the Grantor has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

**AND** the Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose

(Signatures on following page)

**SCHEDULE A**

**ALL** that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at the corner formed by the intersection of the southerly side of Crown Street with the westerly side of Utica Avenue;

**RUNNING THENCE** westerly along the southerly side of Crown Street, 93 feet;

**THENCE** southerly parallel with Utica Avenue, 127 feet 9½ inches to the center line of the block;

**THENCE** easterly along said center line of the block parallel with Crown Street, 93 feet to the westerly side of Utica Avenue;

**THENCE** northerly along the westerly side of Utica Avenue, 127 feet 9½ inches to the corner, the point or place of **BEGINNING**.

**Premises** known as 776-782 Crown Street a/k/a 386 Utica Avenue, Brooklyn, New York.

**BEING AND INTENDED** to be the same premises conveyed to the party of the first part by deed dated 11/13/96 recorded 12/13/96 in the Office of the New York City Register, County of Kings, State of New York, in Reel 3850 page 2089.

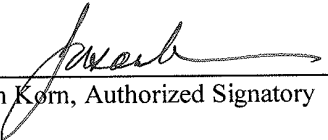


For Clearance click: [Clearance@MadisonAbstract.com](mailto:Clearance@MadisonAbstract.com)

Title Number: K 21 21215

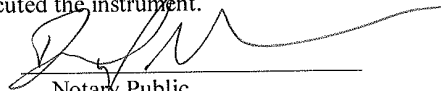
IN WITNESS WHEREOF, Grantor has duly executed this Deed on the date first above written.

776 CROWN STREET REALTY LLC

By:   
Jason Korn, Authorized Signatory

STATE OF NEW YORK }  
COUNTY OF Kings } ss:

On the 23 day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared JASON KORN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

-----X  
776 CROWN STREET REALTY LLC

To

776 C LLC

-----X

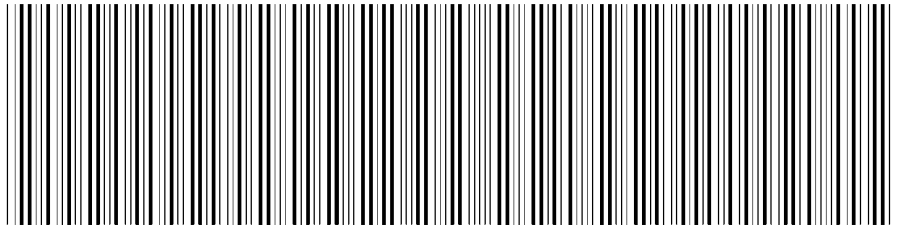
DAVID GLUCK  
NOTARY PUBLIC, State of New York  
No. 01GL6075025  
Qualified in Kings County  
Commission Expires May 27, 2022

Block: 1419  
Lot: 39  
County: Kings

**Record and Return to:**  
776 C LLC  
152 Madison Avenue, Floor 14  
New York, NY 10016



NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



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**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2022010400333005**  
Document Type: DEED

Document Date: 12-27-2021

Preparation Date: 01-04-2022

**ASSOCIATED TAX FORM ID:** 2021122300186

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING  
RP - 5217 REAL PROPERTY TRANSFER REPORT

1  
3



The City of New York  
Department of Environmental Protection  
Bureau of Customer Services  
59-17 Junction Boulevard  
Flushing, NY 11373-5108

## Customer Registration Form for Water and Sewer Billing

### Property and Owner Information:

- (1) Property receiving service: BOROUGH: BROOKLYN BLOCK: 1419 LOT: 39
- (2) Property Address: 776 CROWN STREET, BROOKLYN, NY 11213
- (3) Owner's Name: 776 C LLC
- Additional Name:

### Affirmation:



Your water & sewer bills will be sent to the property address shown above.

### Customer Billing Information:

#### Please Note:

- A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.
- B. Original bills for water and/or sewer service will be mailed to the owner, **at the property address or to an alternate mailing address**. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit [www.nyc.gov/dep](http://www.nyc.gov/dep) to provide us with the other party's information.

### Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner:

12/27/2021

Signature:  Date (mm/dd/yyyy)

Name and Title of Person Signing for Owner, if applicable: 776 C LLC, by Ben Rieder sole member

FOR CITY USE ONLY

C1. County Code  C2. Date Deed Recorded  /  /   
Month Day Year  
C3. Book  OR   
C4. Page   
C5. CRFN



**REAL PROPERTY TRANSFER REPORT**  
STATE OF NEW YORK  
STATE BOARD OF REAL PROPERTY SERVICES  
**RP - 5217NYC**

**PROPERTY INFORMATION**

1. Property Location  776  CROWN STREET  BROOKLYN  11213  
STREET NUMBER STREET NAME BOROUGH ZIP CODE

2. Buyer Name  776 C LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

3. Tax Billing Address        
Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form) LAST NAME / COMPANY FIRST NAME  
STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed  1  # of Parcels OR ☐ Part of a Parcel

4A. Planning Board Approval - N/A for NYC  
4B. Agricultural District Notice - N/A for NYC  
Check the boxes below as they apply:  
6. Ownership Type is Condominium ☐  
7. New Construction on Vacant Land ☐

5. Deed Property Size  FRONT FEET ☒ X  DEPTH OR  ACRES

8. Seller Name  776 CROWN STREET REALTY LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:  
A ☐ One Family Residential C ☐ Residential Vacant Land E ☐ Commercial G ☐ Entertainment / Amusement I ☐ Industrial  
B ☐ 2 or 3 Family Residential D ☐ Non-Residential Vacant Land F ☒ Apartment H ☐ Community Service J ☐ Public Service

**SALE INFORMATION**

10. Sale Contract Date  11 /  8 /  2021  
Month Day Year

11. Date of Sale / Transfer  12 /  27 /  2021  
Month Day Year

12. Full Sale Price \$  7  9  5  5  0  0  0  
( Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

**14. Check one or more of these conditions as applicable to transfer:**

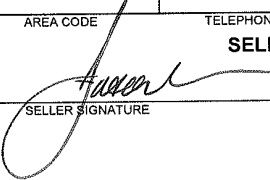
A ☐ Sale Between Relatives or Former Relatives  
B ☐ Sale Between Related Companies or Partners in Business  
C ☐ One of the Buyers is also a Seller  
D ☐ Buyer or Seller is Government Agency or Lending Institution  
E ☐ Deed Type not Warranty or Bargain and Sale (Specify Below )  
F ☐ Sale of Fractional or Less than Fee Interest ( Specify Below )  
G ☐ Significant Change in Property Between Taxable Status and Sale Dates  
H ☐ Sale of Business is Included in Sale Price  
I ☐ Other Unusual Factors Affecting Sale Price ( Specify Below )  
J ☒ None

**ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill**

15. Building Class  C  7  16. Total Assessed Value (of all parcels in transfer)  1  1  9  4  3  0  0  
17. Borough, Block and Lot / Roll Identifier(s) ( If more than three, attach sheet with additional identifier(s) )  
 BROOKLYN 1419 39

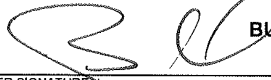
**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

| BUYER  |                          |          | BUYER'S ATTORNEY   |                  |
|--|--------------------------|----------|--|------------------|
| Signed in Counterpart                                    |                          |          |  |                  |
| BUYER SIGNATURE  |                          | DATE     | LAST NAME  | FIRST NAME       |
| C/O: DENALI MANAGEMENT INC. 20 SOUTH BROADWAY, SUITE 300 |                          |          |  |                  |
| STREET NUMBER  | STREET NAME (AFTER SALE) |          | AREA CODE  | TELEPHONE NUMBER |
| YONKERS  |                          |          |  |                  |
|  | NY                       | 10701    | SELLER   |                  |
| CITY OR TOWN   | STATE                    | ZIP CODE | SELLER SIGNATURE   | DATE             |
|  |                          |          |  | 12/27/2021       |

**CERTIFICATION**

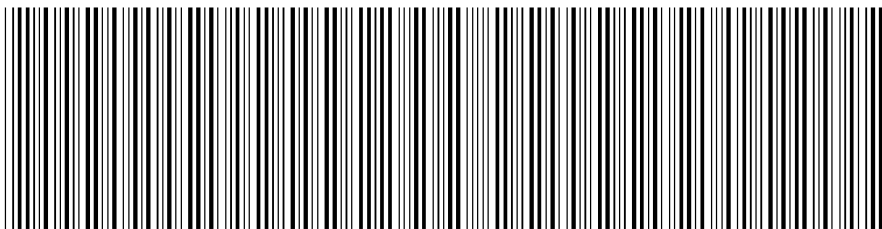
I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

|  |  |                          |  |                       |  |
|--|--|--------------------------|--|-----------------------|--|
| <br>BUYER |  | 12/27/2021<br>DATE       |  | BUYER'S ATTORNEY      |  |
| BUYER SIGNATURE  |  |                          |  | LAST NAME             |  |
| C/O.: DENALI MANAGEMENT INC. 20 SOUTH BROADWAY, SUITE 300                                  |  |                          |  | FIRST NAME            |  |
| STREET NUMBER  |  | STREET NAME (AFTER SALE) |  | AREA CODE             |  |
| YONKERS  |  | NY                       |  | TELEPHONE NUMBER      |  |
|  |  | 10701                    |  | SELLER                |  |
| CITY OR TOWN   |  | STATE                    |  | Signed in Counterpart |  |
|  |  | ZIP CODE                 |  | SELLER SIGNATURE      |  |
|  |  |                          |  | DATE                  |  |

2021122300186201

**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.



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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 27**

**Document ID: 2022010400333008**

Document Date: 12-27-2021

Preparation Date: 01-04-2022

Document Type: MORTGAGE

Document Page Count: 26

**PRESENTER:**

MADISON ABSTRACT, INC. ( K 21 21215 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**RETURN TO:**

MADISON ABSTRACT, INC. ( K 21 21215 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address          |
|--|-------|-----|------------|------------------|
| BROOKLYN                                 | 1419  | 39  | Entire Lot | 776 CROWN STREET |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                  |

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**MORTGAGOR/BORROWER:**

776 C LLC  
20 S BROADWAY, SUITE 300  
YONKERS, NY 10701

**MORTGAGEE/LENDER:**

JPMORGAN CHASE BANK, N.A.  
14800 FRYE ROAD, 2ND FLOOR, MAIL CODE  
TX1-0007  
FORT WORTH, TX 76155

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 2,095,355.40

Taxable Mortgage Amount: \$ 2,095,355.40

Exemption:

TAXES: County (Basic): \$ 10,477.00

City (Additional): \$ 23,573.25

Spec (Additional): \$ 5,238.50

TASF: \$ 0.00

MTA: \$ 6,286.20

NYCTA: \$ 13,096.25

Additional MRT: \$ 0.00

**TOTAL:** \$ 58,671.20

Recording Fee: \$ 167.00

Affidavit Fee: \$ 0.00

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 01-04-2022 17:28

City Register File No.(CRFN):

**2022000004619**



*Annette McMill*

**City Register Official Signature**

**MORTGAGE,  
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS,  
AND FIXTURE FILING**

Dated: December 27, 2021

in the amount of

**\$2,095,355.40**

(the "Mortgage Amount")

From

**776 C LLC**

as mortgagor ("Borrower")  
having an address at:

**20 S Broadway, Suite 300  
Yonkers, NY 10701**

To

**JPMORGAN CHASE BANK, N.A.**

14800 Frye Road, 2nd Floor  
Mail Code TX1-0007  
Fort Worth, Texas 76155-2732  
Attention: Portfolio Administration

as mortgagee ("Lender")

**LOCATION OF PREMISES:**

Street Address: 776 Crown St & 386-398 Utica Ave  
County of: Kings  
State of: New York  
Borough: Brooklyn  
Section: 5  
Block: 1419  
Lot: 39

---

**After recording, please return to:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**Title No K 21 21215**

**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS SECURITY INSTRUMENT MAY PROVIDE FOR ONE OR MORE OF THE FOLLOWING: (1) A VARIABLE RATE OF INTEREST; (2) A BALLOON PAYMENT AT MATURITY, (3) DEFERRAL OF A PORTION OF ACCRUED INTEREST UNDER CERTAIN CIRCUMSTANCES WITH INTEREST SO DEFERRED ADDED TO THE UNPAID PRINCIPAL BALANCE OF THE NOTE AND SECURED HEREBY.**

**MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS  
AND FIXTURE FILING**

Notwithstanding anything to the contrary set forth in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may become secured hereby at any time hereafter is \$2,095,355.40 together with interest thereon, and all amounts expended by Lender to maintain the lien of this Security Instrument or protect any of the Property, including without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, litigation expenses to prosecute or defend the rights, remedies and lien of this Security Instrument or title to the Property, and any costs, charges or amounts to which Lender becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority.

Loan No. 200527604

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Security Instrument"), is made this **27th day of December, 2021** between **776 C LLC, a Delaware limited liability company**, the address of which is **20 S Broadway, Suite 300, Yonkers, NY 10701**, as mortgagor ("Borrower"); and **JPMORGAN CHASE BANK, N.A.** at its offices at **P.O. Box 9178, Coppell, Texas 75019-9178** (together with its successors and assigns, "Lender").

**RECITALS**

1. **Granting Clause.** Borrower irrevocably mortgages, warrants, grants, conveys and assigns to Lender and its successors and assigns, forever, all of Borrower's estate, right, title and interest in and to the property in the county of **Kings**, state of New York, with a street address of **776 Crown St & 386-398 Utica Ave, Brooklyn, New York 11213** (which address is provided for reference only and shall in no way limit the description of the real and personal property otherwise described in this Section 1), described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 shall be referred to as the "Property"):

1.1 **Land and Appurtenances.** The land described on Exhibit A hereto, and all rights-of-way, easements, air rights, water rights and appurtenances thereto (collectively, the "Land"); and



1.2 **Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the Land (collectively, the "Improvements"), and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the operation of the Land and the Improvements; and

1.3 **Enforcement and Collection.** Any and all rights of Borrower to collect and receive all rents, income, revenues, issues, earnest money, deposits, tax, utility and insurance refunds, mineral, oil and gas rights and profits, and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for their collection or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower; and

1.4 **Accounts, Income and Rights.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements, Impounds (as defined below) and general intangibles relating to any of the Property; and

1.5 **Leases and Rents.** All of Borrower's rights in and to all Leases and Rents (as such terms are defined in Section 2.2.1 below) (in accepting this Security Instrument, Lender does not assume any liability for the performance of any such Lease); and

1.6 **Insurance Policies; Condemnation Awards.** All rights in and to all pertinent present and future fire, hazard, earthquake or other insurance policies covering any of the Property (whether or not Lender requires such insurance and whether or not Lender is named as an additional insured or loss payee of such insurance); and all Awards (defined below); and all proceeds or sums payable in lieu of or as compensation for the loss of or damage to any of the Property; and

1.7 **Other Property.** All books and records of Borrower relating to the Property in any form, all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the Property or to the construction of the existing or any future Improvements, all rights of Borrower in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future Improvements, and any performance and/or payment bonds issued in connection therewith, and all trademarks, trade names, computer software and other intellectual property used by Borrower in connection with the Property.

## **2. Security Agreement and Assignment of Leases and Rents.**

2.1 **Security Agreement.** To the extent any of the property described in Section 1 is personal property, Borrower grants to Lender, a security interest therein and in all products and proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of New York (the "UCC"). Borrower hereby irrevocably authorizes Lender to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature. This Security Instrument constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of Improvements and fixtures described in Section 1.2 of this Security Instrument and to any other personal property that is now or hereafter becomes a part of the Property as fixtures.

### **2.2 Assignment of Leases and Rents.**

2.2.1 **Absolute Assignment.** Borrower hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Lender all of Borrower's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Borrower's interest therein or any Improvements, any and all security deposits, guaranties and other security related thereto, and all supporting obligations, letters of credit (whether tangible

or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Lender the right to collect any and all income, rents, issues, profits, payments, damages, refunds, royalties and proceeds made pursuant to or in connection with the Leases and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Security Instrument creates and shall be construed to create an absolute assignment to Lender of the Leases and the Rents and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as defined below). Borrower irrevocably appoints Lender its true and lawful attorney at the option of Lender at any time an Event of Default (as defined below) exists and is continuing, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Borrower or in the name of Lender, for all such Rents and apply the same to the obligations secured by this Security Instrument.

**2.2.2 Revocable License to Collect.** So long as no Event of Default exists and is continuing, Borrower shall have a revocable license, to collect all Rents, and to retain, use or distribute the same. Upon the occurrence and during the continuation of any Event of Default, the foregoing license shall terminate automatically and without notice.

**2.2.3 Collection and Application of Rents by Lender.** While any Event of Default exists and is continuing: (i) Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Security Instrument, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Lender therefor, Borrower shall promptly deliver to Lender all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Borrower, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Lender may be applied by Lender against the obligations secured by this Security Instrument, less all expenses, including attorneys' fees and disbursements, in such order as Lender shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Security Instrument or other action taken by Lender under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Lender a mortgagee-in-possession of the Property.

**2.2.4 Direction to Tenants.** Borrower hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Borrower thereunder to Lender following receipt of any written notice from Lender that states that an Event of Default exists and is continuing and that all such amounts are to be paid to Lender. Borrower further authorizes and directs all such tenants to pay all such amounts to Lender without any right or obligation to inquire as to the validity of Lender's notice and regardless of the fact that Borrower has notified any such tenants that Lender's notice is invalid or has directed any such tenants not to pay such amounts to Lender.

**2.2.5 No Liability.** Lender shall not have any obligation to exercise any right given to it under this Security Instrument and shall not be deemed to have assumed any obligation of Borrower with respect to any agreement, lease or other property in which a lien or security interest is granted under this Security Instrument.

**3. Obligations Secured.** This Security Instrument is given for the purpose of securing:

**3.1 Performance and Payment.** The performance of the obligations contained herein and the payment of **\$2,095,355.40** with interest thereon and all other amounts payable according to the terms of the Loan (as defined below) made to Borrower evidenced by a promissory note of even date herewith executed by Borrower, payable to the order of Lender, and any and all extensions, renewals, modifications or replacements thereof (the "Note"). As used herein, the "Loan" shall mean the loan evidenced by the Note and secured by this Security Instrument.

**3.2 Future Advances.** The repayment of any and all sums advanced or expenditures made by Lender subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Lender pursuant to any provision of this Security Instrument subsequent to its execution.

3.3 **Interest.** All of the obligations secured by this Security Instrument shall bear interest at the rate of interest applicable to the Note (including interest at the Default Rate, as defined in the Note, as applicable), which interest shall also be secured by this Security Instrument.

3.4 **Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Lender under this Security Instrument, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the Loan and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "Loan Documents"); provided, however, that this Security Instrument does not and shall not in any event be deemed to, secure the obligations owing to Lender under the following Loan Documents: (a) any certificate and indemnity agreement regarding hazardous substances (the "Indemnity Agreement") executed in connection with the Loan (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of the Loan (collectively, the "Guaranty").

4. **Warranties and Covenants of Borrower.** Borrower represents and warrants to, and covenants and agrees with, Lender as provided herein. All representations and warranties contained in this Security Instrument are true and correct in all material respects as of the date of this Security Instrument and shall remain true and correct in all material respects as of each date thereafter until the obligations secured hereby are paid in full.

4.1 **Warranties.**

4.1.1 Borrower has full power and authority to grant the Property to Lender and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those encumbrances appearing in the title insurance policy accepted by Lender insuring the lien of this Security Instrument ("Permitted Encumbrances").

4.1.2 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower first obtains knowledge thereof, the Property is free from damage (including, but not limited to, any construction defects or nonconforming work) that would materially impair the value or use of the Property.

4.1.3 The Loan is solely for business or commercial purposes, and is not for personal, family, household or agricultural purposes.

4.1.4 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower obtains knowledge thereof, Borrower, the Property and the present and contemplated use and occupancy of the Property are in compliance with all Applicable Laws in all material respects; and any such matters disclosed to Lender that are related to or affecting insurance coverage shall be disclosed in writing to Borrower's insurer.

4.1.5 Any and all rent rolls, property operating statements and other financial reports ("Financial Reports") furnished to Lender in connection with the Loan are true and correct in all material respects as of their dates, and no material adverse change has occurred in the matters reported in those Financial Reports since the dates of the last submission of those Financial Reports that has not been disclosed to Lender in writing.

4.1.6 Borrower has determined in good faith that: (a) the Loan, including any Guaranty, is an arm's-length transaction on market rate terms; and (b) neither Lender nor any of its affiliates exercised any discretionary authority or control over, or rendered any investment advice in connection with, Borrower's decision to enter into the Loan.

4.2 **Preservation of Lien.** Borrower will preserve and protect the priority of this Security Instrument as a lien on the Property subject only to the Permitted Encumbrances. If Borrower fails to do so, Lender may take any and all actions necessary or appropriate to do so and all sums expended by Lender in so doing, including without limitation, advances for taxes, assessments,

impositions or liens against the Property, shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Lender and shall bear interest at the highest rate borne by any of the obligations secured by this Security Instrument.

4.3 **Repair and Maintenance of Property.** Borrower will keep the Property in good condition and repair, including without limitation underpinning and supporting the Property and any Improvements. Borrower will not remove or demolish, alter, or make additions or construct any new structure on the Property, without the express written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Security Instrument to the contrary, (a) Borrower may make commercially reasonable nonstructural alterations, improvements and replacements to the Property in a manner customary for similar properties; and (b) with respect to commercial leases only, Borrower or its tenants may construct tenant improvements made pursuant to Leases of commercial space in the Property that have been entered into in good faith and in compliance with the requirements of this Security Instrument.

4.4 **Insurance.**

4.4.1 **Insurance Coverage.** At all times during the term of the Loan, Borrower shall comply, and shall cause any other owners of the Property to comply, with the minimum insurance requirements set forth in Schedule "1" attached hereto. Borrower will maintain such insurance as further security for the faithful performance of the obligations secured by this Security Instrument.

4.4.2 **Damage and Destruction.**

(a) **Borrower's Obligations.** In the event of any damage to or loss or destruction of the Property (a "Casualty"), Borrower shall (i) give prompt written notice of the Casualty to Lender and to Borrower's insurer, and shall make a claim under each insurance policy providing coverage therefor and shall promptly furnish Lender with a copy of such claim, proof of loss and such other documentation as Lender may reasonably require; (ii) cause the aggregate proceeds of any and all insurance policies insuring the Property, whether or not required by this Security Instrument, that are payable as a result of the Casualty (collectively, the "Insurance Proceeds") to be paid to Lender to be disbursed or applied in accordance with this Section 4.4.2; and (iii) promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Casualty (collectively, the "Restoration") and otherwise in accordance with this Section 4.4.2. Borrower shall be responsible for all uninsured losses and deductibles. As used in this Security Instrument, the term "Casualty Threshold Amount" means the lesser of \$250,000 or five percent of the original face principal amount of the Note. The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage.

(b) **Control and Disbursement of Proceeds.** If the Casualty is expected to be greater than the Casualty Threshold Amount, or if a Default exists, Lender shall control, administer and disburse all Insurance Proceeds subject to Borrower's satisfaction of the terms and conditions of Lender's form of disbursement agreement, or such other documentation required by Lender, relating to the disbursement of Insurance Proceeds and the Restoration of the Property. If the Casualty is expected to be equal to or less than the Casualty Threshold Amount, and for so long as no Default exists, Lender shall disburse the Insurance Proceeds to Borrower to complete the Restoration in accordance with this Security Instrument.

(c) **Lender's Rights.** Borrower hereby authorizes Lender, in its own name or as attorney-in-fact for Borrower (which power is coupled with an interest and is irrevocable so long as this Security Instrument remains of record) at any time an Event of Default exists and is continuing, to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds, and to deduct therefrom Lender's expenses incurred in the adjustment, collection and disbursement of such Insurance Proceeds or otherwise in connection with the Casualty or the Restoration. Each insurance company is hereby irrevocably authorized and directed to make payment of all Insurance Proceeds directly to Lender. Notwithstanding anything to the contrary, Lender shall not be responsible for or incur any liability for any such insurance, or for the form or legal sufficiency of

insurance contracts, solvency of insurers, or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder.

(d) **Application of Proceeds.** Lender shall have the option to apply the Insurance Proceeds to the obligations secured by this Security Instrument, whether or not then due, in such order as Lender may reasonably determine (or to hold such proceeds for future application to those obligations) if: (i) an Event of Default exists and is continuing; (ii) Borrower fails to satisfy any condition precedent to disbursement of Insurance Proceeds as required by Lender; or (iii) Lender reasonably determines that (A) the rental income will be insufficient to timely pay all debt service and other property operating expenses, or will be insufficient to provide a debt service coverage ratio at least equal to that existing immediately prior to the Casualty; (B) the Restoration cannot be completed by the earlier of (1) twelve months prior to the maturity date of the Note, or (2) within twelve months after the date of the Casualty; provided, however, nothing herein shall extend the maturity date of the Note; or (C) the loan-to-value ratio of the Property following the Restoration, as calculated by Lender in its reasonable discretion, will be greater than the loan-to-value ratio required by Lender's then-current underwriting requirements for similar loans secured by property similar to the Property.

(e) **Effect on the Indebtedness.** Any reduction in the obligations secured hereby resulting from the application of Insurance Proceeds or other funds pursuant to this subsection 4.4.2 shall be deemed to take effect only on the date of such application. No application of Insurance Proceeds or other funds to the obligations secured hereby shall result in any adjustment in the amount or due dates of installments due under the Note.

(f) **Costs and Expenses.** Borrower shall pay, within 30 days after demand by Lender, all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with the adjustment, collection and disbursement of Insurance Proceeds pursuant to this Security Instrument or otherwise in connection with the Casualty or the Restoration.

4.5 **Right of Inspection.** Subject to the rights of tenants, Borrower shall permit Lender or its agents or independent contractors, at all reasonable times and upon reasonable advance notice (except in the event of an emergency, in which case no advance notice is required), to enter upon and inspect the Property without materially and adversely interfering with the use and enjoyment of the Property by Borrower or any tenants of Borrower.

4.6 **Compliance with Laws, Etc.; Preservation of Licenses.** Notwithstanding any disclosure made by Borrower pursuant to Section 4.1.4 above, Borrower shall comply in all material respects with (a) all Federal, State and local laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities (collectively, "Applicable Law") applicable to Borrower, the Property or the use, repair and maintenance thereof by Borrower or any third party, (b) all easements, licenses and agreements relating to the Property or the use thereof by Borrower or any third party, and (c) all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits. Borrower shall indemnify, defend and hold harmless Lender for any and all damages, claims, liabilities, reasonable costs and expenses (including attorneys' fees) arising from Borrower's failure to comply with this Section 4.6.

4.7 **Further Assurances.** Borrower will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Lender deems reasonably necessary to grant the Property to Lender, or to carry out the purposes of this Security Instrument.

4.8 **Legal Actions.** Borrower will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Lender; and will pay all reasonable costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Lender, in a reasonable sum, in any such action or proceeding in which Lender may appear, in any suit or other proceeding to foreclose this Security Instrument, and in any foreclosure sale under this Security Instrument.

4.9 **Taxes, Assessments and Other Liens.** Except as provided in this Security Instrument, Borrower will pay prior to delinquency all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof.

4.10 **Expenses.** Except as prohibited under Applicable Law, Borrower will pay all reasonable costs, fees and expenses (including attorneys' fees) reasonably incurred by Lender in connection with this Security Instrument on the due date thereof (or if no other due date is specified, within 30 days after receipt of Lender's written notice therefor).

4.11 **Repayment.** Borrower will pay all principal and interest and any prepayment premiums on the Loan as provided in the Note. Borrower will pay all other amounts owed under the Loan Documents on the due date thereof (or if no other due date is specified, within 30 days after written demand by Lender). All such amounts shall bear interest at the interest rate applicable to the Note from the date advanced or expended by Lender (or, if not consisting of an advance or expenditure by Lender, from the due date) until paid. If Lender so elects in its sole discretion, such amounts shall be (i) added to the principal balance of the Loan and due and payable in full on the maturity date of the Note, or (ii) added to the principal balance of the Loan and amortized over the remainder of the amortization period used to calculate the monthly payments required under the Note, which may result in an increase to the amount of the monthly payment due under the Note.

4.12 **Financial and Operating Information.** Within 90 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender the rent rolls, property operating statements and other financial reports for the Property for such fiscal year, in a form acceptable to Lender in its reasonable discretion. In addition, within 20 days after written request by Lender, Borrower shall furnish to Lender such financial statements and information about (i) the Property, (ii) Borrower and Guarantor, or any general partners, managing members or managers of Borrower or Guarantor, or any other controlling parties of Borrower, and (iii) commercial tenants or occupants of any portion of the Property that are affiliates of Borrower or Guarantor of the Loan, as Lender may reasonably require.

If Borrower fails to comply with this Section 4.12, and such failure continues for a period of 30 days after written notice of such failure by Lender to Borrower, Borrower shall pay to Lender, as liquidated damages for the extra expense in servicing the Loan, \$500 on the first day of the month following the expiration of such 30-day period and \$100 on the first day of each month thereafter until such failure is cured. All such amounts shall be secured by this Security Instrument. Payment of such amounts shall not cure any Default or Event of Default resulting from such failure.

4.13 **Sale, Transfer, or Encumbrance of Property.**

4.13.1 **Encumbrances; Entity Changes.** Except as otherwise provided below and subject to Borrower's rights to enter into Leases, Borrower shall not, without the prior written consent of Lender, further encumber the Property or any interest therein, or cause or permit any change in the entity, ownership, or control of Borrower without first repaying in full the Note and all other sums secured hereby.

4.13.2 **Sales, Transfers, Conveyances.** Except as otherwise provided below, Borrower shall not, without the prior written consent of Lender (which consent shall be subject to the conditions set forth below), sell, transfer, or otherwise convey the Property or any interest therein, voluntarily or involuntarily, without first repaying in full the Note and all other sums secured hereby. Consent to any one transfer and assumption shall not be deemed a waiver of the right to require consent to any future transfers and assumptions.

4.13.3 **Conditions to Lender's Consent to Transfer and Assumption.** Lender will not unreasonably withhold its consent to a sale or transfer of the Property and related assumption of the Loan by the proposed transferee, provided however, that:

(a) Borrower shall provide to Lender a loan application on such form as Lender may require executed by the proposed transferee and accompanied by such other documents as Lender may require in connection therewith;

(b) Lender may consider the factors normally used by Lender as of the time of the proposed assumption in the process of determining whether or not to lend funds, and may require that the Property and the proposed transferee meet Lender's then-current underwriting, legal, regulatory and related requirements as of that time;

(c) Lender may specifically evaluate the financial responsibility, structure and real estate operations experience of any potential transferee;

(d) Lender may require that it be provided at Borrower's expense, with an appraisal of the Property, an on-site inspection of the Property, and such other documents and items, from appraisers, inspectors and other parties satisfactory to Lender, and may require that Borrower or the transferee of the Property correct any items of deferred maintenance that may be identified by Lender;

(e) Lender may, as a condition to granting its consent to a sale, transfer, or other conveyance of the Property, require in its sole discretion Borrower's payment to Lender of (i) a fee (the "Consented Transfer Fee") of one percent of the unpaid principal balance of the Note; (ii) review fees in accordance with Lender's fee schedule in effect at the time of the request ("Lender's Fee Schedule"), which shall be paid by Borrower to Lender upon Borrower's request for Lender's consent, and shall be non-refundable but applicable to the Consented Transfer Fee, to the extent applicable, (iii) Lender's reasonable attorneys' fees and other reasonable out-of-pocket expenses; and (iv) document preparation fees and other fees in accordance with Lender's Fee Schedule;

(f) No Default or Event of Default (each as defined below) has occurred and is continuing; and

(g) The transferee, a replacement guarantor acceptable to Lender, and any other parties shall execute such documentation in the form required by Lender in its sole and absolute discretion evidencing such transfer and related assumption, including without limitation, an assumption agreement, guaranties and environmental indemnity agreements; and upon the consummation of such transaction the Borrower and the existing guarantor shall be released from all future liability under the Loan Documents (except for the Indemnity Agreement) as provided in the assumption agreement.

4.13.4 **Unconsented Transfers.** Any failure to comply with Section 4.13.1 or 4.13.2 above shall constitute an "Unconsented Transfer" for purposes of this Security Instrument. In the event of an Unconsented Transfer, Borrower and its successors shall be jointly and severally liable to Lender for the payment of a fee (the "Unconsented Transfer Fee") of one percent of the unpaid principal balance of the Note as of the date of such Unconsented Transfer. The Unconsented Transfer Fee shall be due and payable upon written demand therefor by Lender, and shall be secured by this Security Instrument; provided, however, that payment of the Unconsented Transfer Fee shall not cure any Event of Default resulting from the Unconsented Transfer.

4.13.5 **No Waiver.** Lender's waiver of any of the Consented Transfer Fee, the Unconsented Transfer Fee or any other amount payable hereunder, in whole or in part for any one sale, transfer, encumbrance or other conveyance shall not preclude the imposition thereof in connection with any other sale, transfer, encumbrance or other conveyance.

4.13.6 **Permitted Transfers.** Notwithstanding the foregoing and notwithstanding Section 4.14, Lender's consent will not be required, and neither the Consented Transfer Fee nor the Unconsented Transfer Fee will be imposed, for any Permitted Transfer (as defined below), so long as all Transfer Requirements (as defined below) applicable to such Permitted Transfer are timely satisfied. As used herein, the following terms have the meanings set forth below:

"Permitted Transfer" means:

(a) The transfer of less than 25% in the aggregate during the term of the Note of the direct or indirect Equity Interests (as defined below) in Borrower, in addition to any transfers permitted under subparagraphs (b) or (c) of this definition (a "Minority Interest Transfer");

(b) A transfer that occurs by devise, descent or operation of law upon the death of a natural person (a "Decedent Transfer");

(c) A transfer made in good faith for estate planning purposes (i) to one or more non-minor Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more non-minor Immediate Family Members of a settlor of the applicable trust) or (ii) to one or more trusts or legal entities established for the benefit of, and solely owned by, the transferor and/or one or more Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more trusts or legal entities established for the benefit of, and solely owned by, one or more Immediate Family Members of a settlor of the applicable transferor trust) (an "Estate Planning Transfer");

(d) A transfer between existing owners of direct or indirect Equity Interests in the Borrower so long as there is no change in the individuals exercising day-to-day powers of decision-making, management and control of the Borrower, and no release of any guarantors; or

(e) A transfer of furniture, fixtures or equipment if they are reasonably deemed to be surplus to the normal operation and use of the Property or if they are promptly replaced by similar items of at least equivalent value and utility.

"Transfer Requirements" means, with respect to any Permitted Transfer, all of the following that apply to that transfer:

(a) In the case of any Permitted Transfer:

(i) none of the persons or entities liable for the repayment of the Loan shall be released from such liability;

(ii) such transfer must not violate Applicable Law, and the transferee must not be a "specially designated national" or a person that is subject or a target of any economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury or the U.S. Department of State ("Sanctions") and such transfer must not otherwise result in a violation of Sanctions, the USA PATRIOT Act of 2001, any "know your customer" rules applicable to Lender or any other Applicable Law; and

(iii) Borrower must provide Lender with not less than 30 days' prior written notice of the proposed transfer (or to the extent that such transfer is a Decedent Transfer then, as soon as reasonably practicable following Borrower becoming aware that the transfer has occurred), which notice shall include a summary of the proposed changes in the organization, ownership and management of the Property or the applicable entity and such further information as Lender may require to make the determinations contemplated by this subsection (a); provided, however, that no prior notice shall be required for an Estate Planning Transfer or any transfer that results in the transferee owning less than 10% in the aggregate of the direct or indirect Equity Interests in Borrower.

(b) In the case of any Minority Interest Transfer or Estate Planning Transfer, there shall be no change in the individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its sole discretion. In the case of a Decedent Transfer, any new individual exercising such powers must be satisfactory to Lender in its reasonable discretion.

(c) In the case of a Decedent Transfer, if the decedent was a Borrower or guarantor of the Loan, within 30 days after written request by Lender, one or more other persons or entities having credit standing and financial resources reasonably acceptable to Lender, shall assume or guarantee the Loan by executing and delivering to Lender a guaranty or assumption agreement and a certificate and indemnity agreement regarding hazardous substances, each satisfactory to Lender,



providing Lender with recourse substantially identical to that which Lender had against the decedent and granting Lender liens on any and all interests of the transferee in the Property.

(d) In the case of any Estate Planning Transfer (other than a transfer by an individual of an interest in the Property into a revocable trust created for their benefit or the benefit of an Immediate Family Member and which such individual is the trustee) that results in a transfer of an interest in the Property, the transferee shall, prior to the transfer, execute and deliver to Lender an assumption agreement satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the transferor and granting Lender liens on any and all interests of the transferee in the Property.

(e) In the case of any Permitted Transfer that results in a transfer of an interest in the Property, Lender shall be provided, at no cost to Lender, with an endorsement to its title insurance policy insuring the lien of this Security Instrument, which endorsement shall insure that there has been no impairment of that lien or of its priority.

(f) In the case of any Permitted Transfer, Borrower or the transferee shall pay all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with that Permitted Transfer, any applicable fees in accordance with Lender's fee schedule in effect at the time of the Permitted Transfer, and shall provide Lender with such information and documents as Lender reasonably requests in order to make the determinations called for by this Security Instrument and to comply with Applicable Law.

(g) No Default shall exist.

"Equity Interest" means partnership interests in Borrower, if Borrower is a partnership, member interests in Borrower, if Borrower is a limited liability company, or shares of stock of Borrower, if Borrower is a corporation.

"Immediate Family Members" means, with respect to any person, that person's parents, spouse, registered domestic partner (under an applicable state or District of Columbia law providing for registration of domestic partnerships with a governmental agency), siblings, children and other lineal descendants, and the spouses and registered domestic partners of such person's parents, siblings, children and other lineal descendants.

#### 4.14 **Borrower Existence.**

4.14.1 **Legal Entities.** Except as otherwise permitted by this Security Instrument, if Borrower is a corporation, partnership, limited liability company, or other legal entity, Lender is making the Loan in reliance on Borrower's continued existence, ownership and control in its present form. Borrower will not alter its name, jurisdiction of organization, structure, ownership or control without the prior written consent of Lender and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. If Borrower is a partnership, Borrower will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Lender. The withdrawal or expulsion of any general partner from the Borrower partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

4.14.2 **Trusts.** Except as otherwise permitted by this Security Instrument, if Borrower is a trust, there shall be no change in the trustee or other individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its reasonable discretion.

4.15 **Information.** Lender is authorized to disclose to potential participants, assignees, regulators, Federal Home Loan Banks and Federal Reserve Banks, information in Lender's possession with respect to Borrower, guarantors of the Loan, the Property and the Loan.

4.16 **Tax and Insurance Impounds.**

4.16.1 **Impounds.** In addition to the payments required by the Note, Borrower shall pay Lender, at Lender's request, such sums as Lender may from time to time estimate will be required (a) to pay, at least one month before delinquency, the next-due taxes, assessments, insurance premiums and similar charges affecting the Property (collectively, the "Impositions"), divided by the number of months to elapse before one month prior to the date when the applicable Impositions will become delinquent; and (b) at the option of Lender and to the extent permitted under Applicable Law, to maintain a reserve equal to one-sixth of the total annual amount of the Impositions. Lender shall hold such amounts without interest or other income to Borrower (unless required under Applicable Law) to pay the Impositions. The total of all payments to Lender under subsection 4.16.1 shall be referred to herein collectively, as the "Impounds". If this estimate of the Impounds proves insufficient, Borrower, upon demand by Lender, shall pay Lender such additional sums as may be required to pay the Impositions at least one month before delinquency. Borrower hereby acknowledges and agrees that if Lender does not require Borrower to make Impound payments for all or any portion of the Impositions at the origination of the Loan, at any time following the occurrence of an Event of Default (regardless of whether it is later cured), Borrower shall be required to make such Impounds within 30 days after receipt of written notice from Lender.

4.16.2 **Application.** If the Impounds in any one year exceed the amounts actually paid by Lender for Impositions, all or any portion of such excess may be paid to Borrower or credited by Lender on subsequent payments under this section. At any time after the occurrence and during the continuance of an Event of Default, Lender may apply any balance of Impounds it holds to any of the obligations secured hereby in such order as Lender may elect.

4.16.3 **Tax Reporting Service.** Lender may, in its sole and absolute discretion, contract with a tax reporting service covering the Property. Borrower agrees that Lender may rely on the information furnished by such tax service and agrees to pay the reasonable cost of that service within 30 days after receipt of a billing for it.

4.17 **Leasing Matters.** Borrower shall not receive or collect any Rents in advance in excess of one month's Rent from any tenant or collect a security deposit in excess of two months' Rent from any tenant. The Lender shall have all of the rights against tenants of the Property as set forth in Section 291-f of the Real Property Law of New York. To the extent Applicable Law requires any security deposits or other amounts received from tenants of the Property to be held in a segregated account, Borrower shall promptly deposit and maintain all applicable deposits and other amounts in a segregated trust account in a federally insured institution. Borrower shall perform Borrower's obligations under the Leases in all material respects. Borrower hereby consents to Lender obtaining copies of rent rolls and other information relating to the Leases from any governmental agency with which Borrower is obligated to file such information or that otherwise collects or receives such information.

4.18 **Condominium and Cooperative Provisions.** If the Property is not subject to a recorded condominium plan or map, a cooperative regime, or other common interest development regime, on the date of this Security Instrument, Borrower will not subject the Property or any portion thereof to such a plan, map, or regime without the written consent of Lender, which consent may be granted or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including but not limited to Borrower providing Lender with such title insurance endorsements and other documents as Lender may require. If the Property is subject to a recorded condominium plan or map, or other common interest development regime, on the date of this Security Instrument: (a) Borrower represents and warrants that none of the condominium units and no portion of the common elements in the Property have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (b) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any condominium unit or any of the common elements of the Property unless expressly agreed to in writing by Lender; (c) Borrower shall operate the Property solely as a rental property; and (d) the Property granted, conveyed and assigned to Lender hereunder includes all rights, easements, rights of way, reservations and powers of Borrower, as owner, declarant or otherwise, under any applicable condominium act or statute and under any and all condominium declarations, survey maps and plans, association articles and bylaws and documents similar to any of the foregoing. If the Property is subject to a cooperative regime on the date of this Security Instrument: (i) Borrower

represents and warrants that none of the corporate shares in the cooperative regime have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (ii) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any of the corporate shares of the cooperative regime; and (iii) Borrower shall operate the Property solely as a rental property.

4.19 **Use of Property; Zoning Changes.** Unless required by Applicable Law, Borrower shall not: (a) except for any change in use approved by Lender in writing, allow changes in the use for which all or any part of the Property is being used at the time this Security Instrument is executed; (b) convert any individual dwelling unit or common area in the Property to primarily commercial use; or (c) initiate or acquiesce in a change in the zoning classification of the Property.

4.20 **Lien Law.** Borrower will, in compliance with Section 13 of the New York Lien Law, receive the advances secured hereby and will hold the right to receive such advances in a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of the cost of any such improvement before using any part of the total of the advance for any other purpose.

5. **Default.**

5.1 **Definition.** Any of the following shall constitute an "Event of Default" as that term is used in this Security Instrument (and the term "Default" shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied):

5.1.1 Any regular monthly payment under the Note is not paid so that it is received by Lender within fifteen (15) days after the date when due, or any other amount secured by this Security Instrument (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note) is not paid so that it is received by Lender when due;

5.1.2 Any representation or warranty made by Borrower to or for the benefit of Lender herein or elsewhere in connection with the Loan, including but not limited to any representation in connection with the security therefor, shall have been incorrect or misleading in any material respect;

5.1.3 Borrower or any other party thereto (other than Lender) shall fail to perform its obligations under any other covenant or agreement contained in this Security Instrument, the Note, any other Loan Document, which failure continues for a period of 30 days after written notice of such failure by Lender to Borrower (or for a period of 60 days after such notice if such failure cannot reasonably be cured within such 30-day period, but can be cured within such 60-day period and Borrower is proceeding diligently to cure it), but no such notice or cure period shall apply in the case of: (i) any such failure that could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument or the other Loan Documents, result in harm to Lender or impairment of the Note, this Security Instrument, or any other security given under any other Loan Document; (ii) any such failure that is not reasonably susceptible of being cured during such cure period; (iii) breach of any provision that contains an express cure period; or (iv) any breach of Section 4.13 or Section 4.14 of this Security Instrument;

5.1.4 Borrower or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they become due, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding, provided that if such petition or proceeding is not filed or acquiesced in by Borrower or the subject thereof, it shall constitute an Event of Default only if it is not dismissed within 60 days after it is filed or if prior to that time the court enters an order substantially granting the relief sought therein; or

5.1.5 Borrower or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage, deed of trust or similar security instrument encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness secured thereby, which default continues beyond any applicable cure period.

5.2 **Lender's Right to Perform.** After the occurrence and during the continuance of any Event of Default, Lender, but without the obligation so to do and, to the extent permitted by Applicable Law, without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Lender and its agents being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; pay, purchase, contest or compromise any encumbrance, charge or lien; and in exercising any such powers, pay necessary expenses and engage counsel. All sums so expended (including attorneys' fees) shall be secured hereby and bear interest at the Default Rate of interest specified in the Note from the date advanced or expended until repaid and shall be payable by Borrower to Lender on demand.

5.3 **Remedies on Default.** Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Lender and Lender may:

5.3.1 To the extent permitted by Applicable Law, have a receiver appointed as a matter of right without notice to Borrower and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Lender elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Lender and added to the indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender, or advanced by Lender to the receiver, for such purposes shall become an additional part of the indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 5.3 shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Property.

5.3.2 Foreclose this Security Instrument as provided in Section 7 or otherwise realize upon the Property as permitted under Applicable Law.

5.3.3 Sue on the Note as permitted under Applicable Law.

5.3.4 Avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or Applicable Law.

5.4 **No Waiver.** By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of that or any other portion of the obligations secured by this Security Instrument. Lender may from time to time accept and apply any one or more payments of less than the full amount then due and payable on such obligations without waiving any Default, Event of Default, acceleration or other right or remedy of any nature whatsoever. In addition, the failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right. Furthermore, the waiver of any Default or Event of Default shall not constitute a waiver of any subsequent or other Default or Event of Default.

5.5 **Waiver of Marshaling, Etc.** In connection with any foreclosure sale under this Security Instrument, Borrower hereby waives, for itself and all others claiming by, through or under Borrower, any right Borrower or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 **Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising Applicable Law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. Lender shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the Loan proceeds.

6. **Condemnation.** Any and all awards of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property for public or private use, or for injury to any portion of the Property ("Awards"), are hereby assigned and shall be paid to Lender which may apply or disburse such Awards in the same manner, on the same terms, subject to the same conditions, to the same extent, and with the same effect as provided in Section 4.4.2 above for disposition of Insurance Proceeds. Without limiting the generality of the foregoing, if the taking results in a loss of the Property to an extent that, in the reasonable opinion of Lender, renders or is likely to render the Property not economically viable or if, in Lender's reasonable judgment, Lender's security is otherwise impaired, Lender may apply the Awards to reduce the unpaid obligations secured hereby in such order as Lender may determine, and without any adjustment in the amount or due dates of installments due under the Note. If so applied, any Awards in excess of the unpaid balance of the Note and other sums due to Lender shall be paid to Borrower or Borrower's assignee. Such application or release shall not cure or waive any Default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all Awards or other relief therefor, and Borrower agrees to pay Lender's costs and reasonable attorneys' fees incurred in connection therewith. Lender shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

7. **Foreclosure.** Upon the occurrence of any Event of Default, Lender shall have the option, without notice or demand, to declare all sums secured hereby immediately due and payable and to proceed to foreclose on this Security Instrument as now or then provided by law (in which event Lender shall be entitled to the appointment of a receiver) pursuant to a judicial proceeding in accordance with Article 13 of the New York Real Property Actions and Proceedings Law ("RPAPL") or by advertisement in accordance with Article 14 of RPAPL. Any foreclosure shall forever bar Borrower and all persons claiming under Borrower from all right and interest in the Property. In any such proceeding Lender shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Lender shall be entitled to possession of the Property during any period of redemption. Borrower hereby waives any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Security Instrument by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect full redemption. If a deficiency remains after proper application of the proceeds of sale of the Property, Borrower shall pay the same immediately after determination of the amount thereof.

8. **Notices.** Any notice to or demand on Borrower in connection with this Security Instrument or the obligations secured hereby shall be deemed to have been sufficiently made when deposited in the United States mails (with first-class or registered or certified postage prepaid), addressed to Borrower at Borrower's address set forth above. Any notice to or demand on Lender in connection with this Security Instrument or such obligations shall be deemed to have been sufficiently made when deposited in the United States mails with registered or certified postage prepaid, return receipt requested, and addressed to Lender at the address set forth above. Any party may change the address for notices to that party by giving written notice of the address change in accordance with this section.

9. **Modifications, Etc.** Each person or entity now or hereafter owning any interest in the Property agrees, by executing this Security Instrument or taking the Property subject to it, that Lender may in its sole discretion and without notice to or consent of any such person or entity: (i) extend the time for payment of the obligations secured hereby; (ii) discharge or release any one or more parties from their liability for such obligations in whole or in part; (iii) delay any action to collect on such obligations or to

realize on any collateral therefor; (iv) release or fail to perfect any security for such obligations; (v) consent to one or more transfers of the Property, in whole or in part, on any terms; (vi) waive or release any of holder's rights under any of the Loan Documents; (vii) increase the amount of such obligations as permitted by the Loan Documents; or (viii) proceed against such person or entity before, at the same time as, or after it proceeds against any other person or entity liable for such obligations.

10. **Successors and Assigns.** All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11. **Governing Law; Severability.** This Security Instrument shall be governed by the laws of the state where the Property is located, except to the extent preempted by federal laws applicable to national banks. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, the conflict shall not affect other provisions of this Security Instrument or the Note that can be given effect without the conflicting provision, and to this end the provisions of this Security Instrument and the Note are declared to be severable.

12. **Maximum Interest.** No provision of this Security Instrument or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by Applicable Law. If any excess of interest in such respect is herein or in the Note provided for, neither Borrower nor its successors or assigns shall be obligated to pay that portion of such interest that is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section shall control any provision of this Security Instrument or the Note that is inconsistent herewith.

13. **Attorneys' Fees and Legal Expenses.** In the event of any Default under any Loan Document, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any Loan Documents, Lender shall be entitled to collect from any Obligor (as defined in the Note), on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to reasonable fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, such Obligor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of any Obligor, or any party having any interest in any security for any obligations secured hereby; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to the Loan Documents; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing. Notwithstanding anything to the contrary set forth in this Security Instrument or the other Loan Documents, in the event of any litigation between Lender and any Obligor outside the context of a bankruptcy proceeding involving such Obligor as debtor, which litigation arises out of or is related to the Loan or to the Property, if that Obligor is the ultimate prevailing party therein and Lender is not the ultimate prevailing party, such Obligor shall be entitled to recover from Lender the Obligor's reasonable attorneys' fees and court costs incurred therein.

14. **Time is of the Essence.** Time is of the essence under this Security Instrument and in the performance of every term, covenant and obligation contained herein.

15. **Miscellaneous.**

15.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

15.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Security Instrument.

15.3 This Security Instrument, the Note and the other Loan Documents constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other

understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

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

15.5 The existence of any violation of any provision of this Security Instrument or the other Loan Documents (including but not limited to building or health code violations) as of the date of this Security Instrument, whether or not known to Lender, shall not be deemed to be a waiver of any of Lender's rights under any of the Loan Documents including, but not limited to, Lender's right to enforce Borrower's obligations to repair and maintain the Property.

15.6 Upon written request of Borrower in connection with a refinancing of the loan secured hereby or a sale of the Property, Lender shall assign this Security Instrument, without recourse, warranty or representation whatsoever to the refinancing lender upon (a) payment of a sum equal to all monies or indebtedness outstanding under the Note, this Security Instrument and all other Loan Documents, including but not limited to, the outstanding principal amount of the loan secured hereby, all interest accrued thereon and any Prepayment Premium (as defined in the Note), Lender's standard assignment fee as in effect at the time of such assignment and payment of all costs and expenses (including, without limitation, reasonable in-house and outside attorneys' fees) incurred in connection with the assignment of this Security Instrument, and (b) Borrower's delivery to Lender of an affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as Lender may reasonably request.

**16. USA PATRIOT Act Notification and Covenant.**

16.1 Lender hereby notifies Borrower that, pursuant to the requirements of Section 326 of the USA PATRIOT Act of 2001, 31 U.S.C. Section 5318 (the "Act"), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

16.2 Neither Borrower nor any other party liable for the obligations secured hereby as a guarantor or general partner nor any other person or entity participating in any capacity in the Loan will, directly or indirectly, use the proceeds of the Note, or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other person or entity, to (a) further an offer, payment, promise to pay, or authorize the payment or giving of money, or anything else of value, to any person (including, but not limited to, any governmental or other entity) in violation of Applicable Law of any jurisdiction applicable to Borrower or any other party liable for the obligations secured hereby as a guarantor or general partner from time to time relating to bribery or corruption; or (b) fund, finance or facilitate any activities or business or transaction of or with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of any Sanctions, or in any other manner that would result in a violation of Sanctions by any person or entity, including any person or entity participating in any capacity in the Loan.

**17. WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS SECURITY INSTRUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS CONTEMPLATED HEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

18. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THE LOAN DOCUMENTS (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

19. **Type of Property.** Borrower represents and warrants to Lender that this Security Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own separate cooking facilities.

DATED as of the day and year first above written.

**BORROWER:**

776 C LLC,  
a Delaware limited liability company

By:   
BEN RIEDER, Chief Operating Officer



State of New York ) ss.  
County of Bronx )

On the 21<sup>st</sup> day of December in the year **2021**, before me, the undersigned, a Notary Public in and for said state, personally appeared **BEN RIEDER**, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Signature of Notary Public

**Cynthia L. Perfetti**  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires: 12/23/2023

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Crown Street with the westerly side of Utica Avenue;

RUNNING THENCE westerly along the southerly side of Crown Street, 93 feet;

THENCE southerly parallel with Utica Avenue, 127 feet 9½ inches to the center line of the block;

THENCE easterly along said center line of the block parallel with Crown Street, 93 feet to the westerly side of Utica Avenue;

THENCE northerly along the westerly side of Utica Avenue, 127 feet 9½ inches to the corner, the point or place of BEGINNING.

Premises known as 776-782 Crown Street a/k/a 386 Utica Avenue, Brooklyn, New York.

BEING AND INTENDED to be the same premises conveyed to the party of the first part by deed dated 11/13/96 recorded 12/13/96 in the Office of the New York City Register, County of Kings, State of New York, in Reel 3850 page 2089.

PROPERTY ADDRESS: 776 CROWN ST & 386-398 UTICA AVE, BROOKLYN, NEW YORK 11213

Loan No. 200527604

**Schedule 1 to Security Instrument**  
Insurance Requirements

1. **Evidence of Coverage.** Prior to the scheduled Loan funding, Lender must receive and approve written evidence of all required insurance on an ACORD form 28 for property insurance and ACORD form 25 for liability insurance (or similar forms acceptable to Lender in its sole discretion) together with satisfactory proof of payment of premiums. The evidence of coverage must show an inception date prior to or corresponding with the date of the Loan funding. Within 30 days after Loan funding, Borrower must provide Lender with a copy of all insurance policies (including flood and windstorm policies, if applicable) and all required endorsements. Policies must show an inception date prior to or corresponding with the date of the Loan funding. All documents must reflect the Lender-assigned loan number for the Loan as shown above. If flood insurance is required, special requirements apply, as described in paragraph 2.5 of this Schedule 1. ACORD or other certificates are not acceptable evidence of flood insurance.

2. **Required Coverages and Policy Amounts.** Borrower must maintain, or cause to be maintained, the following insurance coverages at all times while any portion of the Loan remains outstanding:

2.1 **Property Insurance.** The property insurance policy must insure against loss or damage to the improvements on the Property by fire and other perils substantially equivalent to those insured under the Causes of Loss – Special Form published by ISO, and against such other perils, including windstorm, as may be specified by Lender. Terrorism and/or earthquake/earth movement insurance coverage and a building ordinance extension endorsement or law and ordinance coverage may be required on a case-by-case basis. Notwithstanding anything to the contrary, Lender shall not require earthquake or terrorism insurance during the term of the Loan unless: (a) required under Applicable Law; (b) required by Lender for similar loans secured by property similar to the Property; (c) required by Lender as a result of a material change in circumstances that expose the Property to a greater risk of peril; or (d) required in connection with the origination of the Loan. The property insurance policy must be in an amount not less than 100% of the replacement cost of the improvements on the Property (without deduction for depreciation) as determined by Lender for purposes of protection of Lender's interests (the "Minimum Property Coverage Amount") and must identify Borrower and the Property address as they appear in the loan documents governing the Loan (the "Loan Documents"). The replacement cost coverage may be provided either in the terms of the policy or by endorsement. If Lender, in its sole discretion, permits coverage of less than the Minimum Property Coverage Amount, then such policy must contain an agreed amount endorsement. If the policy is a blanket policy covering the Property and one or more other properties, the policy must specify the dollar amount of the total blanket limit of the policy that is allocated to the Property, and the amount so allocated to the Property must not be less than the Minimum Property Coverage Amount.

2.2 **Loss of Rents/Business Income Interruption.** Borrower must maintain loss of rents or business income interruption insurance against loss of income (including but not limited to rent, cost reimbursements and all other amounts payable by tenants under leases or otherwise derived by Borrower from the operation of the Property) arising out of damage to or destruction of the improvements on the Property by fire and each other peril insured against under each insurance policy insuring against any type of casualty to the Property or any part thereof that is required pursuant to this Security Instrument. Such insurance must cover the actual loss sustained for at least 12 months with a minimum coverage amount of at least 12 months' potential gross income generated by the Property from all sources, as determined by Lender and without deduction for actual or projected vacancy.

2.3 **Boiler and Machinery.** If a steam boiler is located at the Property, Borrower must carry boiler and machinery coverage in at least the Minimum Property Coverage Amount. If a separate boiler and machinery policy is issued, that policy must include loss of rents or business interruption coverage as described in paragraph 2.2 of this Schedule 1.

2.4 **Liability.** Borrower must maintain commercial general liability insurance (including coverage for elevators and escalators, if any, on the Property) on an occurrence form substantially equivalent to ISO form CG 0001 with coverage of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. All policies must be primary and noncontributory with any other insurance Borrower may carry.

2.5 **Flood.** If any building or mobile home on the Property which secures the Loan is at any time located in a federally-designated special flood hazard area in which flood insurance has been made available pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Act") or other applicable or successor legislation or other area identified by Lender as having a high or moderate risk of flooding (a "Special Flood Hazard Area"), then Borrower must provide Lender with a separate flood insurance policy for each such building or mobile home located in a Special Flood Hazard Area and any contents thereof that also secure the Loan (each a "Building"). **Lender does not accept ACORD or other certificates as acceptable proof of flood insurance.** The amount of flood insurance coverage for each Building must be in an amount at least equal to the Minimum Flood Coverage Amount for the Building. As used in this Security Instrument, "Minimum Flood Coverage Amount" means the lesser of the following for each Building (not including land), as determined by Lender: (i) the insurable value of the Building ("Insurable Value"); or (ii) the outstanding principal balance of the Loan allocated to the Building. For each flood insurance policy, the deductible may not exceed \$10,000.00 for a multifamily Building or \$50,000.00 for a commercial Building; provided, however, for private insurance policies described below, the deductible may not exceed the greater of (A) \$10,000.00 for a multifamily Building and \$50,000.00 for a commercial Building, or (B) 10% of the amount of flood insurance coverage under the private insurance policy. If the amount of coverage under the flood insurance policy for any Building is less than the Insurable Value, Lender may require a Difference in Conditions policy satisfactory to Lender to cover a loss that would not be covered under such flood insurance policy. If flood insurance is required, please see Lender's Flood Insurance Requirements letter, the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, and the Flood Insurance Coverage Detail for further detail about Lender's flood insurance requirements. Subject to the requirements related to private insurance policies explained below, Lender will accept as evidence of the required flood insurance any of the following: (1) a copy of the insurance policy; (2) a declarations page from the insurance policy; or (3) an application plus proof that the premium has been paid in full. For Lender to accept the evidence described in item (3), Borrower must provide Lender with a copy of the insurance policy or the declarations page within 30 days of closing. If Borrower provides flood insurance by a private insurance policy (i.e., a policy that is not a standard policy issued on behalf of the National Flood Insurance Program ("NFIP")) for coverage amounts of \$500,000.00 or less for commercial or multifamily properties, in order to make the required comparison to the NFIP standard policy, Lender will require a copy of the private insurance policy prior to closing. If the private insurance policy fails to meet the criteria set forth in Lender's Flood Insurance Requirements letter or cannot be obtained in time to be reviewed prior to closing of the Loan, Borrower will be required to purchase an NFIP policy in the amount required by the Flood Act as a condition to closing of the Loan.

2.6 **Workers Compensation Insurance.** If Borrower has employees working at the Property, Borrower must carry workers compensation insurance in compliance with the laws of the state in which the Property is located.

2.7 **Changes in Insurance Requirements.** Lender may reasonably change its insurance requirements from time to time throughout the term of the obligations secured by this Security Instrument by giving written notice of such changes to Borrower. Without limiting the generality of the foregoing, Borrower shall from time to time obtain such additional coverages or make such increases in the amounts of existing coverage as may reasonably be required by written notice from Lender. Lender reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time.

3. **Policy and Premium Term.** If a new policy is being issued, the minimum policy term must be one year from Loan funding, with evidence that the premium has been paid in full for the term of the policy. If a new policy is not being issued due to there being an existing policy in force, the remaining term of the existing policy must be at least two months from Loan funding, with evidence that the premium has been paid for the remaining term of the policy.

4. **Maximum Deductibles.** The maximum deductible on the property insurance policy must not exceed the greater of \$25,000.00 or one percent of the applicable amount of coverage. Borrower may carry a lesser deductible if Borrower so chooses. Notwithstanding the foregoing, if the windstorm peril is excluded from the property insurance policy because the Property is located in a high-risk wind area, and windstorm coverage is provided through a separate policy, windstorm coverage only may have a deductible of up to five percent of the loss (and, if applicable, subject to a policy provision that the maximum deductible for windstorm coverage, regardless of the amount of the loss, will be a specified amount not to exceed \$250,000.00). Acceptable deductibles for flood policies are described in paragraph 2.5 of this Schedule 1.

5. **Acceptable Insurance Companies.** The insurer (the "Insurer") providing the insurance required in this Security Instrument and the other Loan Documents must be authorized to do business in the state where the Property is located. Lender shall have the right to approve or, for reasonable cause, disapprove the proposed Insurer selected by Borrower. The Insurer must

have a current Best's rating of "A-" and a financial size category of "VII" or better from A.M. Best Company. A California FAIR (Fair Access to Insurance Requirements) Plan Association policy, or equivalent policy issued by a similar state-run insurer in another state, is acceptable only when minimum form coverage cannot be obtained from an insurance company with such rating.

6. **Mortgage and Loss Payee Endorsement.** Each property policy must name "JPMorgan Chase Bank, National Association and its successors and assigns" as the only mortgagee and loss payee pursuant to a mortgage clause or endorsement (the mortgage clause included in Insurance Service Office ("ISO") Property Form No. CP 00 10 or its equivalent, which must be satisfactory to Lender and must provide that Lender will not have its interest voided by the act or omission of Borrower and that Lender may file a claim directly with the Insurer), which clause or endorsement must be contained in or attached to the policy and must show the following address for Lender: JPMorgan Chase Bank, N.A. and its successors and assigns, P.O. Box 9110, Coppell, Texas 75019-9110.

7. **Renewal Policies.** Borrower must renew or replace all required insurance policies so as to maintain continuous coverage in compliance with the Loan Documents. Borrower must provide Lender with a complete copy of each renewal or replacement policy (including endorsements) within 30 days after its effective date. Lender may order insurance meeting its requirements (at Borrower's expense) if any such policy is not received by such date.

8. **Notice of Cancellation.** All policies must guarantee that Lender will receive 30 days' advance notice prior to cancellation and ten days' notice for nonpayment of premiums. If a notice of cancellation is received on an existing policy and not reinstated or replaced with an acceptable policy before the effective date of the cancellation, Lender may order replacement coverage at Borrower's expense.

9. **Failure of Borrower to Maintain Insurance.**

9.1 **Lender Placed Insurance.** If Borrower fails to maintain insurance in accordance with this Security Instrument and the other Loan Documents, Lender may, in its sole discretion, obtain insurance to protect Lender's interests. This insurance is called "lender placed insurance."

9.2 **Limited Coverage.** Lender placed insurance may cover only the improvements and will be only in the amount required by Lender. In addition to other differences, the amount of coverage on the lender placed insurance may be less than Borrower's policy and may not cover Borrower's equity in the Property, the deductibles may be higher and there may not be personal property/contents, personal liability, medical or special risks coverage. In the case of flood insurance, the amount of coverage may be more than that required by Applicable Law.

9.3 **Cost.** Lender placed insurance is typically more expensive than insurance Borrower may obtain through Borrower's own agent. Borrower may also be assessed a nonrefundable policy issuance fee by Lender as well as any costs incurred by Lender relating to the failure to maintain insurance in accordance with Lender's requirements.

9.4 **Cancellation.** If Lender obtains lender placed insurance, this insurance may be canceled when Borrower provides Lender with satisfactory evidence of insurance coverage that is acceptable to Lender. While the lender placed insurance policy may be canceled and Borrower may be entitled to a refund of a portion of the premiums paid, Borrower may be charged for any time period for which the lender placed insurance was in effect, any cancellation fee assessed by the lender placed insurer, and any costs Lender incurs as a result of the failure to maintain adequate insurance.

10. **Additional Insurance Obtained by Borrower.** If Borrower obtains insurance coverage not required under this Security Instrument or the other Loan Documents that insures any interest in the Property or other collateral securing the Loan, Borrower shall ensure that Lender is named as mortgagee and loss payee on such policies by a mortgage endorsement as described above and Lender shall have the right to direct the application of the proceeds of such insurance as provided in the Loan Documents.

11. **No Permanent Waiver of Requirements.** Borrower understands and agrees that Lender may agree to close the Loan without requiring Borrower to comply strictly with all the requirements set out in this Schedule 1. Borrower acknowledges and agrees that, if Lender so closes the Loan, this is not a permanent waiver of any of the requirements that Lender did not require to be satisfied as of the closing date (the "Specified Requirements"). Lender may at any time in its sole discretion terminate its waiver of the Specified Requirements upon not less than 30 days' written notice to Borrower.

Loan No.: 200527604

## **ADDENDUM TO SECURITY INSTRUMENT (Mixed Use for Multifamily Loan Properties)**

This Addendum is attached to, incorporated into and shall be deemed to amend and supplement the deed of trust, security agreement, assignment of leases and rents and fixture filing, or the mortgage, security agreement, assignment of leases and rents and fixture filing or similar instrument (as applicable, the "Security Instrument") made by the undersigned ("Borrower") as grantor, trustor or mortgagor to secure Borrower's promissory note (the "Note") to JPMorgan Chase Bank, N.A. ("Lender") of the same date and covering the Property described in the Security Instrument. Capitalized terms used but not defined in this Addendum shall have the meanings given to those terms in the Security Instrument.

Certain of the space in the Property is adapted for retail, office or other commercial use rather than for residential apartment use. Leases of such space, as well as leases of other portions of the Property for commercial use are referred to as "Commercial Leases" in this Addendum.

In addition to the assignments, covenants and agreements made in the Security Instrument, Borrower agrees as follows:

1. **Commercial Lease Representations and Warranties.** As of the date hereof, except as otherwise noted in an estoppel certificate and/or a certified rent roll from Borrower delivered to and approved by Lender in connection with the Loan: (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are the valid, binding and enforceable obligations of Borrower and the applicable tenant thereunder; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll statement delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated except to Lender; (e) none of the Rents have been collected for more than one (1) month in advance; (f) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (g) there exists no offset or defense to the payment of any portion of the Rents; (h) no Lease contains an option to purchase, right of first refusal to purchase, expansion right, or any other similar provision unless provided for in the Lease and approved by Lender in writing; and (i) no person or entity has any possessory interest in, or right to occupy the Property, except under and pursuant to a Lease.

2. **Commercial Lease Covenants; Retenancing Reserve.** Except as provided below, Borrower shall not enter into, amend or terminate any Lease, or give any consent or permission or exercise any option required or permitted by the terms thereof or waive any obligation required to be performed by any tenant, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Borrower shall deliver to Lender, promptly upon receipt thereof, copies of any and all notices of default received by Borrower from any tenant under any of the Leases. Borrower shall keep and perform, in all material respects, all terms, conditions and covenants required to be performed by lessor under the Leases. Borrower shall, in all material respects, enforce the Leases and all remedies available to Borrower against the tenants thereunder in case of default under the Leases by any tenant. Borrower shall forthwith deposit with Lender any sums received by Borrower in consideration of any full or partial termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder, and any such sums received by Borrower shall be held in trust by Borrower for such purpose. All such sums received by Lender with respect to any

Loan No.: 200527604

Lease shall be deemed a reserve (the "Retenancing Reserve") for the costs of retenancing the space affected by the termination, modification or amendment and shall be deposited by Lender into a pledged account with Lender and under the sole control of Lender. Borrower hereby grants Lender a security interest in such account and in all funds from time to time on deposit therein as collateral security for all obligations secured by the Security Instrument. If no Event of Default exists and is continuing, Lender shall release the Retenancing Reserve to Borrower from time to time as necessary to pay or reimburse Borrower for such tenant improvements, brokerage commissions and other leasing costs as may be required to retenant the affected space, subject to Borrower's satisfaction of the conditions to disbursement, as determined by Lender in its reasonable discretion.

3. **Permitted Commercial Leases.** Borrower shall be permitted, in the ordinary course of business, to enter into, extend, renew, amend or modify (but not terminate, except in the commercially reasonable enforcement of Borrower's remedies for default under Leases) any Lease ("Permitted Lease") without Lender's specific prior written consent; provided that all of the following conditions are satisfied:

- (a) No Event of Default exists and is continuing;
- (b) No purchase option, right of first refusal or expansion right is thereby granted;
- (c) A new Lease must be commercially reasonable and executed on a standard commercial lease form generally accepted in the commercial real estate lease industry in the geographical area of the Property;
- (d) All the terms thereof (i) are in the ordinary course of business of Borrower; and (ii) are commercially reasonable;
- (e) The same does not and will not cause a default pursuant to the Loan Documents, or any other document or instrument (recorded or otherwise) in any way burdening or affecting the Property; and
- (f) The tenant's business does not and will not: (i) involve the presence of any Hazardous Substance (as defined in the Indemnity Agreement) on the Property (other than supplies for cleaning or maintenance in commercially reasonable amounts required for use in the ordinary course of business, provided such items are incidental to the use of the Property and are stored and used in compliance with Applicable Law), including, but not limited to, any businesses engaged in the processing of dry cleaning on-site; (ii) permit the use of any portion of the Property to be in violation of Applicable Law; or (iii) permit any use of any portion of the Property that would materially, adversely affect the attractiveness, marketability or value of the Property, as determined by Lender in its reasonable discretion, notwithstanding that such use may be otherwise permitted under Applicable Law.

If Lender so requests, Borrower shall furnish to Lender a true and complete copy of each Lease, extension, renewal, amendment or modification of lease, hereafter made by Borrower with respect to space in the Property within 30 days after delivery of each such Lease, extension, renewal, amendment or modification by the parties thereto. The delivery by Borrower of each Lease, extension, renewal, amendment or modification that does not require Lender's specific consent hereunder shall constitute a representation by Borrower that the conditions contained in this Section have been complied with. Furthermore, at Lender's request, Borrower shall cause any tenant to provide Lender with any estoppel or subordination agreement to the extent permitted pursuant to the applicable Lease.


Loan No.: 200527604

4. **Right of Subordination.** Notwithstanding anything in the Security Instrument to the contrary, Lender may, upon written notice to Borrower, elect to: (a) exclude from the assignment provided in the Security Instrument of any of the Leases as specified in such notice so that the interest under such specified Lease is not assigned to Lender; and (b) subordinate the lien and other terms and provisions of the Security Instrument to any of the Leases as indicated in such notice to Borrower.

5. **Security Deposits.** Borrower shall maintain all security deposits collected from tenants or others with respect to the Property in accordance with all applicable legal requirements.

DATED as of the date of the Security Instrument to which this Addendum is attached.

776 C LLC, a Delaware limited liability company



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By: Ben Rieder, Chief Operating Officer



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

BENJAMIN RIEDER,

Plaintiff,

Docket No.: 1:25-cv-05173(AT)

-against-

**SECOND AMENDED  
COMPLAINT**

CHESTNUT HOLDINGS OF NEW YORK, INC, and  
JONATHAN WIENER,

Defendants.

-----X

Plaintiff, Benjamin Rieder (“Plaintiff” or “Mr. Rieder”), by and through his attorneys, Book Law LLP, as and for his First Amended Complaint against defendants, Chestnut Holdings of New York, Inc. (“Chestnut Holdings” or the “Company”), and Jonathan Wiener, in his individual capacity (“Mr. Wiener,” and collectively with Chestnut Holdings, the “Defendants”), alleges as follows:

**NATURE OF ACTION**

1. This is an action for breach of contract and violations of New York Labor Law, Article 6 arising from Defendants’ failure to pay Plaintiff retirement benefits due under a written Retirement Agreement. Plaintiff seeks monetary damages, including contractual benefits, liquidated damages, interest, attorneys’ fees, and costs.

**JURISDICTION, VENUE AND PARTIES**

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the parties are citizens of different States, and the amount in controversy, exclusive of costs, exceeds the sum or value of \$75,000.

11. Mr. Rieder began employment as a Controller with Chestnut Holdings in approximately April 2005.

12. Due to Mr. Rieder's exemplary performance, on July 21, 2009, Mr. Rieder and Defendants entered into three agreements: an Employment Agreement (the "Employment Agreement"), a Split Dollar Insurance Agreement (the "Insurance Agreement"), and a Retirement Agreement.

13. Pursuant to the Employment Agreement, on July 21, 2009, Mr. Rieder was promoted to Chief Operating Officer ("COO") with a salary of \$250,000 and a guaranteed annual bonus of \$125,000. Attached as Exhibit A is a true and correct copy of the Employment Agreement.

14. Mr. Rieder was responsible for providing exclusive, full-time services to the Company and for performing duties as directed by the Chief Executive Officer ("CEO") or any of their designees. Mr. Rieder brought extensive experience and a wealth of real estate knowledge to Chestnut Holdings by overseeing the Company's properties and developing strategic initiatives for its portfolio.

15. Mr. Wiener, as President, was responsible for the administration of the Company and its personnel, including having the authority to enter into agreements governing employment and compensation with senior employees such as Mr. Rieder.

16. The Company regarded Mr. Rieder as a valuable and integral member of Chestnut Holdings and acknowledged his contributions to the Company's success.

17. To encourage Mr. Rieder to continue his career at Chestnut Holdings, the parties executed the Retirement Agreement. Attached as Exhibit B is a true and correct copy of the Retirement Agreement.

18. Mr. Wiener had the authority to determine and approve payment methods and rates for Mr. Rieder, including salary, bonus, and retirement payments, as reflected in the terms of the Employment and Retirement Agreements entered into on behalf of Chestnut Holdings.

19. Mr. Wiener had supervisory authority over the maintenance and accuracy of employment records, agreements, and compensation documentation for Mr. Rieder, including execution and retention of all relevant agreements governing Mr. Rieder's employment and benefits.

20. At all relevant times, Mr. Wiener exercised operational control over Mr. Rieder's employment, including playing a direct and integral role in authorizing, overseeing, and ensuring the creation, performance, and enforcement of the agreements under which Mr. Rieder's compensation, schedule, and benefits were governed.

*The Retirement Agreement*

21. Section 2(a) of the Retirement Agreement provides that “[s]ubject to the provisions of this Agreement, within sixty (60) days after the Retirement Date, the Company shall pay [Mr. Rieder] in a single sum of the amount of \$1,476,814, provided that [Mr. Rieder] is employed by the Company as of the [r]etirement [d]ate.” *Id* at pg. 2.

22. The Retirement Agreement outlines three scenarios to determine whether Mr. Rieder will receive payment. These scenarios include 1) whether Mr. Rieder voluntarily resigned from his position, 2) whether he was terminated for cause, or 3) whether he was terminated without cause. *See Id* at pgs. 2-3.

23. The Retirement Agreement defines “Cause” to mean: “(i) the commission of any act of fraud, material dishonesty, misappropriation or embezzlement, regardless of whether such crime is related to an employee of the Company, (ii) the deliberate or intentional failure or refusal by Employee to (A) to substantially perform the duties assigned to him as an employee of the Company (other than such failure resulting from a Disability), (B) abide by the reasonable directives of the Company, or (C) or (sic) devote substantially his business time and attention to

the business and affairs of the Company, (iii) material nonconformance with the Company's written policies, (iv) Employee's conviction in the court of law of, or Employee's entering a plea of guilty or nolo contendere to, any felony, or (v) an act that is detrimental to the reputation, goodwill or business operation of the Company or any of its affiliates." *Id* at pg. 1.

24. According to Paragraph 2(d) of the Retirement Agreement, if the Company terminates Mr. Rieder without cause, he is entitled to ten (10) percent of the \$1,476,814 at this time of termination and an additional ten (10) percent each year until July 21, 2022, at which time the applicable percentage shall be equal to one hundred percent (100%). *See Id* at pg. 2.

25. Section 2(d) of the Retirement Agreement indicates that in the event, Mr. Rieder is terminated from the Company after four years have passed since the commencement of the Retirement Agreement, (the "Initial Period"), Mr. Rieder shall be entitled to receive an amount equal to the product of the applicable percentage multiplied by \$1,476,814.00. Such amount shall be payable by the Company to Mr. Rieder within sixty (60) days after the date of termination of Mr. Rieder's employment. *Id*.

26. The Retirement Agreement defines "Applicable Percentage" to "be equal to ten percent (10%) beginning on July 21, 2013, and shall be increased ten (10) percentage points each year thereafter on the anniversary of the effective date until July 21, 2022, at which time the Applicable Percentage shall be equal to one hundred percent (100%)." *Id*.

27. Mr. Rieder was terminated without cause from his position on May 31, 2024.

28. Mr. Rieder consistently demonstrated exemplary performance throughout his time at the Company.

29. Mr. Rieder could not have been terminated for cause because his actions did not meet the definition of "Cause" as outlined in Section 1(a) of the Retirement Agreement.

32. Pursuant to the Retirement Agreement, the Company is obligated to pay Mr. Rieder \$1,476,814 in a single sum within sixty days after his last day of employment.

**AS AND FOR A FIRST CAUSE OF ACTION**  
*(Breach of Contract Against Chestnut Holdings)*

35. Plaintiff and Chestnut Holdings entered into a valid and enforceable Retirement Agreement.

37. Chestnut Holdings breached the Agreement by failing to pay Plaintiff the lump sum retirement benefit of \$1,476,814 within sixty days.

38. Plaintiff fulfilled its obligations under the contract by completing his duties as the Chief Operating Officer.

39. Because of Chestnut Holdings' repudiation and breach of the Retirement Agreement, Plaintiff has and will be injured and deprived of his right under the Retirement Agreement to the retirement benefits presently due.

40. As a result of Chestnut Holdings' breach, Plaintiff has suffered and continues to suffer damages in an amount to be determined at trial, but in any event no less than \$1,476,814.00, plus interest, costs, disbursements, and attorneys' fees.

**AS AND FOR A SECOND CAUSE OF ACTION**  
***(Violation of New York Labor Law, Article 6 Against All Defendants)***

41. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs as if fully set forth herein.

42. Chestnut Holdings and Mr. Wiener are employers of Plaintiff under New York Labor Law ("NYLL") § 190(3).

43. Mr. Wiener had the authority to determine and approve payment methods and rates for Plaintiff, including salary, bonus, and retirement payments, as reflected in the terms of the Employment and Retirement Agreements entered into on behalf of Chestnut Holdings.

44. Mr. Wiener also had supervisory authority over the maintenance and accuracy of employment records, agreements, and compensation documentation for Plaintiff, including the execution and retention of all relevant agreements governing Plaintiff's employment and benefits.

45. The compensation that Plaintiff was entitled to be paid under the Retirement Agreement constitutes wages within the meaning of NYLL §190(1).

46. Mr. Wiener had full operational control over Plaintiff's wages as defined by NYLL §190(1).

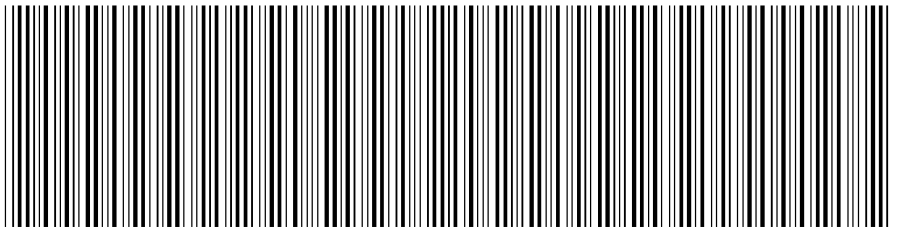
47. In failing to pay Plaintiff the amount due under the Retirement Agreement, Defendants have violated NYLL Article 6, § 193.





**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.



2021121501879002001E12DE

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 5**

**Document ID: 2021121501879002**

Document Date: 12-09-2021

Preparation Date: 12-15-2021

Document Type: DEED

Document Page Count: 4

**PRESENTER:**

MADISON ABSTRACT, INC. ( BX 21 21108 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**RETURN TO:**

MADISON ABSTRACT, INC. ( BX 21 21108 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address             |
|--|-------|-----|------------|---------------------|
| BRONX                                    | 3165  | 11  | Entire Lot | 2390 CRESTON AVENUE |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                     |

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

2390 CRESTON REALTY LLC  
100A BROADWAY, SUITE 449  
BROOKLYN, NY 11249

**GRANTEE/BUYER:**

2390 C LLC  
C/O: DENALI MANAGEMENT INC., 20 SOUTH  
BROADWAY, SUITE 300  
YONKERS, NY 10701

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

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: \$ 57.00

Affidavit Fee: \$ 0.00

**Filing Fee:**

\$ 250.00

NYC Real Property Transfer Tax:

\$ 99,750.00

NYS Real Estate Transfer Tax:

\$ 24,700.00

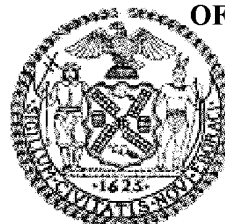
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 12-16-2021 18:45

City Register File No.(CRFN):

**2021000495531**



*Annette McMill*

**City Register Official Signature**

County: Bronx  
Block: 3165  
Lot: 11

**BARGAIN AND SALE DEED, WITHOUT COVENANTS**  
**AGAINST GRANTOR'S ACTS**

*as of 9<sup>th</sup>*  
**THIS INDENTURE**, made the \_\_\_ day of December, Two Thousand and Twenty-One

**BY** 2390 Creston Realty LLC, having an address at 100A Broadway, Suite 449, Brooklyn, NY 11249, party of the first part,

and 2390 C LLC, a Delaware Limited liability company, having an address at c/o Denali Management Inc., 20 South Broadway, Suite 300, Yonkers, NY 10701, parties of the second part,

**WITNESSETH**, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

**ALL** that certain plot, piece, or parcel of land, situate, lying and being in the Borough of Bronx, County of Bronx, State of New York bounded and described as follows:

See attached Schedule A

**BEING** the same premises conveyed to the party of the first part by deed 09/17/2014 and recorded 10/15/2014 in the Bronx County Clerk/Register's Office CRFN# 2014000341304.

**TOGETHER** with all right, title and interest, if any, of the party of the first part of, in and to any streets and roads abutting the above-described premises to the center lines thereof;

**TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises;

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

**AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

Signatures on Next

**SCHEDULE A**

**ALL** that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, County of Bronx, City and State of New York, bounded and described as follows:

**BEGINNING** at a point on the easterly side of Creston Avenue distant 224.25 feet northerly from the corner formed by the intersection of the easterly side of Creston Avenue with the northerly side of 184<sup>th</sup> Street;

**RUNNING THENCE** easterly at right angles to the easterly side of Creston Avenue, 95 feet;

**THENCE** northerly parallel with the easterly side of Creston Avenue 50 feet;

**THENCE** westerly again at right angles to the easterly side of Creston Avenue 95 feet to the easterly side of Creston Avenue;

**THENCE** southerly along the easterly side of Creston Avenue 50 feet to the point or place of **BEGINNING**.

**BEING AND INTENDED** to be the same premises conveyed to the party of the first part by deed dated 9/17/14 recorded 10/15/14 in the Office of the Register, County of Bronx, State of New York, in CRFN 2014000341304.

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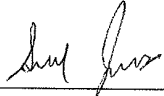
For Clearance click: [Clearance@MadisonAbstract.com](mailto:Clearance@MadisonAbstract.com)



Title Number: **BX 21 21108**

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

2390 CRESTON REALTY LLC

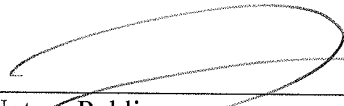
By:   
Name: Samuel Jacobowitz  
Title: Authorized Signatory

**NEW YORK UNIFORM ACKNOWLEDGMENT**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF KINGS     )

On the 8<sup>th</sup> day of December in the year 2021, before me, the undersigned, personally appeared Samuel Jacobowitz, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SHOSHANA LIBMAN  
Notary Public, State of New York  
No. 01L16399375  
Qualified in Queens County  
My Commission Expires 10/21/2023

  
Notary Public

**BARGAIN AND SALE DEED, WITHOUT COVENANTS**  
**AGAINST GRANTOR'S ACTS**

2390 Creston Realty LLC

-to-

2390 C LLC

**City:** New York

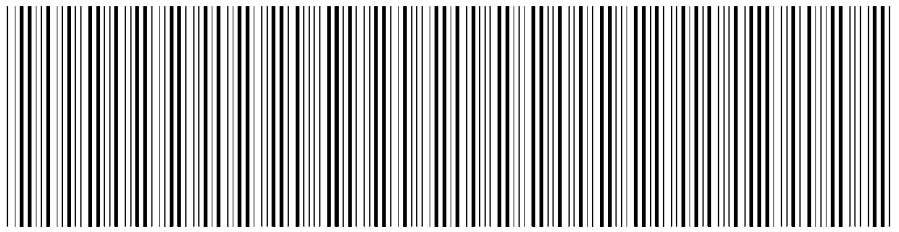
**County:** Bronx

**Block:** 3165

**Lots:** 11

Title No. BX 21 21108

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021121501879002001SDC5F

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2021121501879002**  
Document Type: DEED

Document Date: 12-09-2021

Preparation Date: 12-15-2021

**ASSOCIATED TAX FORM ID:** 2021120600627

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING  
RP - 5217 REAL PROPERTY TRANSFER REPORT

1  
3



The City of New York  
Department of Environmental Protection  
Bureau of Customer Services  
59-17 Junction Boulevard  
Flushing, NY 11373-5108

## Customer Registration Form for Water and Sewer Billing

### Property and Owner Information:

- (1) Property receiving service: BOROUGH: BRONX BLOCK: 3165 LOT: 11
- (2) Property Address: 2390 CRESTON AVENUE, BRONX, NY 10468
- (3) Owner's Name: 2390 C LLC
- Additional Name:

### Affirmation:



Your water & sewer bills will be sent to the property address shown above.

### Customer Billing Information:

#### Please Note:

- A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.
- B. Original bills for water and/or sewer service will be mailed to the owner, **at the property address or to an alternate mailing address**. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit [www.nyc.gov/dep](http://www.nyc.gov/dep) to provide us with the other party's information.

### Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner:

12/09/2021

Signature:

Date (mm/dd/yyyy)

Name and Title of Person Signing for Owner, if applicable:

2390 C LLC, by Nicholas T. Donovan  
Authorized Signatory

FOR CITY USE ONLY

C1. County Code  C2. Date Deed Recorded  /  /   
Month Day Year  
C3. Book  OR C4. Page   
C5. CRFN



REAL PROPERTY TRANSFER REPORT

STATE OF NEW YORK  
STATE BOARD OF REAL PROPERTY SERVICES

RP - 5217NYC

PROPERTY INFORMATION

1. Property Location  2390  CRESTON AVENUE  BRONX  10468  
STREET NUMBER STREET NAME BOROUGH ZIP CODE  
2. Buyer Name  2390 C LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME  
3. Tax Billing Address Indicate where future Tax Bills are to be sent  
if other than buyer address (at bottom of form)    
LAST NAME / COMPANY FIRST NAME  
   
STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE  
4. Indicate the number of Assessment Roll parcels transferred on the deed  1  # of Parcels OR ☐ Part of a Parcel  
4A. Planning Board Approval - N/A for NYC  
4B. Agricultural District Notice - N/A for NYC  
Check the boxes below as they apply:  
5. Deed Property Size  FRONT FEET X  DEPTH OR  ACRES   
6. Ownership Type is Condominium ☐  
7. New Construction on Vacant Land ☐  
8. Seller Name  2390 CRESTON REALTY LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME  
9. Check the box below which most accurately describes the use of the property at the time of sale:  
A ☐ One Family Residential C ☐ Residential Vacant Land E ☐ Commercial G ☐ Entertainment / Amusement I ☐ Industrial  
B ☐ 2 or 3 Family Residential D ☐ Non-Residential Vacant Land F ☒ Apartment H ☐ Community Service J ☐ Public Service

SALE INFORMATION

10. Sale Contract Date  8 / 26 / 2021  
Month Day Year  
11. Date of Sale / Transfer  12 / 9 / 2021  
Month Day Year  
12. Full Sale Price \$  3 8 0 0 0 0 0  
( Full Sale Price is the total amount paid for the property including personal property.  
This payment may be in the form of cash, other property or goods, or the assumption of  
mortgages or other obligations.) Please round to the nearest whole dollar amount.  
13. Indicate the value of personal property included in the sale

14. Check one or more of these conditions as applicable to transfer:

A ☐ Sale Between Relatives or Former Relatives  
B ☐ Sale Between Related Companies or Partners in Business  
C ☐ One of the Buyers is also a Seller  
D ☐ Buyer or Seller is Government Agency or Lending Institution  
E ☐ Deed Type **not** Warranty or Bargain and Sale (Specify Below )  
F ☐ Sale of Fractional or Less than Fee Interest ( Specify Below )  
G ☐ Significant Change in Property Between Taxable Status and Sale Dates  
H ☐ Sale of Business is Included in Sale Price  
I ☐ Other Unusual Factors Affecting Sale Price ( Specify Below )  
J ☒ None

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

15. Building Class  C 1 16. Total Assessed Value (of all parcels in transfer)  3 2 9 4 0 0  
17. Borough, Block and Lot / Roll Identifier(s) ( If more than three, attach sheet with additional identifier(s) )  
 BRONX 3165 11

202112060062720103



**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

signed in counterpart **BUYER**


**BUYER'S ATTORNEY**

|   |  |                          |  |                  |  |                  |  |
|---|--|--------------------------|--|------------------|--|------------------|--|
| BUYER SIGNATURE   |  | DATE                     |  | LAST NAME        |  | FIRST NAME       |  |
| C/O: DENALI MANAGEMENT INC., 20 SOUTH BROADWAY, SUITE 300 |  |                          |  |                  |  |                  |  |
| STREET NUMBER   |  | STREET NAME (AFTER SALE) |  | AREA CODE        |  | TELEPHONE NUMBER |  |
| YONKERS   |  |                          |  |                  |  | <b>SELLER</b>    |  |
| CITY OR TOWN  |  | STATE                    |  | ZIP CODE         |  | DATE             |  |
|   |  | NY                       |  | 10701            |  | 12/8/2021        |  |
|   |  |                          |  | SELLER SIGNATURE |  |                  |  |
|   |  |                          |  |                  |  |                  |  |

2021120600627201

**CERTIFICATION**

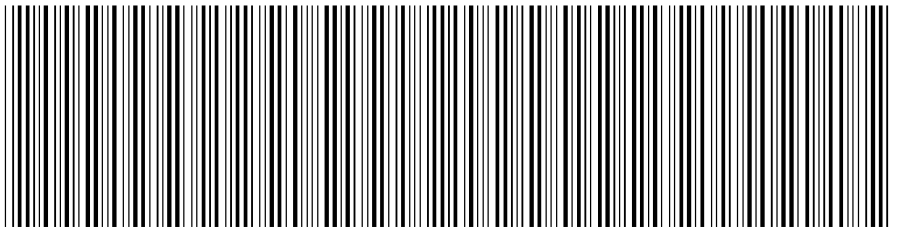
I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

|  |  |                       |  |                      |  |
|--|--|-----------------------|--|----------------------|--|
| <br>BUYER SIGNATURE |  | 12/09/2021<br>DATE    |  | BUYER'S ATTORNEY     |  |
| C/O: DENALI MANAGEMENT INC., 20 SOUTH BROADWAY, SUITE 300  |  |                       |  | LAST NAME FIRST NAME |  |
| STREET NUMBER STREET NAME (AFTER SALE)   |  | AREA CODE             |  | TELEPHONE NUMBER     |  |
| YONKERS  |  | NY                    |  | 10701                |  |
| CITY OR TOWN   |  | STATE                 |  | ZIP CODE             |  |
|  |  | signed in counterpart |  | SELLER               |  |
|  |  | SELLER SIGNATURE      |  | DATE                 |  |

2021120600627201

**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.



2021121501879004001E1256

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 67**

**Document ID: 2021121501879004**

Document Date: 12-09-2021

Preparation Date: 12-15-2021

Document Type: AGREEMENT

Document Page Count: 65

**PRESENTER:**

MADISON ABSTRACT, INC. ( BX 21 21108 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**RETURN TO:**

MADISON ABSTRACT, INC. ( BX 21 21108 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address             |
|--|-------|-----|------------|---------------------|
| BRONX                                    | 3165  | 11  | Entire Lot | 2390 CRESTON AVENUE |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                     |

**CROSS REFERENCE DATA**

**CRFN:** 2010000406699

☒ Additional Cross References on Continuation Page

**PARTIES**

**PARTY 1:**

2390 C LLC  
20 S BROADWAY, SUITE 300  
YONKERS, NY 10701

**PARTY 2:**

JPMORGAN CHASE BANK, N.A.  
14800 FRYE ROAD, 2ND FLOOR, MAIL CODE  
TX1-0007  
FORT WORTH, TX 76155

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 2,850,000.00

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: \$ 362.00

Affidavit Fee: \$ 8.00

**Filing Fee:**

\$ 0.00

**NYC Real Property Transfer Tax:**

\$ 0.00

**NYS Real Estate Transfer Tax:**

\$ 0.00

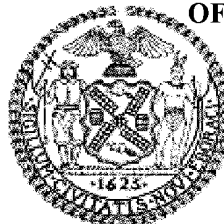
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 12-16-2021 18:45

City Register File No.(CRFN):

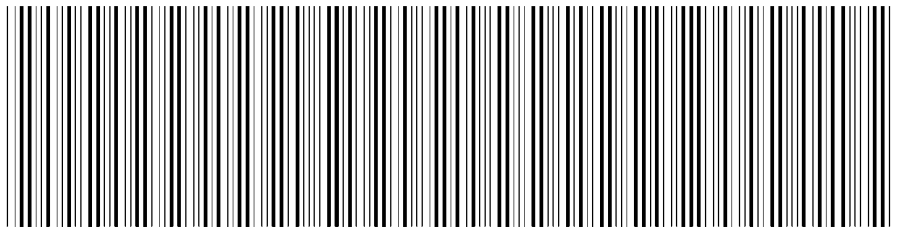
**2021000495533**



*Annette McMill*

**City Register Official Signature**

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021121501879004001C10D6

**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)**

**PAGE 2 OF 67**

**Document ID: 2021121501879004**

Document Date: 12-09-2021

Preparation Date: 12-15-2021

Document Type: AGREEMENT

**CROSS REFERENCE DATA**

**CRFN:** 2012000011879

**CRFN:** 2014000341306

**CRFN:** 2017000236741

**MORTGAGE MODIFICATION AND EXTENSION AGREEMENT**

Title No. BX 21 21108

**RECORD AND RETURN TO:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

The property described in this instrument is also known as Block **3165** and Lot **11** on the Official Tax Map of **Bronx County**.

## MORTGAGE MODIFICATION AND EXTENSION AGREEMENT

This Mortgage Modification and Extension Agreement (this "Agreement"), dated as of **December 9, 2021**, is entered into by **JPMORGAN CHASE BANK, N.A.** having an office at 14800 Frye Road, 2nd Floor, Mail Code TX1-0007, Fort Worth, TX 76155-2732, Attention: Portfolio Administration ("Mortgagee"); and **2390 C LLC, a Delaware limited liability company**, having an address at **20 S Broadway, Suite 300, Yonkers, NY 10701** ("Mortgagor").

### RECITALS

A. Mortgagee is the holder of one or more mortgages more particularly described in Schedule 1 attached to this Agreement consisting of the "Prior Mortgages" securing the amounts due under the promissory note or notes secured thereby (the "Prior Debt"). The Prior Mortgages are a lien on the real property located in **Bronx** County, New York, more particularly described on Exhibit A attached to this Agreement (the "Property").

B. Mortgagee and Mortgagor have agreed to modify and extend the Prior Mortgages.

C. Mortgagor will derive benefit from the modification and extension of the Prior Mortgages.

D. Mortgagor and Mortgagee simultaneously with the execution of this Agreement have entered into a note modification and extension agreement (the "Note Modification") dated the date hereof whereby the terms and payment of the Prior Debt set forth in the promissory note or notes secured by the Prior Mortgages modified hereby (collectively, the "Original Notes") have been modified so that Mortgagor shall pay in accordance with the terms and at the times provided by the Amended and Restated Promissory Note dated the date of this Agreement and executed by Mortgagor in favor of Mortgagee (the "Amended and Restated Promissory Note").

**NOW, THEREFORE**, in consideration of the mutual agreements set forth below, the parties hereto agree as follows:

### AGREEMENT

1. The recitals set forth above are incorporated herein in their entirety.

2. Mortgagor represents that there is, as of the date of this Agreement, due, owing and unpaid on the Prior Mortgages, the aggregate outstanding principal balance of **\$3,160,686.09**, without offset, defense or counterclaim, in contract, tort or otherwise, of any kind or nature whatsoever.

3. The lien of the Prior Mortgages is hereby modified and, after taking into account any paydown or reduction of the outstanding principal balance that may occur in connection with execution of this Agreement, creates a single first lien in the principal amount of **TWO MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$2,850,000.00)** (the "Modified Debt") on the Property.

4. The terms, representations, covenants and conditions of the Prior Mortgages shall be and are hereby superseded and restated in their entirety, from and after the date of this Agreement, by the terms, representations, covenants and conditions set forth in the amended and restated mortgage, security agreement, assignment of leases and rents, and fixture filing attached as Exhibit B to this Agreement (the Prior Mortgages, as amended and restated as provided herein, are referred to as the "Restated Mortgage") and Mortgagor agrees to comply with and be subject to all of the terms, representations, covenants and conditions of the Restated Mortgage.

5. Mortgagor will pay interest on the Modified Debt at the rate of interest and on the terms providing for the payment of principal and interest in the Amended and Restated Promissory Note, which is secured by the Restated Mortgage, and all other terms, provisions and conditions of the Note Modification are incorporated by reference herein and hereby

supersede all the terms, provisions and conditions of the Prior Debt and Mortgagor agrees to comply with the terms, provisions and covenants of the Note Modification.

6. Unless otherwise disclosed to Mortgagee in writing prior to the date of this Agreement, the representations and warranties contained in the Prior Mortgages and the other documents executed in connection therewith, are true and correct in all material respects on and as of the date of this Agreement and with the same effect as if made on and as of that date.

7. Mortgagor represents and warrants that there exists no default or "Event of Default" or any other event, condition or state of facts which, with notice or the passage of time or both, would constitute a default or an "Event of Default" under the Restated Mortgage or under the Prior Mortgages or any of the other loan documents executed in connection with any of the foregoing.

8. Mortgagor has not entered into any agreement that expressly or otherwise prohibits Mortgagor from entering into this Agreement. No provision of this Agreement may be modified, terminated, waived or amended except in a writing signed by all parties hereto.

9. This Agreement may be executed in one or more counterparts by the parties hereto, each of which counterparts will be an original and all of which will constitute a single agreement.

10. Mortgagor will comply with all of the terms, provisions and conditions of the Amended and Restated Promissory Note.

11. Mortgagor represents and warrants that, as of the date of this Agreement, it has no counterclaims, defenses or offsets, in contract, tort or otherwise, whatsoever to the payment of the Modified Debt or any interest thereon.

12. Mortgagor acknowledges that: (a) Mortgagee may now or in the future not have possession of originals or copies of certain of the notes evidencing the Original Debt; (b) Mortgagee is (i) the owner of the Original Notes as modified and extended by the Amended and Restated Promissory Note and secured by the Restated Mortgage, including any lost notes, and (ii) the mortgagee under the Prior Mortgages, the terms, representations, covenants and conditions of which are modified, amended and restated by this Agreement and set forth in the Restated Mortgage; (c) all assignments of the notes evidencing the Prior Debt and all assignments of the Prior Mortgages were duly authorized and such assignments are legally enforceable; (d) Mortgagor has received the mortgage recording tax benefits resulting from the assignment of the Prior Mortgages and the notes constituting the Prior Debt, and the extension and modification of the Mortgages and the Prior Debt was done at the request of Mortgagor and solely for Mortgagor's benefit; (e) RESERVED; (f) Mortgagor hereby ratifies and confirms the validity and existence of any lost note(s) comprising the Prior Debt, and agrees to assume all duties, responsibilities, and obligations thereunder except as such duties, responsibilities, and obligations are modified in the Note Modification or in the Amended and Restated Promissory Note; and (g) Mortgagor hereby ratifies and confirms the validity and existence of the Prior Mortgages and agrees to assume all duties, responsibilities and obligations thereunder except as such duties, responsibilities and obligations are modified herein or in the Restated Mortgage. Mortgagor hereby waives any and all rights and defenses, releases and indemnifies Mortgagee for, assumes liability for, and agrees to pay, protect, defend and save Mortgagee harmless for, from and against, any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, attorneys' fees), causes of action, suits, claims, demands and judgments of any nature or description whatsoever that may at any time be imposed upon, incurred by or awarded against Mortgagee as a result of Mortgagee not having possession of the notes evidencing the Prior Debt, the Prior Mortgages, or any part of either thereof, or in connection with any lost note affidavit or similar document with regard to the Prior Debt or the Prior Mortgages or any assignment of any constituent note or mortgage. Mortgagor, for itself and for its successors and assigns, hereby forever waives any requirement that Mortgagee: (i) produce, deliver, display, indorse, exhibit, or otherwise demonstrate possession of the Prior Debt or prove due execution or authority to execute any assignment of any note or mortgage constituting the Prior Debt or the Prior Mortgages; or (ii) deliver any bond, security, indemnity, affidavit or other documentation in connection with the Prior Debt or the Prior Mortgages. Mortgagor will pay any amounts owing to Mortgagee pursuant to this paragraph within 10 days after written demand therefor by Mortgagee.

IN WITNESS WHEREOF, this Agreement has been executed by each of the parties hereto as of the date first set forth above.

**MORTGAGOR:**

**2390 C LLC,**  
**a Delaware limited liability company**

By: **2390 C HOLDING LLC,**  
**a Delaware limited liability company,**  
**Sole Member**

By: **2390 C S36 LLC,**  
**a New York limited liability company,**  
**Managing Member**

By:

  
\_\_\_\_\_  
**JONATHAN WIENER,**  
**Managing Member**

**SIGNATURE(S) CONTINUED ON FOLLOWING PAGE(S)**



State of New York ) ss.  
County of Bronx )

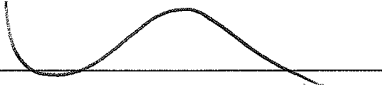
On the 3rd day of December in the year **2021**, before me, the undersigned, a Notary Public in and for said state, personally appeared **JONATHAN WIENER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Signature of Notary Public

**Cynthia L. Perfetti**  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires: 12/23/2023

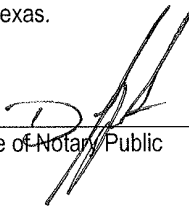
MORTGAGEE:

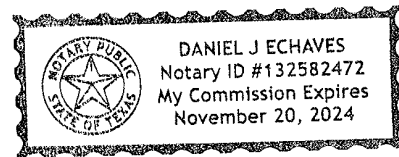
JPMORGAN CHASE BANK, N.A.

By:   
Name: URSULA FLORES  
Title: Authorized Officer

State of Texas ) ss.  
County of Tarrant )

On the 3<sup>rd</sup> of December in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared Ursula Flores, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the city of Fort Worth and the state of Texas.

  
\_\_\_\_\_  
Signature of Notary Public



**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Creston Avenue distant 224.25 feet northerly from the corner formed by the intersection of the easterly side of Creston Avenue with the northerly side of 184th Street;

RUNNING THENCE easterly at right angles to the easterly side of Creston Avenue, 95 feet;

THENCE northerly parallel with the easterly side of Creston Avenue 50 feet;

THENCE westerly again at right angles to the easterly side of Creston Avenue 95 feet to the easterly side of Creston Avenue;

THENCE southerly along the easterly side of Creston Avenue 50 feet to the point or place of BEGINNING.

BEING AND INTENDED to be the same premises conveyed to the party of the first part by deed dated 9/17/14 recorded 10/15/14 in the Office of the Register, County of Bronx, State of New York, in CRFN 2014000341304.

PROPERTY ADDRESS: 2390 CRESTON AVE, BRONX, NEW YORK 10468

**SCHEDULE 1**

**Prior Mortgages**

**First Mortgage And Security Agreement (a)**

Mortgagor: 2390 Creston LLC  
Mortgagee: Signature Bank  
Amount: \$1,175,000.00  
Dated: November 17, 2010  
Recorded: December 3, 2010  
CRFN: 2010000406699  
Mortgage Tax: \$ 32,900.00

**Assignment of Mortgage (a1)**

Assignor: Signature Bank  
Assignee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 1, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011878

**Gap Mortgage (b)**

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Amount: \$425,000.00  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011879  
Mortgage Tax: \$ 8,712.50

**Amended, Restated and Consolidated Mortgage and Security Agreement (b1)**

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011880  
Note: Consolidated mortgages (a) and (b) to form a single lien in the principal amount of \$1,600,000.00.

**Assignment of Mortgage (b2)**

Assignor: Cantor Commercial Real Estate Lending, L.P.  
Assignee: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Dated: November 13, 2012  
Recorded: January 31, 2013  
CRFN: 2013000043576

**Assignment of Mortgage (b3)**

Assignor: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Assignee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341305

Mortgage (c)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Amount: \$874,462.85  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341306  
Mortgage Tax: \$ 24,468.01

Consolidation, Extension and Modification Agreement (c1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341307  
Note: Consolidated mortgages (a), (b) and (c) to form a single lien in the principal amount of \$2,415,000.00.

Assignment of Mortgage (c2)

Assignor: Peapack-Gladstone Bank  
Assignee: Greystone Servicing Corporation, Inc.  
Dated: June 12, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236740

Gap Multifamily Mortgage, Assignment Of Rents And Security Agreement (d)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Amount: \$1,093,945.61  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236741  
Mortgage Tax: \$30,629.21

Consolidation, Extension and Modification Agreement (d1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236742  
Note: Consolidated mortgages (a), (b), (c) and (d) to form a single lien in the principal amount of \$3,375,000.00.

Assignment of Mortgage (d2)

Assignor: Greystone Servicing Corporation, Inc  
Assignee: Federal Home Loan Mortgage Corporation  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236743

Assignment of Mortgage (d3)

Assignor: Federal Home Loan Mortgage Corporation  
Assignee: U.S. Bank National Association, as Trustee  
Dated: September 7, 2017  
Recorded: September 25, 2017  
CRFN: 2017000355339

Assignment of Mortgage (d4)

Assignor: U.S. Bank National Association, as Trustee  
Assignee: JPMorgan Chase Bank, N.A.  
Dated: December 9, 2021  
Recorded: To Be Recorded  
Note: The present unpaid principal balance is \$3,160,686.09.

Extends and Modifies all Mortgages as previously consolidated, in the reduced principal balance of \$2,850,000.00

**EXHIBIT B**

**(Attach Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing)**



**AMENDED AND RESTATED MORTGAGE,  
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS,  
AND FIXTURE FILING**

Dated: December 9, 2021

in the amount of

**\$2,850,000.00**

(the "Mortgage Amount")

From

**2390 C LLC**

as mortgagor ("Borrower")  
having an address at:

**20 S Broadway, Suite 300  
Yonkers, NY 10701**

To

**JPMORGAN CHASE BANK, N.A.**

14800 Frye Road, 2nd Floor  
Mail Code TX1-0007  
Fort Worth, Texas 76155-2732  
Attention: Portfolio Administration

as mortgagee ("Lender")

**LOCATION OF PREMISES:**

|                 |                  |
|-----------------|------------------|
| Street Address: | 2390 Creston Ave |
| County of:      | Bronx            |
| State of:       | New York         |
| Borough:        | Bronx            |
| Section:        | 11               |
| Block:          | 3165             |
| Lot:            | 11               |

---

**After recording, please return to:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS SECURITY INSTRUMENT MAY PROVIDE FOR ONE OR MORE OF THE FOLLOWING: (1) A VARIABLE RATE OF INTEREST; (2) A BALLOON PAYMENT AT MATURITY, (3) DEFERRAL OF A PORTION OF ACCRUED INTEREST UNDER CERTAIN CIRCUMSTANCES WITH INTEREST SO DEFERRED ADDED TO THE UNPAID PRINCIPAL BALANCE OF THE NOTE AND SECURED HEREBY.**

**AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS  
AND FIXTURE FILING**

Notwithstanding anything to the contrary set forth in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may become secured hereby at any time hereafter is \$2,850,000.00 together with interest thereon, and all amounts expended by Lender to maintain the lien of this Security Instrument or protect any of the Property, including without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, litigation expenses to prosecute or defend the rights, remedies and lien of this Security Instrument or title to the Property, and any costs, charges or amounts to which Lender becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority.

Loan No. **200506149**

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Security Instrument"), is made this **9th day of December, 2021** between **2390 C LLC, a Delaware limited liability company**, the address of which is **20 S Broadway, Suite 300, Yonkers, NY 10701**, as mortgagor ("Borrower"); and **JPMORGAN CHASE BANK, N.A.** at its offices at **P.O. Box 9178, Coppell, Texas 75019-9178** (together with its successors and assigns, "Lender").

**RECITALS**

Borrower is the owner of the real property described on Exhibit A attached to this Mortgage. This Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (this "Security Instrument") amends and restates those certain mortgages more particularly described in Schedule 2 attached hereto (collectively "Prior Mortgages" or the "Original Security Instrument"), as modified and extended pursuant to a Mortgage Modification and Extension Agreement dated the date hereof, in the amount of **\$2,850,000.00**, and the terms, representations, covenants and conditions of the Original Security Instrument shall be superseded and restated in their entirety by the terms, representations, covenants and conditions set forth in this Security Instrument.

1. **Granting Clause.** Borrower irrevocably mortgages, warrants, grants, conveys and assigns to Lender and its successors and assigns, forever, all of Borrower's estate, right, title and interest in and to the property in the county of **Bronx**, state of New York, with a street address of **2390 Creston Ave, Bronx, New York 10468** (which address is provided for reference only and shall

in no way limit the description of the real and personal property otherwise described in this Section 1), described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 shall be referred to as the "Property"):

1.1 **Land and Appurtenances.** The land described on Exhibit A hereto, and all rights-of-way, easements, air rights, water rights and appurtenances thereto (collectively, the "Land"); and

1.2 **Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the Land (collectively, the "Improvements"), and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the operation of the Land and the Improvements; and

1.3 **Enforcement and Collection.** Any and all rights of Borrower to collect and receive all rents, income, revenues, issues, earnest money, deposits, tax, utility and insurance refunds, mineral, oil and gas rights and profits, and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for their collection or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower; and

1.4 **Accounts, Income and Rights.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements, Impounds (as defined below) and general intangibles relating to any of the Property; and

1.5 **Leases and Rents.** All of Borrower's rights in and to all Leases and Rents (as such terms are defined in Section 2.2.1 below) (in accepting this Security Instrument, Lender does not assume any liability for the performance of any such Lease); and

1.6 **Insurance Policies; Condemnation Awards.** All rights in and to all pertinent present and future fire, hazard, earthquake or other insurance policies covering any of the Property (whether or not Lender requires such insurance and whether or not Lender is named as an additional insured or loss payee of such insurance); and all Awards (defined below); and all proceeds or sums payable in lieu of or as compensation for the loss of or damage to any of the Property; and

1.7 **Other Property.** All books and records of Borrower relating to the Property in any form, all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the Property or to the construction of the existing or any future Improvements, all rights of Borrower in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future Improvements, and any performance and/or payment bonds issued in connection therewith, and all trademarks, trade names, computer software and other intellectual property used by Borrower in connection with the Property.

## **2. Security Agreement and Assignment of Leases and Rents.**

2.1 **Security Agreement.** To the extent any of the property described in Section 1 is personal property, Borrower grants to Lender, a security interest therein and in all products and proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of New York (the "UCC"). Borrower hereby irrevocably authorizes Lender to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature. This Security Instrument constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of Improvements and fixtures described in Section 1.2 of this Security Instrument and to any other personal property that is now or hereafter becomes a part of the Property as fixtures.

2.2 **Assignment of Leases and Rents.**

2.2.1 **Absolute Assignment.** Borrower hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Lender all of Borrower's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Borrower's interest therein or any Improvements, any and all security deposits, guaranties and other security related thereto, and all supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Lender the right to collect any and all income, rents, issues, profits, payments, damages, refunds, royalties and proceeds made pursuant to or in connection with the Leases and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Security Instrument creates and shall be construed to create an absolute assignment to Lender of the Leases and the Rents and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as defined below). Borrower irrevocably appoints Lender its true and lawful attorney at the option of Lender at any time an Event of Default (as defined below) exists and is continuing, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Borrower or in the name of Lender, for all such Rents and apply the same to the obligations secured by this Security Instrument.

2.2.2 **Revocable License to Collect.** So long as no Event of Default exists and is continuing, Borrower shall have a revocable license, to collect all Rents, and to retain, use or distribute the same. Upon the occurrence and during the continuation of any Event of Default, the foregoing license shall terminate automatically and without notice.

2.2.3 **Collection and Application of Rents by Lender.** While any Event of Default exists and is continuing: (i) Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Security Instrument, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Lender therefor, Borrower shall promptly deliver to Lender all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Borrower, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Lender may be applied by Lender against the obligations secured by this Security Instrument, less all expenses, including attorneys' fees and disbursements, in such order as Lender shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Security Instrument or other action taken by Lender under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Lender a mortgagee-in-possession of the Property.

2.2.4 **Direction to Tenants.** Borrower hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Borrower thereunder to Lender following receipt of any written notice from Lender that states that an Event of Default exists and is continuing and that all such amounts are to be paid to Lender. Borrower further authorizes and directs all such tenants to pay all such amounts to Lender without any right or obligation to inquire as to the validity of Lender's notice and regardless of the fact that Borrower has notified any such tenants that Lender's notice is invalid or has directed any such tenants not to pay such amounts to Lender.

2.2.5 **No Liability.** Lender shall not have any obligation to exercise any right given to it under this Security Instrument and shall not be deemed to have assumed any obligation of Borrower with respect to any agreement, lease or other property in which a lien or security interest is granted under this Security Instrument.

3. **Obligations Secured.** This Security Instrument is given for the purpose of securing:

3.1 **Performance and Payment.** The performance of the obligations contained herein and the payment of \$2,850,000.00 with interest thereon and all other amounts payable according to the terms of the Loan (as defined below) made to

Borrower evidenced by a promissory note of even date herewith executed by Borrower, payable to the order of Lender, and any and all extensions, renewals, modifications or replacements thereof (the "Note"). As used herein, the "Loan" shall mean the loan evidenced by the Note and secured by this Security Instrument.

3.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Lender subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Lender pursuant to any provision of this Security Instrument subsequent to its execution.

3.3 **Interest.** All of the obligations secured by this Security Instrument shall bear interest at the rate of interest applicable to the Note (including interest at the Default Rate, as defined in the Note, as applicable), which interest shall also be secured by this Security Instrument.

3.4 **Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Lender under this Security Instrument, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the Loan and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "Loan Documents"); provided, however, that this Security Instrument does not and shall not in any event be deemed to, secure the obligations owing to Lender under the following Loan Documents: (a) any certificate and indemnity agreement regarding hazardous substances (the "Indemnity Agreement") executed in connection with the Loan (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of the Loan (collectively, the "Guaranty").

4. **Warranties and Covenants of Borrower.** Borrower represents and warrants to, and covenants and agrees with, Lender as provided herein. All representations and warranties contained in this Security Instrument are true and correct in all material respects as of the date of this Security Instrument and shall remain true and correct in all material respects as of each date thereafter until the obligations secured hereby are paid in full.

4.1 **Warranties.**

4.1.1 Borrower has full power and authority to grant the Property to Lender and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those encumbrances appearing in the title insurance policy accepted by Lender insuring the lien of this Security Instrument ("Permitted Encumbrances").

4.1.2 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower first obtains knowledge thereof, the Property is free from damage (including, but not limited to, any construction defects or nonconforming work) that would materially impair the value or use of the Property.

4.1.3 The Loan is solely for business or commercial purposes, and is not for personal, family, household or agricultural purposes.

4.1.4 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower obtains knowledge thereof, Borrower, the Property and the present and contemplated use and occupancy of the Property are in compliance with all Applicable Laws in all material respects; and any such matters disclosed to Lender that are related to or affecting insurance coverage shall be disclosed in writing to Borrower's insurer.

4.1.5 Any and all rent rolls, property operating statements and other financial reports ("Financial Reports") furnished to Lender in connection with the Loan are true and correct in all material respects as of their dates, and no material adverse change has occurred in the matters reported in those Financial Reports since the dates of the last submission of those Financial Reports that has not been disclosed to Lender in writing.

4.1.6 Borrower has determined in good faith that: (a) the Loan, including any Guaranty, is an arm's-length transaction on market rate terms; and (b) neither Lender nor any of its affiliates exercised any discretionary authority or control over, or rendered any investment advice in connection with, Borrower's decision to enter into the Loan.

4.2 **Preservation of Lien.** Borrower will preserve and protect the priority of this Security Instrument as a lien on the Property subject only to the Permitted Encumbrances. If Borrower fails to do so, Lender may take any and all actions necessary or appropriate to do so and all sums expended by Lender in so doing, including without limitation, advances for taxes, assessments, impositions or liens against the Property, shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Lender and shall bear interest at the highest rate borne by any of the obligations secured by this Security Instrument.

4.3 **Repair and Maintenance of Property.** Borrower will keep the Property in good condition and repair, including without limitation underpinning and supporting the Property and any Improvements. Borrower will not remove or demolish, alter, or make additions or construct any new structure on the Property, without the express written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Security Instrument to the contrary, (a) Borrower may make commercially reasonable nonstructural alterations, improvements and replacements to the Property in a manner customary for similar properties; and (b) with respect to commercial leases only, Borrower or its tenants may construct tenant improvements made pursuant to Leases of commercial space in the Property that have been entered into in good faith and in compliance with the requirements of this Security Instrument.

4.4 **Insurance.**

4.4.1 **Insurance Coverage.** At all times during the term of the Loan, Borrower shall comply, and shall cause any other owners of the Property to comply, with the minimum insurance requirements set forth in Schedule "1" attached hereto. Borrower will maintain such insurance as further security for the faithful performance of the obligations secured by this Security Instrument.

4.4.2 **Damage and Destruction.**

(a) **Borrower's Obligations.** In the event of any damage to or loss or destruction of the Property (a "Casualty"), Borrower shall (i) give prompt written notice of the Casualty to Lender and to Borrower's insurer, and shall make a claim under each insurance policy providing coverage therefor and shall promptly furnish Lender with a copy of such claim, proof of loss and such other documentation as Lender may reasonably require; (ii) cause the aggregate proceeds of any and all insurance policies insuring the Property, whether or not required by this Security Instrument, that are payable as a result of the Casualty (collectively, the "Insurance Proceeds") to be paid to Lender to be disbursed or applied in accordance with this Section 4.4.2; and (iii) promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Casualty (collectively, the "Restoration") and otherwise in accordance with this Section 4.4.2. Borrower shall be responsible for all uninsured losses and deductibles. As used in this Security Instrument, the term "Casualty Threshold Amount" means the lesser of \$250,000 or five percent of the original face principal amount of the Note. The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage.

(b) **Control and Disbursement of Proceeds.** If the Casualty is expected to be greater than the Casualty Threshold Amount, or if a Default exists, Lender shall control, administer and disburse all Insurance Proceeds subject to Borrower's satisfaction of the terms and conditions of Lender's form of disbursement agreement, or such other documentation required by Lender, relating to the disbursement of Insurance Proceeds and the Restoration of the Property. If the Casualty is expected to be equal to or less than the Casualty Threshold Amount, and for so long as no Default exists, Lender shall disburse the Insurance Proceeds to Borrower to complete the Restoration in accordance with this Security Instrument.

(c) **Lender's Rights.** Borrower hereby authorizes Lender, in its own name or as attorney-in-fact for Borrower (which power is coupled with an interest and is irrevocable so long as this Security Instrument remains of record) at any time an Event of Default exists and is continuing, to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds, and to deduct therefrom Lender's expenses incurred in the adjustment, collection and disbursement of such Insurance Proceeds or otherwise in connection with the Casualty or the Restoration. Each insurance company is hereby irrevocably authorized and directed to make payment of all Insurance Proceeds directly to Lender. Notwithstanding anything to the contrary, Lender shall not be responsible for or incur any liability for any such insurance, or for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder.

(d) **Application of Proceeds.** Lender shall have the option to apply the Insurance Proceeds to the obligations secured by this Security Instrument, whether or not then due, in such order as Lender may reasonably determine (or to hold such proceeds for future application to those obligations) if: (i) an Event of Default exists and is continuing; (ii) Borrower fails to satisfy any condition precedent to disbursement of Insurance Proceeds as required by Lender; or (iii) Lender reasonably determines that (A) the rental income will be insufficient to timely pay all debt service and other property operating expenses, or will be insufficient to provide a debt service coverage ratio at least equal to that existing immediately prior to the Casualty; (B) the Restoration cannot be completed by the earlier of (1) twelve months prior to the maturity date of the Note, or (2) within twelve months after the date of the Casualty; provided, however, nothing herein shall extend the maturity date of the Note; or (C) the loan-to-value ratio of the Property following the Restoration, as calculated by Lender in its reasonable discretion, will be greater than the loan-to-value ratio required by Lender's then-current underwriting requirements for similar loans secured by property similar to the Property.

(e) **Effect on the Indebtedness.** Any reduction in the obligations secured hereby resulting from the application of Insurance Proceeds or other funds pursuant to this subsection 4.4.2 shall be deemed to take effect only on the date of such application. No application of Insurance Proceeds or other funds to the obligations secured hereby shall result in any adjustment in the amount or due dates of installments due under the Note.

(f) **Costs and Expenses.** Borrower shall pay, within 30 days after demand by Lender, all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with the adjustment, collection and disbursement of Insurance Proceeds pursuant to this Security Instrument or otherwise in connection with the Casualty or the Restoration.

4.5 **Right of Inspection.** Subject to the rights of tenants, Borrower shall permit Lender or its agents or independent contractors, at all reasonable times and upon reasonable advance notice (except in the event of an emergency, in which case no advance notice is required), to enter upon and inspect the Property without materially and adversely interfering with the use and enjoyment of the Property by Borrower or any tenants of Borrower.

4.6 **Compliance with Laws, Etc.; Preservation of Licenses.** Notwithstanding any disclosure made by Borrower pursuant to Section 4.1.4 above, Borrower shall comply in all material respects with (a) all Federal, State and local laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities (collectively, "Applicable Law") applicable to Borrower, the Property or the use, repair and maintenance thereof by Borrower or any third party, (b) all easements, licenses and agreements relating to the Property or the use thereof by Borrower or any third party, and (c) all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits. Borrower shall indemnify, defend and hold harmless Lender for any and all damages, claims, liabilities, reasonable costs and expenses (including attorneys' fees) arising from Borrower's failure to comply with this Section 4.6.

4.7 **Further Assurances.** Borrower will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Lender deems reasonably necessary to grant the Property to Lender, or to carry out the purposes of this Security Instrument.

4.8 **Legal Actions.** Borrower will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Lender; and will pay all reasonable costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Lender, in a reasonable sum, in any such action or proceeding in which Lender may appear, in any suit or other proceeding to foreclose this Security Instrument, and in any foreclosure sale under this Security Instrument.

4.9 **Taxes, Assessments and Other Liens.** Except as provided in this Security Instrument, Borrower will pay prior to delinquency all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof.

4.10 **Expenses.** Except as prohibited under Applicable Law, Borrower will pay all reasonable costs, fees and expenses (including attorneys' fees) reasonably incurred by Lender in connection with this Security Instrument on the due date thereof (or if no other due date is specified, within 30 days after receipt of Lender's written notice therefor).

4.11 **Repayment.** Borrower will pay all principal and interest and any prepayment premiums on the Loan as provided in the Note. Borrower will pay all other amounts owed under the Loan Documents on the due date thereof (or if no other due date is specified, within 30 days after written demand by Lender). All such amounts shall bear interest at the interest rate applicable to the Note from the date advanced or expended by Lender (or, if not consisting of an advance or expenditure by Lender, from the due date) until paid. If Lender so elects in its sole discretion, such amounts shall be (i) added to the principal balance of the Loan and due and payable in full on the maturity date of the Note, or (ii) added to the principal balance of the Loan and amortized over the remainder of the amortization period used to calculate the monthly payments required under the Note, which may result in an increase to the amount of the monthly payment due under the Note.

4.12 **Financial and Operating Information.** Within 90 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender the rent rolls, property operating statements and other financial reports for the Property for such fiscal year, in a form acceptable to Lender in its reasonable discretion. In addition, within 20 days after written request by Lender, Borrower shall furnish to Lender such financial statements and information about (i) the Property, (ii) Borrower and Guarantor, or any general partners, managing members or managers of Borrower or Guarantor, or any other controlling parties of Borrower, and (iii) commercial tenants or occupants of any portion of the Property that are affiliates of Borrower or Guarantor of the Loan, as Lender may reasonably require.

If Borrower fails to comply with this Section 4.12, and such failure continues for a period of 30 days after written notice of such failure by Lender to Borrower, Borrower shall pay to Lender, as liquidated damages for the extra expense in servicing the Loan, \$500 on the first day of the month following the expiration of such 30-day period and \$100 on the first day of each month thereafter until such failure is cured. All such amounts shall be secured by this Security Instrument. Payment of such amounts shall not cure any Default or Event of Default resulting from such failure.

4.13 **Sale, Transfer, or Encumbrance of Property.**

4.13.1 **Encumbrances; Entity Changes.** Except as otherwise provided below and subject to Borrower's rights to enter into Leases, Borrower shall not, without the prior written consent of Lender, further encumber the Property or any interest therein, or cause or permit any change in the entity, ownership, or control of Borrower without first repaying in full the Note and all other sums secured hereby.

4.13.2 **Sales, Transfers, Conveyances.** Except as otherwise provided below, Borrower shall not, without the prior written consent of Lender (which consent shall be subject to the conditions set forth below), sell, transfer, or otherwise convey



the Property or any interest therein, voluntarily or involuntarily, without first repaying in full the Note and all other sums secured hereby. Consent to any one transfer and assumption shall not be deemed a waiver of the right to require consent to any future transfers and assumptions.

4.13.3 **Conditions to Lender's Consent to Transfer and Assumption.** Lender will not unreasonably withhold its consent to a sale or transfer of the Property and related assumption of the Loan by the proposed transferee, provided however, that:

(a) Borrower shall provide to Lender a loan application on such form as Lender may require executed by the proposed transferee and accompanied by such other documents as Lender may require in connection therewith;

(b) Lender may consider the factors normally used by Lender as of the time of the proposed assumption in the process of determining whether or not to lend funds, and may require that the Property and the proposed transferee meet Lender's then-current underwriting, legal, regulatory and related requirements as of that time;

(c) Lender may specifically evaluate the financial responsibility, structure and real estate operations experience of any potential transferee;

(d) Lender may require that it be provided at Borrower's expense, with an appraisal of the Property, an on-site inspection of the Property, and such other documents and items, from appraisers, inspectors and other parties satisfactory to Lender, and may require that Borrower or the transferee of the Property correct any items of deferred maintenance that may be identified by Lender;

(e) Lender may, as a condition to granting its consent to a sale, transfer, or other conveyance of the Property, require in its sole discretion Borrower's payment to Lender of (i) a fee (the "Consented Transfer Fee") of one percent of the unpaid principal balance of the Note; (ii) review fees in accordance with Lender's fee schedule in effect at the time of the request ("Lender's Fee Schedule"), which shall be paid by Borrower to Lender upon Borrower's request for Lender's consent, and shall be non-refundable but applicable to the Consented Transfer Fee, to the extent applicable, (iii) Lender's reasonable attorneys' fees and other reasonable out-of-pocket expenses; and (iv) document preparation fees and other fees in accordance with Lender's Fee Schedule;

(f) No Default or Event of Default (each as defined below) has occurred and is continuing; and

(g) The transferee, a replacement guarantor acceptable to Lender, and any other parties shall execute such documentation in the form required by Lender in its sole and absolute discretion evidencing such transfer and related assumption, including without limitation, an assumption agreement, guaranties and environmental indemnity agreements; and upon the consummation of such transaction the Borrower and the existing guarantor shall be released from all future liability under the Loan Documents (except for the Indemnity Agreement) as provided in the assumption agreement.

4.13.4 **Unconsented Transfers.** Any failure to comply with Section 4.13.1 or 4.13.2 above shall constitute an "Unconsented Transfer" for purposes of this Security Instrument. In the event of an Unconsented Transfer, Borrower and its successors shall be jointly and severally liable to Lender for the payment of a fee (the "Unconsented Transfer Fee") of one percent of the unpaid principal balance of the Note as of the date of such Unconsented Transfer. The Unconsented Transfer Fee shall be due and payable upon written demand therefor by Lender, and shall be secured by this Security Instrument; provided, however, that payment of the Unconsented Transfer Fee shall not cure any Event of Default resulting from the Unconsented Transfer.

4.13.5 **No Waiver.** Lender's waiver of any of the Consented Transfer Fee, the Unconsented Transfer Fee or any other amount payable hereunder, in whole or in part for any one sale, transfer, encumbrance or other conveyance shall not preclude the imposition thereof in connection with any other sale, transfer, encumbrance or other conveyance.

4.13.6 **Permitted Transfers.** Notwithstanding the foregoing and notwithstanding Section 4.14, Lender's consent will not be required, and neither the Consented Transfer Fee nor the Unconsented Transfer Fee will be imposed, for any Permitted Transfer (as defined below), so long as all Transfer Requirements (as defined below) applicable to such Permitted Transfer are timely satisfied. As used herein, the following terms have the meanings set forth below:

"Permitted Transfer" means:

(a) The transfer of less than 25% in the aggregate during the term of the Note of the direct or indirect Equity Interests (as defined below) in Borrower, in addition to any transfers permitted under subparagraphs (b) or (c) of this definition (a "Minority Interest Transfer");

(b) A transfer that occurs by devise, descent or operation of law upon the death of a natural person (a "Decedent Transfer");

(c) A transfer made in good faith for estate planning purposes (i) to one or more non-minor Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more non-minor Immediate Family Members of a settlor of the applicable trust) or (ii) to one or more trusts or legal entities established for the benefit of, and solely owned by, the transferor and/or one or more Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more trusts or legal entities established for the benefit of, and solely owned by, one or more Immediate Family Members of a settlor of the applicable transferor trust) (an "Estate Planning Transfer");

(d) A transfer between existing owners of direct or indirect Equity Interests in the Borrower so long as there is no change in the individuals exercising day-to-day powers of decision-making, management and control of the Borrower, and no release of any guarantors; or

(e) A transfer of furniture, fixtures or equipment if they are reasonably deemed to be surplus to the normal operation and use of the Property or if they are promptly replaced by similar items of at least equivalent value and utility.

"Transfer Requirements" means, with respect to any Permitted Transfer, all of the following that apply to that transfer:

(a) In the case of any Permitted Transfer:

(i) none of the persons or entities liable for the repayment of the Loan shall be released from such liability;

(ii) such transfer must not violate Applicable Law, and the transferee must not be a "specially designated national" or a person that is subject or a target of any economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury or the U.S. Department of State ("Sanctions") and such transfer must not otherwise result in a violation of Sanctions, the USA PATRIOT Act of 2001, any "know your customer" rules applicable to Lender or any other Applicable Law; and

(iii) Borrower must provide Lender with not less than 30 days' prior written notice of the proposed transfer (or to the extent that such transfer is a Decedent Transfer then, as soon as reasonably practicable following Borrower becoming aware that the transfer has occurred), which notice shall include a summary of the proposed changes in the organization, ownership and management of the Property or the applicable entity and such further information as Lender may require to make the determinations contemplated by this subsection (a); provided, however, that no prior notice shall be required for an Estate Planning Transfer or any transfer that results in the transferee owning less than 10% in the aggregate of the direct or indirect Equity Interests in Borrower.

(b) In the case of any Minority Interest Transfer or Estate Planning Transfer, there shall be no change in the individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its sole discretion. In the case of a Decedent Transfer, any new individual exercising such powers must be satisfactory to Lender in its reasonable discretion.

(c) In the case of a Decedent Transfer, if the decedent was a Borrower or guarantor of the Loan, within 30 days after written request by Lender, one or more other persons or entities having credit standing and financial resources reasonably acceptable to Lender, shall assume or guarantee the Loan by executing and delivering to Lender a guaranty or assumption agreement and a certificate and indemnity agreement regarding hazardous substances, each satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the decedent and granting Lender liens on any and all interests of the transferee in the Property.

(d) In the case of any Estate Planning Transfer (other than a transfer by an individual of an interest in the Property into a revocable trust created for their benefit or the benefit of an Immediate Family Member and which such individual is the trustee) that results in a transfer of an interest in the Property, the transferee shall, prior to the transfer, execute and deliver to Lender an assumption agreement satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the transferor and granting Lender liens on any and all interests of the transferee in the Property.

(e) In the case of any Permitted Transfer that results in a transfer of an interest in the Property, Lender shall be provided, at no cost to Lender, with an endorsement to its title insurance policy insuring the lien of this Security Instrument, which endorsement shall insure that there has been no impairment of that lien or of its priority.

(f) In the case of any Permitted Transfer, Borrower or the transferee shall pay all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with that Permitted Transfer, any applicable fees in accordance with Lender's fee schedule in effect at the time of the Permitted Transfer, and shall provide Lender with such information and documents as Lender reasonably requests in order to make the determinations called for by this Security Instrument and to comply with Applicable Law.

(g) No Default shall exist.

"Equity Interest" means partnership interests in Borrower, if Borrower is a partnership, member interests in Borrower, if Borrower is a limited liability company, or shares of stock of Borrower, if Borrower is a corporation.

"Immediate Family Members" means, with respect to any person, that person's parents, spouse, registered domestic partner (under an applicable state or District of Columbia law providing for registration of domestic partnerships with a governmental agency), siblings, children and other lineal descendants, and the spouses and registered domestic partners of such person's parents, siblings, children and other lineal descendants.

#### 4.14 Borrower Existence.

4.14.1 Legal Entities. Except as otherwise permitted by this Security Instrument, if Borrower is a corporation, partnership, limited liability company, or other legal entity, Lender is making the Loan in reliance on Borrower's continued existence, ownership and control in its present form. Borrower will not alter its name, jurisdiction of organization, structure, ownership or control without the prior written consent of Lender and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. If Borrower is a partnership, Borrower will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Lender. The withdrawal or expulsion of any general partner from the Borrower partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

4.14.2 **Trusts.** Except as otherwise permitted by this Security Instrument, if Borrower is a trust, there shall be no change in the trustee or other individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its reasonable discretion.

4.15 **Information.** Lender is authorized to disclose to potential participants, assignees, regulators, Federal Home Loan Banks and Federal Reserve Banks, information in Lender's possession with respect to Borrower, guarantors of the Loan, the Property and the Loan.

4.16 **Tax and Insurance Impounds.**

4.16.1 **Impounds.** In addition to the payments required by the Note, Borrower shall pay Lender, at Lender's request, such sums as Lender may from time to time estimate will be required (a) to pay, at least one month before delinquency, the next-due taxes, assessments, insurance premiums and similar charges affecting the Property (collectively, the "Impositions"), divided by the number of months to elapse before one month prior to the date when the applicable Impositions will become delinquent; and (b) at the option of Lender and to the extent permitted under Applicable Law, to maintain a reserve equal to one-sixth of the total annual amount of the Impositions. Lender shall hold such amounts without interest or other income to Borrower (unless required under Applicable Law) to pay the Impositions. The total of all payments to Lender under subsection 4.16.1 shall be referred to herein collectively, as the "Impounds". If this estimate of the Impounds proves insufficient, Borrower, upon demand by Lender, shall pay Lender such additional sums as may be required to pay the Impositions at least one month before delinquency. Borrower hereby acknowledges and agrees that if Lender does not require Borrower to make impound payments for all or any portion of the Impositions at the origination of the Loan, at any time following the occurrence of an Event of Default (regardless of whether it is later cured), Borrower shall be required to make such Impounds within 30 days after receipt of written notice from Lender.

4.16.2 **Application.** If the Impounds in any one year exceed the amounts actually paid by Lender for Impositions, all or any portion of such excess may be paid to Borrower or credited by Lender on subsequent payments under this section. At any time after the occurrence and during the continuance of an Event of Default, Lender may apply any balance of Impounds it holds to any of the obligations secured hereby in such order as Lender may elect.

4.16.3 **Tax Reporting Service.** Lender may, in its sole and absolute discretion, contract with a tax reporting service covering the Property. Borrower agrees that Lender may rely on the information furnished by such tax service and agrees to pay the reasonable cost of that service within 30 days after receipt of a billing for it.

4.17 **Leasing Matters.** Borrower shall not receive or collect any Rents in advance in excess of one month's Rent from any tenant or collect a security deposit in excess of two months' Rent from any tenant. The Lender shall have all of the rights against tenants of the Property as set forth in Section 291-f of the Real Property Law of New York. To the extent Applicable Law requires any security deposits or other amounts received from tenants of the Property to be held in a segregated account, Borrower shall promptly deposit and maintain all applicable deposits and other amounts in a segregated trust account in a federally insured institution. Borrower shall perform Borrower's obligations under the Leases in all material respects. Borrower hereby consents to Lender obtaining copies of rent rolls and other information relating to the Leases from any governmental agency with which Borrower is obligated to file such information or that otherwise collects or receives such information.

4.18 **Condominium and Cooperative Provisions.** If the Property is not subject to a recorded condominium plan or map, a cooperative regime, or other common interest development regime, on the date of this Security Instrument, Borrower will not subject the Property or any portion thereof to such a plan, map, or regime without the written consent of Lender, which consent may be granted or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including but not limited to Borrower providing Lender with such title insurance endorsements and other documents as Lender may require. If the Property is subject to a recorded condominium plan or map, or other common interest development regime, on the date of this Security Instrument: (a) Borrower represents and warrants that none of the condominium units and no

portion of the common elements in the Property have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (b) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any condominium unit or any of the common elements of the Property unless expressly agreed to in writing by Lender; (c) Borrower shall operate the Property solely as a rental property; and (d) the Property granted, conveyed and assigned to Lender hereunder includes all rights, easements, rights of way, reservations and powers of Borrower, as owner, declarant or otherwise, under any applicable condominium act or statute and under any and all condominium declarations, survey maps and plans, association articles and bylaws and documents similar to any of the foregoing. If the Property is subject to a cooperative regime on the date of this Security Instrument: (i) Borrower represents and warrants that none of the corporate shares in the cooperative regime have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (ii) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any of the corporate shares of the cooperative regime; and (iii) Borrower shall operate the Property solely as a rental property.

4.19 **Use of Property; Zoning Changes.** Unless required by Applicable Law, Borrower shall not: (a) except for any change in use approved by Lender in writing, allow changes in the use for which all or any part of the Property is being used at the time this Security Instrument is executed; (b) convert any individual dwelling unit or common area in the Property to primarily commercial use; or (c) initiate or acquiesce in a change in the zoning classification of the Property.

4.20 **Lien Law.** Borrower will, in compliance with Section 13 of the New York Lien Law, receive the advances secured hereby and will hold the right to receive such advances in a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of the cost of any such improvement before using any part of the total of the advance for any other purpose.

## **5. Default.**

5.1 **Definition.** Any of the following shall constitute an "Event of Default" as that term is used in this Security Instrument (and the term "Default" shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied):

5.1.1 Any regular monthly payment under the Note is not paid so that it is received by Lender within fifteen (15) days after the date when due, or any other amount secured by this Security Instrument (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note) is not paid so that it is received by Lender when due;

5.1.2 Any representation or warranty made by Borrower to or for the benefit of Lender herein or elsewhere in connection with the Loan, including but not limited to any representation in connection with the security therefor, shall have been incorrect or misleading in any material respect;

5.1.3 Borrower or any other party thereto (other than Lender) shall fail to perform its obligations under any other covenant or agreement contained in this Security Instrument, the Note, any other Loan Document, which failure continues for a period of 30 days after written notice of such failure by Lender to Borrower (or for a period of 60 days after such notice if such failure cannot reasonably be cured within such 30-day period, but can be cured within such 60-day period and Borrower is proceeding diligently to cure it), but no such notice or cure period shall apply in the case of: (i) any such failure that could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument or the other Loan Documents, result in harm to Lender or impairment of the Note, this Security Instrument, or any other security given under any other Loan Document; (ii) any such failure that is not reasonably susceptible of being cured during such cure period; (iii) breach of any provision that contains an express cure period; or (iv) any breach of Section 4.13 or Section 4.14 of this Security Instrument;

5.1.4 Borrower or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they become due, or file, or have filed against it, a voluntary or

involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding, provided that if such petition or proceeding is not filed or acquiesced in by Borrower or the subject thereof, it shall constitute an Event of Default only if it is not dismissed within 60 days after it is filed or if prior to that time the court enters an order substantially granting the relief sought therein; or

5.1.5 Borrower or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage, deed of trust or similar security instrument encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness secured thereby, which default continues beyond any applicable cure period.

5.2 **Lender's Right to Perform.** After the occurrence and during the continuance of any Event of Default, Lender, but without the obligation so to do and, to the extent permitted by Applicable Law, without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Lender and its agents being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; pay, purchase, contest or compromise any encumbrance, charge or lien; and in exercising any such powers, pay necessary expenses and engage counsel. All sums so expended (including attorneys' fees) shall be secured hereby and bear interest at the Default Rate of interest specified in the Note from the date advanced or expended until repaid and shall be payable by Borrower to Lender on demand.

5.3 **Remedies on Default.** Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Lender and Lender may:

5.3.1 To the extent permitted by Applicable Law, have a receiver appointed as a matter of right without notice to Borrower and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Lender elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Lender and added to the indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender, or advanced by Lender to the receiver, for such purposes shall become an additional part of the indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 5.3 shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Property.

5.3.2 Foreclose this Security Instrument as provided in Section 7 or otherwise realize upon the Property as permitted under Applicable Law.

5.3.3 Sue on the Note as permitted under Applicable Law.

5.3.4 Avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or Applicable Law.

5.4 **No Waiver.** By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of that or any other portion of the obligations secured by this Security Instrument. Lender may from time to time accept and apply any one or more payments of less than the full amount then due and payable on

such obligations without waiving any Default, Event of Default, acceleration or other right or remedy of any nature whatsoever. In addition, the failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right. Furthermore, the waiver of any Default or Event of Default shall not constitute a waiver of any subsequent or other Default or Event of Default.

5.5 **Waiver of Marshaling, Etc.** In connection with any foreclosure sale under this Security Instrument, Borrower hereby waives, for itself and all others claiming by, through or under Borrower, any right Borrower or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 **Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising Applicable Law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. Lender shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the Loan proceeds.

6. **Condemnation.** Any and all awards of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property for public or private use, or for injury to any portion of the Property ("Awards"), are hereby assigned and shall be paid to Lender which may apply or disburse such Awards in the same manner, on the same terms, subject to the same conditions, to the same extent, and with the same effect as provided in Section 4.4.2 above for disposition of Insurance Proceeds. Without limiting the generality of the foregoing, if the taking results in a loss of the Property to an extent that, in the reasonable opinion of Lender, renders or is likely to render the Property not economically viable or if, in Lender's reasonable judgment, Lender's security is otherwise impaired, Lender may apply the Awards to reduce the unpaid obligations secured hereby in such order as Lender may determine, and without any adjustment in the amount or due dates of installments due under the Note. If so applied, any Awards in excess of the unpaid balance of the Note and other sums due to Lender shall be paid to Borrower or Borrower's assignee. Such application or release shall not cure or waive any Default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all Awards or other relief therefor, and Borrower agrees to pay Lender's costs and reasonable attorneys' fees incurred in connection therewith. Lender shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

7. **Foreclosure.** Upon the occurrence of any Event of Default, Lender shall have the option, without notice or demand, to declare all sums secured hereby immediately due and payable and to proceed to foreclose on this Security Instrument as now or then provided by law (in which event Lender shall be entitled to the appointment of a receiver) pursuant to a judicial proceeding in accordance with Article 13 of the New York Real Property Actions and Proceedings Law ("RPAPL") or by advertisement in accordance with Article 14 of RPAPL. Any foreclosure shall forever bar Borrower and all persons claiming under Borrower from all right and interest in the Property. In any such proceeding Lender shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Lender shall be entitled to possession of the Property during any period of redemption. Borrower hereby waives any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Security Instrument by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect full redemption. If a deficiency remains after proper application of the proceeds of sale of the Property, Borrower shall pay the same immediately after determination of the amount thereof.

**MORTGAGE MODIFICATION AND EXTENSION AGREEMENT**

**RECORD AND RETURN TO:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

The property described in this instrument is also known as Block **3165** and Lot **11** on the Official Tax Map of **Bronx County**.



## MORTGAGE MODIFICATION AND EXTENSION AGREEMENT

This Mortgage Modification and Extension Agreement (this "Agreement"), dated as of **December 9, 2021**, is entered into by **JPMORGAN CHASE BANK, N.A.** having an office at 14800 Frye Road, 2nd Floor, Mail Code TX1-0007, Fort Worth, TX 76155-2732, Attention: Portfolio Administration ("Mortgagee"); and **2390 C LLC, a Delaware limited liability company**, having an address at **20 S Broadway, Suite 300, Yonkers, NY 10701** ("Mortgagor").

### RECITALS

A. Mortgagee is the holder of one or more mortgages more particularly described in Schedule 1 attached to this Agreement consisting of the "Prior Mortgages" securing the amounts due under the promissory note or notes secured thereby (the "Prior Debt"). The Prior Mortgages are a lien on the real property located in **Bronx** County, New York, more particularly described on Exhibit A attached to this Agreement (the "Property").

B. Mortgagee and Mortgagor have agreed to modify and extend the Prior Mortgages.

C. Mortgagor will derive benefit from the modification and extension of the Prior Mortgages.

D. Mortgagor and Mortgagee simultaneously with the execution of this Agreement have entered into a note modification and extension agreement (the "Note Modification") dated the date hereof whereby the terms and payment of the Prior Debt set forth in the promissory note or notes secured by the Prior Mortgages modified hereby (collectively, the "Original Notes") have been modified so that Mortgagor shall pay in accordance with the terms and at the times provided by the Amended and Restated Promissory Note dated the date of this Agreement and executed by Mortgagor in favor of Mortgagee (the "Amended and Restated Promissory Note").

**NOW, THEREFORE**, in consideration of the mutual agreements set forth below, the parties hereto agree as follows:

### AGREEMENT

1. The recitals set forth above are incorporated herein in their entirety.
2. Mortgagor represents that there is, as of the date of this Agreement, due, owing and unpaid on the Prior Mortgages, the aggregate outstanding principal balance of **\$3,160,686.09**, without offset, defense or counterclaim, in contract, tort or otherwise, of any kind or nature whatsoever.
3. The lien of the Prior Mortgages is hereby modified and, after taking into account any paydown or reduction of the outstanding principal balance that may occur in connection with execution of this Agreement, creates a single first lien in the principal amount of **TWO MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$2,850,000.00)** (the "Modified Debt") on the Property.
4. The terms, representations, covenants and conditions of the Prior Mortgages shall be and are hereby superseded and restated in their entirety, from and after the date of this Agreement, by the terms, representations, covenants and conditions set forth in the amended and restated mortgage, security agreement, assignment of leases and rents, and fixture filing attached as Exhibit B to this Agreement (the Prior Mortgages, as amended and restated as provided herein, are referred to as the "Restated Mortgage") and Mortgagor agrees to comply with and be subject to all of the terms, representations, covenants and conditions of the Restated Mortgage.
5. Mortgagor will pay interest on the Modified Debt at the rate of interest and on the terms providing for the payment of principal and interest in the Amended and Restated Promissory Note, which is secured by the Restated Mortgage, and all other terms, provisions and conditions of the Note Modification are incorporated by reference herein and hereby

supersede all the terms, provisions and conditions of the Prior Debt and Mortgagor agrees to comply with the terms, provisions and covenants of the Note Modification.

6. Unless otherwise disclosed to Mortgagee in writing prior to the date of this Agreement, the representations and warranties contained in the Prior Mortgages and the other documents executed in connection therewith, are true and correct in all material respects on and as of the date of this Agreement and with the same effect as if made on and as of that date.

7. Mortgagor represents and warrants that there exists no default or "Event of Default" or any other event, condition or state of facts which, with notice or the passage of time or both, would constitute a default or an "Event of Default" under the Restated Mortgage or under the Prior Mortgages or any of the other loan documents executed in connection with any of the foregoing.

8. Mortgagor has not entered into any agreement that expressly or otherwise prohibits Mortgagor from entering into this Agreement. No provision of this Agreement may be modified, terminated, waived or amended except in a writing signed by all parties hereto.

9. This Agreement may be executed in one or more counterparts by the parties hereto, each of which counterparts will be an original and all of which will constitute a single agreement.

10. Mortgagor will comply with all of the terms, provisions and conditions of the Amended and Restated Promissory Note.

11. Mortgagor represents and warrants that, as of the date of this Agreement, it has no counterclaims, defenses or offsets, in contract, tort or otherwise, whatsoever to the payment of the Modified Debt or any interest thereon.

12. Mortgagor acknowledges that: (a) Mortgagee may now or in the future not have possession of originals or copies of certain of the notes evidencing the Original Debt; (b) Mortgagee is (i) the owner of the Original Notes as modified and extended by the Amended and Restated Promissory Note and secured by the Restated Mortgage, including any lost notes, and (ii) the mortgagee under the Prior Mortgages, the terms, representations, covenants and conditions of which are modified, amended and restated by this Agreement and set forth in the Restated Mortgage; (c) all assignments of the notes evidencing the Prior Debt and all assignments of the Prior Mortgages were duly authorized and such assignments are legally enforceable; (d) Mortgagor has received the mortgage recording tax benefits resulting from the assignment of the Prior Mortgages and the notes constituting the Prior Debt, and the extension and modification of the Mortgages and the Prior Debt was done at the request of Mortgagor and solely for Mortgagor's benefit; (e) RESERVED; (f) Mortgagor hereby ratifies and confirms the validity and existence of any lost note(s) comprising the Prior Debt, and agrees to assume all duties, responsibilities, and obligations thereunder except as such duties, responsibilities, and obligations are modified in the Note Modification or in the Amended and Restated Promissory Note; and (g) Mortgagor hereby ratifies and confirms the validity and existence of the Prior Mortgages and agrees to assume all duties, responsibilities and obligations thereunder except as such duties, responsibilities and obligations are modified herein or in the Restated Mortgage. Mortgagor hereby waives any and all rights and defenses, releases and indemnifies Mortgagee for, assumes liability for, and agrees to pay, protect, defend and save Mortgagee harmless for, from and against, any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, attorneys' fees), causes of action, suits, claims, demands and judgments of any nature or description whatsoever that may at any time be imposed upon, incurred by or awarded against Mortgagee as a result of Mortgagee not having possession of the notes evidencing the Prior Debt, the Prior Mortgages, or any part of either thereof, or in connection with any lost note affidavit or similar document with regard to the Prior Debt or the Prior Mortgages or any assignment of any constituent note or mortgage. Mortgagor, for itself and for its successors and assigns, hereby forever waives any requirement that Mortgagee: (i) produce, deliver, display, indorse, exhibit, or otherwise demonstrate possession of the Prior Debt or prove due execution or authority to execute any assignment of any note or mortgage constituting the Prior Debt or the Prior Mortgages; or (ii) deliver any bond, security, indemnity, affidavit or other documentation in connection with the Prior Debt or the Prior Mortgages. Mortgagor will pay any amounts owing to Mortgagee pursuant to this paragraph within 10 days after written demand therefor by Mortgagee.

IN WITNESS WHEREOF, this Agreement has been executed by each of the parties hereto as of the date first set forth above.

**MORTGAGOR:**

**2390 C LLC,**  
**a Delaware limited liability company**

By: **2390 C HOLDING LLC,**  
**a Delaware limited liability company,**  
**Sole Member**

By: **2390 C S36 LLC,**  
**a New York limited liability company,**  
**Managing Member**

By: \_\_\_\_\_



**JONATHAN WIENER,**  
**Managing Member**

**SIGNATURE(S) CONTINUED ON FOLLOWING PAGE(S)**

State of New York ) ss.  
County of Bronx )

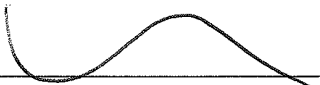
On the 3rd day of December in the year **2021**, before me, the undersigned, a Notary Public in and for said state, personally appeared **JONATHAN WIENER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Signature of Notary Public

**Cynthia L. Perfetti**  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires: 12/23/2023

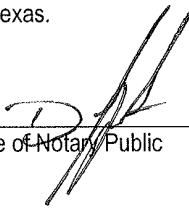
MORTGAGEE:

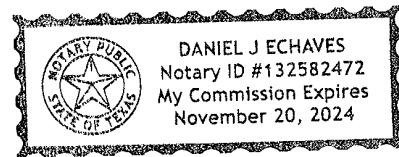
JPMORGAN CHASE BANK, N.A.

By:   
Name: URSULA FLORES  
Title: Authorized Officer

State of Texas ) ss.  
County of Tarrant )

On the 3<sup>rd</sup> of December in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared Ursula Flores, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the city of Fort Worth and the state of Texas.

  
\_\_\_\_\_  
Signature of Notary Public



**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Creston Avenue distant 224.25 feet northerly from the corner formed by the intersection of the easterly side of Creston Avenue with the northerly side of 184th Street;

RUNNING THENCE easterly at right angles to the easterly side of Creston Avenue, 95 feet;

THENCE northerly parallel with the easterly side of Creston Avenue 50 feet;

THENCE westerly again at right angles to the easterly side of Creston Avenue 95 feet to the easterly side of Creston Avenue;

THENCE southerly along the easterly side of Creston Avenue 50 feet to the point or place of BEGINNING.

BEING AND INTENDED to be the same premises conveyed to the party of the first part by deed dated 9/17/14 recorded 10/15/14 in the Office of the Register, County of Bronx, State of New York, in CRFN 2014000341304.

PROPERTY ADDRESS: 2390 CRESTON AVE, BRONX, NEW YORK 10468

**SCHEDULE 1**

**Prior Mortgages**

**First Mortgage And Security Agreement (a)**

Mortgagor: 2390 Creston LLC  
Mortgagee: Signature Bank  
Amount: \$1,175,000.00  
Dated: November 17, 2010  
Recorded: December 3, 2010  
CRFN: 2010000406699  
Mortgage Tax: \$ 32,900.00

**Assignment of Mortgage (a1)**

Assignor: Signature Bank  
Assignee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 1, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011878

**Gap Mortgage (b)**

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Amount: \$425,000.00  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011879  
Mortgage Tax: \$ 8,712.50

**Amended, Restated and Consolidated Mortgage and Security Agreement (b1)**

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011880  
Note: Consolidated mortgages (a) and (b) to form a single lien in the principal amount of \$1,600,000.00.

**Assignment of Mortgage (b2)**

Assignor: Cantor Commercial Real Estate Lending, L.P.  
Assignee: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Dated: November 13, 2012  
Recorded: January 31, 2013  
CRFN: 2013000043576

**Assignment of Mortgage (b3)**

Assignor: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Assignee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341305



Mortgage (c)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Amount: \$874,462.85  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341306  
Mortgage Tax: \$ 24,468.01

Consolidation, Extension and Modification Agreement (c1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341307  
Note: Consolidated mortgages (a), (b) and (c) to form a single lien in the principal amount of \$2,415,000.00.

Assignment of Mortgage (c2)

Assignor: Peapack-Gladstone Bank  
Assignee: Greystone Servicing Corporation, Inc.  
Dated: June 12, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236740

Gap Multifamily Mortgage, Assignment Of Rents And Security Agreement (d)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Amount: \$1,093,945.61  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236741  
Mortgage Tax: \$30,629.21

Consolidation, Extension and Modification Agreement (d1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236742  
Note: Consolidated mortgages (a), (b), (c) and (d) to form a single lien in the principal amount of \$3,375,000.00.

Assignment of Mortgage (d2)

Assignor: Greystone Servicing Corporation, Inc  
Assignee: Federal Home Loan Mortgage Corporation  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236743

Assignment of Mortgage (d3)

Assignor: Federal Home Loan Mortgage Corporation  
Assignee: U.S. Bank National Association, as Trustee  
Dated: September 7, 2017  
Recorded: September 25, 2017  
CRFN: 2017000355339

Assignment of Mortgage (d4)

Assignor: U.S. Bank National Association, as Trustee  
Assignee: JPMorgan Chase Bank, N.A.  
Dated: December 9, 2021  
Recorded: To Be Recorded  
Note: The present unpaid principal balance is \$3,160,686.09.

Extends and Modifies all Mortgages as previously consolidated, in the reduced principal balance of \$2,850,000.00

**EXHIBIT B**

**(Attach Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing)**

**AMENDED AND RESTATED MORTGAGE,  
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS,  
AND FIXTURE FILING**

Dated: December 9, 2021

in the amount of

**\$2,850,000.00**

(the "Mortgage Amount")

From

**2390 C LLC**

as mortgagor ("Borrower")  
having an address at:

**20 S Broadway, Suite 300  
Yonkers, NY 10701**

To

**JPMORGAN CHASE BANK, N.A.**

14800 Frye Road, 2nd Floor  
Mail Code TX1-0007  
Fort Worth, Texas 76155-2732  
Attention: Portfolio Administration

as mortgagee ("Lender")

**LOCATION OF PREMISES:**

|                        |                         |
|------------------------|-------------------------|
| <b>Street Address:</b> | <b>2390 Creston Ave</b> |
| <b>County of:</b>      | <b>Bronx</b>            |
| <b>State of:</b>       | <b>New York</b>         |
| <b>Borough:</b>        | <b>Bronx</b>            |
| <b>Section:</b>        | <b>11</b>               |
| <b>Block:</b>          | <b>3165</b>             |
| <b>Lot:</b>            | <b>11</b>               |

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**After recording, please return to:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS SECURITY INSTRUMENT MAY PROVIDE FOR ONE OR MORE OF THE FOLLOWING: (1) A VARIABLE RATE OF INTEREST; (2) A BALLOON PAYMENT AT MATURITY, (3) DEFERRAL OF A PORTION OF ACCRUED INTEREST UNDER CERTAIN CIRCUMSTANCES WITH INTEREST SO DEFERRED ADDED TO THE UNPAID PRINCIPAL BALANCE OF THE NOTE AND SECURED HEREBY.**

**AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS  
AND FIXTURE FILING**

Notwithstanding anything to the contrary set forth in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may become secured hereby at any time hereafter is \$2,850,000.00 together with interest thereon, and all amounts expended by Lender to maintain the lien of this Security Instrument or protect any of the Property, including without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, litigation expenses to prosecute or defend the rights, remedies and lien of this Security Instrument or title to the Property, and any costs, charges or amounts to which Lender becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority.

Loan No. **200506149**

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Security Instrument"), is made this **9th day of December, 2021** between **2390 C LLC, a Delaware limited liability company**, the address of which is **20 S Broadway, Suite 300, Yonkers, NY 10701**, as mortgagor ("Borrower"); and **JPMORGAN CHASE BANK, N.A.** at its offices at **P.O. Box 9178, Coppell, Texas 75019-9178** (together with its successors and assigns, "Lender").

**RECITALS**

Borrower is the owner of the real property described on Exhibit A attached to this Mortgage. This Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (this "Security Instrument") amends and restates those certain mortgages more particularly described in Schedule 2 attached hereto (collectively "Prior Mortgages" or the "Original Security Instrument"), as modified and extended pursuant to a Mortgage Modification and Extension Agreement dated the date hereof, in the amount of **\$2,850,000.00**, and the terms, representations, covenants and conditions of the Original Security Instrument shall be superseded and restated in their entirety by the terms, representations, covenants and conditions set forth in this Security Instrument.

1. **Granting Clause.** Borrower irrevocably mortgages, warrants, grants, conveys and assigns to Lender and its successors and assigns, forever, all of Borrower's estate, right, title and interest in and to the property in the county of **Bronx**, state of New York, with a street address of **2390 Creston Ave, Bronx, New York 10468** (which address is provided for reference only and shall

in no way limit the description of the real and personal property otherwise described in this Section 1), described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 shall be referred to as the "Property"):

1.1 **Land and Appurtenances.** The land described on Exhibit A hereto, and all rights-of-way, easements, air rights, water rights and appurtenances thereto (collectively, the "Land"); and

1.2 **Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the Land (collectively, the "Improvements"), and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the operation of the Land and the Improvements; and

1.3 **Enforcement and Collection.** Any and all rights of Borrower to collect and receive all rents, income, revenues, issues, earnest money, deposits, tax, utility and insurance refunds, mineral, oil and gas rights and profits, and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for their collection or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower; and

1.4 **Accounts, Income and Rights.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements, Impounds (as defined below) and general intangibles relating to any of the Property; and

1.5 **Leases and Rents.** All of Borrower's rights in and to all Leases and Rents (as such terms are defined in Section 2.2.1 below) (in accepting this Security Instrument, Lender does not assume any liability for the performance of any such Lease); and

1.6 **Insurance Policies; Condemnation Awards.** All rights in and to all pertinent present and future fire, hazard, earthquake or other insurance policies covering any of the Property (whether or not Lender requires such insurance and whether or not Lender is named as an additional insured or loss payee of such insurance); and all Awards (defined below); and all proceeds or sums payable in lieu of or as compensation for the loss of or damage to any of the Property; and

1.7 **Other Property.** All books and records of Borrower relating to the Property in any form, all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the Property or to the construction of the existing or any future Improvements, all rights of Borrower in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future Improvements, and any performance and/or payment bonds issued in connection therewith, and all trademarks, trade names, computer software and other intellectual property used by Borrower in connection with the Property.

## **2. Security Agreement and Assignment of Leases and Rents.**

2.1 **Security Agreement.** To the extent any of the property described in Section 1 is personal property, Borrower grants to Lender, a security interest therein and in all products and proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of New York (the "UCC"). Borrower hereby irrevocably authorizes Lender to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature. This Security Instrument constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of Improvements and fixtures described in Section 1.2 of this Security Instrument and to any other personal property that is now or hereafter becomes a part of the Property as fixtures.

2.2 **Assignment of Leases and Rents.**

2.2.1 **Absolute Assignment.** Borrower hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Lender all of Borrower's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Borrower's interest therein or any Improvements, any and all security deposits, guaranties and other security related thereto, and all supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Lender the right to collect any and all income, rents, issues, profits, payments, damages, refunds, royalties and proceeds made pursuant to or in connection with the Leases and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Security Instrument creates and shall be construed to create an absolute assignment to Lender of the Leases and the Rents and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as defined below). Borrower irrevocably appoints Lender its true and lawful attorney at the option of Lender at any time an Event of Default (as defined below) exists and is continuing, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Borrower or in the name of Lender, for all such Rents and apply the same to the obligations secured by this Security Instrument.

2.2.2 **Revocable License to Collect.** So long as no Event of Default exists and is continuing, Borrower shall have a revocable license, to collect all Rents, and to retain, use or distribute the same. Upon the occurrence and during the continuation of any Event of Default, the foregoing license shall terminate automatically and without notice.

2.2.3 **Collection and Application of Rents by Lender.** While any Event of Default exists and is continuing: (i) Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Security Instrument, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Lender therefor, Borrower shall promptly deliver to Lender all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Borrower, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Lender may be applied by Lender against the obligations secured by this Security Instrument, less all expenses, including attorneys' fees and disbursements, in such order as Lender shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Security Instrument or other action taken by Lender under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Lender a mortgagee-in-possession of the Property.

2.2.4 **Direction to Tenants.** Borrower hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Borrower thereunder to Lender following receipt of any written notice from Lender that states that an Event of Default exists and is continuing and that all such amounts are to be paid to Lender. Borrower further authorizes and directs all such tenants to pay all such amounts to Lender without any right or obligation to inquire as to the validity of Lender's notice and regardless of the fact that Borrower has notified any such tenants that Lender's notice is invalid or has directed any such tenants not to pay such amounts to Lender.

2.2.5 **No Liability.** Lender shall not have any obligation to exercise any right given to it under this Security Instrument and shall not be deemed to have assumed any obligation of Borrower with respect to any agreement, lease or other property in which a lien or security interest is granted under this Security Instrument.

3. **Obligations Secured.** This Security Instrument is given for the purpose of securing:

3.1 **Performance and Payment.** The performance of the obligations contained herein and the payment of \$2,850,000.00 with interest thereon and all other amounts payable according to the terms of the Loan (as defined below) made to

Borrower evidenced by a promissory note of even date herewith executed by Borrower, payable to the order of Lender, and any and all extensions, renewals, modifications or replacements thereof (the "Note"). As used herein, the "Loan" shall mean the loan evidenced by the Note and secured by this Security Instrument.

3.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Lender subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Lender pursuant to any provision of this Security Instrument subsequent to its execution.

3.3 **Interest.** All of the obligations secured by this Security Instrument shall bear interest at the rate of interest applicable to the Note (including interest at the Default Rate, as defined in the Note, as applicable), which interest shall also be secured by this Security Instrument.

3.4 **Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Lender under this Security Instrument, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the Loan and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "Loan Documents"); provided, however, that this Security Instrument does not and shall not in any event be deemed to, secure the obligations owing to Lender under the following Loan Documents: (a) any certificate and indemnity agreement regarding hazardous substances (the "Indemnity Agreement") executed in connection with the Loan (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of the Loan (collectively, the "Guaranty").

4. **Warranties and Covenants of Borrower.** Borrower represents and warrants to, and covenants and agrees with, Lender as provided herein. All representations and warranties contained in this Security Instrument are true and correct in all material respects as of the date of this Security Instrument and shall remain true and correct in all material respects as of each date thereafter until the obligations secured hereby are paid in full.

4.1 **Warranties.**

4.1.1 Borrower has full power and authority to grant the Property to Lender and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those encumbrances appearing in the title insurance policy accepted by Lender insuring the lien of this Security Instrument ("Permitted Encumbrances").

4.1.2 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower first obtains knowledge thereof, the Property is free from damage (including, but not limited to, any construction defects or nonconforming work) that would materially impair the value or use of the Property.

4.1.3 The Loan is solely for business or commercial purposes, and is not for personal, family, household or agricultural purposes.

4.1.4 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower obtains knowledge thereof, Borrower, the Property and the present and contemplated use and occupancy of the Property are in compliance with all Applicable Laws in all material respects; and any such matters disclosed to Lender that are related to or affecting insurance coverage shall be disclosed in writing to Borrower's insurer.

4.1.5 Any and all rent rolls, property operating statements and other financial reports ("Financial Reports") furnished to Lender in connection with the Loan are true and correct in all material respects as of their dates, and no material adverse change has occurred in the matters reported in those Financial Reports since the dates of the last submission of those Financial Reports that has not been disclosed to Lender in writing.



4.1.6 Borrower has determined in good faith that: (a) the Loan, including any Guaranty, is an arm's-length transaction on market rate terms; and (b) neither Lender nor any of its affiliates exercised any discretionary authority or control over, or rendered any investment advice in connection with, Borrower's decision to enter into the Loan.

4.2 **Preservation of Lien.** Borrower will preserve and protect the priority of this Security Instrument as a lien on the Property subject only to the Permitted Encumbrances. If Borrower fails to do so, Lender may take any and all actions necessary or appropriate to do so and all sums expended by Lender in so doing, including without limitation, advances for taxes, assessments, impositions or liens against the Property, shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Lender and shall bear interest at the highest rate borne by any of the obligations secured by this Security Instrument.

4.3 **Repair and Maintenance of Property.** Borrower will keep the Property in good condition and repair, including without limitation underpinning and supporting the Property and any Improvements. Borrower will not remove or demolish, alter, or make additions or construct any new structure on the Property, without the express written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Security Instrument to the contrary, (a) Borrower may make commercially reasonable nonstructural alterations, improvements and replacements to the Property in a manner customary for similar properties; and (b) with respect to commercial leases only, Borrower or its tenants may construct tenant improvements made pursuant to Leases of commercial space in the Property that have been entered into in good faith and in compliance with the requirements of this Security Instrument.

4.4 **Insurance.**

4.4.1 **Insurance Coverage.** At all times during the term of the Loan, Borrower shall comply, and shall cause any other owners of the Property to comply, with the minimum insurance requirements set forth in Schedule "1" attached hereto. Borrower will maintain such insurance as further security for the faithful performance of the obligations secured by this Security Instrument.

4.4.2 **Damage and Destruction.**

(a) **Borrower's Obligations.** In the event of any damage to or loss or destruction of the Property (a "Casualty"), Borrower shall (i) give prompt written notice of the Casualty to Lender and to Borrower's insurer, and shall make a claim under each insurance policy providing coverage therefor and shall promptly furnish Lender with a copy of such claim, proof of loss and such other documentation as Lender may reasonably require; (ii) cause the aggregate proceeds of any and all insurance policies insuring the Property, whether or not required by this Security Instrument, that are payable as a result of the Casualty (collectively, the "Insurance Proceeds") to be paid to Lender to be disbursed or applied in accordance with this Section 4.4.2; and (iii) promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Casualty (collectively, the "Restoration") and otherwise in accordance with this Section 4.4.2. Borrower shall be responsible for all uninsured losses and deductibles. As used in this Security Instrument, the term "Casualty Threshold Amount" means the lesser of \$250,000 or five percent of the original face principal amount of the Note. The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage.

(b) **Control and Disbursement of Proceeds.** If the Casualty is expected to be greater than the Casualty Threshold Amount, or if a Default exists, Lender shall control, administer and disburse all Insurance Proceeds subject to Borrower's satisfaction of the terms and conditions of Lender's form of disbursement agreement, or such other documentation required by Lender, relating to the disbursement of Insurance Proceeds and the Restoration of the Property. If the Casualty is expected to be equal to or less than the Casualty Threshold Amount, and for so long as no Default exists, Lender shall disburse the Insurance Proceeds to Borrower to complete the Restoration in accordance with this Security Instrument.

(c) **Lender's Rights.** Borrower hereby authorizes Lender, in its own name or as attorney-in-fact for Borrower (which power is coupled with an interest and is irrevocable so long as this Security Instrument remains of record) at any time an Event of Default exists and is continuing, to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds, and to deduct therefrom Lender's expenses incurred in the adjustment, collection and disbursement of such Insurance Proceeds or otherwise in connection with the Casualty or the Restoration. Each insurance company is hereby irrevocably authorized and directed to make payment of all Insurance Proceeds directly to Lender. Notwithstanding anything to the contrary, Lender shall not be responsible for or incur any liability for any such insurance, or for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder.

(d) **Application of Proceeds.** Lender shall have the option to apply the Insurance Proceeds to the obligations secured by this Security Instrument, whether or not then due, in such order as Lender may reasonably determine (or to hold such proceeds for future application to those obligations) if: (i) an Event of Default exists and is continuing; (ii) Borrower fails to satisfy any condition precedent to disbursement of Insurance Proceeds as required by Lender; or (iii) Lender reasonably determines that (A) the rental income will be insufficient to timely pay all debt service and other property operating expenses, or will be insufficient to provide a debt service coverage ratio at least equal to that existing immediately prior to the Casualty; (B) the Restoration cannot be completed by the earlier of (1) twelve months prior to the maturity date of the Note, or (2) within twelve months after the date of the Casualty; provided, however, nothing herein shall extend the maturity date of the Note; or (C) the loan-to-value ratio of the Property following the Restoration, as calculated by Lender in its reasonable discretion, will be greater than the loan-to-value ratio required by Lender's then-current underwriting requirements for similar loans secured by property similar to the Property.

(e) **Effect on the Indebtedness.** Any reduction in the obligations secured hereby resulting from the application of Insurance Proceeds or other funds pursuant to this subsection 4.4.2 shall be deemed to take effect only on the date of such application. No application of Insurance Proceeds or other funds to the obligations secured hereby shall result in any adjustment in the amount or due dates of installments due under the Note.

(f) **Costs and Expenses.** Borrower shall pay, within 30 days after demand by Lender, all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with the adjustment, collection and disbursement of Insurance Proceeds pursuant to this Security Instrument or otherwise in connection with the Casualty or the Restoration.

4.5 **Right of Inspection.** Subject to the rights of tenants, Borrower shall permit Lender or its agents or independent contractors, at all reasonable times and upon reasonable advance notice (except in the event of an emergency, in which case no advance notice is required), to enter upon and inspect the Property without materially and adversely interfering with the use and enjoyment of the Property by Borrower or any tenants of Borrower.

4.6 **Compliance with Laws, Etc.; Preservation of Licenses.** Notwithstanding any disclosure made by Borrower pursuant to Section 4.1.4 above, Borrower shall comply in all material respects with (a) all Federal, State and local laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities (collectively, "Applicable Law") applicable to Borrower, the Property or the use, repair and maintenance thereof by Borrower or any third party, (b) all easements, licenses and agreements relating to the Property or the use thereof by Borrower or any third party, and (c) all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits. Borrower shall indemnify, defend and hold harmless Lender for any and all damages, claims, liabilities, reasonable costs and expenses (including attorneys' fees) arising from Borrower's failure to comply with this Section 4.6.

4.7 **Further Assurances.** Borrower will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Lender deems reasonably necessary to grant the Property to Lender, or to carry out the purposes of this Security Instrument.

4.8 **Legal Actions.** Borrower will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Lender; and will pay all reasonable costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Lender, in a reasonable sum, in any such action or proceeding in which Lender may appear, in any suit or other proceeding to foreclose this Security Instrument, and in any foreclosure sale under this Security Instrument.

4.9 **Taxes, Assessments and Other Liens.** Except as provided in this Security Instrument, Borrower will pay prior to delinquency all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof.

4.10 **Expenses.** Except as prohibited under Applicable Law, Borrower will pay all reasonable costs, fees and expenses (including attorneys' fees) reasonably incurred by Lender in connection with this Security Instrument on the due date thereof (or if no other due date is specified, within 30 days after receipt of Lender's written notice therefor).

4.11 **Repayment.** Borrower will pay all principal and interest and any prepayment premiums on the Loan as provided in the Note. Borrower will pay all other amounts owed under the Loan Documents on the due date thereof (or if no other due date is specified, within 30 days after written demand by Lender). All such amounts shall bear interest at the interest rate applicable to the Note from the date advanced or expended by Lender (or, if not consisting of an advance or expenditure by Lender, from the due date) until paid. If Lender so elects in its sole discretion, such amounts shall be (i) added to the principal balance of the Loan and due and payable in full on the maturity date of the Note, or (ii) added to the principal balance of the Loan and amortized over the remainder of the amortization period used to calculate the monthly payments required under the Note, which may result in an increase to the amount of the monthly payment due under the Note.

4.12 **Financial and Operating Information.** Within 90 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender the rent rolls, property operating statements and other financial reports for the Property for such fiscal year, in a form acceptable to Lender in its reasonable discretion. In addition, within 20 days after written request by Lender, Borrower shall furnish to Lender such financial statements and information about (i) the Property, (ii) Borrower and Guarantor, or any general partners, managing members or managers of Borrower or Guarantor, or any other controlling parties of Borrower, and (iii) commercial tenants or occupants of any portion of the Property that are affiliates of Borrower or Guarantor of the Loan, as Lender may reasonably require.

If Borrower fails to comply with this Section 4.12, and such failure continues for a period of 30 days after written notice of such failure by Lender to Borrower, Borrower shall pay to Lender, as liquidated damages for the extra expense in servicing the Loan, \$500 on the first day of the month following the expiration of such 30-day period and \$100 on the first day of each month thereafter until such failure is cured. All such amounts shall be secured by this Security Instrument. Payment of such amounts shall not cure any Default or Event of Default resulting from such failure.

4.13 **Sale, Transfer, or Encumbrance of Property.**

4.13.1 **Encumbrances; Entity Changes.** Except as otherwise provided below and subject to Borrower's rights to enter into Leases, Borrower shall not, without the prior written consent of Lender, further encumber the Property or any interest therein, or cause or permit any change in the entity, ownership, or control of Borrower without first repaying in full the Note and all other sums secured hereby.

4.13.2 **Sales, Transfers, Conveyances.** Except as otherwise provided below, Borrower shall not, without the prior written consent of Lender (which consent shall be subject to the conditions set forth below), sell, transfer, or otherwise convey

the Property or any interest therein, voluntarily or involuntarily, without first repaying in full the Note and all other sums secured hereby. Consent to any one transfer and assumption shall not be deemed a waiver of the right to require consent to any future transfers and assumptions.

4.13.3 **Conditions to Lender's Consent to Transfer and Assumption.** Lender will not unreasonably withhold its consent to a sale or transfer of the Property and related assumption of the Loan by the proposed transferee, provided however, that:

(a) Borrower shall provide to Lender a loan application on such form as Lender may require executed by the proposed transferee and accompanied by such other documents as Lender may require in connection therewith;

(b) Lender may consider the factors normally used by Lender as of the time of the proposed assumption in the process of determining whether or not to lend funds, and may require that the Property and the proposed transferee meet Lender's then-current underwriting, legal, regulatory and related requirements as of that time;

(c) Lender may specifically evaluate the financial responsibility, structure and real estate operations experience of any potential transferee;

(d) Lender may require that it be provided at Borrower's expense, with an appraisal of the Property, an on-site inspection of the Property, and such other documents and items, from appraisers, inspectors and other parties satisfactory to Lender, and may require that Borrower or the transferee of the Property correct any items of deferred maintenance that may be identified by Lender;

(e) Lender may, as a condition to granting its consent to a sale, transfer, or other conveyance of the Property, require in its sole discretion Borrower's payment to Lender of (i) a fee (the "Consented Transfer Fee") of one percent of the unpaid principal balance of the Note; (ii) review fees in accordance with Lender's fee schedule in effect at the time of the request ("Lender's Fee Schedule"), which shall be paid by Borrower to Lender upon Borrower's request for Lender's consent, and shall be non-refundable but applicable to the Consented Transfer Fee, to the extent applicable, (iii) Lender's reasonable attorneys' fees and other reasonable out-of-pocket expenses; and (iv) document preparation fees and other fees in accordance with Lender's Fee Schedule;

(f) No Default or Event of Default (each as defined below) has occurred and is continuing; and

(g) The transferee, a replacement guarantor acceptable to Lender, and any other parties shall execute such documentation in the form required by Lender in its sole and absolute discretion evidencing such transfer and related assumption, including without limitation, an assumption agreement, guaranties and environmental indemnity agreements; and upon the consummation of such transaction the Borrower and the existing guarantor shall be released from all future liability under the Loan Documents (except for the Indemnity Agreement) as provided in the assumption agreement.

4.13.4 **Unconsented Transfers.** Any failure to comply with Section 4.13.1 or 4.13.2 above shall constitute an "Unconsented Transfer" for purposes of this Security Instrument. In the event of an Unconsented Transfer, Borrower and its successors shall be jointly and severally liable to Lender for the payment of a fee (the "Unconsented Transfer Fee") of one percent of the unpaid principal balance of the Note as of the date of such Unconsented Transfer. The Unconsented Transfer Fee shall be due and payable upon written demand therefor by Lender, and shall be secured by this Security Instrument; provided, however, that payment of the Unconsented Transfer Fee shall not cure any Event of Default resulting from the Unconsented Transfer.

4.13.5 **No Waiver.** Lender's waiver of any of the Consented Transfer Fee, the Unconsented Transfer Fee or any other amount payable hereunder, in whole or in part for any one sale, transfer, encumbrance or other conveyance shall not preclude the imposition thereof in connection with any other sale, transfer, encumbrance or other conveyance.

4.13.6 **Permitted Transfers.** Notwithstanding the foregoing and notwithstanding Section 4.14, Lender's consent will not be required, and neither the Consented Transfer Fee nor the Unconsented Transfer Fee will be imposed, for any Permitted Transfer (as defined below), so long as all Transfer Requirements (as defined below) applicable to such Permitted Transfer are timely satisfied. As used herein, the following terms have the meanings set forth below:

"Permitted Transfer" means:

(a) The transfer of less than 25% in the aggregate during the term of the Note of the direct or indirect Equity Interests (as defined below) in Borrower, in addition to any transfers permitted under subparagraphs (b) or (c) of this definition (a "Minority Interest Transfer");

(b) A transfer that occurs by devise, descent or operation of law upon the death of a natural person (a "Decedent Transfer");

(c) A transfer made in good faith for estate planning purposes (i) to one or more non-minor Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more non-minor Immediate Family Members of a settlor of the applicable trust) or (ii) to one or more trusts or legal entities established for the benefit of, and solely owned by, the transferor and/or one or more Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more trusts or legal entities established for the benefit of, and solely owned by, one or more Immediate Family Members of a settlor of the applicable transferor trust) (an "Estate Planning Transfer");

(d) A transfer between existing owners of direct or indirect Equity Interests in the Borrower so long as there is no change in the individuals exercising day-to-day powers of decision-making, management and control of the Borrower, and no release of any guarantors; or

(e) A transfer of furniture, fixtures or equipment if they are reasonably deemed to be surplus to the normal operation and use of the Property or if they are promptly replaced by similar items of at least equivalent value and utility.

"Transfer Requirements" means, with respect to any Permitted Transfer, all of the following that apply to that transfer:

(a) In the case of any Permitted Transfer:

(i) none of the persons or entities liable for the repayment of the Loan shall be released from such liability;

(ii) such transfer must not violate Applicable Law, and the transferee must not be a "specially designated national" or a person that is subject or a target of any economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury or the U.S. Department of State ("Sanctions") and such transfer must not otherwise result in a violation of Sanctions, the USA PATRIOT Act of 2001, any "know your customer" rules applicable to Lender or any other Applicable Law; and

(iii) Borrower must provide Lender with not less than 30 days' prior written notice of the proposed transfer (or to the extent that such transfer is a Decedent Transfer then, as soon as reasonably practicable following Borrower becoming aware that the transfer has occurred), which notice shall include a summary of the proposed changes in the organization, ownership and management of the Property or the applicable entity and such further information as Lender may require to make the determinations contemplated by this subsection (a); provided, however, that no prior notice shall be required for an Estate Planning Transfer or any transfer that results in the transferee owning less than 10% in the aggregate of the direct or indirect Equity Interests in Borrower.

(b) In the case of any Minority Interest Transfer or Estate Planning Transfer, there shall be no change in the individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its sole discretion. In the case of a Decedent Transfer, any new individual exercising such powers must be satisfactory to Lender in its reasonable discretion.

(c) In the case of a Decedent Transfer, if the decedent was a Borrower or guarantor of the Loan, within 30 days after written request by Lender, one or more other persons or entities having credit standing and financial resources reasonably acceptable to Lender, shall assume or guarantee the Loan by executing and delivering to Lender a guaranty or assumption agreement and a certificate and indemnity agreement regarding hazardous substances, each satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the decedent and granting Lender liens on any and all interests of the transferee in the Property.

(d) In the case of any Estate Planning Transfer (other than a transfer by an individual of an interest in the Property into a revocable trust created for their benefit or the benefit of an Immediate Family Member and which such individual is the trustee) that results in a transfer of an interest in the Property, the transferee shall, prior to the transfer, execute and deliver to Lender an assumption agreement satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the transferor and granting Lender liens on any and all interests of the transferee in the Property.

(e) In the case of any Permitted Transfer that results in a transfer of an interest in the Property, Lender shall be provided, at no cost to Lender, with an endorsement to its title insurance policy insuring the lien of this Security Instrument, which endorsement shall insure that there has been no impairment of that lien or of its priority.

(f) In the case of any Permitted Transfer, Borrower or the transferee shall pay all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with that Permitted Transfer, any applicable fees in accordance with Lender's fee schedule in effect at the time of the Permitted Transfer, and shall provide Lender with such information and documents as Lender reasonably requests in order to make the determinations called for by this Security Instrument and to comply with Applicable Law.

(g) No Default shall exist.

"Equity Interest" means partnership interests in Borrower, if Borrower is a partnership, member interests in Borrower, if Borrower is a limited liability company, or shares of stock of Borrower, if Borrower is a corporation.

"Immediate Family Members" means, with respect to any person, that person's parents, spouse, registered domestic partner (under an applicable state or District of Columbia law providing for registration of domestic partnerships with a governmental agency), siblings, children and other lineal descendants, and the spouses and registered domestic partners of such person's parents, siblings, children and other lineal descendants.

#### 4.14 Borrower Existence.

4.14.1 Legal Entities. Except as otherwise permitted by this Security Instrument, if Borrower is a corporation, partnership, limited liability company, or other legal entity, Lender is making the Loan in reliance on Borrower's continued existence, ownership and control in its present form. Borrower will not alter its name, jurisdiction of organization, structure, ownership or control without the prior written consent of Lender and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. If Borrower is a partnership, Borrower will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Lender. The withdrawal or expulsion of any general partner from the Borrower partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

4.14.2 **Trusts.** Except as otherwise permitted by this Security Instrument, if Borrower is a trust, there shall be no change in the trustee or other individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its reasonable discretion.

4.15 **Information.** Lender is authorized to disclose to potential participants, assignees, regulators, Federal Home Loan Banks and Federal Reserve Banks, information in Lender's possession with respect to Borrower, guarantors of the Loan, the Property and the Loan.

4.16 **Tax and Insurance Impounds.**

4.16.1 **Impounds.** In addition to the payments required by the Note, Borrower shall pay Lender, at Lender's request, such sums as Lender may from time to time estimate will be required (a) to pay, at least one month before delinquency, the next-due taxes, assessments, insurance premiums and similar charges affecting the Property (collectively, the "Impositions"), divided by the number of months to elapse before one month prior to the date when the applicable Impositions will become delinquent; and (b) at the option of Lender and to the extent permitted under Applicable Law, to maintain a reserve equal to one-sixth of the total annual amount of the Impositions. Lender shall hold such amounts without interest or other income to Borrower (unless required under Applicable Law) to pay the Impositions. The total of all payments to Lender under subsection 4.16.1 shall be referred to herein collectively, as the "Impounds". If this estimate of the Impounds proves insufficient, Borrower, upon demand by Lender, shall pay Lender such additional sums as may be required to pay the Impositions at least one month before delinquency. Borrower hereby acknowledges and agrees that if Lender does not require Borrower to make impound payments for all or any portion of the Impositions at the origination of the Loan, at any time following the occurrence of an Event of Default (regardless of whether it is later cured), Borrower shall be required to make such Impounds within 30 days after receipt of written notice from Lender.

4.16.2 **Application.** If the Impounds in any one year exceed the amounts actually paid by Lender for Impositions, all or any portion of such excess may be paid to Borrower or credited by Lender on subsequent payments under this section. At any time after the occurrence and during the continuance of an Event of Default, Lender may apply any balance of Impounds it holds to any of the obligations secured hereby in such order as Lender may elect.

4.16.3 **Tax Reporting Service.** Lender may, in its sole and absolute discretion, contract with a tax reporting service covering the Property. Borrower agrees that Lender may rely on the information furnished by such tax service and agrees to pay the reasonable cost of that service within 30 days after receipt of a billing for it.

4.17 **Leasing Matters.** Borrower shall not receive or collect any Rents in advance in excess of one month's Rent from any tenant or collect a security deposit in excess of two months' Rent from any tenant. The Lender shall have all of the rights against tenants of the Property as set forth in Section 291-f of the Real Property Law of New York. To the extent Applicable Law requires any security deposits or other amounts received from tenants of the Property to be held in a segregated account, Borrower shall promptly deposit and maintain all applicable deposits and other amounts in a segregated trust account in a federally insured institution. Borrower shall perform Borrower's obligations under the Leases in all material respects. Borrower hereby consents to Lender obtaining copies of rent rolls and other information relating to the Leases from any governmental agency with which Borrower is obligated to file such information or that otherwise collects or receives such information.

4.18 **Condominium and Cooperative Provisions.** If the Property is not subject to a recorded condominium plan or map, a cooperative regime, or other common interest development regime, on the date of this Security Instrument, Borrower will not subject the Property or any portion thereof to such a plan, map, or regime without the written consent of Lender, which consent may be granted or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including but not limited to Borrower providing Lender with such title insurance endorsements and other documents as Lender may require. If the Property is subject to a recorded condominium plan or map, or other common interest development regime, on the date of this Security Instrument: (a) Borrower represents and warrants that none of the condominium units and no

portion of the common elements in the Property have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (b) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any condominium unit or any of the common elements of the Property unless expressly agreed to in writing by Lender; (c) Borrower shall operate the Property solely as a rental property; and (d) the Property granted, conveyed and assigned to Lender hereunder includes all rights, easements, rights of way, reservations and powers of Borrower, as owner, declarant or otherwise, under any applicable condominium act or statute and under any and all condominium declarations, survey maps and plans, association articles and bylaws and documents similar to any of the foregoing. If the Property is subject to a cooperative regime on the date of this Security Instrument: (i) Borrower represents and warrants that none of the corporate shares in the cooperative regime have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (ii) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any of the corporate shares of the cooperative regime; and (iii) Borrower shall operate the Property solely as a rental property.

4.19 **Use of Property; Zoning Changes.** Unless required by Applicable Law, Borrower shall not: (a) except for any change in use approved by Lender in writing, allow changes in the use for which all or any part of the Property is being used at the time this Security Instrument is executed; (b) convert any individual dwelling unit or common area in the Property to primarily commercial use; or (c) initiate or acquiesce in a change in the zoning classification of the Property.

4.20 **Lien Law.** Borrower will, in compliance with Section 13 of the New York Lien Law, receive the advances secured hereby and will hold the right to receive such advances in a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of the cost of any such improvement before using any part of the total of the advance for any other purpose.

## 5. **Default.**

5.1 **Definition.** Any of the following shall constitute an "Event of Default" as that term is used in this Security Instrument (and the term "Default" shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied):

5.1.1 Any regular monthly payment under the Note is not paid so that it is received by Lender within fifteen (15) days after the date when due, or any other amount secured by this Security Instrument (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note) is not paid so that it is received by Lender when due;

5.1.2 Any representation or warranty made by Borrower to or for the benefit of Lender herein or elsewhere in connection with the Loan, including but not limited to any representation in connection with the security therefor, shall have been incorrect or misleading in any material respect;

5.1.3 Borrower or any other party thereto (other than Lender) shall fail to perform its obligations under any other covenant or agreement contained in this Security Instrument, the Note, any other Loan Document, which failure continues for a period of 30 days after written notice of such failure by Lender to Borrower (or for a period of 60 days after such notice if such failure cannot reasonably be cured within such 30-day period, but can be cured within such 60-day period and Borrower is proceeding diligently to cure it), but no such notice or cure period shall apply in the case of: (i) any such failure that could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument or the other Loan Documents, result in harm to Lender or impairment of the Note, this Security Instrument, or any other security given under any other Loan Document; (ii) any such failure that is not reasonably susceptible of being cured during such cure period; (iii) breach of any provision that contains an express cure period; or (iv) any breach of Section 4.13 or Section 4.14 of this Security Instrument;

5.1.4 Borrower or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they become due, or file, or have filed against it, a voluntary or



involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding, provided that if such petition or proceeding is not filed or acquiesced in by Borrower or the subject thereof, it shall constitute an Event of Default only if it is not dismissed within 60 days after it is filed or if prior to that time the court enters an order substantially granting the relief sought therein; or

5.1.5 Borrower or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage, deed of trust or similar security instrument encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness secured thereby, which default continues beyond any applicable cure period.

5.2 **Lender's Right to Perform.** After the occurrence and during the continuance of any Event of Default, Lender, but without the obligation so to do and, to the extent permitted by Applicable Law, without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Lender and its agents being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; pay, purchase, contest or compromise any encumbrance, charge or lien; and in exercising any such powers, pay necessary expenses and engage counsel. All sums so expended (including attorneys' fees) shall be secured hereby and bear interest at the Default Rate of interest specified in the Note from the date advanced or expended until repaid and shall be payable by Borrower to Lender on demand.

5.3 **Remedies on Default.** Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Lender and Lender may:

5.3.1 To the extent permitted by Applicable Law, have a receiver appointed as a matter of right without notice to Borrower and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Lender elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Lender and added to the indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender, or advanced by Lender to the receiver, for such purposes shall become an additional part of the indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 5.3 shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Property.

5.3.2 Foreclose this Security Instrument as provided in Section 7 or otherwise realize upon the Property as permitted under Applicable Law.

5.3.3 Sue on the Note as permitted under Applicable Law.

5.3.4 Avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or Applicable Law.

5.4 **No Waiver.** By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of that or any other portion of the obligations secured by this Security Instrument. Lender may from time to time accept and apply any one or more payments of less than the full amount then due and payable on

such obligations without waiving any Default, Event of Default, acceleration or other right or remedy of any nature whatsoever. In addition, the failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right. Furthermore, the waiver of any Default or Event of Default shall not constitute a waiver of any subsequent or other Default or Event of Default.

5.5 **Waiver of Marshaling, Etc.** In connection with any foreclosure sale under this Security Instrument, Borrower hereby waives, for itself and all others claiming by, through or under Borrower, any right Borrower or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 **Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising Applicable Law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. Lender shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the Loan proceeds.

6. **Condemnation.** Any and all awards of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property for public or private use, or for injury to any portion of the Property ("Awards"), are hereby assigned and shall be paid to Lender which may apply or disburse such Awards in the same manner, on the same terms, subject to the same conditions, to the same extent, and with the same effect as provided in Section 4.4.2 above for disposition of Insurance Proceeds. Without limiting the generality of the foregoing, if the taking results in a loss of the Property to an extent that, in the reasonable opinion of Lender, renders or is likely to render the Property not economically viable or if, in Lender's reasonable judgment, Lender's security is otherwise impaired, Lender may apply the Awards to reduce the unpaid obligations secured hereby in such order as Lender may determine, and without any adjustment in the amount or due dates of installments due under the Note. If so applied, any Awards in excess of the unpaid balance of the Note and other sums due to Lender shall be paid to Borrower or Borrower's assignee. Such application or release shall not cure or waive any Default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all Awards or other relief therefor, and Borrower agrees to pay Lender's costs and reasonable attorneys' fees incurred in connection therewith. Lender shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

7. **Foreclosure.** Upon the occurrence of any Event of Default, Lender shall have the option, without notice or demand, to declare all sums secured hereby immediately due and payable and to proceed to foreclose on this Security Instrument as now or then provided by law (in which event Lender shall be entitled to the appointment of a receiver) pursuant to a judicial proceeding in accordance with Article 13 of the New York Real Property Actions and Proceedings Law ("RPAPL") or by advertisement in accordance with Article 14 of RPAPL. Any foreclosure shall forever bar Borrower and all persons claiming under Borrower from all right and interest in the Property. In any such proceeding Lender shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Lender shall be entitled to possession of the Property during any period of redemption. Borrower hereby waives any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Security Instrument by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect full redemption. If a deficiency remains after proper application of the proceeds of sale of the Property, Borrower shall pay the same immediately after determination of the amount thereof.

8. **Notices.** Any notice to or demand on Borrower in connection with this Security Instrument or the obligations secured hereby shall be deemed to have been sufficiently made when deposited in the United States mails (with first-class or registered or certified postage prepaid), addressed to Borrower at Borrower's address set forth above. Any notice to or demand on Lender in connection with this Security Instrument or such obligations shall be deemed to have been sufficiently made when deposited in the United States mails with registered or certified postage prepaid, return receipt requested, and addressed to Lender at the address set forth above. Any party may change the address for notices to that party by giving written notice of the address change in accordance with this section.

9. **Modifications, Etc.** Each person or entity now or hereafter owning any interest in the Property agrees, by executing this Security Instrument or taking the Property subject to it, that Lender may in its sole discretion and without notice to or consent of any such person or entity: (i) extend the time for payment of the obligations secured hereby; (ii) discharge or release any one or more parties from their liability for such obligations in whole or in part; (iii) delay any action to collect on such obligations or to realize on any collateral therefor; (iv) release or fail to perfect any security for such obligations; (v) consent to one or more transfers of the Property, in whole or in part, on any terms; (vi) waive or release any of holder's rights under any of the Loan Documents; (vii) increase the amount of such obligations as permitted by the Loan Documents; or (viii) proceed against such person or entity before, at the same time as, or after it proceeds against any other person or entity liable for such obligations.

10. **Successors and Assigns.** All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11. **Governing Law; Severability.** This Security Instrument shall be governed by the laws of the state where the Property is located, except to the extent preempted by federal laws applicable to national banks. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, the conflict shall not affect other provisions of this Security Instrument or the Note that can be given effect without the conflicting provision, and to this end the provisions of this Security Instrument and the Note are declared to be severable.

12. **Maximum Interest.** No provision of this Security Instrument or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by Applicable Law. If any excess of interest in such respect is herein or in the Note provided for, neither Borrower nor its successors or assigns shall be obligated to pay that portion of such interest that is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section shall control any provision of this Security Instrument or the Note that is inconsistent herewith.

13. **Attorneys' Fees and Legal Expenses.** In the event of any Default under any Loan Document, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any Loan Documents, Lender shall be entitled to collect from any Obligor (as defined in the Note), on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to reasonable fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, such Obligor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of any Obligor, or any party having any interest in any security for any obligations secured hereby; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to the Loan Documents; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing. Notwithstanding anything to the contrary set forth in this Security Instrument or the other Loan Documents, in the event of any litigation between Lender and any Obligor outside the context of a bankruptcy proceeding involving such Obligor as debtor, which litigation arises out of or is related to the Loan or to the Property, if that Obligor is the ultimate prevailing party therein and Lender is not the ultimate prevailing party, such Obligor shall be entitled to recover from Lender the Obligor's reasonable attorneys' fees and court costs incurred therein.

14. **Time Is of the Essence.** Time is of the essence under this Security Instrument and in the performance of every term, covenant and obligation contained herein.

15. **Miscellaneous.**

15.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

15.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Security Instrument.

15.3 This Security Instrument, the Note and the other Loan Documents constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

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

15.5 The existence of any violation of any provision of this Security Instrument or the other Loan Documents (including but not limited to building or health code violations) as of the date of this Security Instrument, whether or not known to Lender, shall not be deemed to be a waiver of any of Lender's rights under any of the Loan Documents including, but not limited to, Lender's right to enforce Borrower's obligations to repair and maintain the Property.

15.6 Upon written request of Borrower in connection with a refinancing of the loan secured hereby or a sale of the Property, Lender shall assign this Security Instrument, without recourse, warranty or representation whatsoever to the refinancing lender upon (a) payment of a sum equal to all monies or indebtedness outstanding under the Note, this Security Instrument and all other Loan Documents, including but not limited to, the outstanding principal amount of the loan secured hereby, all interest accrued thereon and any Prepayment Premium (as defined in the Note), Lender's standard assignment fee as in effect at the time of such assignment and payment of all costs and expenses (including, without limitation, reasonable in-house and outside attorneys' fees) incurred in connection with the assignment of this Security Instrument, and (b) Borrower's delivery to Lender of an affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as Lender may reasonably request.

16. **USA PATRIOT Act Notification and Covenant.**

16.1 Lender hereby notifies Borrower that, pursuant to the requirements of Section 326 of the USA PATRIOT Act of 2001, 31 U.S.C. Section 5318 (the "Act"), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

16.2 Neither Borrower nor any other party liable for the obligations secured hereby as a guarantor or general partner nor any other person or entity participating in any capacity in the Loan will, directly or indirectly, use the proceeds of the Note, or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other person or entity, to (a) further an offer, payment, promise to pay, or authorize the payment or giving of money, or anything else of value, to

any person (including, but not limited to, any governmental or other entity) in violation of Applicable Law of any jurisdiction applicable to Borrower or any other party liable for the obligations secured hereby as a guarantor or general partner from time to time relating to bribery or corruption; or (b) fund, finance or facilitate any activities or business or transaction of or with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of any Sanctions, or in any other manner that would result in a violation of Sanctions by any person or entity, including any person or entity participating in any capacity in the Loan.

17. **WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS SECURITY INSTRUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS CONTEMPLATED HEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

18. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THE LOAN DOCUMENTS (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

19. **Type of Property.** Borrower represents and warrants to Lender that this Security Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own separate cooking facilities.

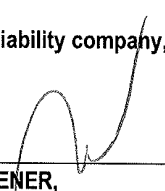
DATED as of the day and year first above written.

**BORROWER:**

**2390 C LLC,  
a Delaware limited liability company**

By: **2390 C HOLDING LLC,  
a Delaware limited liability company,  
Sole Member**

By: **2390 C S36 LLC,  
a New York limited liability company,  
Managing Member**

By:   
\_\_\_\_\_  
**JONATHAN WIENER,  
Managing Member**

State of New York ) ss.  
County of Bronx )

On the 3rd day of December in the year **2021**, before me, the undersigned, a Notary Public in and for said state, personally appeared **JONATHAN WIENER**, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Signature of Notary Public

**Cynthia L. Perfetti**  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires: 12/23/2023

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Bronx, County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Creston Avenue distant 224.25 feet northerly from the corner formed by the intersection of the easterly side of Creston Avenue with the northerly side of 184th Street;

RUNNING THENCE easterly at right angles to the easterly side of Creston Avenue, 95 feet;

THENCE northerly parallel with the easterly side of Creston Avenue 50 feet;

THENCE westerly again at right angles to the easterly side of Creston Avenue 95 feet to the easterly side of Creston Avenue;

THENCE southerly along the easterly side of Creston Avenue 50 feet to the point or place of BEGINNING.

BEING AND INTENDED to be the same premises conveyed to the party of the first part by deed dated 9/17/14 recorded 10/15/14 in the Office of the Register, County of Bronx, State of New York, in CRFN 2014000341304.

PROPERTY ADDRESS: 2390 CRESTON AVE, BRONX, NEW YORK 10468

Loan No. 200506149

**Schedule 1 to Security Instrument**  
Insurance Requirements

1. **Evidence of Coverage.** Prior to the scheduled Loan funding, Lender must receive and approve written evidence of all required insurance on an ACORD form 28 for property insurance and ACORD form 25 for liability insurance (or similar forms acceptable to Lender in its sole discretion) together with satisfactory proof of payment of premiums. The evidence of coverage must show an inception date prior to or corresponding with the date of the Loan funding. Within 30 days after Loan funding, Borrower must provide Lender with a copy of all insurance policies (including flood and windstorm policies, if applicable) and all required endorsements. Policies must show an inception date prior to or corresponding with the date of the Loan funding. All documents must reflect the Lender-assigned loan number for the Loan as shown above. If flood insurance is required, special requirements apply, as described in paragraph 2.5 of this Schedule 1. ACORD or other certificates are not acceptable evidence of flood insurance.

2. **Required Coverages and Policy Amounts.** Borrower must maintain, or cause to be maintained, the following insurance coverages at all times while any portion of the Loan remains outstanding:

2.1 **Property Insurance.** The property insurance policy must insure against loss or damage to the improvements on the Property by fire and other perils substantially equivalent to those insured under the Causes of Loss – Special Form published by ISO, and against such other perils, including windstorm, as may be specified by Lender. Terrorism and/or earthquake/earth movement insurance coverage and a building ordinance extension endorsement or law and ordinance coverage may be required on a case-by-case basis. Notwithstanding anything to the contrary, Lender shall not require earthquake or terrorism insurance during the term of the Loan unless: (a) required under Applicable Law; (b) required by Lender for similar loans secured by property similar to the Property; (c) required by Lender as a result of a material change in circumstances that expose the Property to a greater risk of peril; or (d) required in connection with the origination of the Loan. The property insurance policy must be in an amount not less than 100% of the replacement cost of the improvements on the Property (without deduction for depreciation) as determined by Lender for purposes of protection of Lender's interests (the "Minimum Property Coverage Amount") and must identify Borrower and the Property address as they appear in the loan documents governing the Loan (the "Loan Documents"). The replacement cost coverage may be provided either in the terms of the policy or by endorsement. If Lender, in its sole discretion, permits coverage of less than the Minimum Property Coverage Amount, then such policy must contain an agreed amount endorsement. If the policy is a blanket policy covering the Property and one or more other properties, the policy must specify the dollar amount of the total blanket limit of the policy that is allocated to the Property, and the amount so allocated to the Property must not be less than the Minimum Property Coverage Amount.

2.2 **Loss of Rents/Business Income Interruption.** Borrower must maintain loss of rents or business income interruption insurance against loss of income (including but not limited to rent, cost reimbursements and all other amounts payable by tenants under leases or otherwise derived by Borrower from the operation of the Property) arising out of damage to or destruction of the improvements on the Property by fire and each other peril insured against under each insurance policy insuring against any type of casualty to the Property or any part thereof that is required pursuant to this Security Instrument. Such insurance must cover the actual loss sustained for at least 12 months with a minimum coverage amount of at least 12 months' potential gross income generated by the Property from all sources, as determined by Lender and without deduction for actual or projected vacancy.

2.3 **Boiler and Machinery.** If a steam boiler is located at the Property, Borrower must carry boiler and machinery coverage in at least the Minimum Property Coverage Amount. If a separate boiler and machinery policy is issued, that policy must include loss of rents or business interruption coverage as described in paragraph 2.2 of this Schedule 1.

2.4 **Liability.** Borrower must maintain commercial general liability insurance (including coverage for elevators and escalators, if any, on the Property) on an occurrence form substantially equivalent to ISO form CG 0001 with coverage of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. All policies must be primary and noncontributory with any other insurance Borrower may carry.



2.5 **Flood.** If any building or mobile home on the Property which secures the Loan is at any time located in a federally-designated special flood hazard area in which flood insurance has been made available pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Act") or other applicable or successor legislation or other area identified by Lender as having a high or moderate risk of flooding (a "Special Flood Hazard Area"), then Borrower must provide Lender with a separate flood insurance policy for each such building or mobile home located in a Special Flood Hazard Area and any contents thereof that also secure the Loan (each a "Building"). **Lender does not accept ACORD or other certificates as acceptable proof of flood insurance.** The amount of flood insurance coverage for each Building must be in an amount at least equal to the Minimum Flood Coverage Amount for the Building. As used in this Security Instrument, "Minimum Flood Coverage Amount" means the lesser of the following for each Building (not including land), as determined by Lender: (i) the insurable value of the Building ("Insurable Value"); or (ii) the outstanding principal balance of the Loan allocated to the Building. For each flood insurance policy, the deductible may not exceed \$10,000.00 for a multifamily Building or \$50,000.00 for a commercial Building; provided, however, for private insurance policies described below, the deductible may not exceed the greater of (A) \$10,000.00 for a multifamily Building and \$50,000.00 for a commercial Building, or (B) 10% of the amount of flood insurance coverage under the private insurance policy. If the amount of coverage under the flood insurance policy for any Building is less than the Insurable Value, Lender may require a Difference in Conditions policy satisfactory to Lender to cover a loss that would not be covered under such flood insurance policy. If flood insurance is required, please see Lender's Flood Insurance Requirements letter, the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, and the Flood Insurance Coverage Detail for further detail about Lender's flood insurance requirements. Subject to the requirements related to private insurance policies explained below, Lender will accept as evidence of the required flood insurance any of the following: (1) a copy of the insurance policy; (2) a declarations page from the insurance policy; or (3) an application plus proof that the premium has been paid in full. For Lender to accept the evidence described in item (3), Borrower must provide Lender with a copy of the insurance policy or the declarations page within 30 days of closing. If Borrower provides flood insurance by a private insurance policy (i.e., a policy that is not a standard policy issued on behalf of the National Flood Insurance Program ("NFIP")) for coverage amounts of \$500,000.00 or less for commercial or multifamily properties, in order to make the required comparison to the NFIP standard policy, Lender will require a copy of the private insurance policy prior to closing. If the private insurance policy fails to meet the criteria set forth in Lender's Flood Insurance Requirements letter or cannot be obtained in time to be reviewed prior to closing of the Loan, Borrower will be required to purchase an NFIP policy in the amount required by the Flood Act as a condition to closing of the Loan.

2.6 **Workers Compensation Insurance.** If Borrower has employees working at the Property, Borrower must carry workers compensation insurance in compliance with the laws of the state in which the Property is located.

2.7 **Changes in Insurance Requirements.** Lender may reasonably change its insurance requirements from time to time throughout the term of the obligations secured by this Security Instrument by giving written notice of such changes to Borrower. Without limiting the generality of the foregoing, Borrower shall from time to time obtain such additional coverages or make such increases in the amounts of existing coverage as may reasonably be required by written notice from Lender. Lender reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time.

3. **Policy and Premium Term.** If a new policy is being issued, the minimum policy term must be one year from Loan funding, with evidence that the premium has been paid in full for the term of the policy. If a new policy is not being issued due to there being an existing policy in force, the remaining term of the existing policy must be at least two months from Loan funding, with evidence that the premium has been paid for the remaining term of the policy.

4. **Maximum Deductibles.** The maximum deductible on the property insurance policy must not exceed the greater of \$25,000.00 or one percent of the applicable amount of coverage. Borrower may carry a lesser deductible if Borrower so chooses. Notwithstanding the foregoing, if the windstorm peril is excluded from the property insurance policy because the Property is located in a high-risk wind area, and windstorm coverage is provided through a separate policy, windstorm coverage only may have a deductible of up to five percent of the loss (and, if applicable, subject to a policy provision that the maximum deductible for windstorm coverage, regardless of the amount of the loss, will be a specified amount not to exceed \$250,000.00). Acceptable deductibles for flood policies are described in paragraph 2.5 of this Schedule 1.

5. **Acceptable Insurance Companies.** The insurer (the "Insurer") providing the insurance required in this Security Instrument and the other Loan Documents must be authorized to do business in the state where the Property is located. Lender shall have the right to approve or, for reasonable cause, disapprove the proposed Insurer selected by Borrower. The Insurer must

have a current Best's rating of "B+" and a financial size category of "VI" or better from A.M. Best Company. A California FAIR (Fair Access to Insurance Requirements) Plan Association policy, or equivalent policy issued by a similar state-run insurer in another state, is acceptable only when minimum form coverage cannot be obtained from an insurance company with such rating.

6. **Mortgage and Loss Payee Endorsement.** Each property policy must name "JPMorgan Chase Bank, National Association and its successors and assigns" as the only mortgagee and loss payee pursuant to a mortgage clause or endorsement (the mortgage clause included in Insurance Service Office ("ISO") Property Form No. CP 00 10 or its equivalent, which must be satisfactory to Lender and must provide that Lender will not have its interest voided by the act or omission of Borrower and that Lender may file a claim directly with the Insurer), which clause or endorsement must be contained in or attached to the policy and must show the following address for Lender: JPMorgan Chase Bank, N.A. and its successors and assigns, P.O. Box 9110, Coppell, Texas 75019-9110.

7. **Renewal Policies.** Borrower must renew or replace all required insurance policies so as to maintain continuous coverage in compliance with the Loan Documents. Borrower must provide Lender with a complete copy of each renewal or replacement policy (including endorsements) within 30 days after its effective date. Lender may order insurance meeting its requirements (at Borrower's expense) if any such policy is not received by such date.

8. **Notice of Cancellation.** All policies must guarantee that Lender will receive 30 days' advance notice prior to cancellation and ten days' notice for nonpayment of premiums. If a notice of cancellation is received on an existing policy and not reinstated or replaced with an acceptable policy before the effective date of the cancellation, Lender may order replacement coverage at Borrower's expense.

9. **Failure of Borrower to Maintain Insurance.**

9.1 **Lender Placed Insurance.** If Borrower fails to maintain insurance in accordance with this Security Instrument and the other Loan Documents, Lender may, in its sole discretion, obtain insurance to protect Lender's interests. This insurance is called "lender placed insurance."

9.2 **Limited Coverage.** Lender placed insurance may cover only the improvements and will be only in the amount required by Lender. In addition to other differences, the amount of coverage on the lender placed insurance may be less than Borrower's policy and may not cover Borrower's equity in the Property, the deductibles may be higher and there may not be personal property/contents, personal liability, medical or special risks coverage. In the case of flood insurance, the amount of coverage may be more than that required by Applicable Law.

9.3 **Cost.** Lender placed insurance is typically more expensive than insurance Borrower may obtain through Borrower's own agent. Borrower may also be assessed a nonrefundable policy issuance fee by Lender as well as any costs incurred by Lender relating to the failure to maintain insurance in accordance with Lender's requirements.

9.4 **Cancellation.** If Lender obtains lender placed insurance, this insurance may be canceled when Borrower provides Lender with satisfactory evidence of insurance coverage that is acceptable to Lender. While the lender placed insurance policy may be canceled and Borrower may be entitled to a refund of a portion of the premiums paid, Borrower may be charged for any time period for which the lender placed insurance was in effect, any cancellation fee assessed by the lender placed insurer, and any costs Lender incurs as a result of the failure to maintain adequate insurance.

10. **Additional Insurance Obtained by Borrower.** If Borrower obtains insurance coverage not required under this Security Instrument or the other Loan Documents that insures any interest in the Property or other collateral securing the Loan, Borrower shall ensure that Lender is named as mortgagee and loss payee on such policies by a mortgage endorsement as described above and Lender shall have the right to direct the application of the proceeds of such insurance as provided in the Loan Documents.

11. **No Permanent Waiver of Requirements.** Borrower understands and agrees that Lender may agree to close the Loan without requiring Borrower to comply strictly with all the requirements set out in this Schedule 1. Borrower acknowledges and agrees that, if Lender so closes the Loan, this is not a permanent waiver of any of the requirements that Lender did not require to be satisfied as of the closing date (the "Specified Requirements"). Lender may at any time in its sole discretion terminate its waiver of the Specified Requirements upon not less than 30 days' written notice to Borrower.

## SCHEDULE 2

### Description of Prior Mortgages

#### First Mortgage And Security Agreement (a)

Mortgagor: 2390 Creston LLC  
Mortgagee: Signature Bank  
Amount: \$1,175,000.00  
Dated: November 17, 2010  
Recorded: December 3, 2010  
CRFN: 2010000406699  
Mortgage Tax: \$ 32,900.00

#### Assignment of Mortgage (a1)

Assignor: Signature Bank  
Assignee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 1, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011878

#### Gap Mortgage (b)

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Amount: \$425,000.00  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011879  
Mortgage Tax: \$ 8,712.50

#### Amended, Restated and Consolidated Mortgage and Security Agreement (b1)

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011880  
Note: Consolidated mortgages (a) and (b) to form a single lien in the principal amount of \$1,600,000.00.

#### Assignment of Mortgage (b2)

Assignor: Cantor Commercial Real Estate Lending, L.P.  
Assignee: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Dated: November 13, 2012  
Recorded: January 31, 2013  
CRFN: 2013000043576

#### Assignment of Mortgage (b3)

Assignor: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Assignee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341305

Mortgage (c)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Amount: \$874,462.85  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341306  
Mortgage Tax: \$ 24,468.01

Consolidation, Extension and Modification Agreement (c1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341307  
Note: Consolidated mortgages (a), (b) and (c) to form a single lien in the principal amount of \$2,415,000.00.

Assignment of Mortgage (c2)

Assignor: Peapack-Gladstone Bank  
Assignee: Greystone Servicing Corporation, Inc.  
Dated: June 12, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236740

Gap Multifamily Mortgage, Assignment Of Rents And Security Agreement (d)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Amount: \$1,093,945.61  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236741  
Mortgage Tax: \$30,629.21

Consolidation, Extension and Modification Agreement (d1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236742  
Note: Consolidated mortgages (a), (b), (c) and (d) to form a single lien in the principal amount of \$3,375,000.00.

Assignment of Mortgage (d2)

Assignor: Greystone Servicing Corporation, Inc  
Assignee: Federal Home Loan Mortgage Corporation  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236743

Assignment of Mortgage (d3)

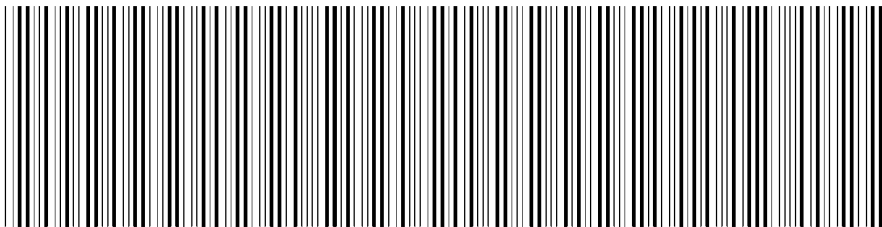
Assignor: Federal Home Loan Mortgage Corporation  
Assignee: U.S. Bank National Association, as Trustee  
Dated: September 7, 2017  
Recorded: September 25, 2017  
CRFN: 2017000355339

Assignment of Mortgage (d4)

Assignor: U.S. Bank National Association, as Trustee  
Assignee: JPMorgan Chase Bank, N.A.  
Dated: December 9, 2021  
Recorded: To Be Recorded  
Note: The present unpaid principal balance is \$3,160,686.09.

Extends and modifies all mortgages as previously consolidated, in the reduced principal balance of \$2,850,000.00

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



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**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2021121501879004**

Document Date: 12-09-2021

Preparation Date: 12-15-2021

Document Type: AGREEMENT

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

255 MORTGAGE TAX EXEMPT AFFIDAVIT

4

**TAX LAW AFFIDAVIT  
(Section 255 Affidavit-Mortgage Modification)**

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF Bronx )

**JONATHAN WIENER**, being duly sworn, deposes and says that said person is **Managing Member of 2390 C S36 LLC, a New York limited liability company**, said entity being **Managing Member of 2390 C HOLDING LLC, a Delaware limited liability company**, said entity being the **Sole Member of 2390 C LLC, a Delaware limited liability company**, the "Mortgagor" referred to herein;

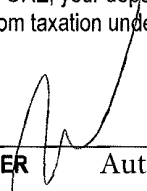
THAT JPMORGAN CHASE BANK, N.A. ("Lender") is the owner and holder of the mortgage or mortgages described in Schedule 1 attached to this Affidavit (collectively, the "Prior Mortgages") in connection with which Prior Mortgage recording tax was paid in the amount of **\$96,709.72**;

THAT there is presently owing on the Prior Mortgage the principal sum of **\$3,160,686.09**;

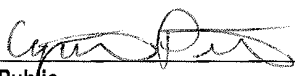
THAT in order to modify the terms of the Prior Mortgages and replace them with a single new mortgage, Mortgagor has delivered to Lender a mortgage modification and extension agreement delivered herewith for recording (the "Modification Agreement") which (1) extends the term of the loan secured by the Prior Mortgages, (2) otherwise modifies certain terms of the Prior Mortgages, and (3) replaces them with a new Amended and Restated Mortgage in the amount of **TWO MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$2,850,000.00)** as further described in the Modification Agreement;

THAT there have been no reloans or readvances, or new funds lent or new or additional indebtedness created, under the Modification Agreement;

WHEREFORE, your deponent respectfully requests that the Modification Agreement tendered herewith for recording be declared exempt from taxation under Section 255 of Article XI of the Tax Law of the State of New York.

JONATHAN WIENER  Authorized Signatory

SWORN TO before me on the 3rd day of December, 2021.

  
Notary Public

**Cynthia L. Perfetti**  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires: 12/23/2023

## SCHEDULE 1

### Prior Mortgages

#### First Mortgage And Security Agreement (a)

Mortgagor: 2390 Creston LLC  
Mortgagee: Signature Bank  
Amount: \$1,175,000.00  
Dated: November 17, 2010  
Recorded: December 3, 2010  
CRFN: 2010000406699  
Mortgage Tax: \$ 32,900.00

#### Assignment of Mortgage (a1)

Assignor: Signature Bank  
Assignee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 1, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011878

#### Gap Mortgage (b)

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Amount: \$425,000.00  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011879  
Mortgage Tax: \$ 8,712.50

#### Amended, Restated and Consolidated Mortgage and Security Agreement (b1)

Mortgagor: 2390 Creston LLC  
Mortgagee: Cantor Commercial Real Estate Lending, L.P.  
Dated: December 22, 2011  
Recorded: January 11, 2012  
CRFN: 2012000011880  
Note: Consolidated mortgages (a) and (b) to form a single lien in the principal amount of \$1,600,000.00.

#### Assignment of Mortgage (b2)

Assignor: Cantor Commercial Real Estate Lending, L.P.  
Assignee: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Dated: November 13, 2012  
Recorded: January 31, 2013  
CRFN: 2013000043576

#### Assignment of Mortgage (b3)

Assignor: U.S. Bank National Association, as Trustee for the Registered Holders of Comm 2012-CCREI Commercial Mortgage Pass-Through Certificates  
Assignee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341305



Mortgage (c)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Amount: \$874,462.85  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341306  
Mortgage Tax: \$ 24,468.01

Consolidation, Extension and Modification Agreement (c1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Peapack-Gladstone Bank  
Dated: September 17, 2014  
Recorded: October 15, 2014  
CRFN: 2014000341307  
Note: Consolidated mortgages (a), (b) and (c) to form a single lien in the principal amount of \$2,415,000.00.

Assignment of Mortgage (c2)

Assignor: Peapack-Gladstone Bank  
Assignee: Greystone Servicing Corporation, Inc.  
Dated: June 12, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236740

Gap Multifamily Mortgage, Assignment Of Rents And Security Agreement (d)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Amount: \$1,093,945.61  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236741  
Mortgage Tax: \$30,629.21

Consolidation, Extension and Modification Agreement (d1)

Mortgagor: 2390 Creston Realty LLC  
Mortgagee: Greystone Servicing Corporation, Inc.  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236742  
Note: Consolidated mortgages (a), (b), (c) and (d) to form a single lien in the principal amount of \$3,375,000.00.

Assignment of Mortgage (d2)

Assignor: Greystone Servicing Corporation, Inc  
Assignee: Federal Home Loan Mortgage Corporation  
Dated: June 15, 2017  
Recorded: June 27, 2017  
CRFN: 2017000236743

Assignment of Mortgage (d3)

Assignor: Federal Home Loan Mortgage Corporation  
Assignee: U.S. Bank National Association, as Trustee  
Dated: September 7, 2017  
Recorded: September 25, 2017  
CRFN: 2017000355339

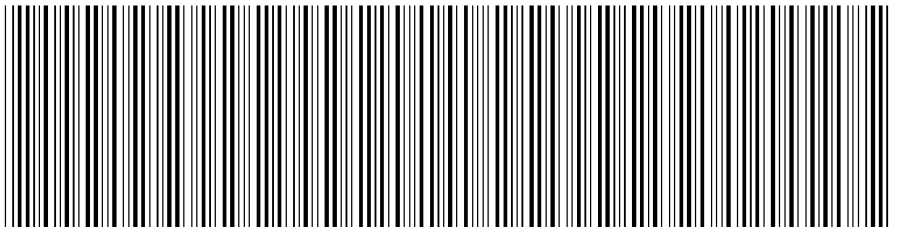
Assignment of Mortgage (d4)

Assignor: U.S. Bank National Association, as Trustee  
Assignee: JPMorgan Chase Bank, N.A.  
Dated: December 9, 2021  
Recorded: To Be Recorded  
Note: The present unpaid principal balance is \$3,160,686.09.

Extends and modifies all mortgages as previously consolidated, in the reduced principal balance of \$2,850,000.00

**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.



2021100100565001001E958E

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 4**

**Document ID: 2021100100565001**

Document Date: 09-24-2021

Preparation Date: 10-01-2021

Document Type: DEED

Document Page Count: 3

**PRESENTER:**

FIRST AMERICAN TITLE INSURANCE CO. NCS  
666 THIRD AVENUE  
1076587NY6  
NEW YORK, NY 10017  
212-850-0644  
JGAMBOA@FIRSTAM.COM

**RETURN TO:**

HOLM & O'HARA LLP  
3 WEST 35TH STREET, 9TH FLOOR  
NEW YORK, NY 10001

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address              |
|--|-------|-----|------------|----------------------|
| BRONX                                    | 2721  | 40  | Entire Lot | 1025 LONGWOOD AVENUE |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                      |

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

SOBRO SHARP IV LLC  
2365 NOSTRAND AVENUE, 2ND FLOOR  
BROOKLYN, NY 11210

**GRANTEE/BUYER:**

801 SOUTHERN LLC  
C/O: DENALI MANAGEMENT INC., 20 SOUTH  
BROADWAY, SUITE 300  
YONKERS, NY 10701

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

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: \$ 52.00

Affidavit Fee: \$ 0.00

**Filing Fee:**

\$ 250.00

NYC Real Property Transfer Tax:

\$ 78,750.00

NYS Real Estate Transfer Tax:

\$ 19,500.00

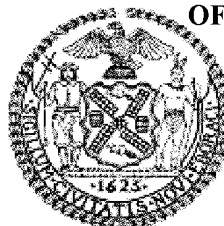
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 10-07-2021 12:22

City Register File No.(CRFN):

**2021000394371**



*Annette McMill*

**City Register Official Signature**

3020-1076587NY6

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT - THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made, the 24<sup>th</sup> day of September, 2021  
AS OF

BETWEEN

SOBRO SHARP IV LLC, a New York limited liability company, maintaining an office at c/o Sharp Management Corp., 2365 Nostrand Avenue, 2<sup>nd</sup> Floor, Brooklyn, New York 11210,

party of the first part, and

801 SOUTHERN LLC, a Delaware limited liability company, maintaining an office at c/o Denali Management Inc., 20 South Broadway, Suite 300, Yonkers, New York 10701,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, do hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever, all their right title and interest in and to:

ALL that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the:

**SEE ANNEXED SCHEDULE "A"**

BEING intended to be the same Premises known as 801 Southern Boulevard (a/k/a 1025 Longwood Avenue), Bronx, New York (Block: 2721, Lot: 40), as same is conveyed to the party of the first by deed from United States of America - U.S. Marshals Service, dated 5/17/2007 and recorded 6/12/2007 as CRFN 2007000302619 in Bronx County Clerk/Register's Office, Bronx County, State of New York;

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

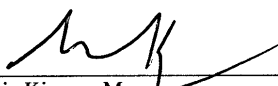
AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

SOBRO SHARP IV LLC

By:   
Martin Kirzner, Manager

STATE OF NEW YORK )  
ss: )  
COUNTY OF KINGS )

JANICE LUCRET  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01LU6417205  
Qualified in Kings County  
My Commission Expires 05-10-2025

On the 1st day of September, 2021, before me the undersigned, a notary public in and for said state, personally appeared Martin Kirzner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF BRONX, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY SIDE OF LONGWOOD AVENUE AND THE WESTERLY SIDE OF SOUTHERN BOULEVARD;

RUNNING THENCE NORTHERLY AND ALONG THE WESTERLY SIDE OF SOUTHERN BOULEVARD, 110 FEET;

THENCE WESTERLY AND PARALLEL WITH THE NORTHERLY SIDE OF LONGWOOD AVENUE, 42 FEET;

THENCE SOUTHERLY AND PARALLEL WITH THE WESTERLY SIDE OF SOUTHERN BOULEVARD AND FOR PART OF THE WAY THROUGH A PARTY WALL, 110 FEET TO THE NORTHERLY SIDE OF LONGWOOD AVENUE;

THENCE EASTERLY ALONG THE NORTHERLY SIDE OF LONGWOOD AVENUE, 42 FEET TO THE POINT OR PLACE OF BEGINNING.

**THE** policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

**FOR CONVEYANCING ONLY: TOGETHER** with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

***Bargain and Sale Deed*** of 11  
With Covenant Against Grantor's Acts

BLOCK: 2721  
LOT: 40  
COUNTY: Bronx

TITLE NO. **3020-1076587NY6**

1025 Longwood Ave.

---

**SOBRO SHARP IV LLC**

**TO**

**801 SOUTHERN LLC**

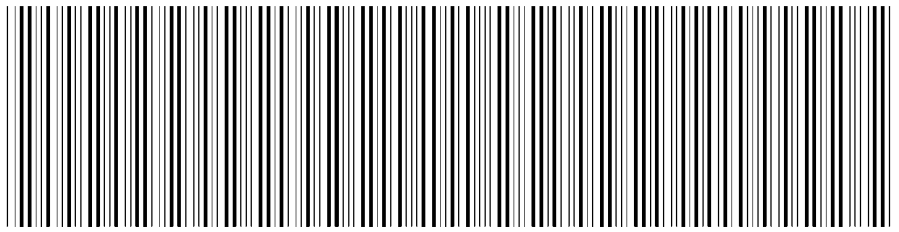
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**RETURN BY MAIL TO:**

Anthony T. Simari, Esq.  
Holm & O'Hara LLP  
3 West 35th Street, 9th Floor  
New York, NY 10001

**First American Title  
Insurance Company**  
666 Third Avenue 5th fl  
New York, N.Y. 10017  
Phone: (212) 922-9700  
Fax: (212) 922-0881

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021100100565001001S5B0F

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2021100100565001**  
Document Type: DEED

Document Date: 09-24-2021

Preparation Date: 10-01-2021

**ASSOCIATED TAX FORM ID:** 2021080400059

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING  
RP - 5217 REAL PROPERTY TRANSFER REPORT  
SMOKE DETECTOR AFFIDAVIT

1  
3  
2



The City of New York  
Department of Environmental Protection  
Bureau of Customer Services  
59-17 Junction Boulevard  
Flushing, NY 11373-5108

## Customer Registration Form for Water and Sewer Billing

### Property and Owner Information:

- (1) Property receiving service: BOROUGH: BRONX BLOCK: 2721 LOT: 40
- (2) Property Address: 1025 LONGWOOD AVENUE, BRONX, NY 10459
- (3) Owner's Name: 801 SOUTHERN LLC
- Additional Name:

### Affirmation:



Your water & sewer bills will be sent to the property address shown above.

### Customer Billing Information:

#### Please Note:

- A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.
- B. Original bills for water and/or sewer service will be mailed to the owner, **at the property address or to an alternate mailing address**. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit [www.nyc.gov/dep](http://www.nyc.gov/dep) to provide us with the other party's information.

### Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner:

Signature:

Date (mm/dd/yyyy)

Name and Title of Person Signing for Owner, if applicable:

*09-24-2021*  
*JONATHAN WERNER,*  
*AUTHORIZED SIGNATORY*



FOR CITY USE ONLY

C1. County Code  C2. Date Deed Recorded  /  /   
Month Day Year

C3. Book  OR C4. Page   
C5. CRFN



**REAL PROPERTY TRANSFER REPORT**  
STATE OF NEW YORK  
STATE BOARD OF REAL PROPERTY SERVICES  
**RP - 5217NYC**

**PROPERTY INFORMATION**

1. Property Location  1025  LONGWOOD AVENUE  BRONX  10459  
STREET NUMBER STREET NAME BOROUGH ZIP CODE

2. Buyer Name  801 SOUTHERN LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

3. Tax Billing Address        
Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form) LAST NAME / COMPANY FIRST NAME  
STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed  1  # of Parcels OR ☐ Part of a Parcel

5. Deed Property Size  FRONT FEET ☒ X  DEPTH OR  ACRES

8. Seller Name  SOBRO SHARP IV LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:

|  |  |   |  |   |
|--|--|---|--|---|
| A <input type="checkbox"/> One Family Residential    | C <input type="checkbox"/> Residential Vacant Land     | E <input type="checkbox"/> Commercial           | G <input type="checkbox"/> Entertainment / Amusement | I <input type="checkbox"/> Industrial     |
| B <input type="checkbox"/> 2 or 3 Family Residential | D <input type="checkbox"/> Non-Residential Vacant Land | F <input checked="" type="checkbox"/> Apartment | H <input type="checkbox"/> Community Service         | J <input type="checkbox"/> Public Service |

4A. Planning Board Approval - N/A for NYC

4B. Agricultural District Notice - N/A for NYC

Check the boxes below as they apply:

6. Ownership Type is Condominium ☐

7. New Construction on Vacant Land ☐

**SALE INFORMATION**

10. Sale Contract Date  5 / 28 / 2021  
Month Day Year

11. Date of Sale / Transfer  9 / 24 / 2021  
Month Day Year

12. Full Sale Price \$  3 0 0 0 0 0 0  
( Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

14. Check one or more of these conditions as applicable to transfer:

|   |
|---|
| A <input type="checkbox"/> Sale Between Relatives or Former Relatives                           |
| B <input type="checkbox"/> Sale Between Related Companies or Partners in Business               |
| C <input type="checkbox"/> One of the Buyers is also a Seller                                   |
| D <input type="checkbox"/> Buyer or Seller is Government Agency or Lending Institution          |
| E <input type="checkbox"/> Deed Type not Warranty or Bargain and Sale (Specify Below)           |
| F <input type="checkbox"/> Sale of Fractional or Less than Fee Interest (Specify Below)         |
| G <input type="checkbox"/> Significant Change in Property Between Taxable Status and Sale Dates |
| H <input type="checkbox"/> Sale of Business is Included in Sale Price                           |
| I <input type="checkbox"/> Other Unusual Factors Affecting Sale Price (Specify Below)           |
| J <input checked="" type="checkbox"/> None  |

**ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill**

15. Building Class  C 7

16. Total Assessed Value (of all parcels in transfer)  3 4 3 8 0 0

17. Borough, Block and Lot / Roll Identifier(s) ( If more than three, attach sheet with additional identifier(s) )  
 BRONX 2721 40

**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

**BUYER**

**BUYER'S ATTORNEY**

|  |  |                          |  |  |  |                  |  |
|--|--|--------------------------|--|--|--|------------------|--|
| BUYER SIGNATURE<br><i>[Signature]</i>                    |  | DATE<br>09-24-2021       |  | LAST NAME                              |  | FIRST NAME       |  |
| C/O: DENALI MANAGEMENT INC. 20 SOUTH BROADWAY, SUITE 300 |  |                          |  |  |  |                  |  |
| STREET NUMBER  |  | STREET NAME (AFTER SALE) |  | AREA CODE                              |  | TELEPHONE NUMBER |  |
| YONKERS  |  |                          |  |  |  |                  |  |
| CITY OR TOWN   |  | STATE<br>NY              |  | ZIP CODE<br>10701                      |  | SELLER           |  |
|  |  |                          |  | SELLER SIGNATURE<br><i>[Signature]</i> |  | DATE             |  |

*DOMASMAN WIENER,*  
*AUTHORIZED SIGNATORY*

## CERTIFICATION

Pg 9 of 11

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

|   |  |  |   |  |
|---|--|--|---|--|
| <b>BUYER</b><br><i>See attached</i>   |  |  | <b>BUYER'S ATTORNEY</b>   |  |
| BUYER SIGNATURE<br>C/O: DENALI MANAGEMENT INC. 20 SOUTH BROADWAY, SUITE 300 |  |  | LAST NAME<br>FIRST NAME   |  |
| DATE<br>09-24-2021  |  |  |   |  |
| STREET NUMBER<br>YONKERS  |  |  | AREA CODE<br>TELEPHONE NUMBER                                     |  |
| STREET NAME (AFTER SALE)  |  |  | <b>SELLER</b>   |  |
| CITY OR TOWN<br>YONKERS   |  |  | SELLER SIGNATURE<br><i>MARTIN KIRZNER</i><br>AUTHORIZED SIGNATORY |  |
| STATE<br>NY   |  |  | DATE<br>09-24-2021  |  |
| ZIP CODE<br>10701   |  |  |   |  |

2021080400059201

**AFFIDAVIT OF COMPLIANCE**  
**WITH SMOKE DETECTOR REQUIREMENT**  
**FOR ONE- AND TWO-FAMILY DWELLINGS**

State of New York }  
 County of Kings } SS.:

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at

1025 LONGWOOD AVENUE

Street Address Unit/Apt.

BRONX  
Borough

New York,

2721  
Block

40  
Lot

(the "Premises");

That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

SO BRO SITARP IV LLC

Name of Grantor (Type or Print)

*[Signature]*

Signature of Grantor

MARTIN KERNER,  
AUTHORIZED SIGNATORY

Sworn to before me

this 1st day of September 2021

*[Signature]*

see attached

Name of Grantee (Type or Print)

Signature of Grantee

Sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

**NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6th, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.**

JANICE LUCRET  
 NOTARY PUBLIC-STATE OF NEW YORK  
 No. 01LU6417205  
 Qualified in Kings County  
 My Commission Expires 05-10-2025

2021080400059101

**AFFIDAVIT OF COMPLIANCE  
WITH SMOKE DETECTOR REQUIREMENT  
FOR ONE- AND TWO-FAMILY DWELLINGS**

State of New York }  
County of Bronx } SS.:

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at  
1025 LONGWOOD AVENUE

Street Address Unit/Apt.

BRONX  
Borough

New York,

2721  
Block

40  
Lot

(the "Premises");

That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

see attached

Name of Grantor (Type or Print)

801 SOUTHERN LLC

Name of Grantee (Type or Print)

Signature of Grantor

Signature of Grantee

JONATHAN WIENER,  
AUTHORIZED SIGNATORY

Sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Sworn to before me

this 20<sup>th</sup> day of September 20 21

Cynthia L. Perfetti

Notary Public, State of New York

Reg. No. 01PE6402108

Qualified in Bronx County

Commission Expires: 12/23/2023

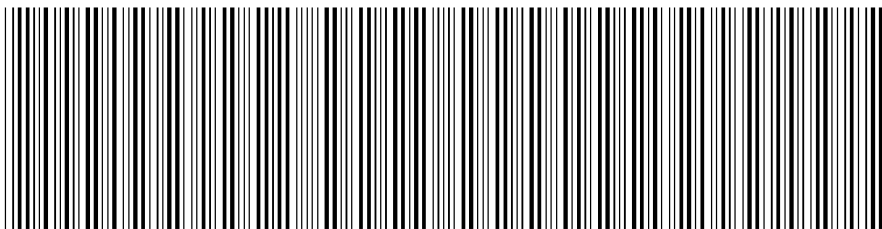
These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

**NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6th, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.**

2021080400059101

**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.



2021100300030004001EA8AA

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 28**

**Document ID: 2021100300030004**

Document Date: 09-24-2021

Preparation Date: 10-11-2021

Document Type: MORTGAGE

Document Page Count: 26

**PRESENTER:**

FIRST AMERICAN TITLE INSURANCE CO. NCS  
666 THIRD AVENUE  
1076587NY6  
NEW YORK, NY 10017  
212-850-0644  
JGAMBOA@FIRSTAM.COM

**RETURN TO:**

JPMORGAN CHASE BANK, N.A.  
P.O. BOX 9011  
COPPELL, TX 75019-9011

**PROPERTY DATA**

| Borough                                      | Block | Lot | Unit       | Address                |
|--|-------|-----|------------|------------------------|
| BRONX  | 2721  | 40  | Entire Lot | 801 SOUTHERN BOULEVARD |
| <b>Property Type:</b> COMMERCIAL REAL ESTATE |       |     |            |                        |

**CROSS REFERENCE DATA**

**CRFN:** 2007000322793

☒ Additional Cross References on Continuation Page

**PARTIES**

**MORTGAGOR/BORROWER:**

801 SOUTHERN LLC  
20 S BROADWAY, SUITE 300  
YONKERS, NY 10701

**MORTGAGEE/LENDER:**

JPMORGAN CHASE BANK, N.A.  
14800 FRYE ROAD, 2ND FLOOR  
FORT WORTH, TX 76155-2732

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 2,250,000.00

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: \$ 167.00

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 10-18-2021 10:03

City Register File No.(CRFN):

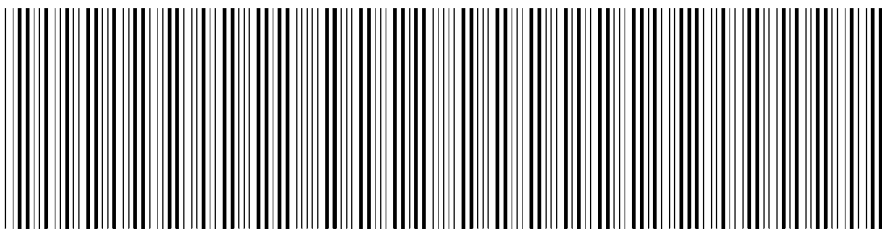
**2021000408321**



*Annette McMill*

**City Register Official Signature**

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021100300030004001CAA2A

**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)**

**PAGE 2 OF 28**

**Document ID: 2021100300030004**

Document Date: 09-24-2021

Preparation Date: 10-11-2021

Document Type: MORTGAGE

**CROSS REFERENCE DATA**

**CRFN:** 2014000390706

**CRFN:** 2007000322797

**CRFN:** 2014000365475

**CRFN:** 2019000171388

**Document ID:** 2021100300030003

1016587 NY6

**AMENDED AND RESTATED SPLIT MORTGAGE A**

Dated: September 24, 2021

As of

in the amount of

**\$2,250,000.00**

(the "Mortgage Amount")

From

**801 SOUTHERN LLC**

as mortgagor ("Borrower")  
having an address at:

20 S Broadway, Ste 300  
Yonkers, NY 10701

To

**JPMORGAN CHASE BANK, N.A.**

14800 Frye Road, 2nd Floor  
Mail Code TX1-0007  
Fort Worth, Texas 76155-2732  
Attention: Portfolio Administration

as mortgagee ("Lender")

**LOCATION OF PREMISES:**

|                 |                                      |
|-----------------|--------------------------------------|
| Street Address: | 801 Southern Blvd; 1025 Longwood Ave |
| County of:      | Bronx                                |
| State of:       | New York                             |
| Borough:        | Bronx                                |
| Section:        | 10                                   |
| Block:          | 2721                                 |
| Lot:            | 40                                   |

---

**After recording, please return to:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**First American Title  
Insurance Company**

666 Third Avenue 5th fl  
New York, N.Y. 10017  
Phone: (212) 922-9700  
Fax: (212) 922-0881

4829-9436-8351v.2 -



**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS SECURITY INSTRUMENT MAY PROVIDE FOR ONE OR MORE OF THE FOLLOWING: (1) A VARIABLE RATE OF INTEREST; (2) A BALLOON PAYMENT AT MATURITY, (3) DEFERRAL OF A PORTION OF ACCRUED INTEREST UNDER CERTAIN CIRCUMSTANCES WITH INTEREST SO DEFERRED ADDED TO THE UNPAID PRINCIPAL BALANCE OF THE NOTE AND SECURED HEREBY.**

**AMENDED AND RESTATED SPLIT MORTGAGE A**

Notwithstanding anything to the contrary set forth in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may become secured hereby at any time hereafter is \$2,250,000.00 together with interest thereon, and all amounts expended by Lender to maintain the lien of this Security Instrument or protect any of the Property, including without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, litigation expenses to prosecute or defend the rights, remedies and lien of this Security Instrument or title to the Property, and any costs, charges or amounts to which Lender becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority.

Loan No. 200468866

THIS AMENDED AND RESTATED SPLIT MORTGAGE A (this "Security Instrument"), is made this **24th day of September, 2021** between **801 SOUTHERN LLC, a Delaware limited liability company**, the address of which is **20 S Broadway, Ste 300, Yonkers, NY 10701**, as mortgagor ("Borrower"); and **JPMORGAN CHASE BANK, N.A.** at its offices at **P.O. Box 9178, Coppell, Texas 75019-9178** (together with its successors and assigns, "Lender").

**RECITALS**

Borrower is the owner of the real property described on Exhibit A attached to this Mortgage. This Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (this "Security Instrument") amends and restates those certain mortgages more particularly described in Schedule 2 attached hereto (collectively "Prior Mortgages" or the "Original Security Instrument"), as modified and extended pursuant to a Mortgage Modification and Extension Agreement dated the date hereof, in the amount of **\$2,250,000.00**, and the terms, representations, covenants and conditions of the Original Security Instrument shall be superseded and restated in their entirety by the terms, representations, covenants and conditions set forth in this Security Instrument.

1. **Granting Clause.** Borrower irrevocably mortgages, warrants, grants, conveys and assigns to Lender and its successors and assigns, forever, all of Borrower's estate, right, title and interest in and to the property in the county of **Bronx**, state of New York, with a street address of **801 Southern Blvd; 1025 Longwood Ave, Bronx, New York 10459** (which address is provided for reference only and shall in no way limit the description of the real and personal property otherwise described in this Section 1); described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 shall be referred to as the "Property");

1.1 **Land and Appurtenances.** The land described on Exhibit A hereto, and all rights-of-way, easements, air rights, water rights and appurtenances thereto (collectively, the "Land"); and

1.2 **Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the Land (collectively, the "Improvements"), and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the operation of the Land and the Improvements; and

1.3 **Enforcement and Collection.** Any and all rights of Borrower to collect and receive all rents, income, revenues, issues, earnest money, deposits, tax, utility and insurance refunds, mineral, oil and gas rights and profits, and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for their collection or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower; and

1.4 **Accounts, Income and Rights.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements, Impounds (as defined below) and general intangibles relating to any of the Property; and

1.5 **Leases and Rents.** All of Borrower's rights in and to all Leases and Rents (as such terms are defined in Section 2.2.1 below) (in accepting this Security Instrument, Lender does not assume any liability for the performance of any such Lease); and

1.6 **Insurance Policies; Condemnation Awards.** All rights in and to all pertinent present and future fire, hazard, earthquake or other insurance policies covering any of the Property (whether or not Lender requires such insurance and whether or not Lender is named as an additional insured or loss payee of such insurance); and all Awards (defined below); and all proceeds or sums payable in lieu of or as compensation for the loss of or damage to any of the Property; and

1.7 **Other Property.** All books and records of Borrower relating to the Property in any form, all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the Property or to the construction of the existing or any future Improvements, all rights of Borrower in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future Improvements, and any performance and/or payment bonds issued in connection therewith, and all trademarks, trade names, computer software and other intellectual property used by Borrower in connection with the Property.

## **2. Security Agreement and Assignment of Leases and Rents.**

2.1 **Security Agreement.** To the extent any of the property described in Section 1 is personal property, Borrower grants to Lender, a security interest therein and in all products and proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of New York (the "UCC"). Borrower hereby irrevocably authorizes Lender to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature. This Security Instrument constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of Improvements and fixtures described in Section 1.2 of this Security Instrument and to any other personal property that is now or hereafter becomes a part of the Property as fixtures.

### **2.2 Assignment of Leases and Rents.**

2.2.1 **Absolute Assignment.** Borrower hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Lender all of Borrower's right, title and interest now existing and hereafter arising in and to the leases,

subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Borrower's interest therein or any Improvements, any and all security deposits, guaranties and other security related thereto, and all supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Lender the right to collect any and all income, rents, issues, profits, payments, damages, refunds, royalties and proceeds made pursuant to or in connection with the Leases and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Security Instrument creates and shall be construed to create an absolute assignment to Lender of the Leases and the Rents and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as defined below). Borrower irrevocably appoints Lender its true and lawful attorney at the option of Lender at any time an Event of Default (as defined below) exists and is continuing, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Borrower or in the name of Lender, for all such Rents and apply the same to the obligations secured by this Security Instrument.

**2.2.2 Revocable License to Collect.** So long as no Event of Default exists and is continuing, Borrower shall have a revocable license, to collect all Rents, and to retain, use or distribute the same. Upon the occurrence and during the continuation of any Event of Default, the foregoing license shall terminate automatically and without notice.

**2.2.3 Collection and Application of Rents by Lender.** While any Event of Default exists and is continuing: (i) Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Security Instrument, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Lender therefor, Borrower shall promptly deliver to Lender all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Borrower, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Lender may be applied by Lender against the obligations secured by this Security Instrument, less all expenses, including attorneys' fees and disbursements, in such order as Lender shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Security Instrument or other action taken by Lender under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Lender a mortgagee-in-possession of the Property.

**2.2.4 Direction to Tenants.** Borrower hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Borrower thereunder to Lender following receipt of any written notice from Lender that states that an Event of Default exists and is continuing and that all such amounts are to be paid to Lender. Borrower further authorizes and directs all such tenants to pay all such amounts to Lender without any right or obligation to inquire as to the validity of Lender's notice and regardless of the fact that Borrower has notified any such tenants that Lender's notice is invalid or has directed any such tenants not to pay such amounts to Lender.

**2.2.5 No Liability.** Lender shall not have any obligation to exercise any right given to it under this Security Instrument and shall not be deemed to have assumed any obligation of Borrower with respect to any agreement, lease or other property in which a lien or security interest is granted under this Security Instrument.

**3. Obligations Secured.** This Security Instrument is given for the purpose of securing:

**3.1 Performance and Payment.** The performance of the obligations contained herein and the payment of \$2,250,000.00 with interest thereon and all other amounts payable according to the terms of the Loan (as defined below) made to Borrower evidenced by a promissory note of even date herewith executed by Borrower, payable to the order of Lender, and any and all extensions, renewals, modifications or replacements thereof (the "Note"). As used herein, the "Loan" shall mean the loan evidenced by the Note and secured by this Security Instrument.

3.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Lender subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Lender pursuant to any provision of this Security Instrument subsequent to its execution.

3.3 **Interest.** All of the obligations secured by this Security Instrument shall bear interest at the rate of interest applicable to the Note (including interest at the Default Rate, as defined in the Note, as applicable), which interest shall also be secured by this Security Instrument.

3.4 **Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Lender under this Security Instrument, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the Loan and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "Loan Documents"); provided, however, that this Security Instrument does not and shall not in any event be deemed to, secure the obligations owing to Lender under the following Loan Documents: (a) any certificate and indemnity agreement regarding hazardous substances (the "Indemnity Agreement") executed in connection with the Loan (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of the Loan (collectively, the "Guaranty").

4. **Warranties and Covenants of Borrower.** Borrower represents and warrants to, and covenants and agrees with, Lender as provided herein. All representations and warranties contained in this Security Instrument are true and correct in all material respects as of the date of this Security Instrument and shall remain true and correct in all material respects as of each date thereafter until the obligations secured hereby are paid in full.

4.1 **Warranties.**

4.1.1 Borrower has full power and authority to grant the Property to Lender and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those encumbrances appearing in the title insurance policy accepted by Lender insuring the lien of this Security Instrument ("Permitted Encumbrances").

4.1.2 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower first obtains knowledge thereof, the Property is free from damage (including, but not limited to, any construction defects or nonconforming work) that would materially impair the value or use of the Property.

4.1.3 The Loan is solely for business or commercial purposes, and is not for personal, family, household or agricultural purposes.

4.1.4 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower obtains knowledge thereof, Borrower, the Property and the present and contemplated use and occupancy of the Property are in compliance with all Applicable Laws in all material respects; and any such matters disclosed to Lender that are related to or affecting insurance coverage shall be disclosed in writing to Borrower's insurer.

4.1.5 Any and all rent rolls, property operating statements and other financial reports ("Financial Reports") furnished to Lender in connection with the Loan are true and correct in all material respects as of their dates, and no material adverse change has occurred in the matters reported in those Financial Reports since the dates of the last submission of those Financial Reports that has not been disclosed to Lender in writing.

4.1.6 Borrower has determined in good faith that: (a) the Loan, including any Guaranty, is an arm's-length transaction on market rate terms; and (b) neither Lender nor any of its affiliates exercised any discretionary authority or control over, or rendered any investment advice in connection with, Borrower's decision to enter into the Loan.

4.2 **Preservation of Lien.** Borrower will preserve and protect the priority of this Security Instrument as a lien on the Property subject only to the Permitted Encumbrances. If Borrower fails to do so, Lender may take any and all actions necessary or appropriate to do so and all sums expended by Lender in so doing, including without limitation, advances for taxes, assessments, impositions or liens against the Property, shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Lender and shall bear interest at the highest rate borne by any of the obligations secured by this Security Instrument.

4.3 **Repair and Maintenance of Property.** Borrower will keep the Property in good condition and repair, including without limitation underpinning and supporting the Property and any Improvements. Borrower will not remove or demolish, alter, or make additions or construct any new structure on the Property, without the express written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Security Instrument to the contrary, (a) Borrower may make commercially reasonable nonstructural alterations, improvements and replacements to the Property in a manner customary for similar properties; and (b) with respect to commercial leases only, Borrower or its tenants may construct tenant improvements made pursuant to Leases of commercial space in the Property that have been entered into in good faith and in compliance with the requirements of this Security Instrument.

4.4 **Insurance.**

4.4.1 **Insurance Coverage.** At all times during the term of the Loan, Borrower shall comply, and shall cause any other owners of the Property to comply, with the minimum insurance requirements set forth in Schedule "1" attached hereto. Borrower will maintain such insurance as further security for the faithful performance of the obligations secured by this Security Instrument.

4.4.2 **Damage and Destruction.**

(a) **Borrower's Obligations.** In the event of any damage to or loss or destruction of the Property (a "Casualty"), Borrower shall (i) give prompt written notice of the Casualty to Lender and to Borrower's insurer, and shall make a claim under each insurance policy providing coverage therefor and shall promptly furnish Lender with a copy of such claim, proof of loss and such other documentation as Lender may reasonably require; (ii) cause the aggregate proceeds of any and all insurance policies insuring the Property, whether or not required by this Security Instrument, that are payable as a result of the Casualty (collectively, the "Insurance Proceeds") to be paid to Lender to be disbursed or applied in accordance with this Section 4.4.2; and (iii) promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Casualty (collectively, the "Restoration") and otherwise in accordance with this Section 4.4.2. Borrower shall be responsible for all uninsured losses and deductibles. As used in this Security Instrument, the term "Casualty Threshold Amount" means the lesser of \$250,000 or five percent of the original face principal amount of the Note. The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage.

(b) **Control and Disbursement of Proceeds.** If the Casualty is expected to be greater than the Casualty Threshold Amount, or if a Default exists, Lender shall control, administer and disburse all Insurance Proceeds subject to Borrower's satisfaction of the terms and conditions of Lender's form of disbursement agreement, or such other documentation required by Lender, relating to the disbursement of Insurance Proceeds and the Restoration of the Property. If the Casualty is expected to be equal to or less than the Casualty Threshold Amount, and for so long as no Default exists, Lender shall disburse the Insurance Proceeds to Borrower to complete the Restoration in accordance with this Security Instrument.

(c) **Lender's Rights.** Borrower hereby authorizes Lender, in its own name or as attorney-in-fact for Borrower (which power is coupled with an interest and is irrevocable so long as this Security Instrument remains of record) at any time an Event of Default exists and is continuing, to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds, and to deduct therefrom Lender's expenses incurred in the adjustment, collection and disbursement of such

Insurance Proceeds or otherwise in connection with the Casualty or the Restoration. Each insurance company is hereby irrevocably authorized and directed to make payment of all Insurance Proceeds directly to Lender. Notwithstanding anything to the contrary, Lender shall not be responsible for or incur any liability for any such insurance, or for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder.

(d) **Application of Proceeds.** Lender shall have the option to apply the Insurance Proceeds to the obligations secured by this Security Instrument, whether or not then due, in such order as Lender may reasonably determine (or to hold such proceeds for future application to those obligations) if: (i) an Event of Default exists and is continuing; (ii) Borrower fails to satisfy any condition precedent to disbursement of Insurance Proceeds as required by Lender; or (iii) Lender reasonably determines that (A) the rental income will be insufficient to timely pay all debt service and other property operating expenses, or will be insufficient to provide a debt service coverage ratio at least equal to that existing immediately prior to the Casualty; (B) the Restoration cannot be completed by the earlier of (1) twelve months prior to the maturity date of the Note, or (2) within twelve months after the date of the Casualty; provided, however, nothing herein shall extend the maturity date of the Note; or (C) the loan-to-value ratio of the Property following the Restoration, as calculated by Lender in its reasonable discretion, will be greater than the loan-to-value ratio required by Lender's then-current underwriting requirements for similar loans secured by property similar to the Property.

(e) **Effect on the Indebtedness.** Any reduction in the obligations secured hereby resulting from the application of Insurance Proceeds or other funds pursuant to this subsection 4.4.2 shall be deemed to take effect only on the date of such application. No application of Insurance Proceeds or other funds to the obligations secured hereby shall result in any adjustment in the amount or due dates of installments due under the Note.

(f) **Costs and Expenses.** Borrower shall pay, within 30 days after demand by Lender, all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with the adjustment, collection and disbursement of Insurance Proceeds pursuant to this Security Instrument or otherwise in connection with the Casualty or the Restoration.

4.5 **Right of Inspection.** Subject to the rights of tenants, Borrower shall permit Lender or its agents or independent contractors, at all reasonable times and upon reasonable advance notice (except in the event of an emergency, in which case no advance notice is required), to enter upon and inspect the Property without materially and adversely interfering with the use and enjoyment of the Property by Borrower or any tenants of Borrower.

4.6 **Compliance with Laws, Etc.; Preservation of Licenses.** Notwithstanding any disclosure made by Borrower pursuant to Section 4.1.4 above, Borrower shall comply in all material respects with (a) all Federal, State and local laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities (collectively, "Applicable Law") applicable to Borrower, the Property or the use, repair and maintenance thereof by Borrower or any third party; (b) all easements, licenses and agreements relating to the Property or the use thereof by Borrower or any third party; and (c) all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits. Borrower shall indemnify, defend and hold harmless Lender for any and all damages, claims, liabilities, reasonable costs and expenses (including attorneys' fees) arising from Borrower's failure to comply with this Section 4.6.

4.7 **Further Assurances.** Borrower will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Lender deems reasonably necessary to grant the Property to Lender, or to carry out the purposes of this Security Instrument.

4.8 **Legal Actions.** Borrower will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Lender; and will pay all reasonable costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and

others, incurred by Lender, in a reasonable sum, in any such action or proceeding in which Lender may appear, in any suit or other proceeding to foreclose this Security Instrument, and in any foreclosure sale under this Security Instrument.

**4.9 Taxes, Assessments and Other Liens.** Except as provided in this Security Instrument, Borrower will pay prior to delinquency all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof.

**4.10 Expenses.** Except as prohibited under Applicable Law, Borrower will pay all reasonable costs, fees and expenses (including attorneys' fees) reasonably incurred by Lender in connection with this Security Instrument on the due date thereof (or if no other due date is specified, within 30 days after receipt of Lender's written notice therefor).

**4.11 Repayment.** Borrower will pay all principal and interest and any prepayment premiums on the Loan as provided in the Note. Borrower will pay all other amounts owed under the Loan Documents on the due date thereof (or if no other due date is specified, within 30 days after written demand by Lender). All such amounts shall bear interest at the interest rate applicable to the Note from the date advanced or expended by Lender (or, if not consisting of an advance or expenditure by Lender, from the due date) until paid. If Lender so elects in its sole discretion, such amounts shall be (i) added to the principal balance of the Loan and due and payable in full on the maturity date of the Note, or (ii) added to the principal balance of the Loan and amortized over the remainder of the amortization period used to calculate the monthly payments required under the Note, which may result in an increase to the amount of the monthly payment due under the Note.

**4.12 Financial and Operating Information.** Within 90 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender the rent rolls, property operating statements and other financial reports for the Property for such fiscal year, in a form acceptable to Lender in its reasonable discretion. In addition, within 20 days after written request by Lender, Borrower shall furnish to Lender such financial statements and information about (i) the Property, (ii) Borrower and Guarantor, or any general partners, managing members or managers of Borrower or Guarantor, or any other controlling parties of Borrower, and (iii) commercial tenants or occupants of any portion of the Property that are affiliates of Borrower or Guarantor of the Loan, as Lender may reasonably require.

If Borrower fails to comply with this Section 4.12, and such failure continues for a period of 30 days after written notice of such failure by Lender to Borrower, Borrower shall pay to Lender, as liquidated damages for the extra expense in servicing the Loan, \$500 on the first day of the month following the expiration of such 30-day period and \$100 on the first day of each month thereafter until such failure is cured. All such amounts shall be secured by this Security Instrument. Payment of such amounts shall not cure any Default or Event of Default resulting from such failure.

**4.13 Sale, Transfer, or Encumbrance of Property.**

**4.13.1 Encumbrances; Entity Changes.** Except as otherwise provided below and subject to Borrower's rights to enter into Leases, Borrower shall not, without the prior written consent of Lender, further encumber the Property or any interest therein, or cause or permit any change in the entity, ownership, or control of Borrower without first repaying in full the Note and all other sums secured hereby.

**4.13.2 Sales, Transfers, Conveyances.** Except as otherwise provided below, Borrower shall not, without the prior written consent of Lender (which consent shall be subject to the conditions set forth below), sell, transfer, or otherwise convey the Property or any interest therein, voluntarily or involuntarily, without first repaying in full the Note and all other sums secured hereby. Consent to any one transfer and assumption shall not be deemed a waiver of the right to require consent to any future transfers and assumptions.

**4.13.3 Conditions to Lender's Consent to Transfer and Assumption.** Lender will not unreasonably withhold its consent to a sale or transfer of the Property and related assumption of the Loan by the proposed transferee, provided however, that:

(a) Borrower shall provide to Lender a loan application on such form as Lender may require executed by the proposed transferee and accompanied by such other documents as Lender may require in connection therewith;

(b) Lender may consider the factors normally used by Lender as of the time of the proposed assumption in the process of determining whether or not to lend funds, and may require that the Property and the proposed transferee meet Lender's then-current underwriting, legal, regulatory and related requirements as of that time;

(c) Lender may specifically evaluate the financial responsibility, structure and real estate operations experience of any potential transferee;

(d) Lender may require that it be provided at Borrower's expense, with an appraisal of the Property, an on-site inspection of the Property, and such other documents and items, from appraisers, inspectors and other parties satisfactory to Lender, and may require that Borrower or the transferee of the Property correct any items of deferred maintenance that may be identified by Lender;

(e) Lender may, as a condition to granting its consent to a sale, transfer, or other conveyance of the Property, require in its sole discretion Borrower's payment to Lender of (i) a fee (the "Consented Transfer Fee") of one percent of the unpaid principal balance of the Note; (ii) review fees in accordance with Lender's fee schedule in effect at the time of the request ("Lender's Fee Schedule"), which shall be paid by Borrower to Lender upon Borrower's request for Lender's consent, and shall be non-refundable but applicable to the Consented Transfer Fee, to the extent applicable, (iii) Lender's reasonable attorneys' fees and other reasonable out-of-pocket expenses; and (iv) document preparation fees and other fees in accordance with Lender's Fee Schedule;

(f) No Default or Event of Default (each as defined below) has occurred and is continuing; and

(g) The transferee, a replacement guarantor acceptable to Lender, and any other parties shall execute such documentation in the form required by Lender in its sole and absolute discretion evidencing such transfer and related assumption, including without limitation, an assumption agreement, guaranties and environmental indemnity agreements; and upon the consummation of such transaction the Borrower and the existing guarantor shall be released from all future liability under the Loan Documents (except for the Indemnity Agreement) as provided in the assumption agreement.

4.13.4 **Unconsented Transfers.** Any failure to comply with Section 4.13.1 or 4.13.2 above shall constitute an "Unconsented Transfer" for purposes of this Security Instrument. In the event of an Unconsented Transfer, Borrower and its successors shall be jointly and severally liable to Lender for the payment of a fee (the "Unconsented Transfer Fee") of one percent of the unpaid principal balance of the Note as of the date of such Unconsented Transfer. The Unconsented Transfer Fee shall be due and payable upon written demand therefor by Lender, and shall be secured by this Security Instrument; provided, however, that payment of the Unconsented Transfer Fee shall not cure any Event of Default resulting from the Unconsented Transfer.

4.13.5 **No Waiver.** Lender's waiver of any of the Consented Transfer Fee, the Unconsented Transfer Fee or any other amount payable hereunder, in whole or in part for any one sale, transfer, encumbrance or other conveyance shall not preclude the imposition thereof in connection with any other sale, transfer, encumbrance or other conveyance.

4.13.6 **Permitted Transfers.** Notwithstanding the foregoing and notwithstanding Section 4.14, Lender's consent will not be required, and neither the Consented Transfer Fee nor the Unconsented Transfer Fee will be imposed, for any Permitted Transfer (as defined below), so long as all Transfer Requirements (as defined below) applicable to such Permitted Transfer are timely satisfied. As used herein, the following terms have the meanings set forth below:



"Permitted Transfer" means:

(a) The transfer of less than 25% in the aggregate during the term of the Note of the direct or indirect Equity Interests (as defined below) in Borrower, in addition to any transfers permitted under subparagraphs (b) or (c) of this definition (a "Minority Interest Transfer");

(b) A transfer that occurs by devise, descent or operation of law upon the death of a natural person (a "Decedent Transfer");

(c) A transfer made in good faith for estate planning purposes (i) to one or more non-minor Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more non-minor Immediate Family Members of a settlor of the applicable trust) or (ii) to one or more trusts or legal entities established for the benefit of, and solely owned by, the transferor and/or one or more Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more trusts or legal entities established for the benefit of, and solely owned by, one or more Immediate Family Members of a settlor of the applicable transferor trust) (an "Estate Planning Transfer");

(d) A transfer between existing owners of direct or indirect Equity Interests in the Borrower so long as there is no change in the individuals exercising day-to-day powers of decision-making, management and control of the Borrower and no release of any guarantors; or

(e) A transfer of furniture, fixtures or equipment if they are reasonably deemed to be surplus to the normal operation and use of the Property or if they are promptly replaced by similar items of at least equivalent value and utility.

"Transfer Requirements" means, with respect to any Permitted Transfer, all of the following that apply to that transfer:

(a) In the case of any Permitted Transfer:

(i) none of the persons or entities liable for the repayment of the Loan shall be released from such liability;

(ii) such transfer must not violate Applicable Law, and the transferee must not be a "specially designated national" or a person that is subject or a target of any economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury or the U.S. Department of State ("Sanctions") and such transfer must not otherwise result in a violation of Sanctions, the USA PATRIOT Act of 2001, any "know your customer" rules applicable to Lender or any other Applicable Law; and

(iii) Borrower must provide Lender with not less than 30 days' prior written notice of the proposed transfer (or to the extent that such transfer is a Decedent Transfer then, as soon as reasonably practicable following Borrower becoming aware that the transfer has occurred), which notice shall include a summary of the proposed changes in the organization, ownership and management of the Property or the applicable entity and such further information as Lender may require to make the determinations contemplated by this subsection (a); provided, however, that no prior notice shall be required for an Estate Planning Transfer or any transfer that results in the transferee owning less than 10% in the aggregate of the direct or indirect Equity Interests in Borrower.

(b) In the case of any Minority Interest Transfer or Estate Planning Transfer, there shall be no change in the individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its sole discretion. In the case of a Decedent Transfer, any new individual exercising such powers must be satisfactory to Lender in its reasonable discretion.

(c) In the case of a Decedent Transfer, if the decedent was a Borrower or guarantor of the Loan, within 30 days after written request by Lender, one or more other persons or entities having credit standing and financial resources reasonably acceptable to Lender, shall assume or guarantee the Loan by executing and delivering to Lender a guaranty of assumption agreement and a certificate and indemnity agreement regarding hazardous substances, each satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the decedent and granting Lender liens on any and all interests of the transferee in the Property.

(d) In the case of any Estate Planning Transfer (other than a transfer by an individual of an interest in the Property into a revocable trust created for their benefit or the benefit of an Immediate Family Member and which such individual is the trustee) that results in a transfer of an interest in the Property, the transferee shall, prior to the transfer, execute and deliver to Lender an assumption agreement satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the transferor and granting Lender liens on any and all interests of the transferee in the Property.

(e) In the case of any Permitted Transfer that results in a transfer of an interest in the Property, Lender shall be provided, at no cost to Lender, with an endorsement to its title insurance policy insuring the lien of this Security Instrument, which endorsement shall insure that there has been no impairment of that lien or of its priority.

(f) In the case of any Permitted Transfer, Borrower or the transferee shall pay all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with that Permitted Transfer, any applicable fees in accordance with Lender's fee schedule in effect at the time of the Permitted Transfer, and shall provide Lender with such information and documents as Lender reasonably requests in order to make the determinations called for by this Security Instrument and to comply with Applicable Law.

(g) No Default shall exist.

"Equity Interest" means partnership interests in Borrower, if Borrower is a partnership, member interests in Borrower, if Borrower is a limited liability company, or shares of stock of Borrower, if Borrower is a corporation.

"Immediate Family Members" means, with respect to any person, that person's parents, spouse, registered domestic partner (under an applicable state or District of Columbia law providing for registration of domestic partnerships with a governmental agency), siblings, children and other lineal descendants, and the spouses and registered domestic partners of such person's parents, siblings, children and other lineal descendants.

#### 4.14 Borrower Existence.

4.14.1 Legal Entities. Except as otherwise permitted by this Security Instrument, if Borrower is a corporation, partnership, limited liability company, or other legal entity, Lender is making the Loan in reliance on Borrower's continued existence, ownership and control in its present form. Borrower will not alter its name, jurisdiction of organization, structure, ownership or control without the prior written consent of Lender and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. If Borrower is a partnership, Borrower will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Lender. The withdrawal or expulsion of any general partner from the Borrower partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

4.14.2 Trusts. Except as otherwise permitted by this Security Instrument, if Borrower is a trust, there shall be no change in the trustee or other individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its reasonable discretion.

4.15 **Information.** Lender is authorized to disclose to potential participants, assignees, regulators, Federal Home Loan Banks and Federal Reserve Banks, information in Lender's possession with respect to Borrower, guarantors of the Loan, the Property and the Loan.

4.16 **Tax and Insurance Impounds.**

4.16.1 **Impounds.** In addition to the payments required by the Note, Borrower shall pay Lender, at Lender's request, such sums as Lender may from time to time estimate will be required (a) to pay, at least one month before delinquency, the next-due taxes, assessments, insurance premiums and similar charges affecting the Property (collectively, the "Impositions"); divided by the number of months to elapse before one month prior to the date when the applicable Impositions will become delinquent; and (b) at the option of Lender and to the extent permitted under Applicable Law, to maintain a reserve equal to one-sixth of the total annual amount of the Impositions. Lender shall hold such amounts without interest or other income to Borrower (unless required under Applicable Law) to pay the Impositions. The total of all payments to Lender under subsection 4.16.1 shall be referred to herein collectively, as the "Impounds". If this estimate of the Impounds proves insufficient, Borrower, upon demand by Lender, shall pay Lender such additional sums as may be required to pay the Impositions at least one month before delinquency. Borrower hereby acknowledges and agrees that if Lender does not require Borrower to make Impound payments for all or any portion of the Impositions at the origination of the Loan, at any time following the occurrence of an Event of Default (regardless of whether it is later cured), Borrower shall be required to make such Impounds within 30 days after receipt of written notice from Lender.

4.16.2 **Application.** If the Impounds in any one year exceed the amounts actually paid by Lender for Impositions, all or any portion of such excess may be paid to Borrower or credited by Lender on subsequent payments under this section. At any time after the occurrence and during the continuance of an Event of Default, Lender may apply any balance of Impounds it holds to any of the obligations secured hereby in such order as Lender may elect.

4.16.3 **Tax Reporting Service.** Lender may, in its sole and absolute discretion, contract with a tax reporting service covering the Property. Borrower agrees that Lender may rely on the information furnished by such tax service and agrees to pay the reasonable cost of that service within 30 days after receipt of a billing for it.

4.17 **Leasing Matters.** Borrower shall not receive or collect any Rents in advance in excess of one month's Rent from any tenant or collect a security deposit in excess of two months' Rent from any tenant. The Lender shall have all of the rights against tenants of the Property as set forth in Section 291-f of the Real Property Law of New York. To the extent Applicable Law requires any security deposits or other amounts received from tenants of the Property to be held in a segregated account, Borrower shall promptly deposit and maintain all applicable deposits and other amounts in a segregated trust account in a federally insured institution. Borrower shall perform Borrower's obligations under the Leases in all material respects. Borrower hereby consents to Lender obtaining copies of rent rolls and other information relating to the Leases from any governmental agency with which Borrower is obligated to file such information or that otherwise collects or receives such information.

4.18 **Condominium and Cooperative Provisions.** If the Property is not subject to a recorded condominium plan or map, a cooperative regime, or other common interest development regime, on the date of this Security Instrument, Borrower will not subject the Property or any portion thereof to such a plan, map, or regime without the written consent of Lender, which consent may be granted or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including but not limited to Borrower providing Lender with such title insurance endorsements and other documents as Lender may require. If the Property is subject to a recorded condominium plan or map, or other common interest development regime, on the date of this Security Instrument: (a) Borrower represents and warrants that none of the condominium units and no portion of the common elements in the Property have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (b) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any condominium unit or any of the common elements of the Property unless expressly agreed to in writing by Lender; (c) Borrower shall operate the Property solely as a rental

property; and (d) the Property granted, conveyed and assigned to Lender hereunder includes all rights, easements, rights of way, reservations and powers of Borrower, as owner, declarant or otherwise, under any applicable condominium act or statute and under any and all condominium declarations, survey maps and plans, association articles and bylaws and documents similar to any of the foregoing. If the Property is subject to a cooperative regime on the date of this Security Instrument: (i) Borrower represents and warrants that none of the corporate shares in the cooperative regime have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (ii) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any of the corporate shares of the cooperative regime; and (iii) Borrower shall operate the Property solely as a rental property.

4.19 **Use of Property; Zoning Changes.** Unless required by Applicable Law, Borrower shall not: (a) except for any change in use approved by Lender in writing, allow changes in the use for which all or any part of the Property is being used at the time this Security Instrument is executed; (b) convert any individual dwelling unit or common area in the Property to primarily commercial use; or (c) initiate or acquiesce in a change in the zoning classification of the Property.

4.20 **Lien Law.** Borrower will, in compliance with Section 13 of the New York Lien Law, receive the advances secured hereby and will hold the right to receive such advances in a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of the cost of any such improvement before using any part of the total of the advance for any other purpose.

5. **Default.**

5.1 **Definition.** Any of the following shall constitute an "Event of Default" as that term is used in this Security Instrument (and the term "Default" shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied):

5.1.1 Any regular monthly payment under the Note is not paid so that it is received by Lender within fifteen (15) days after the date when due, or any other amount secured by this Security Instrument (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note) is not paid so that it is received by Lender when due;

5.1.2 Any representation or warranty made by Borrower to or for the benefit of Lender herein or elsewhere in connection with the Loan, including but not limited to any representation in connection with the security therefor, shall have been incorrect or misleading in any material respect;

5.1.3 Borrower or any other party thereto (other than Lender) shall fail to perform its obligations under any other covenant or agreement contained in this Security Instrument, the Note, any other Loan Document, which failure continues for a period of 30 days after written notice of such failure by Lender to Borrower (or for a period of 60 days after such notice if such failure cannot reasonably be cured within such 30-day period, but can be cured within such 60-day period and Borrower is proceeding diligently to cure it), but no such notice or cure period shall apply in the case of: (i) any such failure that could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument or the other Loan Documents, result in harm to Lender or impairment of the Note, this Security Instrument, or any other security given under any other Loan Document; (ii) any such failure that is not reasonably susceptible of being cured during such cure period; (iii) breach of any provision that contains an express cure period; or (iv) any breach of Section 4.13 or Section 4.14 of this Security Instrument;

5.1.4 Borrower or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they become due, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding, provided that if such petition or proceeding is not filed or acquiesced in by Borrower or the subject thereof, it shall constitute an Event of Default only if it is not dismissed within 60 days after it is filed or if prior to that time the court enters an order substantially granting the relief sought therein; or

5.1.5 Borrower or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage, deed of trust or similar security instrument encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness secured thereby, which default continues beyond any applicable cure period.

5.2 **Lender's Right to Perform.** After the occurrence and during the continuance of any Event of Default, Lender, but without the obligation so to do and, to the extent permitted by Applicable Law, without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Lender and its agents being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; pay, purchase, contest or compromise any encumbrance, charge or lien; and in exercising any such powers, pay necessary expenses and engage counsel. All sums so expended (including attorneys' fees) shall be secured hereby and bear interest at the Default Rate of interest specified in the Note from the date advanced or expended until repaid and shall be payable by Borrower to Lender on demand.

5.3 **Remedies on Default.** Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Lender and Lender may:

5.3.1 To the extent permitted by Applicable Law, have a receiver appointed as a matter of right without notice to Borrower and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Lender elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Lender and added to the indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender, or advanced by Lender to the receiver, for such purposes shall become an additional part of the indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 5.3 shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Property.

5.3.2 Foreclose this Security Instrument as provided in Section 7 or otherwise realize upon the Property as permitted under Applicable Law.

5.3.3 Sue on the Note as permitted under Applicable Law.

5.3.4 Avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or Applicable Law.

5.4 **No Waiver.** By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of that or any other portion of the obligations secured by this Security Instrument. Lender may from time to time accept and apply any one or more payments of less than the full amount then due and payable on such obligations without waiving any Default, Event of Default, acceleration or other right or remedy of any nature whatsoever. In addition, the failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right. Furthermore, the waiver of any Default or Event of Default shall not constitute a waiver of any subsequent or other Default or Event of Default.

5.5 **Waiver of Marshaling, Etc.** In connection with any foreclosure sale under this Security Instrument, Borrower hereby waives, for itself and all others claiming by, through or under Borrower, any right Borrower or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 **Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising Applicable Law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. Lender shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the Loan proceeds.

6. **Condemnation.** Any and all awards of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property for public or private use, or for injury to any portion of the Property ("Awards"), are hereby assigned and shall be paid to Lender which may apply or disburse such Awards in the same manner, on the same terms, subject to the same conditions, to the same extent, and with the same effect as provided in Section 4.4.2 above for disposition of Insurance Proceeds. Without limiting the generality of the foregoing, if the taking results in a loss of the Property to an extent that, in the reasonable opinion of Lender, renders or is likely to render the Property not economically viable or if, in Lender's reasonable judgment, Lender's security is otherwise impaired, Lender may apply the Awards to reduce the unpaid obligations secured hereby in such order as Lender may determine, and without any adjustment in the amount or due dates of installments due under the Note. If so applied, any Awards in excess of the unpaid balance of the Note and other sums due to Lender shall be paid to Borrower or Borrower's assignee. Such application or release shall not cure or waive any Default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all Awards or other relief therefor, and Borrower agrees to pay Lender's costs and reasonable attorneys' fees incurred in connection therewith. Lender shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

7. **Foreclosure.** Upon the occurrence of any Event of Default, Lender shall have the option, without notice or demand, to declare all sums secured hereby immediately due and payable and to proceed to foreclose on this Security Instrument as now or then provided by law (in which event Lender shall be entitled to the appointment of a receiver) pursuant to a judicial proceeding in accordance with Article 13 of the New York Real Property Actions and Proceedings Law ("RPAPL") or by advertisement in accordance with Article 14 of RPAPL. Any foreclosure shall forever bar Borrower and all persons claiming under Borrower from all right and interest in the Property. In any such proceeding Lender shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Lender shall be entitled to possession of the Property during any period of redemption. Borrower hereby waives any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Security Instrument by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect full redemption. If a deficiency remains after proper application of the proceeds of sale of the Property, Borrower shall pay the same immediately after determination of the amount thereof.

8. **Notices.** Any notice to or demand on Borrower in connection with this Security Instrument or the obligations secured hereby shall be deemed to have been sufficiently made when deposited in the United States mails (with first-class or registered or certified postage prepaid), addressed to Borrower at Borrower's address set forth above. Any notice to or demand on Lender in connection with this Security Instrument or such obligations shall be deemed to have been sufficiently made when deposited in the United States mails with registered or certified postage prepaid, return receipt requested, and addressed to Lender at the address set forth above. Any party may change the address for notices to that party by giving written notice of the address change in accordance with this section.

9. **Modifications, Etc.** Each person or entity now or hereafter owning any interest in the Property agrees, by executing this Security Instrument or taking the Property subject to it, that Lender may in its sole discretion and without notice to or consent of any such person or entity: (i) extend the time for payment of the obligations secured hereby; (ii) discharge or release any one or more parties from their liability for such obligations in whole or in part; (iii) delay any action to collect on such obligations or to realize on any collateral therefor; (iv) release or fail to perfect any security for such obligations; (v) consent to one or more transfers of the Property, in whole or in part, on any terms; (vi) waive or release any of holder's rights under any of the Loan Documents; (vii) increase the amount of such obligations as permitted by the Loan Documents; or (viii) proceed against such person or entity before, at the same time as, or after it proceeds against any other person or entity liable for such obligations.

10. **Successors and Assigns.** All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11. **Governing Law; Severability.** This Security Instrument shall be governed by the laws of the state where the Property is located, except to the extent preempted by federal laws applicable to national banks. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, the conflict shall not affect other provisions of this Security Instrument or the Note that can be given effect without the conflicting provision, and to this end the provisions of this Security Instrument and the Note are declared to be severable.

12. **Maximum Interest.** No provision of this Security Instrument or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by Applicable Law. If any excess of interest in such respect is herein or in the Note provided for, neither Borrower nor its successors or assigns shall be obligated to pay that portion of such interest that is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section shall control any provision of this Security Instrument or the Note that is inconsistent herewith.

13. **Attorneys' Fees and Legal Expenses.** In the event of any Default under any Loan Document, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any Loan Documents, Lender shall be entitled to collect from any Obligor (as defined in the Note), on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to reasonable fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, such Obligor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of any Obligor, or any party having any interest in any security for any obligations secured hereby; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to the Loan Documents; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing. Notwithstanding anything to the contrary set forth in this Security Instrument or the other Loan Documents, in the event of any litigation between Lender and any Obligor outside the context of a bankruptcy proceeding involving such Obligor as debtor, which litigation arises out of or is related to the Loan or to the Property, if that Obligor is the ultimate prevailing party therein and Lender is not the ultimate prevailing party, such Obligor shall be entitled to recover from Lender the Obligor's reasonable attorneys' fees and court costs incurred therein.

14. **Time Is of the Essence.** Time is of the essence under this Security Instrument and in the performance of every term, covenant and obligation contained herein.

15. **Miscellaneous.**

15.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

15.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Security Instrument.

15.3 This Security Instrument, the Note and the other Loan Documents constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

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

15.5 The existence of any violation of any provision of this Security Instrument or the other Loan Documents (including but not limited to building or health code violations) as of the date of this Security Instrument, whether or not known to Lender, shall not be deemed to be a waiver of any of Lender's rights under any of the Loan Documents including, but not limited to, Lender's right to enforce Borrower's obligations to repair and maintain the Property.

15.6 Upon written request of Borrower in connection with a refinancing of the loan secured hereby or a sale of the Property, Lender shall assign this Security Instrument, without recourse, warranty or representation whatsoever to the refinancing lender upon (a) payment of a sum equal to all monies or indebtedness outstanding under the Note, this Security Instrument and all other Loan Documents, including but not limited to, the outstanding principal amount of the loan secured hereby, all interest accrued thereon and any Prepayment Premium (as defined in the Note), Lender's standard assignment fee as in effect at the time of such assignment and payment of all costs and expenses (including, without limitation, reasonable in-house and outside attorneys' fees) incurred in connection with the assignment of this Security Instrument, and (b) Borrower's delivery to Lender of an affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as Lender may reasonably request.

**16. USA PATRIOT Act Notification and Covenant.**

16.1 Lender hereby notifies Borrower that, pursuant to the requirements of Section 326 of the USA PATRIOT Act of 2001, 31 U.S.C. Section 5318 (the "Act"), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

16.2 Neither Borrower nor any other party liable for the obligations secured hereby as a guarantor or general partner nor any other person or entity participating in any capacity in the Loan will, directly or indirectly, use the proceeds of the Note, or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other person or entity, to (a) further an offer, payment, promise to pay, or authorize the payment or giving of money, or anything else of value, to any person (including, but not limited to, any governmental or other entity) in violation of Applicable Law of any jurisdiction applicable to Borrower or any other party liable for the obligations secured hereby as a guarantor or general partner from time to time relating to bribery or corruption; or (b) fund, finance or facilitate any activities or business or transaction of or with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of any Sanctions, or in any other manner that would result in a violation of Sanctions by any person or entity, including any person or entity participating in any capacity in the Loan.



17. **WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS SECURITY INSTRUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS CONTEMPLATED HEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

18. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THE LOAN DOCUMENTS (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

19. **Type of Property.** Borrower represents and warrants to Lender that this Security Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own separate cooking facilities. ✓

DATED as of the day and year first above written.

**BORROWER:**

801 SOUTHERN LLC,  
a Delaware limited liability company

By: 801 SOUTHERN HOLDING LLC,  
a Delaware limited liability company,  
Sole Member

By: 801 SOUTHERN S17 LLC,  
a New York limited liability company,  
Managing Member

By:   
JONATHAN WIENER  
Managing Member

State of New York ) ss.  
County of Bronx )

On the 20<sup>th</sup> day of September in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared JONATHAN WIENER, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature of Notary Public

**MELISSA J ANTONETTI**

Notary Public, State of New York

Registration No. 01AN6359168

Qualified in Bronx County

My Commission Expires May 22, 2025

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF BRONX, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY SIDE OF LONGWOOD AVENUE AND THE WESTERLY SIDE OF SOUTHERN BOULEVARD;

RUNNING THENCE NORTHERLY AND ALONG THE WESTERLY SIDE OF SOUTHERN BOULEVARD, 110 FEET;

THENCE WESTERLY AND PARALLEL WITH THE NORTHERLY SIDE OF LONGWOOD AVENUE, 42 FEET;

THENCE SOUTHERLY AND PARALLEL WITH THE WESTERLY SIDE OF SOUTHERN BOULEVARD AND FOR PART OF THE WAY THROUGH A PARTY WALL, 110 FEET TO THE NORTHERLY SIDE OF LONGWOOD AVENUE;

THENCE EASTERLY ALONG THE NORTHERLY SIDE OF LONGWOOD AVENUE, 42 FEET TO THE POINT OR PLACE OF BEGINNING.

PROPERTY ADDRESS: 801 SOUTHERN BLVD; 1025 LONGWOOD AVE, BRONX, NEW YORK 10459

Loan No. 200468866

**Schedule 1 to Amended and Restated Split Mortgage A**  
Insurance Requirements

1. **Evidence of Coverage.** Prior to the scheduled Loan funding, Lender must receive and approve written evidence of all required insurance on an ACORD form 28 for property insurance and ACORD form 25 for liability insurance (or similar forms acceptable to Lender in its sole discretion) together with satisfactory proof of payment of premiums. The evidence of coverage must show an inception date prior to or corresponding with the date of the Loan funding. Within 30 days after Loan funding, Borrower must provide Lender with a copy of all insurance policies (including flood and windstorm policies, if applicable) and all required endorsements. Policies must show an inception date prior to or corresponding with the date of the Loan funding. All documents must reflect the Lender-assigned loan number for the Loan as shown above. If flood insurance is required, special requirements apply, as described in paragraph 2.5 of this Schedule 1. ACORD or other certificates are not acceptable evidence of flood insurance.

2. **Required Coverages and Policy Amounts.** Borrower must maintain, or cause to be maintained, the following insurance coverages at all times while any portion of the Loan remains outstanding:

2.1 **Property Insurance.** The property insurance policy must insure against loss or damage to the improvements on the Property by fire and other perils substantially equivalent to those insured under the Causes of Loss – Special Form published by ISO, and against such other perils, including windstorm, as may be specified by Lender. Terrorism and/or earthquake/earth movement insurance coverage and a building ordinance extension endorsement or law and ordinance coverage may be required on a case-by-case basis. Notwithstanding anything to the contrary, Lender shall not require earthquake or terrorism insurance during the term of the Loan unless: (a) required under Applicable Law; (b) required by Lender for similar loans secured by property similar to the Property; (c) required by Lender as a result of a material change in circumstances that expose the Property to a greater risk of peril; or (d) required in connection with the origination of the Loan. The property insurance policy must be in an amount not less than 100% of the replacement cost of the improvements on the Property (without deduction for depreciation) as determined by Lender for purposes of protection of Lender's interests (the "Minimum Property Coverage Amount") and must identify Borrower and the Property address as they appear in the loan documents governing the Loan (the "Loan Documents"). The replacement cost coverage may be provided either in the terms of the policy or by endorsement. If Lender, in its sole discretion, permits coverage of less than the Minimum Property Coverage Amount, then such policy must contain an agreed amount endorsement. If the policy is a blanket policy covering the Property and one or more other properties, the policy must specify the dollar amount of the total blanket limit of the policy that is allocated to the Property, and the amount so allocated to the Property must not be less than the Minimum Property Coverage Amount.

2.2 **Loss of Rents/Business Income Interruption.** Borrower must maintain loss of rents or business income interruption insurance against loss of income (including but not limited to rent, cost reimbursements and all other amounts payable by tenants under leases or otherwise derived by Borrower from the operation of the Property) arising out of damage to or destruction of the improvements on the Property by fire and each other peril insured against under each insurance policy insuring against any type of casualty to the Property or any part thereof that is required pursuant to this Security Instrument. Such insurance must cover the actual loss sustained for at least 12 months with a minimum coverage amount of at least 12 months' potential gross income generated by the Property from all sources, as determined by Lender and without deduction for actual or projected vacancy.

2.3 **Boiler and Machinery.** If a steam boiler is located at the Property, Borrower must carry boiler and machinery coverage in at least the Minimum Property Coverage Amount. If a separate boiler and machinery policy is issued, that policy must include loss of rents or business interruption coverage as described in paragraph 2.2 of this Schedule 1.

2.4 **Liability.** Borrower must maintain commercial general liability insurance (including coverage for elevators and escalators, if any, on the Property) on an occurrence form substantially equivalent to ISO form CG 0001 with coverage of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. All policies must be primary and noncontributory with any other insurance Borrower may carry.

2.5 **Flood.** If any building or mobile home on the Property which secures the Loan is at any time located in a federally-designated special flood hazard area in which flood insurance has been made available pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Act") or other applicable or successor legislation or other area identified by Lender as having a high or moderate risk of flooding (a "Special Flood Hazard Area"), then Borrower must provide Lender with a separate flood insurance policy for each such building or mobile home located in a Special Flood Hazard Area and any contents thereof that also secure the Loan (each a "Building"). **Lender does not accept ACORD or other certificates as acceptable proof of flood insurance.** The amount of flood insurance coverage for each Building must be in an amount at least equal to the Minimum Flood Coverage Amount for the Building. As used in this Security Instrument, "Minimum Flood Coverage Amount" means the lesser of the following for each Building (not including land), as determined by Lender: (i) the insurable value of the Building ("Insurable Value"); or (ii) the outstanding principal balance of the Loan allocated to the Building. For each flood insurance policy, the deductible may not exceed \$10,000.00 for a multifamily Building or \$50,000.00 for a commercial Building; provided, however, for private insurance policies described below, the deductible may not exceed the greater of (A) \$10,000.00 for a multifamily Building and \$50,000.00 for a commercial Building, or (B) 10% of the amount of flood insurance coverage under the private insurance policy. If the amount of coverage under the flood insurance policy for any Building is less than the Insurable Value, Lender may require a Difference in Conditions policy satisfactory to Lender to cover a loss that would not be covered under such flood insurance policy. If flood insurance is required, please see Lender's Flood Insurance Requirements letter, the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, and the Flood Insurance Coverage Detail for further detail about Lender's flood insurance requirements. Subject to the requirements related to private insurance policies explained below, Lender will accept as evidence of the required flood insurance any of the following: (1) a copy of the insurance policy; (2) a declarations page from the insurance policy; or (3) an application plus proof that the premium has been paid in full. For Lender to accept the evidence described in item (3), Borrower must provide Lender with a copy of the insurance policy or the declarations page within 30 days of closing. If Borrower provides flood insurance by a private insurance policy (i.e., a policy that is not a standard policy issued on behalf of the National Flood Insurance Program ("NFIP")) for coverage amounts of \$500,000.00 or less for commercial or multifamily properties, in order to make the required comparison to the NFIP standard policy, Lender will require a copy of the private insurance policy prior to closing. If the private insurance policy fails to meet the criteria set forth in Lender's Flood Insurance Requirements letter or cannot be obtained in time to be reviewed prior to closing of the Loan, Borrower will be required to purchase an NFIP policy in the amount required by the Flood Act as a condition to closing of the Loan.

2.6 **Workers Compensation Insurance.** If Borrower has employees working at the Property, Borrower must carry workers compensation insurance in compliance with the laws of the state in which the Property is located.

2.7 **Changes in Insurance Requirements.** Lender may reasonably change its insurance requirements from time to time throughout the term of the obligations secured by this Security Instrument by giving written notice of such changes to Borrower. Without limiting the generality of the foregoing, Borrower shall from time to time obtain such additional coverages or make such increases in the amounts of existing coverage as may reasonably be required by written notice from Lender. Lender reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time.

3. **Policy and Premium Term.** If a new policy is being issued, the minimum policy term must be one year from Loan funding, with evidence that the premium has been paid in full for the term of the policy. If a new policy is not being issued due to there being an existing policy in force, the remaining term of the existing policy must be at least two months from Loan funding, with evidence that the premium has been paid for the remaining term of the policy.

4. **Maximum Deductibles.** The maximum deductible on the property insurance policy must not exceed the greater of \$25,000.00 or one percent of the applicable amount of coverage. Borrower may carry a lesser deductible if Borrower so chooses. Notwithstanding the foregoing, if the windstorm peril is excluded from the property insurance policy because the Property is located in a high-risk wind area, and windstorm coverage is provided through a separate policy, windstorm coverage only may have a deductible of up to five percent of the loss (and, if applicable, subject to a policy provision that the maximum deductible for windstorm coverage, regardless of the amount of the loss, will be a specified amount not to exceed \$250,000.00). Acceptable deductibles for flood policies are described in paragraph 2.5 of this Schedule 1.

5. **Acceptable Insurance Companies.** The insurer (the "Insurer") providing the insurance required in this Security Instrument and the other Loan Documents must be authorized to do business in the state where the Property is located. Lender shall have the right to approve or, for reasonable cause, disapprove the proposed Insurer selected by Borrower. The Insurer must

have a current Best's rating of "B+" and a financial size category of "VI" or better from A.M. Best Company. A California FAIR (Fair Access to Insurance Requirements) Plan Association policy, or equivalent policy issued by a similar state-run insurer in another state, is acceptable only when minimum form coverage cannot be obtained from an insurance company with such rating.

6. **Mortgage and Loss Payee Endorsement.** Each property policy must name "JPMorgan Chase Bank, National Association and its successors and assigns" as the only mortgagee and loss payee pursuant to a mortgage clause or endorsement (the mortgage clause included in Insurance Service Office ("ISO") Property Form No. CP 00 10 or its equivalent, which must be satisfactory to Lender and must provide that Lender will not have its interest voided by the act or omission of Borrower and that Lender may file a claim directly with the Insurer), which clause or endorsement must be contained in or attached to the policy and must show the following address for Lender: JPMorgan Chase Bank, N.A. and its successors and assigns, P.O. Box 9110, Coppell, Texas 75019-9110.

7. **Renewal Policies.** Borrower must renew or replace all required insurance policies so as to maintain continuous coverage in compliance with the Loan Documents. Borrower must provide Lender with a complete copy of each renewal or replacement policy (including endorsements) within 30 days after its effective date. Lender may order insurance meeting its requirements (at Borrower's expense) if any such policy is not received by such date.

8. **Notice of Cancellation.** All policies must guarantee that Lender will receive 30 days' advance notice prior to cancellation and ten days' notice for nonpayment of premiums. If a notice of cancellation is received on an existing policy and not reinstated or replaced with an acceptable policy before the effective date of the cancellation, Lender may order replacement coverage at Borrower's expense.

9. **Failure of Borrower to Maintain Insurance.**

9.1 **Lender Placed Insurance.** If Borrower fails to maintain insurance in accordance with this Security Instrument and the other Loan Documents, Lender may, in its sole discretion, obtain insurance to protect Lender's interests. This insurance is called "lender placed insurance."

9.2 **Limited Coverage.** Lender placed insurance may cover only the improvements and will be only in the amount required by Lender. In addition to other differences, the amount of coverage on the lender placed insurance may be less than Borrower's policy and may not cover Borrower's equity in the Property, the deductibles may be higher and there may not be personal property/contents, personal liability, medical or special risks coverage. In the case of flood insurance, the amount of coverage may be more than that required by Applicable Law.

9.3 **Cost.** Lender placed insurance is typically more expensive than insurance Borrower may obtain through Borrower's own agent. Borrower may also be assessed a nonrefundable policy issuance fee by Lender as well as any costs incurred by Lender relating to the failure to maintain insurance in accordance with Lender's requirements.

9.4 **Cancellation.** If Lender obtains lender placed insurance, this insurance may be canceled when Borrower provides Lender with satisfactory evidence of insurance coverage that is acceptable to Lender. While the lender placed insurance policy may be canceled and Borrower may be entitled to a refund of a portion of the premiums paid, Borrower may be charged for any time period for which the lender placed insurance was in effect, any cancellation fee assessed by the lender placed insurer, and any costs Lender incurs as a result of the failure to maintain adequate insurance.

10. **Additional Insurance Obtained by Borrower.** If Borrower obtains insurance coverage not required under this Security Instrument or the other Loan Documents that insures any interest in the Property or other collateral securing the Loan, Borrower shall ensure that Lender is named as mortgagee and loss payee on such policies by a mortgage endorsement as described above and Lender shall have the right to direct the application of the proceeds of such insurance as provided in the Loan Documents.

11. **No Permanent Waiver of Requirements.** Borrower understands and agrees that Lender may agree to close the Loan without requiring Borrower to comply strictly with all the requirements set out in this Schedule 1. Borrower acknowledges and agrees that, if Lender so closes the Loan, this is not a permanent waiver of any of the requirements that Lender did not require to be satisfied as of the closing date (the "Specified Requirements"). Lender may at any time in its sole discretion terminate its waiver of the Specified Requirements upon not less than 30 days' written notice to Borrower.

## SCHEDULE 2

### Description of Prior Mortgages

#### Mortgage (a)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$895,000.00  
Dated: May 17, 2007  
Recorded: June 22, 2007  
CRFN: 2007000322793  
Mortgage Tax: \$25,060.00

#### Mortgage Modification Agreement (a1)

Between: SOBRO SHARP IV LLC, SOBRO SHARP LLC, SOBRO SHARP II LLC, SOBRO SHARP III LLC, GATES PLACE LLC, WINDSOR ESTATES II L.P., W.T. PARTNERS L.P. AND MEDARY STENTON ASSOCIATES LP  
And: NEW YORK COMMUNITY BANK  
Dated: August 15, 2011  
Recorded: December 14, 2011  
CRFN: 2011000436411  
Note: Extends and modifies Mortgage (a) to secure the reduced principal amount of \$881,810.54.

#### Mortgage, Assignment of Leases and Rents, and Security Agreement (b)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$385,716.82  
Dated: September 8, 2014  
Recorded: November 24, 2014  
CRFN: 2014000390706  
Mortgage Tax: \$ 7,906.85

#### Consolidation, Modification and Extension Agreement (b1)

Between: SOBRO SHARP IV LLC  
And: NEW YORK COMMUNITY BANK  
Dated: September 8, 2014  
Recorded: November 24, 2014  
CRFN: 2014000390706  
Note: which mortgages (a) and (b) were consolidated to form a single lien in the amount of \$1,220,000.00.

#### Mortgage (c)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$850,000.00  
Dated: May 17, 2007  
Recorded: June 22, 2007  
CRFN: 2007000322797  
Mortgage Tax: \$ 23,800.00

**Mortgage Modification Agreement (c1)**

Between: SOBRO SHARP IV LLC, SOBRO SHARP LLC, SOBRO SHARP II LLC, SOBRO SHARP III LLC, GATES PLACE LLC, WINDSOR ESTATES II L.P., W.T. PARTNERS L.P. AND MEDARY STENTON ASSOCIATES, LP  
And: NEW YORK COMMUNITY BANK  
Dated: August 15, 2011  
Recorded: September 13, 2011  
CRFN: 2011000323656  
Note: Extends and modifies Mortgage (c) to secure the reduced principal amount of \$837,473.69.

**Mortgage, Assignment of Leases and Rents, and Security Agreement (d)**

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$852,668.50  
Dated: September 8, 2014  
Recorded: November 3, 2014  
CRFN: 2014000365475  
Mortgage Tax: \$23,875.61

**Consolidation, Modification and Extension Agreement (d1)**

Between: SOBRO SHARP IV LLC  
And: NEW YORK COMMUNITY BANK  
Dated: September 8, 2014  
Recorded: November 3, 2014  
CRFN: 2014000365476  
Note: which mortgages (c) and (d) were consolidated to form a single lien in the amount of \$1,645,000.00.

**Mortgage, Assignment of Leases and Rents, and Security Agreement (e)**

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$1,820,185.77  
Dated: May 22, 2019  
Recorded: June 3, 2019  
CRFN: 2019000171388  
Mortgage Tax: \$50,965.60

**Consolidation, Modification, Extension and Spreader Agreement (e1)**

Between: SOBRO SHARP IV LLC  
And: NEW YORK COMMUNITY BANK  
Dated: May 22, 2019  
Recorded: June 3, 2019  
CRFN: 2019000171389  
Note: which mortgages (a) through (e) were consolidated to form a single lien in the amount of \$4,411,000.00.

**Assignment of Mortgage (e2)**

Assignor: NEW YORK COMMUNITY BANK  
Assignee: JPMORGAN CHASE BANK, N.A.  
Dated: On or about the date hereof September 24, 2021  
Note: To be recorded *Simultaneously*



Mortgage Modification and Splitting and Assumption Agreement (e3)

Between: 801 SOUTHERN LLC and 3007-09 3RD LLC

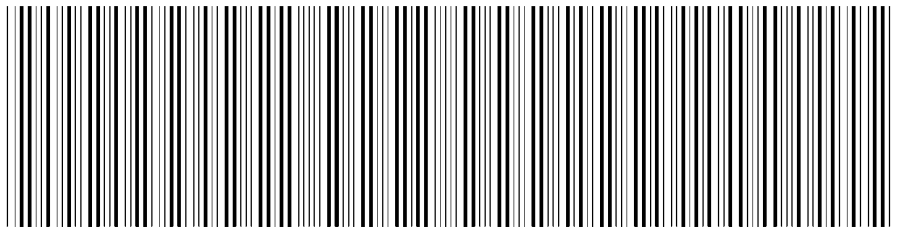
And: JPMORGAN CHASE BANK, N.A.

Dated: On or about the date hereof *September 7, 2021*

To be recorded *Simultaneously*

Note: which splits mortgages (a) through (e), as consolidated, into Amended and Restated Split Mortgage A from 801 Southern LLC to JPMorgan Chase Bank, N.A. in the amount of \$2,250,000.00 and Amended and Restated Split Mortgage B from 3007-09 3rd LLC to JPMorgan Chase Bank, N.A. in the amount of \$2,141,442.07. *TO Be recorded simultaneously*

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021100300030004001S662B

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2021100300030004**  
Document Type: MORTGAGE

Document Date: 09-24-2021

Preparation Date: 10-11-2021

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

255 MORTGAGE TAX EXEMPT AFFIDAVIT

4

**TAX LAW AFFIDAVIT**  
**(Section 255 Affidavit-Amended and Restated Split Mortgage A)**

STATE OF NEW YORK )  
COUNTY OF Bronx ) ss.

JONATHAN WIENER, being duly sworn, deposes and says that said person is Managing Member of 801 SOUTHERN S17 LLC, a New York limited liability company, said entity being Managing Member of 801 SOUTHERN HOLDING LLC, a Delaware limited liability company, said entity being the Sole Member of 801 SOUTHERN LLC, a Delaware limited liability company, the "Mortgagor" referred to herein;

THAT JPMORGAN CHASE BANK, N.A. ("Lender") is the owner and holder of the mortgage or mortgages described in Schedule 1 attached to this Affidavit (collectively, the "Prior Mortgages") in connection with which Prior Mortgage recording tax was paid in the amount of \$131,608.06;

THAT there is presently owing on the Prior Mortgage the principal sum of <sup>unpaid</sup> \$2,250,000.00;

THAT in order to modify the terms of the Prior Mortgages and replace them with a single new mortgage, Mortgagor has delivered to Lender a mortgage modification and extension agreement delivered herewith for recording (the "Modification Agreement") which (1) extends the term of the loan secured by the Prior Mortgages, (2) otherwise modifies certain terms of the Prior Mortgages, and (3) replaces them with a new Amended and Restated Mortgage in the amount of TWO MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$2,250,000.00) as further described in the Modification Agreement;  
*TO BE RECORDED SIMULTANEOUSLY*

THAT there have been no re-loans or readvances, or new funds lent or new or additional indebtedness created, under the Modification Agreement;

WHEREFORE, your deponent respectfully requests that the Modification Agreement tendered herewith for recording be declared exempt from taxation under Section 255 of Article XI of the Tax Law of the State of New York.

JONATHAN WIENER

SWORN TO before me on the 20th day of September, 2021.

Notary Public

**MELISSA J ANTONETTI**

Notary Public, State of New York

Registration No. 01AN6359168

Qualified in Bronx County

My Commission Expires May 22, 2025

## SCHEDULE 1

### Prior Mortgages

#### Mortgage (a)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$895,000.00  
Dated: May 17, 2007  
Recorded: June 22, 2007  
CRFN: 2007000322793  
Mortgage Tax: \$25,060.00

#### Mortgage Modification Agreement (a1)

Between: SOBRO SHARP IV LLC, SOBRO SHARP LLC, SOBRO SHARP II LLC, SOBRO SHARP III LLC, GATES PLACE LLC, WINDSOR ESTATES II L.P., W.T. PARTNERS L.P. AND MEDARY STENTON ASSOCIATES, LP  
And: NEW YORK COMMUNITY BANK  
Dated: August 15, 2011  
Recorded: December 14, 2011  
CRFN: 2011000436411  
Note: Extends and modifies Mortgage (a) to secure the reduced principal amount of \$881,810.54.

#### Mortgage, Assignment of Leases and Rents, and Security Agreement (b)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$385,716.82  
Dated: September 8, 2014  
Recorded: November 24, 2014  
CRFN: 2014000390706  
Mortgage Tax: \$ 7,906.85

#### Consolidation, Modification and Extension Agreement (b1)

Between: SOBRO SHARP IV LLC  
And: NEW YORK COMMUNITY BANK  
Dated: September 8, 2014  
Recorded: November 24, 2014  
CRFN: 2014000390706  
Note: which mortgages (a) and (b) were consolidated to form a single lien in the amount of \$1,220,000.00.

#### Mortgage (c)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$850,000.00  
Dated: May 17, 2007  
Recorded: June 22, 2007  
CRFN: 2007000322797  
Mortgage Tax: \$ 23,800.00

Mortgage Modification Agreement (c1)

Between: SOBRO SHARP IV LLC, SOBRO SHARP LLC, SOBRO SHARP II LLC, SOBRO SHARP III LLC, GATES PLACE LLC, WINDSOR ESTATES II L.P., W.T. PARTNERS L.P. AND MEDARY STENTON ASSOCIATES, LP  
And: NEW YORK COMMUNITY BANK  
Dated: August 15, 2011  
Recorded: September 13, 2011  
CRFN: 2011000323656  
Note: Extends and modifies Mortgage (c) to secure the reduced principal amount of \$837,473.69.

Mortgage, Assignment of Leases and Rents, and Security Agreement (d)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$852,668.50  
Dated: September 8, 2014  
Recorded: November 3, 2014  
CRFN: 2014000365475  
Mortgage Tax: \$23,875.61

Consolidation, Modification and Extension Agreement (d1)

Between: SOBRO SHARP IV LLC  
And: NEW YORK COMMUNITY BANK  
Dated: September 8, 2014  
Recorded: November 3, 2014  
CRFN: 2014000365476  
Note: which mortgages (c) and (d) were consolidated to form a single lien in the amount of \$1,645,000.00.

Mortgage, Assignment of Leases and Rents, and Security Agreement (e)

Mortgagor: SOBRO SHARP IV LLC  
Mortgagee: NEW YORK COMMUNITY BANK  
Amount: \$1,820,185.77  
Dated: May 22, 2019  
Recorded: June 3, 2019  
CRFN: 2019000171388  
Mortgage Tax: \$50,965.60

Consolidation, Modification, Extension and Spreader Agreement (e1)

Between: SOBRO SHARP IV LLC  
And: NEW YORK COMMUNITY BANK  
Dated: May 22, 2019  
Recorded: June 3, 2019  
CRFN: 2019000171389  
Note: which mortgages (a) through (e) were consolidated to form a single lien in the amount of \$4,411,000.00.

Assignment of Mortgage (e2)

Assignor: NEW YORK COMMUNITY BANK  
Assignee: JPMORGAN CHASE BANK, N.A.  
Dated: On or about the date hereof, *September 24, 2021*  
Note: To be recorded *Simultaneously*

*54*

Mortgage Modification and Splitting and Assumption Agreement (e3)

Between: 801 SOUTHERN LLC and 3007-09 3RD LLC

And: JPMORGAN CHASE BANK, N.A.

Dated: ~~On or about the date hereof~~ September 24, 2024

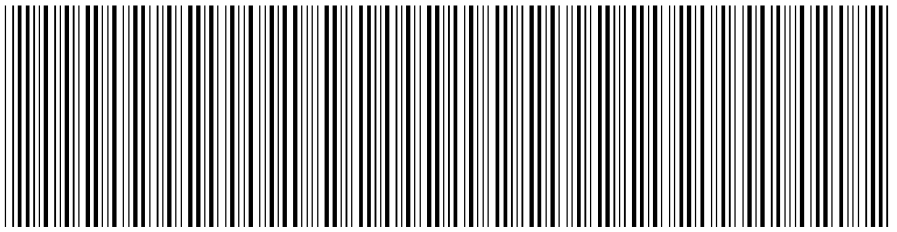
To be recorded *Simultaneously*

Note: which splits mortgages (a) through (e), as consolidated, into Amended and Restated Split Mortgage A from 801 Southern LLC to JPMorgan Chase Bank, N.A. in the amount of \$2,250,000.00 and Amended and Restated Split Mortgage B from 3007-09 3rd LLC to JPMorgan Chase Bank, N.A. in the amount of \$2,141,442.07. *to BE recorded simultaneously*

*MTX paid \$0.00*

**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.



2021082600209001001EA9D5

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 4**

**Document ID: 2021082600209001**

Document Date: 08-16-2021

Preparation Date: 08-26-2021

Document Type: DEED

Document Page Count: 3

**PRESENTER:**

MADISON ABSTRACT, INC. ( BX 21 20925 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**RETURN TO:**

MADISON ABSTRACT, INC. ( BX 21 20925 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address               |
|--|-------|-----|------------|-----------------------|
| BRONX                                    | 3351  | 35  | Entire Lot | 344 EAST 209TH STREET |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                       |

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

SCOTT-CRAIG ASSOCIATES LLC  
C/O: THE MORGAN GROUP, ONE SOUND SHORE  
DRIVE, SUITE 203  
GREENWICH, CT 06830

**GRANTEE/BUYER:**

344 E 209 LLC  
C/O: DENALI MANAGEMENT INC., 20 SOUTH  
BROADWAY, SUITE 300  
YONKERS, NY 10701

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

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: \$ 52.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 250.00

NYC Real Property Transfer Tax:

\$ 99,750.00

NYS Real Estate Transfer Tax:

\$ 24,700.00

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 09-01-2021 19:39

City Register File No.(CRFN):

**2021000347926**



*Annette McMill*

**City Register Official Signature**

**BARGAIN AND SALE DEED  
WITH COVENANT AGAINST GRANTORS ACT**

**THIS INDENTURE**, dated as of August 16, 2021, by SCOTT-CRAIG ASSOCIATES LLC, a New York Limited Liability Company having an address at C/o The Morgan Group, One Sound Shore Drive, Suite 203, Greenwich, CT 06830 ("Grantor"), to 344 E 209 LLC, a Delaware Limited Liability Company, having an office at C/o Denali Management Inc., 20 South Broadway, Suite 300, Yonkers, New York 10701 ("Grantee").

**WITNESSETH**, that Grantor in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged by Grantor, does hereby grant and release and assign forever unto Grantee, and the heirs, successors and assigns of Grantee, those certain plots, pieces or parcels of land situate lying and being in the County of BRONX, City and State of New York, known as and by the street address as 344 EAST 209TH STREET, BRONX, NEW YORK (Block 3351, Lot 54), (the "Land").

**SEE SCHEDULE "A" ANNEXED HERETO**

Being and intended to be the same premises conveyed to the Grantor (or the Grantor's predecessor in interest) in Deed dated 7/15/1997 recorded 2/24/2000 in Reel/Pg/File 1743/2181. Premises known as and by the street address: 344 EAST 209<sup>TH</sup> STREET, BRONX, NEW YORK; Block 3351, Lot 35.

**TOGETHER** with all right, title and interest of Grantor in and to any and all buildings and improvements located on the Land (the "Improvements");

**TOGETHER** with all right, title and interest, if any, of Grantor in and to any easements, rights of way, privileges, benefits, appurtenances, hereditaments, strips, gaps and gores, and any and all other rights, if any, thereon or in any way pertaining thereto, including, without limitation, any land lying in the bed of any streets and roads abutting the above-described property to the center lines thereof (the foregoing rights, together with the Land and the Improvements being hereinafter referred to, collectively, as the "Premises");

**TO HAVE AND TO HOLD** the Premises herein granted, or mentioned and intended so to be, unto Grantee, and the heirs, successors and assigns of Grantee, forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

**AND** Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of improvements and will apply the same first to the payment of the cost of improvements before using any part of the total of the same or any other purpose.

[SIGNATURES ON FOLLOWING PAGE]

BRONX  
B- 3351  
L- 35



**SCHEDULE A**

**ALL** that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Bronx, City and State of New York, known and designated as Lots 179 and 180 on a certain map entitled, "Map of Norwood in the 24<sup>th</sup> Ward of the City of New York, adjoining with Williamsbridge Station of New York and Harlem Railway, by Jonah A. Briggs, C.E., May 1889, Fordham, New York" filed in the Office of the Register of the County of New York, on June 27, 1889 as Map 1021 at which said lots taken together are, according to said map, bounded and described as follows:

**BEGINNING** at the corner formed by the intersection of the southerly side of Ozark Street (now East 209<sup>th</sup> Street) and the westerly side of Decatur Avenue;

**RUNNING THENCE** southerly, along the westerly side of Decatur Avenue, 50 feet;

**THENCE** westerly, at right angles to the westerly side of Decatur Avenue, 100 feet to the center of the block;

**THENCE** northerly, parallel with Decatur Avenue and along said center line of the block, 50 feet to the southerly side of Ozark Street (now East 209<sup>th</sup> Street);

**THENCE** easterly, along the southerly side of Ozark Street (now East 209<sup>th</sup> Street), 100 feet to the point or place of **BEGINNING**.

**BEING AND INTENDED** to be the same premises conveyed to the party of the first part by deed dated 7/15/97 recorded 2/24/00 in the Office of the New York City Register, County of Bronx, State of New York, in Reel 1743 Page 2181.

---

For Clearance click: [Clearance@MadisonAbstract.com](mailto:Clearance@MadisonAbstract.com)



Title Number: **BX 21 20925**

**IN WITNESS WHEREOF**, Grantor has duly executed this deed the day and year first above written.

GRANTOR:  
SCOTT-CRAIG ASSOCIATES LLC

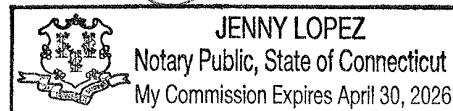
X S. Morgan  
By: Name: Scott Morgan  
Title: Authorized Signatory

ACKNOWLEDGMENT TAKEN OUTSIDE NEW YORK STATE

STATE OF CONNECTICUT     )  
COUNTY OF FAIRFIELD     ) ss.:

On AUGUST 11, 2021, before me, the undersigned, personally appeared SCOTT MORGAN personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the STATE OF CONNECTICUT, COUNTY OF FAIRFIELD.

X Jenny Lopez  
Notary Public



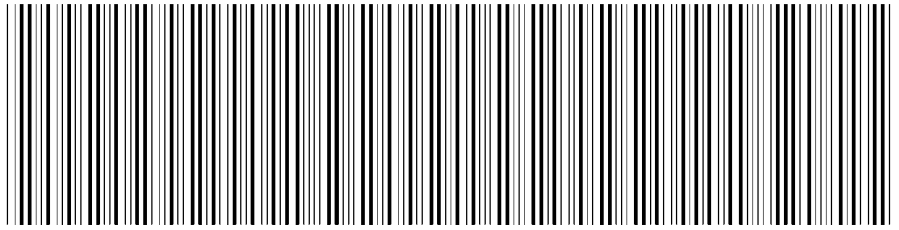
BARGAIN AND SALE DEED  
WITH COVENANT AGAINST GRANTORS ACT

Section:  
Block: 3351  
Lot: 54  
County: BRONX  
Premises: 344 EAST 209TH STREET, BRONX, NEW YORK

Record and Return by Mail to:  
Anthony T. Simari, Esq.  
Holm & O'hara LLP  
3 West 35th Street, 9th Floor  
New York, NY 10001  
(212) 295-8472

Title NO BX 21 20925

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021082600209001001S6754

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2021082600209001**  
Document Type: DEED

Document Date: 08-16-2021

Preparation Date: 08-26-2021

**ASSOCIATED TAX FORM ID:** 2021073000343

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING  
RP - 5217 REAL PROPERTY TRANSFER REPORT

1  
3



The City of New York  
Department of Environmental Protection  
Bureau of Customer Services  
59-17 Junction Boulevard  
Flushing, NY 11373-5108

## Customer Registration Form for Water and Sewer Billing

### Property and Owner Information:

- (1) Property receiving service: BOROUGH: BRONX BLOCK: 3351 LOT: 35
- (2) Property Address: 344 EAST 209TH STREET, BRONX, NY 10467
- (3) Owner's Name: 344 E 209 LLC
- Additional Name:

### Affirmation:



Your water & sewer bills will be sent to the property address shown above.

### Customer Billing Information:

#### Please Note:

- A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.
- B. Original bills for water and/or sewer service will be mailed to the owner, **at the property address or to an alternate mailing address**. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit [www.nyc.gov/dep](http://www.nyc.gov/dep) to provide us with the other party's information.

### Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner:

Signature: \_\_\_\_\_

1/16/21 Date (mm/dd/yyyy)

Name and Title of Person Signing for Owner, if applicable: \_\_\_\_\_

Jonathan Wiener, Auth. Sig

FOR CITY USE ONLY

C1. County Code  C2. Date Deed Recorded  /  /   
Month Day Year  
C3. Book  OR C4. Page   
C5. CRFN



**REAL PROPERTY TRANSFER REPORT**  
STATE OF NEW YORK  
STATE BOARD OF REAL PROPERTY SERVICES  
**RP - 5217NYC**

**PROPERTY INFORMATION**

1. Property Location  344  EAST 209TH STREET  BRONX  10467  
STREET NUMBER STREET NAME BOROUGH ZIP CODE

2. Buyer Name  344 E 209 LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

3. Tax Billing Address Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form)    
LAST NAME / COMPANY FIRST NAME  
   
STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed  1  # of Parcels OR ☐ Part of a Parcel

5. Deed Property Size  FRONT FEET X  DEPTH OR  ACRES

8. Seller Name  SCOTT-CRAIG ASSOCIATES LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:

|  |  |   |  |   |
|--|--|---|--|---|
| A <input type="checkbox"/> One Family Residential    | C <input type="checkbox"/> Residential Vacant Land     | E <input type="checkbox"/> Commercial           | G <input type="checkbox"/> Entertainment / Amusement | I <input type="checkbox"/> Industrial     |
| B <input type="checkbox"/> 2 or 3 Family Residential | D <input type="checkbox"/> Non-Residential Vacant Land | F <input checked="" type="checkbox"/> Apartment | H <input type="checkbox"/> Community Service         | J <input type="checkbox"/> Public Service |

4A. Planning Board Approval - N/A for NYC  
4B. Agricultural District Notice - N/A for NYC  
Check the boxes below as they apply:  
6. Ownership Type is Condominium ☐  
7. New Construction on Vacant Land ☐

**SALE INFORMATION**

10. Sale Contract Date  4 / 12 / 2021   
Month Day Year

11. Date of Sale / Transfer  8 / 16 / 2021   
Month Day Year

12. Full Sale Price \$  3  8  0  0  0  0   
( Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

**14. Check one or more of these conditions as applicable to transfer:**

A ☐ Sale Between Relatives or Former Relatives  
B ☐ Sale Between Related Companies or Partners in Business  
C ☐ One of the Buyers is also a Seller  
D ☐ Buyer or Seller is Government Agency or Lending Institution  
E ☐ Deed Type not Warranty or Bargain and Sale (Specify Below )  
F ☐ Sale of Fractional or Less than Fee Interest ( Specify Below )  
G ☐ Significant Change in Property Between Taxable Status and Sale Dates  
H ☐ Sale of Business is Included in Sale Price  
I ☐ Other Unusual Factors Affecting Sale Price ( Specify Below )  
J ☒ None

**ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill**

15. Building Class  C  1  16. Total Assessed Value (of all parcels in transfer)  7  4  6  5  5  0

17. Borough, Block and Lot / Roll Identifier(s) ( If more than three, attach sheet with additional identifier(s) )  
 BRONX 3351 35

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

344E209 LLC

BUYER

BUYER'S ATTORNEY

BUYER SIGNATURE

C/O.: DENALI MANAGEMENT INC. 20 SOUTH BROADWAY, SUITE 300

LAST NAME

FIRST NAME

STREET NUMBER

STREET NAME (AFTER SALE)

AREA CODE

TELEPHONE NUMBER

YONKERS

NY

10701

SELLER

CITY OR TOWN

STATE

ZIP CODE

SELLER SIGNATURE

DATE

Signed in Counter Part

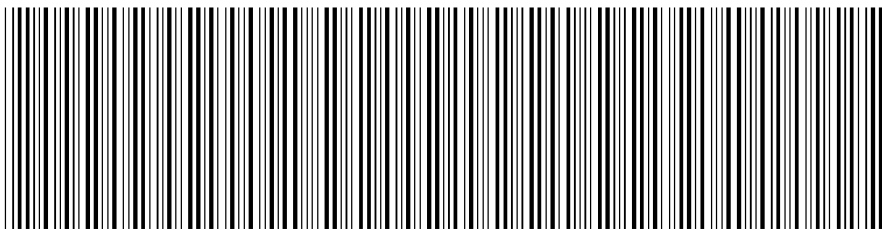
CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

| BUYER  |  |  | BUYER'S ATTORNEY                        |  |
|--|--|--|---|--|
| Signed in Counterpart                                    |  |  |   |  |
| BUYER SIGNATURE  |  |  | DATE                                    |  |
| C/O: DENALI MANAGEMENT INC. 20 SOUTH BROADWAY, SUITE 300 |  |  |   |  |
| STREET NUMBER  |  |  | STREET NAME (AFTER SALE)                |  |
| YONKERS  |  |  | NY                                      |  |
| CITY OR TOWN   |  |  | STATE                                   |  |
| 10701  |  |  | ZIP CODE                                |  |
|  |  |  | AREA CODE                               |  |
|  |  |  | TELEPHONE NUMBER                        |  |
|  |  |  | SELLER                                  |  |
|  |  |  | X 5 9770-CHAG-1770-CHAG-LLC             |  |
|  |  |  | DATE                                    |  |
|  |  |  | 8/16/21                                 |  |
|  |  |  | SELLER SIGNATURE                        |  |
|  |  |  | BY: SCOTT MORGAN - AUTHORIZED SIGNATORY |  |

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

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2021082600209005001E6924

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 34**

**Document ID: 2021082600209005**

Document Date: 08-16-2021

Preparation Date: 08-26-2021

Document Type: AGREEMENT

Document Page Count: 32

**PRESENTER:**

MADISON ABSTRACT, INC. ( BX 21 20925 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**RETURN TO:**

MADISON ABSTRACT, INC. ( BX 21 20925 )  
670 WHITE PLAINS ROAD, SUITE 121  
AS AGENT TO FIRST AMERICAN TITLE INSURANCE  
COMPANY  
SCARSDALE, NY 10583  
914-725-7200

**PROPERTY DATA**

|  |              |            |             |                     |
|--|--------------|------------|-------------|---------------------|
| <b>Borough</b>                           | <b>Block</b> | <b>Lot</b> | <b>Unit</b> | <b>Address</b>      |
| BRONX                                    | 3351         | 35         | Entire Lot  | 344 EAST 209 STREET |
| <b>Property Type:</b> APARTMENT BUILDING |              |            |             |                     |

**CROSS REFERENCE DATA**

BRONX      Year: 1985      Reel: 622      Page: 1496

☒ Additional Cross References on Continuation Page

**PARTIES**

**PARTY 1:**

344 E 209 LLC  
C/O DENALI MANAGEMENT INC., 20 SOUTH  
BROADWAY, SUITE 300  
YONKERS, NY 10701

**PARTY 2:**

INVESTORS BANK  
101 JFK PARKWAY  
SHORT HILLS, NJ 07078

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 2,850,000.00

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: \$ 197.00

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 09-01-2021 19:39

City Register File No.(CRFN):

**2021000347930**

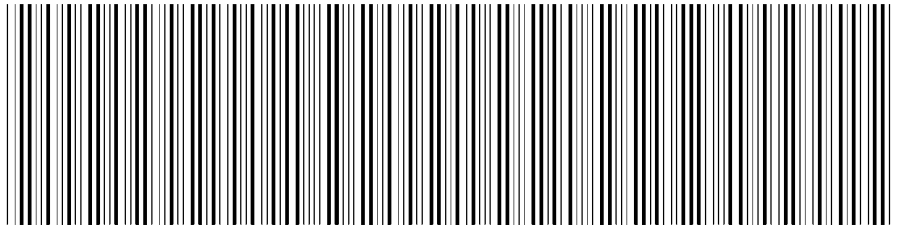


*Annette McMill*

**City Register Official Signature**



NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021082600209005001C6BA4

**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)**

**PAGE 2 OF 34**

**Document ID: 2021082600209005**

Document Date: 08-16-2021

Preparation Date: 08-26-2021

Document Type: AGREEMENT

**CROSS REFERENCE DATA**

BRONX **Year:** 1987 **Reel:** 750 **Page:** 986

BRONX **Year:** 1988 **Reel:** 875 **Page:** 638

BRONX **Year:** 1990 **Reel:** 985 **Page:** 290

BRONX **Year:** 1993 **Reel:** 1148 **Page:** 1

BRONX **Year:** 2000 **Reel:** 1743 **Page:** 2185

**CRFN:** 2006000662185

**CRFN:** 2011000263127

**CRFN:** 2014000130559

**CRFN:** 2016000149989

**AMENDED AND RESTATED  
MORTGAGE AND SECURITY AGREEMENT**

**344 E 209 LLC**  
(Mortgagor)

and

**INVESTORS BANK**  
(Mortgagee)

Dated: As of August 16, 2021

Property: 344 East 209th Street (a/k/a 3295 Decatur Avenue)  
Bronx, New York

Block: 3351

Lot: 35

County: Bronx

State: New York

**RECORD AND RETURN TO:**

Donovan LLP  
152 Madison Avenue, 14<sup>th</sup> Floor  
New York, New York 10016  
Attention: Kevin J. Monaghan, Esq.

*Title NO BX21 20925*

THIS MORTGAGE DOES NOT COVER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX RESIDENTIAL DWELLING UNITS, EACH DWELLING UNIT HAVING ITS OWN SEPARATE COOKING FACILITIES.

---

**AMENDED AND RESTATED  
MORTGAGE AND SECURITY AGREEMENT**

**THIS AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT** (this "**Mortgage**") made as of the 16<sup>th</sup> day of August, 2021, by **344 E 209 LLC**, a Delaware limited liability company (the "**Mortgagor**"), having a mailing address c/o Denali Management Inc., 20 South Broadway, Suite 300, Yonkers, New York 10701, in favor of

**INVESTORS BANK** ("**Mortgagee**"), a New Jersey chartered bank, having a mailing address of 101 JFK Parkway, Short Hills, New Jersey 07078.

A. Mortgagor is the owner of the fee estate commonly known as and by street address 344 East 209th Street (a/k/a 3295 Decatur Avenue), Bronx, New York, designated as Block 3351, Lot 35, as more fully described in **Exhibit A** attached hereto and made a part hereof (the "**Real Property**").

B. Mortgagee is the present owner and holder of, and Mortgagor is the current obligor under, those certain promissory notes (the "**Prior Notes**"), the aggregate principal amount of which is hereby reduced by partial prepayment to \$2,850,000.00, and the same are secured by those certain mortgages (the "**Prior Mortgages**") described on **Schedule I** annexed hereto and made a part hereof encumbering the Real Property.

C. On the date hereof, Mortgagor and Mortgagee are amending, restating and extending the Prior Notes pursuant to a certain Amended and Restated Promissory Note (as the same may hereafter be amended, modified, extended or replaced, the "**Note**").

E. Mortgagor and Mortgagee desire to (1) extend, amend and restate in its entirety the indebtedness evidenced by the Prior Notes, which shall constitute a single indebtedness in the aggregate stated principal amount of \$2,850,000.00 (the "**Indebtedness**"), all on the terms and conditions provided in the Note and (2) amend and restate the liens of the Prior Mortgages, which shall remain a single, valid first and prior lien upon the Mortgaged Property securing the Indebtedness, and (3) amend and restate the terms and conditions contained in the Prior Mortgages as hereinafter set forth.

F. Mortgagor and Mortgagee intend these Recitals to be a material part of this Mortgage.

**NOW, THEREFORE**, in consideration of the property and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

I. This Mortgage constitutes a mortgage and security agreement encumbering the Mortgaged Property upon the terms and conditions set forth herein to secure the Indebtedness, it being understood and agreed that the Mortgaged Property secures the repayment of the entire Indebtedness.

II. Mortgagor hereby represents and warrants that the indebtedness evidenced by the Prior Notes, constitutes a single indebtedness in the principal amount of the Indebtedness, as

evidenced by the Note, and that the Prior Mortgages, as hereby amended and restated, constitute a single valid first priority lien upon the Mortgaged Property fully securing the Indebtedness, evidenced by the Note together with interest thereon as provided therein.

III. From and after the date hereof, the terms, covenants and provisions of the Prior Mortgages are hereby modified, extended, amended and restated in their entirety as provided herein, and the Prior Mortgages, as so modified, extended, amended and restated are hereby ratified and confirmed in all respects by Mortgagor.

IV. Neither this Mortgage nor anything contained herein shall be construed as a substitution or novation of the indebtedness evidenced by the Prior Notes or of the Prior Mortgages, which shall remain in full force and effect, as hereby confirmed, modified, extended, restated and superseded.

Mortgagor has executed and delivered to Mortgagee the Note payable to the order of Mortgagee in the stated principal sum of \$2,850,000.00, payable with interest and on the terms and conditions set forth therein. Mortgagor and Mortgagee have executed a loan agreement dated this date ("**Loan Agreement**"), pursuant to the terms of which Mortgagee has agreed to make such loan (the "**Loan**") to Mortgagor under the terms and conditions set forth therein.

The Loan Agreement, the Note, this Mortgage, and all other documents executed and delivered in connection with the Loan including, without limitation, any guaranty of, and any other collateral document securing any of, Mortgagor's obligations respecting the Loan are sometimes individually referred to herein as a "**Loan Document**" and collectively as the "**Loan Documents**".

**NOW THIS MORTGAGE WITNESSETH**, to secure the payment of the said indebtedness with interest as aforesaid and otherwise in accordance with the terms and conditions of the Note and all extensions, modifications and renewals thereof and the performance of the covenants and agreements contained herein, together with all other sums due and owing to Mortgagee under the terms of the Loan Documents, together with all existing and future liabilities of Mortgagor to Mortgagee under the Loan Documents or otherwise (said indebtedness, interest and all other sums and liabilities are hereinafter collectively referred to as the "**Aggregate Debt**"), and as security for the due and timely performance by Mortgagor of all of the other provisions of the Loan Documents, and intending to be legally bound hereby, and in consideration therefor, Mortgagor hereby GRANTS, BARGAINS, SELLS, ALIENATES, ENFEOFFS, CONVEYS, ASSIGNS, TRANSFERS, RELEASES, PLEDGES, and MORTGAGES to Mortgagee, with power of sale, the Real Property (the Real Property and any other collateral securing Mortgagor's obligations under any of the Loan Documents is hereinafter referred to collectively as the "**Collateral**");

**TOGETHER WITH** all right, title, and interest of Mortgagor in and to the following property rights and interests, which Mortgagor hereby assigns to Mortgagee until the Aggregate Debt is paid (the Real Property together with the following property being hereinafter collectively called the "**Mortgaged Property**");

(a) all buildings and other improvements now or hereafter located on the Real Property ("**Improvements**");

(b) all streets, lanes, alleys, passages, ways, water courses, easements, rights, liberties, privileges, tenements, hereditaments and appurtenances whatsoever thereunto belonging to or in any way made appurtenant hereafter, and the reversions and remainder, with respect thereto ("**Appurtenances**");

(c) all machinery, apparatus, equipment, furniture, furnishings, fixtures, inventory, goods, appliances, and other property of every kind and nature whatsoever, together with replacements thereof and accessories, parts or accessions thereto, owned by Mortgagor or in which Mortgagor has or shall have an interest, and whether or not now or hereafter located on the Real Property, and any and all proceeds of any of the foregoing ("**Equipment**");

(d) all building materials, building machinery and building equipment delivered on site to the Real Property during the course of, or in connection with, the construction of, or reconstruction of, or remodeling of any building and improvements from time to time during the term of this Mortgage ("**Building Equipment**");

(e) all general intangibles relating to the development or use of the Real Property, including, but not limited to, all licenses, permits and agreements from or with all boards, agencies, departments, public utilities, governmental or otherwise, all names under which or by which the Real Property or Improvements may at any time be operated or known and all rights to carry on business under any such names or any variations thereof, all trademarks and goodwill in any way relating to the Real Property, all shares of stock or other evidence of ownership of any part of the Real Property owned by Mortgagor in common with others, and all documents of membership in any owners or members association or similar group having responsibility for managing or operating any portion or all of the Real Property ("**Intangibles**");

(f) all awards or payments, including interest thereon, which may be made with respect to the Real Property and Improvements, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Real Property or Improvements including, without limitation, all awards or payments of estimated compensation, all damages to the Real Property or Improvements resulting from any taking, all machinery and equipment dislocation expenses, all settlement amounts, all apportionments of taxes, reimbursement of attorneys and engineers fees, all moving expenses and all business dislocation expenses ("**Awards**");

(g) all insurance policies covering the Real Property or Improvements and all proceeds of any unearned premiums on any such insurance policies including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Real Property or Improvements ("**Insurance Policies**");

(h) all leases, agreements of sale and other agreements affecting the use or occupancy of any portion or all of the Real Property or Improvements, whether heretofore or hereafter executed and all rights to payment under any such lease or agreement ("**Leases and Agreements**");

(i) all rents, receipts, issues, profits and other income of any and all kinds (including deposits) received or receivable and due or to become due from the sale or lease of any property, goods or materials or from the rendering of services including, but not limited to (i) the lease or sale of all or a portion of the Real Property or Improvements, or (ii) the operation of any income-producing facility on the Real Property or Improvements (all of such proceeds, receipts and income are hereinafter referred to as the **"Income and Rents"** and all such rights are hereinafter referred to as the **"Accounts Receivable"**);

(j) any securities or guaranties held by Mortgagor with respect to any of the Intangibles, Awards, Leases or Accounts Receivable, and any notes, drafts, acceptances, chattel paper, documents, or other instruments evidencing the same (**"Securities"**);

(k) all funds deposited by Mortgagor with Mortgagee pursuant to the Loan Agreement or otherwise, including, without limitation, the Escrows (as defined below), all reserves, deferred payments, deposits, refunds, cost savings and payments of any kind relating to the Improvements (**"Deposits"**);

(l) all plans and specifications prepared for renovations to or construction of the Improvements and all studies, data and drawings related thereto; and also all contracts and agreements relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the renovations to or construction of Improvements (**"Plans"**);

(m) the right, in the name and on behalf of itself or Mortgagor, to appear in or defend any action or proceeding brought with respect to the Real Property or Improvements (including without limitation, any condemnation or arbitration proceedings) and to commence any action or proceedings to protect the interest of Mortgagee in the Real Property and Improvements;

(n) all refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Mortgaged Property as a result of tax certiorari or any applications or proceedings for reduction of taxes;

(o) all proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash or otherwise (**"Proceeds"**); and

(p) any and all other rights of Mortgagor in and to the items set forth in subsections (a) through (o) above.

**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee, its successors and assigns forever. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to the Mortgaged Property hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Real Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, pledge, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein. Notwithstanding the foregoing, Mortgagor shall, at its own cost, make, execute, acknowledge, deliver and record any and all

such further acts, deeds, conveyances, mortgages, notices of assignment, transfers, assurances and other documents as Mortgagee shall from time to time require for better assuring, conveying, assigning, transferring and confirming unto Mortgagee of the Mortgaged Property and the other rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign for carrying out the intention of facilitating the performance of the terms of this Mortgage. In addition, Mortgagor hereby agrees that this Mortgage is a security agreement under the Uniform Commercial Code and creates in Mortgagee a security interest thereunder in, among other things, all Equipment, Building Equipment, Intangibles, Awards, Insurance Policies, Leases and Agreements, Income and Rents, Accounts Receivable, Securities, Deposits, Plans and Proceeds. Upon the filing of this Mortgage in the office of the recorder of deeds in and for the county where the Real Property is located, this Mortgage shall also be effective as a financing statement filed in such office as a fixture filing. Mortgagor shall, at its own cost and expense, execute, deliver and file any financing statements, continuation certificates and other documents Mortgagee may require from time to time to perfect and maintain in favor of Mortgagee a security interest under the Uniform Commercial Code in such Equipment, Building Equipment, Intangibles, Awards, Insurance Policies, Leases and Agreements, Income and Rents, Accounts Receivable, Securities, Deposits, Plans and Proceeds. Without limiting the generality of any of the foregoing, Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor to execute, deliver and file any of the documents referred to hereinabove for and on behalf of Mortgagor. Mortgagor shall not change its principal place of business without giving Mortgagee at least thirty (30) days' prior written notice thereof. Mortgagor hereby irrevocably authorizes Mortgagee to prepare and file and/or record, as applicable, new financing statements from Mortgagor in the same form as the financing statements delivered to Mortgagee on the date hereof except for the change of address and unless the standard form accepted by the State where the Real Property is located or where the Mortgagor was formed has changed, in which event such financing statement shall be in the new form. Upon any Event of Default hereunder or under any of the other Loan Documents, Mortgagee shall have in addition to any other rights and remedies hereunder or under the other Loan Documents, all of the rights and remedies granted to a secured party under the Uniform Commercial Code with respect to all personal property. To the extent permitted by law, Mortgagor agrees that the items set forth on the financing statements shall be treated as part of the Real Property and Improvements regardless of the fact that such items are set forth on the financing statements.

**PROVIDED ALWAYS**, and these presents are upon this express condition, that if Mortgagor or its successors or assigns shall well and truly pay or cause to be paid unto Mortgagee, its successors or assigns, the Aggregate Debt secured by this Mortgage, and otherwise perform Mortgagor's obligations under the Loan Documents, then this Mortgage, and the estate hereby granted, shall cease, terminate and be void, and Mortgagee shall furnish to Mortgagor a satisfaction of this Mortgage in proper form for recording, but Mortgagee shall not be required to bear any expense or cost in connection with such satisfaction or the recording thereof.

**THIS MORTGAGE** also secures advances made by Mortgagee with respect to the Mortgaged Property for the payment of taxes, assessments, maintenance charges, and insurance premiums, costs incurred by Mortgagee for the protection of the Mortgaged Property or the lien of this Mortgage, including reasonable attorneys' fees, and expenses incurred by Mortgagee by

reason of the occurrence of an Event of Default hereunder, including reasonable attorneys' fees, and the priority of such advances, costs and expenses shall relate back to the date of this Mortgage, or to such later date as required by applicable law.

**MORTGAGOR REPRESENTS AND WARRANTS TO AND COVENANTS WITH**  
Mortgagee as follows:

1. Title. As of the date hereof (a) Mortgagor has good and marketable title to an indefeasible fee simple estate in the Mortgaged Property subject to no lien, charge, or encumbrance except such as are listed as exceptions to title or exclusions from coverage in the title insurance policy being issued by Madison Abstract, Inc., as agent for Fidelity National Title Group, to Mortgagee concurrently with the recording of this Mortgage; (b) this Mortgage is and shall remain a valid and enforceable first lien on the Mortgaged Property subject only to the matters referred to in subsection (a) hereof; (c) Mortgagor shall preserve such title, and all of its rights in and to the Mortgaged Property, and shall forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and entities whomsoever, subject only to the matters referred to in subsection (a) hereof; and (d) Mortgagor has full power and lawful authority to mortgage the Mortgaged Property and grant a security interest therein in the manner and form herein done or intended hereafter to be done.

2. Payment and Performance. Mortgagor shall:

(a) punctually pay the Aggregate Debt, in the amounts and at the times and places that the same may be due, and perform and comply with all of the terms, covenants, conditions and obligations contained in the Loan Documents;

(b) pay a late charge equal to five percent (5%) of any payment of principal, interest, escrowed sums, or premium which is not received within fifteen (15) days following the due date thereof to cover the expense involved in handling such late payment; and

(c) pay on or before the due date thereof any indebtedness which may be secured by a lien or charge on the Mortgaged Property and upon request of Mortgagee exhibit satisfactory evidence of the discharge thereof.

3. Taxes and Other Charges. Subject to the provisions of Section 5 hereof, Mortgagor shall pay all taxes of every kind and nature (including real and personal property, income, gross receipts, franchise, profits, sales and withholding taxes), all general and special assessments, water and sewer rents and charges, and all levies, permits, inspection and license fees and other public charges now or hereafter levied or assessed against the Mortgaged Property as liens or assessments (hereinafter individually called a "**Tax**" and collectively the "**Taxes**") as the same shall become due and payable from time to time and before interest or penalties accrue thereon; provided, however, that Mortgagor shall not be required to pay any Tax to the extent that nonpayment thereof is permitted while the validity thereof is being contested, so long as (a) Mortgagor notifies Mortgagee in writing of its intention to contest the validity thereof, (b) the validity thereof is being contested in good faith by Mortgagor, (c) Mortgagor deposits with Mortgagee if Mortgagee so requests an amount deemed sufficient to make such payment if the contest is unsuccessful and (d) no Event of Default is continuing nor does there exist any fact or



circumstance which with notice or the passage of time or both could constitute an Event of Default. Notwithstanding the foregoing, Mortgagor shall under no circumstances permit the Mortgaged Property to be sold or advertised for sale for nonpayment of any Tax. Mortgagor shall not apply for or claim any deduction from the taxable value of the Mortgaged Property because of the existence of the Note or this Mortgage. Subject to Mortgagor's right to contest any Tax as hereinabove provided, Mortgagor shall deliver to Mortgagee receipts evidencing the payment of such Tax on or before the last day on which any Tax may be paid without interest or penalties or as soon thereafter as such receipts are available.

4. Insurance. Mortgagor shall provide and maintain in force at all times (a) hazard/casualty insurance insuring all Improvements, Building Equipment and Equipment which now are or hereafter become a part of the Mortgaged Property for perils covered by an all risk insurance policy with an ordinance or law coverage endorsement containing both replacement costs and agreed amount endorsements or options naming Mortgagee (Investors Bank, ISAOA/ATIMA, P.O. Box 704108, Dallas, Texas 75370-4108), as "First Mortgagee and Loss Payee/Lender's Loss Payable" in an amount equal to 100% of the full replacement cost; (b) commercial general liability insurance for the Mortgaged Property, naming Mortgagee (Investors Bank, ISAOA/ATIMA, P.O. Box 704108, Dallas, Texas 75370-4108) as an Additional Insured protecting Mortgagor and Mortgagee against liability for bodily injury or property damage occurring in, on or adjacent to the Mortgaged Property in commercially reasonable amounts, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence for each person and for property damage and up to Two Million Dollars (\$2,000,000.00) in the aggregate, plus a minimum umbrella requirement One Million Dollars (\$1,000,000.00); (c) boiler and machinery insurance if the Mortgaged Property has a boiler or is an office building; (d) business interruption / rental value insurance for the perils specified herein for one hundred percent (100%) of the rents (including operating expenses, real estate taxes, assessments and insurance costs which are any lessee's liability) for a period of twelve (12) months; (e) if any portion of the Improvements is currently or at any time in the future located in a "special flood hazard area" designated by the Federal Emergency Management Agency, flood hazard insurance covering building and contents in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, together with such "excess flood" insurance naming Mortgagee as loss payee in such amount and with such deductible as Mortgagee may reasonably require. and (f) insurance against any other hazards as may be reasonably required by the Mortgagee, including, without limitation, ordinance and law coverage, in such amounts as may be determined by Mortgagee. Without limiting the foregoing, if the all-risk or special cause of loss coverage excludes wind (or named windstorm) damage, Mortgagor must present evidence satisfactory to Mortgagee, in its sole, non-reviewable discretion, of separate wind coverage and any special deductibles for this peril are subject to Mortgagee approval, in its sole, non-reviewable discretion. The insurance carrier shall have a minimum rating of A-/VI by A.M. Best.

Any policy or policies with respect to all of the above-mentioned insurance (the "Policy") (i) shall be issued by an insurer acceptable to Mortgagee, (ii) shall contain a provision that Mortgagee shall be given thirty (30) days' prior written notice of material change or cancellation of said Policy and that no such change or cancellation shall be effective as to

Mortgagee in the absence of such notice, and (iii) shall contain such other provisions as shall from time to time be required by Mortgagee. Any such Policy may provide for customary "deductibles" provided the limits thereof are satisfactory to Mortgagee. Not less than fifteen (15) days' prior to any date upon which any premium for such insurance shall be due and payable and subject to the terms of Section 5 hereof, Mortgagor shall deliver to Mortgagee satisfactory evidence that such premium has been paid, and further, not less than fifteen (15) days' prior to the expiration date of any Policy, Mortgagor shall deliver to Mortgagee satisfactory evidence of the renewal of such Policy. In the event of the foreclosure of the Mortgage or other transfer of Mortgagor's interest in the Mortgaged Property in satisfaction of the Aggregate Debt, all right, title and interest of Mortgagor to any Policy then in force covering the Mortgaged Property shall pass to the transferee of the Mortgaged Property.

5. Tax and Insurance Escrow.

Mortgagor shall pay or cause to be paid to Mortgagee on the first day of each month a sum equal to one-twelfth (1/12th) of the amount of (a) all annual real estate taxes and assessments as estimated from time to time by Mortgagee, becoming due with respect to the Mortgaged Property, (b) all premiums, computed on an annual basis, for the insurance required to be carried pursuant to Section 4(e) hereof insuring the Mortgaged Property against loss or damage by flood, if applicable and (c) upon the request of Mortgagee, which request will not be made until after the occurrence of an Event of Default hereunder, all premiums, computed on an annual basis, for all other insurance required to be carried pursuant to Section 4 hereof (inclusive of escrows required under clause (b) above). All such amounts (hereinafter, the "**Escrows**") shall be held by Mortgagee in such manner as it sees fit without any obligation to collateralize same; provided however, that if and to the extent that Mortgagee is required under applicable law to collateralize the Escrows for the benefit of Mortgagor, Mortgagee shall also have the right to charge a reasonable service fee in connection therewith unless prohibited under such law. Mortgagor shall provide Mortgagee with copies of bills for all amounts required to be escrowed upon the reasonable request of Mortgagee from time to time. The Escrows shall be applied to the payment of the respective items in respect of which the Escrows were deposited as set forth, or at Mortgagee's option, to the payment of any such items in clause a, b or c above in such order of priority as Mortgagee shall determine, as the same become due and payable. If, prior to the date upon which any of the aforesaid items shall be due and payable, the amount of Escrows then on deposit therefor shall be insufficient to pay such item, Mortgagor within five (5) days after demand is made therefor shall deposit the amount of such deficiency with Mortgagee. Upon the occurrence and during the continuance of an Event of Default hereunder, Mortgagee may at its option apply the Escrows or any part thereof in payment of any unpaid portion of the Aggregate Debt. If, when making any assignment of this Mortgage, the then Mortgagee may pay over to its assignee the then balance of the Escrows. Upon such assignment, Mortgagee shall have no further obligation to Mortgagor with respect to such deposits. A one-time tax servicing fee of Two Hundred and 00/100 Dollars (\$200.00) will be imposed as of the date hereof.

6. Casualty Loss.

(a) Mortgagor shall notify Mortgagee in writing within five (5) business days of the occurrence of any damage to or destruction affecting the Mortgaged Property. Mortgagor

hereby directs any insurer to pay directly to Mortgagee any moneys payable under any Policy, and Mortgagor hereby appoints Mortgagee as attorney-in-fact to endorse any draft therefor. Sums paid to Mortgagee by any insurer may be retained on deposit with Mortgagee and, after deducting therefrom any expenses incurred in the collection thereof, including without limitation, attorneys' and expert witness' fees and costs, shall be applied as follows:

(i) Provided, that (W) no Event of Default shall be continuing, (X) the Improvements, Building Equipment and Equipment can, in Mortgagee's sole discretion be restored at least six (6) months prior to the Maturity Date (as defined in the Note), (Y) in Mortgagee's judgment upon restoration (1) the value of the Improvements, Building Equipment and Equipment shall at least equal their value immediately prior to such casualty and (2) the income will be sufficient to cover operating expenses of the Mortgaged Property and debt service on the Loan with the same debt service coverage ratio as reasonably determined by Mortgagee as existed as of the date hereof or immediately prior to such casualty, whichever is greater and (Z) there are sufficient sums available, as reasonably determined by Mortgagee, for repairs and restoration and for payments of all amounts to become due under the Loan Documents during the repairs and restoration (collectively, the "**Proceeds Release Conditions**"), Mortgagee will make 75% of the net insurance proceeds available to Mortgagor for restoration and will release the remaining 25% of the net insurance proceeds after completion of the restoration and the rental of the restored portion of the Mortgaged Property at a rental acceptable to Mortgagee. In the event the estimated costs of restoration exceed 25% of the outstanding principal balance of the Loan, the plans and specifications pertaining to such restoration shall be subject to the prior written approval of Mortgagee. Disbursement of the insurance proceeds will be made periodically pursuant to such plans and specifications pertaining to the restoration.

(ii) To the extent that the insurance proceeds held by Mortgagee are insufficient to pay the hard and soft costs of the restoration, Mortgagor shall be required to pay all amounts necessary in order to complete such restoration. Mortgagee shall not be required at any time to disburse any insurance proceeds if the undisbursed balance is, in its sole opinion, insufficient to timely complete the lien free restoration of the Mortgaged Property in accordance with the plans and specifications. It is intended that no trust shall be created by the receipt and retention by Mortgagee of any insurance proceeds, but only a debtor-creditor relationship between mortgagee and mortgagor for an amount equal to the insurance proceeds held, nor shall there be any obligation on Mortgagee to pay any interest on insurance proceeds held by Mortgagee.

(iii) If the Proceeds Release Conditions are not satisfied, such insurance proceeds may be applied, at Mortgagee's option, to the prepayment of the Note.

(b) Regardless of the cause of the damage or destruction or the availability or sufficiency of insurance proceeds, until all indebtedness secured hereby shall be fully paid Mortgagor shall be obligated to repair, restore, and rebuild any Improvements, Building Equipment and Equipment so damaged or destroyed. Repair and restoration of the Improvements, Building Equipment and Equipment shall be commenced promptly after the occurrence of the loss and shall be prosecuted to completion diligently, the Improvements, Building Equipment and Equipment being so restored and rebuilt as to be of at least equal value and substantially the same character as prior to such damage and destruction.

(c) In the event that Mortgagor is to be reimbursed out of the insurance proceeds for the costs of repairs and restoration, such proceeds shall be made available from time to time upon the furnishing to Mortgagee of satisfactory evidences of the estimated cost of completion thereof and such architect's certificates, waivers of lien, contractor's sworn statements, and other evidence of cost and of payment and of the continued priority of the lien hereof over any potential liens of mechanics and materialmen as Mortgagee may require and approve. No payment made by Mortgagee prior to the final completion of the work shall, together with all payments theretofore made, exceed seventy-five percent (75%) of the net insurance proceeds made available to Mortgagee at the time of payment, and at all times the undisbursed balance of said proceeds shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any proceeds remaining after payment of the cost of rebuilding and restoration shall, at the option of Mortgagee, either be applied in reduction of the indebtedness secured hereby, or paid to Mortgagor.

(d) Should such damage or destruction occur after foreclosure or sale proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied in rebuilding or restoration of the Improvements, Building Equipment and Equipment, shall be used to pay the indebtedness then due and owing in the event of a non-judicial sale or the amount due in accordance with any decree of foreclosure or deficiency judgment that may be entered in connection with such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if such owner shall then be entitled to the same, or otherwise as any court having jurisdiction may direct. Following any foreclosure sale, or other sale of the Mortgaged Property by Mortgagee pursuant to the terms hereof, Mortgagee is authorized without the consent of Mortgagor to assign any and all insurance policies to the purchaser at the sale and to take such other steps as Mortgagee may deem advisable to cause the interests of such purchaser to be protected by any of such insurance policies.

7. Condemnation.

(a) Mortgagor shall promptly notify Mortgagee of the commencement of any proceedings for the condemnation of the Mortgaged Property (a "**Taking**") or any portion thereof. Mortgagee may participate in any such proceeding and may be represented therein by counsel of its selection at the expense of Mortgagor. Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit or facilitate such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee. The proceeds of any award or compensation so received shall, at the option of Mortgagee, either be applied to the prepayment of the Aggregate Debt, or be paid over to Mortgagor for restoration of the Mortgaged Property.

(b) Provided that the Proceeds Release Conditions are satisfied and Mortgagor, promptly after the condemnation award is settled and/or awarded, proceeds with the restoration, replacement, rebuilding or repair (hereinafter collectively referred to as "Restoration") of the Mortgaged Property as nearly as possible to the condition it was in immediately prior to such Taking, then all awards received by Mortgagee, on account of such Taking, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be paid by Mortgagee, out of such awards as restoration progresses, as the same may be certified by an architect approved by Mortgagee, upon the written request of Mortgagor,

which request shall be accompanied by a title company or official search, or other evidence satisfactory to Mortgagee, showing that there have not been filed with respect to the Mortgaged Property any vendor's, contractor's, mechanic's, laborer's or materialman's statutory or similar liens which have not been bonded or otherwise discharged of record, except such as will be discharged upon payment of the sum requested.

(c) If the award, less the actual cost, fees and expenses, if any, incurred in connection with the Taking, shall be insufficient to pay the entire cost of such Restoration, Mortgagor will promptly pay the deficiency. It is intended that no trust shall be created by the receipt and retention by Mortgagee of any proceeds of a Taking, but only a debtor-creditor relationship between Mortgagee and Mortgagor for an amount equal to such proceeds, nor shall there be any obligation on Mortgagee to pay any interest thereon.

8. Preservation of Lien; Conveyance of Title.

(a) Mortgagor shall pay, from time to time as and when the same shall become due, all claims and demands of any persons or entities which, if unpaid, might result in or permit the creation of a lien on the Mortgaged Property or any part thereof, and in general shall do or cause to be done everything necessary so that the lien hereof shall be fully preserved and so that there shall not be created, permitted or suffered to exist any lien, encumbrance or charge affecting the Mortgaged Property other than those matters referred to in subsection 1(a) hereof which have been approved in writing by Mortgagee, all at the sole cost of Mortgagor. At Mortgagee's election, and without notice to Mortgagor, Mortgagee may make but is not obligated to make, any payments which Mortgagor has failed to make under any prior lien, but such payment by Mortgagee shall not release Mortgagor from Mortgagor's obligations or constitute a waiver of Mortgagor's default hereunder. Any sum so expended by Mortgagee shall be secured by this Mortgage, together with interest thereon at the rate stipulated in the Note from the date such payment is made by Mortgagee until the date of repayment by Mortgagor. Notwithstanding the foregoing, Mortgagor shall have the right, at its sole cost and expense, to contest in good faith by any lawful means any such claims and demands, provided that it notifies Mortgagee in writing of its intention to do so and deposits with Mortgagee, if Mortgagee so requests, an amount deemed sufficient by Mortgagee to satisfy such claims and demands if it is ultimately determined that Mortgagor is responsible therefor.

(b) Mortgagor shall not convey or transfer, or attempt to convey or transfer or permit or suffer a conveyance or transfer of legal or equitable title to the Mortgaged Property or any part thereof and whether such conveyance or transfer is voluntary, involuntary, by operation of law or otherwise, so long as any part of the Aggregate Debt remains unpaid without the prior written consent of Mortgagee, except as permitted pursuant to the terms of the Loan Agreement.

9. Maintenance and Repair; Compliance with Laws and Regulations. Mortgagor shall cause the Mortgaged Property to be maintained in good condition and repair, reasonable wear and tear and casualty or condemnation loss excepted. None of the Improvements, Equipment, or Building Equipment shall be removed, demolished, materially altered, or sold (except for normal replacement of the Equipment and except as may be contemplated in the Loan Agreement), without the prior written consent of Mortgagee. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or

destroyed by any casualty or which may be affected by any condemnation or eminent domain proceeding. Mortgagor shall promptly comply with all laws, orders, ordinances, regulations, restrictions and requirements of governmental authorities, of courts and of insurance companies applicable to Mortgagor or affecting the Mortgaged Property, or the use thereof. Mortgagor also shall promptly comply with the provisions of any recorded covenants, conditions or restrictions to which the Mortgaged Property or any part thereof may at any time be subject. Mortgagor shall not cause or allow the construction or erection of any public, municipal or utility improvements upon the Mortgaged Property other than those required by public authorities, without the prior written consent of Mortgagee. Mortgagor shall not drill or extract or enter into any lease for the drilling for or extraction of oil, gas or other hydrocarbon substances or any mineral of any kind or character on or from the Mortgaged Property or any part thereof without the prior written consent of Mortgagee. Mortgagor shall not seek, make, or consent to any change in zoning or conditions of use of the Mortgaged Property without the prior written consent of Mortgagee.

10. Leases. Except as may be permitted in the Loan Agreement, Mortgagor shall not enter into any lease or similar agreement for space in or on the Mortgaged Property without in each case obtaining Mortgagee's prior written approval of all the terms and conditions thereof and, once approved, Mortgagor shall not amend, modify, or cancel any such lease or similar agreement or assign any amounts due thereunder without obtaining Mortgagee's prior written approval.

11. Required Notice. Mortgagor shall give Mortgagee prompt written notice of any action or proceeding purporting to affect the Mortgaged Property of which it has actual knowledge including, without limitation, the following:

- (a) a material casualty to the Mortgaged Property;
- (b) receipt of notice of condemnation of the Mortgaged Property or any part thereof;
- (c) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Mortgaged Property;
- (d) receipt of any default notice from the holder of any lien or security interest in the Mortgaged Property; or
- (e) commencement of any litigation materially affecting the Mortgaged Property.

Mortgagee shall have the right to appear in or defend any such action or proceeding to the same extent as Mortgagor. Furthermore, Mortgagee shall have the right to bring any action or proceeding, in the name and on behalf of itself or Mortgagor, which Mortgagee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property or any part thereof.

12. Mortgagee's Right to Cure. Mortgagee shall have the right, but not the obligation, at Mortgagee's election and without notice to Mortgagor, to cure any Event of Default by Mortgagor under any of the Loan Documents or under any mortgage or with respect

to any security interest, lien or encumbrance which is senior in lien and position to this Mortgage. Any payments made or expenses reasonably incurred by Mortgagee in the exercise of such right shall not release Mortgagor from Mortgagor's obligation or constitute a waiver of Mortgagor's Event of Default. Any such payments made or expenses incurred by Mortgagee shall be repayable on demand by Mortgagee, together with interest thereon at the rate specified in the Note from the date such payment was made or such expense was incurred, and the aggregate amount thereof, including such interest, shall become part of the Aggregate Debt and shall be secured by the lien of this Mortgage.

13. Certificate of No Offsets. Within ten (10) days after being requested to do so by Mortgagee, which request will be accompanied by a statement prepared by Mortgagee setting forth the then remaining unpaid amount of the Aggregate Debt, Mortgagor shall furnish to Mortgagee or any proposed assignee of this Mortgage a statement, duly executed, acknowledged and certified by Mortgagor, acknowledging the remaining unpaid amount of the Aggregate Debt and stating whether there exists any uncured defaults, offsets or defenses thereto.

14. Right to Inspect. Mortgagor shall permit Mortgagee and its agents to enter and inspect the Mortgaged Property or any part thereof upon reasonable advance notice during normal business hours and subject to the rights of tenants, except during emergent situations, during which Mortgagee may enter and inspect immediately.

15. Revenue, Tax or Other Stamps. Mortgagor shall pay the cost of any revenue, tax, or other stamps (other than those relating to income) now or hereafter required by the laws of the State where the Real Property is located or the United States to be affixed to the Note or this Mortgage and if any taxes are imposed under the laws of the State where the Real Property is located or the United States with respect to debts secured by a mortgage, or with respect to evidences of indebtedness so secured, Mortgagor shall pay or reimburse Mortgagee upon demand the amount of such taxes without credit against any indebtedness evidenced by the Note. If Mortgagor does not or may not do so, Mortgagee may at its option accelerate the indebtedness evidenced by the Note to maturity as in the case of default by Mortgagor.

16. Possession. Until an Event of Default shall have occurred under this Mortgage, Mortgagor shall be permitted to retain actual possession of the Mortgaged Property, to manage, operate, use and enjoy the same and all rights appertaining thereto, and to collect, receive, take, use, and enjoy the Income and Rents. The right of Mortgagor to collect the Income and Rents may be revoked by Mortgagee at any time and from time to time after an Event of Default has occurred under this Mortgage, by giving notice of such revocation to Mortgagor. Following the giving of such notice, Mortgagee may retain and apply the Income and Rents toward payment of the Aggregate Debt in such priority and proportions as Mortgagee, in its discretion, shall determine.

17. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

(a) Mortgagor shall fail to repay the Loan in full at maturity (whether on the Maturity Date or by acceleration or otherwise) or shall fail to make or cause to be made any

other payment due to Mortgagee under any Loan Document within ten (10) days after the date when such payment is due and payable,

(b) Mortgagor shall fail to make or cause to be made any payment for utilities, real estate taxes, or assessments referred to in this Mortgage or insurance premiums for the insurance required under this Mortgage when such payment is due;

(c) Any representation or warranty of Mortgagor under this Mortgage or under any of the other Loan Documents shall be untrue in any material respect when made;

(d) Mortgagor shall fail to observe or perform any of the covenants or agreements on its part to be observed and performed under sub-paragraph 3(j) *Single Purpose, Bankruptcy Remote Entity* of the Loan Agreement, and such non-compliance shall continue beyond all grace and cure periods under the Loan Agreement; or

(e) Any Event of Default shall occur under the terms of any of the other Loan Documents.

18. Remedies. Upon the occurrence of any Event of Default:

(a) The Aggregate Debt shall, at the option of Mortgagee, become due and payable immediately without presentment, demand, notice of nonpayment, protest, notice of protest or other notice of dishonor, all of which are hereby expressly waived by Mortgagor.

(b) Mortgagee may institute appropriate proceedings at law or equity to collect the amount of the Aggregate Debt then due (by acceleration or otherwise), or for specific performance, Mortgagor acknowledges that all such covenants may be specifically enforced by Mortgagee by injunction or other appropriate equitable remedy), or to recover damages for any breach thereof, or to institute an action of mortgage foreclosure against the Mortgaged Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or elsewhere provided for, and proceed therein to final judgment and execution for the Aggregate Debt, with interest as specified in Section 19 below, together with costs and expenses as specified in Section 20 below.

(c) With or without demand upon Mortgagor for the surrender of possession, Mortgagee may enter upon and take possession of the Mortgaged Property, without liability for trespass, damages or otherwise and, upon so doing, Mortgagee may, in its discretion and in addition to any of its other rights, as Mortgagee in possession, alter, improve, complete or repair the Mortgaged Property (and in so doing Mortgagee shall have the right to use the Mortgaged Property and to expend such amount for that purpose as Mortgagee shall deem best, all of which, with interest thereon at the rate specified in the Note from date of payment, shall be repayable by Mortgagor on demand and shall be secured hereby), and operate, rent, sell or lease the same in the name of Mortgagor or Mortgagee upon such terms and conditions as Mortgagee shall deem appropriate, and Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor for all such purposes.

(d) Mortgagee may further, by summary proceedings, initiate an action for possession or otherwise, dispossess any tenants, users or occupiers of the Mortgaged Property



then or thereafter in default in the payment of any rent or other charge for the use thereof, and any tenants or other users or occupiers whose leasehold estates or rights to use the Mortgaged Property are subordinate to the lien of this Mortgage, whether or not any such tenant, user or occupier is so in default; and Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact of Mortgagor for all such purposes. If Mortgagor remains in possession after demand by Mortgagee for surrender of possession of the Mortgaged Property, such continued possession by Mortgagor shall be as tenant of Mortgagee, and Mortgagor agrees to pay monthly in advance to Mortgagee such rent for the Mortgaged Property so occupied as Mortgagee may demand, and in default of so doing, Mortgagor may also be dispossessed by summary proceedings or otherwise. In case of the appointment of a receiver of the rents, the foregoing agreement of Mortgagor to pay rent shall inure to the benefit of such receiver.

(e) With or without taking possession of the Mortgaged Property, Mortgagee may collect and receive all the Income and Rents and, after deducting the cost of all alterations, improvements, repairs, completion, partial completion, operation, sale, rental, leasing commissions and charges, including, but not limited to, reasonable counsel fees, incurred by Mortgagee, apply the net income to the sums secured hereby in such manner as Mortgagee in its discretion shall determine. Mortgagee shall be liable to account only for the Income and Rents actually received.

(f) If Mortgagee shall so elect, Mortgagor shall not resist or contest, but shall join in any petition to any court by Mortgagee for the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of all the Income and Rents therefrom, with such powers as the court making such appointment shall confer, and Mortgagor hereby appoints Mortgagee attorney-in-fact of Mortgagor for all such purposes. Furthermore, Mortgagee in its sole, non-reviewable discretion may apply ex-parte to a court of competent jurisdiction for an order appointing a rent receiver for the Mortgaged Property, without notice and without regard for the adequacy of the security for the Loan and without regard for the solvency of Mortgagor, any guarantor or indemnitor with respect to the Loan or of any person liable for the payment of the Loan. Mortgagor consents to the appointment of a receiver in such circumstance and covenants and agrees that neither Mortgagor nor any guarantor or indemnitor or other person liable for the payment of the Loan will contest, oppose or delay Mortgagee's application aforesaid. Legal fees and costs incurred by Mortgagee incident to such application shall be the responsibility of Mortgagor.

(g) All deposits held in connection with the rental, lease, license, or use of space or other facilities on the Mortgaged Property at the time of the occurrence of such Event of Default, all interest of Mortgagor in all premiums for, or dividends upon, any insurance for the Mortgaged Property, and all refunds or rebates of taxes and assessments upon the Mortgaged Property, are hereby assigned to Mortgagee as further security for the payment of the Aggregate Debt during the continuance of any such Event of Default.

(h) To the extent now or hereafter permitted by law and subject to such grace periods and notice requirements thereby imposed, Mortgagee may cause a judicial sale of the Mortgaged Property in accordance with this subsection (h). Such sale may be made without demand on Mortgagor at the time and place fixed in the notice of such sale, and such sale may be of the Mortgaged Property as a whole or in separate lots, and in such order as Mortgagee may

determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Such sale of the Mortgaged Property may be postponed by public announcement at the time and place of sale, and may be further postponed from time to time thereafter by public announcement at the time fixed by the preceding postponement. Any person or entity, including Mortgagee, may purchase at such sale. After deducting all costs, fees, and expenses of Mortgagee, including cost of evidence of title in connection with such sale, the proceeds of sale shall be applied to payment of the Aggregate Debt. The Mortgaged Property may be sold as aforesaid either before, after, or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage, and such power and right of sale shall not be affected by any entry hereunder, or by the exercise of any other right, remedy or power with respect to the enforcement of the provisions of any of the Loan Documents or the collection of the amount of the Aggregate Debt. The provisions of this subsection (h) are not intended to and shall not adversely affect Mortgagee's rights to conduct a non-judicial sale of such portions of the Mortgaged Property as constitute personal property.

(i) To the extent permitted by law, Mortgagor shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, or any exemption from execution or sale of the Mortgaged Property, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take, or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, prior to any sale of any of Mortgagor's interest therein; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the Real Property so sold or any part thereof, and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay, or impede the execution of any power herein granted to Mortgagee but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor further waives and releases all procedural errors, defects and imperfections in any proceeding instituted by Mortgagee under any of the Loan Documents.

(j) Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereinafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for the Aggregate Debt marshaled upon any foreclosure of this Mortgage or of any other security for any of the Aggregate Debt.

19. Default Rate of Interest. Following the occurrence of any Event of Default, the principal sum outstanding under the Note shall bear interest at the Default Rate and such additional interest shall be secured by this Mortgage and all other Collateral.

20. Costs and Expenses. Following the occurrence of any Event of Default under any of the Loan Documents, Mortgagor shall pay upon demand all reasonable costs and expenses, up to the maximum amount allowed by law (including all amounts paid to attorneys, accountants, real estate brokers, appraisers, and other advisors employed by Mortgagee and to any contractors for labor and materials), incurred by Mortgagee in the exercise of any of its rights, remedies or

powers under any of the Loan Documents, or as a secured or unsecured creditor, as the case may be, of Mortgagor, any general partner of Mortgagor, or any Guarantor (as defined in the Loan Agreement) in any state or federal bankruptcy proceedings, or with respect to any Collateral, and any amount thereof not paid promptly following demand therefor, together with interest thereon at the Default Rate from the date of such demand, shall become part of the Aggregate Debt and shall be secured by the lien of this Mortgage. In connection with and as part of the foregoing, in the event that any of the Loan Documents is placed in the hands of any attorney for the collection of any sum payable thereunder, Mortgagor agrees to pay reasonable attorneys' fees for the collection of the amount being claimed under such Loan Documents, as well as all costs, disbursements and allowances provided by law, and the payment of such fees and such costs, disbursements, and allowances shall also be secured by the lien of this Mortgage. Nothing in this Section 20 shall limit the obligation of Mortgagor to pay costs and expenses of Mortgagee for which Mortgagor is otherwise liable under the Loan Documents.

21. Renewals and Extensions. This Mortgage shall secure any and all renewals, or extensions of the whole or any part of the indebtedness hereby secured however evidenced, with interest at such lawful rate as may be agreed upon and any such renewals or extensions or any change in the terms or rate of interest shall not impair in any manner the validity of or priority of this Mortgage, nor release Mortgagor from personal liability for the indebtedness hereby secured.

22. Severability. In the event that for any reason one or more of the provisions of this Mortgage or their application to any person or circumstance shall be held to be invalid, illegal, or unenforceable in any respect or to any extent, such provisions shall nevertheless remain valid, legal and enforceable in all such other respects and to such extent as may be permissible. In addition, any such invalidity, illegality, or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. Successors and Assigns; Covenant Running with the Land. This Mortgage inures to the benefit of Mortgagee and its successors and assigns and binds Mortgagor, and its permitted successors and assigns, and the words the "Mortgagee" and the "Mortgagor" whenever occurring herein shall be deemed to include such respective successors and assigns. Mortgagee may assign or otherwise transfer this Mortgage and any or all of the Loan Documents to any other person, and such other person shall thereupon become vested with all of the benefits in respect thereof granted to Mortgagee herein or otherwise. Any act or agreement to be done or performed by Mortgagor herein shall be construed as a covenant running with the land and shall be binding upon Mortgagor and its successors and assigns.

24. Notices. Any notice, demand, or request hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes when personally presented, or sent by any nationally recognized overnight courier to such party at its address set forth below or sent by certified or registered mail, return receipt requested, to such party at its address set forth below:

Mortgagor: 344 E 209 LLC  
c/o Denali Management Inc., 20 South Broadway, Suite 300  
Yonkers, New York 10701

with a copy to  
Mortgagor's  
counsel:

Holm & O'Hara, LLP  
3 West 34th Street, 9th Floor  
New York, New York 10001  
Attention: Anthony T. Simari, Esq.

Mortgagee:

Investors Bank  
101 JFK Parkway  
Short Hills, New Jersey 07078  
Attention: Commercial Real Estate

with a copy to  
Mortgagee's  
counsel

Donovan LLP  
152 Madison Avenue, 14<sup>th</sup> Floor  
New York, New York 10016  
Attention: Kevin J. Monaghan, Esq.

Such notice shall be deemed to be given when received if delivered personally, on the next business day if sent by an overnight commercial courier or two days after the date mailed if sent by certified or registered mail. Any notice of any change in such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived in writing by the party entitled to receive such notice.

25. Definitions; Number and Gender. In the event Mortgagor consists of more than one person or entity, the obligations and liabilities hereunder of each of such persons and entities shall be joint and several and the word the "Mortgagor" shall mean all or some or any of them. For purposes of this Mortgage, the singular shall be deemed to include the plural and the neuter shall be deemed to include the masculine and feminine, as the context may require. The words "Loan Agreement", "Mortgage", "Note", and "Loan Document" shall include any supplements to or any amendments of or restatements of the Loan Agreement, this Mortgage, the Note, and any of the other Loan Documents. The words "Real Property", "Mortgaged Property", "Improvements", "Appurtenances", "Equipment", "Building Equipment", "Intangibles", "Awards", "Insurance Policies", "Leases and Agreements", "Income and Rents", "Accounts Receivable", "Securities", "Deposits", "Plans" and "Proceeds" shall include any portion of and additions to the Real Property, the Mortgaged Property, the Improvements, the Appurtenances, the Equipment, the Building Equipment, the Intangibles, the Awards, the Insurance Policies, the Leases and Agreements, the Income and Rents, the Accounts Receivable, the Securities, the Deposits, the Plans and the Proceeds, respectively.

26. Captions. The captions or headings of the sections and paragraphs of this Mortgage are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Mortgage.

27. Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State where the Mortgaged Property is located.

28. Jurisdiction; Venue. Mortgagor hereby agrees that any action or proceeding against it to enforce the Mortgage may be commenced in state or federal court in the county where the Mortgaged Property is located.

29. **JURY TRIAL WAIVER. MORTGAGOR AND MORTGAGEE HEREBY WAIVE ANY AND ALL RIGHTS THAT THEY MAY HAVE NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING EITHER DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING BETWEEN MORTGAGOR AND MORTGAGEE OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE. IT IS INTENDED THAT THIS WAIVER OF JURY TRIAL SHALL APPLY TO ANY AND ALL CLAIMS, DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDING.**

30. Counterparts. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signatures of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Mortgage to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

31. Limitation on Mortgagor's Liability. The liability of Mortgagor hereunder is subject to the limitations set forth in paragraph 23 of the Note.

32. New York Specific Provisions.

(a) Interpretation. In the event of a conflict between the provisions of this Section 32 and any other provisions of this Mortgage, the provisions of this Section 32 shall govern.

(b) New York Lien Law Covenant. Pursuant to Section 13 of the Lien Law of New York, Mortgagor shall receive the advances secured hereby, and shall hold the right to receive such advances, as a trust fund to be applied first for the purpose of paying the cost of any improvement, and shall apply such advances first to the payment of the cost of any such improvements on the Mortgaged Property, before using any part of the total of the same for any other purpose.

(c) Section 291-f. Mortgagee shall have all of the rights as against lessees of the Mortgaged Property as set forth in Section 291(f) of the Real Property Law of New York.

(d) Maximum Secured Amount. Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is the principal sum of \$2,850,000.00 plus interest thereon, plus amounts expended by Mortgagee after a declaration of default hereunder to maintain the lien of this Mortgage or to protect the Mortgaged Property

secured by this Mortgage, including, without limitation, amounts in respect of insurance premiums, real estate taxes, litigation expenses to prosecute or defend the rights, remedies and lien of this Mortgage or title to the Mortgaged Property secured hereby, and any costs, charges or amounts to which Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority, together with interest on all the foregoing amounts at the Default Rate.

(e) Payments Due on Non-Business Days. If the Loan Documents require Mortgagor to make any payment on a day that is not a business day, then: (i) Mortgagor shall instead pay such amount on the next business day (except where the Loan Documents provide otherwise for any particular payment); and (b) notwithstanding any applicable Law to the contrary (including, but not limited to, New York General Construction Law Section 25), Mortgagor shall not be credited with such payment until the date Mortgagor actually pays it. Any applicable interest shall continue to accrue on such amount until such date.

(f) Application of Real Property Law Sections. The covenants and conditions in this Mortgage shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions of Real Property Law Sections 254, 271 and 272. The following provisions of Real Property Law Section 254 shall, however, not apply to this Mortgage and the rights and obligations of the parties to this Mortgage: (i) subsection "4" covering the use and application of casualty or flood insurance proceeds; and (ii) the portion of subsection "4-a" that begins with the word "however" and continues to the end of the paragraph. Any inconsistency between this Mortgage and Real Property Law Section 254, 271 or 272 shall be resolved in favor of this Mortgage.

(g) Judicial Foreclosure. Without limiting Mortgagee's ability to resort to any or all of the rights and remedies listed above, or otherwise available to Mortgagee, Mortgagee may also commence and prosecute a judicial foreclosure action under Article 13 of the New York Real Property Actions and Proceedings Law.

(h) Non-Judicial Foreclosure. Mortgagee may, either with or without entry or taking possession of the Mortgaged Property as this Mortgage provides or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action to foreclose this Mortgage, sell the Mortgaged Property, or any part of it through any procedures provided by applicable law, including, without limitation the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto), and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entirety, or in two or more parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law.

(i) Mortgage Recording Tax. Mortgagor shall pay when due all mortgage recording taxes payable in connection with this Mortgage and any other mortgages executed by Mortgagor in favor of, or for the benefit of, Mortgagee. Mortgagor hereby agrees to indemnify, protect and defend Mortgagee from and against any and all claims, liabilities, losses, costs, damages and expenses incurred by Mortgagee arising in connection with Mortgagor's failure to so pay any mortgage recording taxes.

(j) Transfer Taxes.

(i) In the event of any sale or transfer of the Mortgaged Property, or any part thereof, including any sale or transfer by reason of foreclosure of this Mortgage or any prior or subordinate mortgage or by deed in lieu of any such foreclosure, Mortgagor shall timely and duly complete, execute and deliver to Mortgagee all forms and supporting documentation required by any taxing authority to estimate and fix any tax payable by reason of such sale or transfer or recording of the deed evidencing such sale or transfer, including any New York State Real Estate Transfer Tax payable pursuant to Article 31 of the New York Tax Law and New York City Real Property Transfer Tax payable pursuant to Chapter 21, Title 11 of the New York City Administrative Code (individually, a "**Transfer Tax**" and collectively, the "**Transfer Taxes**").

(ii) Mortgagor shall pay the Transfer Taxes that may hereafter become due and payable with respect to any sale or transfer of the Mortgaged Property described in this subsection (j), and in default of such payment, Mortgagee may pay the same and the amount of such payment shall be added to the indebtedness secured hereby.

(iii) Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, coupled with an interest, to prepare and deliver any questionnaire, statement, affidavit or tax return in connection with any Transfer Tax applicable to any foreclosure or deed in lieu of foreclosure described in this subsection (j).

(iv) Mortgagor shall indemnify and hold harmless Mortgagee against (A) any and all liability incurred by Mortgagee for the payment of any Transfer Tax with respect to any transfer of the Mortgaged Property by reason of foreclosure or acceptance of a deed-in-lieu of foreclosure, and (B) any and all expenses incurred by Mortgagee in connection therewith including, without limitation, interest, penalties and attorneys' fees.

(v) Notwithstanding anything in the Loan Documents to the contrary, including, without limitation, any of the provisions of Section 23 of the Note, the obligation to pay the Transfer Taxes and indemnify Mortgagee under this subsection (j) is a personal obligation of Mortgagor, whether or not Mortgagor is personally obligated to pay the indebtedness secured by this Mortgage, and shall be binding upon and enforceable against the distributees, successors and assigns of Mortgagor with the same force and effect as though each of them had personally executed and delivered this Mortgage, notwithstanding any exculpation provision in favor of Mortgagor with respect to the payment of any other monetary obligations under this Mortgage.

(vi) In the event that Mortgagor fails or refuses to pay a tax payable by Mortgagor with respect to a sale or transfer by reason of a foreclosure of this Mortgage in accordance with this subsection (j), the amount of the tax, any interest or penalty applicable thereto and any other amount payable pursuant to Mortgagor's obligation to indemnify Mortgagee under this subsection (j) may, at the sole option of Mortgagee, be paid as an expense of the sale out of the proceeds of the mortgage foreclosure sale.

(vii) The provisions of this subsection (j) shall survive any transfer and the delivery of the deed affecting such transfer. Nothing in this subsection (j) shall be deemed to

grant to Mortgagor any greater rights to sell, assign or otherwise transfer the Mortgaged Property than are expressly provided in the Loan Agreement or herein or in the other Loan Documents nor to deprive Mortgagee of any right to refuse to consent to any transaction referred to in this subsection (j).

(k) Assignment to New Mortgagee. Upon no less than ten (10) days written request from Mortgagor, Mortgagee shall assign its right, title and interest in and to the Indebtedness, including, without limitation, this Mortgage, to a bona fide third party mortgagee, provided that any such third party mortgagee purchases the Indebtedness from Mortgagee in an amount equal to the outstanding principal balance of the Indebtedness, and further provided that the interest and all other amounts then due under the Note, this Mortgage and the other Loan Documents and all other obligations of Mortgagor to Mortgagee are then satisfied in full. In consideration of such assignment by Mortgagee, Mortgagor shall pay to Mortgagee an assignment fee equal to \$2,500 and reimburse Mortgagee for any and all third party fees, costs and expenses incurred by Mortgagee in connection with such assignment, including without limitation, reasonable attorneys' fees and disbursements.

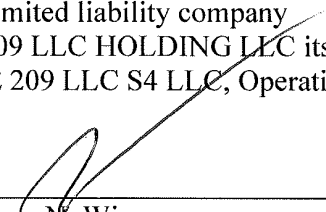
(l) Property Encumbered. THIS MORTGAGE DOES NOT COVER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX RESIDENTIAL DWELLING UNITS, EACH DWELLING UNIT HAVING ITS OWN SEPARATE COOKING FACILITIES.



**IN WITNESS WHEREOF**, Mortgagor has executed and delivered this Mortgage as of the day and year first above written.

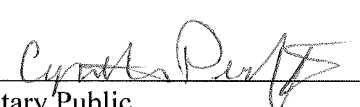
344 E 209 LLC,  
a Delaware limited liability company  
By: 344 E 209 LLC HOLDING LLC its sole member  
By: 344 E 209 LLC S4 LLC, Operating Member

By:

  
Jonathan N. Wiener  
Managing Member

STATE OF NEW YORK                     )  
  )ss:  
COUNTY OF BRONX                    )

On the 13<sup>th</sup> day of August, 2021 before me, the undersigned, personally appeared Jonathan N. Wiener, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

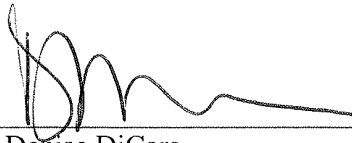
  
Notary Public

CYNTHIA L. PERFETTI  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires 12/23/2023

MORTGAGEE'S ACKNOWLEDGMENT AND CONSENT

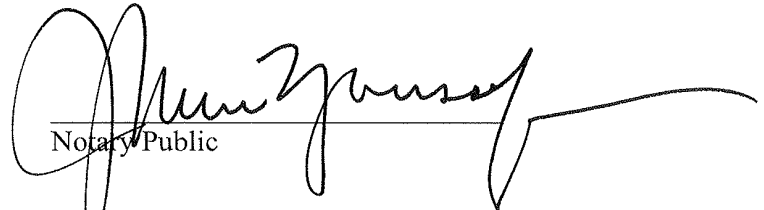
Mortgagee is executing this Mortgage to signify its consent to the amendment and restatement of the Prior Mortgages as set forth above. Nothing herein shall, or shall be deemed to, obligate Mortgagee for repayment of any amount evidenced by the Note or secured by this Mortgage.

INVESTORS BANK

By:   
Denise DiCara  
Senior Vice President

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF SUFFOLK     )

On the 16 day of August, 2021 before me, the undersigned, personally appeared , Denise DiCara personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

THERESE YOUSSEF  
Notary Public, State of New York  
No. 01YO4824098  
Qualified in Suffolk County  
Commission Expires Dec. 31, 2022

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE REAL PROPERTY**

That certain real property located at 344 East 209th Street (a/k/a 3295 Decatur Avenue), Bronx, New York, and more particularly described as:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Bronx, City and State of New York, known and designated as Lots 179 and 180 on a certain map entitled, "Map of Norwood in the 24th Ward of the City of New York, adjoining with Williamsbridge Station of New York and Harlem Railway, by Jonah A. Briggs, C.E., May 1889, Fordham, New York" filed in the Office of the Register of the County of New York, on June 27, 1889 as Map 1021 at which said lots taken together are, according to said map, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Ozark Street (now East 209th Street) and the westerly side of Decatur Avenue;

RUNNING THENCE southerly, along the westerly side of Decatur Avenue, 50 feet;

THENCE westerly, at right angles to the westerly side of Decatur Avenue, 100 feet to the center of the block;

THENCE northerly, parallel with Decatur Avenue and along said center line of the block, 50 feet to the southerly side of Ozark Street (now East 209th Street);

THENCE easterly, along the southerly side of Ozark Street (now East 209th Street), 100 feet to the point or place of BEGINNING.

**MORTGAGE SCHEDULE** I

**(1A) MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: The Troy Savings Bank  
Amount: \$400,100.00 (mortgage tax paid \$6,001.50)  
Dated: 11/22/85  
Recorded: 12/10/85  
Recording ID: Reel 622 page 1496

**Assignment of Mortgage**

Assignor: The Troy Savings Bank  
Assignee: Morsemere Federal Savings and Loan Association  
Dated: 02/09/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 996

**(1B) MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: Morsemere Federal Savings and Loan Association  
Amount: \$9,900.00 (mortgage tax paid \$148.50)  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 986

**Consolidation, Extension and Modification Agreement**

Mortgagor: Nicolette Associates  
Mortgagee: Morsemere Federal Savings and Loan Association  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 1000  
Remarks: Consolidated Mortgages 1A and 1B to form a single lien in the principal amount of \$410,000.00.

**Assignment of Mortgage**

Assignor: Morsemere Federal Savings and Loan Association  
Assignee: Federal Home Loan Mortgage Corporation  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 1013  
Remarks: Assigned mortgages 1A and 1B, as consolidated.

**Mortgage, Note and Collateral Assignment of Leases, Modification and Reinstatement Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Federal Home Loan Mortgage Corporation  
Dated: 12/01/92  
Recorded: 01/27/93  
Recording ID: Reel 1143 page 793  
Remarks: Modifies and reinstates mortgages 1A and 1B, as consolidated.

**Multifamily Note and Mortgage Extension and Modification Agreement**

Mortgagor: Nicolette Associates  
Mortgagee: Federal Home Loan Mortgage Corporation  
Dated: 07/17/97  
Recorded: 08/21/97  
Recording ID: Reel 1492 page 2086  
Remarks: Extends and modifies mortgages 1A and 1B, as consolidated.

**Assignment of Mortgage**

Assignor: Federal Home Loan Mortgage Corporation  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/07/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2198  
Remarks: Assigned mortgages 1A and 1B, as consolidated.

**(1C) MORTGAGE**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Amount: \$3,295,000.00 (mortgage tax paid \$74,137.50)  
Dated: 09/29/88  
Recorded: 10/20/88  
Recording ID: Reel 875 page 638

**Severance Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Dated: 12/17/92  
Recorded: 01/28/93  
Recording ID: Reel 1144 page 387  
Remarks: Severed mortgage 1C into several separate and distinct parts of which the principal sum of \$190,000.00 remains a lien against subject premises known as "Substitute Mortgage No. 10".

**Modification of Mortgage and Collateral Assignment of Leases and Rentals Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Dated: 12/18/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 2078

**Assignment of Mortgage**

Assignor: Skylake State Bank  
Assignee: HDW Skylake LLC  
Dated: 03/18/98  
Recorded: 06/16/98  
Recording ID: Reel 1552 page 2410

**Assignment of Mortgage**

Assignor: HDW Skylake LLC  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/05/98  
Recorded: 10/19/20  
Recording ID: CRFN 2020000288642

**(1D) MORTGAGE (affects subject premises and more)**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Amount: \$6,000,000.00 (mortgage tax paid \$135,000.00)  
Dated: 04/06/90  
Recorded: 05/15/90  
Recording ID: Reel 985 page 290

**Modification Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Dated: 12/01/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 1717

**Severance Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Dated: 12/14/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 1781  
Remarks: Severed mortgage 1D into 25 separate and distinct parts of which the principal sum of \$115,872.00 remains a lien against subject premises.

**(1E) SUBSTITUTE NOTE AND MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Amount: \$115,872.00 (mortgage tax paid \$0.00)  
Dated: 12/17/92  
Recorded: 02/19/93  
Recording ID: Reel 1148 page 1  
Remarks: This Substitute Mortgage was recorded pursuant to Severance Agreement affecting mortgage in Reel 985 page 290.

**Assignment of Mortgage**

Assignor: Sonia Holdings Ltd. and LAS Management Corp.  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/07/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2194

**(1F) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Credit Suisse First Boston Mortgage Capital LLC  
Amount: \$198,781.67 (mortgage tax paid \$3,976.00)  
Dated: 10/15/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2185

**Amended Restated and Consolidated Mortgage, Assignment of Leases and Rents  
and Security Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/15/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2215  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E and 1F to form a single lien in the principal amount of \$855,000.00.

**Assignment of Mortgage**

Assignor: Credit Suisse First Boston Mortgage Capital LLC  
Assignee: JPMorgan Chase Bank, formerly known as The Chase Manhattan Bank, as Trustee for the Registered Holders of the Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1998-C2  
Dated: 09/08/03  
Recorded: 04/26/04  
Recording ID: CRFN 2004000206209  
Remarks: Assigned mortgages 1A through 1F, as consolidated.

**Assignment of Mortgage**

Assignor: JPMorgan Chase Bank  
Assignee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage, Inc.  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662184  
Remarks: Assigned mortgages 1A through 1F, as consolidated.

**(1G) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage, Inc.  
Amount: \$972,051.48 (mortgage tax paid \$27,218.81)  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662185

**Consolidation, Modification and Restatement of Mortgages and Security Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage Inc.  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662186  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F and 1G to form a single lien of \$1,763,704.00

**Assignment of Mortgage**

Assignor: Mortgage Electronic Registration Systems, Inc.  
Assignee: Signature Bank  
Dated: 06/01/11  
Recorded: 07/26/11  
Recording ID: CRFN 2011000263126  
Remarks: Assigned mortgages 1A through 1G, as consolidated.

**(1H) FIRST MORTGAGE CONSOLIDATION, EXTENSION, MODIFICATION AND SECURITY AGREEMENT**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Signature Bank  
Amount: \$564,675.80 (mortgage tax paid \$15,811.61)  
Dated: 06/01/11  
Recorded: 07/26/11  
Recording ID: CRFN 2011000263127  
Remarks: This mortgage, by its terms, consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G and 1H to form a single lien of \$2,250,000.00.

**Assignment of Mortgage**

Assignor: Signature Bank  
Assignee: New York Community Bank  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 2014000130558  
Remarks: Assigned mortgages 1A through 1H, as consolidated.

**(1I) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Amount: \$903,569.32 (mortgage tax paid \$25,300.80)  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 2014000130559

**Consolidation and Extension Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 20014000130560  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H and 1I to form a single lien of \$3,050,000.00.

**(1J) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Amount: \$700,000.00 (mortgage tax paid \$19,600.00)  
Dated: 04/07/16  
Recorded: 04/29/16  
Recording ID: CRFN 2016000149989



**Consolidation, Modification and Extension Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Dated: 04/07/16  
Recorded: 04/29/16  
Recording ID: CRFN 2016000149990  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I and 1J to form a single lien of \$3,750,000.00.

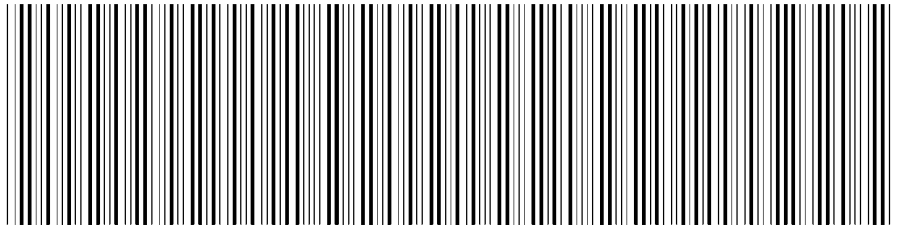
**Assignment of Mortgage**

Assignor: New York Community Bank  
Assignee: Investors Bank  
Dated: as of 08/16/21  
Recorded: TO BE RECORDED  
Remarks: Assigns mortgages 1A through 1J, as consolidated in the reduced principal amount of \$2,850,000.00.

**Amended and Restated Mortgage and Security Agreement**

Mortgagor: 344 E 209 LLC  
Mortgagee: Investors Bank  
Dated: 08/16/21  
Recorded: TO BE RECORDED  
  
Remarks: Extends and modifies mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I and 1J, as previously consolidated, in the principal amount of \$2,850,000.00.

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021082600209005001SA7A5

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2021082600209005**  
Document Type: AGREEMENT

Document Date: 08-16-2021

Preparation Date: 08-26-2021

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

255 MORTGAGE TAX EXEMPT AFFIDAVIT

8

SECTION 255 AFFIDAVIT  
Amended and Restated Mortgage and Security Agreement

STATE OF NEW YORK     )  
  ss.:  
COUNTY OF BRONX     )

JONATHAN N. WIENER, being duly sworn, deposes and says:

1. I am the Managing Member of **344 E 209 LLC S4 LLC**, which is the Operating Member of **344 E 209 LLC HOLDING LLC**, which is the sole member of **344 E 209 LLC** (the "Borrower").

2. Borrower is the mortgagor named in a certain Amended and Restated Mortgage and Security Agreement ("Restated Mortgage"), dated August 16, 2021, in the aggregate principal sum of \$2,850,000.00, by and between Borrower and INVESTORS BANK, and intended to be recorded in the Office of the Register of the City of New York, Bronx County ("Register's Office").

3. The maximum principal indebtedness which under any contingency may be secured by the Restated Mortgage is \$2,850,000.00.

4. The Restated Mortgage is intended to amend and restate the mortgages set forth on Exhibit A annexed hereto and made a part hereof, and does not create or secure any new or further indebtedness or obligations, other than the principal indebtedness secured by, or which under any contingency may be secured by, the mortgages set forth on Exhibit A. All Mortgage Tax has been paid with respect to the existing mortgages set forth on Exhibit A. There have been no reloans or readvances on said Restated Mortgage or the note secured thereby.

5. In view of the fact that all mortgage recording taxes required to be paid under the Tax Law have been paid with respect of the mortgages set forth on Exhibit A, I make this Affidavit in support of, and this Affidavit shall constitute, an application under Section 255 of the Tax Law for exemption from any requirement to pay additional recording taxes under said Section 255 in connection with the filing and recording of the Restated Mortgage.

WHEREFORE, I respectfully request that the Restated Mortgage be accepted for recording without the payment of any mortgage recording tax.

  
\_\_\_\_\_  
JONATHAN N. WIENER

*MANAGING member*

Sworn to before me this  
13<sup>th</sup> day of August, 2021

  
\_\_\_\_\_  
Notary Public

## EXHIBIT A

### MORTGAGE SCHEDULE

#### **(1A) MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: The Troy Savings Bank  
Amount: \$400,100.00 (mortgage tax paid \$6,001.50)  
Dated: 11/22/85  
Recorded: 12/10/85  
Recording ID: Reel 622 page 1496

#### **Assignment of Mortgage**

Assignor: The Troy Savings Bank  
Assignee: Morsemere Federal Savings and Loan Association  
Dated: 02/09/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 996

#### **(1B) MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: Morsemere Federal Savings and Loan Association  
Amount: \$9,900.00 (mortgage tax paid \$148.50)  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 986

#### **Consolidation, Extension and Modification Agreement**

Mortgagor: Nicolette Associates  
Mortgagee: Morsemere Federal Savings and Loan Association  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 1000  
Remarks: Consolidated Mortgages 1A and 1B to form a single lien in the principal amount of \$410,000.00.

#### **Assignment of Mortgage**

Assignor: Morsemere Federal Savings and Loan Association  
Assignee: Federal Home Loan Mortgage Corporation  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 1013  
Remarks: Assigned mortgages 1A and 1B, as consolidated.

#### **Mortgage, Note and Collateral Assignment of Leases, Modification and Reinstatement Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Federal Home Loan Mortgage Corporation  
Dated: 12/01/92  
Recorded: 01/27/93  
Recording ID: Reel 1143 page 793  
Remarks: Modifies and reinstates mortgages 1A and 1B, as consolidated.

**Multifamily Note and Mortgage Extension and Modification Agreement**

Mortgagor: Nicolette Associates  
Mortgagee: Federal Home Loan Mortgage Corporation  
Dated: 07/17/97  
Recorded: 08/21/97  
Recording ID: Reel 1492 page 2086  
Remarks: Extends and modifies mortgages 1A and 1B, as consolidated.

**Assignment of Mortgage**

Assignor: Federal Home Loan Mortgage Corporation  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/07/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2198  
Remarks: Assigned mortgages 1A and 1B, as consolidated.

**(1C) MORTGAGE**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Amount: \$3,295,000.00 (mortgage tax paid \$74,137.50)  
Dated: 09/29/88  
Recorded: 10/20/88  
Recording ID: Reel 875 page 638

**Severance Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Dated: 12/17/92  
Recorded: 01/28/93  
Recording ID: Reel 1144 page 387  
Remarks: Severed mortgage 1C into several separate and distinct parts of which the principal sum of \$190,000.00 remains a lien against subject premises known as "Substitute Mortgage No. 10".

**Modification of Mortgage and Collateral Assignment of Leases and Rentals Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Dated: 12/18/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 2078

**Assignment of Mortgage**

Assignor: Skylake State Bank  
Assignee: HDW Skylake LLC  
Dated: 03/18/98  
Recorded: 06/16/98  
Recording ID: Reel 1552 page 2410

**Assignment of Mortgage**

Assignor: HDW Skylake LLC  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/05/98  
Recorded: 10/19/20  
Recording ID: CRFN 2020000288642

**(1D) MORTGAGE (affects subject premises and more)**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Amount: \$6,000,000.00 (mortgage tax paid \$135,000.00)  
Dated: 04/06/90  
Recorded: 05/15/90  
Recording ID: Reel 985 page 290

**Modification Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Dated: 12/01/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 1717

**Severance Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Dated: 12/14/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 1781  
Remarks: Severed mortgage 1D into 25 separate and distinct parts of which the principal sum of \$115,872.00 remains a lien against subject premises.

**(1E) SUBSTITUTE NOTE AND MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Amount: \$115,872.00 (mortgage tax paid \$0.00)  
Dated: 12/17/92  
Recorded: 02/19/93  
Recording ID: Reel 1148 page 1  
Remarks: This Substitute Mortgage was recorded pursuant to Severance Agreement affecting mortgage in Reel 985 page 290.

**Assignment of Mortgage**

Assignor: Sonia Holdings Ltd. and LAS Management Corp.  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/07/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2194

**(1F) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Credit Suisse First Boston Mortgage Capital LLC  
Amount: \$198,781.67 (mortgage tax paid \$3,976.00)  
Dated: 10/15/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2185

**Amended Restated and Consolidated Mortgage, Assignment of Leases and Rents  
and Security Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/15/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2215  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E and 1F to form a single lien in the principal amount of \$855,000.00.

**Assignment of Mortgage**

Assignor: Credit Suisse First Boston Mortgage Capital LLC  
Assignee: JPMorgan Chase Bank, formerly known as The Chase Manhattan Bank, as Trustee for the Registered Holders of the Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1998-C2  
Dated: 09/08/03  
Recorded: 04/26/04  
Recording ID: CRFN 2004000206209  
Remarks: Assigned mortgages 1A through 1F, as consolidated.

**Assignment of Mortgage**

Assignor: JPMorgan Chase Bank  
Assignee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage, Inc.  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662184  
Remarks: Assigned mortgages 1A through 1F, as consolidated.

**(1G) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage, Inc.  
Amount: \$972,051.48 (mortgage tax paid \$27,218.81)  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662185

**Consolidation, Modification and Restatement of Mortgages and Security Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage Inc.  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662186  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F and 1G to form a single lien of \$1,763,704.00



**Assignment of Mortgage**

Assignor: Mortgage Electronic Registration Systems, Inc.  
Assignee: Signature Bank  
Dated: 06/01/11  
Recorded: 07/26/11  
Recording ID: CRFN 2011000263126  
Remarks: Assigned mortgages 1A through 1G, as consolidated.

**(1H) FIRST MORTGAGE CONSOLIDATION, EXTENSION, MODIFICATION AND SECURITY AGREEMENT**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Signature Bank  
Amount: \$564,675.80 (mortgage tax paid \$15,811.61)  
Dated: 06/01/11  
Recorded: 07/26/11  
Recording ID: CRFN 2011000263127  
Remarks: This mortgage, by its terms, consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G and 1H to form a single lien of \$2,250,000.00.

**Assignment of Mortgage**

Assignor: Signature Bank  
Assignee: New York Community Bank  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 2014000130558  
Remarks: Assigned mortgages 1A through 1H, as consolidated.

**(1I) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Amount: \$903,569.32 (mortgage tax paid \$25,300.80)  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 2014000130559

**Consolidation and Extension Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 20014000130560  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H and 1I to form a single lien of \$3,050,000.00.

**(1J) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Amount: \$700,000.00 (mortgage tax paid \$19,600.00)  
Dated: 04/07/16  
Recorded: 04/29/16  
Recording ID: CRFN 2016000149989

**Consolidation, Modification and Extension Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Dated: 04/07/16  
Recorded: 04/29/16  
Recording ID: CRFN 2016000149990  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I and 1J to form a single lien of \$3,750,000.00.

**Assignment of Mortgage**

Assignor: New York Community Bank  
Assignee: Investors Bank  
Dated: as of 08/16/21  
Recorded: TO BE RECORDED  
Remarks: Assigns mortgages 1A through 1J, as consolidated in the reduced principal amount of \$2,850,000.00.

**Amended and Restated Mortgage and Security Agreement**

Mortgagor: 344 E 209 LLC  
Mortgagee: Investors Bank  
Dated: 08/16/21  
Recorded: TO BE RECORDED  
  
Remarks: Extends and modifies mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I and 1J, as previously consolidated, in the principal amount of \$2,850,000.00.

SECTION 255 AFFIDAVIT  
Amended and Restated Mortgage and Security Agreement

[illegible]

SS.:

JONATHAN N. WIENER, being duly sworn, deposes and says:

1. I am the Managing Member of **344 E 209 LLC S4 LLC**, which is the Operating Member of **344 E 209 LLC HOLDING LLC**, which is the sole member of **344 E 209 LLC** (the "Borrower").

2. Borrower is the mortgagor named in a certain Amended and Restated Mortgage and Security Agreement ("Restated Mortgage"), dated August 16, 2021, in the aggregate principal sum of \$2,850,000.00, by and between Borrower and INVESTORS BANK, and intended to be recorded in the Office of the Register of the City of New York, Bronx County ("Register's Office").

3. The maximum principal indebtedness which under any contingency may be secured by the Restated Mortgage is \$2,850,000.00.

4. The Restated Mortgage is intended to amend and restate the mortgages set forth on Exhibit A annexed hereto and made a part hereof, and does not create or secure any new or further indebtedness or obligations, other than the principal indebtedness secured by, or which under any contingency may be secured by, the mortgages set forth on Exhibit A. All Mortgage Tax has been paid with respect to the existing mortgages set forth on Exhibit A. There have been no reloans or readvances on said Restated Mortgage or the note secured thereby.

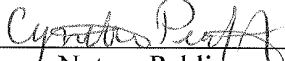
5. In view of the fact that all mortgage recording taxes required to be paid under the Tax Law have been paid with respect of the mortgages set forth on Exhibit A, I make this Affidavit in support of, and this Affidavit shall constitute, an application under Section 255 of the Tax Law for exemption from any requirement to pay additional recording taxes under said Section 255 in connection with the filing and recording of the Restated Mortgage.

WHEREFORE, I respectfully request that the Restated Mortgage be accepted for recording without the payment of any mortgage recording tax.

  
\_\_\_\_\_  
JONATHAN N. WIENER

*MANAGING member*

Sworn to before me this  
13<sup>th</sup> day of August, 2021

  
\_\_\_\_\_  
Notary Public

CYNTHIA L. PERFETTI  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires 12/23/2023

**EXHIBIT A**

**MORTGAGE SCHEDULE**

**(1A) MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: The Troy Savings Bank  
Amount: \$400,100.00 (mortgage tax paid \$6,001.50)  
Dated: 11/22/85  
Recorded: 12/10/85  
Recording ID: Reel 622 page 1496

**Assignment of Mortgage**

Assignor: The Troy Savings Bank  
Assignee: Morsemere Federal Savings and Loan Association  
Dated: 02/09/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 996

**(1B) MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: Morsemere Federal Savings and Loan Association  
Amount: \$9,900.00 (mortgage tax paid \$148.50)  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 986

**Consolidation, Extension and Modification Agreement**

Mortgagor: Nicolette Associates  
Mortgagee: Morsemere Federal Savings and Loan Association  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 1000  
Remarks: Consolidated Mortgages 1A and 1B to form a single lien in the principal amount of \$410,000.00.

**Assignment of Mortgage**

Assignor: Morsemere Federal Savings and Loan Association  
Assignee: Federal Home Loan Mortgage Corporation  
Dated: 02/10/87  
Recorded: 04/03/87  
Recording ID: Reel 750 page 1013  
Remarks: Assigned mortgages 1A and 1B, as consolidated.

**Mortgage, Note and Collateral Assignment of Leases, Modification and Reinstatement Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Federal Home Loan Mortgage Corporation  
Dated: 12/01/92  
Recorded: 01/27/93  
Recording ID: Reel 1143 page 793  
Remarks: Modifies and reinstates mortgages 1A and 1B, as consolidated.

**Multifamily Note and Mortgage Extension and Modification Agreement**

Mortgagor: Nicolette Associates  
Mortgagee: Federal Home Loan Mortgage Corporation  
Dated: 07/17/97  
Recorded: 08/21/97  
Recording ID: Reel 1492 page 2086  
Remarks: Extends and modifies mortgages 1A and 1B, as consolidated.

**Assignment of Mortgage**

Assignor: Federal Home Loan Mortgage Corporation  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/07/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2198  
Remarks: Assigned mortgages 1A and 1B, as consolidated.

**(1C) MORTGAGE**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Amount: \$3,295,000.00 (mortgage tax paid \$74,137.50)  
Dated: 09/29/88  
Recorded: 10/20/88  
Recording ID: Reel 875 page 638

**Severance Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Dated: 12/17/92  
Recorded: 01/28/93  
Recording ID: Reel 1144 page 387  
Remarks: Severed mortgage 1C into several separate and distinct parts of which the principal sum of \$190,000.00 remains a lien against subject premises known as "Substitute Mortgage No. 10".

**Modification of Mortgage and Collateral Assignment of Leases and Rentals Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: The Skylake State Bank  
Dated: 12/18/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 2078

**Assignment of Mortgage**

Assignor: Skylake State Bank  
Assignee: HDW Skylake LLC  
Dated: 03/18/98  
Recorded: 06/16/98  
Recording ID: Reel 1552 page 2410

**Assignment of Mortgage**

Assignor: HDW Skylake LLC  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/05/98  
Recorded: 10/19/20  
Recording ID: CRFN 2020000288642

**(1D) MORTGAGE (affects subject premises and more)**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Amount: \$6,000,000.00 (mortgage tax paid \$135,000.00)  
Dated: 04/06/90  
Recorded: 05/15/90  
Recording ID: Reel 985 page 290

**Modification Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Dated: 12/01/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 1717

**Severance Agreement**

Mortgagor: Nicolette Associates et al.  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Dated: 12/14/92  
Recorded: 02/19/93  
Recording ID: Reel 1147 page 1781  
Remarks: Severed mortgage 1D into 25 separate and distinct parts of which the principal sum of \$115,872.00 remains a lien against subject premises.

**(1E) SUBSTITUTE NOTE AND MORTGAGE**

Mortgagor: Nicolette Associates  
Mortgagee: Sonia Holdings Ltd. and LAS Management Corp.  
Amount: \$115,872.00 (mortgage tax paid \$0.00)  
Dated: 12/17/92  
Recorded: 02/19/93  
Recording ID: Reel 1148 page 1  
Remarks: This Substitute Mortgage was recorded pursuant to Severance Agreement affecting mortgage in Reel 985 page 290.

**Assignment of Mortgage**

Assignor: Sonia Holdings Ltd. and LAS Management Corp.  
Assignee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/07/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2194

**(1F) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Credit Suisse First Boston Mortgage Capital LLC  
Amount: \$198,781.67 (mortgage tax paid \$3,976.00)  
Dated: 10/15/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2185

**Amended Restated and Consolidated Mortgage, Assignment of Leases and Rents  
and Security Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Credit Suisse First Boston Mortgage Capital LLC  
Dated: 10/15/98  
Recorded: 02/24/00  
Recording ID: Reel 1743 page 2215  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E and 1F to form a single lien in the principal amount of \$855,000.00.

**Assignment of Mortgage**

Assignor: Credit Suisse First Boston Mortgage Capital LLC  
Assignee: JPMorgan Chase Bank, formerly known as The Chase Manhattan Bank, as Trustee for the Registered Holders of the Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1998-C2  
Dated: 09/08/03  
Recorded: 04/26/04  
Recording ID: CRFN 2004000206209  
Remarks: Assigned mortgages 1A through 1F, as consolidated.

**Assignment of Mortgage**

Assignor: JPMorgan Chase Bank  
Assignee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage, Inc.  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662184  
Remarks: Assigned mortgages 1A through 1F, as consolidated.

**(1G) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage, Inc.  
Amount: \$972,051.48 (mortgage tax paid \$27,218.81)  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662185

**Consolidation, Modification and Restatement of Mortgages and Security Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Mortgage Electronic Registration Systems, Inc., as nominee for Bear Stearns Commercial Mortgage Inc.  
Dated: 05/11/06  
Recorded: 11/30/06  
Recording ID: CRFN 2006000662186  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F and 1G to form a single lien of \$1,763,704.00



**Assignment of Mortgage**

Assignor: Mortgage Electronic Registration Systems, Inc.  
Assignee: Signature Bank  
Dated: 06/01/11  
Recorded: 07/26/11  
Recording ID: CRFN 2011000263126  
Remarks: Assigned mortgages 1A through 1G, as consolidated.

**(1H) FIRST MORTGAGE CONSOLIDATION, EXTENSION, MODIFICATION AND SECURITY AGREEMENT**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: Signature Bank  
Amount: \$564,675.80 (mortgage tax paid \$15,811.61)  
Dated: 06/01/11  
Recorded: 07/26/11  
Recording ID: CRFN 2011000263127  
Remarks: This mortgage, by its terms, consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G and 1H to form a single lien of \$2,250,000.00.

**Assignment of Mortgage**

Assignor: Signature Bank  
Assignee: New York Community Bank  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 2014000130558  
Remarks: Assigned mortgages 1A through 1H, as consolidated.

**(1I) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Amount: \$903,569.32 (mortgage tax paid \$25,300.80)  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 2014000130559

**Consolidation and Extension Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Dated: 03/26/14  
Recorded: 04/16/14  
Recording ID: CRFN 20014000130560  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H and 1I to form a single lien of \$3,050,000.00.

**(1J) MORTGAGE**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Amount: \$700,000.00 (mortgage tax paid \$19,600.00)  
Dated: 04/07/16  
Recorded: 04/29/16  
Recording ID: CRFN 2016000149989

**Consolidation, Modification and Extension Agreement**

Mortgagor: Scott-Craig Associates LLC  
Mortgagee: New York Community Bank  
Dated: 04/07/16  
Recorded: 04/29/16  
Recording ID: CRFN 2016000149990  
Remarks: Consolidated mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I and 1J to form  
a single lien of \$3,750,000.00.

**Assignment of Mortgage**

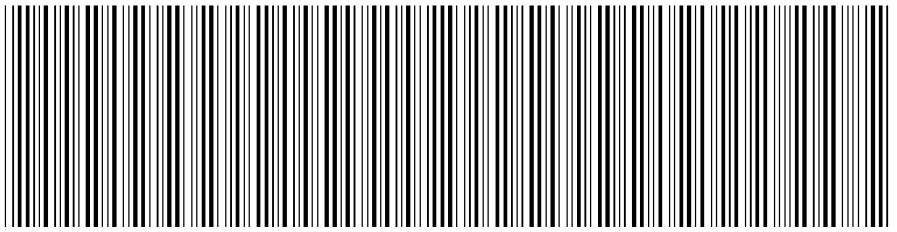
Assignor: New York Community Bank  
Assignee: Investors Bank  
Dated: as of 08/16/21  
Recorded: TO BE RECORDED  
Remarks: Assigns mortgages 1A through 1J, as consolidated in the reduced principal  
amount of \$2,850,000.00.

**Amended and Restated Mortgage and Security Agreement**

Mortgagor: 344 E 209 LLC  
Mortgagee: Investors Bank  
Dated: 08/16/21  
Recorded: TO BE RECORDED  
  
Remarks: Extends and modifies mortgages 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I and  
1J, as previously consolidated, in the principal amount of \$2,850,000.00.

**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.



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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 4**

**Document ID: 2021110201271001**

Document Date: 10-28-2021

Preparation Date: 11-09-2021

Document Type: DEED

Document Page Count: 3

**PRESENTER:**

FIRST AMERICAN TITLE INS - LW  
666 THIRD AVENUE  
3020-1086972  
NEW YORK, NY 10017  
515-832-3206  
LWING@FIRSTAM.COM

**RETURN TO:**

DONOVAN LLP  
152 MADISON AVENUE, 14TH FLR  
NEW YORK, NY 10001

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address            |
|--|-------|-----|------------|--------------------|
| BRONX                                    | 3292  | 1   | Entire Lot | 2961 MARION AVENUE |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                    |

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

2961-65 MARION, LLC  
1 DEPOT PLZ  
MAMARONECK, NY 10543-1849

**GRANTEE/BUYER:**

2961-65 M LLC  
5676 RIVERDALE AVENUE, SUITE 307  
BRONX, NY 10471

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

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: \$ 52.00

Affidavit Fee: \$ 0.00

**Filing Fee:**

\$ 250.00

**NYC Real Property Transfer Tax:**

\$ 326,760.00

**NYS Real Estate Transfer Tax:**

\$ 80,912.00

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 11-15-2021 17:16

City Register File No.(CRFN):

**2021000451311**



*Annette McMill*

**City Register Official Signature**

**First American Title  
Insurance Company**  
666 Third Avenue 5th fl  
New York, N.Y. 10017  
Phone: (212) 922-9700  
Fax: (212) 922-0881

3020-1086972

**BARGAIN AND SALE DEED  
WITH COVENANT AGAINST GRANTORS ACTS**

**THIS INDENTURE**, dated as of October 28, 2021, by 2961-65 Marion, LLC, a New York limited liability company, having an address at c/o Yellowstone Properties, Inc., One Depot Plaza, P.O. Box 549, Mamaroneck, New York 10543 ("Grantor"), to 2961-65 M LLC, a Delaware limited liability company, having an office at 5676 Riverdale Avenue, Suite 307, Bronx, New York 10471 ("Grantee").

**WITNESSETH**, that Grantor in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged by Grantor, does hereby grant and release and assign forever unto Grantee, and the heirs, successors and assigns of Grantee, all those certain plots, pieces or parcels of land situate lying and being in the City and State of New York, Bronx County, known as and by the street address 2961-65 Marion Avenue, Bronx, New York 10458 designated as Block 3292 Lot 1, as shown on the Bronx County Tax Map (the "Land") bounded and described as follows;

Block  
3292

See "Schedule A" Attached Hereto.

Lot

**TOGETHER** with all right, title and interest of Grantor in and to any and all buildings and improvements located on the Land (the "Improvements"); and

1

**TOGETHER** with all right, title and interest, it any, of Grantor in and to any easements, rights of way, privileges, benefits, appurtenances, hereditaments, strips, gaps and gores, and any and all other rights, if any, thereon or in any way pertaining thereto, including, without limitation, any land lying in the bed of any streets and roads abutting the above-described property to the center lines thereof (the foregoing rights, together with the Land and the Improvements being hereinafter referred to, collectively, as the "Premises").

**TO HAVE AND TO HOLD** the Premises herein granted, or mentioned and intended so to be, unto Grantee, and the heirs, successors and assigns of Grantee, forever.

**AND** Grantor covenants that Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatever.

**AND** Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of improvements and will apply the same first to the payment of the cost of improvements before using any part of the total of the same or any other purpose.

**BEING AND INTENDED TO BE** the same premises conveyed to Grantor by deed, dated May 4, 2006, and recorded on May 12, 2006 as CRFN 2006000266380.

IN WITNESS WHEREOF, Grantor has duly executed this deed the day and year first above written.

**GRANTOR:**

**2961-65 MARION, LLC**, a New York limited liability company

By: **YELLOWSTONE REALTY ADVISORS, LLC**,  
a Connecticut limited liability company  
its Manager

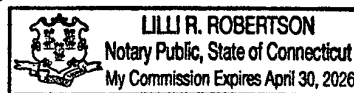
By: \_\_\_\_\_

Name: Arthur Green  
Title: Manager

*Connecticut*  
STATE OF ~~NEW YORK~~ )  
*Fairfield* )  
COUNTY OF ~~NEW YORK~~ )

On the 26<sup>th</sup> day of October, in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared **ARTHUR GREEN** personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

*Lilli R. Robertson*  
\_\_\_\_\_  
Notary Public



TIDE NO. 3020-1080974

**SCHEDULE "A"**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE NORTHEASTERLY SIDE OF BEDFORD PARK BOULEVARD WITH THE NORTHWESTERLY SIDE OF MARION AVENUE;

RUNNING THENCE NORTHERLY ALONG THE NORTHEASTERLY SIDE OF BEDFORD PARK BOULEVARD, 123.28 FEET;

THENCE NORTHEASTERLY PARALLEL WITH MARION AVENUE, 166.06 FEET;

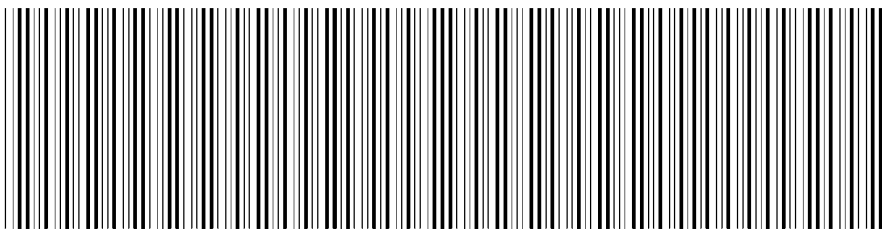
THENCE SOUTHEASTERLY AT RIGHT ANGLES WITH MARION AVENUE, 110 FEET TO THE NORTHWESTERLY SIDE OF MARION AVENUE;

THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY SIDE OF MARION AVENUE, 221.73 FEET TO THE POINT OR PLACE OF BEGINNING.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

**FOR CONVEYANCING ONLY: TOGETHER** with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2021110201271001002S2D72

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2021110201271001**

Document Date: 10-28-2021

Preparation Date: 11-09-2021

Document Type: DEED

**ASSOCIATED TAX FORM ID:** 2021102000050

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING

1

RP - 5217 REAL PROPERTY TRANSFER REPORT

3

SMOKE DETECTOR AFFIDAVIT

2

FOR CITY USE ONLY

C1. County Code  C2. Date Deed Recorded  /  /   
Month Day Year  
C3. Book  OR C4. Page   
C5. CRFN



REAL PROPERTY TRANSFER REPORT

STATE OF NEW YORK  
STATE BOARD OF REAL PROPERTY SERVICES

RP - 5217NYC

PROPERTY INFORMATION

1. Property Location  2961  MARION AVENUE  BRONX  10458  
STREET NUMBER STREET NAME BOROUGH ZIP CODE

2. Buyer Name  2961-65 M LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

3. Tax Billing Address Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form)  
    
LAST NAME / COMPANY FIRST NAME  
     
STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed  1  # of Parcels OR ☐ Part of a Parcel

4A. Planning Board Approval - N/A for NYC  
4B. Agricultural District Notice - N/A for NYC

5. Deed Property Size  FRONT FEET ☒ X  DEPTH OR  ACRES

6. Ownership Type is Condominium ☐  
7. New Construction on Vacant Land ☐

8. Seller Name  2961-65 MARION, LLC   
LAST NAME / COMPANY FIRST NAME  
   
LAST NAME / COMPANY FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:

|  |  |   |  |   |
|--|--|---|--|---|
| A <input type="checkbox"/> One Family Residential    | C <input type="checkbox"/> Residential Vacant Land     | E <input type="checkbox"/> Commercial           | G <input type="checkbox"/> Entertainment / Amusement | I <input type="checkbox"/> Industrial     |
| B <input type="checkbox"/> 2 or 3 Family Residential | D <input type="checkbox"/> Non-Residential Vacant Land | F <input checked="" type="checkbox"/> Apartment | H <input type="checkbox"/> Community Service         | J <input type="checkbox"/> Public Service |

SALE INFORMATION

10. Sale Contract Date  8 / 17 / 2021  
Month Day Year

11. Date of Sale / Transfer  10 / 28 / 2021  
Month Day Year

12. Full Sale Price \$  1  2  4  4  8  0  0  0  
( Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

14. Check one or more of these conditions as applicable to transfer:

|   |
|---|
| A <input type="checkbox"/> Sale Between Relatives or Former Relatives                           |
| B <input type="checkbox"/> Sale Between Related Companies or Partners in Business               |
| C <input type="checkbox"/> One of the Buyers is also a Seller                                   |
| D <input type="checkbox"/> Buyer or Seller is Government Agency or Lending Institution          |
| E <input type="checkbox"/> Deed Type not Warranty or Bargain and Sale (Specify Below)           |
| F <input type="checkbox"/> Sale of Fractional or Less than Fee Interest (Specify Below)         |
| G <input type="checkbox"/> Significant Change in Property Between Taxable Status and Sale Dates |
| H <input type="checkbox"/> Sale of Business is Included in Sale Price                           |
| I <input type="checkbox"/> Other Unusual Factors Affecting Sale Price (Specify Below)           |
| J <input checked="" type="checkbox"/> None  |

ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

15. Building Class  D, 1 16. Total Assessed Value (of all parcels in transfer)  1  5  8  4  0  0  0

17. Borough, Block and Lot / Roll Identifier(s) ( If more than three, attach sheet with additional identifier(s) )  
 BRONX 3292 1



**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

**BUYER**

10/8/21

**BUYER'S ATTORNEY**

BUYER SIGNATURE  
5676 RIVERDALE AVENUE, SUITE 307

DATE

LAST NAME

FIRST NAME

STREET NUMBER

STREET NAME (AFTER SALE)

AREA CODE

TELEPHONE NUMBER

BRONX

NY

10471

**SELLER**

CITY OR TOWN

STATE

ZIP CODE

SELLER SIGNATURE

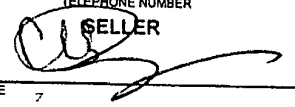
DATE

**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false Instruments.

**BUYER**

**BUYER'S ATTORNEY**

|   |  |                   |  |                  |                   |
|---|--|-------------------|--|------------------|-------------------|
| BUYER SIGNATURE<br>5676 RIVERDALE AVENUE, SUITE 307 |  | DATE              | LAST NAME  |                  | FIRST NAME        |
| STREET NUMBER<br>5676                               | STREET NAME (AFTER SALE)<br>RIVERDALE AVENUE |                   | AREA CODE  | TELEPHONE NUMBER |                   |
| CITY OR TOWN<br>BRONX                               | STATE<br>NY                                  | ZIP CODE<br>10471 | SELLER SIGNATURE<br> |                  | DATE<br>10/8/2025 |

**AFFIDAVIT OF COMPLIANCE  
WITH SMOKE DETECTOR REQUIREMENT  
FOR ONE- AND TWO-FAMILY DWELLINGS**

*Connecticut*  
State of ~~New York~~  
County of *Fairfield* SS.: *Stamford*

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at

2961 MARION AVENUE

Street Address Unit/Apt.

BRONX

Borough

New York,

3292

Block

1

Lot

(the "Premises");

That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

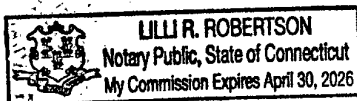
That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

*2961-65 Marion Ave*  
*Arthur Lee*  
\_\_\_\_\_  
Name of Grantor (Type or Print)  
*[Signature]*  
\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Name of Grantee (Type or Print)  
\_\_\_\_\_  
Signature of Grantee

Sworn to before me  
this 26<sup>th</sup> day of October 20 21

Sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_



These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

**NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6th, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.**

2021102000050101

**AFFIDAVIT OF COMPLIANCE  
WITH SMOKE DETECTOR REQUIREMENT  
FOR ONE- AND TWO-FAMILY DWELLINGS**

State of New York }  
County of } SS.:

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at

2961 MARION AVENUE

Street Address Unit/Apt.

BRONX

Borough

New York,

3292

Block

1

Lot

(the "Premises");

That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized.)

Name of Grantor (Type or Print)

Name of Grantee (Type or Print)

Signature of Grantor

Signature of Grantee

Sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Sworn to before me

this 25<sup>th</sup> day of October 20\_\_\_\_

*Cynthia L. Perfetti*

Notary Public, State of New York

Reg. No. 01PE6402108

Qualified in Bronx County

Commission Expires: 12/23/2023

These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

**NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6th, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.**

2021102000050101



The City of New York  
Department of Environmental Protection  
Bureau of Customer Services  
59-17 Junction Boulevard  
Flushing, NY 11373-5108

## Customer Registration Form for Water and Sewer Billing

### Property and Owner Information:

- (1) Property receiving service: BOROUGH: BRONX BLOCK: 3292 LOT: 1
- (2) Property Address: 2961 MARION AVENUE, BRONX, NY 10458
- (3) Owner's Name: 2961-65 M LLC
- Additional Name:

### Affirmation:



Your water & sewer bills will be sent to the property address shown above.

### Customer Billing Information:

#### Please Note:

- A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.
- B. Original bills for water and/or sewer service will be mailed to the owner, **at the property address or to an alternate mailing address**. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit [www.nyc.gov/dep](http://www.nyc.gov/dep) to provide us with the other party's information.

### Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

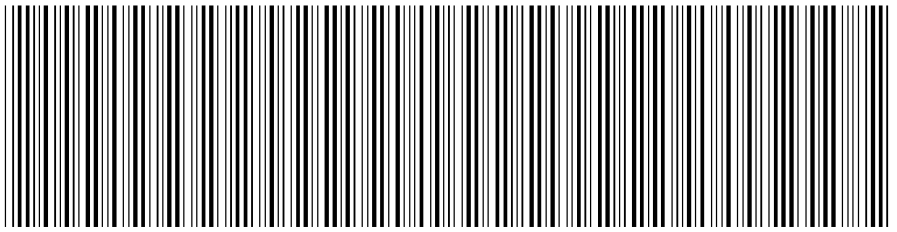
Print Name of Owner:

Signature: \_\_\_\_\_ Date (mm/dd/yyyy) 10/25/2001

Name and Title of Person Signing for Owner, if applicable:

**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.



2021111701597001003E2783

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 24**

**Document ID: 2021111701597001**

Document Date: 10-28-2021

Preparation Date: 12-31-2021

Document Type: MORTGAGE

Document Page Count: 23

**PRESENTER:**

FIRST AMERICAN TITLE INS - LW  
666 THIRD AVENUE  
3020-1086972  
NEW YORK, NY 10017  
515-832-3206  
LWING@FIRSTAM.COM

**RETURN TO:**

JPMORGAN CHASE BANK NA  
P.O. BOX 9011  
COPPELL, TX 75019

**PROPERTY DATA**

| Borough                                  | Block | Lot | Unit       | Address            |
|--|-------|-----|------------|--------------------|
| BRONX                                    | 3292  | 1   | Entire Lot | 2961 MARION AVENUE |
| <b>Property Type:</b> APARTMENT BUILDING |       |     |            |                    |

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**MORTGAGOR/BORROWER:**

2961-65 M LLC  
20 S. BROADWAY, SUITE 300  
YONKERS, NY 10701

**MORTGAGEE/LENDER:**

JPMORGAN CHASE BANK, NA  
14800 FRYE ROAD  
FORT WORTH, TX 76155

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 1,740,000.00

Taxable Mortgage Amount: \$ 1,740,000.00

Exemption:

TAXES: County (Basic): \$ 8,700.00

City (Additional): \$ 19,575.00

Spec (Additional): \$ 4,350.00

TASF: \$ 0.00

MTA: \$ 5,220.00

NYCTA: \$ 10,875.00

Additional MRT: \$ 0.00

**TOTAL:** \$ 48,720.00

Recording Fee: \$ 152.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

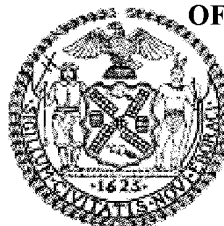
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 01-10-2022 09:58

City Register File No.(CRFN):

**2022000012464**



*Annette McMill*

**City Register Official Signature**

3020-1086972  
First American Title  
Insurance Company  
666 Third Avenue 5th Fl  
New York, N.Y. 10017  
Phone: (212) 922-9700  
Fax: (212) 922-0881

**MORTGAGE,  
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS,  
AND FIXTURE FILING**

Dated: October 28, 2021

in the amount of

**\$1,740,000.00**

(the "Mortgage Amount")

From

**2961-65 M LLC**

as mortgagor ("Borrower")  
having an address at:

**20 S Broadway, Ste 300  
Yonkers, NY 10701**

To

**JPMORGAN CHASE BANK, N.A.**

14800 Frye Road, 2nd Floor  
Mail Code TX1-0007  
Fort Worth, Texas 76155-2732  
Attention: Portfolio Administration

as mortgagee ("Lender")

**LOCATION OF PREMISES:**

Street Address: **2961-2965 Marion Ave**  
County of: **Bronx**  
State of: **New York**  
Borough: **Bronx**  
Section: **12**  
Block: **3292**  
Lot: **1**

---

**After recording, please return to:**

**JPMORGAN CHASE BANK, N.A.**  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

JPMORGAN CHASE BANK, N.A.  
Attention: CTL Closing  
P.O. Box 9011  
Coppell, TX 75019-9011

**BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS SECURITY INSTRUMENT MAY PROVIDE FOR ONE OR MORE OF THE FOLLOWING: (1) A VARIABLE RATE OF INTEREST; (2) A BALLOON PAYMENT AT MATURITY, (3) DEFERRAL OF A PORTION OF ACCRUED INTEREST UNDER CERTAIN CIRCUMSTANCES WITH INTEREST SO DEFERRED ADDED TO THE UNPAID PRINCIPAL BALANCE OF THE NOTE AND SECURED HEREBY.**

**MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS  
AND FIXTURE FILING**

Notwithstanding anything to the contrary set forth in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may become secured hereby at any time hereafter is \$1,740,000.00 together with interest thereon, and all amounts expended by Lender to maintain the lien of this Security Instrument or protect any of the Property, including without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, litigation expenses to prosecute or defend the rights, remedies and lien of this Security Instrument or title to the Property, and any costs, charges or amounts to which Lender becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority.

Loan No. 200490242

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Security Instrument"), is made this **28th day of October, 2021** between **2961-65 M LLC, a Delaware limited liability company**, the address of which is **20 S Broadway, Ste 300, Yonkers, NY 10701**, as mortgagor ("Borrower"); and **JPMORGAN CHASE BANK, N.A.** at its offices at **P.O. Box 9178, Coppell, Texas 75019-9178** (together with its successors and assigns, "Lender").

**RECITALS**

1. **Granting Clause.** Borrower irrevocably mortgages, warrants, grants, conveys and assigns to Lender and its successors and assigns, forever, all of Borrower's estate, right, title and interest in and to the property in the county of **Bronx**, state of New York, with a street address of **2961-2965 Marion Ave, Bronx, New York 10458** (which address is provided for reference only and shall in no way limit the description of the real and personal property otherwise described in this Section 1), described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 shall be referred to as the "Property"):

1.1 **Land and Appurtenances.** The land described on Exhibit A hereto, and all rights-of-way, easements, air rights, water rights and appurtenances thereto (collectively, the "Land"); and



1.2 **Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the Land (collectively, the "Improvements"), and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with the operation of the Land and the Improvements; and

1.3 **Enforcement and Collection.** Any and all rights of Borrower to collect and receive all rents, income, revenues, issues, earnest money, deposits, tax, utility and insurance refunds, mineral, oil and gas rights and profits, and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for their collection or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower; and

1.4 **Accounts, Income and Rights.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements, Impounds (as defined below) and general intangibles relating to any of the Property; and

1.5 **Leases and Rents.** All of Borrower's rights in and to all Leases and Rents (as such terms are defined in Section 2.2.1 below) (in accepting this Security Instrument, Lender does not assume any liability for the performance of any such Lease); and

1.6 **Insurance Policies; Condemnation Awards.** All rights in and to all pertinent present and future fire, hazard, earthquake or other insurance policies covering any of the Property (whether or not Lender requires such insurance and whether or not Lender is named as an additional insured or loss payee of such insurance); and all Awards (defined below); and all proceeds or sums payable in lieu of or as compensation for the loss of or damage to any of the Property; and

1.7 **Other Property.** All books and records of Borrower relating to the Property in any form, all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the Property or to the construction of the existing or any future Improvements, all rights of Borrower in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future Improvements, and any performance and/or payment bonds issued in connection therewith, and all trademarks, trade names, computer software and other intellectual property used by Borrower in connection with the Property.

## 2. **Security Agreement and Assignment of Leases and Rents.**

2.1 **Security Agreement.** To the extent any of the property described in Section 1 is personal property, Borrower grants to Lender, a security interest therein and in all products and proceeds of any thereof, pursuant to the Uniform Commercial Code of the state of New York (the "UCC"). Borrower hereby irrevocably authorizes Lender to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature. This Security Instrument constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of Improvements and fixtures described in Section 1.2 of this Security Instrument and to any other personal property that is now or hereafter becomes a part of the Property as fixtures.

### 2.2 **Assignment of Leases and Rents.**

2.2.1 **Absolute Assignment.** Borrower hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Lender all of Borrower's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Borrower's interest therein or any Improvements, any and all security deposits, guaranties and other security related thereto, and all supporting obligations, letters of credit (whether tangible

or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Lender the right to collect any and all income, rents, issues, profits, payments, damages, refunds, royalties and proceeds made pursuant to or in connection with the Leases and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Security Instrument creates and shall be construed to create an absolute assignment to Lender of the Leases and the Rents and shall not be deemed to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as defined below). Borrower irrevocably appoints Lender its true and lawful attorney at the option of Lender at any time an Event of Default (as defined below) exists and is continuing, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Borrower or in the name of Lender, for all such Rents and apply the same to the obligations secured by this Security Instrument.

2.2.2 **Revocable License to Collect.** So long as no Event of Default exists and is continuing, Borrower shall have a revocable license, to collect all Rents, and to retain, use or distribute the same. Upon the occurrence and during the continuation of any Event of Default, the foregoing license shall terminate automatically and without notice.

2.2.3 **Collection and Application of Rents by Lender.** While any Event of Default exists and is continuing: (i) Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Security Instrument, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Lender therefor, Borrower shall promptly deliver to Lender all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Borrower, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Lender may be applied by Lender against the obligations secured by this Security Instrument, less all expenses, including attorneys' fees and disbursements, in such order as Lender shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Security Instrument or other action taken by Lender under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Lender a mortgagee-in-possession of the Property.

2.2.4 **Direction to Tenants.** Borrower hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Borrower thereunder to Lender following receipt of any written notice from Lender that states that an Event of Default exists and is continuing and that all such amounts are to be paid to Lender. Borrower further authorizes and directs all such tenants to pay all such amounts to Lender without any right or obligation to inquire as to the validity of Lender's notice and regardless of the fact that Borrower has notified any such tenants that Lender's notice is invalid or has directed any such tenants not to pay such amounts to Lender.

2.2.5 **No Liability.** Lender shall not have any obligation to exercise any right given to it under this Security Instrument and shall not be deemed to have assumed any obligation of Borrower with respect to any agreement, lease or other property in which a lien or security interest is granted under this Security Instrument.

3. **Obligations Secured.** This Security Instrument is given for the purpose of securing:

3.1 **Performance and Payment.** The performance of the obligations contained herein and the payment of \$1,740,000.00 with interest thereon and all other amounts payable according to the terms of the Loan (as defined below) made to Borrower evidenced by a promissory note of even date herewith executed by Borrower, payable to the order of Lender, and any and all extensions, renewals, modifications or replacements thereof (the "Note"). As used herein, the "Loan" shall mean the loan evidenced by the Note and secured by this Security Instrument.

3.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Lender subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Lender pursuant to any provision of this Security Instrument subsequent to its execution.

3.3 **Interest.** All of the obligations secured by this Security Instrument shall bear interest at the rate of interest applicable to the Note (including interest at the Default Rate, as defined in the Note, as applicable), which interest shall also be secured by this Security Instrument.

3.4 **Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Lender under this Security Instrument, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the Loan and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "Loan Documents"); provided, however, that this Security Instrument does not and shall not in any event be deemed to, secure the obligations owing to Lender under the following Loan Documents: (a) any certificate and indemnity agreement regarding hazardous substances (the "Indemnity Agreement") executed in connection with the Loan (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of the Loan (collectively, the "Guaranty").

4. **Warranties and Covenants of Borrower.** Borrower represents and warrants to, and covenants and agrees with, Lender as provided herein. All representations and warranties contained in this Security Instrument are true and correct in all material respects as of the date of this Security Instrument and shall remain true and correct in all material respects as of each date thereafter until the obligations secured hereby are paid in full.

4.1 **Warranties.**

4.1.1 Borrower has full power and authority to grant the Property to Lender and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those encumbrances appearing in the title insurance policy accepted by Lender insuring the lien of this Security Instrument ("Permitted Encumbrances").

4.1.2 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower first obtains knowledge thereof, the Property is free from damage (including, but not limited to, any construction defects or nonconforming work) that would materially impair the value or use of the Property.

4.1.3 The Loan is solely for business or commercial purposes, and is not for personal, family, household or agricultural purposes.

4.1.4 To Borrower's knowledge and except as otherwise disclosed to Lender in writing prior to the date of this Security Instrument or disclosed to Lender in writing promptly after Borrower obtains knowledge thereof, Borrower, the Property and the present and contemplated use and occupancy of the Property are in compliance with all Applicable Laws in all material respects; and any such matters disclosed to Lender that are related to or affecting insurance coverage shall be disclosed in writing to Borrower's insurer.

4.1.5 Any and all rent rolls, property operating statements and other financial reports ("Financial Reports") furnished to Lender in connection with the Loan are true and correct in all material respects as of their dates, and no material adverse change has occurred in the matters reported in those Financial Reports since the dates of the last submission of those Financial Reports that has not been disclosed to Lender in writing.

4.1.6 Borrower has determined in good faith that: (a) the Loan, including any Guaranty, is an arm's-length transaction on market rate terms; and (b) neither Lender nor any of its affiliates exercised any discretionary authority or control over, or rendered any investment advice in connection with, Borrower's decision to enter into the Loan.

4.2 **Preservation of Lien.** Borrower will preserve and protect the priority of this Security Instrument as a lien on the Property subject only to the Permitted Encumbrances. If Borrower fails to do so, Lender may take any and all actions necessary or appropriate to do so and all sums expended by Lender in so doing, including without limitation, advances for taxes, assessments,

impositions or liens against the Property, shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Lender and shall bear interest at the highest rate borne by any of the obligations secured by this Security Instrument.

4.3 **Repair and Maintenance of Property.** Borrower will keep the Property in good condition and repair, including without limitation underpinning and supporting the Property and any Improvements. Borrower will not remove or demolish, alter, or make additions or construct any new structure on the Property, without the express written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Security Instrument to the contrary, (a) Borrower may make commercially reasonable nonstructural alterations, improvements and replacements to the Property in a manner customary for similar properties; and (b) with respect to commercial leases only, Borrower or its tenants may construct tenant improvements made pursuant to Leases of commercial space in the Property that have been entered into in good faith and in compliance with the requirements of this Security Instrument.

4.4 **Insurance.**

4.4.1 **Insurance Coverage.** At all times during the term of the Loan, Borrower shall comply, and shall cause any other owners of the Property to comply, with the minimum insurance requirements set forth in Schedule "1" attached hereto. Borrower will maintain such insurance as further security for the faithful performance of the obligations secured by this Security Instrument.

4.4.2 **Damage and Destruction.**

(a) **Borrower's Obligations.** In the event of any damage to or loss or destruction of the Property (a "Casualty"), Borrower shall (i) give prompt written notice of the Casualty to Lender and to Borrower's insurer, and shall make a claim under each insurance policy providing coverage therefor and shall promptly furnish Lender with a copy of such claim, proof of loss and such other documentation as Lender may reasonably require; (ii) cause the aggregate proceeds of any and all insurance policies insuring the Property, whether or not required by this Security Instrument, that are payable as a result of the Casualty (collectively, the "Insurance Proceeds") to be paid to Lender to be disbursed or applied in accordance with this Section 4.4.2; and (iii) promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Casualty (collectively, the "Restoration") and otherwise in accordance with this Section 4.4.2. Borrower shall be responsible for all uninsured losses and deductibles. As used in this Security Instrument, the term "Casualty Threshold Amount" means the lesser of \$250,000 or five percent of the original face principal amount of the Note. The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Mortgage.

(b) **Control and Disbursement of Proceeds.** If the Casualty is expected to be greater than the Casualty Threshold Amount, or if a Default exists, Lender shall control, administer and disburse all Insurance Proceeds subject to Borrower's satisfaction of the terms and conditions of Lender's form of disbursement agreement, or such other documentation required by Lender, relating to the disbursement of Insurance Proceeds and the Restoration of the Property. If the Casualty is expected to be equal to or less than the Casualty Threshold Amount, and for so long as no Default exists, Lender shall disburse the Insurance Proceeds to Borrower to complete the Restoration in accordance with this Security Instrument.

(c) **Lender's Rights.** Borrower hereby authorizes Lender, in its own name or as attorney-in-fact for Borrower (which power is coupled with an interest and is irrevocable so long as this Security Instrument remains of record) at any time an Event of Default exists and is continuing, to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds, and to deduct therefrom Lender's expenses incurred in the adjustment, collection and disbursement of such Insurance Proceeds or otherwise in connection with the Casualty or the Restoration. Each insurance company is hereby irrevocably authorized and directed to make payment of all Insurance Proceeds directly to Lender. Notwithstanding anything to the contrary, Lender shall not be responsible for or incur any liability for any such insurance, or for the form or legal sufficiency of

insurance contracts, solvency of insurers, or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder.

(d) **Application of Proceeds.** Lender shall have the option to apply the Insurance Proceeds to the obligations secured by this Security Instrument, whether or not then due, in such order as Lender may reasonably determine (or to hold such proceeds for future application to those obligations) if: (i) an Event of Default exists and is continuing; (ii) Borrower fails to satisfy any condition precedent to disbursement of Insurance Proceeds as required by Lender; or (iii) Lender reasonably determines that (A) the rental income will be insufficient to timely pay all debt service and other property operating expenses, or will be insufficient to provide a debt service coverage ratio at least equal to that existing immediately prior to the Casualty; (B) the Restoration cannot be completed by the earlier of (1) twelve months prior to the maturity date of the Note, or (2) within twelve months after the date of the Casualty; provided, however, nothing herein shall extend the maturity date of the Note; or (C) the loan-to-value ratio of the Property following the Restoration, as calculated by Lender in its reasonable discretion, will be greater than the loan-to-value ratio required by Lender's then-current underwriting requirements for similar loans secured by property similar to the Property.

(e) **Effect on the Indebtedness.** Any reduction in the obligations secured hereby resulting from the application of Insurance Proceeds or other funds pursuant to this subsection 4.4.2 shall be deemed to take effect only on the date of such application. No application of Insurance Proceeds or other funds to the obligations secured hereby shall result in any adjustment in the amount or due dates of installments due under the Note.

(f) **Costs and Expenses.** Borrower shall pay, within 30 days after demand by Lender, all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with the adjustment, collection and disbursement of Insurance Proceeds pursuant to this Security Instrument or otherwise in connection with the Casualty or the Restoration.

4.5 **Right of Inspection.** Subject to the rights of tenants, Borrower shall permit Lender or its agents or independent contractors, at all reasonable times and upon reasonable advance notice (except in the event of an emergency, in which case no advance notice is required), to enter upon and inspect the Property without materially and adversely interfering with the use and enjoyment of the Property by Borrower or any tenants of Borrower.

4.6 **Compliance with Laws, Etc.; Preservation of Licenses.** Notwithstanding any disclosure made by Borrower pursuant to Section 4.1.4 above, Borrower shall comply in all material respects with (a) all Federal, State and local laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities (collectively, "Applicable Law") applicable to Borrower, the Property or the use, repair and maintenance thereof by Borrower or any third party, (b) all easements, licenses and agreements relating to the Property or the use thereof by Borrower or any third party, and (c) all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits. Borrower shall indemnify, defend and hold harmless Lender for any and all damages, claims, liabilities, reasonable costs and expenses (including attorneys' fees) arising from Borrower's failure to comply with this Section 4.6.

4.7 **Further Assurances.** Borrower will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Lender deems reasonably necessary to grant the Property to Lender, or to carry out the purposes of this Security Instrument.

4.8 **Legal Actions.** Borrower will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Lender; and will pay all reasonable costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Lender, in a reasonable sum, in any such action or proceeding in which Lender may appear, in any suit or other proceeding to foreclose this Security Instrument, and in any foreclosure sale under this Security Instrument.

4.9 **Taxes, Assessments and Other Liens.** Except as provided in this Security Instrument, Borrower will pay prior to delinquency all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof.

4.10 **Expenses.** Except as prohibited under Applicable Law, Borrower will pay all reasonable costs, fees and expenses (including attorneys' fees) reasonably incurred by Lender in connection with this Security Instrument on the due date thereof (or if no other due date is specified, within 30 days after receipt of Lender's written notice thereof).

4.11 **Repayment.** Borrower will pay all principal and interest and any prepayment premiums on the Loan as provided in the Note. Borrower will pay all other amounts owed under the Loan Documents on the due date thereof (or if no other due date is specified, within 30 days after written demand by Lender). All such amounts shall bear interest at the interest rate applicable to the Note from the date advanced or expended by Lender (or, if not consisting of an advance or expenditure by Lender, from the due date) until paid. If Lender so elects in its sole discretion, such amounts shall be (i) added to the principal balance of the Loan and due and payable in full on the maturity date of the Note, or (ii) added to the principal balance of the Loan and amortized over the remainder of the amortization period used to calculate the monthly payments required under the Note, which may result in an increase to the amount of the monthly payment due under the Note.

4.12 **Financial and Operating Information.** Within 90 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender the rent rolls, property operating statements and other financial reports for the Property for such fiscal year, in a form acceptable to Lender in its reasonable discretion. In addition, within 20 days after written request by Lender, Borrower shall furnish to Lender such financial statements and information about (i) the Property, (ii) Borrower and Guarantor, or any general partners, managing members or managers of Borrower or Guarantor, or any other controlling parties of Borrower, and (iii) commercial tenants or occupants of any portion of the Property that are affiliates of Borrower or Guarantor of the Loan, as Lender may reasonably require.

If Borrower fails to comply with this Section 4.12, and such failure continues for a period of 30 days after written notice of such failure by Lender to Borrower, Borrower shall pay to Lender, as liquidated damages for the extra expense in servicing the Loan, \$500 on the first day of the month following the expiration of such 30-day period and \$100 on the first day of each month thereafter until such failure is cured. All such amounts shall be secured by this Security Instrument. Payment of such amounts shall not cure any Default or Event of Default resulting from such failure.

4.13 **Sale, Transfer, or Encumbrance of Property.**

4.13.1 **Encumbrances; Entity Changes.** Except as otherwise provided below and subject to Borrower's rights to enter into Leases, Borrower shall not, without the prior written consent of Lender, further encumber the Property or any interest therein, or cause or permit any change in the entity, ownership, or control of Borrower without first repaying in full the Note and all other sums secured hereby.

4.13.2 **Sales, Transfers, Conveyances.** Except as otherwise provided below, Borrower shall not, without the prior written consent of Lender (which consent shall be subject to the conditions set forth below), sell, transfer, or otherwise convey the Property or any interest therein, voluntarily or involuntarily, without first repaying in full the Note and all other sums secured hereby. Consent to any one transfer and assumption shall not be deemed a waiver of the right to require consent to any future transfers and assumptions.

4.13.3 **Conditions to Lender's Consent to Transfer and Assumption.** Lender will not unreasonably withhold its consent to a sale or transfer of the Property and related assumption of the Loan by the proposed transferee, provided however, that:

(a) Borrower shall provide to Lender a loan application on such form as Lender may require executed by the proposed transferee and accompanied by such other documents as Lender may require in connection therewith;

(b) Lender may consider the factors normally used by Lender as of the time of the proposed assumption in the process of determining whether or not to lend funds, and may require that the Property and the proposed transferee meet Lender's then-current underwriting, legal, regulatory and related requirements as of that time;

(c) Lender may specifically evaluate the financial responsibility, structure and real estate operations experience of any potential transferee;

(d) Lender may require that it be provided at Borrower's expense, with an appraisal of the Property, an on-site inspection of the Property, and such other documents and items, from appraisers, inspectors and other parties satisfactory to Lender, and may require that Borrower or the transferee of the Property correct any items of deferred maintenance that may be identified by Lender;

(e) Lender may, as a condition to granting its consent to a sale, transfer, or other conveyance of the Property, require in its sole discretion Borrower's payment to Lender of (i) a fee (the "Consented Transfer Fee") of one percent of the unpaid principal balance of the Note; (ii) review fees in accordance with Lender's fee schedule in effect at the time of the request ("Lender's Fee Schedule"), which shall be paid by Borrower to Lender upon Borrower's request for Lender's consent, and shall be non-refundable but applicable to the Consented Transfer Fee, to the extent applicable, (iii) Lender's reasonable attorneys' fees and other reasonable out-of-pocket expenses; and (iv) document preparation fees and other fees in accordance with Lender's Fee Schedule;

(f) No Default or Event of Default (each as defined below) has occurred and is continuing; and

(g) The transferee, a replacement guarantor acceptable to Lender, and any other parties shall execute such documentation in the form required by Lender in its sole and absolute discretion evidencing such transfer and related assumption, including without limitation, an assumption agreement, guaranties and environmental indemnity agreements; and upon the consummation of such transaction the Borrower and the existing guarantor shall be released from all future liability under the Loan Documents (except for the Indemnity Agreement) as provided in the assumption agreement.

4.13.4 **Unconsented Transfers.** Any failure to comply with Section 4.13.1 or 4.13.2 above shall constitute an "Unconsented Transfer" for purposes of this Security Instrument. In the event of an Unconsented Transfer, Borrower and its successors shall be jointly and severally liable to Lender for the payment of a fee (the "Unconsented Transfer Fee") of one percent of the unpaid principal balance of the Note as of the date of such Unconsented Transfer. The Unconsented Transfer Fee shall be due and payable upon written demand therefor by Lender, and shall be secured by this Security Instrument; provided, however, that payment of the Unconsented Transfer Fee shall not cure any Event of Default resulting from the Unconsented Transfer.

4.13.5 **No Waiver.** Lender's waiver of any of the Consented Transfer Fee, the Unconsented Transfer Fee or any other amount payable hereunder, in whole or in part for any one sale, transfer, encumbrance or other conveyance shall not preclude the imposition thereof in connection with any other sale, transfer, encumbrance or other conveyance.

4.13.6 **Permitted Transfers.** Notwithstanding the foregoing and notwithstanding Section 4.14, Lender's consent will not be required, and neither the Consented Transfer Fee nor the Unconsented Transfer Fee will be imposed, for any Permitted Transfer (as defined below), so long as all Transfer Requirements (as defined below) applicable to such Permitted Transfer are timely satisfied. As used herein, the following terms have the meanings set forth below:

"Permitted Transfer" means:

(a) The transfer of less than 25% in the aggregate during the term of the Note of the direct or indirect Equity Interests (as defined below) in Borrower, in addition to any transfers permitted under subparagraphs (b) or (c) of this definition (a "Minority Interest Transfer");

(b) A transfer that occurs by devise, descent or operation of law upon the death of a natural person (a "Decedent Transfer");

(c) A transfer made in good faith for estate planning purposes (i) to one or more non-minor Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more non-minor Immediate Family Members of a settlor of the applicable trust) or (ii) to one or more trusts or legal entities established for the benefit of, and solely owned by, the transferor and/or one or more Immediate Family Members of the transferor (or in the case of a transferor that is a trust or trustee, to one or more trusts or legal entities established for the benefit of, and solely owned by, one or more Immediate Family Members of a settlor of the applicable transferor trust) (an "Estate Planning Transfer");

(d) A transfer between existing owners of direct or indirect Equity Interests in the Borrower so long as there is no change in the individuals exercising day-to-day powers of decision-making, management and control of the Borrower, and no release of any guarantors; or

(e) A transfer of furniture, fixtures or equipment if they are reasonably deemed to be surplus to the normal operation and use of the Property or if they are promptly replaced by similar items of at least equivalent value and utility.

"Transfer Requirements" means, with respect to any Permitted Transfer, all of the following that apply to that transfer:

(a) In the case of any Permitted Transfer:

(i) none of the persons or entities liable for the repayment of the Loan shall be released from such liability;

(ii) such transfer must not violate Applicable Law, and the transferee must not be a "specially designated national" or a person that is subject or a target of any economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury or the U.S. Department of State ("Sanctions") and such transfer must not otherwise result in a violation of Sanctions, the USA PATRIOT Act of 2001, any "know your customer" rules applicable to Lender or any other Applicable Law; and

(iii) Borrower must provide Lender with not less than 30 days' prior written notice of the proposed transfer (or to the extent that such transfer is a Decedent Transfer then, as soon as reasonably practicable following Borrower becoming aware that the transfer has occurred), which notice shall include a summary of the proposed changes in the organization, ownership and management of the Property or the applicable entity and such further information as Lender may require to make the determinations contemplated by this subsection (a); provided, however, that no prior notice shall be required for an Estate Planning Transfer or any transfer that results in the transferee owning less than 10% in the aggregate of the direct or indirect Equity Interests in Borrower.

(b) In the case of any Minority Interest Transfer or Estate Planning Transfer, there shall be no change in the individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its sole discretion. In the case of a Decedent Transfer, any new individual exercising such powers must be satisfactory to Lender in its reasonable discretion.

(c) In the case of a Decedent Transfer, if the decedent was a Borrower or guarantor of the Loan, within 30 days after written request by Lender, one or more other persons or entities having credit standing and financial resources reasonably acceptable to Lender, shall assume or guarantee the Loan by executing and delivering to Lender a guaranty or assumption agreement and a certificate and indemnity agreement regarding hazardous substances, each satisfactory to Lender,



providing Lender with recourse substantially identical to that which Lender had against the decedent and granting Lender liens on any and all interests of the transferee in the Property.

(d) In the case of any Estate Planning Transfer (other than a transfer by an individual of an interest in the Property into a revocable trust created for their benefit or the benefit of an Immediate Family Member and which such individual is the trustee) that results in a transfer of an interest in the Property, the transferee shall, prior to the transfer, execute and deliver to Lender an assumption agreement satisfactory to Lender, providing Lender with recourse substantially identical to that which Lender had against the transferor and granting Lender liens on any and all interests of the transferee in the Property.

(e) In the case of any Permitted Transfer that results in a transfer of an interest in the Property, Lender shall be provided, at no cost to Lender, with an endorsement to its title insurance policy insuring the lien of this Security Instrument, which endorsement shall insure that there has been no impairment of that lien or of its priority.

(f) In the case of any Permitted Transfer, Borrower or the transferee shall pay all costs and expenses (including attorneys' fees) reasonably incurred by Lender in connection with that Permitted Transfer, any applicable fees in accordance with Lender's fee schedule in effect at the time of the Permitted Transfer, and shall provide Lender with such information and documents as Lender reasonably requests in order to make the determinations called for by this Security Instrument and to comply with Applicable Law.

(g) No Default shall exist.

"Equity Interest" means partnership interests in Borrower, if Borrower is a partnership, member interests in Borrower, if Borrower is a limited liability company, or shares of stock of Borrower, if Borrower is a corporation.

"Immediate Family Members" means, with respect to any person, that person's parents, spouse, registered domestic partner (under an applicable state or District of Columbia law providing for registration of domestic partnerships with a governmental agency), siblings, children and other lineal descendants, and the spouses and registered domestic partners of such person's parents, siblings, children and other lineal descendants.

#### 4.14 Borrower Existence.

4.14.1 Legal Entities. Except as otherwise permitted by this Security Instrument, if Borrower is a corporation, partnership, limited liability company, or other legal entity, Lender is making the Loan in reliance on Borrower's continued existence, ownership and control in its present form. Borrower will not alter its name, jurisdiction of organization, structure, ownership or control without the prior written consent of Lender and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. If Borrower is a partnership, Borrower will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Lender. The withdrawal or expulsion of any general partner from the Borrower partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

4.14.2 Trusts. Except as otherwise permitted by this Security Instrument, if Borrower is a trust, there shall be no change in the trustee or other individuals exercising day-to-day powers of decision-making, management and control over either Borrower or the Property unless Lender has given its prior written consent to such change in its reasonable discretion.

4.15 Information. Lender is authorized to disclose to potential participants, assignees, regulators, Federal Home Loan Banks and Federal Reserve Banks, information in Lender's possession with respect to Borrower, guarantors of the Loan, the Property and the Loan.

4.16 **Tax and Insurance Impounds.**

4.16.1 **Impounds.** In addition to the payments required by the Note, Borrower shall pay Lender, at Lender's request, such sums as Lender may from time to time estimate will be required (a) to pay, at least one month before delinquency, the next-due taxes, assessments, insurance premiums and similar charges affecting the Property (collectively, the "Impositions"), divided by the number of months to elapse before one month prior to the date when the applicable Impositions will become delinquent; and (b) at the option of Lender and to the extent permitted under Applicable Law, to maintain a reserve equal to one-sixth of the total annual amount of the Impositions. Lender shall hold such amounts without interest or other income to Borrower (unless required under Applicable Law) to pay the Impositions. The total of all payments to Lender under subsection 4.16.1 shall be referred to herein collectively, as the "Impounds". If this estimate of the Impounds proves insufficient, Borrower, upon demand by Lender, shall pay Lender such additional sums as may be required to pay the Impositions at least one month before delinquency. Borrower hereby acknowledges and agrees that if Lender does not require Borrower to make Impound payments for all or any portion of the Impositions at the origination of the Loan, at any time following the occurrence of an Event of Default (regardless of whether it is later cured), Borrower shall be required to make such Impounds within 30 days after receipt of written notice from Lender.

4.16.2 **Application.** If the Impounds in any one year exceed the amounts actually paid by Lender for Impositions, all or any portion of such excess may be paid to Borrower or credited by Lender on subsequent payments under this section. At any time after the occurrence and during the continuance of an Event of Default, Lender may apply any balance of Impounds it holds to any of the obligations secured hereby in such order as Lender may elect.

4.16.3 **Tax Reporting Service.** Lender may, in its sole and absolute discretion, contract with a tax reporting service covering the Property. Borrower agrees that Lender may rely on the information furnished by such tax service and agrees to pay the reasonable cost of that service within 30 days after receipt of a billing for it.

4.17 **Leasing Matters.** Borrower shall not receive or collect any Rents in advance in excess of one month's Rent from any tenant or collect a security deposit in excess of two months' Rent from any tenant. The Lender shall have all of the rights against tenants of the Property as set forth in Section 291-f of the Real Property Law of New York. To the extent Applicable Law requires any security deposits or other amounts received from tenants of the Property to be held in a segregated account, Borrower shall promptly deposit and maintain all applicable deposits and other amounts in a segregated trust account in a federally insured institution. Borrower shall perform Borrower's obligations under the Leases in all material respects. Borrower hereby consents to Lender obtaining copies of rent rolls and other information relating to the Leases from any governmental agency with which Borrower is obligated to file such information or that otherwise collects or receives such information.

4.18 **Condominium and Cooperative Provisions.** If the Property is not subject to a recorded condominium plan or map, a cooperative regime, or other common interest development regime, on the date of this Security Instrument, Borrower will not subject the Property or any portion thereof to such a plan, map, or regime without the written consent of Lender, which consent may be granted or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including but not limited to Borrower providing Lender with such title insurance endorsements and other documents as Lender may require. If the Property is subject to a recorded condominium plan or map, or other common interest development regime, on the date of this Security Instrument: (a) Borrower represents and warrants that none of the condominium units and no portion of the common elements in the Property have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (b) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any condominium unit or any of the common elements of the Property unless expressly agreed to in writing by Lender; (c) Borrower shall operate the Property solely as a rental property; and (d) the Property granted, conveyed and assigned to Lender hereunder includes all rights, easements, rights of way, reservations and powers of Borrower, as owner, declarant or otherwise, under any applicable condominium act or statute and under any and all condominium declarations, survey maps and plans, association articles and bylaws and documents similar to any of the foregoing. If the Property is subject to a cooperative regime on the date of this Security Instrument: (i) Borrower

represents and warrants that none of the corporate shares in the cooperative regime have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (ii) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any of the corporate shares of the cooperative regime; and (iii) Borrower shall operate the Property solely as a rental property.

4.19 **Use of Property; Zoning Changes.** Unless required by Applicable Law, Borrower shall not: (a) except for any change in use approved by Lender in writing, allow changes in the use for which all or any part of the Property is being used at the time this Security Instrument is executed; (b) convert any individual dwelling unit or common area in the Property to primarily commercial use; or (c) initiate or acquiesce in a change in the zoning classification of the Property.

4.20 **Lien Law.** Borrower will, in compliance with Section 13 of the New York Lien Law, receive the advances secured hereby and will hold the right to receive such advances in a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of the cost of any such improvement before using any part of the total of the advance for any other purpose.

5. **Default.**

5.1 **Definition.** Any of the following shall constitute an "Event of Default" as that term is used in this Security Instrument (and the term "Default" shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied):

5.1.1 Any regular monthly payment under the Note is not paid so that it is received by Lender within fifteen (15) days after the date when due, or any other amount secured by this Security Instrument (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note) is not paid so that it is received by Lender when due;

5.1.2 Any representation or warranty made by Borrower to or for the benefit of Lender herein or elsewhere in connection with the Loan, including but not limited to any representation in connection with the security therefor, shall have been incorrect or misleading in any material respect;

5.1.3 Borrower or any other party thereto (other than Lender) shall fail to perform its obligations under any other covenant or agreement contained in this Security Instrument, the Note, any other Loan Document, which failure continues for a period of 30 days after written notice of such failure by Lender to Borrower (or for a period of 60 days after such notice if such failure cannot reasonably be cured within such 30-day period, but can be cured within such 60-day period and Borrower is proceeding diligently to cure it), but no such notice or cure period shall apply in the case of: (i) any such failure that could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument or the other Loan Documents, result in harm to Lender or impairment of the Note, this Security Instrument, or any other security given under any other Loan Document; (ii) any such failure that is not reasonably susceptible of being cured during such cure period; (iii) breach of any provision that contains an express cure period; or (iv) any breach of Section 4.13 or Section 4.14 of this Security Instrument;

5.1.4 Borrower or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they become due, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding, provided that if such petition or proceeding is not filed or acquiesced in by Borrower or the subject thereof, it shall constitute an Event of Default only if it is not dismissed within 60 days after it is filed or if prior to that time the court enters an order substantially granting the relief sought therein; or

5.1.5 Borrower or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage, deed of trust or similar security instrument encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness secured thereby, which default continues beyond any applicable cure period.

5.2 **Lender's Right to Perform.** After the occurrence and during the continuance of any Event of Default, Lender, but without the obligation so to do and, to the extent permitted by Applicable Law, without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Lender and its agents being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; pay, purchase, contest or compromise any encumbrance, charge or lien; and in exercising any such powers, pay necessary expenses and engage counsel. All sums so expended (including attorneys' fees) shall be secured hereby and bear interest at the Default Rate of interest specified in the Note from the date advanced or expended until repaid and shall be payable by Borrower to Lender on demand.

5.3 **Remedies on Default.** Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Lender and Lender may:

5.3.1 To the extent permitted by Applicable Law, have a receiver appointed as a matter of right without notice to Borrower and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Lender elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Lender and added to the indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender, or advanced by Lender to the receiver, for such purposes shall become an additional part of the indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 5.3 shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Property.

5.3.2 Foreclose this Security Instrument as provided in Section 7 or otherwise realize upon the Property as permitted under Applicable Law.

5.3.3 Sue on the Note as permitted under Applicable Law.

5.3.4 Avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or Applicable Law.

5.4 **No Waiver.** By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of that or any other portion of the obligations secured by this Security Instrument. Lender may from time to time accept and apply any one or more payments of less than the full amount then due and payable on such obligations without waiving any Default, Event of Default, acceleration or other right or remedy of any nature whatsoever. In addition, the failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right. Furthermore, the waiver of any Default or Event of Default shall not constitute a waiver of any subsequent or other Default or Event of Default.

5.5 **Waiver of Marshaling, Etc.** In connection with any foreclosure sale under this Security Instrument, Borrower hereby waives, for itself and all others claiming by, through or under Borrower, any right Borrower or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 **Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising Applicable Law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. Lender shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the Loan proceeds.

6. **Condemnation.** Any and all awards of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property for public or private use, or for injury to any portion of the Property ("Awards"), are hereby assigned and shall be paid to Lender which may apply or disburse such Awards in the same manner, on the same terms, subject to the same conditions, to the same extent, and with the same effect as provided in Section 4.4.2 above for disposition of Insurance Proceeds. Without limiting the generality of the foregoing, if the taking results in a loss of the Property to an extent that, in the reasonable opinion of Lender, renders or is likely to render the Property not economically viable or if, in Lender's reasonable judgment, Lender's security is otherwise impaired, Lender may apply the Awards to reduce the unpaid obligations secured hereby in such order as Lender may determine, and without any adjustment in the amount or due dates of installments due under the Note. If so applied, any Awards in excess of the unpaid balance of the Note and other sums due to Lender shall be paid to Borrower or Borrower's assignee. Such application or release shall not cure or waive any Default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all Awards or other relief therefor, and Borrower agrees to pay Lender's costs and reasonable attorneys' fees incurred in connection therewith. Lender shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

7. **Foreclosure.** Upon the occurrence of any Event of Default, Lender shall have the option, without notice or demand, to declare all sums secured hereby immediately due and payable and to proceed to foreclose on this Security Instrument as now or then provided by law (in which event Lender shall be entitled to the appointment of a receiver) pursuant to a judicial proceeding in accordance with Article 13 of the New York Real Property Actions and Proceedings Law ("RPAPL") or by advertisement in accordance with Article 14 of RPAPL. Any foreclosure shall forever bar Borrower and all persons claiming under Borrower from all right and interest in the Property. In any such proceeding Lender shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Lender shall be entitled to possession of the Property during any period of redemption. Borrower hereby waives any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Security Instrument by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect full redemption. If a deficiency remains after proper application of the proceeds of sale of the Property, Borrower shall pay the same immediately after determination of the amount thereof.

8. **Notices.** Any notice to or demand on Borrower in connection with this Security Instrument or the obligations secured hereby shall be deemed to have been sufficiently made when deposited in the United States mails (with first-class or registered or certified postage prepaid), addressed to Borrower at Borrower's address set forth above. Any notice to or demand on Lender in connection with this Security Instrument or such obligations shall be deemed to have been sufficiently made when deposited in the United States mails with registered or certified postage prepaid, return receipt requested, and addressed to Lender at the address set forth above. Any party may change the address for notices to that party by giving written notice of the address change in accordance with this section.

9. **Modifications, Etc.** Each person or entity now or hereafter owning any interest in the Property agrees, by executing this Security Instrument or taking the Property subject to it, that Lender may in its sole discretion and without notice to or consent of any such person or entity: (i) extend the time for payment of the obligations secured hereby; (ii) discharge or release any one or more parties from their liability for such obligations in whole or in part; (iii) delay any action to collect on such obligations or to

realize on any collateral therefor; (iv) release or fail to perfect any security for such obligations; (v) consent to one or more transfers of the Property, in whole or in part, on any terms; (vi) waive or release any of holder's rights under any of the Loan Documents; (vii) increase the amount of such obligations as permitted by the Loan Documents; or (viii) proceed against such person or entity before, at the same time as, or after it proceeds against any other person or entity liable for such obligations.

10. **Successors and Assigns.** All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

11. **Governing Law; Severability.** This Security Instrument shall be governed by the laws of the state where the Property is located, except to the extent preempted by federal laws applicable to national banks. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, the conflict shall not affect other provisions of this Security Instrument or the Note that can be given effect without the conflicting provision, and to this end the provisions of this Security Instrument and the Note are declared to be severable.

12. **Maximum Interest.** No provision of this Security Instrument or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by Applicable Law. If any excess of interest in such respect is herein or in the Note provided for, neither Borrower nor its successors or assigns shall be obligated to pay that portion of such interest that is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section shall control any provision of this Security Instrument or the Note that is inconsistent herewith.

13. **Attorneys' Fees and Legal Expenses.** In the event of any Default under any Loan Document, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any Loan Documents, Lender shall be entitled to collect from any Obligor (as defined in the Note), on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to reasonable fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, such Obligor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of any Obligor, or any party having any interest in any security for any obligations secured hereby; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to the Loan Documents; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing. Notwithstanding anything to the contrary set forth in this Security Instrument or the other Loan Documents, in the event of any litigation between Lender and any Obligor outside the context of a bankruptcy proceeding involving such Obligor as debtor, which litigation arises out of or is related to the Loan or to the Property, if that Obligor is the ultimate prevailing party therein and Lender is not the ultimate prevailing party, such Obligor shall be entitled to recover from Lender the Obligor's reasonable attorneys' fees and court costs incurred therein.

14. **Time Is of the Essence.** Time is of the essence under this Security Instrument and in the performance of every term, covenant and obligation contained herein.

15. **Miscellaneous.**

15.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

15.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Security Instrument.

15.3 This Security Instrument, the Note and the other Loan Documents constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other

understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

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

15.5 The existence of any violation of any provision of this Security Instrument or the other Loan Documents (including but not limited to building or health code violations) as of the date of this Security Instrument, whether or not known to Lender, shall not be deemed to be a waiver of any of Lender's rights under any of the Loan Documents including, but not limited to, Lender's right to enforce Borrower's obligations to repair and maintain the Property.

15.6 Upon written request of Borrower in connection with a refinancing of the loan secured hereby or a sale of the Property, Lender shall assign this Security Instrument, without recourse, warranty or representation whatsoever to the refinancing lender upon (a) payment of a sum equal to all monies or indebtedness outstanding under the Note, this Security Instrument and all other Loan Documents, including but not limited to, the outstanding principal amount of the loan secured hereby, all interest accrued thereon and any Prepayment Premium (as defined in the Note), Lender's standard assignment fee as in effect at the time of such assignment and payment of all costs and expenses (including, without limitation, reasonable in-house and outside attorneys' fees) incurred in connection with the assignment of this Security Instrument, and (b) Borrower's delivery to Lender of an affidavit pursuant to Section 275 of the New York Real Property Law and such other documents and instruments as Lender may reasonably request.

**16. USA PATRIOT Act Notification and Covenant.**

16.1 Lender hereby notifies Borrower that, pursuant to the requirements of Section 326 of the USA PATRIOT Act of 2001, 31 U.S.C. Section 5318 (the "Act"), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

16.2 Neither Borrower nor any other party liable for the obligations secured hereby as a guarantor or general partner nor any other person or entity participating in any capacity in the Loan will, directly or indirectly, use the proceeds of the Note, or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other person or entity, to (a) further an offer, payment, promise to pay, or authorize the payment or giving of money, or anything else of value, to any person (including, but not limited to, any governmental or other entity) in violation of Applicable Law of any jurisdiction applicable to Borrower or any other party liable for the obligations secured hereby as a guarantor or general partner from time to time relating to bribery or corruption; or (b) fund, finance or facilitate any activities or business or transaction of or with any person or entity, or in any country or territory, that, at the time of such funding, is the subject of any Sanctions, or in any other manner that would result in a violation of Sanctions by any person or entity, including any person or entity participating in any capacity in the Loan.

**17. WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS SECURITY INSTRUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS CONTEMPLATED HEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

18. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THE LOAN DOCUMENTS (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

19. **Type of Property.** Borrower represents and warrants to Lender that this Security Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own separate cooking facilities. ✓

DATED as of the day and year first above written.

**BORROWER:**

2961-65 M LLC,  
a Delaware limited liability company

By: 2961-65 M HOLDING LLC,  
a Delaware limited liability company,  
Sole Member

By: 2961-65 M S34 LLC,  
a New York limited liability company,  
Managing Member

By: \_\_\_\_\_  
JONATHAN WIENER,  
Managing Member



State of New York ) ss.  
County of Bronx )

On the 25<sup>th</sup> day of October in the year 2021, before me, the undersigned, a Notary Public in and for said state, personally appeared JONATHAN WIENER, 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/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Signature of Notary Public

**Cynthia L. Perfetti**  
Notary Public, State of New York  
Reg. No. 01PE6402108  
Qualified in Bronx County  
Commission Expires: 12/23/2023

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE NORTHEASTERLY SIDE OF BEDFORD PARK BOULEVARD WITH THE NORTHWESTERLY SIDE OF MARION AVENUE;

RUNNING THENCE NORTHERLY ALONG THE NORTHEASTERLY SIDE OF BEDFORD PARK BOULEVARD, 123.28 FEET;

THENCE NORTHEASTERLY PARALLEL WITH MARION AVENUE, 166.06 FEET;

THENCE SOUTHEASTERLY AT RIGHT ANGLES WITH MARION AVENUE, 110 FEET TO THE NORTHWESTERLY SIDE OF MARION AVENUE;

THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY SIDE OF MARION AVENUE, 221.73 FEET TO THE POINT OR PLACE OF BEGINNING.

PROPERTY ADDRESS: 2961-2965 MARION AVE, BRONX, NEW YORK 10458

Loan No. 200490242

### Schedule 1 to Security Instrument

#### Insurance Requirements

1. **Evidence of Coverage.** Prior to the scheduled Loan funding, Lender must receive and approve written evidence of all required insurance on an ACORD form 28 for property insurance and ACORD form 25 for liability insurance (or similar forms acceptable to Lender in its sole discretion) together with satisfactory proof of payment of premiums. The evidence of coverage must show an inception date prior to or corresponding with the date of the Loan funding. Within 30 days after Loan funding, Borrower must provide Lender with a copy of all insurance policies (including flood and windstorm policies, if applicable) and all required endorsements. Policies must show an inception date prior to or corresponding with the date of the Loan funding. All documents must reflect the Lender-assigned loan number for the Loan as shown above. If flood insurance is required, special requirements apply, as described in paragraph 2.5 of this Schedule 1. ACORD or other certificates are not acceptable evidence of flood insurance.

2. **Required Coverages and Policy Amounts.** Borrower must maintain, or cause to be maintained, the following insurance coverages at all times while any portion of the Loan remains outstanding:

2.1 **Property Insurance.** The property insurance policy must insure against loss or damage to the improvements on the Property by fire and other perils substantially equivalent to those insured under the Causes of Loss – Special Form published by ISO, and against such other perils, including windstorm, as may be specified by Lender. Terrorism and/or earthquake/earth movement insurance coverage and a building ordinance extension endorsement or law and ordinance coverage may be required on a case-by-case basis. Notwithstanding anything to the contrary, Lender shall not require earthquake or terrorism insurance during the term of the Loan unless: (a) required under Applicable Law; (b) required by Lender for similar loans secured by property similar to the Property; (c) required by Lender as a result of a material change in circumstances that expose the Property to a greater risk of peril; or (d) required in connection with the origination of the Loan. The property insurance policy must be in an amount not less than 100% of the replacement cost of the improvements on the Property (without deduction for depreciation) as determined by Lender for purposes of protection of Lender's interests (the "Minimum Property Coverage Amount") and must identify Borrower and the Property address as they appear in the loan documents governing the Loan (the "Loan Documents"). The replacement cost coverage may be provided either in the terms of the policy or by endorsement. If Lender, in its sole discretion, permits coverage of less than the Minimum Property Coverage Amount, then such policy must contain an agreed amount endorsement. If the policy is a blanket policy covering the Property and one or more other properties, the policy must specify the dollar amount of the total blanket limit of the policy that is allocated to the Property, and the amount so allocated to the Property must not be less than the Minimum Property Coverage Amount.

2.2 **Loss of Rents/Business Income Interruption.** Borrower must maintain loss of rents or business income interruption insurance against loss of income (including but not limited to rent, cost reimbursements and all other amounts payable by tenants under leases or otherwise derived by Borrower from the operation of the Property) arising out of damage to or destruction of the improvements on the Property by fire and each other peril insured against under each insurance policy insuring against any type of casualty to the Property or any part thereof that is required pursuant to this Security Instrument. Such insurance must cover the actual loss sustained for at least 12 months with a minimum coverage amount of at least 12 months' potential gross income generated by the Property from all sources, as determined by Lender and without deduction for actual or projected vacancy.

2.3 **Boiler and Machinery.** If a steam boiler is located at the Property, Borrower must carry boiler and machinery coverage in at least the Minimum Property Coverage Amount. If a separate boiler and machinery policy is issued, that policy must include loss of rents or business interruption coverage as described in paragraph 2.2 of this Schedule 1.

2.4 **Liability.** Borrower must maintain commercial general liability insurance (including coverage for elevators and escalators, if any, on the Property) on an occurrence form substantially equivalent to ISO form CG 0001 with coverage of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. All policies must be primary and noncontributory with any other insurance Borrower may carry.

2.5 **Flood.** If any building or mobile home on the Property which secures the Loan is at any time located in a federally-designated special flood hazard area in which flood insurance has been made available pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Act") or other applicable or successor legislation or other area identified by Lender as having a high or moderate risk of flooding (a "Special Flood Hazard Area"), then Borrower must provide Lender with a separate flood insurance policy for each such building or mobile home located in a Special Flood Hazard Area and any contents thereof that also secure the Loan (each a "Building"). **Lender does not accept ACORD or other certificates as acceptable proof of flood insurance.** The amount of flood insurance coverage for each Building must be in an amount at least equal to the Minimum Flood Coverage Amount for the Building. As used in this Security Instrument, "Minimum Flood Coverage Amount" means the lesser of the following for each Building (not including land), as determined by Lender: (i) the insurable value of the Building ("Insurable Value"); or (ii) the outstanding principal balance of the Loan allocated to the Building. For each flood insurance policy, the deductible may not exceed \$10,000.00 for a multifamily Building or \$50,000.00 for a commercial Building; provided, however, for private insurance policies described below, the deductible may not exceed the greater of (A) \$10,000.00 for a multifamily Building and \$50,000.00 for a commercial Building, or (B) 10% of the amount of flood insurance coverage under the private insurance policy. If the amount of coverage under the flood insurance policy for any Building is less than the Insurable Value, Lender may require a Difference in Conditions policy satisfactory to Lender to cover a loss that would not be covered under such flood insurance policy. If flood insurance is required, please see Lender's Flood Insurance Requirements letter, the Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, and the Flood Insurance Coverage Detail for further detail about Lender's flood insurance requirements. Subject to the requirements related to private insurance policies explained below, Lender will accept as evidence of the required flood insurance any of the following: (1) a copy of the insurance policy; (2) a declarations page from the insurance policy; or (3) an application plus proof that the premium has been paid in full. For Lender to accept the evidence described in item (3), Borrower must provide Lender with a copy of the insurance policy or the declarations page within 30 days of closing. If Borrower provides flood insurance by a private insurance policy (i.e., a policy that is not a standard policy issued on behalf of the National Flood Insurance Program ("NFIP")) for coverage amounts of \$500,000.00 or less for commercial or multifamily properties, in order to make the required comparison to the NFIP standard policy, Lender will require a copy of the private insurance policy prior to closing. If the private insurance policy fails to meet the criteria set forth in Lender's Flood Insurance Requirements letter or cannot be obtained in time to be reviewed prior to closing of the Loan, Borrower will be required to purchase an NFIP policy in the amount required by the Flood Act as a condition to closing of the Loan.

2.6 **Workers Compensation Insurance.** If Borrower has employees working at the Property, Borrower must carry workers compensation insurance in compliance with the laws of the state in which the Property is located.

2.7 **Changes in Insurance Requirements.** Lender may reasonably change its insurance requirements from time to time throughout the term of the obligations secured by this Security Instrument by giving written notice of such changes to Borrower. Without limiting the generality of the foregoing, Borrower shall from time to time obtain such additional coverages or make such increases in the amounts of existing coverage as may reasonably be required by written notice from Lender. Lender reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time.

3. **Policy and Premium Term.** If a new policy is being issued, the minimum policy term must be one year from Loan funding, with evidence that the premium has been paid in full for the term of the policy. If a new policy is not being issued due to there being an existing policy in force, the remaining term of the existing policy must be at least two months from Loan funding, with evidence that the premium has been paid for the remaining term of the policy.

4. **Maximum Deductibles.** The maximum deductible on the property insurance policy must not exceed the greater of \$25,000.00 or one percent of the applicable amount of coverage. Borrower may carry a lesser deductible if Borrower so chooses. Notwithstanding the foregoing, if the windstorm peril is excluded from the property insurance policy because the Property is located in a high-risk wind area, and windstorm coverage is provided through a separate policy, windstorm coverage only may have a deductible of up to five percent of the loss (and, if applicable, subject to a policy provision that the maximum deductible for windstorm coverage, regardless of the amount of the loss, will be a specified amount not to exceed \$250,000.00). Acceptable deductibles for flood policies are described in paragraph 2.5 of this Schedule 1.

5. **Acceptable Insurance Companies.** The insurer (the "Insurer") providing the insurance required in this Security Instrument and the other Loan Documents must be authorized to do business in the state where the Property is located. Lender shall have the right to approve or, for reasonable cause, disapprove the proposed Insurer selected by Borrower. The Insurer must

have a current Best's rating of "A-" and a financial size category of "VII" or better from A.M. Best Company. A California FAIR (Fair Access to Insurance Requirements) Plan Association policy, or equivalent policy issued by a similar state-run insurer in another state, is acceptable only when minimum form coverage cannot be obtained from an insurance company with such rating.

6. **Mortgage and Loss Payee Endorsement.** Each property policy must name "JPMorgan Chase Bank, National Association and its successors and assigns" as the only mortgagee and loss payee pursuant to a mortgage clause or endorsement (the mortgage clause included in Insurance Service Office ("ISO") Property Form No. CP 00 10 or its equivalent, which must be satisfactory to Lender and must provide that Lender will not have its interest voided by the act or omission of Borrower and that Lender may file a claim directly with the Insurer), which clause or endorsement must be contained in or attached to the policy and must show the following address for Lender: JPMorgan Chase Bank, N.A. and its successors and assigns, P.O. Box 9110, Coppell, Texas 75019-9110.

7. **Renewal Policies.** Borrower must renew or replace all required insurance policies so as to maintain continuous coverage in compliance with the Loan Documents. Borrower must provide Lender with a complete copy of each renewal or replacement policy (including endorsements) within 30 days after its effective date. Lender may order insurance meeting its requirements (at Borrower's expense) if any such policy is not received by such date.

8. **Notice of Cancellation.** All policies must guarantee that Lender will receive 30 days' advance notice prior to cancellation and ten days' notice for nonpayment of premiums. If a notice of cancellation is received on an existing policy and not reinstated or replaced with an acceptable policy before the effective date of the cancellation, Lender may order replacement coverage at Borrower's expense.

9. **Failure of Borrower to Maintain Insurance.**

9.1 **Lender Placed Insurance.** If Borrower fails to maintain insurance in accordance with this Security Instrument and the other Loan Documents, Lender may, in its sole discretion, obtain insurance to protect Lender's interests. This insurance is called "lender placed insurance."

9.2 **Limited Coverage.** Lender placed insurance may cover only the improvements and will be only in the amount required by Lender. In addition to other differences, the amount of coverage on the lender placed insurance may be less than Borrower's policy and may not cover Borrower's equity in the Property, the deductibles may be higher and there may not be personal property/contents, personal liability, medical or special risks coverage. In the case of flood insurance, the amount of coverage may be more than that required by Applicable Law.

9.3 **Cost.** Lender placed insurance is typically more expensive than insurance Borrower may obtain through Borrower's own agent. Borrower may also be assessed a nonrefundable policy issuance fee by Lender as well as any costs incurred by Lender relating to the failure to maintain insurance in accordance with Lender's requirements.

9.4 **Cancellation.** If Lender obtains lender placed insurance, this insurance may be canceled when Borrower provides Lender with satisfactory evidence of insurance coverage that is acceptable to Lender. While the lender placed insurance policy may be canceled and Borrower may be entitled to a refund of a portion of the premiums paid, Borrower may be charged for any time period for which the lender placed insurance was in effect, any cancellation fee assessed by the lender placed insurer, and any costs Lender incurs as a result of the failure to maintain adequate insurance.

10. **Additional Insurance Obtained by Borrower.** If Borrower obtains insurance coverage not required under this Security Instrument or the other Loan Documents that insures any interest in the Property or other collateral securing the Loan, Borrower shall ensure that Lender is named as mortgagee and loss payee on such policies by a mortgage endorsement as described above and Lender shall have the right to direct the application of the proceeds of such insurance as provided in the Loan Documents.

11. **No Permanent Waiver of Requirements.** Borrower understands and agrees that Lender may agree to close the Loan without requiring Borrower to comply strictly with all the requirements set out in this Schedule 1. Borrower acknowledges and agrees that, if Lender so closes the Loan, this is not a permanent waiver of any of the requirements that Lender did not require to be satisfied as of the closing date (the "Specified Requirements"). Lender may at any time in its sole discretion terminate its waiver of the Specified Requirements upon not less than 30 days' written notice to Borrower.

| Distinct Count of ViolationID<br>Row Labels  | Column Labels |             |              |
|--|---------------|-------------|--------------|
|  | Close         | Open        | Grand Total  |
| 1025 LONGWOOD AVENUE BRONX NY 10459          | 219           | 131         | 350          |
| 1064 WARD AVENUE BRONX NY 10472              | 837           | 80          | 917          |
| 1124 STRATFORD AVENUE BRONX NY 10472         | 360           | 100         | 460          |
| 1127 SHERIDAN AVENUE BRONX NY 10456          | 738           | 123         | 861          |
| 115 EAST 169 STREET BRONX NY 10452           | 393           | 24          | 417          |
| 1178 WASHINGTON AVENUE BRONX NY 10456        | 288           | 52          | 340          |
| 1344 UNIVERSITY AVENUE BRONX NY 10452        | 497           | 66          | 563          |
| 1355 FINDLAY AVENUE BRONX NY 10456           | 278           | 18          | 296          |
| 1359 FINDLAY AVENUE BRONX NY 10456           | 191           | 10          | 201          |
| 1451 TAYLOR AVENUE BRONX NY 10460            | 70            | 33          | 103          |
| 1467 TAYLOR AVENUE BRONX NY 10460            | 87            | 19          | 106          |
| 147 WEST 230 STREET BRONX NY 10463           | 58            | 34          | 92           |
| 1479 DAHILL ROAD BROOKLYN NY 11204           | 310           | 138         | 448          |
| 1515 GRAND CONCOURSE BRONX NY 10452          | 727           | 104         | 831          |
| 1529 DAHILL ROAD BROOKLYN NY 11204           | 645           | 75          | 720          |
| 17 WEST 125 STREET MANHATTAN NY 10027        | 196           | 49          | 245          |
| 1738 UNIVERSITY AVENUE BRONX NY 10453        | 610           | 62          | 672          |
| 1760 AMSTERDAM AVENUE MANHATTAN NY 10031     | 14            |             | 14           |
| 1764 AMSTERDAM AVENUE MANHATTAN NY 10031     | 14            | 1           | 15           |
| 1766 AMSTERDAM AVENUE MANHATTAN NY 10031     | 6             | 3           | 9            |
| 1801 MARMION AVENUE BRONX NY 10460           | 204           | 43          | 247          |
| 1809 MARMION AVENUE BRONX NY 10460           | 115           | 35          | 150          |
| 1818 CLAY AVENUE BRONX NY 10457              | 223           | 34          | 257          |
| 2192 AMSTERDAM AVENUE MANHATTAN NY 10032     | 53            | 8           | 61           |
| 2208 AMSTERDAM AVENUE MANHATTAN NY 10032     | 180           | 27          | 207          |
| 2265 UNIVERSITY AVENUE BRONX NY 10468        | 346           | 37          | 383          |
| 2295 GRAND CONCOURSE BRONX NY 10453          | 139           | 48          | 187          |
| 230 EAST 167 STREET BRONX NY 10456           | 153           | 49          | 202          |
| 2300 GRAND CONCOURSE BRONX NY 10458          | 555           | 123         | 678          |
| 2380 CRESTON AVENUE BRONX NY 10468           | 528           | 27          | 555          |
| 2390 CRESTON AVENUE BRONX NY 10468           | 306           | 147         | 453          |
| 2415 CRESTON AVENUE BRONX NY 10468           | 9             | 2           | 11           |
| 2432 WEBB AVENUE BRONX NY 10468              | 200           | 30          | 230          |
| 2485 ELM PLACE BRONX NY 10458                | 295           | 41          | 336          |
| 2584 CRESTON AVENUE BRONX NY 10468           | 143           | 58          | 201          |
| 2585 GRAND CONCOURSE BRONX NY 10468          | 84            | 49          | 133          |
| 2593 GRAND CONCOURSE BRONX NY 10468          | 148           | 19          | 167          |
| 2609 AQUEDUCT AVENUE WEST BRONX NY 10468     | 141           | 34          | 175          |
| 2610 UNIVERSITY AVENUE BRONX NY 10468        | 153           | 44          | 197          |
| 268 UNION AVENUE BROOKLYN NY 11211           | 208           | 42          | 250          |
| 295 FT WASHINGTON AVENUE MANHATTAN NY 10032  | 179           | 52          | 231          |
| 2961 MARION AVENUE BRONX NY 10458            | 431           | 205         | 636          |
| 2976 MARION AVENUE BRONX NY 10458            | 120           | 40          | 160          |
| 3007 3 AVENUE BRONX NY 10455                 | 89            | 12          | 101          |
| 3009 3 AVENUE BRONX NY 10455                 | 70            | 5           | 75           |
| 325 WEST 77 STREET MANHATTAN NY 10024        | 158           | 4           | 162          |
| 344 EAST 209 STREET BRONX NY 10467           | 295           | 163         | 458          |
| 356 SOUTH 1 STREET BROOKLYN NY 11211         | 248           | 48          | 296          |
| 360 SOUTH 1 STREET BROOKLYN NY 11211         | 220           | 85          | 305          |
| 364 SOUTH 1 STREET BROOKLYN NY 11211         | 16            | 17          | 33           |
| 364 SOUTH 4 STREET BROOKLYN NY 11211         | 210           | 19          | 229          |
| 367 EAST 201 STREET BRONX NY 10458           | 174           | 71          | 245          |
| 376 SOUTH 4 STREET BROOKLYN NY 11211         | 107           | 11          | 118          |
| 381 HOOPER STREET BROOKLYN NY 11211          | 192           | 42          | 234          |
| 387 SOUTH 4 STREET BROOKLYN NY 11211         | 42            | 23          | 65           |
| 394 HOOPER STREET BROOKLYN NY 11211          | 320           | 26          | 346          |
| 4303 BAYCHESTER AVENUE BRONX NY 10466        | 36            | 23          | 59           |
| 45 EAST MOSHOLU PARKWAY NORTH BRONX NY 10467 | 185           | 29          | 214          |
| 465 EAST 167 STREET BRONX NY 10456           | 191           | 54          | 245          |
| 4754 RICHARDSON AVENUE BRONX NY 10470        | 108           | 52          | 160          |
| 4755 WHITE PLAINS ROAD BRONX NY 10470        | 143           | 40          | 183          |
| 505 EAST 178 STREET BRONX NY 10457           | 215           | 33          | 248          |
| 510 EAST 13 STREET MANHATTAN NY 10009        | 195           | 47          | 242          |
| 514 EAST 138 STREET BRONX NY 10454           | 286           | 96          | 382          |
| 526 EAST 138 STREET BRONX NY 10454           | 645           | 114         | 759          |
| 530 EAST 138 STREET BRONX NY 10454           | 237           | 58          | 295          |
| 533 EAST 139 STREET BRONX NY 10454           | 111           | 51          | 162          |
| 534 EAST 138 STREET BRONX NY 10454           | 262           | 40          | 302          |
| 537 EAST 139 STREET BRONX NY 10454           | 76            | 23          | 99           |
| 550 EAST 139 STREET BRONX NY 10454           | 34            | 6           | 40           |
| 558 WEST 189 STREET MANHATTAN NY 10040       | 172           | 27          | 199          |
| 574 EAST 139 STREET BRONX NY 10454           | 44            | 5           | 49           |
| 600 TRINITY AVENUE BRONX NY 10455            | 526           | 64          | 590          |
| 643 SOUTHERN BOULEVARD BRONX NY 10455        | 517           | 135         | 652          |
| 66 WEST 88 STREET MANHATTAN NY 10024         | 70            | 27          | 97           |
| 690 ROGERS AVENUE BROOKLYN NY 11226          | 169           | 56          | 225          |
| 741 EAST 217 STREET BRONX NY 10467           | 10            | 8           | 18           |
| 743 EAST 217 STREET BRONX NY 10467           | 2             |             | 2            |
| 745 EAST 217 STREET BRONX NY 10467           | 5             | 23          | 28           |
| 776 CROWN STREET BROOKLYN NY 11213           | 586           | 256         | 842          |
| 85 MC CLELLAN STREET BRONX NY 10452          | 128           | 10          | 138          |
| 86-22 DONGAN AVENUE QUEENS NY 11373          | 159           | 85          | 244          |
| 8817 BAY PARKWAY BROOKLYN NY 11214           | 101           | 27          | 128          |
| 900 BRONX PARK SOUTH BRONX NY 10460          | 788           | 19          | 807          |
| 900 MELROSE AVENUE BRONX NY 10451            | 489           | 27          | 516          |
| 984 EAST 15 STREET BROOKLYN NY 11230         | 21            | 4           | 25           |
| <b>Grand Total</b>                           | <b>20103</b>  | <b>4281</b> | <b>24384</b> |