

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 9:20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP,
INC. D/B/A PAR FUNDING, *et al.*,

Defendants.

**NON-PARTY TOORAK CAPITAL PARTNERS, LLC'S, MOTION TO INTERVENE
AND LIFT LITIGATION INJUNCTION TO ALLOW IT TO PROCEED WITH
FORECLOSURE ACTIONS IN NEW YORK STATE COURT**

The Non-Party, TOORAK CAPITAL PARTNER, LLC, a Delaware limited liability company (“Toorak”), by and through its undersigned attorneys, hereby moves the Court for (i) the entry of an order allowing it to intervene as a party Defendant in this action and (ii) lifting the litigation injunction for the limited purpose of allowing it to proceed with two foreclosure actions in New York state court: *Toorak Capital Partners, LLC v. 145 Stuyvesant Ave Prop LLC et al.*, Index No. 500868/2021 (the “145 Stuyvesant Foreclosure Action”), which names Complete Business Solutions Group, Inc. d/b/a Par Funding (“CBSG”) as a junior lienholder defendant and *Toorak Capital Partners, LLC v. 347A Quincy St Prop LLC, et al.*, Index No. 501908/2021 (the “347A Quincy Foreclosure Action” and collectively, with the 145 Stuyvesant Foreclosure Action, the “Foreclosure Actions”), which names Fast Advance Funding Inc. (“Fast Advance”) as a junior lienholder defendant. As grounds therefor, Toorak states the following:

I. INTRODUCTION

1. On July 27, 2020, the Court entered its Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver (the “Order Appointing Receiver”) [ECF No. 36] wherein it appointed a Receiver over certain Receivership Entities.¹

2. On July 31, 2020, the Court entered its Order Granting Plaintiff’s Urgent Motion to Amend Order Appointing Receiver to Include Litigation Injunction (the “Order Staying Litigation”) [ECF No. 56] wherein it stayed “[a]ll civil legal proceedings of any nature, including, but not limited to,... foreclosure actions... involving... (b) any of the Receivership Entities’ property interests, wherever located [and] (c) any of the Receivership Entities, including subsidiaries and partnerships” (“Ancillary Proceedings”) and further ordered that:

The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.

3. On August 13, 2020, the Court entered its Amended Order Appointing Receiver (the “Amended Order”) [ECF No. 141] wherein it repeated the terms of the Order Staying Litigation and appointed a Receiver over additional Receivership Entities, including CBSG.

4. On December 16, 2020, the Court entered its Order Granting Motion to Expand Receivership Estate (the “Order Expanding Receivership Estate”) [ECF No. 436] whereby it expanded the scope of the receivership to include other Receivership Entities, including Fast Advance.

¹ The terms “Receiver” and “Receivership Entities” are defined in the Order Appointing Receiver [ECF No. 36] and subsequent Amended Order Appointing Receiver [ECF No. 141].

5. Although not named in this case, Toorak seeks entry of an order allowing it to intervene as a party Defendant in this action and lifting the litigation injunction for the limited purpose of allowing it to proceed with the Foreclosure Actions pending in New York state court. Toorak has a first priority lien on two properties, securing indebtedness of \$1.8 million and \$2.1 million, respectively. The indebtedness exceeds the value of the underlying properties that secure the debt (the “Properties”). As further outlined below, the affected real property offers no realistic prospect of recovery to the receivership estate, and if Toorak is not permitted to proceed with its Foreclosure Actions, the indebtedness will continue to increase, the value of the Properties may fluctuate, and, most importantly, the risk of inadequate protection and preservation of the Properties will continue to rise.

II. *FACTS UNDERLYING TOORAK’S INTEREST*

6. Toorak has initiated the two Foreclosure Actions: the 145 Stuyvesant Foreclosure Action and the 347A Quincy Foreclosure Action, each of which names a Receivership Entity as a result of its *junior* interest in the subject property.

B. The 145 Stuyvesant Loan and 145 Stuyvesant Foreclosure Action

7. On January 12, 2021 – before it knew of this case or the receivership – Toorak initiated the 145 Stuyvesant Foreclosure Action in the Supreme Court of the State of New York for Kings County, by filing its Verified Complaint (the “145 Stuyvesant Foreclosure Complaint”). A copy of the 145 Stuyvesant Foreclosure Complaint, with all exhibits, is attached hereto as **Exhibit “1.”**

8. As set forth in the 145 Stuyvesant Foreclosure Complaint, Toorak is the owner and holder of a certain loan (the “145 Stuyvesant Loan”), which is evidenced by: (i) that certain Promissory Note, dated as of March 11, 2019 (the “145 Stuyvesant Note”), in the original principal amount of \$1,132,625.00, executed by 145 Stuyvesant Ave Prop LLC (“145 Stuyvesant”) and in

favor of Firm Lending LLC (“Original Lender”) and (ii) that certain Building Loan Promissory Note (the “145 Stuyvesant Building Note”), dated as of March 11, 2019, in the original principal amount of \$131,475.00, executed by 145 Stuyvesant and in favor of Original Lender. Copies of the 145 Stuyvesant Note and 145 Stuyvesant Building Note are attached respectively as Exhibits “A” and “B” to the Foreclosure Complaint.

9. The indebtedness owed under the 145 Stuyvesant Note and 145 Stuyvesant Building Note (collectively, the “145 Stuyvesant Notes”) is secured by 145 Stuyvesant’s non-residential real property, and improvements thereon, with a street address of 145 Stuyvesant Ave., Brooklyn, NY 11221, and all or substantially all of 145 Stuyvesant’s personal property, as set forth in the Mortgages (defined below) (collectively, the “145 Stuyvesant Property”).

10. Toorak is the owner and holder of (i) that certain Commercial Mortgage, Security Agreement and Fixture Filing, dated as of March 11, 2019, the grantor under which is 145 Stuyvesant (as amended from time to time, the “145 Stuyvesant Mortgage”), encumbering the 145 Stuyvesant Property and (ii) that certain Building Loan Mortgage, Security Agreement and Fixture Filing, dated as of March 11, 2019, the grantor under which is 145 Stuyvesant (as amended from time to time, the “145 Stuyvesant Building Mortgage”), encumbering the 145 Stuyvesant Property. The Mortgage and Building Mortgage were recorded on March 26, 2019 and March 28, 2019, respectively. Copies of the 145 Stuyvesant Mortgage and 145 Stuyvesant Building Mortgage are attached respectively as Exhibits “C” and “D” to the Foreclosure Complaint.

11. Prior to the commencement of the Foreclosure Action, Original Lender assigned the 145 Stuyvesant Note, 145 Stuyvesant Building Note, 145 Stuyvesant Mortgage, and 145 Stuyvesant Building Mortgage to TCM Funding LLC, which then assigned the 145 Stuyvesant Note, 145 Stuyvesant Building Note, 145 Stuyvesant Mortgage and 145 Stuyvesant Building

Mortgage to Toorak. Copies of the assignments of mortgage are attached as Exhibits “F” and “G” to the Foreclosure Complaint.

12. Toorak is also the owner and holder of certain Commercial Guaranty agreements, each dated April 17, 2019 (collectively, the “145 Stuyvesant Guaranty Agreements”), under which Chanon D. Gordon is identified as the guarantor for the 145 Stuyvesant Note and 145 Stuyvesant Building Note. Copies of the 145 Stuyvesant Guaranty Agreements are attached as Exhibit “E” to the Foreclosure Complaint.

13. The 145 Stuyvesant Note, 145 Stuyvesant Mortgage, 145 Stuyvesant Building Note, 145 Stuyvesant Building Mortgage, and 145 Stuyvesant Guaranty Agreements are collectively referred to herein as the “145 Stuyvesant Loan Documents.”

14. As a result of 145 Stuyvesant’s default under the 145 Stuyvesant Loan Documents, Toorak initiated the 145 Stuyvesant Foreclosure Action wherein it requested the court enter judgment in favor of Toorak for foreclosure of the 145 Stuyvesant Property against 145 Stuyvesant and all parties who may claim an interest in the 145 Stuyvesant Property including, in particular, CBSG, a *junior* lienholder who may claim an interest in the 145 Stuyvesant Property by virtue of a Mortgage Security Agreement dated April 17, 2019, recorded May 28, 2019 (the “CBSG Mortgage”). A copy of the CBSG Deed of Trust is attached hereto as **Exhibit “2.”**

15. Over \$2.1 million is currently due and owing to Toorak under the 145 Stuyvesant Loan Documents, and interest continues to accrue on this amount. The indebtedness due to Toorak exceeds the value of the 145 Stuyvesant Property. A copy of the valuation report for the 145 Stuyvesant Property, which shows the value as \$1,530,000.00, is attached hereto as **Exhibit “3”**.

16. On March 8, 2021, the attorney for the Receiver for CBSG entered an appearance in the 145 Stuyvesant Foreclosure Action. The Amended Order and Order Expanding

Receivership Estate were included as exhibits to the Notice of Appearance. The attorney for the Receiver for CBSG also filed a Notice of Stay, which included the Order Staying Litigation as an exhibit (the “145 Stuyvesant Notice”). A copy of that 145 Stuyvesant Notice is attached hereto as **Exhibit “4.”**

C. The 347A Quincy Foreclosure Action

17. On January 25, 2021 – before it knew of this case or the receivership – Toorak initiated a foreclosure action (the “347A Quincy Foreclosure Action”) styled *Toorak Capital Partners, LLC v. 347A Quincy St Prop LLC, et al.*, Index No. 501908/2021, in the Supreme Court of the State of New York for Kings County, by filing its Verified Complaint (the “347A Quincy Foreclosure Complaint”). A copy of the 347A Quincy Foreclosure Complaint, with all exhibits, is attached hereto as **Exhibit “5.”**

18. As set forth in the 347A Quincy Foreclosure Complaint, Toorak is the owner and holder of a certain loan (the “347A Quincy Loan”), which is evidenced by: (i) that certain Commercial Promissory Note, dated as of April 17, 2019 (the “347A Quincy Note”), in the original principal amount of \$1,019,017.98, executed by 347A Quincy St Prop LLC (“347A Quincy”) and in favor of Firm Lending LLC (“Original Lender”) and (ii) that certain Building Loan Promissory Note (the “Building Note”), dated as of April 17, 2019, in the original principal amount of \$150,000.00, executed by 347A Quincy and in favor of Original Lender. Copies of the Note and Building Note are attached respectively as Exhibits “A” and “B” to the 347A Quincy Foreclosure Complaint.

19. The indebtedness owed under the Note and Building Note (collectively, the “347A Quincy Notes”) is secured by 347A Quincy’s non-residential real property, and improvements thereon, with a street address of 347A Quincy Avenue, Brooklyn, NY 11216, and all or

substantially all of 347A Quincy's personal property, as set forth in the Mortgages (defined below) (collectively, the "347A Quincy Property" and with the 145 Stuyvesant Property, the "Properties").

20. Toorak is the owner and holder of (i) that certain Commercial Mortgage, Security Agreement and Fixture Filing, dated as of April 17, 2019, the grantor under which is 347A Quincy (as amended from time to time, the "347A Quincy Mortgage"), encumbering the 347A Quincy Property and (ii) that certain Building Loan Mortgage, Security Agreement and Fixture Filing, dated as of April 17, 2019, the grantor under which is 347A Quincy (as amended from time to time, the "347A Quincy Building Mortgage"), encumbering the 347A Quincy Property. The Mortgage and Building Mortgage were recorded on May 8, 2019. Copies of the Mortgage and Building Mortgage are attached respectively as Exhibits "C" and "D" to the Foreclosure Complaint.

21. Prior to the commencement of the Foreclosure Action, Original Lender assigned the 347A Quincy Note, 347A Quincy Building Note, 347A Quincy Mortgage, and 347A Quincy Building Mortgage to Toorak. Copies of the assignments of mortgage are attached as Exhibits "F" and "G" to the Foreclosure Complaint.

22. Toorak is also the owner and holder of certain Commercial Guaranty agreements, each dated April 17, 2019 (collectively, the "347A Quincy Guaranty Agreements"), under which Chanon D. Gordon is identified as the guarantor for the Note and Building Note. Copies of the 347A Quincy Guaranty Agreements are attached as Exhibit "E" to the Foreclosure Complaint.

23. The 347A Quincy Note, 347A Quincy Mortgage, 347A Quincy Building Note, 347A Quincy Mortgage, and 347A Quincy Guaranty Agreements are collectively referred to herein as the "347A Quincy Loan Documents."

24. As a result of 347A Quincy's default under the 347A Quincy Loan Documents, Toorak initiated the 347A Quincy Foreclosure Action wherein it requested the court enter judgment in favor of Toorak for foreclosure of the Property against 347A Quincy and all parties who may claim an interest in the Property including, in particular, Fast Advance, a *junior* lienholder who may claim an interest in the Property by virtue of a Mortgage Security Agreement dated May 13, 2019, recorded June 12, 2019 (the "Fast Advance Mortgage"). A copy of the Fast Advance Mortgage is attached hereto as **Exhibit "6."**

25. Over \$1.8 million is currently due and owing to Toorak under the 347A Quincy Loan Documents, and interest continues to accrue on this amount. The indebtedness due to Toorak exceeds the value of the 347A Quincy Property. A copy of the valuation report for the 347A Quincy Property, which shows the value as \$1,460,000.00, is attached hereto as **Exhibit "7"**.

26. On July 27, 2021, the attorney for the Receiver for Fast Advance entered an appearance in the Foreclosure Action. The Amended Order and Order Expanding Receivership Estate were included as exhibits to the Notice of Appearance. The attorney for the Receiver for Fast Advance also filed a Notice of Stay, which included the Order Staying Litigation as an exhibit (the "347A Quincy Notice"). A copy of the 347A Quincy Notice is attached hereto as **Exhibit "8."**

27. Toorak now files this Motion to Intervene and Lift Litigation Injunction to Allow it to proceed with the 347A Quincy Foreclosure Action and the 145 Stuyvesant Foreclosure Action in New York State Court (the "Motion to Intervene"). Toorak seeks to intervene for the limited purpose of modifying the Order Staying Litigation, Amended Order, and Order Expanding Receivership Estate, so as to lift the litigation injunction and allow it to proceed with its Foreclosure Actions against 145 Stuyvesant and 347A Quincy, as well as all other defendants and junior lienholders, including CBSG and Fast Advance.

III. *THE REQUEST TO INTERVENE SHOULD BE GRANTED*

28. “Rule 24 of the Federal Rules of Civil Procedure provides that the Court must permit someone to intervene who brings a timely motion and who ‘claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.’” *Quantum Communs. Corp. v. Star Broad., Inc.*, No. 05-21772-CIV, 2009 U.S. Dist. LEXIS 92868, 2009 WL 3055371 (S.D. Fla. Sept. 14, 2009).

29. To establish a right to intervene under Rule 24(a), the prospective intervenor must establish: “1) that the application to intervene is timely; 2) that the intervenor has an interest relating to the property or transaction that is the subject of the action; 3) that the intervenor is situated so disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and 4) that the intervenor’s interest is not adequately represented by the existing parties to the suit.” *Id.* (citing *Purcell v. BankAtlantic Financial Corp.*, 85 F. 3d 1508, 1512 (11th Cir. 1996)).

30. Moreover, under Rule 24(c), a motion to intervene must “be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Fed. R. Civ. P. 24(c).

31. Toorak meets each element of the standard for intervention.

32. First, Toorak’s motion is timely. Notably, neither the 145 Stuyvesant Foreclosure Action nor the 347A Quincy Foreclosure Action have been stayed by the New York state courts. After the Receiver entered an appearance in the Foreclosure Actions, Toorak considered whether to wait for the resolution of this case or to seek to intervene to lift the litigation injunction. Toorak, through its counsel, then mailed a letter dated June 21, 2022, to counsel for the Receiver and requested consent to a lift of the injunction for the limited purpose of allowing Toorak to proceed with the Foreclosure Actions. A copy of the letter is attached hereto as **Exhibit “9.”** Despite

following up via email, Toorak's counsel did not receive a response to the letter. Accordingly, Toorak determined seeking to intervene to lift the litigation injunction by means of this Motion is necessary to preserve the value of the Properties and Toorak's interest as a first-priority lienholder.

33. Next, Toorak has an interest in this case because CBSG and Fast Advance – two Receivership Entities – may have interests as junior lienholders in the 145 Stuyvesant Property and 347A Quincy Property, respectively, which are the subject Properties of foreclosure actions initiated by Toorak.

34. Further, as the senior secured lender with respect to the Properties, Toorak is in a position whereby the failure to modify the litigation injunction impairs and impedes its ability to protect its interest in the Properties. As a result of the litigation injunction, Toorak has already been delayed for over a year in its ability to enforce its rights under the Loan Documents through foreclosure actions. 145 Stuyvesant and 347A Quincy remain in default under the Loan Documents with over \$2.1 million and \$1.8 million respectively currently due and owing to Toorak. Modifying the litigation injunction to allow Toorak to proceed with the Foreclosure Actions would allow Toorak the ability to recover a portion of the indebtedness due.

35. Additionally, Toorak's interest is not represented by any of the existing parties.

36. Finally, Toorak has satisfactorily established the basis for its claim in accordance with Rule 24(c), as Toorak has included the Notes, Building Notes, Mortgages, and Building Mortgages as exhibits to the 145 Stuyvesant Foreclosure Complaint and the 347A Quincy Foreclosure Complaint.

37. Accordingly, Toorak should be allowed to intervene as a Defendant to this action.

**IV. THE REQUEST TO LIFT THE LITIGATION
INJUNCTION SHOULD BE GRANTED**

38. To modify a litigation stay, a court should consider “(1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party’s underlying claim.” *SEC v. Stanford Int’l Bank Ltd.*, 424 Fed. Appx 338, 341 (5th Cir. 2011) (quoting *SEC v. Wencke*, 742 F. 2d 1230, 1231 (9th Cir. 1984)).

39. First, Toorak will suffer substantial injury if it is not allowed to proceed with its Foreclosure Actions at this time due to the continued enforcement of the litigation injunction this Court has imposed against junior lienholders, CBSG and Fast Advance, whose interests will nevertheless be protected, if not extinguished, in the Foreclosure Actions. As can be established by the appraisal reports, Toorak’s first-priority lien interest is undercollateralized with zero equity cushion. And indeed, the amounts the 145 Stuyvesant and 347A Quincy owe Toorak will continue to increase, the values of the Properties may continue to fluctuate, and the risk of inadequate protection and preservation of the Properties will continue to rise; while the junior lienholder’s chances of recovery of any surplus are slim-to-none due to the lack of equity.

40. Second, as discussed above, this motion is timely, as Toorak has determined after much consideration that intervening to lift the litigation injunction is its best course of action to protect its collateral and no parties are prejudiced by the filing of this motion.

41. Third, Toorak is likely to prevail in the Foreclosure Actions, as Toorak has established a *prima facie* case for foreclosure under New York law. As shown in the Foreclosure Complaints (Exhibit 1 and Exhibit 5), Toorak has established the existence of the notes and mortgages and has also established the borrower’s defaults. *See HSBC Bank USA v. Merrill*, 37

A.D.3d 899, 900, 830 N.Y.S.2d 598, 599 (2007) (“Entitlement to a judgment of foreclosure may be established, as a matter of law, where a mortgagee produces both the mortgage and unpaid note, together with evidence of the mortgagor’s default ...”).

42. Relatedly, due to the passage of recent New York legislation constraining the statute of limitations on judicial foreclosure actions, time is of the essence to obtain Toorak’s judgment on the merits; and the continuation of this litigation stay would pose a risk of extinguishing Toorak’s first-priority lien interest on a mere technicality.²

43. This is not a case where Toorak is attempting to unfreeze assets of the Receivership or hail the Receiver into court, but rather to extinguish inferior interests of one of the Receivership Entities in the Properties. Thus, continuing to stay Toorak’s foreclosure claims is not necessary to maintain the status quo of the parties to this case, nor to safeguard any disputed assets.

44. As such, the litigation injunction should be lifted to allow Toorak to proceed with the 145 Stuyvesant Foreclosure Action and the 347A Quincy Foreclosure Action.

V. CONCLUSION

45. Based on the foregoing points and authorities, this Court should enter an order allowing Toorak to intervene as a party Defendant in this action and lifting the litigation injunction for the limited purpose of allowing it to proceed with its Foreclosure Actions in New York state court.

WHEREFORE, Toorak respectfully requests that the Court enter an order allowing it to intervene as a party Defendant in this action, lifting the litigation injunction for the limited purpose

² In 2022, the New York legislature has approved a soon-to-be-enacted law, Senate Bill No. 5473, which significantly constrains the ability of lenders, servicers, and investors to efficiently prosecute foreclosure actions. Unlike judicial foreclosures in Florida, which allow a lender to allege a mortgagor’s continuing default past the expiration of the statute of limitations, the New York law would presently and *retroactively* bar mortgagees from alleging subsequent installment defaults past the expiration of the six-year statute of limitations.

of allowing it to proceed with its Foreclosure Actions in New York state court and granting such other and further relief as the court deems just and proper.

Dated: September 1, 2022

Respectfully submitted,

POLSINELLI P.C.
315 S. Biscayne Blvd., Suite 400
Miami, Florida 33131
Tel.: 305-921-1811
Fax: 305-921-1801

/s/ Nardo Dorsin

Nardo Dorsin
Florida Bar No. 126301
ndorsin@polsinelli.com
Brendan I. Herbert
Florida Bar No. 76925
bherbert@polsinelli.com

*Attorneys for non-party,
Toorak Capital Partners, LLC*

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I HEREBY CERTIFY that, pursuant to Local Rule 7.1, the undersigned counsel contacted and attempted to confer with the attorneys for the Receiver and SEC in a good faith effort to resolve the issues raised in this motion. The parties were unable to agree to the relief requested.

/s/ Nardo Dorsin
Nardo Dorsin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Notice of Electronic Filing by CM/ECF transmission to all counsel and parties who are registered to receive such service in this case on September 1, 2022.

/s/ Nardo Dorsin
Nardo Dorsin

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

TOORAK CAPITAL PARTNERS, LLC

Index No.

Plaintiff(s),

Summons

-against-

145 STUYVESANT AVE PROP LLC; CHANON D. GORDON; NEW VISION TRUST CUSTODIAN FBO ELVENYIA BARTON-GIBSON IRA; ELVENYIA BARTON-GIBSON; COMPLETE BUSINESS SOLUTIONS GROUP, INC. D/B/A PAR FUNDING, and JOHN DOE NO. 1 THROUGH JOHN DOE NO. XXX, inclusive, the last thirty names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint.

Date Index No. Purchased: January 12, 2021

Defendant(s).

To the above named Defendant(s)

(See Attached Service List)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is location of subject property, which is Kings County, New York.

Dated: Kansas City, Missouri
January 12, 2021

Polsinelli PC
by /s/ Amy E. Hatch
Amy E. Hatch
Attorneys for Plaintiff
900 West 48th Place, Suite 900
Kansas City, Missouri 64112
(816) 753-1000
ahatch@polsinelli.com

SUMMONS SERVICE LIST

- **145 Stuyvesant Ave Prop LLC** – 116 Springwood Lane, Bloomfield, Connecticut 06002
- **Chanon D. Gordon** – 119 Mayflower Street, Hartford, Connecticut 06610
- **New Vision Trust Custodian FBO Elvenya Barton-Gibson IRA** – 3762 Riverly Trace, Marietta, Georgia 30067
- **Elvenya Barton-Gibson** – 3762 Riverly Trace, Marietta, Georgia 30067
- **Complete Business Solutions Group, Inc. d/b/a Par Funding** – 20 North 3rd Street, Philadelphia, Pennsylvania 19106

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

TOORAK CAPITAL PARTNERS LLC,

Plaintiff,

-against-

145 STUYVESANT AVE PROP LLC; CHANON D. GORDON; NEW VISION TRUST CUSTODIAN FBO ELVENYIA BARTON-GIBSON IRA; ELVENYIA BARTON-GIBSON; COMPLETE BUSINESS SOLUTIONS GROUP, INC. D/B/A PAR FUNDING, and JOHN DOE NO. I THROUGH JOHN DOE NO. XXX, inclusive, the last thirty names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Defendants.

Index No.

VERIFIED COMPLAINT

(Mortgage Foreclosure Action)

Block 1621, Lot 7

Property known as:
145 Stuyvesant Avenue
Brooklyn, NY 11221

Plaintiff Toorak Capital Partners LLC (“**Plaintiff**”), by and through its attorneys, for its complaint against Defendants 145 Stuyvesant Ave Prop LLC (“**Borrower**”), Chanon D. Gordon (“**Gordon**”), New Vision Trust Custodian FBO Elvenyia Barton-Gibson IRA (“**New Vision Trust**”), Elvenyia Barton-Gibson (“**Barton-Gibson**”), Complete Business Solutions Group, Inc. d/b/a Par Funding (“**Complete Business**”), and John Doe No. I through John Doe No. XXX, states as follows:

The Parties

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Delaware, with its main office located at 15 Maple Street, Second Floor West, Summit, NJ 07901.

2. Borrower is a New York limited liability company and citizen of the State of New York with its principal place of business at 116 Springwood Lane, Bloomfield, CT 06002.

3. Guarantor is an individual and resident of Connecticut, residing at 119 Mayflower Street, Hartford, CT 06610.

4. New Vision Trust and Barton-Gibson are the holders of a mortgage lien on the property that is the subject of this foreclosure action and has an address at 3762 Riverly Trace, Marietta, GA 30067. Said mortgage lien was recorded on March 29, 2019, with the NYC Office of Finance, Office of the City Register (“**Register**”) as CRFN 2019000166179.

5. Complete Business is the holder of a lien on the property that is the subject of this foreclosure action and is a Delaware limited liability company with an address at 20 North 3rd Street, Philadelphia, PA 19106. Said lien was recorded with the Register on May 28, 2019, as CRFN 2019000166179.

6. Defendants John Does I through XXX are currently unknown to Plaintiff, but, on information and belief, are tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the Complaint.

Jurisdiction and Venue

7. Jurisdiction over this action is proper pursuant to CPLR §301.

8. Venue is proper in this Court pursuant to CPLR §503.

The Loan Transaction

9. Plaintiff is the owner and holder of a certain loan (the “**Loan**”), which is evidenced by: (i) that certain Promissory Note, dated as of March 11, 2019 (the “**Note**”), in the original principal amount of \$1,132,625.00, executed by Borrower and in favor of Firm Lending LLC (“**Original Lender**”) and (ii) that certain Building Loan Promissory Note (the “**Building Note**”), dated as of March 11, 2019, in the original principal amount of \$131,475.00, executed by Borrower and in favor of Original Lender. A true and correct copy of the Note is attached

hereto as **Exhibit A**. A true and correct copy of the Building Note is attached hereto as **Exhibit B**.

10. The indebtedness owed under the Note and Building Note (collectively, the “**Notes**”) is secured by Borrower’s non-residential real property, and improvements thereon, with a street address of 145 Stuyvesant Ave, Brooklyn, NY 11221, and all or substantially all of Borrower’s personal property, as set forth in the Mortgage (defined below) (collectively, the “**Property**”).

11. Plaintiff is the owner and holder of (i) that certain Commercial Mortgage, Security Agreement and Fixture Filing, dated as of March 11, 2019, the grantor under which is Borrower (as amended from time to time, the “**Mortgage**”), encumbering the Property and (ii) that certain Building Loan Mortgage, Security Agreement and Fixture Filing, dated as of March 11, 2019, the grantor under which is Borrower (as amended from time to time, the “**Building Mortgage**”), encumbering the Property . A true and correct copy of the Mortgage is attached hereto as **Exhibit C**. A true and correct copy of the Building Mortgage is attached hereto as **Exhibit D**.

12. The Mortgage was duly recorded with the Register, on March 26, 2019, as CRFN 2019000096671, and the New York State recording tax was duly paid thereon. (Ex. C.)

13. The Building Mortgage was duly recorded with the Register, on March 28, 2019, as CRFN 20190000100476, and the New York State recording tax was duly paid thereon. (Ex. D.)

14. Plaintiff is the owner and holder of a certain Commercial Guaranty, dated as of March 11, 2019 (the “**Guaranty**”), under which Guarantor is identified as the guarantor and

pursuant to which Guarantor guaranteed payment of certain amounts owed under the Note. A true and correct copy of the Guaranty is attached hereto as **Exhibit E**.

15. The Notes, the Mortgage, the Building Mortgage, the Guaranty, and all other documents further evidencing, securing or executed in connection with the Loan are referred to herein collectively as the **“Loan Documents.”**

16. Prior to the commencement of this action, Original Lender assigned the Note and the Mortgage to TCM Funding LLC, which then assigned the Note and Mortgage to Plaintiff. True and correct copies of the assignments of the Mortgage are attached hereto collectively as **Exhibit F**.

17. Prior to the commencement of this action, Original Lender assigned the Building Note and the Building Mortgage to TCM Funding LLC, which then assigned the Building Note and Building Mortgage to Plaintiff. True and correct copies of the assignments are attached hereto collectively as **Exhibit G**.

18. The original Loan Documents, including the Notes, were delivered to Plaintiff, and, thus, Plaintiff is the current holder and owner of the Loan Documents.

19. Prior to the commencement of this action, Plaintiff has been in exclusive possession of the original Notes and has not transferred the same to any other person or entity.

Default Under the Loan Documents

- 20. The Loan Documents provide, among other things:
 - a. Borrower shall make monthly payments of principal and interest and other amounts;

- b. in the event of a default by the Borrower, the entire unpaid principal, accrued interest, and all other amounts payable under the Loan Documents may be accelerated at Plaintiff's option;
- c. in the event of a default by the Borrower, Borrower's license to collect the rents generated by the Property may be revoked;
- d. in any action to foreclose, Plaintiff shall be entitled to the appointment of a receiver without notice or regard to value;
- e. Plaintiff shall be entitled to legal expenses, costs and fees; and
- f. in the event of a default by the Borrower, interest at the default rate set forth in the Loan Documents shall be owed by the Borrower.

21. Borrower defaulted under the Loan Documents by failing to make monthly payments of principal and interest required under the Loan Documents. By letter dated August 23, 2019, (the "**Default Letter**"), Plaintiff notified Borrower of its default under the Loan Documents and that the debt owed under the Notes had been accelerated. A true and correct copy of the Default Letter sent to Borrower is attached hereto as **Exhibit H**.

22. Borrower has failed to cure the defaults and remains in default under the Loan Documents.

Amounts Due Under the Loan Documents

23. As of November 30, 2020, the following amounts are due and owing to Plaintiff under the Loan Documents:

- (a) Unpaid principal balance of \$1,132,625.00;
- (b) Interest accrued from May 1, 2019 through November 30, 2020, in the amount of \$170,066.79;

- (c) Interest at the per diem rate of \$298.89 from December 1, 2020, and thereafter;
- (d) Default interest accrued from June 1, 2019 through November 30, 2020, in the amount of \$245,720.16;
- (e) Default interest at the per diem rate of \$455.88 from December 1, 2020, and thereafter;
- (f) late fees in the amount of \$17,006.68;
- (g) a disposition fee in the amount of \$20,000.00;
- (h) a special servicing fee in the amount of \$4,000.00;
- (i) legal fees in the amount of \$6,832.16;
- (j) Other fees and charges in the amount of \$2,876.62;
- (k) Any and all fees and costs incurred by Plaintiff, both to date and hereafter, in connection with the collection of the amounts due and owing under the Loan Documents for the protection, preservation and realization of the Property, including processing fees, late charges, inspection fees, environmental fees, appraisal fees, expenses, administrative fees, attorneys' fees, and costs incurred in connection with the issuance of the third-party reports in connection with the Property;
- (l) Prepayment consideration and any other amounts due and owing under the Loan Documents;
- (m) Less any funds paid by Borrower but not yet applied to the debt by Plaintiff; and
- (n) Any other amounts due and owing under the Loan Documents.

Right to Possession and Rents

24. Under Section 3.02 of the Mortgage and Building Mortgage (collectively, the “**Mortgages**”), upon a default under the Mortgages, Plaintiff is entitled to collect and receive the rents and the value of the use and occupation of the Property.

25. Plaintiff is entitled to an order directing all rents, issues and profits from the Property be remitted to Plaintiff in accordance with the terms of the Mortgages and other Loan Documents and directing that any such amounts be used to reduce the indebtedness described above.

Right to Foreclosure

26. Under the Mortgages, upon an event of default, Plaintiff has the right to institute a proceeding for foreclosure. Thus, Plaintiff is entitled to an Order from the Court that the Mortgages be foreclosed, that the liens provided therein be declared as first and prior liens on the Property, and that Plaintiff be granted the right of immediate possession of the Property.

27. No other action has been brought to recover any part of the debt under the Mortgages, Notes, or other Loan Documents.

28. Plaintiff may not be deemed to have waived, altered, released, or changed its election to foreclose by reason of any payment made after the date of commencement of this action of any and all of the defaults identified herein.

29. Plaintiff specifically reserves the right to pursue a temporary injunction, appointment of receiver, or other relief with respect to its rights under the Loan Documents. Pursuant to N.Y. Real Prop. Acts. Law §1371, Plaintiff will move the Court to enter final judgment against Borrower and Guarantor for any residue of the debt under the Notes remaining unsatisfied after the foreclosure sale of the Property is completed.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff for foreclosure of the Property as follows:

- A. Finding that Plaintiff has a first and best lien on the Property;
- B. Ordering that Plaintiff has the legal right and is authorized to foreclose on the Property:
 - (i) in one parcel according to law together with the fixtures and articles of personalty upon the premises;
 - (ii) subject to zoning restrictions and ordinances adopted by any municipality or other governmental authority, and violations thereof;
 - (iii) subject to any state of facts that an accurate survey would show;
 - (iv) subject to covenants and restrictions of record, if any; and
 - (v) subject to violations, if any, noted by any federal, state, city, town or village agency having authority over the premises;
- C. Finding that such foreclosure will vest in the purchaser thereat free and clear title to the Property, free of any and all interests that are or might be asserted by the Defendants to this Complaint;
- D. Ordering that Plaintiff has the right to credit bid at such foreclosure sale any and all amounts due to Plaintiff under the Loan Documents;
- E. Ordering and directing that the Sheriff of Kings County, New York, or any referee appointed in this action, foreclose the Property and deliver title via a Sheriff's Deed or Referee's Deed, and bill of sale, as appropriate, to the successful bidder at such foreclosure;
- F. Ordering and directing that the proceeds of the sale be applied as follows:

- (i) to payment of the expenses of the sale;
 - (ii) to the payment of the debt owed to Plaintiff under the Notes;
 - (iii) to the payment of foreclosure costs and other accrued costs in connection with the foreclosure;
 - (iv) to the payment, at Plaintiff's option, of any real property taxes that may be due and unpaid in connection with the Property;
 - (v) to the payment, at Plaintiff's option, of all other assessments against or attributable to the Property; and
 - (vi) the surplus, if any, to the payment of debts secured by junior liens on the Property and then, to Borrower, in accordance with further order of the Court;
- G. Ordering that Borrower has no right of redemption or reinstatement with respect to the Property;
- H. Finding that Plaintiff has preserved its right to pursue any deficiency that may exist under the Notes and other Loan Documents after application of the proceeds of the foreclosure sale pursuant to N.Y. Real Prop. Acts. Law §1371 and may move the Court to enter final judgment against Borrower and Guarantor for such deficiency; and
- I. Ordering all further relief is just, proper, and equitable.

Dated: Kansas City, Missouri
January 12, 2021

POLSINELLI PC

By: /s/ Amy E. Hatch

MORGAN C. FIANDER
600 Third Avenue, 42nd Floor
New York, New York 10016
(212) 684-0199
mfiander@polsinelli.com

AMY E. HATCH
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112
(816) 753-1000
ahatch@polsinelli.com

ATTORNEYS FOR PLAINTIFF

FLORIDA
STATE OF NEW JERSEY
COUNTY OF UNION HILLSBOROUGH

STEPHEN J. TODE, JR.
COLIN MCLINDEN,

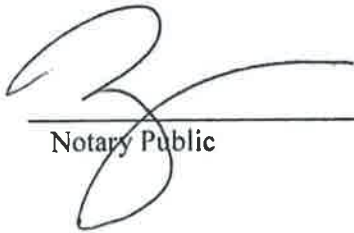
a PRINCIPAL

being duly sworn, says that he is an associate at Plaintiff Toorak

Capital Partners, LLC, that he has read the foregoing Verified Complaint and said Verified Complaint is true to his own knowledge except as to matters therein stated to be alleged on information and belief and that as to those matters he believes them to be true.


Name: Colin McLinden
Title: Associate, Toorak Capital Partners, LLC
PRINCIPAL & HEAD OF SPECIAL SECTOR

Sworn to before me this
5TH day of January, 2021



Notary Public



Exhibit A

145 STUYVESANT AVE PROP LLC
\$1,132,625.00
March 11, 2019

COMMERCIAL PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, **145 STUYVESANT AVE PROP LLC** a New York limited liability company having an office at **116 Springwood Lane, Bloomfield, CT 06002** ("Maker"), promises to pay to the order of **FIRM LENDING, LLC**, a Florida limited liability company having its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Lender"), or at such other place as the holder hereof may designate, the principal sum of **One Million One Hundred Thirty Two Thousand Six Hundred Twenty Five and 00/100 dollars (\$1,132,625.00)** with interest on said unpaid balance computed from the date advanced (the "Commencement Date") hereinafter set forth, together with all taxes assessed upon this Note and together with any costs, expenses, and reasonable attorneys' fees incurred in the collection of this Note or in protecting, maintaining, or enforcing its security interest or any mortgage securing this Note or upon any litigation or controversy affecting this Note or the security given therefor, including, without limitation, proceedings under the Federal Bankruptcy Code.

1. Payments. Principal and interest hereunder shall be payable as follows:

A. From the Commencement Date, interest on the face amount of this Note shall accrue at the rate of 9.5% for the period beginning on and including the Commencement Date to the last day of the month in which the Commencement Date occurs and shall be payable at the closing of the loan.

B. The rate of interest of this Note, which shall remain effective until an Event of Default (as defined below), shall be fixed at 9.5%. Interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

C. Beginning on the May 01, 2019 and continuing on the 1st day of each and every month thereafter through and including the payment due on the April 01, 2020. Maker shall make payments of interest only on the face amount of this Note in arrears, in the amount due hereunder.

D. If not sooner paid, the entire balance due, principal, accrued interest, and together with all other sums due hereunder, shall be due and payable in full on April 01, 2020

E. All payments received will be credited first to late charges and costs hereunder, then to interest accrued at the applicable interest rate hereinafter set forth, with the balance on account of principal.

F. At no time shall the interest rate exceed the maximum rate permitted by the usury statutes governing this Note, if any. If, by application of the above interest rate formula, the interest rate would exceed and violate such usury statutes, interest shall accrue at the maximum rate permitted by law.

2. Security. This Note is secured by a first priority Open-End Commercial Mortgage, Security Agreement, and Fixture Filing (the "Mortgage") on that certain piece or parcel of real property known as 145 Stuyvesant Avenue, Brooklyn, NY 11221 more specifically described in said Mortgage.

3. Default. If any of the following events occur (which is an "Event of Default"), Lender may declare the entire outstanding principal balance hereof, together with any other amounts that Maker owes to Lender, to be immediately due and payable:

- a. Maker fails to pay any installment of principal and/or interest or any other charges due under this Note within five (5) days after the same becomes due and payable;
- b. Maker defaults in any other obligations, liabilities, or indebtedness with Lender (whether now existing or hereafter arising);
- c. Maker sells, leases, or otherwise disposes of all or substantially all of its property, assets, or business, or if Maker ceases any of its business operations, dissolves, or commences reorganization;
- d. Makers makes or takes any action to make a general assignment for the benefit of its creditors or becomes insolvent or has a receiver, custodian, trustee in Bankruptcy, or conservator appointed for it or for substantially all or any of its assets;
- e. Makers files or becomes the subject of a petition in Bankruptcy or upon the commencement of any proceeding or action under any Bankruptcy laws, insolvency laws, relief of debtors laws, or any other similar law affecting Maker, provided, however, that Maker shall have sixty (60) days from the filing of any involuntary petition in Bankruptcy to have the same discharged and dismissed;
- f. Upon the failure by Maker to observe or perform, or upon default in, any covenants, agreements, or provisions in the Mortgage or in any other instrument, document, or agreement, executed and/or delivered in connection herewith or therewith;
- g. Any representation or statement made herein or any other representation or statement made or furnished to Lender by Maker was materially incorrect or misleading at the time it was made or furnished;
- h. In the event of any material adverse change in the financial condition of Maker or any guarantor of the loan; or
- i. Upon the death of any guarantor of the loan.

4. Default Rate. After the occurrence of an Event of Default, interest will accrue at the lesser of (i) twenty three and 99/100 dollars (23.99%) percent per annum or (ii) the maximum rate allowed by law. Interest will continue to accrue at the default rate after judgment until the Note is paid in full.

6. Prepayment. The Principal Amount may be prepaid in whole or in part at any time without charge, penalty or premium. All prepayments shall be paid, together with accrued interest to the date of prepayment, upon at least fifteen (15) days' prior written notice to Payee of maker's intention to prepay. Upon the giving of such notice of maker's intention to prepay the amount set forth in such notice, the amount to be prepaid shall become due and payable on the date specified in such notice.

6. Late Charge. It is further agreed that the holder hereof may collect a late charge equal to the greater of ten percent (10%) of any payment required hereunder or \$100.00, including the final payment, or required under any security agreement, mortgage, or any other instrument, document, or agreement executed and/or delivered in connection herewith which is not paid within five (5) days of the due date thereof. This late charge is to cover the extra expenses involved in handling delinquent payments and is not to be construed to cover other costs and attorneys' fees incurred in any action to collect this Note or to foreclose the mortgage securing the same. This provision shall not affect or limit the holder's rights or remedies with respect to any Event of Default.

7. Lien/Set Off. Maker hereby gives the holder hereof a lien and right of set off for all of Maker's liabilities to the holder hereof or Lender upon and against all deposits, credits, and other property of Maker now or hereafter in the possession or control of the holder hereof, or in transit to it, excepting however, funds held in trust by Maker. All payments shall be made in lawful currency of the United States of America in immediately available funds, without abatement, counterclaim, or set-off, and free and clear of, and without any deduction or withholding for, any taxes or other matters.

8. Purpose of Loan. Maker represents and warrants that the proceeds of this Note are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial or farming or agricultural purposes. Maker acknowledges that Lender is making this loan to Maker in reliance upon the above representation by Maker. The above representation by Maker will survive the closing of this loan and repayment of amounts due to Lender hereunder.

9. Other Obligations. To the extent that the outstanding balance of this Note is reduced or paid in full by reason of any payment to Lender by an accommodation maker, endorser, or guarantor, and all or any part of such payment is rescinded, avoided, or recovered from Lender for any reason whatsoever, including, without limitation, any proceedings in connection with the insolvency, bankruptcy, or reorganization of the accommodation maker, endorser, or guarantor, the amount of such rescinded, avoided, or returned payment shall be added to or, in the event this Note has been previously paid in full, shall revive the principal balance of this Note upon which interest may be charged at the applicable rate set forth in this Note and shall be considered part of the outstanding balance of this Note and all terms and provisions herein shall thereafter apply to the same.

10. WAIVER. MAKER (AND EACH AND EVERY ENDORSER, GUARANTOR, AND SURETY OF THIS NOTE) ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES THE RIGHT TO NOTICE AND HEARING THE NEW YORK GENERAL STATUTES, OR ANY SUCCESSOR STATUTE OF SIMILAR IMPORT, WITH RESPECT TO ANY PREJUDGMENT REMEDY AS DEFINED THEREIN, AND FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE, AND ALL RIGHTS UNDER ANY STATUTE OF LIMITATIONS, AND AGREES THAT THE TIME FOR PAYMENT OF THIS NOTE MAY BE CHANGED AND EXTENDED AS PROVIDED IN SAID MORTGAGE OR ANY SECURITY AGREEMENT, WITHOUT IMPAIRING MAKER'S LIABILITY THEREON, AND FURTHER CONSENTS TO THE RELEASE OF ALL OR ANY PART OF THE SECURITY FOR THE PAYMENT HEREOF, OR THE RELEASE OF ANY PARTY LIABLE FOR THIS OBLIGATION WITHOUT AFFECTING THE LIABILITY OF THE OTHER PARTIES HERETO. ANY DELAY ON THE PART OF THE HOLDER HEREOF IN EXERCISING ANY RIGHT HEREUNDER SHALL NOT OPERATE AS A WAIVER OF ANY SUCH RIGHT, AND ANY WAIVER GRANTED FOR ONE OCCASION SHALL NOT OPERATE AS A WAIVER IN THE EVENT OF ANY SUBSEQUENT DEFAULT.

MAKER FURTHER WAIVES TRIAL BY JURY AND ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, AND ONLY AFTER CONSIDERATION OF THE RAMIFICATIONS OF THE WAIVER BY ITS ATTORNEY.

11. Binding Effect. This Note shall be binding on Maker, its successors and assigns and shall inure to the benefit of Lender, any holder hereof, its successors and assigns.

12. Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to conflicts of laws principles thereof.

13. Joint and Several. Should this Note be signed by more than one Maker, references in this Note to Maker in the singular shall include the plural and all obligations herein contained shall be joint and several of each signer hereof.

14. Maximum Rate. Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Maker under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Maker stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Maker and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Maker.

15. Rights Cumulative. The rights and remedies of Lender shall be cumulative and not in the alternative, and shall include all rights and remedies granted herein, in any document referred to herein or executed and/or delivered in connection herewith, and under all applicable laws, and the exercise of any one or more of them will not be a waiver of any other.

16. Severability. If any term, clause, or provision hereof shall be adjudged to be invalid or unenforceable by a court of appropriate jurisdiction, the validity and enforceability of the remainder shall not be affected thereby and each such term, clause, or provision shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned have executed this Commercial Promissory Note as of March 11, 2019.

BORROWER
145 STUYVESANT AVE PROP LLC

By: 
Name: Chanon D Gordon
Title: Managing Member and Sole Member

STATE OF NY)
) ss:
COUNTY OF NY)

On March 11, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Chanon D Gordon, 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 as Managing Member and Sole Member of 145 STUYVESANT AVE PROP LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.


NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

ALLONGE

ALLONGE TO NOTE(S) MORE FULLY DESCRIBED ON EXHIBIT A ATTACHED
HERETO AND MADE A PART HEREOF

PAY TO THE ORDER OF TCM FUNDING, LLC, a Delaware limited liability company.

Dated: 2-20-20

FIRM LENDING, LLC

By: [Signature]
Name: Joachim Masu Jal
Title: Manager


ALLONGE

ALLONGE TO NOTES(S) MORE FULLY DESCRIBED ON EXHIBIT A ATTACHED
HERETO AND MADE A PART HEREOF.

Pay to the order of TOORAK CAPITAL PARTNERS, LLC, A Delaware limited liability
company.

Dated: March 13, 2019

TCM FUNDING, LLC

By: 
Name: Latbi Benslimane
Title: Authorized Signatory

FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO. 500868/2021

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 01/12/2021

Exhibit B

145 STUYVESANT AVE PROP LLC
\$131,475.00
March 11, 2019

BUILDING LOAN
COMMERCIAL PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, **145 STUYVESANT AVE PROP LLC**, a New York limited liability company having an address at **116 Springwood Lane, Bloomfield, CT 06002** (the "Maker"), promises to pay to the order of **FIRM LENDING, LLC**, a Florida limited liability company having its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Lender"), or at such other place as the holder hereof may designate, the principal sum of up to **One Hundred Thirty One Thousand Four Hundred Seventy Five and 00/100 dollars (\$131,475.00)** ("Maximum Principal Amount"), or so much as may be advanced hereunder, with interest on said unpaid balance from time to time outstanding computed from the date advanced (the Commencement Date") as hereinafter set forth, together with all taxes assessed upon this Note and together with any costs, expenses, and reasonable attorneys' fees incurred in the collection of this Note or in protecting, maintaining, or enforcing its security interest or any mortgage securing this Note or upon any litigation or controversy affecting this Note or the security given therefor, including, without limitation, proceedings under the Federal Bankruptcy Code.

1. Payments. Principal and interest hereunder shall be payable as follows:

A. From the Commencement Date, interest on the face amount of this Note shall accrue at the rate of **9.5%** for the period beginning on and including the Commencement Date to the last day of the month in which the Commencement Date occurs and shall be payable at the closing of the loan.

B. The rate of interest of this Note, which shall remain effective until an Event of Default (as defined below), shall be fixed at **9.5%**. Interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

C. Beginning on the **May 01, 2019** and continuing on the **1st** day of each and every month thereafter through and including the payment due on the **April 01, 2020**. Maker shall make payments of interest only on the face amount of this Note, in arrears, in the amount due hereunder.

D. If not sooner paid, the entire balance due, principal, accrued interest, and together with all other sums due hereunder, shall be due and payable in full on **April 01, 2020** (the "Maturity Date"). It is understood and agreed by Maker that if sufficient prepayments of principal have not been made, a balloon payment will be due on the Maturity Date.

E. All payments received will be credited first to late charges and costs hereunder, then to interest accrued at the applicable interest rate hereinafter set forth, with the balance on account of principal.

F. At no time shall the interest rate exceed the maximum rate permitted by the usury statutes governing this Note, if any. If, by application of the above interest rate formula, the

interest rate would exceed and violate such usury statutes, interest shall accrue at the maximum rate permitted by law.

2. Advances. All advances made hereunder will be made in accordance with the terms of the Loan Agreement of even date.

3. Security. This Note is secured by a second priority Building Loan Commercial Mortgage Security Agreement and Fixture Filing (the "Mortgage") on that certain piece or parcel of real properties known as 145 Stuyvesant Avenue, Brooklyn, NY 11221, being more specifically described in said Mortgage.

4. Default. If any of the following events occur (which is an "Event of Default"), Lender may declare the entire outstanding principal balance hereof, together with any other amounts that Maker owes to Lender, to be immediately due and payable, on written notice of such acceleration to the borrower:

- a. Maker fails to pay any installment of principal and/or interest or any other charges due under this Note within five (5) days after the same becomes due and payable;
- b. Maker defaults in any other obligations, liabilities, or indebtedness with Lender (whether now existing or hereafter arising);
- c. Maker sells, leases, or otherwise disposes of all or substantially all of its property, assets, or business, or if Maker ceases any of its business operations, dissolves, or commences reorganization;
- d. Makers makes or takes any action to make a general assignment for the benefit of its creditors or becomes insolvent or has a receiver, custodian, trustee in Bankruptcy, or conservator appointed for it or for substantially all or any of its assets;
- e. Makers files or becomes the subject of a petition in Bankruptcy or upon the commencement of any proceeding or action under any Bankruptcy laws, insolvency laws, relief of debtors laws, or any other similar law affecting Maker, provided, however, that Maker shall have sixty (60) days from the filing of any involuntary petition in Bankruptcy to have the same discharged and dismissed;
- f. Upon the failure by Maker to observe or perform, or upon default in, any covenants, agreements, or provisions in the Mortgage, Loan Agreement or in any other instrument, document, or agreement, executed and/or delivered in connection herewith or therewith;
- g. Any representation or statement made herein or any other representation or statement made or furnished to Lender by Maker was materially incorrect or misleading at the time it was made or furnished;
- b. In the event of any material adverse change in the financial condition of Maker or any guarantor of the loan; or
- l. Upon the death of any guarantor of the loan.

5. Default Rate. After the occurrence of an Event of Default, interest will accrue at the lesser of (I) twenty three and 99/100 (23.99%) percent per annum or (II) the Maximum Rate (as defined in Section 15 below) allowed by applicable law. Interest will continue to accrue at the default rate after judgment until the Note is paid in full.

6. Prepayment. The Principal Amount may be prepaid in whole or in part at any time without charge, penalty or premium. All prepayments shall be paid, together with accrued interest to the date of prepayment, upon at least fifteen (15) days' prior written notice to Payee of maker's intention to prepay. Upon the giving of such notice of maker's intention to prepay the amount set forth in such notice, the amount to be prepaid shall become due and payable on the date specified in such notice.

Notwithstanding any other provision of this Note, all payments made hereunder shall be applied first to payment of interest on the Principal Amount outstanding hereunder from time to time, secondly, to sums payable hereunder or under the mortgage (hereinafter defined) other than interest and principal, and thirdly to principal.

7. Late Charge. It is further agreed that the holder hereof may collect a late charge equal to the greater of ten percent (10%) of any payment required hereunder or \$100.00, including the final payment, or required under any security agreement, mortgage, or any other instrument, document, or agreement executed and/or delivered in connection herewith which is not paid within five (5) days of the due date thereof. This late charge is to cover the extra expenses involved in handling delinquent payments and is not to be construed to cover other costs and attorneys' fees incurred in any action to collect this Note or to foreclose the mortgage securing the same. This provision shall not affect or limit the holder's rights or remedies with respect to any Event of Default.

8. Lien/Set Off. Maker hereby gives the holder hereof a lien and right of set off for all of Maker's liabilities to the holder hereof or Lender upon and against all deposits, credits, and other property of Maker now or hereafter in the possession or control of the holder hereof, or in transit to it, excepting however, funds held in trust by Maker. All payments shall be made in lawful currency of the United States of America in immediately available funds, without abatement, counterclaim, or set-off, and free and clear of, and without any deduction or withholding for, any taxes or other matters.

9. Purpose of Loan. Maker represents and warrants that the proceeds of this Note are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial or farming or agricultural purposes. Maker acknowledges that Lender is making this loan to Maker in reliance upon the above representation by Maker. The above representation by Maker will survive the closing of this loan and repayment of amounts due to Lender hereunder.

10. Other Obligations. To the extent that the outstanding balance of this Note is reduced or paid in full by reason of any payment to Lender by an accommodation maker, endorser, or guarantor, and all or any part of such payment is rescinded, avoided, or recovered from Lender for any reason whatsoever, including, without limitation, any proceedings in connection with the insolvency, bankruptcy, or reorganization of the accommodation maker, endorser, or guarantor, the amount of such rescinded, avoided, or returned payment shall be added to or, in the event this Note has been previously paid in full, shall revive the principal balance of this Note upon which interest may be charged at the applicable rate set forth in this Note and shall be considered part of the outstanding balance of this Note and all terms and provisions herein shall thereafter apply to the same.

11. Waiver. MAKER (AND EACH AND EVERY ENDORSER, GUARANTOR, AND SURETY OF THIS NOTE) ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY

WAIVES THE RIGHT TO NOTICE AND HEARING UNDER APPLICABLE NEW YORK GENERAL STATUTES, OR ANY SUCCESSOR STATUTE OF SIMILAR IMPORT, WITH RESPECT TO ANY PREJUDGMENT REMEDY AS DEFINED THEREIN, AND FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE, AND ALL RIGHTS UNDER ANY STATUTE OF LIMITATIONS, AND AGREES THAT THE TIME FOR PAYMENT OF THIS NOTE MAY BE CHANGED AND EXTENDED AS PROVIDED IN SAID MORTGAGE OR ANY SECURITY AGREEMENT, WITHOUT IMPAIRING MAKER'S LIABILITY THEREON, AND FURTHER CONSENTS TO THE RELEASE OF ALL OR ANY PART OF THE SECURITY FOR THE PAYMENT HEREOF, OR THE RELEASE OF ANY PARTY LIABLE FOR THIS OBLIGATION WITHOUT AFFECTING THE LIABILITY OF THE OTHER PARTIES HERETO. ANY DELAY ON THE PART OF THE HOLDER HEREOF IN EXERCISING ANY RIGHT HEREUNDER SHALL NOT OPERATE AS A WAIVER OF ANY SUCH RIGHT, AND ANY WAIVER GRANTED FOR ONE OCCASION SHALL NOT OPERATE AS A WAIVER IN THE EVENT OF ANY SUBSEQUENT DEFAULT. MAKER FURTHER WAIVES TRIAL BY JURY AND ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, AND ONLY AFTER CONSIDERATION OF THE RAMIFICATIONS OF THE WAIVER BY ITS ATTORNEY.

12. Binding Effect. This Note shall be binding on Maker, its successors and assigns and shall inure to the benefit of Lender, any holder hereof, its successors and assigns.

13. Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New York. The Maker acknowledges and agrees that the transaction evidenced by this Note was negotiated and accepted in the State of New York and the performance of the obligations hereunder shall be deemed to be performed in the State of New York.

14. Joint and Several. Should this Note be signed by more than one Maker, references in this Note to Maker in the singular shall include the plural and all obligations herein contained shall be joint and several of each signer hereof.

15. Maximum Rate. Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Maker under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate. Maker stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Maker and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Maker.

16. Rights Cumulative. The rights and remedies of Lender shall be cumulative and not in the alternative, and shall include all rights and remedies granted herein, in any document referred to herein or executed and/or delivered in connection herewith, and under all applicable laws, and the exercise of any one or more of them will not be a waiver of any other.

FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO. 500868/2021

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 01/12/2021

17. Severability. If any term, clause, or provision hereof shall be adjudged to be invalid or unenforceable by a court of appropriate jurisdiction, the validity and enforceability of the remainder shall not be affected thereby and each such term, clause, or provision shall be valid and enforceable to the fullest extent permitted by law.

[No further text on this page; signatures appear on following page]

FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM


132

RECEIVED NYSCEF: 01/12/2021

NYSCEF DOC. NO. 3

IN WITNESS WHEREOF, the undersigned have executed this Building Loan Commercial Promissory Note as of March 11, 2019.

BORROWER
145 STUYVESANT AVE PROP LLC

By: 

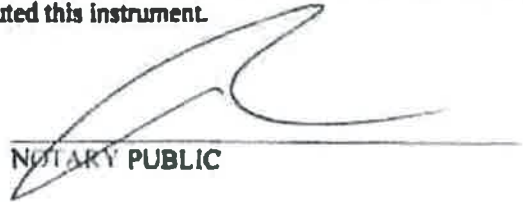
Name: Chanon D Gordon

Title: Managing Member and Sole Member

STATE OF NY)
) ss:
COUNTY OF NY)

On March 11, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, Chanon D Gordon, 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 as Managing Member and Sole Member of 145 STUYVESANT AVE PROP LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH8185359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022


NOTARY PUBLIC

ALLONGE

ALLONGE TO NOTE(S) MORE FULLY DESCRIBED ON EXHIBIT A ATTACHED
HERETO AND MADE A PART HEREOF

PAY TO THE ORDER OF TCM FUNDING, LLC, a Delaware limited liability company.

Dated: 2-20-20

FIRM LENDING, LLC

By: [Signature]
Name: Joachim Masvidal
Title: Manager


ALLONGE

ALLONGE TO NOTES(S) MORE FULLY DESCRIBED ON EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

Pay to the order of TOORAK CAPITAL PARTNERS, LLC, A Delaware limited liability company.

Dated: March 13, 2019

TCM FUNDING, LLC

By: 
Name: Larbi Benslimane
Title: Authorized Signatory

NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 01/12/2021

Exhibit C

<p>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</p> <p>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.</p>	 <p>2019032100304002001E3336</p>
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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 23**

Document ID: 2019032100304002 Document Date: 03-11-2019 Preparation Date: 03-21-2019
 Document Type: MORTGAGE
 Document Page Count: 22


<p>PRESENTER: RAM ABSTRACT LTD - RFA 5514 (LT) 2635 PETTIT AVENUE SUITE 201 BELLMORE, NY 11710 718-846-7800 LTOPALIAN@RAMTITLE.COM</p>	<p>RETURN TO: FIRM LENDING, LLC 150 SE 2ND AVENUE, SUITE 805 MIAMI, FL 33131</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------

Borough	Block	Lot	Unit	Address
BROOKLYN	1621	7	Entire Lot	145 STUYVESANT AVENUE
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES	
<p>MORTGAGOR/BORROWER: 145 STUYVESANT AVE PROP LLC 116 SPRINGWOOD LANE BLOOMFIELD, CT 06002</p>	<p>MORTGAGEE/LENDER: FIRM LENDING, LLC 150 SE 2ND AVENUE, SUITE 805 MIAMI, FL 33131</p>

FEEES AND TAXES																																																																															
<p>Mortgage :</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">Mortgage Amount:</td> <td style="width:10%;">\$</td> <td style="width:20%;">1,132,625.00</td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> </tr> <tr> <td>Taxable Mortgage Amount:</td> <td>\$</td> <td>1,132,625.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Exemption:</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>TAXES: County (Basic):</td> <td>\$</td> <td>5,663.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>City (Additional):</td> <td>\$</td> <td>12,741.75</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Spec (Additional):</td> <td>\$</td> <td>0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>TASF:</td> <td>\$</td> <td>2,831.50</td> <td></td> <td></td> <td></td> </tr> <tr> <td>MTA:</td> <td>\$</td> <td>3,397.80</td> <td></td> <td></td> <td></td> </tr> <tr> <td>NYCTA:</td> <td>\$</td> <td>0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Additional MRT:</td> <td>\$</td> <td>0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>TOTAL:</td> <td>\$</td> <td>24,634.05</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Recording Fee:</td> <td>\$</td> <td>147.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Affidavit Fee:</td> <td>\$</td> <td>0.00</td> <td></td> <td></td> <td></td> </tr> </table>	Mortgage Amount:	\$	1,132,625.00				Taxable Mortgage Amount:	\$	1,132,625.00				Exemption:						TAXES: County (Basic):	\$	5,663.00				City (Additional):	\$	12,741.75				Spec (Additional):	\$	0.00				TASF:	\$	2,831.50				MTA:	\$	3,397.80				NYCTA:	\$	0.00				Additional MRT:	\$	0.00				TOTAL:	\$	24,634.05				Recording Fee:	\$	147.00				Affidavit Fee:	\$	0.00				<p>Filing Fee: \$ 0.00 NYC Real Property Transfer Tax: \$ 0.00 NYS Real Estate Transfer Tax: \$ 0.00</p>
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<p>RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK</p> <p>Recorded/Filed 03-26-2019 12:27 City Register File No.(CRFN): 2019000096671</p> <div style="text-align: center;">  <p><i>Annette McMill</i> City Register Official Signature</p> </div>																																																																															

RFA 5514

22

After Recording Return to:

145 STUYVESANT AVE PROP LLC
\$1,132,625.00
March 11, 2019

Firm Lending, LLC
150 SE 2nd Avenue, Suite 805
Miami, FL 33131

THIS MORTGAGE DOES/DOES NOT (CIRCLE ONE) ENCUMBER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS HAVING THEIR OWN SEPARATE COOKING FACILITIES.

COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

KNOW ALL MEN BY THESE PRESENTS that **145 STUYVESANT AVE PROP LLC**, a New York limited liability company having its principal place of business at **116 Springwood Lane, Bloomfield, CT 06002** ("Mortgagor" or "Borrower", as the case maybe), for the consideration of **One Million One Hundred Thirty Two Thousand Six Hundred Twenty Five and 00/100 dollars (\$1,132,625.00)** and other good and valuable consideration, received to its full satisfaction from **FIRM LENDING, LLC.**, a Florida limited liability company at its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Mortgagee" or "Lender", as the case maybe) does hereby give, grant, bargain, sell, and confirm unto the said Mortgagee, its successors and assigns forever, the following:

- (A) All right, title and interest in and to those premises more commonly known as **145 Stuyvesant Avenue, Brooklyn, NY 11221** (the "Property") which is more particularly described in **SCHEDULE A** (the "Premises") which is attached hereto and made a part hereof;
- (B) TOGETHER WITH (1) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Premises, and (2) all building materials, supplies and other property stored at or delivered to the Premises or any other location for incorporation into the improvements located or to be located on the Premises, and all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, and used or intended to be used in connection with, or with the operation of, or the occupancy of, the Premises, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of Mortgagor in and to such personal property which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (the "Improvements");
- (C) TOGETHER WITH (1) all estate, right, title and interest of Mortgagor, of whatever character, whether now owned or hereafter acquired, in and to (a) all streets, roads and public places, open or proposed, in front of or adjoining the Premises, and the land lying in the bed of such streets, roads and public places, and (b) all other sidewalks, alleys, ways, passages, strips and gores of land adjoining or used or intended to be used in connection with any of the property described in paragraphs (A) and (B) hereof, or any part thereof; and (2) all water courses, water rights, easements, rights-of-way and rights of use or passage, public or private, and all estates, interest,

benefits, powers, rights (including, without limitation, any and all lateral support, drainage, slope, sewer, water, air, mineral, oil, gas and subsurface rights), privileges, licenses, profits, rents, royalties, tenements, hereditaments, reversions and subreversions, remainders and subremainders and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property described in **paragraphs (A) and (B)** hereof, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor; and

(D) TOGETHER WITH (a) all estate, right, title and interest of Mortgagor of, in and to all judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in **paragraphs (A), (B) and (C)** hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in **paragraphs (A), (B) or (C)** hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in **paragraphs (A), (B) or (C)** hereof, or any part thereof; and Mortgagee is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquitances therefor, and (if it so elects) to apply the same, after deducting therefrom any expenses incurred by Mortgagee in the collection and handling thereof, toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; and **(b)** all contract rights, general intangibles, governmental permits, licenses and approvals, actions and rights in action, including without limitation all rights to insurance proceeds and unearned premiums, arising from or relating to the property described in **paragraphs (A), (B) and (C)** above; and **(c)** all proceeds, products, replacements additions, substitutions, renewals and accessions of and to the property described in **paragraphs (A), (B) and (C)**.

All of the property described in **paragraphs (A), (B), (C) and (D)** above, and each item of property therein described, is herein referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD the above granted and bargained Premises, with the appurtenances thereof, unto it, the said Mortgagee, its successors and assigns forever, to it and their own proper use and behoof. And also, the said Mortgagor does for itself, its successors and assigns, covenant with the said Mortgagee, its successors and assigns, that at and until the ensealing of these presents, they are well seized of the Premises as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free and clear of all encumbrances whatsoever.

AND FURTHERMORE, Mortgagor does by these presents bind itself, its legal representatives and its successors and assigns forever to WARRANT AND DEFEND the above granted and bargained Mortgaged Property to Mortgagee, its successors and assigns, against all claims and demands whatsoever.

THE CONDITION OF THIS MORTGAGE IS SUCH THAT:

WHEREAS, Mortgagor is indebted to Mortgagee by virtue of a commercial loan transaction (the "Loan") in the sum **One Million One Hundred Thirty Two Thousand Six Hundred Twenty Five and 00/100 dollars (\$1,132,625.00)** as evidenced by (1) a certain Commercial Promissory Note in the principal amount of **One Million One Hundred Thirty Two Thousand Six Hundred Twenty Five and 00/100 dollars (\$1,132,625.00)** (as same may be amended, restated, or modified from time to time, the "Note") dated on **March 11, 2019** executed by Mortgagor and delivered to Mortgagee, with all amounts remaining unpaid thereon being finally due and payable on **April 01, 2020** and (2) that certain Loan Agreement (as

same may be amended, restated, or modified from time to time, "Loan Agreement") of even date herewith;

WHEREAS, the terms and repayment of such obligations of the Mortgagor are set forth in the Note;

WHEREAS, Mortgagor represents and warrants that it has full power and authority to execute and deliver the Note, this Mortgage, and all other documents, agreements and instruments required of it by Mortgagee in connection with the making of the Loan (the Note, this Mortgage, and all such other documents, agreements and instruments executed and delivered by Mortgagor in connection with the Loan being sometimes collectively referred to herein as the "Loan Documents").

NOW, THEREFORE, Mortgagor hereby covenants and agrees with Mortgagee as follows:

ARTICLE ONE: COVENANTS OF MORTGAGOR

1.01 Performance of Loan Documents. Mortgagor shall cause to be performed, observed and complied with all provisions hereof, of the Note and each of the Loan Documents, and will promptly pay to Mortgagee the principal, with interest thereon, and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of the Loan Documents when payment shall become due (the entire principal amount of the Note, all accrued interest thereon and all obligations and indebtedness thereunder and hereunder and under all of the Loan Documents described being referred to herein as the "Indebtedness").

1.02 General Representations, Covenants and Warranties. Mortgagor represents and covenants that (a) Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency case or proceeding is pending or contemplated by or against Mortgagor; (b) all reports, statements and other data furnished by Mortgagor to Mortgagee in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (c) this Mortgage, the Note and all other Loan Documents are legal, valid and binding obligations of Mortgagor enforceable in accordance with their respective terms and the execution and delivery thereof do not contravene any contract or agreement to which Mortgagor is a party or by which Mortgagor may be bound and do not contravene any law, order, decree, rule or regulation to which Mortgagor is subject; (d) there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting Mortgagor or any part of the Mortgaged Property; (e) all costs arising from construction of any improvements and the purchase of all equipment located on the Mortgaged Property which have been incurred prior to the date of this Mortgage have been paid; (f) the Mortgaged Property has frontage on, and direct access for, ingress and egress to the street(s) described in any survey submitted to Mortgagee; (g) electric, sewer, water facilities and any other necessary utilities are, or will be, available in sufficient capacity to service the Mortgaged Property satisfactorily during the term of the Note, and any easements necessary to the furnishing of such utility service by Mortgagor have been or will be obtained and duly recorded (evidence satisfactory to Mortgagee that all utility services required for the use, occupancy and operations of the Mortgaged Property shall be provided to Mortgagee immediately upon Mortgagee's request); (h) there has not been, is not presently and will not in the future be any activity conducted by Mortgagor or any tenant at or upon any part of the Mortgaged Property that has given or will give rise to the imposition of a lien on any part of the Mortgaged Property; (i) Mortgagor is not in default under the terms of any instrument evidencing or securing any indebtedness of Mortgagor, and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, or the passage of time or both; and (j) Mortgagee has legal capacity to enter into the Loan and to execute and deliver the Loan Documents, and the Loan Documents have been duly and properly executed on behalf of Mortgagee.

1.03 Compliance with Laws; Permits; Notice. Mortgagor covenants and warrants that the Mortgaged Property presently complies with and shall continue to comply with all applicable restrictive covenants, applicable zoning, wetlands and subdivision ordinances and building codes, all applicable health and environmental laws and regulations and all other applicable laws, statutes, rules, ordinances, codes, and regulations, and Mortgagor has not received any notice that the Mortgaged Property is not in compliance with any such laws, statutes, rules, ordinances, codes and regulations. If Mortgagor receives notice from any federal, state or other governmental body that it is not in compliance with any such laws, statutes, rules, ordinances, codes and regulations, Mortgagor shall provide Mortgagee with a copy of such notice promptly. Mortgagor agrees to comply with all federal, state and municipal local laws, statutes, rules, ordinances, codes and regulations in connection with the construction and development of the Mortgaged Property. Mortgagor has obtained all licenses, permits, authorizations, consents and approvals necessary for the construction and development of the Mortgaged Property, and all such licenses, permits, authorizations, consents and approvals are in full force and effect and all appeal periods have expired. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the nature of the occupancy for which the Premises were intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without Mortgagee's prior written consent. Mortgagor warrants and represents that its use, and the use by any of its tenants, of the Mortgaged Property is in accordance and compliance with the terms and conditions of any and all rules, regulations, and laws that may be applicable to the Mortgaged Property, including, without limitation, all federal, state and local laws, ordinances, rules and regulations regarding hazardous and toxic materials and that Mortgagor shall maintain and continue such compliance and shall require and ensure its tenants' compliance with the same. Mortgagor shall maintain or shall cause their agent to maintain in its possession, available for the inspection of the Mortgagee, and shall deliver to the Mortgagee, upon three (3) business days' request, evidence of compliance with all such requirements. Mortgagor hereby indemnifies and holds Mortgagee free of and harmless from and against any and all claims, demands, damages or liabilities that Mortgagee may incur with regard thereto.

1.04 Taxes and Other Charges.

1.04.1 Impositions. Subject to the provisions of this **Section 1.04**, Mortgagor shall pay, at least five (5) days before the date due, all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Premises, and all other governmental levies and charges (collectively, the "Impositions"), of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, which shall be assessed, levied, confirmed, imposed or become a lien upon or against the Mortgaged Property or any part thereof, or which shall become payable with respect thereto. Mortgagor shall deliver to Mortgagee, within twenty (20) days after the due date of each payment in connection with the Impositions or any assessment for local improvements ("Assessment"), the original or a true Photostatic copy of the official receipt evidencing such payment or other proof of payment satisfactory to Mortgagee.

1.04.2 Insurance.

(a) Mortgagor shall keep all buildings erected on or to be erected on the Mortgaged Property insured against loss by fire and such other hazards as the Mortgagee may require and Mortgagor shall obtain and maintain insurance with respect to other insurable risks and coverage relating to the Mortgaged Property including, without limitation, fire, builder's risk, worker's compensation, physical damages, loss of rentals or business interruption, earthquake (if applicable), and liability insurance, all such insurance to be in such sums and upon such

terms and conditions as Mortgagee reasonably may require, with loss proceeds by the terms of such policies made payable to the Mortgagee as its interest may appear. Mortgagor covenants that all insurance premiums shall be paid not later than fifteen (15) days prior to the date on which such policy could be cancelled for non-payment. If, to Mortgagor's knowledge, any portion of the Mortgaged Property is in an area identified by any federal governmental authority as having special flood hazards, and flood insurance is available, a flood insurance policy meeting the current guidelines of the Federal Insurance Administration is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Loan, (2) the full insurable value of the Mortgaged Property, and (3) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973, as amended. All such insurance policies (collectively, the "hazard insurance policy") shall contain a standard mortgagee clause naming the Mortgagee and its successors and assigns as beneficiary, and may not be reduced, terminated, or canceled without thirty (30) days' prior written notice to the Mortgagee.

(b) Such insurance companies shall be duly qualified as such under the laws of the states in which the Mortgaged Property is located, duly authorized and licensed in such states to transact the applicable insurance business and to write the insurance provided, and companies whose claims paying ability is rated in the two highest rating categories by A.M. Best with respect to hazard and flood insurance. Such insurance shall be in amounts not less than the greater of: (i) the outstanding principal balance of the Loan, or (ii) the amount necessary to avoid the operation of any co-insurance provisions with respect to the Premises.

(c) All such policies shall provide for a minimum of thirty (30) days prior written cancellation notice to Mortgagee. Mortgagee, upon its request to Mortgagor, shall have the custody of all such policies and all other policies which may be procured insuring said Mortgaged Property, the same to be delivered, to Mortgagee at its office and all renewal policies to be delivered and premiums paid to Mortgagee at its office at least twenty (20) days before the expiration of the old policies; and Mortgagor agrees that upon failure to maintain the insurance as above stipulated or to deliver said renewal policies as aforesaid, or to pay the premiums therefor, Mortgagee may, without obligation to do so, procure such insurance and pay the premiums therefor and all sums so expended shall immediately be paid by Mortgagor and unless so paid, shall be deemed part of the debt secured hereby and shall bear interest at the rate set forth in the Note, and thereupon the entire principal sum unpaid, including such sums as have been paid for premiums of insurance as aforesaid, and any and all other sums which shall be payable hereunder shall become due and payable forthwith at the option of Mortgagee, anything herein contained to the contrary notwithstanding. In case of loss and payment by any insurance company, the amount of insurance money received shall be applied either to the Indebtedness secured hereby, or in rebuilding and restoring the damaged property, as Mortgagee may elect.

(d) Mortgagor has not engaged in and shall not engage in any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either including, without limitation, no unlawful fee, commission, kickback, or other unlawful compensation or value of any kind has been or will be received, retained, or realized by any attorney, firm, or other person, and no such unlawful items have been received, retained, or realized by Mortgagor.

(e) No action, inaction, or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any

applicable special hazard insurance policy or bankruptcy bond, irrespective of the cause of such failure of coverage.

1.04.3 Deposits for Impositions and Insurance. Notwithstanding anything to the contrary contained in any of the Loan Documents, upon demand by Mortgagee, after failure by Mortgagor to pay any of the amounts specified in Sections 1.04.1 or 1.04.2, Mortgagor shall deposit with Mortgagee on the first day of each month an amount equal to one twelfth (1/12th) of the sum of: (i) the aggregate annual payments for the Impositions; (ii) the annual insurance premiums on the policies of insurance required to be obtained and kept in force by Mortgagor under this Mortgage; and (iii) all other periodic charges (other than interest and principal under the Note) arising out of the ownership of the Mortgaged Property or any portion thereof which are or with notice or the passage of time or both will become a lien against the Mortgaged Property or any part thereof ((i), (ii), and (iii), collectively, the "Annual Payments"). Such sums will not bear interest and are subject to adjustment or additional payments in order to assure Mortgagee that it will have the full amount of any payment on hand at least one (1) month prior to its due date. Mortgagee shall hold said sums in escrow to pay said Annual Payments in the manner and to the extent permitted by law when the same become due and payable. Notwithstanding anything herein to the contrary, however, such deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Mortgagee. If the total payments made by Mortgagor to Mortgagee, on account of said Annual Payments up to the time when the same become due and payable, shall exceed the amount of payment for said Annual Payments actually made by Mortgagee, such excess shall be credited by Mortgagee against the next payment or payments due from Mortgagor to Mortgagee on account of said Annual Payments. If, however, said payments made by Mortgagor shall not be sufficient to pay said Annual Payments when the same become due and payable, Mortgagor agrees to promptly pay to Mortgagee the amount necessary to make up any deficiency. In case of default in the performance of any of the agreements or provisions contained in the Note, Mortgagee may, at its option, at any time after such default, apply the balance remaining of the sums accumulated, as a credit against the principal or interest of the mortgage Indebtedness, or both.

1.04.4 Late Charge. Mortgagee may collect a "late charge" of ten percent (10%) on any payment or installment due or required to be paid pursuant to the terms of this Mortgage or the Note which is not paid within five (5) days of when the same is required to be paid to cover the extra expenses involved in handling such delinquent payment.

1.04.5 Proof of Payment. Upon request of Mortgagee, Mortgagor shall deliver to Mortgagee, within twenty (20) days after the due date of any payment required in this Section 1.04, proof of payment satisfactory to Mortgagee.

1.05 Condemnation. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of, any damage or taking through condemnation, eminent domain or the like, and Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such condemnation, taking or the like and to settle or compromise any claim in connection therewith.

1.06 Care of Mortgaged Property; Demolition and Alteration. Mortgagor shall maintain the Mortgaged Property in good condition and repair, shall not commit or suffer any waste of the Mortgaged Property, and shall comply with or cause to be complied with, all statutes, laws, rules, ordinances and requirements of any governmental authority relating to the Mortgaged Property; and Mortgagor shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in Section 1.05. Mortgagor shall complete and pay for, within a reasonable time, any structure in the process of

construction on the Mortgaged Property at any time during the term of the Loan; and Mortgagor shall not initiate, join in, or consent to any change in any private restrictive covenants, or private restrictions, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof, without the written consent of Mortgagee. Mortgagor agrees that no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished, or materially altered, without the prior written consent of Mortgagee, except that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage.

1.07 Transfer and Encumbrance of Mortgaged Property.

(a) Mortgagor shall not sell, convey, transfer, suffer any type of change in title or ownership, lease, assign or further encumber any interest in any part of the Mortgaged Property, without the prior written consent of Mortgagee. Any such sale, conveyance, transfer, pledge, lease, assignment or encumbrance made without Mortgagee's prior written consent shall be null and void and shall constitute a default hereunder. Mortgagor shall not, without the prior written consent of Mortgagee, permit any further assignment of the rents, royalties, issues, revenues, income, profits or other benefits from the Mortgaged Property, or any part thereof, and any such assignment without the prior written consent of Mortgagee shall be null and void and shall constitute a default hereunder. Mortgagor agrees that in the event the ownership of the Mortgaged Property or any part thereof is permitted by Mortgagee to be vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage and the Note and other sums hereby secured without in any way vitiating or discharging Mortgagor's liability hereunder or upon the Note and other sums hereby secured. No sale of the Mortgaged Property and no forbearance to any person with respect to this Mortgage and no extension to any person of the time for payment of the Note and other sums hereby secured given by Mortgagee shall operate to release, discharge, modify, change or affect the original liability of Mortgagor either in whole or in part.

(b) If Mortgagor shall sell, convey, assign or transfer all or any part of the Mortgaged Property or any interest therein or any beneficial interest in Mortgagor without Mortgagee's prior written consent, Mortgagee may, at Mortgagee's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner on the Indebtedness, declare the Indebtedness to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, lease or transfer, and upon such declaration the entire unpaid balance of the Indebtedness shall be immediately due and payable.

(c) Mortgagor shall keep the Mortgaged Property free from mechanics' liens, materialmen's liens and encumbrances. If any prohibited lien or encumbrance is filed against the Mortgaged Property, Mortgagor shall cause the same to be removed and discharged of record within thirty (30) days after the date of filing thereof.

(d) Mortgagor shall obtain, upon request by Mortgagee, from all persons hereafter having or acquiring any interest in or encumbrance on the Mortgaged Property or the said equipment or accessions, a writing duly acknowledged, and stating the nature and extent of such interest or encumbrance and that the same is subordinate to this Mortgage and no offsets or defenses exist in favor thereof against this Mortgage or the Note hereby secured, and deliver such writing to Mortgagee.

1.08 Further Assurances. At any time and from time to time upon Mortgagee's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee and, where appropriate, shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled, at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all such further mortgages, instruments of further assurance, certificates and such other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, the obligations of Mortgagor under the Note and this Mortgage, the lien of this Mortgage as a lien upon all of the Mortgaged Property, and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.09 Uniform Commercial Code Security Agreement and Fixture Filing. This Mortgage is intended to be a security agreement and fixture filing which is to be filed for record in the real estate records pursuant to the Uniform Commercial Code in effect from time to time in the State of New York for any of the goods specified above in this Mortgage as part of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code and Mortgagor hereby agrees to execute and deliver any additional financing statements covering said goods from time to time and in such form as Mortgagee may require to perfect a security interest with respect to said goods. Mortgagor shall pay all costs of filing such financing statements and renewals and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements which Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in said goods, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Mortgage, including the covenants to pay when due all sums secured by this Mortgage, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies permitted by applicable law as to such goods.

AS IT IS RELATED HERETO:

DEBTOR IS: 145 Stuyvesant Ave Prop LLC
116 Springwood Lane
Bloomfield, CT 06002

SECURED PARTY IS: Firm Lending, LLC
150 SE 2nd Avenue, Suite 805,
Miami, FL 33131

Mortgagor represents, covenants, and warrants that as of the date hereof as follows: Mortgagor's full, correct, and exact legal name is set forth immediately above in this **Section 1.09**. Mortgagor is an organization of the type and is incorporated in, organized, or formed under the laws of the state specified in the introductory paragraph to this Mortgage. In the event of any change in name or identity of Mortgagor, Mortgagor hereby authorizes Mortgagee to file such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon the Mortgaged Property which may be deemed personal property or fixtures, including future replacement thereof, which serves as collateral under this Mortgage.

1.10 Lease Covenants. Each and every covenant on the part of Mortgagor contained in any assignment of lessor's interest in leases or any assignment of rents, royalties, issues, revenues, profits, income or other benefits made collateral hereto is made an obligation of Mortgagor hereunder as if fully set forth herein.

1.11 After-Acquired Property. To the extent permitted by and subject to applicable law, the lien of this Mortgage will automatically attach, without further act, to all after-acquired property located in, on, or attached to, or used, or intended to be used, in connection with, or with the renovation of, the Mortgaged Property or any part thereof; provided, however, that, upon request of Mortgagee, Mortgagor shall execute and deliver such instrument or instruments as shall reasonably be requested by Mortgagee to confirm such lien, and Mortgagor hereby appoints Mortgagee its attorney-in-fact to execute all such instruments, which power is coupled with an interest and is irrevocable.

1.12 Expenses. Unless otherwise agreed in writing, Mortgagor will pay when due and payable all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, court costs, fees of inspecting architect(s) and engineer(s) and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Mortgagee in connection with: (a) the preparation and execution of the Loan Documents; (b) the funding of the Loan; (c) in the event an Event of Default occurs hereunder or under the Note or any of the Loan Documents, all costs, fees and expenses, including, without limitation, all reasonable attorneys' fees in connection with the enforcement under the Note or foreclosure under this Mortgage, preparation for enforcement of this Mortgage or any other Loan Documents, whether or not suit or other action is actually commenced or undertaken; (d) enforcement of this Mortgage or any other Loan Documents; (e) court or administrative proceedings of any kind to which Mortgagee may be a party, either as plaintiff or defendant, by reason of the Note, the Mortgage or any other Loan Documents; (f) preparation for and actions taken in connection with Mortgagee's taking possession of the Mortgaged Property; (g) negotiations with Mortgagor, its beneficiary, or any of its agents in connection with the existence or cure of any Event of Default or default; (h) any proposed refinancing by Mortgagor or any other person or entity of the debt secured hereby; (i) the transfer of the Mortgaged Property in lieu of foreclosure; (j) inspection of the Mortgaged Property pursuant to **Section 1.15**; and (k) the approval by Mortgagee of actions taken or proposed to be taken by Mortgagor, its beneficiary, or other person or entity which approval is required by the terms of this Mortgage or any other of the Loan Document. Mortgagor will, upon demand by Mortgagee, reimburse Mortgagee or any takeout lender for all such expenses which have been incurred or which shall be incurred by either of them; and will indemnify and hold harmless Mortgagee from and against, and reimburse it for, the same and for all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by it by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever or asserted against it on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property, or with this Mortgage or the Indebtedness.

1.13 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, Assessment, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition, agreement or term in this Mortgage, the Note or in any of the Loan Documents, Mortgagee may, without obligation to do so, to preserve its interest in the Mortgaged Property, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Mortgagee, together with interest thereon at the default rate, as provided in the Note, from the date incurred until paid by Mortgagor, shall be added to the Indebtedness and secured by the lien of this Mortgage to the extent permitted by law. Mortgagee is hereby empowered to enter and to authorize others

to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition, agreement or term, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.14 Financial Statements, Books, and Records. Mortgagor will furnish to Mortgagee, within thirty (30) days after a request therefor, a detailed statement in writing, covering the period of time specified in such request, showing all income derived from the operation of the Mortgaged Property, and all disbursements made in connection therewith, and containing a list of the names of all tenants and occupants of the Mortgaged Property, the portion or portions of the Mortgaged Property occupied by each such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements and the period covered by such leases or other agreements.

1.15 Inspection. Mortgagee, and any persons authorized by Mortgagee, shall have the right, at Mortgagee's option, to enter and inspect the Premises during the fourth (4th) month and at all other reasonable times during the term of the Loan. Mortgagor shall pay any professional fees and expenses, which may be incurred by Mortgagee in connection with such inspection.

1.16 Loan to Value Covenant. If at any one or more time(s) during the term of the Note the then aggregate outstanding and committed principal amount of the Note, plus accrued interest and fees thereon, plus all amounts outstanding under any debts secured by prior liens on the Mortgaged Property, is greater than eighty percent (80%) of the value of the Mortgaged Property, as determined by Mortgagee based upon Mortgagee's review of any appraisal and such other factors as Mortgagee may deem appropriate, then Mortgagor shall within thirty (30) days following a request by Mortgagee, prepay the Note by an amount sufficient to cause the then outstanding principal amount of the Note, plus accrued interest and fees thereon, to be reduced to an amount equal to or less than eighty percent (80%) of the value of the Mortgaged Property. The inability of Mortgagor to reduce the principal balance of the Note within thirty (30) days following request by Mortgagee shall be, at Mortgagee's option, an Event of Default, hereunder.

ARTICLE TWO: DEFAULTS

2.01 Event of Default. The term "Event of Default" or "default" wherever used in this Mortgage, shall mean anyone or more of the following events: (a) failure by Mortgagor to pay any installment of principal and/or interest under the Note within five (5) days after the same becomes due and payable; (b) failure by Mortgagor to observe or perform, or upon any default in, any other covenants, agreements or provisions herein, in the Note, or in any of the Loan Documents; (c) failure by Mortgagor to pay any Imposition, Assessment, other utility charges on or lien against the Mortgaged Property; (d) failure by Mortgagor to keep in force the insurance required in this Mortgage; (e) failure by Mortgagor to either deliver the policies of insurance described in this Mortgage or to pay the premiums for such insurance as provided herein; (f) failure by Mortgagor to pay any installment, which may not then be due or delinquent, of any Assessment for local improvements for which an official bill has been issued by the appropriate authorities and which may now or hereafter affect the Mortgaged Property, and may be or become payable in installments; (g) the actual or threatened waste, removal or demolition of, or material alteration to, any part of the Mortgaged Property, except as permitted herein; (h) the vesting of title, or any sale, conveyance, transfer, leasing, assignment or further encumbrance in any manner whatsoever of any interest in the Mortgaged Property, or any part thereof, in or to anyone other than the present owner, or any change in title or ownership of the Mortgaged Property, or any part thereof, without the prior written consent of Mortgagee; (i) all or a material portion of the Mortgaged Property being taken through condemnation, eminent domain, or any other taking such that Mortgagee has reason to believe that the remaining portion of the Mortgaged Property is insufficient to satisfy the outstanding balance of the Note,

or the value of the Mortgaged Property being impaired by condemnation, eminent domain or any other taking, (which term when used herein shall include, but not be limited to, any damage or taking by any governmental authority or any other authority authorized by the laws of any state or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily for a period in excess of thirty (30) days, or permanently; (j) the merger or dissolution of Mortgagor or the death of any guarantor of the Note ("Guarantor"); (k) any representation or warranty of Mortgagor or Guarantor made herein or in any such guaranty or in any certificate, report, financial statement, or other instrument furnished in connection with the making of the Note, the Mortgage, or any such guaranty, shall prove false or misleading in any material respect; (l) Maker makes or takes any action to make a general assignment for the benefit of its creditors or becomes insolvent or has a receiver, custodian, trustee in Bankruptcy, or conservator appointed for it or for substantially all or any of its assets; (m) Mortgagor files, or becomes the subject of, a petition in bankruptcy, or upon the commencement of any proceeding or action under any bankruptcy laws, insolvency laws, relief of debtors laws, or any other similar law affecting Mortgagor, provided however, that Mortgagor shall have sixty (60) days from the filing of any involuntary petition in bankruptcy to have the same discharged and dismissed; (n) the Mortgaged Property becomes subject to (1) any tax lien which is superior to the lien of the Mortgage, other than a lien for local real estate taxes and assessments not due and payable or (2) any mechanic's, materialman's, or other lien which is, or is asserted to be, superior to the lien of the Mortgage and such lien shall remain undischarged for thirty (30) days, (o) Mortgagor fails to promptly cure any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property; (p) in the event of any material adverse change in the financial condition of Mortgagor; or (q) any of the aforementioned events occur with respect to any Guarantor.

ARTICLE THREE: REMEDIES

In the event that an Event of Default or default shall have occurred, the remedies available to Mortgagee include, but are not limited to, any and all rights and remedies available hereunder, any and all rights and remedies available at law, in equity, or by statute. Without limiting the foregoing, the rights and remedies available to Mortgagee shall include, but not be limited to, any one or more of the following:

3.01 Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may, at its option, declare without demand or notice all of the outstanding Indebtedness to be due and payable immediately, and upon such declaration such Indebtedness shall immediately become and be due and payable without demand or notice.

3.02 Mortgagee's Right to Enter and Take Possession. If an Event of Default shall have occurred, Mortgagor, upon demand on Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property and Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of the Mortgaged Property, collect and receive the rents and income therefrom, and to apply so much of said rents and income as may be required in the necessary expenses of running said Premises, including reasonable attorneys' fees, management agents' fees, and if the Mortgagee manages the Premises with its own employees, an amount equal to the customary management agents' fees charged for similar property in the area where the Premises are located, and to apply the balance of said rents and income to the payment of the amounts due upon said Note, or in payment of taxes assessed against the Premises, or both. And for this purpose, and in case of such default, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee the rents and income accruing from said Premises. Nothing contained in the foregoing provisions shall impair or affect any right or remedy which the Mortgagee might now or hereafter have, were it not for such provisions, but the rights herein given shall be in addition to any others which the Mortgagee may have hereunder.

3.03 Receiver. If an Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled to apply for the appointment of a receiver of the rents and profit of the Mortgaged Property without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Mortgaged Property as security for the amounts due Mortgagee, or the solvency of any person or limited liability company liable for the payment of such amounts.

3.04 Waiver of Appraisal, Valuation, Stay, Exemption, and Redemption Laws, etc.; Marshaling. Mortgagor agrees to the full extent permitted by law that after an Event of Default neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, exemption, moratorium, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure hereof.

3.05 Suits to Protect the Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable in order to (a) prevent any impairment of the Mortgaged Property, (b) foreclose this Mortgage, (c) preserve and protect its interest in the Mortgaged Property, and (d) to restrain the enforcement of, or compliance with, any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

3.06 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial case or proceeding affecting Mortgagor, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such case or proceeding for the entire Indebtedness at the date of the institution of such case or proceeding, and for any additional amounts which may become due and payable by Mortgagor after such date.

3.07 Application of Monies by Mortgagee. After the occurrence of an Event of Default, any monies collected or received by Mortgagee shall be applied in such priority as Mortgagee may determine in its sole and absolute discretion, to such matters including, but not limited to, the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee, to deposits for Impositions and Insurance and insurance premiums due, to the cost of insurance, Impositions, Assessments, and other charges and to the payment of the Indebtedness.

3.08 No Waiver. Notwithstanding any course of dealing or course of performance, neither failure nor delay on the part of Mortgagee to exercise any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

3.09 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any of the Indebtedness; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other of the Loan Documents; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other of the Loan Documents or releases or any party liable under the Note; (e) consents to the filing of any map, plat or replat of the Premises; (f) consents to the granting of any easement on the Premises; or (g) makes

or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage be altered thereby.

3.10 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other of the Loan Documents is exclusive of any other right, power and remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other of the Loan Documents, or now or hereafter existing at law, in equity or by statute.

3.11 Interest after Event of Default; Default Rate. If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and this Mortgage shall, at Mortgagee's option, bear interest at the default rate set forth in the Note.

ARTICLE FOUR: MISCELLANEOUS PROVISIONS

4.01 Heirs, Successors and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

4.02 Addresses for Notices, etc.

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage shall be in writing, signed by the party giving or making the same, and shall be sent by certified mail, return receipt requested, as follows:

MORTGAGOR: 145 Stuyvesant Ave Prop LLC
116 Springwood Lane
Bloomfield, CT 06002

Copy to:

MORTGAGEE: Firm Lending, LLC
150 SE 2nd Avenue, Suite 805,
Miami, FL 33131

Copy to: **LaRocca Hornik Rosen, et al**
Attn: Jonathan L. Hornik, Esq.
83 South Main Street, Suite 302
Freehold, NJ 07728

(b) Either party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

4.03 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or expand or otherwise affect any of the terms hereof.

4.04 Provisions Subject to Applicable Laws; Severability All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable. In the event that any of the covenants, agreements, terms or provisions contained in the Note, or in this Mortgage or in any other Loan Documents shall be deemed invalid, illegal or unenforceable in any respect by a court with appropriate jurisdiction, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

4.05 Modification. This Mortgage, the Note, and all other Indebtedness are subject to modification. Neither this Mortgage, nor any term hereof, may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought.

4.06 Governing Law. THIS MORTGAGE IS MADE BY MORTGAGOR AND ACCEPTED BY MORTGAGEE IN THE STATE OF NEW YORK EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED IN THE MORTGAGED PROPERTY UNDER THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED. TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER (BUT THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT LENDER'S RIGHTS WITH RESPECT TO SUCH SECURITY INTEREST CREATED IN THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED).

4.07 Prejudgment Remedies. THE MORTGAGOR HEREBY REPRESENTS, COVENANTS, AND AGREES THAT THE PROCEEDS OF THE LOAN SECURED BY THIS MORTGAGE, AND EVIDENCED BY THE LOAN AGREEMENT, AND THE NOTE SHALL BE USED FOR GENERAL COMMERCIAL PURPOSES AND THAT SUCH LOAN IS A "COMMERCIAL TRANSACTION" AS DEFINED BY THE STATUTES OF THE STATE OF NEW YORK. THE MORTGAGOR HEREBY WAIVES SUCH RIGHTS AS IT MAY HAVE TO NOTICE AND/OR HEARING UNDER ANY APPLICABLE FEDERAL OR STATE LAWS INCLUDING, WITHOUT LIMITATION, NEW YORK GENERAL STATUTES PERTAINING TO THE EXERCISE BY THE MORTGAGEE OF SUCH RIGHTS AS THE MORTGAGEE MAY HAVE INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK PREJUDGMENT REMEDIES AND/OR TO DEPRIVE THE MORTGAGOR OF OR AFFECT THE USE OF OR POSSESSION OR ENJOYMENT OF THE MORTGAGOR'S PROPERTY PRIOR TO THE RENDITION OF A FINAL JUDGMENT AGAINST THE MORTGAGOR. THE MORTGAGOR FURTHER WAIVES ANY RIGHT IT MAY HAVE TO REQUIRE THE MORTGAGEE TO PROVIDE A BOND OR OTHER SECURITY AS A PRECONDITION TO OR IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT BY THE MORTGAGEE, AND WAIVES ANY OBJECTION TO THE ISSUANCE OF SUCH PREJUDGMENT REMEDY BASED ON ANY OFFSETS, CLAIMS, DEFENSES, OR COUNTERCLAIMS TO ANY ACTION BROUGHT BY

THE MORTGAGEE. FURTHER, THE MORTGAGOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISAL, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

4.08 Effects of Changes and Laws Regarding Taxation. In the event of an enactment of any law deducting from the value of the Mortgaged Property any mortgage lien thereon, or imposing upon Mortgagee the payment of any or part of the Impositions, charges, or Assessments previously paid by Mortgagor pursuant to this Mortgage, or change in the law relating to the taxation of mortgages, debts secured by mortgages or Mortgagee's interest in the Mortgaged Property so as to impose new incidents of taxes on Mortgagee, then Mortgagor shall pay such Impositions or Assessments or shall reimburse Mortgagee therefor; provided that, however, if in the opinion of counsel to Mortgagee such payment cannot lawfully be made by Mortgagor, then Mortgagee may, at Mortgagee's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Mortgagor, and Mortgagee may invoke any remedies permitted by applicable law.

4.09 Purpose of Loan. Mortgagor represents and warrants that the proceeds from this Loan are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial or farming or agricultural purposes. Mortgagor acknowledges that Mortgagee has made this Loan to Mortgagor in reliance upon the above representation. Said representation will survive the closing and repayment of the Loan.

4.10 Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

4.11 Usury Laws. This Mortgage, the Note, and the other Loan Documents are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate permitted by applicable law. If, by the terms of this Mortgage, the Note, or any of the Loan Documents, Mortgagor is at any time required or obligated to pay interest on the debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

4.12 Construction. This Mortgage and the Note shall be construed without regard to any presumption or other rule requiring construction against the party causing this Mortgage and the Note to be drafted.

4.13 Release of Mortgage. If all of Mortgagor's obligations under the Loan Documents are paid in full in accordance with the terms of the Loan Documents and all amounts due under the Mortgage and accompanying loan documents are paid in full, no Default then exists hereunder and no Event of Default then exists under any other Loan Document, and if Mortgagor shall well and truly perform all of Mortgagor's covenants contained herein, then this conveyance shall become null and void and be released, and the Mortgaged Property shall be released to Mortgagor, at Mortgagor's request and expense.

4.14 Entire Agreement. This Mortgage, together with the other Loan Documents executed in connection herewith, constitutes the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements, and understandings relating to such subject matter. In entering into this Mortgage, Mortgagor acknowledges that it is not relying on any representation, warranty, covenant, promise, assurance, or other statement of any kind made by the Mortgagee or by any employee or agent of the Mortgagee.

4.15 Provisional Remedies: Foreclosure And Injunctive Relief: Nothing shall be deemed to apply to limit the right of Lender to: (a) exercise self-help remedies, (b) foreclose judicially or non-judicially against any real or personal property collateral, or to exercise judicial or non-judicial power of sale rights, (c) obtain from a court provisional or ancillary remedies (including, but not limited to, injunctive relief, a writ of possession, prejudgment attachment, a protective order or the appointment of a receiver) or (d) pursue rights against Borrower or any other party in a third party proceeding in action brought against Lender (including, but not limited to, actions in bankruptcy court). Lender may exercise the rights set forth in the foregoing clauses (a) through (d), inclusive, before, during, or after the pendency of any proceeding

4.16 State Specific Provisions.

Foreclosure. Mortgagee may institute an action to foreclose this Mortgage 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, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate stipulated in the Note to the date of default, and thereafter at the Default Rate specified in the Note, together with all other sums due by Mortgagor in accordance with the provisions of the Note and this Mortgage, including all sums which may have been loaned by Mortgagee to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for taxes, water or sewer rents, charges or claims, payments on prior liens, completion of construction of improvements, insurance or repairs to the Mortgaged Property, all costs of suit, together with interest at such Default Rate on any judgment obtained by Mortgagee from and after the date of any foreclosure sale until actual payment is made as of the full amount due Mortgagee, and reasonable attorneys' fees for collection, or Mortgagee may foreclose only as to the sum past due with interest and costs as above provided, without injury to this Mortgage or the displacement or impairment of the remainder of the lien thereof, and at such foreclosure sale the Mortgaged Property shall be sold subject to all remaining items of Indebtedness; and Mortgagee may again foreclose, in the same manner, as often as there may be any sum past due. In the event Mortgagee forecloses this Mortgage against the Mortgaged Property, Mortgagee may, at its option and in its sole and absolute discretion, assume all rights (but not the obligation unless consented to by Mortgagee) as owner of the Mortgaged Property, and to assume all rights and privileges of Mortgagor thereunder; or

If the Indebtedness shall have become due and payable, whether by lapse of time or by acceleration, then and in every such case Mortgagor confer upon Mortgagee the authority and power to proceed to protect and enforce its rights by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or in the Loan Documents, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Mortgage by advertisement or action, or for the enforcement of any other appropriate legal or equitable remedy.

If Mortgagee invokes the STATUTORY POWER OF SALE, Mortgagee shall mail a copy of a notice of sale to Mortgagor, and to other persons prescribed by applicable law, in the manner provided by applicable law. Mortgagee shall publish the notice of sale, and the Mortgaged Property shall be sold in the manner prescribed by applicable law. Mortgagee or its designee may purchase the Mortgaged Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Mortgage; and (c) any excess to the person or persons legally entitled to it in accordance with the terms of this Mortgage.

Section 291-f Agreement.

- a) This Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby.
- b) Mortgagor shall deliver notice of this Mortgage to any tenant (unless such notice is contained in such tenant's Lease), which notice shall be to all present and future holders of any interest in any Lease, by assignment or otherwise, and shall take such action as may now or hereafter be reasonably required to afford Mortgagee the full protections and benefits of such Section 291-f; and
- c) Mortgagor shall request the recipient of any such notice to acknowledge the receipt thereof.

Power of Sale.

Upon the completion of any sale or sales made under or by virtue of this Mortgage, an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that Mortgagee shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Mortgage pursuant to any judicial or nonjudicial proceedings or any judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

Upon any sale made under or by virtue of this Mortgage pursuant to any judicial or nonjudicial proceedings or any judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom (to the extent allowed by applicable law) the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but those liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

Covenant to Appointment of Receiver. Upon an Event of Default, Mortgagor hereby covenants that Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Obligations, without any showing of fraud or mismanagement on the part of Mortgagor or the insolvency of any party bound for its payment, to the appointment of a receiver or the immediate appointment of Mortgagee to

take possession of and to operate the Mortgaged Property, and to collect and apply the rents, issues, profits and revenues thereof. The foregoing shall constitute a covenant and Mortgagee shall be entitled to all of the rights and remedies provided in the RPL (including without limitation, §254(10) of the RPL).

Assignment of Mortgage Lien. Provided no Event of Default has occurred, at that time when the holder of the Note shall have been paid in full in an amount equal to the Obligations under the Loan Documents have been performed, Mortgagee shall, upon request by Mortgagor, assign the lien of this Mortgage to a subsequent Mortgagee, provided that Mortgagor shall reimburse Mortgagee for all costs associated with that assignment (including, without limitation, reasonable attorneys' fees) and that assignment shall, otherwise, be without any cost or expense to Mortgagee and without representation, warranty or covenants by, or recourse against, Mortgagee.

New York Real Property Law. The clauses and covenants contained herein which are construed by Section 254 of the RPL shall be construed as provided in that section except as otherwise provided in this Mortgage and the additional clauses and covenants contained herein shall afford rights supplemental to and not exclusive of the rights conferred by the clauses and covenants construed by that Section 254 (or any other laws of the State of New York, including, without limitation, Sections 271 and 272 of the RPL) and shall not impair, modify, alter or defeat those rights, notwithstanding that those additional clauses and covenants may relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as the clauses and covenants construed by Section 254 or other provisions of the RPL or other laws of the State of New York. Mortgagee's rights arising under the clauses and covenants contained in the RPL and/or other laws of the State of New York and/or herein shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others and no act of the Mortgagee shall be construed as an election to proceed under any one such provision to the exclusion of any other provision, notwithstanding anything to the contrary contained herein.

Documentary Taxes and Recording Taxes. Mortgagor will pay all filing, registration or recording fees, together with all required recording taxes, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges (including any documentary stamp tax or intangible tax) arising out of or in connection with the execution and delivery or recording of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do (herein collectively called the "Documentary Taxes). Mortgagor hereby agrees that, in the event that it is determined that additional Documentary Taxes are due hereon or on the Note or any other mortgage or promissory note executed in connection herewith, Mortgagor shall indemnify and hold harmless Mortgagee for all those Documentary Taxes including all penalties and interest assessed or charged in connection therewith. Mortgagor shall pay same within ten (10) days after demand for payment from Mortgagee and the payment of those sums shall be secured by this Mortgage and shall bear interest at the Default Rate (as defined in the Note) until paid in full.

Lien Law. Mortgagor, in compliance the New York Lien Law (as amended and in effect; the "NYLL"), including, without limitation Section 13 thereof, will receive the advances (including the Loan proceeds) secured hereby and will hold the right to receive those advances as a trust fund to be applied first for the

purpose of paying the cost of improvements and will apply those funds first to the payment of the cost of any improvement before using any part of the total of any advance for any other purpose.

Trust Funds. Mortgagor will receive the advances secured hereby and will hold the right to receive those advances as a trust fund to be applied first for the purpose of paying the cost of any improvements before using any part of those advances for any other purpose. The covenants of this Section are made subject to and in compliance with the trust fund provision of Section 13 of the NYLL.

Future Advances. Any and all future advances (if any), with interest thereon, shall, to the fullest extent permitted by NYLL, be secured by this Mortgage unless the parties shall otherwise agree in writing. This Mortgage secures not only existing Obligations and advances made contemporaneously with the execution hereof, but also future advances, whether obligatory, or optional, or both, to the same extent as if such future advances were made contemporaneously with the execution of this Mortgage, even if no advance is made at the time of the execution of this Mortgage and even if no Obligations are outstanding at the time any advance is made.


NOW, THEREFORE, If the Note and any Indebtedness secured by this Mortgage shall be well and truly paid according to their tenor and if all the terms, covenants, conditions, and agreements of the Mortgagor contained herein and in the Note and Loan Documents, shall be fully and faithfully performed, observed, and complied with, then this mortgage deed shall be void, but shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage on March 11, 2019

Signed, Sealed, and Delivered in the Presence of:

MORTGAGOR
145 STUYVESANT AVE PROP LLC

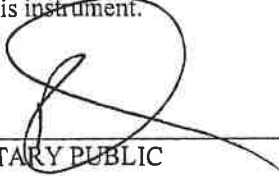

Name: _____

By: 
Name: Chanon D Gordon
Title: Managing Member and Sole Member

Name: _____

STATE OF NY)
) ss:
COUNTY OF NY)

On March 11, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, Chanon D Gordon, 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 as Managing Member and Sole Member of 145 STUYVESANT AVE PROP LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.



NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

SCHEDULE A
PROPERTY DESCRIPTION

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 a point on the easterly side of Stuyvesant Avenue distant 60 feet southerly from the corner formed by the intersection of the easterly side of Stuyvesant Avenue with the southerly side of Greene Avenue;

RUNNING THENCE easterly parallel with Greene Avenue and part of the distance through a party wall 75 feet;

THENCE southerly parallel with Stuyvesant Avenue 20 feet;

THENCE westerly parallel with Greene Avenue and part of the distance through a party wall 75 feet to the easterly side of Stuyvesant Avenue; and

THENCE northerly along the easterly side of Stuyvesant Avenue 20 feet to the point or place of BEGINNING

NOTE: Being Lot(s) Lot: 7, Block: 1621; Tax Map of the Brooklyn, County of KINGS, State of NEWYORK.

NOTE: Lot and Block shown for informational purposes only.

Property address is commonly known as: 145 Stuyvesant Avenue, Brooklyn, NY 11221

**“Said premises is
or will be improved by
a three family
dwelling only.”**

FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO. 500868/2021

NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 01/12/2021

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SCHEDULE B
PERMITTED ENCUMBRANCES

As outlined on Schedule B of the Lender's title policy.

FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO: 500868/2021

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 01/12/2021

Exhibit D

<p>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</p> <p>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.</p>	 <p>2019032800948001001E4F7D</p>
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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 39**

Document ID: 2019032800948001 Document Date: 03-11-2019 Preparation Date: 03-28-2019
 Document Type: MORTGAGE
 Document Page Count: 38

<p>PRESENTER: RAM ABSTRACT LTD - RFA 5514 - 2ND SET (LT) 2635 PETTIT AVENUE SUITE 201 BELLMORE, NY 11710 718-846-7800 LTOPALIAN@RAMTITLE.COM</p>	<p>RETURN TO: LA ROCCA, HORNIK, ROSEN, GREENBERG AND BLAHA, ESQS. - ATTN: JONATHAN L. HORNIK 83 SOUTH STREET, SUITE 302 FREEHOLD, NJ 07728</p>
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PROPERTY DATA			
Borough	Block	Lot	Unit Address
BROOKLYN	1621	7	Entire Lot 145 STUYVESANT AVENUE
Property Type: DWELLING ONLY - 3 FAMILY			

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES	
<p>MORTGAGOR/BORROWER: 145 STUYVESANT AVE PROP LLC 116 SPRINGWOOD LANE BLOOMFIELD, CT 06002</p>	<p>MORTGAGEE/LENDER: FIRM LENDING, LLC 150 SE 2ND AVENUE, SUITE 805 MIAMI, FL 33131</p>

FEES AND TAXES			
Mortgage :		Filing Fee:	
Mortgage Amount:	\$ 131,475.00		\$ 0.00
Taxable Mortgage Amount:	\$ 131,475.00	NYC Real Property Transfer Tax:	\$ 0.00
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 657.50	NYS Real Estate Transfer Tax:	\$ 0.00
City (Additional):	\$ 1,479.38		\$ 0.00
Spec (Additional):	\$ 0.00		
TASF:	\$ 328.75		
MTA:	\$ 394.50		
NYCTA:	\$ 0.00		
Additional MRT:	\$ 0.00		
TOTAL:	\$ 2,860.13		
Recording Fee:	\$ 227.00		
Affidavit Fee:	\$ 0.00		

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

Recorded/Filed 03-28-2019 15:49
 City Register File No.(CRFN):
2019000100476




Annette McMill
City Register Official Signature

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 01/12/2021
RFA 5574

(38)

BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

145 STUYVESANT AVE PROP LLC

(Mortgagor)

to

FIRM LENDING, LLC (Mortgagee)

Dated: March 11, 2019

Property Address: 145 Stuyvesant Avenue, Brooklyn, NY 11221

Block:
Lot:
County: Kings
State: New York

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

LaRocca, Hornik, Rosen, Greenberg & Blaha
Att: Jonathan L. Hornik, Esq.
83 South Street
Suite 302
Freehold, NJ 07728

THIS MORTGAGE DOES/DOES NOT (CIRCLE ONE) ENCUMBER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS HAVING THEIR OWN SEPARATE COOKING FACILITIES.

THIS BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT ("Mortgage"), made **March 11, 2019**, between **145 STUYVESANT AVE PROP LLC**, a New York New York with an address of **116 Springwood Lane, Bloomfield, CT 06002** (the "**Mortgagor**"), **FIRM LENDING, LLC**, a Florida limited liability company having its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("**Mortgagee**").

WITNESSETH:

WHEREAS, Mortgagor is the holder of the fee simple interest in the real property described in Schedule A attached hereto (hereinafter, collectively, the "**Premises**") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "**Improvements**");

WHEREAS, Mortgagor has delivered this Mortgage on this date to secure (1) the payment of an indebtedness in the principal sum of up to **One Hundred Thirty One Thousand Four Hundred Seventy Five and 00/100 dollars (\$131,475.00)** lawful money of the United States of America, to be paid with interest according to a certain Building Loan Secured Promissory Note dated the date hereof made by Mortgagor to Mortgagee (the secured promissory note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "**Note**") and all other sums due hereunder, under the other Loan Documents (hereinafter defined) and under the Note (said indebtedness and interest due under the Note and all other sums due hereunder, under the Note and under the other Loan Documents being hereinafter collectively referred to as the "**Debt**") and (2) performance of Mortgagor's obligations under the Loan Documents (as hereinafter defined).

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "**Mortgaged Property**");

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in

connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "Equipment"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "Leases") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (hereinafter collectively referred to as the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, 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 Mortgaged Property;

(f) all accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "Intangibles");

(g) all agreements and/or contracts now or hereafter entered into by the Mortgagor relating to the sale, leasing, brokerage, development, construction (including architectural and engineering contracts), equipping, management, maintenance, marketing, and/or operation of the Premises or the Improvements, including all moneys due and to become due thereunder;

- (h) the plans and specifications and working drawings relating to the construction of any Improvements at the Premises;
- (i) all options and agreements with respect to any additional real property for the use or development in connection with operation of the Premises and/or construction of any Improvements;
- (j) all consents, certificates, authorizations, variances, waivers, licenses, permits and approvals from any governmental authority relating to the Premises and/or the construction of any Improvements;
- (k) all rights, interest and benefits of Mortgagor to 421-a certificates; and
- (l) all proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

GENERAL PROVISIONS

1. **Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay all monthly installments of interest and principal as provided for in the Note and shall repay the Debt on or before the Maturity Date, as such term is defined in the Note (the "**Maturity Date**") at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents including, without limitation, the Note, this Mortgage and that certain Building Loan Agreement, dated the date hereof, among Mortgagor and Mortgagee (the "**Building Loan Agreement**"), now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and this Mortgage (the "**Loan Documents**") are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. The Note is evidence of that certain loan made to the Mortgagor by the Mortgagee (the "**Loan**").

2. **Warranty of Title.** Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable first (1st) lien on and security interest in the Mortgaged Property, subject only to the lien of the Land Loan (as defined in the Building Loan Agreement) and said

exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance.

(a) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain during the entire term of this Mortgage (the "Term") policies of insurance against loss or damage by fire, lightning, wind and such other perils as are included in a standard "all risk" or "special causes of loss" form, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the greatest of (i) the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, (ii) the outstanding principal balance of the Loan, and (iii) such amount that the insurer would not deem Mortgagor a coinsurer under said policies. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation and an "Agreed Amount Endorsement". The policies shall have a deductible no greater than \$10,000 unless agreed to by Mortgagee in writing.

(b) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the Term the following policies of insurance:

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal amount of the Loan or the maximum limit of coverage available with respect to the Improvements and Equipment under said Program, whichever is less.

(ii) Commercial General Liability insurance, including coverage for contractual liability, property damage, bodily injury (including death resulting therefrom), personal injury, advertising injury and a liquor liability endorsement if liquor is sold on the Mortgaged Property, containing minimum limits per occurrence of \$1,000,000.00 and \$2,000,000.00 in the aggregate for any policy year. The policy shall also name the Mortgagee as an additional insured and include coverage for; the discharge or release of pollutants from a hostile fire; cross suits arising from claims or suits brought by additional insureds; a retention not to exceed \$15,000 per occurrence and; extended completed operations coverage for a period of 6 years following the completion of construction with limits per occurrence of \$1,000,000.00 and \$2,000,000 in the aggregate for the 6 year period. The policy shall not include any reduction in coverage for failure to maintain certificates of insurance or indemnity agreements from subcontractors or independent contractors.

(iii) Automobile liability coverage covering all owned, hired and non-owned vehicles with a limit of \$1,000,000.00 per occurrence.

(iv) Umbrella liability coverage providing coverage over the commercial general liability, automobile liability and employers liability insurance policies containing minimum limits per occurrence of \$5,000,000.00 and \$5,000,000.00 in the aggregate for any policy year. The policy shall include extended completed operations coverage for a period of 6 years following the completion of construction with limits per occurrence of \$5,000,000.00 and \$5,000,000.00 in the aggregate for the six year period.

(v) Rental loss and/or business interruption insurance for a period of twelve (12) months in an amount equal to the greater of (A) estimated gross revenues from the operations of the Mortgaged Property over twelve (12) months or (B) the projected operating expenses (including stabilized management fees, applicable reserve deposits, and debt service) for the maintenance and operation of the Mortgaged Property over twelve (12) months. The amount of such insurance shall be increased in Mortgagee's reasonable discretion from time to time during the Term as and when new Leases and renewal Leases are entered into and the Rents increase or the annual estimate of (or the actual) gross revenue, as may be applicable, increases.

(vi) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), in an amount at least equal to the outstanding principal amount of the Note or \$2,000,000.00 whichever is less.

(vii) Worker's compensation and employer's liability insurance with respect to any employees or uninsured subcontractors and sub-subcontractors of Mortgagor, and as required by any governmental authority or legal requirement.

(viii) "Builder's Risk, Completed Value, Non-Reporting Form", or other form approved by the Mortgagee, with "all-risk" extended coverage (including vandalism and malicious mischief) and coverage for "completion and/or premises occupancy" for the full insurable value of all work incorporated in the Improvements and all materials and equipment on or about the Mortgaged Property intended for permanent use in the Improvements or incident to the construction thereof in form and substance acceptable to Mortgagee.

(ix) Law and ordinance coverage in an amount satisfactory to Mortgagee if the Mortgaged Property, or any part thereof, shall constitute a nonconforming use under applicable zoning ordinances, sub-division and building codes or other laws, ordinances, orders and requirements.

(x) Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

(c) All policies of insurance (the "Policies") required pursuant to this paragraph: (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of "BBB" or better by Standard & Poor's Ratings Services, a division of McGraw-Hill Companies, Inc. and a rating of "A:VII" or better in the current Best's Insurance Reports; (ii) shall name Mortgagee and its successors and/or assigns as their interest may appear as the mortgagee; (iii) shall contain a Non-Contributory Standard Mortgagee Clause and a Lender's Loss Payable Endorsement, or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Mortgagee; (v) shall be maintained throughout the Term without cost to Mortgagee; (vi) shall be assigned and the originals or certified copies delivered to Mortgagee (including certified copies of the Policies in effect on the date hereof within thirty (30) days after the closing of the Loan); (vii) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee in its reasonable discretion as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to

Mortgagee evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee (provided, however, that Mortgagor is not required to furnish such evidence of payment to Mortgagee in the event that such Insurance Premiums have been paid by Mortgagee pursuant to Paragraph 5 hereof). If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Mortgagor agrees to reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

(d) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an “**Insured Casualty**”), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of an Insured Casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(e) In case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of an Insured Casualty that does not exceed ten percent (10%) of the original principal amount of the Note, Mortgagee shall settle and adjust any claim without the consent of Mortgagee and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receipt for any such insurance proceeds.

(ii) In the event an Insured Casualty shall exceed ten percent (10%) of the original principal amount of the Note, then and in that event, Mortgagor shall settle and adjust any claim and agree with the insurance company or companies on the amount to be paid on the loss and the proceeds of any such policy shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Mortgage. Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact, coupled with an interest, to settle and adjust any such claims and endorse any checks payable to the order of Mortgagee. Mortgagor hereby releases Mortgagee from any liability with respect to the settlement or adjustment by Mortgagee of any Insured Casualty.

(iii) In the event of an Insured Casualty where the loss is in an aggregate amount less than thirty percent (30%) of the original principal balance of the Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months and prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor

shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iv) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall be without any Prepayment Premium (as such term is defined in the Note, except that if an Event of Default has occurred and is continuing then the Mortgagor shall pay to Mortgagee an additional amount equal to the Prepayment Premium (as such term is defined in the Note), if any. Any such application to the Debt shall (A) be applied to those payments of principal and interest last due under the Note but shall not postpone any payments otherwise required pursuant to the Note other than such last due payments and (B) cause the Note to be re-amortized in accordance with its terms and conditions.

(v) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee in its reasonable discretion prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be retained by Mortgagee as additional collateral for the Loan. Any reimbursement of insurance proceeds to Mortgagor shall be made pursuant to and consistent with the terms of the Building Loan Agreement.

(f) In the event of any conflict, inconsistency or ambiguity between the provisions of this Paragraph 3 and 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, the provisions of Paragraph 3 hereof shall control.

4. **Payment of Taxes, Etc.** Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. Mortgagor will deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge

whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Mortgagor is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Mortgagee pursuant to Paragraph 5 hereof).

5. **Tax and Insurance Escrow Fund.** At Mortgagee's request, Mortgagor shall pay to Mortgagee on the first (1st) day of each calendar month (a) 110% of one-twelfth of the Taxes that Mortgagee estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) 110% of one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "**Tax and Insurance Escrow Fund**"). The Tax and Insurance Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Tax and Insurance Escrow Fund in a timely fashion to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 3 and 4 hereof. In making any payment relating to the Tax and Insurance Escrow Fund, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or Mortgagor's insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 3 and 4 hereof, Mortgagee shall, in its sole discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If at any time Mortgagee determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay the items set forth in (a) and (b) above, Mortgagee shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Mortgagee by the amount that Mortgagee estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Tax and Insurance Escrow Fund to the payment of the Debt in any order in its sole discretion. Until expended or applied as above provided, any amounts in the Tax and Insurance Escrow Fund shall constitute additional security for the Debt. The Tax and Insurance Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. The Tax and Insurance Escrow Fund may, at Mortgagee's sole option, be held in an interest bearing account in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. All earnings or interest on the Tax and Insurance Escrow Fund, if any, shall be, and become, part of such Tax and Insurance Escrow Fund and shall be disbursed as provided in this Paragraph 5. If Mortgagee so elects at any time, Mortgagor shall provide, at Mortgagor's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the Term.

Notwithstanding the foregoing, the Mortgagor and Mortgagee covenant and agree that provided no Event of Default has occurred under the Note, this Mortgage or any other Loan Documents, and provided further that Mortgagor furnishes Mortgagee with proof that all Taxes, Insurance Premiums and Other Charges are being paid as required under this Mortgage, Mortgagee shall not require Mortgagor

to make monthly installments for the payment of Taxes, Insurance Premiums and Other Charges to the Tax and Insurance Escrow Fund.

6. **Condemnation.** Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a "**Condemnation**") and shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Mortgagor, regardless of whether an Award (hereinafter defined) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment ("**Award**") for any taking accomplished through a Condemnation (a "**Taking**") and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Mortgage. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for in the Note, in this Mortgage and the other Loan Documents and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Mortgagee to expenses of collecting the Award and to discharge of the Debt. Mortgagee shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than twenty-five percent (25%) of the original principal balance of the Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months of the Taking and at least six (6) months prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default shall have occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Condemnation, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award to be made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Debt shall be without any Prepayment Premium except that if an Event of Default has occurred and is continuing then the Mortgagor shall pay to Mortgagee an additional amount equal to the Prepayment Premium, if any. Any such application to the Debt shall (i) be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments and (ii) cause the Note to be re-amortized in accordance with its terms and conditions. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such Award, Mortgagor shall have the right, whether or

not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the Debt.

(d) In the event Mortgagor is entitled to reimbursement out of the Award received by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence reasonably satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding resulting from such condemnation, (2) finds or, at Mortgagee's option, receives assurances reasonably satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, in the sole and absolute discretion of Mortgagee, be retained by Mortgagee and applied to payment of the Debt provided that such application to the Debt shall be without any Prepayment Premium as long as no Event of Default has occurred and is continuing.

7. Leases and Rents.

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee, all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into any leases for the Mortgaged Property without Mortgagee's prior written consent which consent may be granted or withheld in Mortgagee's sole discretion. All residential leases shall be written on the standard form of residential lease which has been

approved by Mortgagee and all commercial leases shall be written on the standard form of commercial lease which has been approved by Mortgagee. No material changes may be made to the Mortgagee-approved standard residential or commercial lease except for customary alterations made in the ordinary course of business. All Leases shall provide that they are subordinate to lien, terms and provisions of this Mortgage and that the tenant agrees to attorn to Mortgagee. All renewals of residential leases and all proposed residential leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. None of the commercial leases shall contain any non-disturbance or similar recognition agreement, any requirement that the Mortgagor rebuild the Mortgaged Property in connection with a casualty or condemnation of any portion of the Mortgaged Property, or any other similar provisions which adversely affect the Mortgaged Property or which might adversely affect the rights of any holder of the Loan without the prior written consent of Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all residential and commercial leases.

(c) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which can lead to an offset of Rents or termination of the applicable Lease that Mortgagor shall send or receive thereunder; (iii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall use its best efforts to deliver to Mortgagee, upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee, provided that Mortgagor shall not be required to deliver such certificates more frequently than four (4) times in any calendar year; and (vii) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require. Except to the extent Mortgagor is acting in the ordinary course of business as a prudent operator of property similar to the Mortgaged Property, Mortgagor (A) shall not, alter, modify or change the terms of the Leases in any material respect without the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed; (B) shall not convey or transfer or suffer or permit a conveyance or transfer of the Mortgaged Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, tenants under the Leases; (C) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (D) shall not cancel or terminate the Leases or accept a surrender thereof, except if a tenant is in default thereunder; provided, however, that any Lease may be cancelled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the cancelled Lease.

(d) Mortgagor may enter into proposed new commercial leases and proposed renewals or extensions of existing commercial leases without the prior written consent of Mortgagee if such proposed commercial leases or extension: (i) is not for greater than or equal to ten percent (10%) of the gross leaseable area of the Mortgaged Property, or greater than or equal to ten percent (10%) of the total gross rental revenues of the Mortgaged Property; (ii) shall have an initial term of not less than three (3) years or greater than ten (10) years; (iii) shall provide for rental rates comparable to existing local market rates and shall be an arms-length transaction; (iv) shall not contain any options for renewal or expansion by the tenant thereunder at rental rates which are either below comparable market levels or less than the rental rates paid by the tenant during the initial lease term; (v) shall be to a tenant which is experienced, creditworthy and reputable; and (vi) shall comply with the requirements of subparagraph (b), above. Mortgagor may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (vi) immediately above only with the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed. Mortgagor expressly understands that any and all new or

proposed commercial leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Mortgage and the other Loan Documents.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

8. **Representations and Covenants Concerning the Loan.** Mortgagor represents, warrants and covenants as follows:

(a) The Note, this Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(b) All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Mortgaged Property have been obtained and are in full force and effect. The Mortgaged Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Mortgaged Property. The Mortgagor shall comply with all of the recommendations concerning the maintenance and repair of the Mortgaged Property which are contained in the inspection and engineering report which was delivered to Mortgagee in connection with the origination of the Loan.

(c) All of the Improvements which were included in determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against by title insurance. All of the Improvements comply with all material requirements of any applicable zoning, building codes, fire codes and subdivision laws and ordinances.

(d) The Mortgaged Property is not subject to any Leases other than the Leases described in the rent roll delivered to Mortgagee in connection with this Mortgage. No person has any possessory interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder.

(e) The survey of the Mortgaged Property delivered to Mortgagee in connection with this Mortgage, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Mortgaged Property is situated, is certified to the Mortgagee, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Mortgaged Property or the title thereto.

(f) The Mortgaged Property is and shall at all times remain in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

(g) Mortgagor operates the Mortgaged Property and has not entered into any agreement with any third party relating to the operation and management of the Mortgaged Property, and no third party is entitled to any management fee or any portion of the Rents.

9. **Trust Fund.** 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 improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

10. **Maintenance of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof subject to the applicable provisions of this Mortgage. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property that is destroyed by any casualty, or becomes damaged, worn or dilapidated or that is affected by any proceeding of the character referred to in Paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or to any portion thereof (iii) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of management or (iv) amend or modify any easement, covenant or restrictions which benefits or burden the Mortgaged Property. Mortgagor will not install or permit to be installed on the Premises any underground storage tank.

Notwithstanding the foregoing or anything to the contrary contained herein, Mortgagor shall be permitted to improve and renovate the Mortgaged Property, strictly in accordance with terms of that certain Building Loan Agreement dated as of the date hereof (the "**Building Loan Agreement**"), as executed and delivered by Mortgagor in connection with this Mortgage.

11. **Transfer or Encumbrance of the Mortgaged Property.**

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property and control of its interest in the Ground Lease as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property and the Ground Lease so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, have the right to sell, transfer, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or its interest in the Ground Lease or any part thereof or permit the Mortgaged Property or its interest in the Ground Lease or any part thereof (inclusive of any air rights, developments right or similar) to be sold, conveyed, alienated, leased, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 11 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property or its interest in the Ground Lease for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any persons or entity(ies) guaranteeing the Loan and/or any of Mortgagee's obligations under the Loan Documents (collectively the "**Guarantor**"), or any general partner of Mortgagor or Guarantor is a company, the voluntary or involuntary sale, conveyance or transfer of such company's stock (or the stock of any corporation directly or indirectly controlling such company by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such company; (iv) if Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member; (v) any pledge, hypothecation, assignment, transfer or other encumbrance of any ownership interest in Mortgagor; and (vi) any change in the management structure or control of the Mortgagor, whether directly or indirectly accomplished.

(c) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof made in contravention of this paragraph shall be null and void and of no force and effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

12. **Estoppel Certificates and No Default Affidavits.**

(a) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a certificate reaffirming all representations and warranties of Mortgagor set forth herein and in the other Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

(c) Mortgagor shall deliver to Mortgagee upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee provided that Mortgagor shall not be required to deliver such certificates more frequently than four (4) times in any calendar year.

13. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable, provided that Mortgagor shall not be required to pay any Prepayment Premium in connection herewith unless an Event of Default has occurred and is continuing.

14. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

15. **Controlling Agreement.** It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Paragraph 15 shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by

applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt, and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

16. **Financial Statements.**

(a) The financial statements heretofore furnished to Mortgagee are, as of the dates specified therein, complete and correct and fairly present the financial condition of the Mortgagor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles. Mortgagor does not have any liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mortgagor and reasonably likely to have a materially adverse effect on the Mortgaged Property or the operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Mortgagor from that set forth in said financial statements.

(b) Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish to Mortgagee on or before fifteen (15) days after the end of each calendar month the following items, each certified by Mortgagor as being true and correct: (i) leasing and operating reports including a written statement (rent roll) dated as of the last day of each such calendar month identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any material defaults or payment delinquencies thereunder; and (ii) monthly and year to date operating statements prepared for each calendar month during each such calendar month, each of which shall include an itemization of actual (not pro forma) capital expenditures during the applicable period, each report covering such month to date on a year-to-date basis, contrasted against the comparable period of the previous year and the then approved budget. Within fifteen (15) days after the end of each quarter, certified quarterly financial statements and operating statements covering such quarter to date and on a year-to-date basis, contrasted against the comparable period of the previous year and the then approved budget. Within sixty (60) days following the end of each calendar year, Mortgagor shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Mortgagor in such detail as Mortgagee may reasonably request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year. Mortgagor's annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Mortgagor or the general partner of Mortgagor, as applicable, stating that each such annual financial statement presents fairly the financial condition of the Mortgaged Property being reported upon and has been prepared in accordance with good and sound accounting principles consistently applied. Mortgagor's annual financial statements shall include (i) a list of commercial tenants, if any, occupying more than twenty (20%) percent of the total floor area of the Improvements, and (ii) a breakdown showing the year in which each commercial lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which commercial leases shall expire in each such year, each such

percentage to be expressed on both a per year and a cumulative basis. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial data as Mortgagee or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property.

17. **Performance of Other Agreements.** Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

18. **Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage or for facilitating the sale of the Loan and the Loan Documents (if Mortgage elects to do so.) Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. It is expressly agreed that any such receiver shall be permitted do any further acts as the Mortgagee may determine to be necessary to complete the development and construction of any Improvements at the Mortgaged Property pursuant to the Building Loan Agreement and the Draw Schedule (annexed thereto). All such costs and expenses of such receiver that are advanced by the Mortgagee pursuant to the Building Loan Agreement to develop and construct the Improvements as aforesaid shall, to the extent permitted by the Building Loan Agreement and applicable law and subject to the terms of hereof, be added to the Indebtedness, and secured by this Mortgage. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

19. **Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its

successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

20. **Reporting Requirements.** Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any Guarantor.

21. **Events of Default.** The Debt shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "Event of Default"):

(a) if any portion of the Debt is not paid when due, including the failure to repay the Debt on or before the Maturity Date;

(b) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable in accordance with Paragraph 4 and Paragraph 5 of this Mortgage;

(c) if the Policies are not kept in full force and effect or are not delivered to Mortgagee upon request and in accordance with the requirements contained in this Mortgage;

(d) if Mortgagor transfers or encumbers any portion of the Mortgaged Property without Mortgagee's prior written consent, it being expressly agreed and acknowledged by Mortgagor that subordinate financing is prohibited by this Mortgage;

(e) if any material representation or warranty of Mortgagor, or of any Guarantor, made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if the indebtedness secured by any other mortgage or security agreement covering any part of the Mortgaged Property, whether it be superior or junior in lien to this Mortgage, is accelerated due to default thereunder;

(i) subject to Mortgagor's rights set forth in Paragraph 28 of this Mortgage, if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien in excess of \$10,000.00 except a lien for local real estate taxes and assessments not then due and payable;

(j) if Mortgagor fails to cure properly any (i) building department violations, or (ii) rent impairing violations affecting or which may be interpreted to affect the Mortgaged Property and which have or may have a negative adverse impact on Rents in the sole judgment of Mortgagee within thirty (30) days after Mortgagor first receives notice of any such violations;

(k) except as permitted in this Mortgage and the Building Loan Agreement executed on the date hereof between Mortgage and Mortgagee, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Mortgagee;

(l) if Mortgagor shall continue to be in default under any term, covenant, or provision of the Note or any of the other Loan Documents, beyond applicable cure periods contained in those documents;

(m) if Mortgagor fails to cure a default under any other term, covenant or provision of this Mortgage within thirty (30) days after Mortgagor first receives notice of any such default; provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional thirty (30) days to cure such default provided that Mortgagor diligently and continuously pursues such cure;

(n) if, without Mortgagee's prior written consent, such consent not to be unreasonably withheld or delayed, (i) Mortgagor ceases to act as the manager of the Mortgaged Property, (ii) Mortgagor shall enter into a management agreement with any party or there is any material change in any management agreement approved by Mortgagee, (iii) the management of the Mortgaged Property is transferred to a person or entity other than Mortgagor, (iv) there is any material change in the management, operation or control of the Mortgaged Property (v) if Mortgagor shall own or manage any property other than the Mortgaged Property or (vi) the Mortgagor modifies or amends its operating agreement or similar governing document;

(o) if Mortgagor ceases to continuously operate the Mortgaged Property or any material portion thereof for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken with the consent of Mortgagee);

(p) damage to the Mortgaged Property in any manner which is not covered by insurance solely as a result of Mortgagor's failure to maintain insurance required in accordance with this Mortgage;

(q) if any adverse change occurs in the financial condition of Mortgagor or any Guarantor which Mortgagee shall, in good faith, deem to be material or to otherwise materially impair the prospect of payment or performance by Mortgagor of its obligations evidenced by the Note and secured by this Mortgage or any Loan Document;

(r) if an Event of Default shall have occurred and be continuing under the Building Loan Agreement;

(s) the occurrence of any default, beyond the expiration of any applicable notice, grace or cure period, under any other loans made by Mortgagee to Mortgagor, any Guarantor or any principal of Mortgagor giving rise to a right to accelerate payment thereof including, without limitation, any secured or unsecured loans;

(t) if, upon application by Mortgagee to two (2) or more fire insurance companies which are lawfully doing business in the State of New York and which are issuing policies of

fire insurance upon buildings situated within the area wherein the Mortgaged Property is situated, such companies shall refuse to issue such policies.

(v) The failure by Borrower to satisfy the conditions to the Final Advance set forth in Section 2.4 of the Building Loan Agreement on or before the Scheduled Completion Date (as defined therein);

(w) The cessation of Construction Work (as defined in the Building Loan Agreement) for any period of thirty (30) consecutive business days;

(x) A casualty loss such that Lender is not obligated under this Mortgage to advance insurance proceeds to Mortgagor provided that a breach of this Section 21(x) shall not be deemed a default for purposes of the Note if the Mortgagee is reasonably satisfied that the Mortgagor has sufficient available funds without the insurance proceeds to complete the Construction Work (as defined in the Building Loan Agreement) prior to the Completion Date (as defined in the Building Loan Agreement);

(y) The failure or refusal by Title Company (as defined in the Building Loan Agreement) to issue an endorsement to the Title Policy (as defined in the Building Loan Agreement) in the manner set forth in subsection 2.3(c) of the Building Agreement following notice and failure to cure within ten days thereof;

(z) The institution by any lienor of a foreclosure action against the Mortgaged Property or any part thereof;

(aa) The issuance of a "stop work order" or any similar order, notice or requirement that prohibits the Mortgagor from continuing to perform work at the Mortgaged Property which condition is not remedied within thirty (30) days of issuance; or

(bb) The death of any Guarantor or other obligor of the obligations of Mortgagor under the Loan, provided, however, Mortgagor shall have sixty (60) days from the death of such Guarantor to either, (i) provide evidence to Mortgagee that the remaining Guarantors have the financial means on their own to continue to guarantee all obligations of Mortgagor under the Note, this Mortgage and the Loan Documents, as provided by the Guarantee executed by Guarantor on the date hereof, which evidence shall be subject to Mortgagee's approval in its sole but reasonable discretion, or (ii) provide to Mortgagee a substitute guarantor, and all financial documentation concerning said substitute guarantor that Mortgagee requests, which substitute guarantor shall be subject to Mortgagee's approval in its sole but reasonable discretion.

22. **Late Payment Charge and Default Rate.**

(a) If any portion of the Debt is not paid within five (5) days upon the date on which it is due, Mortgagor shall pay to Mortgagee, upon demand, an amount equal to ten percent (10%) of such unpaid portion of the Debt in order to defray a portion of the expenses incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be deemed to be secured by this Mortgage.

(b) From and after the occurrence of an Event of Default, regardless of whether or not there has been a notice of default issued by Mortgagee, interest shall accrue on the outstanding Principal Sum at a rate equal to lesser of (i) 23 %, or (ii) the maximum rate allowed by law (the "Default Rate"). The Default Rate shall remain in effect until any and all Events of Default shall have been cured.

In addition, the Default Rate shall remain in effect during any period of default even upon the acceleration of the Debt. The Default Rate shall be in effect at all times after the maturity of the Debt (whether by acceleration or otherwise). Upon acceleration or maturity, the Default Rate shall remain in effect until all sums due under the Note, the Mortgage and the Loan Documents shall have been paid in full.

23. **Right To Cure Defaults.** Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

24. **Remedies.**

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property by Mortgagee itself or otherwise, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or non-judicial under Article 14 of the RPAPL, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, Mortgagor expressly consents to a non-judicial foreclosure by power of sale under RPAPL Section 14, or similar, applicable statute;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;
- (iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

- (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in any of the other Loan Documents;
- (vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;
- (vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;
- (viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property (other than alterations contemplated pursuant to the terms of the Building Loan Agreement); (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Mortgaged Property to the payment of Debt, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;
- (i) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Building Loan Agreement or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect under the Building Loan Agreement;
- (ii) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code; or
- (xi) exercise any of its rights and remedies under any of the Loan Documents (including, without limitation, any guaranty executed in connection with the Loan).

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto in accordance with all applicable laws, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage and the other Loan Documents.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this paragraph at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Note, this Mortgage or in any of the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Mortgage or in any of the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Note, this Mortgage or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Mortgage or any of the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder

shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 24 (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Note, this Mortgage or any of the other Loan Documents shall not be impaired by any indulgence, including, without limitation, (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Debt.

(j) Upon the occurrence of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Mortgaged Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of the Mortgaged Property for non-payment of rent, however designated.

(k) In any suit to foreclose the lien hereof (including any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs which may be estimated as items to be expended after entry of the decree of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title or the value of the Mortgaged Property.

25. **Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property with 24 hours' notice at any reasonable time during the Term. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

26. **Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged

Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Note, this Mortgage and the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

27. **Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt. Mortgagor hereby irrevocably authorizes Mortgagee to file UCC Financing Statements, Amendments and/or Continuations in order to perfect or continue the perfection of Mortgagee's security interest in the Collateral.

28. **Contest of Certain Claims.** Notwithstanding the provisions of Paragraphs 4 hereof, but subject in any event to the provisions of Paragraph 5 hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within

ten (10) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, cancelled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

29. **Recovery of Sums Required to be Paid.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

30. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

31. **Hazardous Substances.** Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge: (a) the Mortgaged Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state super-lien and environmental clean-up statutes and all regulations adopted in respect to the foregoing laws (collectively, "Environmental Laws"); (b) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants including without limitation, petroleum, tremolite, anthophyllite,

actinolite or polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively, "**Hazardous Substances**"); (c) no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Mortgaged Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property other than in compliance with all Environmental Laws; (d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Mortgaged Property; and (e) no underground storage tanks exist on any of the Mortgaged Property. So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor (i) shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws, (ii) shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on or near the Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws and/or if Mortgagor shall become aware of any condition on or near the Mortgaged Property which shall pose a threat to the health, safety or welfare of humans, (iii) shall remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law, promptly after Mortgagor becomes aware of same, at Mortgagor's sole expense (or as shall be required by Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by Mortgagee ("**Mortgagee's Consultant**") and (iv) shall comply with all of the recommendations contained in the environmental report which was delivered to Mortgagee in connection with the origination of the Loan. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. The obligations and liabilities of Mortgagor under this Paragraph 33 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

32. **Asbestos.** Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, no asbestos or any substance or material containing asbestos ("**Asbestos**") is located on the Mortgaged Property. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, Asbestos and shall remove any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. The obligations and liabilities of Mortgagor under this Paragraph 32 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

33. **Environmental Monitoring.** Mortgagor shall give prompt written notices to Mortgagee of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Mortgaged Property, (b) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance or Asbestos, and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Mortgagor shall permit Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any

Environmental Law or Hazardous Substance, and Mortgagor shall pay all attorneys' fees and disbursements incurred by Mortgagee in connection therewith. Upon Mortgagee's reasonable request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide (i) an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on, in or near the Mortgaged Property, and (ii) an inspection or audit of the Mortgaged Property prepared by a duly qualified engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Mortgaged Property. The cost and expense of such audit or inspection shall be paid by Mortgagor. If Mortgagor fails to provide any inspection or audit required pursuant to this Paragraph 33 within thirty (30) days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added to the Debt and shall bear interest thereafter until paid at the Default Rate. In the event that any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at Mortgagor's expense upon request of Mortgagee. In the event that any investigation, site monitoring, containment cleanup, removal, restoration or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "**Remedial Work**"), Mortgagor shall commence all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law) and thereafter diligently prosecute to completion all such Remedial Work within ninety (90) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law). All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

34. **Indemnification.** In addition to any other indemnifications provided herein or in the other Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees, whether in-house staff, retained firms, or otherwise, and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or

Asbestos including, without limitation, the costs and expenses of any Remedial Work, attorneys' and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Mortgaged Property to comply with any Access Laws; (k) any representation or warranty made in the Note, this Mortgage or any of the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto, including mortgage brokerage fees; (m) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and the Loan Documents and the Debt (including, but not limited to, all costs and any reappraisals of the Mortgaged Property or any other collateral for the Debt), (n) the claims of any lessee of any or any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease, (o) any amounts payable to Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date the loss or damage is sustained by Mortgagee until paid and any amendment to, or restructuring of, the Debt and the Loan Documents, (p) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (q) the past, current and/or future sale or offering for sale of any interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and shall bear interest at the Default Rate. The obligations and liabilities of Mortgagor under this Paragraph 34 shall survive the termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

Mortgagor agrees that the Mortgaged Property shall at all times comply in all material respects and to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws"). Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee. Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws. Mortgagor shall protect, defend, indemnify and save harmless Mortgagee, its successors and assigns, from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees, whether in-house staff, retained firms, or otherwise, and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of against any liability incurred by reason of any actions, claims, violations, costs, fees or liabilities related to or arising from the Access Laws.

35. **Notices.** Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor (and in the case of Mortgagor, with a copy to

145 STUYVESANT AVE PROP LLC, having an address at 116 Springwood Lane, Bloomfield, CT 06002.

1) or Mortgagee, as the case may be (and in the case of Mortgagee, with a copy to LaRocca, Hornik, Rosen, Greenberg & Blaha, PC, 40 Wall Street, 32nd Fl., New York, NY 10005, Att: Jonathan L. Hornik, Esq.), shall designate in writing, and shall be deemed to be received by the addressee on (i) the day such notice is personally delivered to such addressee, (ii) the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, (iii) the day following the day on which such notice is delivered to a nationally recognized overnight courier delivery service, or (iv) the day facsimile transmission is confirmed after transmission of such notice by telecopy to such telecopier number as Mortgagor or Mortgagee, as the case may be, shall have previously designated in writing.

36. **Authority.** (a) Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

37. **Non-Waiver.** The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, or any of the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any of the other Loan Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

38. **No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

39. **Liability.** The obligations and liabilities of each party constituting the Mortgagor shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

40. **Inapplicable Provision.** If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

41. **Headings, Etc.** The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

42. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

43. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "**Mortgagor**" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "**Mortgagee**" shall mean "Mortgagee and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "**person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the words "**Mortgaged Property**" shall include any portion of the Mortgaged Property and any interest therein and the words "**attorneys' fees**" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

44. **Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

45. **Waiver of Jury Trial.** **MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.**

46. **Miscellaneous.**

(a) The Loan Documents contain the entire agreement between Mortgagor and Mortgagee relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.

(b) Mortgagor represents and warrants to Mortgagee that there has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note or under any of the other Loan

Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

(c) Mortgagor acknowledges that, with respect to the Loan, Mortgagor is relying solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Mortgagee or any parent, subsidiary or affiliate of Mortgagee. Mortgagor acknowledges that Mortgagee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of the Mortgagor or its affiliates. Mortgagor acknowledges that it is represented by competent counsel and has consulted counsel before executing the Loan Documents.

(d) Mortgagor covenants and agrees to pay Mortgagee upon receipt of written notice from Mortgagee, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and the costs and expenses of any title insurance company, appraisers, engineers or surveyors) incurred by Mortgagee in connection with (i) the preparation, negotiation, execution and delivery of this Mortgage and the other Loan Documents; (ii) Mortgagor's performance of and compliance with Mortgagor's respective agreements and covenants contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Mortgagee's performance and compliance with all agreements and conditions contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Mortgage and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Mortgagee pursuant to this Mortgage and the other Loan Documents.

(e) This Mortgage shall be governed by and construed in accordance with the laws of the State of New York and the applicable laws of the United States of America.

(f) Mortgagee shall not be obligated to perform or discharge any obligation of the Mortgagor as a result of the collateral assignment hereby effected, and the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all liability, loss or damage which the Mortgagee may incur by reason of any act of the Mortgagee under this Mortgage, other than as a result of the Mortgagee's willful misconduct or gross negligence. Should the Mortgagee incur any such liability, loss or damage by reason of this Mortgage and which is covered by the foregoing indemnity, or in defense against any such claims or demands, or perform any acts or covenants on the part of Mortgagor to be performed under any lease, or pay for the account of the Mortgagor any and all sums, costs and expenses for the discharge of taxes, assessments, water rents or other liens against the Mortgaged Property or any part thereof, or on account of insurance premiums or repairs, and also any amounts and expenses necessary to perform any covenants and conditions to be performed on the part of the Mortgagor under any lease, the amount thereof, including costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date such expenses were paid by the Mortgagee to the date of payment to the Mortgagee by the Mortgagor, shall be included in the obligations secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor upon demand.

(g) Anything in this Mortgage or the other Loan Documents to the contrary notwithstanding, Mortgagor shall indemnify and hold Mortgagee harmless and defend it at Mortgagor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of Mortgagee's counsel, whether in-house staff, retained firms, or otherwise) and all claims, actions, procedures and suits arising out of or in connection with (a) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and the Loan Documents and the Debt (including, but not limited to, all costs and any reappraisals of the Mortgaged Property or any other collateral for the Debt, (b) any amendment to, or restructuring of, the Debt and the Loan Documents, (c) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (d) the past, current and/or future sale or offering for sale of any interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and shall bear interest at the Default Rate.

(h) That this Mortgage is made pursuant to the Building Loan Agreement intended to be filed in the Office of the Clerk of the County in which the Mortgaged Property are located on or before the date of recording of this Mortgage, and this Mortgage is subject to all of the provisions of such Building Loan Agreement, including, without limitation, the provisions thereof entitling Mortgagee to declare the entire indebtedness secured hereby to be immediately due and payable, all of which provisions are incorporated herein with the same force and with like effect as if they were fully set forth herein at length and made a part hereof.

47. **Section 291-f Agreement.** This Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby. Mortgagor shall (unless such notice is contained in such commercial lease) deliver notice of this Mortgage in form and substance reasonably acceptable to Mortgagee, to all present and future holders of any interest in any commercial lease, by assignment or otherwise, and shall take such other action as may now or hereafter be reasonably required to afford Mortgagee the full protections and benefits of Section 291f. Mortgagor shall request the recipient of any such notice to acknowledge the receipt thereof.

48. **Transfer Tax Provisions.** (a) Mortgagor covenants and agrees that, in the event of a sale of the Mortgaged Property or other transfer, it will duly complete, execute and deliver to Mortgagee contemporaneously with the submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix any and all applicable state and local real estate transfer taxes, including, without limitation, any real estate transfer taxes payable under Article 31 of the New York State Tax Law or under Title 11, Chapter 21 of the Administrative Code of the City of New York, if applicable, or any successor provisions thereto (collectively, "**Transfer Taxes**") by reason of such sale or other transfer or recording of the deed evidencing such sale or other transfer. This subsection (a) shall apply only if this Mortgage remains outstanding after any such sale or transfer.

(b) Mortgagor shall pay all transfer Taxes that may hereafter become due and payable with respect to any transfer, and in default thereof Mortgagee may pay the same and the amount of such payment shall be added to the Debt and, unless incurred in connection with a foreclosure of this Mortgage, be secured by this Mortgage. The provisions of this Section shall survive any transfer and the delivery of the deed in connection with any transfer.

49. **Maximum Principal Amount.** NOTWITHSTANDING ANY PROVISION SET FORTH HEREIN TO THE CONTRARY, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE AT EXECUTION, OR WHICH UNDER ANY CONTINGENCY MAY BECOME SECURED HEREBY AT ANY TIME HEREAFTER, IS U.S. ONE HUNDRED THIRTY ONE THOUSAND FOUR HUNDRED SEVENTY FIVE AND 00/100 DOLLARS (\$131,475.00) PLUS ALL INTEREST PAYABLE UNDER THE NOTE AND ALL AMOUNTS EXPENDED BY MORTGAGEE AFTER DEFAULT BY MORTGAGOR (A) FOR THE PAYMENT OF TAXES, CHARGES OR ASSESSMENTS WHICH MAY BE IMPOSED BY LEGAL REQUIREMENTS UPON THE MORTGAGED PROPERTY; (B) TO MAINTAIN THE INSURANCE REQUIRED UNDER THIS MORTGAGE; (C) FOR ANY EXPENSES INCURRED IN MAINTAINING THE MORTGAGED PROPERTY AND UPHOLDING THE LIEN OF THIS MORTGAGE, INCLUDING, BUT NOT LIMITED TO, THE EXPENSE OF ANY LITIGATION TO PROSECUTE OR DEFEND THE RIGHTS AND LIEN CREATED BY THIS MORTGAGE, AND (D) FOR ANY AMOUNT, COST OR CHARGE TO WHICH MORTGAGEE BECOMES SUBROGATED, UPON PAYMENT, WHETHER UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY, OR UNDER EXPRESS STATUTORY AUTHORITY.

50. **Covenants in Addition to RPL.** All covenants hereof shall be construed as affording to Mortgagee rights in addition to and not exclusive of the rights conferred under the provisions of Sections 254, 271, 272, 273 and 291-f of the Real Property Law of the State of New York or any other applicable legal requirement.

51. **Patriot Act Compliance.** (u) Mortgagor will use its good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction of the Mortgagor and the Mortgaged Property, including those relating to money laundering and terrorism. The Mortgagee shall have the right to audit the Mortgagor's compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction of the Mortgagor and the Mortgaged Property, including those relating to money laundering and terrorism. In the event that the Mortgagor fails to comply with the Patriot Act or any such requirements of governmental authorities, then the Mortgagee may, at its option, cause the Mortgagor to comply therewith and any and all reasonable costs and expenses incurred by the Mortgagee in connection therewith shall be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

Neither the Mortgagor nor any partner in the Mortgagor or member of such partner nor any owner of a direct or indirect interest in the Mortgagor (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is not currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("OFAC"), (ii) any other list

of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists".

52. **Assignment of Mortgage.** Upon payment of the Debt in full, Mortgagee agrees to assign this Mortgage to the Mortgagor's designee for mortgage tax-savings purposes, provided Mortgagor pays Mortgagee's attorney's reasonable fees for preparing and delivering the required assignment documentation.

53. **Cross-Default.** This Mortgage, the Note, and the Loan Documents are cross defaulted with any other loans made by Mortgagee (or its affiliates) for which the guarantor(s) of this Mortgage, Note, and Loan Documents, is a surety or guarantor (the "**Cross Default Loans**"). Upon the occurrence of an Event of Default hereunder, Mortgagee shall be permitted to exercise all remedies under the mortgage, the accompanying promissory note and the loan documents of the Cross Default Loans. Upon the occurrence of a default under any of the Cross Default Loans beyond all applicable notice, grace and/or cure periods, Mortgagee shall be permitted to exercise all remedies under this Mortgage, the Note and Loan Documents.

54. **Cross Collateralization.** This Mortgage is cross-collateralized against all property, rights, interests and estates of Mortgagor in and to the Mortgaged Property. Upon the occurrence of an Event of Default under this Mortgage, the Note or any of the Loan Documents, Mortgagee reserves the right, in its sole and absolute discretion, to exercise its remedies against each of such property, rights, interests and estates, in any such order determined by Mortgagee, or to foreclose simultaneously on all such property, rights, interests and estates. Further, the foreclosure on any less than all of such property, rights, interests and estates shall in no way be considered the exclusive remedy of Mortgagee, and Mortgagee shall be permitted to foreclose with respect to all of the Mortgaged Property until the entire indebtedness due under the Note is satisfied or paid in full. The contemporaneous or separate foreclosure on all or any of such property, rights, interests and estates shall not constitute an election of remedies by Mortgagee.

55. **No Occupancy by Mortgagor et al.** None of (i) Mortgagor, (ii) any guarantor of Mortgagor, (iii) any person holding an equity or other ownership interest in Mortgagor or any guarantor of Mortgagor or (iv) any member of the immediate family of the persons identified in (i), (ii) and (iii) shall occupy or inhabit (or permit the occupancy or habitation of) any part of the Mortgaged Property, including without limitation, any building, structure or other improvement located thereon.

[INTENTIONALLY LEFT BLANK - SIGNATURE PAGE TO FOLLOW]

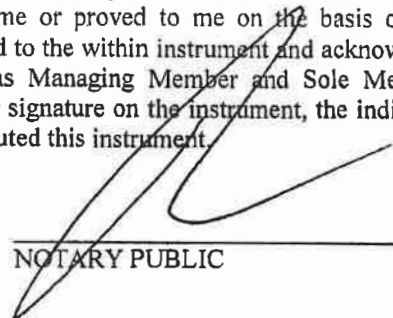
IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor and Mortgagee on the day and year first above written.

MORTGAGOR:
145 STUYVESANT AVE PROP LLC

By: 
Name: Chanon D Gordon
Title: Managing Member and Sole Member

STATE OF NY)
) ss:
COUNTY OF NY)

On March 11, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, Chanon D Gordon, 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 as Managing Member and Sole Member of 145 STUYVESANT AVE PROP LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.


NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

SCHEDULE "A"
Property Description

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 a point on the easterly side of Stuyvesant Avenue distant 60 feet southerly from the corner formed by the intersection of the easterly side of Stuyvesant Avenue with the southerly side of Greene Avenue;

RUNNING THENCE easterly parallel with Greene Avenue and part of the distance through a party wall 75 feet;

THENCE southerly parallel with Stuyvesant Avenue 20 feet;

THENCE westerly parallel with Greene Avenue and part of the distance through a party wall 75 feet to the easterly side of Stuyvesant Avenue; and

THENCE northerly along the easterly side of Stuyvesant Avenue 20 feet to the point or place of BEGINNING

NOTE: Being Lot(s) Lot: 7, Block: 1621; Tax Map of the Brooklyn, County of KINGS, State of NEWYORK.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 145 Stuyvesant Avenue, Brooklyn, NY 11221

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Exhibit E

145 STUYVESANT AVE PROP LLC
\$1,132,625.00
March 11, 2019

COMMERCIAL GUARANTY

FOR VALUE RECEIVED, the undersigned Channon D Gordon of 1 North Main St, Windsor Locks, CT 06096 ("Guarantor") hereby unconditionally and absolutely guarantees the prompt payment and performance of a certain Commercial Promissory Note (the "Note") made by 145 STUYVESANT AVE PROP LLC, a New York limited liability company having its principal place of business at 116 Springwood Lane, Bloomfield, CT 06002 ("Borrower") dated March 11, 2019 in favor of FIRM LENDING, LLC, a Florida limited liability company having its principal place of business at 150 SE 2nd Avenue, Suite 805, Miami, FL 33131 ("Lender"), said Note being in the original principal amount of One Million One Hundred Thirty Two Thousand Six Hundred Twenty Five and 00/100 dollars (\$1,132,625.00) and all monies coming due thereunder, or under any mortgage or any other document granted to secure said Note (all of the foregoing hereinafter collectively referred to as the "Security Instruments") and any environmental indemnification agreement, and any other document executed in relation to and simultaneously with the Note (all of the foregoing hereinafter collectively referred to as the "Documents") (the said Note, Security Instruments, and Documents are hereinafter collectively referred to as the "Loan Documents"). The loan made by Lender to Borrower pursuant to the Note and the Loan Documents is referred to herein as the "Loan".

This Guaranty is intended to guaranty each payment of principal and interest due under said Note and all of the obligations set forth in the Loan Documents and the performance of the Borrower's obligations under the Loan Documents. This Guaranty also includes all costs of collection and attorneys' fees and all other costs, which are required to be paid under the Loan Documents.

(1) **Consent to Modifications.** Guarantor consents to any change in the terms and conditions of the Loan Documents, including but not limited to, any change in the collateral provided in the Loan Documents or any change with respect to the parties who may be liable with respect to the Loan Documents, all without notice to or further assent by Guarantor. Guarantor is to remain bound upon this Guaranty, notwithstanding any such change or extension or release, substitution, exchange or other indulgence granted any maker of said Note. Guarantor hereby waives all defenses, counterclaims, or offsets which Guarantor might have by reason of any change in or to the Loan Documents or any release, exchange, surrender, or impairment of security, or any addition or release of any party liable with respect to the Loan Documents.

(2) **Default.** Upon any default of Borrower in the payment or performance under any of the Loan Documents, the holder of the Note may enforce this Guaranty immediately against Guarantor without the necessity of any suit or action against Borrower or any other party and without resorting to and without regard to any collateral or any other guarantee or any other source of payment. In the event of default under any of the Loan Documents, Guarantor further agrees to pay all costs, without limitation, attorneys' fees, incurred or expended by the holder of the Note in the collection or attempted collection under this Guaranty and in realization of any lien or security interest securing amounts due hereunder, including, without limitation, those incurred as a result of the Note holder's participation in any proceeding involving Guarantor under the Federal Bankruptcy Code.

(3) **Delay or Omission No Waiver.** No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right; and a waiver on one occasion shall not be a bar to or waiver of any right on any other occasion.

(4) Continuing Guaranty. This is a continuing guaranty which shall take effect on its delivery and shall remain in full force and effect and be binding upon Guarantor until the complete satisfaction of all of the obligations set forth in the Loan Documents.

(5) Waiver. Guarantor hereby waives demand, presentment, protest, and notice of acceptance of this Guaranty by Lender, and of any loans made, extensions granted or other action taken in reliance hereon and all other demands and notices of any description in connection with this Guaranty, or under the Loan Documents.

(6) Representations and Warranties.

(a) Guarantor represents and warrants that Guarantor is deriving direct financial benefit from the loans evidenced by the Note.

(b) Guarantor further represents and warrants that Guarantor is not now insolvent and will not be rendered insolvent by the execution hereof or performance hereunder.

(c) There are no actions, suits or proceedings pending, or to the knowledge of the Guarantor, threatened against or affecting the Guarantor or the properties of the Guarantor before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Guarantor, would have a material adverse effect on the financial condition, properties or operations of the Guarantor.

(d) The most recent financial statements of the Guarantor, copies of which statements have been furnished to the Lender, fairly present the financial condition of the Guarantor as of such dates in accordance with generally accepted accounting principles applied on a consistent basis, and since the date of each of such financial statements, there has been no material adverse change in such condition or operations.

(e) Guarantor is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any charter or other restriction which would have a material adverse effect on the ability of the Guarantor to carry out Guarantor's obligations under this Guaranty.

(f) No information, exhibit or report furnished by the Guarantor to the Lender in connection with the negotiation of this Guaranty contained as of the date thereof, or, if there be no such date, the date of furnishing thereof, any untrue statements of a material fact and do not omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(g) This Guaranty constitutes the valid and legally binding obligation of the Guarantor, enforceable in accordance with its terms, except as the enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally.

(h) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery of this Guaranty, or in connection with the performance of the Guarantor's obligations hereunder, if any, have been obtained as required hereunder or by law.

(7) Financial Information. Guarantor shall provide all financial information reasonably requested by Lender. Guarantor shall provide all financial information in such format and containing such information required by Lender.

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(8) Dealing with Borrower and Others. Without incurring responsibility to Guarantor and without impairing or releasing the liabilities and obligations of Guarantor hereunder, Lender may, at any time and from time to time, without the consent of or notice to Guarantor, upon any terms or conditions and in whole or in part shall have the right to:

(a) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order, any property by whomsoever at any time pledged, assigned, mortgaged or in which a security interest is given to secure, or howsoever securing, the liabilities and obligations of Borrower;

(b) exercise or refrain from exercising any rights against Borrower or other persons or entities (including Guarantor) or against any security given by Borrower or other persons or entities (including Guarantor), or otherwise act or refrain from acting;

(c) settle or compromise any liabilities and obligations of Borrower to Lender, dispose of any security therefor, with or without consideration, or any liability incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liabilities and obligations of Borrower (whether due or not) to creditors of Borrower other than Lender and Guarantor; and

(d) apply any sums by whomsoever paid and howsoever realized for the benefit of Borrower to any liabilities and obligations of Borrower, subject to the provisions of the Loan Documents.

(9) Subrogation. So long as any of the Note remains unpaid, any liabilities and obligations of Borrower exist under the Loan Documents or Guarantor under this Agreement, Guarantor waives any and all rights of indemnification, reimbursement, subrogation or contribution which Guarantor may otherwise have now or hereafter as a matter of law against Borrower.

(10) Obligations Absolute. The liabilities and obligations of Guarantor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Note or any other Loan Document; (ii) the insolvency of, or the voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting Borrower any other guarantor or any of their assets; or (iii) any other circumstance or claim which otherwise might constitute a defense available to, or a discharge of, Borrower with respect to its liabilities and obligations under the Loan Documents, or of Guarantor with respect to this Agreement.

(11) No Impairment. No invalidity, irregularity or unenforceability of all or any part of any liabilities and obligations of Borrower or the impairment or loss of any security therefor, whether caused by any actions or inactions of Lender, or otherwise, shall affect, impair or be a defense to this Agreement.

(12) Joint and Several Liability. The liability of each Guarantor under this Agreement shall be joint and several with that of each and every other Guarantor.

(13) Rights Cumulative. All rights, powers and remedies afforded to Lender by reason of this Agreement are separate and cumulative remedies, and no one of such remedies whether or not exercised by Lender shall be deemed to exclude any of the other remedies available to Lender nor prejudice the availability of any other legal or equitable remedy which Lender may have with respect to the Loan.

(14) Commercial Transaction. GUARANTOR HEREBY REPRESENTS, COVENANTS AND AGREES THAT THE LOAN IS A "COMMERCIAL TRANSACTION" AS DEFINED BY THE STATUTES OF THE STATE OF NEW YORK. THE GUARANTOR HEREBY WAIVES SUCH RIGHTS AS IT MAY HAVE TO NOTICE AND/OR HEARING UNDER ANY APPLICABLE FEDERAL OR STATE LAWS INCLUDING, WITHOUT LIMITATION, NEW YORK GENERAL STATUTES, PERTAINING TO THE EXERCISE BY THE LENDER OF SUCH RIGHTS AS THE LENDER MAY HAVE INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK PREJUDGMENT REMEDIES AND/OR TO DEPRIVE THE GUARANTOR OF OR AFFECT THE USE OF OR POSSESSION OR ENJOYMENT OF THE GUARANTOR'S PROPERTY PRIOR TO THE RENDITION OF A FINAL JUDGMENT AGAINST THE GUARANTOR. THE GUARANTOR FURTHER WAIVES ANY RIGHT IT MAY HAVE TO REQUIRE THE LENDER TO PROVIDE A BOND OR OTHER SECURITY AS A PRECONDITION TO OR IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT BY THE LENDER, AND WAIVES ANY OBJECTION TO THE ISSUANCE OF SUCH PREJUDGMENT REMEDY BASED ON ANY OFFSETS, CLAIMS, DEFENSES OR COUNTERCLAIMS TO ANY ACTION BROUGHT BY THE LENDER. FURTHER, THE GUARANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISAL, HOMESTEAD, EXEMPTION, STAY REDEMPTION AND MORATORIUM LAWS.

(15) Successors and Assigns. This Guaranty shall inure to the benefit of Lender, and its successors and assigns, and it shall be binding upon Guarantor and the executors, administrators, heirs, successors, and assigns, of each of the Guarantor.

(16) Governing Law and Jurisdiction. THIS GUARANTY SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. THE UNDERSIGNED AGREES THAT THE EXECUTION AND DELIVERY OF THIS GUARANTY, AS WELL AS THE PERFORMANCE OF ANY OBLIGATIONS REQUIRED HEREIN, CONSTITUTE THE TRANSACTION OF BUSINESS WITHIN THE STATE OF NEW YORK. THE UNDERSIGNED ACKNOWLEDGES THAT BY VIRTUE OF TRANSACTING BUSINESS WITHIN THE STATE OF NEW YORK THE UNDERSIGNED SHALL BE SUBJECT TO PERSONAL JURISDICTION IN THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS GUARANTY AND THE UNDERSIGNED APPOINTS THE NEW YORK SECRETARY OF STATE AS ITS ATTORNEY AND AGREES THAT ANY PROCESS IN ANY CASE OF CONTROVERSY ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY MAY BE SERVED UPON THE NEW YORK SECRETARY OF STATE AND SHALL HAVE THE SAME VALIDITY AS IF SERVED UPON THE UNDERSIGNED PERSONALLY. NOTWITHSTANDING THE FOREGOING, THE UNDERSIGNED AGREES TO SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS GUARANTY AND, IN FURTHERANCE OF SUCH AGREEMENT, THE UNDERSIGNED HEREBY AGREES AND CONSENTS THAT WITHOUT LIMITING OTHER METHODS OF OBTAINING JURISDICTION, PERSONAL JURISDICTION OVER THE UNDERSIGNED IN ANY SUCH ACTION OR PROCEEDING MAY BE OBTAINED WITHIN OR WITHOUT THE JURISDICTION OF ANY COURT LOCATED IN NEW YORK AND THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING MAY BE SERVED UPON THE UNDERSIGNED BY REGISTERED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF THE UNDERSIGNED, WHETHER SUCH ADDRESS BE WITHIN OR WITHOUT THE JURISDICTION OF ANY SUCH COURT. THE UNDERSIGNED AGREE THAT ANY APPROPRIATE STATE OR FEDERAL DISTRICT COURT LOCATED IN THE

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STATE OF NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CASE OR CONTROVERSY ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY AND SHALL BE A PROPER FORUM IN WHICH TO ADJUDICATE SUCH CASE OR CONTROVERSY.

(17) Jury Trial Waiver. GUARANTOR AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE GUARANTOR OR LENDER ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE UNDERSIGNED WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS GUARANTY.

(18) Headings. The descriptive headings of the several sections of this Guaranty are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of March 11, 2019

Signed in the Presence of:

Name: [Handwritten Signature]

GUARANTOR

[Handwritten Signature]
Chanon D Gordon, individually

Name: _____

STATE OF NY)
) ss.:
COUNTY OF NY)

On March 11, 2019 before me personally came Chanon D Gordon, who being by me duly sworn, did depose and say that he/she signed this instrument as his/her voluntary act and deed.

[Handwritten Signature]
NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH8155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

145 STUYVESANT AVE PROP LLC
\$131,475.00
March 11, 2019

COMMERCIAL GUARANTY

FOR VALUE RECEIVED, the undersigned **Chanon D Gordon** of **1 North Main St, Windsor Locks, CT 06096** ("Guarantor") hereby unconditionally and absolutely guarantees the prompt payment and performance of a certain Building Loan Commercial Promissory Note (the "Note") made by **145 STUYVESANT AVE PROP LLC**, a New York limited liability company having its principal place of business at **116 Springwood Lane, Bloomfield, CT 06002** ("Borrower") dated on **March 11, 2019** in favor of **FIRM LENDING, LLC**, a Florida limited liability company having its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Lender"), said Note being in the original principal amount of **One Hundred Thirty One Thousand Four Hundred Seventy Five and 00/100 dollars (\$131,475.00)** and all monies coming due thereunder, or under any mortgage or any other document granted to secure said Note (all of the foregoing hereinafter collectively referred to as the "Security Instruments") and any environmental indemnification agreement, and any other document executed in relation to and simultaneously with the Note (all of the foregoing hereinafter collectively referred to as the "Documents") (the said Note, Security Instruments, and Documents are hereinafter collectively referred to as the "Loan Documents"). The loan made by Lender to Borrower pursuant to the Note and the Loan Documents is referred to herein as the "Loan".

This Guaranty is intended to guaranty each payment of principal and interest due under said Note and all of the obligations set forth in the Loan Documents and the performance of the Borrower's obligations under the Loan Documents. This Guaranty also includes all costs of collection and attorneys' fees and all other costs, which are required to be paid under the Loan Documents.

(1) Consent to Modifications. Guarantor consents to any change in the terms and conditions of the Loan Documents, including but not limited to, any change in the collateral provided in the Loan Documents or any change with respect to the parties who may be liable with respect to the Loan Documents, all without notice to or further assent by Guarantor. Guarantor is to remain bound upon this Guaranty, notwithstanding any such change or extension or release, substitution, exchange or other indulgence granted any maker of said Note. Guarantor hereby waives all defenses, counterclaims, or offsets which Guarantor might have by reason of any change in or to the Loan Documents or any release, exchange, surrender, or impairment of security, or any addition or release of any party liable with respect to the Loan Documents.

(2) Default. Upon any default of Borrower in the payment or performance under any of the Loan Documents, the holder of the Note may enforce this Guaranty immediately against Guarantor without the necessity of any suit or action against Borrower or any other party and without resorting to and without regard to any collateral or any other guarantee or any other source of payment. In the event of default under any of the Loan Documents, Guarantor further agrees to pay all costs, without limitation, attorneys' fees, incurred or expended by the holder of the Note in the collection or attempted collection under this Guaranty and in realization of any lien or security interest securing amounts due hereunder, including, without limitation, those incurred as a result of the Note holder's participation in any proceeding involving Guarantor under the Federal Bankruptcy Code.

(3) Delay or Omission No Waiver. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right; and a waiver one on occasion shall not be a bar to or waiver of any right on any other occasion.

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(5) Waiver. Guarantor hereby waives demand, presentment, protest, and notice of acceptance of this Guaranty by Lender, and of any loans made, extensions granted or other action taken in reliance hereon and all other demands and notices of any description in connection with this Guaranty, or under the Loan Documents.

(6) Representations and Warranties.

(a) Guarantor represents and warrants that Guarantor is deriving direct financial benefit from the loans evidenced by the Note.

(b) Guarantor further represents and warrants that Guarantor is not now insolvent and will not be rendered insolvent by the execution hereof or performance hereunder.

(c) There are no actions, suits or proceedings pending, or to the knowledge of the Guarantor, threatened against or affecting the Guarantor or the properties of the Guarantor before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Guarantor, would have a material adverse effect on the financial condition, properties or operations of the Guarantor.

(d) The most recent financial statements of the Guarantor, copies of which statements have been furnished to the Lender, fairly present the financial condition of the Guarantor as of such dates in accordance with generally accepted accounting principles applied on a consistent basis, and since the date of each of such financial statements, there has been no material adverse change in such condition or operations.

(e) Guarantor is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any charter or other restriction which would have a material adverse effect on the ability of the Guarantor to carry out Guarantor's obligations under this Guaranty.

(f) No information, exhibit or report furnished by the Guarantor to the Lender in connection with the negotiation of this Guaranty contained as of the date thereof, or, if there be no such date, the date of furnishing thereof, any untrue statements of a material fact and do not omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(g) This Guaranty constitutes the valid and legally binding obligation of the Guarantor, enforceable in accordance with its terms, except as the enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally.

(h) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery of this Guaranty, or in connection with the performance of the Guarantor's obligations hereunder, if any, have been obtained as required hereunder or by law.

(7) Financial Information. Guarantor shall provide all financial information reasonably requested by Lender. Guarantor shall provide all financial information in such format and containing such information required by Lender.

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(15) **Successors and Assigns.** This Guaranty shall inure to the benefit of Lender, and its successors and assigns, and it shall be binding upon Guarantor and the executors, administrators, heirs, successors, and assigns, of each of the Guarantor.

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(18) Headings. The descriptive headings of the several sections of this Guaranty are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of March 11, 2019

Signed in the Presence of:

agad
Name:

GUARANTOR
Chanon D Gordon
Chanon D Gordon, individually

Name:

STATE OF NY)
 NY) ss.:
COUNTY OF)

On March 11, 2019 before me personally came Chanon D Gordon, who being by me duly sworn, did depose and say that he/she signed this instrument as his/her voluntary act and deed.

[Signature]
NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 20 22

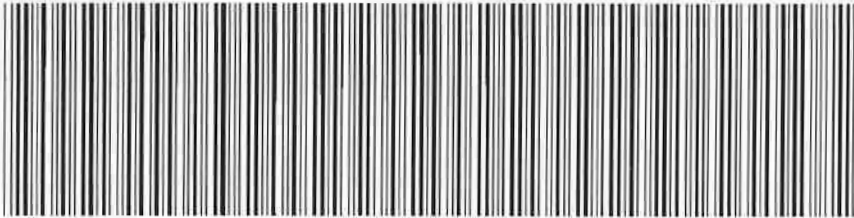






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NYSCEF DOC. NO. 7

RECEIVED NYSCEF: 01/12/2021

Exhibit F

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.	 2019100201101001001EAA93																																		
RECORDING AND ENDORSEMENT COVER PAGE PAGE 1 OF 5																																			
Document ID: 2019100201101001 Document Date: 03-11-2019 Preparation Date: 10-02-2019 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 4																																			
PRESENTER: LENDMARQ 1401 BRICKELL AVE STE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM	RETURN TO: LENDMARQ C/CO TCM FUNDING 1401 BRICKELL AVE SUITE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM																																		
<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="5" style="text-align: center; border-bottom: 1px solid black;">PROPERTY DATA</th> </tr> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Borough</th> <th style="text-align: left; border-bottom: 1px solid black;">Block</th> <th style="text-align: left; border-bottom: 1px solid black;">Lot</th> <th style="text-align: left; border-bottom: 1px solid black;">Unit</th> <th style="text-align: left; border-bottom: 1px solid black;">Address</th> </tr> </thead> <tbody> <tr> <td>BROOKLYN</td> <td>1621</td> <td>7</td> <td>Entire Lot</td> <td>145 STUYVESANT AVENUE</td> </tr> <tr> <td colspan="5" style="padding-left: 40px;">Property Type: DWELLING ONLY - 3 FAMILY</td> </tr> </tbody> </table>		PROPERTY DATA					Borough	Block	Lot	Unit	Address	BROOKLYN	1621	7	Entire Lot	145 STUYVESANT AVENUE	Property Type: DWELLING ONLY - 3 FAMILY																		
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CROSS REFERENCE DATA CRFN: 2019000096671																																			
PARTIES																																			
ASSIGNOR/OLD LENDER: FIRM LENDING LLC 150 SE 2ND AVE, SUITE 805 MIAMI, FL 33131	ASSIGNEE/NEW LENDER: TCM FUNDING LLC 141 NE 3RD AVE, SUITE 500 MIAM, FL 33132																																		
FEES AND TAXES																																			
<table style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2">Mortgage :</td> </tr> <tr> <td>Mortgage Amount:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>Taxable Mortgage Amount:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>Exemption:</td> <td></td> </tr> <tr> <td>TAXES: County (Basic):</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>City (Additional):</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>Spec (Additional):</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>TASF:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>MTA:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>NYCTA:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>Additional MRT:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>TOTAL:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>Recording Fee:</td> <td style="text-align: right;">\$ 57.00</td> </tr> <tr> <td>Affidavit Fee:</td> <td style="text-align: right;">\$ 0.00</td> </tr> </table>	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	<table style="width:100%; border-collapse: collapse;"> <tr> <td>Filing Fee:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>NYC Real Property Transfer Tax:</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>NYS Real Estate Transfer Tax:</td> <td style="text-align: right;">\$ 0.00</td> </tr> </table>	Filing Fee:	\$ 0.00	NYC Real Property Transfer Tax:	\$ 0.00	NYS Real Estate Transfer Tax:	\$ 0.00
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																																		
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NYC Real Property Transfer Tax:	\$ 0.00																																		
NYS Real Estate Transfer Tax:	\$ 0.00																																		
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center; vertical-align: middle;">  </td> <td style="padding-left: 20px;"> RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 10-03-2019 10:46 City Register File No.(CRFN): 2019000320532  City Register Official Signature </td> </tr> </table>			RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 10-03-2019 10:46 City Register File No.(CRFN): 2019000320532  City Register Official Signature																																
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 10-03-2019 10:46 City Register File No.(CRFN): 2019000320532  City Register Official Signature																																		

Prepared by:

LaRocca Hornik Rosen Greenberg & Blaha
Jonathan L Hornik, Esq.
82 South Street, Suite 302
Freehold, NJ 07728

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

KNOW THAT Firm Lending, LLC., a Florida limited liability company at its principal place of business at 150 SE 2nd Avenue, Suite 805, Miami, FL 33131 ("**Assignor**") in consideration of Ten (\$10.00) or more Dollars, paid by TCM Funding LLC, a Florida limited liability company at its principal place of business at 141 NE 3rd Avenue, Suite 500, Miami FL 33132 ("**Assignee**"), hereby assigns, sells, transfers and delivers unto Assignee, those certain Mortgage, Security Agreement, And Fixture Filing and Collateral Assignment Of Leases And Rents described in **Exhibit A** (the "Assigned Loan Documents") annexed hereto and incorporated herein by this reference, covering the premises commonly known as **145 Stuyvesant Avenue, Brooklyn, NY 11221**, designated on the official tax map of Brooklyn and County of Kings as Block 1621, Lot 7 and more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Premises").

Such Assigned Loan Documents having been given to secure payment of \$1,132,625.00, which Mortgage is of record in Book, Volume, or Liber No. 201900009667 at page 23 of Records of County of Kings, State of New York, Assignment of Leases and Rents is of record in Book, Volume, or Liber No. 201900009667 at page 8 of Records of County of Kings, State of New York together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Assigned Loan Documents.

TOGETHER with the bonds, notes or other obligations described in said Assigned Loan Documents, and the monies due and to grow thereon with interest;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns forever.

The Assigned Loan Documents hereby have not been further assigned except as set forth herein.

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the Assignor has duly executed this assignment as of March 11, 2019.

ASSIGNOR:

Firm Lending, LLC

By: *[Signature]*

Name: Joacim Masvidal

Title: CEO

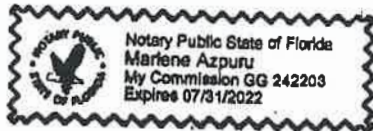
STATE OF FLORIDA)
)ss.:
COUNTY OF MIAMI-DADE)

I certify that on March 11 2019, Joacim Masvidal came before me in person and stated to my satisfaction that he/she:

(a) made the attached instrument; and

(b) CEO was authorized to and did execute this instrument on behalf of and as of Firm Lending, LLC (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its partnership agreement and partners.

[Signature]
NOTARY PUBLIC



FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO. 500868/2021

NYSCEF DOC. NO. 7

RECEIVED NYSCEF: 01/12/2021

EXHIBIT A

A Mortgage, Security Agreement, And Fixture Filing and Collateral Assignment Of Leases And Rents between Firm Lending, LLC and 145 Stuyvesant Ave Prop LLC dated March 11, 2019 with regard to the Property located at 145 Stuyvesant Avenue, Brooklyn, NY 11221 in the Mortgage amount of One Million One Hundred Thirty Two Thousand Six Hundred Twenty Five and 00/100 dollars (\$1,132,625.00).

EXHIBIT B

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 a point on the easterly side of Stuyvesant Avenue distant 60 feet southerly from the corner formed by the intersection of the easterly side of Stuyvesant Avenue with the southerly side of Greene Avenue;

RUNNING THENCE easterly parallel with Greene Avenue and part of the distance through a party wall 75 feet;

THENCE southerly parallel with Stuyvesant Avenue 20 feet;

THENCE westerly parallel with Greene Avenue and part of the distance through a party wall 75 feet to the easterly side of Stuyvesant Avenue; and

THENCE northerly along the easterly side of Stuyvesant Avenue 20 feet to the point or place of BEGINNING

NOTE: Being Lot(s) Lot: 7, Block: 1621; Tax Map of the Brooklyn, County of KINGS, State of NEWYORK.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 145 Stuyvesant Avenue, Brooklyn, NY 11221

<p>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</p> <p>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.</p>	 <p>2019110100195001001E3638</p>
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RECORDING AND ENDORSEMENT COVER PAGE PAGE 1 OF 5

Document ID: 2019110100195001 **Document Date:** 03-13-2019 **Preparation Date:** 11-01-2019
Document Type: ASSIGNMENT, MORTGAGE
Document Page Count: 4

<p>PRESENTER: LENDMARQ 1401 BRICKELL AVE STE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM</p>	<p>RETURN TO: LENDMARQ SUITE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM</p>
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Borough	Block	Lot	Unit	Address
BROOKLYN	1621	7	Entire Lot	145 STUYVESANT AVENUE
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA

CRFN: 2019000096671

PARTIES	
<p>ASSIGNOR/OLD LENDER: TCM FUNDING LLC 141 NE 3RD AVENUE, SUITE 500 MIAMI, FL 33132</p>	<p>ASSIGNEE/NEW LENDER: TOORAK CAPITAL PARTNERS LLC 15 MAPLE STREET, SECOND FLOOR WEST SUMMIT, NJ 07901</p>

FEES AND TAXES			
Mortgage :		Filing Fee:	
Mortgage Amount:	\$ 0.00		\$ 0.00
Taxable Mortgage Amount:	\$ 0.00	NYC Real Property Transfer Tax:	\$ 0.00
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 0.00	NYS Real Estate Transfer Tax:	\$ 0.00
City (Additional):	\$ 0.00		\$ 0.00
Spec (Additional):	\$ 0.00		\$ 0.00
TASF:	\$ 0.00		\$ 0.00
MTA:	\$ 0.00		\$ 0.00
NYCTA:	\$ 0.00		\$ 0.00
Additional MRT:	\$ 0.00		\$ 0.00
TOTAL:	\$ 0.00		
Recording Fee:	\$ 57.00		
Affidavit Fee:	\$ 0.00		



**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**
 Recorded/Filed 11-01-2019 10:56
 City Register File No.(CRFN):
2019000356840

Annette McMill
City Register Official Signature

Prepared by:

LaRocca Hornik Rosen Greenberg & Blaha
Jonathan L Hornik, Esq.
82 South Street, Suite 302
Freehold, NJ 07728

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

KNOW THAT TCM Funding LLC, a Florida limited liability company at its principal place of business at 141 NE 3rd Ave, Suite 500, Miami, FL 33132 ("Assignor") in consideration of Ten (\$10.00) or more Dollars, paid by TOORAK CAPITAL PARTNERS LLC, a Delaware limited liability company, having an office at 15 Maple Street, Second Floor West, Summit NJ 07901 ("Assignee"), hereby assigns, sells, transfers and delivers unto Assignee, those certain Mortgage, Security Agreement, And Fixture Filing and Collateral Assignment Of Leases And Rents described in **Exhibit A** (the "Assigned Loan Documents") annexed hereto and incorporated herein by this reference, covering the premises commonly known as **145 Stuyvesant Avenue, Brooklyn, NY 11221**, designated on the official tax map of Brooklyn, NY and County of Kings as Block 1621 , Lot 7 and more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Premises").

Such Assigned Loan Documents having been given to secure payment of \$1,132,625.00, which Mortgage is of record in Book, Volume, or Liber No.2019000096671 at page - of Records of County of Kings, State of New York, Assignment of Leases and Rents is of record in Book, Volume, or Liber No.2019000096671 at page _s_ of Records of County of Kings, State of New York together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Assigned Loan Documents.

TOGETHER with the bonds, notes or other obligations described in said Assigned Loan Documents, and the monies due and to grow thereon with interest;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns forever.

The Assigned Loan Documents hereby have not been further assigned except as set forth herein.

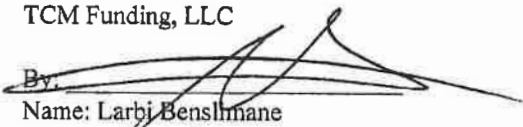
This Assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the Assignor has duly executed this assignment as of March 11, 2019.

ASSIGNOR:

TCM Funding, LLC

By: 

Name: Larbi Benslimane

Title: Authorized Signatory

STATE OF Florida)
)ss.:
COUNTY OF MIAMI)
 DADE

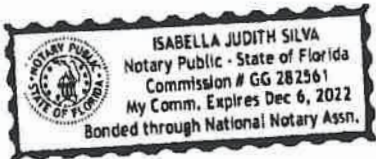
I certify that on MARCH 13 2019, Larbi Benslimane came before me in person and stated to my satisfaction that he/she:

(a) made the attached instrument; and

(b) was authorized to and did execute this instrument on behalf of and as Authorized Signatory of TCM Funding, LLC (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its partnership agreement and partners.



NOTARY PUBLIC



FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO: 500868/2021

NYSCEF DOC. NO. 7

RECEIVED NYSCEF: 01/12/2021

EXHIBIT A

A Mortgage, Security Agreement, And Fixture Filing and Collateral Assignment Of Leases And Rents between Firm Lending, LLC and 145 Stuyvesant Ave Prop LLC dated March 11, 2019 with regard to the Property located at 145 Stuyvesant Avenue, Brooklyn, NY 11221 in the Mortgage amount of One Million One Hundred Thirty Two Thousand Six Hundred Twenty Five and 00/100 dollars (\$1,132,625.00).

EXHIBIT B

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 a point on the easterly side of Stuyvesant Avenue distant 60 feet southerly from the corner formed by the intersection of the easterly side of Stuyvesant Avenue with the southerly side of Greene Avenue;

RUNNING THENCE easterly parallel with Greene Avenue and part of the distance through a party wall 75 feet;

THENCE southerly parallel with Stuyvesant Avenue 20 feet;

THENCE westerly parallel with Greene Avenue and part of the distance through a party wall 75 feet to the easterly side of Stuyvesant Avenue; and

THENCE northerly along the easterly side of Stuyvesant Avenue 20 feet to the point or place of BEGINNING

NOTE: Being Lot(s) Lot: 7, Block: 1621; Tax Map of the Brooklyn, County of KINGS, State of NEWYORK.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 145 Stuyvesant Avenue, Brooklyn, NY 11221

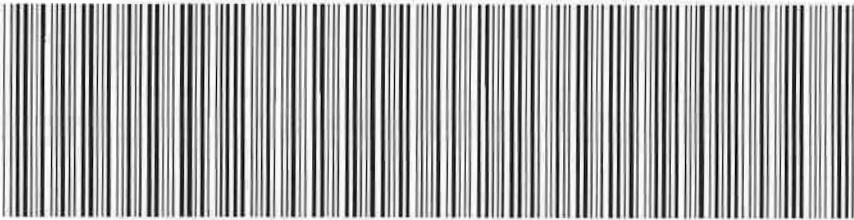
FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO: 500868/2021

NYSCEF DOC. NO. 8

RECEIVED NYSCEF: 01/12/2021

Exhibit G

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.	 2020013100639001001E9C13
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RECORDING AND ENDORSEMENT COVER PAGE PAGE 1 OF 4

Document ID: 2020013100639001 Document Date: 12-30-2019 Preparation Date: 01-31-2020
 Document Type: ASSIGNMENT, MORTGAGE
 Document Page Count: 3

PRESENTER: LENDMARQ 1401 BRICKELL AVE STE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM	RETURN TO: TCM FUNDING, LLC 1401 BRICKELL AVE, SUITE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM
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PROPERTY DATA			
Borough	Block	Lot	Unit Address
BROOKLYN	1621	7	Entire Lot 145 STUYVESANT AVENUE
Property Type: DWELLING ONLY - 3 FAMILY			

CROSS REFERENCE DATA

CRFN: 2019000100477

PARTIES	
ASSIGNOR/OLD LENDER: FIRM LENDING, LLC 150 SE 2ND AVE, SUITE 804 MIAMI, FL 33131	ASSIGNEE/NEW LENDER: TCM FUNDING, LLC 1401 BRICKELL AVE, SUITE 330 MIAMI, FL 33131

FEES AND TAXES			
Mortgage :		Filing Fee:	
Mortgage Amount:	\$ 0.00		\$ 0.00
Taxable Mortgage Amount:	\$ 0.00	NYC Real Property Transfer Tax:	
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$ 0.00		\$ 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		



**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**
 Recorded/Filed 01-31-2020 14:43
 City Register File No.(CRFN):
2020000041265

Annette McMillan
City Register Official Signature

Prepared By:

FIRM LENDING
150 SE 2nd Ave, Suite 804
Miami FL 33131

Upon Recording Return To:

TCM Funding, LLC
1401 Brickell Avenue, Suite 330
Miami, FL 33131

ASSIGNMENT OF COMMERCIAL MORTGAGE, SECURITY
AGREEMENT AND FIXTURE FILING AND COLLATERAL
ASSIGNMENT OF LEASES AND RENTS

KNOW THAT FIRM LENDING, LLC A LIMITED LIABILITY COMPANY organized under the laws of FLORIDA, having an office at 150 SE 2nd Ave, Suite 804 Miami FL 33131 ("Assignor") in consideration of Ten (\$10.00) or more Dollars, paid by TCM Funding, LLC, a Florida Limited Liability Company, located at 1401 Brickell Avenue, Suite 330 Miami, FL 33131 ("Assignee"), hereby assigns, sells, transfers and delivers unto Assignee, that certain COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage") and that certain COLLATERAL ASSIGNMENT OF LEASES AND RENTS ("Collateral Assignment"), together with that certain related Promissory Note secured by such Mortgage and Collateral Assignment made by 145 Stuyvesant Ave Prop LLC to Assignor dated as of March 11 2019 in the amount of \$131,475.00, as the same may be amended from time to time and the indebtedness evidenced thereby (together with any and all guarantees thereof) (the "Note"; and together with the Mortgage and the Collateral Assignment, the "Loan Documents"), which Mortgage and Collateral Assignment encumber certain real property described in EXHIBIT A annexed hereto and incorporated herein by this reference, covering the premises commonly known as 145 Stuyvesant Avenue, Brooklyn, NY 11221 (the "Premises").

TOGETHER with any other bonds, notes or other obligations described in said Loan Documents, and the monies due and to become due thereon with interest, and all rights accrued or to accrue thereunder.

The Mortgage will be, or has been, as applicable, recorded in Book, Volume, or Liber No. 2019000101675 at page 6 of Records of County of Kings State of New York. The Collateral Assignment will be, or has been, as applicable, recorded in Book, Volume, or Liber No. 2019000100477 at page 8 of Records of County of Kings State of New York. (It is agreed that the relevant Book and Page references will be inserted above by hand as soon as available).

This assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market.

TO HAVE AND TO HOLD the same unto the Assignee and to its successors, legal representatives and assigns forever.

The Loan Documents assigned hereby have not been further assigned except as set forth herein.

IN WITNESS WHEREOF, the Assignor has duly executed this assignment as of the 30 day Of DECEMBER.

ASSIGNOR:

FIRM LENDING LLC

By: J M L
Name: Joaquin Masvidal
Title: Authorized Signatory

STATE OF FL)
) ss:
COUNTY OF DADE)

On the 30 day Of DECEMBER, before me, the undersigned, a Notary Public in and for the State, personally appeared Joaquin Masvidal, 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 on behalf of which the individual(s) acted, executed the instrument.

Marlene Azpuru
Notary Public

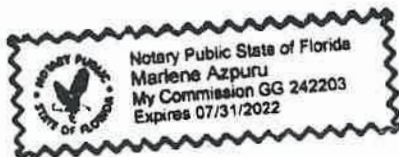


EXHIBIT A

Property Address: 145 Stuyvesant Avenue, Brooklyn, NY 1122

[Legal Description]

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 a point on the easterly side of Stuyvesant Avenue distant 60 feet southerly from the corner formed by the intersection of the easterly side of Stuyvesant Avenue with the southerly side of Greene Avenue;

RUNNING THENCE easterly parallel with Greene Avenue and part of the distance through a party wall 75 feet;

THENCE southerly parallel with Stuyvesant Avenue 20 feet;

THENCE westerly parallel with Greene Avenue and part of the distance through a party wall 75 feet to the easterly side of Stuyvesant Avenue; and

THENCE northerly along the easterly side of Stuyvesant Avenue 20 feet to the point or place of BEGINNING

NOTE: Being Lot(s) Lot: 7, Block: 1621; Tax Map of the Brooklyn, County of KINGS, State of NEWYORK.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 145 Stuyvesant Avenue, Brooklyn, NY 11221

<p>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</p> <p>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.</p>	 <p>2019122601164001001E72F7</p>
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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 5**

Document ID: 2019122601164001 **Document Date:** 12-26-2019 **Preparation Date:** 12-26-2019
Document Type: ASSIGNMENT, MORTGAGE
Document Page Count: 4

<p>PRESENTER: LENDMARQ 1401 BRICKELL AVE STE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM</p>	<p>RETURN TO: LENDMARQ LLC 1401 BRICKELL AVE SUITE 330 MIAMI, FL 33131 SUPPORT@SIMPLIFILE.COM</p>
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Borough	Block	Lot	Unit	Address
BROOKLYN	1621	7	Entire Lot	145 STUYVESANT AVENUE
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA

CRFN: 2019000101675

PARTIES	
<p>ASSIGNOR/OLD LENDER: TCM FUNDING 141 NE 3RD AVENUE SUITE 500 MIAMI, FL 33132</p>	<p>ASSIGNEE/NEW LENDER: TOORAK CAPITAL PARTNERS LLC 15 MAPLES STREET SECOND FLOOR SUMMIT, NJ 07901</p>

FEES AND TAXES			
Mortgage :		Filing Fee:	
Mortgage Amount:	\$ 0.00		\$ 0.00
Taxable Mortgage Amount:	\$ 0.00	NYC Real Property Transfer Tax:	
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$ 0.00		\$ 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		



**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**
 Recorded/Filed 12-27-2019 11:39
 City Register File No.(CRFN):
2019000423750
Annette McMill
City Register Official Signature

Prepared by:

LaRocca Hornik Rosen Greenberg & Blaha
Jonathan L Hornik, Esq.
82 South Street, Suite 302
Freehold, NJ 07728

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

KNOW THAT TCM Funding., a Florida limited liability company at its principal place of business at 141 NE 3rd Ave, Suite 500, Miami, FL 33132 ("**Assignor**") in consideration of Ten (\$10.00) or more Dollars, paid by TOORAK CAPITAL PARTNERS LLC, a Delaware limited liability company, having an office at 15 Maple Street, Second Floor West, Summit NJ 07901 ("**Assignee**"), hereby assigns, sells, transfers and delivers unto Assignee, those certain Mortgage, Security Agreement, And Fixture Filing and Collateral Assignment Of Leases And Rents described in **Exhibit A** (the "Assigned Loan Documents") annexed hereto and incorporated herein by this reference, covering the premises commonly known as **145 Stuyvesant Avenue, Brooklyn, NY 11221**, designated on the official tax map of **Brooklyn, NY** and County of **Kings** as Block **1621**, Lot **7** and more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Premises").

Such Assigned Loan Documents having been given to secure payment of \$131,475.00, which Mortgage is of record in Book, Volume, or Liber No. 201900010167, at page 6 of Records of County of Kings, State of New York, Assignment of Leases and Rents is of record in Book, Volume, or Liber No. 2019000100177, at page 8 of Records of County of Kings, State of New York together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Assigned Loan Documents.

TOGETHER with the bonds, notes or other obligations described in said Assigned Loan Documents, and the monies due and to grow thereon with interest;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns forever.

The Assigned Loan Documents hereby have not been further assigned except as set forth herein.

[Balance of Page is intentionally Left Blank]

IN WITNESS WHEREOF, the Assignor has duly executed this assignment as of the 26
day of DECEMBER, 2019

ASSIGNOR:

TCM FUNDING, LLC

By: 
Name: LARBI BENSLIMANE
Title: AUTHORIZED SIGNATORY

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

On the 26 day of DECEMBER, 2019, before me, the undersigned, a Notary Public in and for the State, personally appeared LARBI BENSLIMANE, 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 on behalf of which the individual(s) acted, executed the instrument.

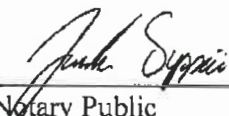

Notary Public



EXHIBIT A

A Mortgage, Security Agreement, And Fixture Filing and Collateral Assignment Of Leases And Rents between Firm Lending, LLC and 145 Stuyvesant Ave Prop LLC dated March 11, 2019 with regard to the Property located at 145 Stuyvesant Avenue, Brooklyn, NY 11221 in the Mortgage amount of One Hundred Thirty One Thousand Four Hundred Seventy Five and 00/100 dollars (\$131,475.00)

EXHIBIT B

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 a point on the easterly side of Stuyvesant Avenue distant 60 feet southerly from the corner formed by the intersection of the easterly side of Stuyvesant Avenue with the southerly side of Greene Avenue;

RUNNING THENCE easterly parallel with Greene Avenue and part of the distance through a party wall 75 feet;

THENCE southerly parallel with Stuyvesant Avenue 20 feet;

THENCE westerly parallel with Greene Avenue and part of the distance through a party wall 75 feet to the easterly side of Stuyvesant Avenue; and

THENCE northerly along the easterly side of Stuyvesant Avenue 20 feet to the point or place of BEGINNING

NOTE: Being Lot(s) Lot: 7, Block: 1621; Tax Map of the Brooklyn, County of KINGS, State of NEWYORK.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 145 Stuyvesant Avenue, Brooklyn, NY 11221

FILED: KINGS COUNTY CLERK 01/12/2021 03:08 PM

INDEX NO. 500868/2021

NYSCEF DOC. NO. 9

RECEIVED NYSCEF: 01/12/2021

Exhibit H



900 W. 48th Place, Suite 900, Kansas City, MO 64112-1895 • 816.753.1000

August 23, 2019

Amy E. Hatch
(816) 360-4178
(816) 572-5178 Direct Fax
ahatch@polsinelli.com

VIA CERTIFIED MAIL

NOTICE OF ACCELERATION

145 Stuyvesant Ave Prop LLC
116 Springwood Lane
Bloomfield, CT 06002

Chanon D. Gordon
1 North Main Street
Windsor Locks, CT 06096

Re: Borrower: 145 Stuyvesant Ave Prop LLC
Original Loan Amount: \$1,132,625.00 and \$131,475.00

Ladies and Gentlemen:

This Firm is counsel to Toorak Capital Partners LLC (“**Lender**”). Lender is the owner and holder of that certain Commercial Promissory Note dated March 11, 2019, in the original principal amount of \$1,132,625.00 and a Building Loan Commercial Promissory Note dated March 11, 2019, in the original principal amount of \$131,475.00 (as amended from time to time, the “**Notes**,” and the loan evidenced thereby being hereinafter referred to as the “**Loan**”), the original maker of which is 145 Stuyvesant Ave Prop LLC (“**Borrower**”). In connection with the Loan, Chanon D. Gordon (“**Guarantor**”) executed that certain Commercial Guaranty dated March 11, 2019 (the “**Guaranty**”), pursuant to which Guarantor irrevocably and unconditionally guaranteed performance of certain obligations owed in connection with the Loan.

In order to secure the indebtedness owed in connection with the Loan, Borrower executed that certain Commercial Mortgage, Security Agreement and Fixture Filing dated as of March 11, 2019 and a Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement dated as of March 11, 2019 (as amended from time to time, the “**Security Instruments**”). Under the Security Instruments, Lender has a lien on and security interest in certain real property, and improvements thereon, and certain personal property associated therewith, all as further identified in the Security Instruments (collectively, the “**Property**”). Lender is the current holder and owner of the Notes, the Guaranty, the Security Instruments, and all other documents

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Polsinelli LLP In California



145 Stuyvesant Ave Prop LLC
August 23, 2019
Page 2

and instruments further evidencing, securing, or executed in connection with the Loan (collectively, the “**Loan Documents**”).

Lender has previously notified Borrower that Borrower is in default under the Notes and other Loan Documents as a result of Borrower’s failure to timely make payments due and owing thereunder. Borrower has failed to cure the defaults under the Loan, and, as a result, Borrower and Guarantor remain in default under their respective obligations owed under the Loan Documents. Accordingly, Lender has elected to accelerate the indebtedness owed under the Notes and other Loan Documents, and, as a result of such acceleration, Borrower’s license under the Loan Documents to receive, collect and make use of rents, profits and income of any other type (the “**Rents**”) is hereby revoked, and all such Rents are now the property of Lender. You shall hold the Rents in trust for the benefit of Lender. The revocation of Borrower’s license to collect and make use of the Rents shall remain in full force and effect until such time as Lender and Borrower otherwise agree in a signed writing.

Lender may pursue any other available rights and remedies under the Loan Documents or at law or in equity, without further notice or demand, and all as Lender may determine in its sole discretion. Such rights and remedies include, but are not limited to, the appointment of a receiver to take possession of and administer the Property and foreclosure of the Property.

Lender, or Lender’s servicer or other agents, may, from time to time, generate automated billing statements or other statements that are forwarded to Borrower or to other persons or entities on a monthly or other periodic basis. The forwarding to you of any billing statement from this time forward, including any billing statement that purports to state amounts due and owing by Borrower that are different from the accelerated indebtedness owed, may not be relied upon by Borrower, does not act to de-accelerate or reinstate the debt in any manner, and does not result in any waiver of Lender’s rights as set forth herein, all of which are reserved in their entirety.

Any partial payment made by Borrower, or acceptance of any partial payment by Lender or any of its representatives or loan servicing agents, of any amount that is not sufficient to pay the amounts owed Lender in full is not intended, and shall not be deemed, to constitute a waiver of any of Lender’s rights, remedies or recourse under the Loan Documents or at law or in equity. Any application of any such payment is not intended, and shall not be deemed, to be a modification, rearrangement or extension of the existing Loan Documents. Any such payment shall be applied in such order and manner as Lender may elect in its sole discretion or as may be provided in the Loan Documents, without any waiver by Lender of its right to pursue any of its rights or remedies under the Loan Documents or at law or in equity.



145 Stuyvesant Ave Prop LLC
August 23, 2019
Page 3

Any past or future negotiation between you or your representatives or agents on the one hand and Lender and its representatives or agents on the other do not and shall not constitute a waiver of Lender's right to exercise its rights and remedies under the Loan Documents or at law or in equity. Any alleged waiver of any of Lender's rights shall not be effective unless in writing duly executed by an authorized representative of Lender. Neither Borrower nor any other obligor for the indebtedness owed under the Loan Documents shall be entitled to rely upon any oral statements made or purported to be made by or on behalf of Lender or its agents in connection with any alleged agreement by or on behalf of Lender to refrain from exercising any of Lender's rights under the Loan Documents or otherwise at law or in equity.

Nothing set forth herein is intended, and nothing herein shall be deemed, to modify, limit, release, reduce, or waive any of Lender's rights, remedies, or privileges under any of the Loan Documents, or at law or in equity, all of which are hereby specifically reserved. Furthermore, the enumeration of any specific default herein is not intended, and shall not be deemed, to waive other defaults that may currently exist under the Loan Documents.

Thank you for your attention to this matter.

Sincerely,

Amy E. Hatch

AEH:jag

cc: Clark Rogers (via electronic mail)

EXHIBIT 2

<p>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</p> <p>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.</p>	 <p>2019052200631001001E2D35</p>
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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 13**

Document ID: 2019052200631001 Document Date: 04-17-2019 Preparation Date: 05-22-2019
 Document Type: MORTGAGE
 Document Page Count: 12

<p>PRESENTER: SEARCHTEC INC. D/B/A ST2 INC. 314 N. 12TH STREET STE# 100 PHILADELPHIA, PA 19107 215-963-0888 RECORDINGDOCS@SEARCHTEC.COM</p>	<p>RETURN TO: SEARCHTEC INC. D/B/A ST2 INC. 314 N. 12TH STREET STE# 100 PHILADELPHIA, PA 19107 215-963-0888 RECORDINGDOCS@SEARCHTEC.COM</p>
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PROPERTY DATA				
Borough	Block	Lot	Unit	Address
BROOKLYN	1621	7	Entire Lot	145 STUYVESANT
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES	
<p>MORTGAGOR/BORROWER: 145 STUYVESANT AVE PROP LLC A/K/A STUYVESANT AVE. 41 FLATBUSH AVENUE BROOKLYN, NY 11217</p>	<p>MORTGAGEE/LENDER: COMPLETE BUSINESS SOLUTIONS GROUP, INC. 20 NORTH 3RD STREET PHILADELPHIA, PA 19106</p>

FEES AND TAXES			
Mortgage :		Filing Fee:	
Mortgage Amount:	\$ 0.00		\$ 0.00
Taxable Mortgage Amount:	\$ 210,000.00	NYC Real Property Transfer Tax:	\$ 0.00
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 1,050.00	NYS Real Estate Transfer Tax:	\$ 0.00
City (Additional):	\$ 2,100.00		\$ 0.00
Spec (Additional):	\$ 0.00		
TASF:	\$ 525.00		
MTA:	\$ 630.00		
NYCTA:	\$ 0.00		
Additional MRT:	\$ 0.00		
TOTAL:	\$ 4,305.00		
Recording Fee:	\$ 97.00		
Affidavit Fee:	\$ 0.00		



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

Recorded/Filed 05-28-2019 12:25
 City Register File No.(CRFN):
2019000166179

Annette M Hill
City Register Official Signature

ORDER# CBS00109
Record & Return to: SearchTec
314 N 12th St, Suite 100 Phila, Pa. 19107
215-963-0888



Prepared By/After Recording Return To:
Brian H. Smith, Esquire
20 North Third Street
Philadelphia, PA 19106

THE PROPERTY SECURING THIS INSTRUMENT IS A 1-2 FAMILY DWELLING.

[Space Above This Line For Recording Data]

SECURITY AGREEMENT

- (A) **“Security Instrument”** means this document, which is dated 4/17/19 together with any and all Riders to this document.
- (B) **“Mortgagor”** is 145 Stuyvesant Ave Prop LLC a/k/a 145 Stuyvesant Ave. Prop LLC, with an address of 41 Flatbush Avenue, Brooklyn, NY 11217.
- (C) **“Mortgagee”** is Complete Business Solutions Group, Inc. d/b/a Par Funding. Mortgagee is a corporation organized and existing under the laws of the State of Delaware. Mortgagee’s address is 20 North 3rd Street, Philadelphia, Pennsylvania 19106. Mortgagee is the mortgagee under this Security Instrument.
- (D) **“Agreement”** means (singly or collectively, as the case may be) the Agreement(s) For The Purchase And Sale Of Future Receivables signed by GORDON MANAGEMENT GROUP LLC DBA GORDON MANAGEMENT GROUP (“GORDON”) and dated as of April 3, 2019. The Agreement states that GORDON owes Mortgagee \$210,000.00 plus fees.
- (E) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”
- (F) **“Advance”** means the debt evidenced by the Agreement, plus fees, any prepayment charges and late charges due under the Agreement, and all sums due under this Security Instrument, plus fees.
- (G) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- (H) **“Electronic Funds Transfer”** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic

instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(I) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) "Periodic Payment" means the regularly scheduled amount due for (i) principal and fees under the Agreement, plus (ii) any amounts under Section 3 of this Security Instrument.

(K) "Successor in Interest of Mortgagor" means any party that has taken title to the Property, whether or not that party has assumed Mortgagor's obligations under the Agreement and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Mortgagee: (i) the repayment of the Advance, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Mortgagor's and GORDON's covenants and agreements under this Security Instrument and the Agreement. For this purpose, Mortgagor does hereby mortgage, grant and convey to Mortgagee, with power of sale, the following described property: 145 Stuyvesant Avenue, Brooklyn, NY ("Property Address") (see Exhibit "A" hereto).

TOGETHER WITH all the improvements now or hereafter erected on the Property Address, and all easements, appurtenances, and fixtures now or hereafter a part of the Property Address. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

MORTGAGOR COVENANTS that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Mortgagor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances whether or not of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and nonuniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Mortgagor and Mortgagee covenant and agree as follows:

1. Payment of Principal, Fees, Prepayment Charges, and Late Charges. GORDON shall pay when due the principal of, and fees on, the debt evidenced by the Agreement and any prepayment charges and late charges due under the Agreement. Payments due under the Agreement and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Mortgagee as payment under the Agreement or this Security Instrument is returned to Mortgagee unpaid, Mortgagee may require that any or all subsequent payments due under the Agreement and this Security Instrument be made in one or more of the following forms, as selected by Mortgagee: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Mortgagee when received at the location designated in the Agreement or at such other location as may be designated by Mortgagee in accordance with the notice provisions in Section 13. Mortgagee may return any payment or partial payment if the payment or partial payments are insufficient to bring the Advance current. Mortgagee may accept any payment or partial

payment insufficient to bring the Advance current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Mortgagee is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Mortgagee need not pay Fees on unapplied funds. Mortgagee may hold such unapplied funds until GORDON makes payment to bring the Advance current. If GORDON does not do so within a reasonable period of time, Mortgagee shall either apply such funds or return them to GORDON. If not applied earlier, such funds will be applied to the outstanding principal balance under the Agreement immediately prior to foreclosure. No offset or claim which GORDON might have now or in the future against Mortgagee shall relieve GORDON from making payments due under the Agreement and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Mortgagee shall be applied in the following order of priority: (a) fees due under the Agreement; (b) principal due under the Agreement. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Agreement.

If Mortgagee receives a payment from GORDON for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Mortgagee may apply any payment received from Mortgagor to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Agreement.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Charges; Liens. Mortgagor shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Mortgagor shall promptly discharge any lien which has priority over this Security Instrument unless Mortgagor: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Mortgagee, but only so long as Mortgagor is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Mortgagee's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Mortgagee subordinating the lien to this Security Instrument. If Mortgagee determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Mortgagee may give Mortgagor a notice identifying the lien. Within 10 days of the date on which that notice is given, Mortgagor shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Mortgagee may require Mortgagor to pay a one-time charge for a real estate tax verification and/or reporting service used by Mortgagee in connection with this Advance.

4. Property Insurance. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Mortgagee requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Mortgagee requires. What Mortgagee requires pursuant to the preceding sentences can change during the term of the Advance. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Mortgagee's right to disapprove Mortgagor's choice, which right shall not be exercised unreasonably. Mortgagee may require Mortgagor to pay, in connection with this Advance, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone

determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Mortgagor shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Mortgagor.

If Mortgagor fails to maintain any of the coverages described above, Mortgagee may obtain insurance coverage, at Mortgagee's option and Mortgagor's expense. Mortgagee is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Mortgagee, but might or might not protect Mortgagor, Mortgagor's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Mortgagor acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Mortgagor could have obtained. Any amounts disbursed by Mortgagee under this Section 4 shall become additional debt of GORDON secured by this Security Instrument. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest within 30 days after the date of the Notice.

All insurance policies required by Mortgagee and renewals of such policies shall be subject to Mortgagee's right to disapprove such policies, shall include a standard mortgage clause, and shall name Mortgagee as mortgagee and/or as an additional loss payee. Mortgagee shall have the right to hold the policies and renewal certificates. If Mortgagee requires, Mortgagor shall promptly give to Mortgagee all receipts of paid premiums and renewal notices. If Mortgagor obtains any form of insurance coverage, not otherwise required by Mortgagee, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Mortgagee as mortgagee and/or as an additional loss payee.

In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor. Unless Mortgagee and Mortgagor otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Mortgagee, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Mortgagee's security is not lessened. During such repair and restoration period, Mortgagee shall have the right to hold such insurance proceeds until Mortgagee has had an opportunity to inspect such Property to ensure the work has been completed to Mortgagee's satisfaction, provided that such inspection shall be undertaken promptly. Mortgagee may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Mortgagee shall not be required to pay Mortgagor any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Mortgagor shall not be paid out of the insurance proceeds and shall be the sole obligation of Mortgagor. If the restoration or repair is not economically feasible or Mortgagee's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Mortgagor abandons the Property, Mortgagee may file, negotiate and settle any available insurance claim and related matters. If Mortgagor does not respond within 30 days to a notice from Mortgagee that the insurance carrier has offered to settle a claim, then Mortgagee may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Mortgagee acquires the Property under Section 19 or otherwise, Mortgagor hereby assigns to Mortgagee (a) Mortgagor's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Security Instrument, and (b) any other of Mortgagor's rights (other than the right to any refund of unearned premiums paid by Mortgagor) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Mortgagee may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Security Instrument, whether or not then due.

5. Occupancy. Mortgagor or GORDON, as appropriate, shall, within 60 days after

the execution of this Security Instrument, either: (a) occupy, establish, and use the Property as its principal residence or principal place of business/business residence, or (b) if the Property is an investment property, ensure that the Property is occupied. Any occupation of the Property shall continue for at least one year after the date of occupancy, unless Mortgagee otherwise consents in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Mortgagor's or GORDON's control.

6. Preservation, Maintenance and Protection of the Property; Inspections. Mortgagor shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Mortgagor is residing in the Property, Mortgagor shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Mortgagor shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Mortgagor shall be responsible for repairing or restoring the Property only if Mortgagee has released proceeds for such purposes. Mortgagee may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Mortgagor is not relieved of Mortgagor's obligation for the completion of such repair or restoration.

Mortgagee or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Mortgagee may inspect the interior of the improvements on the Property. Mortgagee shall give Mortgagor notice at the time of or prior to such an interior inspection specifying such reasonable cause.

7. GORDON's Advance Application. Mortgagor shall be in default hereunder if, during the Advance application process, Mortgagor or any persons or entities acting at the direction of GORDON or with GORDON's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Mortgagee (or failed to provide Mortgagee with material information) in connection with the Advance.

8. Protection of Mortgagee's Interest in the Property and Rights Under this Security Instrument. If (a) Mortgagor fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Mortgagee's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Mortgagor has abandoned the Property, then Mortgagee may do and pay for whatever is reasonable or appropriate to protect Mortgagee's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Mortgagee's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Mortgagee may take action under this Section 8, Mortgagee does not have to do so and is not under any duty or obligation to do so. It is agreed that Mortgagee incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Mortgagee under this Section 8 shall become additional debt of GORDON secured by this Security Instrument. These amounts shall bear Fees at the Agreement rate from the date of disbursement and shall be payable, with such Fees, upon notice from Mortgagee to Mortgagor requesting payment.

9. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Mortgagee.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Mortgagee's security is not lessened. During such repair and restoration period, Mortgagee shall have the right to hold such Miscellaneous Proceeds until Mortgagee has had an opportunity to inspect such Property to ensure the work has been completed to Mortgagee's satisfaction, provided that such inspection shall be undertaken promptly. Mortgagee may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Mortgagee shall not be required to pay Mortgagor any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Mortgagee's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Mortgagor and Mortgagee otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Mortgagor.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Mortgagor and Mortgagee otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Mortgagor, or if, after notice by Mortgagee to Mortgagor that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Mortgagor fails to respond to Mortgagee within 30 days after the date the notice is given, Mortgagee is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Mortgagor Miscellaneous Proceeds or the party against whom Mortgagor has a right of action in regard to Miscellaneous Proceeds.

Mortgagor shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Mortgagee's judgment, could result in forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Mortgagee's judgment, precludes forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Mortgagee's interest in the Property are hereby assigned and shall be paid to Mortgagee.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

10. Forbearance By Mortgagee Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Mortgagee to GORDON or any Successor in Interest of GORDON shall not operate to release the liability of Mortgagor or any Successors in Interest of Mortgagor. Mortgagee shall not be required to commence proceedings

against any Successor in Interest of GORDON or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Mortgagor or any Successors in Interest of GORDON. Any forbearance by Mortgagee in exercising any right or remedy including, without limitation, Mortgagee's acceptance of payments from third persons, entities or Successors in Interest of GORDON or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

11. Joint and Several Liability; Co-signers; Successors and Assigns Bound. If more than one, Mortgagor covenants and agrees that Mortgagor's obligations and liability under this Security Instrument shall be joint and several. However, any Mortgagor who co-signs this Security Instrument but does not execute the Agreement (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Mortgagee and any other Mortgagor can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Agreement without the co-signer's consent.

Subject to the provisions of Section 16, any Successor in Interest of Mortgagor who assumes Mortgagor's obligations under this Security Instrument in writing, and is approved by Mortgagee, shall obtain all of Mortgagor's rights and benefits under this Security Instrument. Mortgagor shall not be released from Mortgagor's obligations and liability under this Security Instrument unless Mortgagee agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 17) and benefit the successors and assigns of Mortgagee.

12. Advance Charges. Mortgagee may charge Mortgagor fees for services performed in connection with Mortgagor's default hereunder, for the purpose of protecting Mortgagee's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees, which fees may be incurred prior to or in connection with any bankruptcy proceedings. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Mortgagor shall not be construed as a prohibition on the charging of such fee. Mortgagee may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Advance is subject to a law which sets maximum Advance charges, and that law is finally interpreted so that the fees or other Advance charges collected or to be collected in connection with the Advance exceed the permitted limits, then: (a) any such Advance charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Mortgagor which exceeded permitted limits will be refunded. Mortgagee may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to GORDON. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). The acceptance of any such refund made by direct payment to GORDON will constitute a waiver of any right of action GORDON might have arising out of such overcharge.

13. Notices. All notices given by Mortgagor or Mortgagee in connection with this Security Instrument must be in writing. Any notice to Mortgagor in connection with this Security Instrument shall be deemed to have been given to Mortgagor when mailed by first class mail or when actually delivered to Mortgagor's notice address if sent by other means. Notice to any one Mortgagor shall constitute notice to all Mortgagors unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Mortgagor has designated a substitute notice address by notice to Mortgagee. Mortgagor shall promptly notify Mortgagee of Mortgagor's change of address. If Mortgagee specifies a procedure for reporting Mortgagor's change of address, then Mortgagor shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Mortgagee shall be given by delivering it or by mailing it by first class mail to Mortgagee's address stated herein unless Mortgagee has designated another address by notice to Mortgagor.

Any notice in connection with this Security Instrument shall not be deemed to have been given to Mortgagee until actually received by Mortgagee. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

14. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Agreement which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

15. Mortgagor's Copies. If request therefor is made to Mortgagee in writing, Mortgagor shall be given one copy of the Agreement and of this Security Instrument. To the extent there is any missing, incomplete, or incorrect information (including but not limited to information required to record this Security Instrument) in this Security Instrument, Mortgagor agrees that Mortgagee may serve as Mortgagor's attorney-in-fact for the limited purpose of correcting, completing, or supplying such information in the Security Instrument.

16. Transfer of the Property or a Beneficial Interest in Mortgagor. As used in this Section 16, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Mortgagor at a future date to a Mortgagee.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Mortgagor is not a natural person and a beneficial interest in Mortgagor is sold or transferred) without Mortgagee's prior written consent, Mortgagee may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Mortgagee if such exercise is prohibited by Applicable Law.

If Mortgagee exercises this option, Mortgagee shall give Mortgagor notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 13 within which all sums secured by this Security Instrument must be paid. If such sums are not paid prior to the expiration of this period, Mortgagee may invoke any remedies permitted by this Security Instrument without further notice or demand.

17. Mortgagor's Right to Reinstate After Acceleration. If Mortgagor meets certain conditions, Mortgagee shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Mortgagor's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Mortgagor or GORDON: (a) pays Mortgagee all sums which then would be due under this Security Instrument and the Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Mortgagee's interest in the Property and rights under this Security Instrument; and (d) takes such action as Mortgagee may reasonably require to assure that Mortgagee's interest in the Property and rights under this Security Instrument, and the obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Mortgagee may require that such reinstatement sums and expenses are paid in one or more of the following forms, as selected by Mortgagee: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement, this Security Instrument and obligations secured hereby

shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 16.

18. Sale of Agreement; Change of Advance Servicer; Notice of Grievance. The Agreement or a partial interest in the Agreement (together with this Security Instrument) can be sold one or more times without prior notice to Mortgagor. A sale might result in a change in the entity (known as the "Advance Servicer") that collects Periodic Payments due under the Agreement and/or this Security Instrument and performs other mortgage servicing obligations under the Agreement, this Security Instrument, and Applicable Law. There also might be one or more changes of the Advance Servicer unrelated to a sale of the Agreement. If there is a change of the Advance Servicer, GORDON and Mortgagor will be given written notice of the change which will state the name and address of the new Advance Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Agreement is sold and thereafter the Advance is serviced by an Advance Servicer other than the Mortgagee, the mortgage servicing obligations to GORDON and/or Mortgagor will remain with the Advance Servicer or be transferred to a successor Advance Servicer and are not assumed by the Mortgagee unless otherwise provided by the Agreement.

Neither Mortgagor nor Mortgagee may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Mortgagor or Mortgagee has notified the other party (with such notice given in compliance with the requirements of Section 13) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Mortgagor pursuant to Section 20 and the notice of acceleration given to Mortgagor pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 18.

19. Hazardous Substances. As used in this Section 19: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup. Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Mortgagor shall promptly give Mortgagee written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Mortgagor has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Mortgagor learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of

any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Mortgagee for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Mortgagor and Mortgagee further covenant and agree as follows:

20. Acceleration; Default; Remedies. Subject to the provisions of this Section 20, Mortgagee may accelerate and require immediate payment in full of all sums secured by this Security Instrument. Unless Applicable Law does not require the provision of notice as described in this Section 20, Mortgagee shall give notice to Mortgagor and GORDON prior to acceleration following Mortgagor's breach of any covenant, representation, warranty, term, provision, or agreement in this Security Instrument (but not prior to acceleration under Section 16 unless Applicable Law provides otherwise) or following GORDON's breach of any covenant, representation, warranty, term, agreement, or provision of the Agreement or breach of any addendum to the Agreement. Any such breach of this Security Instrument or the Agreement or any addendum thereto shall be considered an event of default under this Security Instrument. The aforementioned notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Mortgagee at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding or, if permissible, by non-judicial proceedings. Mortgagee shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 20, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

21. Release. Upon payment of all sums secured by this Security Instrument, Mortgagee shall release this Security Instrument. Mortgagee may charge Mortgagor a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

22. Waiver of Valuation and Appraisalment. Mortgagor waives all right of valuation and appraisalment.

BY SIGNING BELOW, Mortgagor accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Mortgagor and recorded with it.

145 Stuyvesant Ave Prop LLC a/k/a 145 Stuyvesant Ave. Prop LLC

By: *Chanon D. Gordon*
Chanon D. Gordon, Managing Member/Sole Member

Attest:

(Signature)

(Print Name & Title)

State of NY

County of NY

On this 17 day of April, in the year 2019 before me, the undersigned Notary Public, personally appeared Chanon D. Gordon, 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 as Managing Member/Sole Member of 145 Stuyvesant Ave Prop LLC a/k/a 145 Stuyvesant Ave. Prop LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

[Signature]
Notary Public

My Commission Expires: NOV. 13 2019

SEAL

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 a point on the easterly side of Stuyvesant Avenue distant 60 feet southerly from the corner formed by the intersection of the easterly side of Stuyvesant Avenue with the southerly side of Greene Avenue;

RUNNING THENCE easterly parallel with Greene Avenue and part of the distance through a party wall 75 feet;

THENCE southerly parallel with Stuyvesant Avenue 20 feet;

THENCE westerly parallel with Greene Avenue and part of the distance through a party wall 75 feet to the easterly side of Stuyvesant Avenue; and

THENCE northerly along the easterly side of Stuyvesant Avenue 20 feet to the point or place of BEGINNING

NOTE: Being Lot(s) Lot: 7, Block: 1621; Tax Map of the Brooklyn, County of KINGS, State of NEWYORK.

NOTE: Lot and Block shown for informational purposes only.

Property address is commonly known as: 145 Stuyvesant Avenue, Brooklyn, NY 11221

"A"

EXHIBIT 3

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Please Note: This report was completed with the following assumptions: Market Approach: **Fair Market Price**, Marketing Time: **Typical**. Important additional information relating to this report, including use and restrictions, is contained in an attached addendum which is an integral part of this report.

Address	145 Stuyvesant Ave, Brooklyn, NY 11221	Order ID	8392782	Property ID	33207072
Inspection Date	08/23/2022	Date of Report	08/24/2022		
Loan Number	TCM19073	APN	016210007		
Borrower Name	145 STUYVESANT AVE PROP LLC	County	Kings		

Tracking IDs

Order Tracking ID	TCM19073	Tracking ID 1	TCM19073
Tracking ID 2	--	Tracking ID 3	--

General Conditions

Owner	145 STUYVESANT AVE PROP LLC	Condition Comments	
R. E. Taxes	\$3,612	Based on the exterior inspection the house needs a new windows. My approximate estimate for the repairs would be around \$20,000. Positive features: location contributes value, well maintained condition. Negative features: none observed.	
Assessed Value	\$18,094		
Zoning Classification	Residential R6A		
Property Type	Multifamily		
Occupancy	Occupied		
Ownership Type	Fee Simple		
Property Condition	Average		
Estimated Exterior Repair Cost	\$20,000		
Estimated Interior Repair Cost	\$0		
Total Estimated Repair	\$20,000		
HOA	No		
Visible From Street	Visible		
Road Type	Public		

Neighborhood & Market Data

Location Type	Urban	Neighborhood Comments	
Local Economy	Stable	The percentage of renters within subject's for neighborhood is 78%, demand housing and rent is stable in the area. Supply and demand are in balance.	
Sales Prices in this Neighborhood	Low: \$300,000 High: \$2,700,000		
Market for this type of property	Remained Stable for the past 6 months.		
Normal Marketing Days	<90		

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221**TCM19073**
Loan Number**\$1,530,000**
As-Is Value**Current Listings**

	Subject	Listing 1	Listing 2	Listing 3 *
Street Address	145 Stuyvesant Ave	915 Greene Ave	844 Greene Ave	28 Grove St
City, State	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY
Zip Code	11221	11221	11221	11221
Datasource	Tax Records	MLS	MLS	MLS
Miles to Subj.	--	0.13 ¹	0.06 ¹	0.55 ¹
Property Type	Multifamily	Multifamily	Multifamily	Multifamily
Original List Price \$	\$	\$1,599,000	\$1,888,888	\$1,675,000
List Price \$	--	\$1,599,000	\$1,888,888	\$1,675,000
Original List Date		07/20/2022	11/20/2021	05/24/2022
DOM · Cumulative DOM	-- · --	35 · 35	277 · 277	90 · 92
Age (# of years)	123	123	123	19
Condition	Average	Average	Good	Average
Sales Type	--	Fair Market Value	Fair Market Value	Fair Market Value
Location	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
View	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
Style/Design	3 Stories colonial	3 Stories colonial	3 Stories colonial	3 Stories colonial
# Units	3	2	3	3
Living Sq. Feet	3,600	3,180	3,360	2,964
Bdrm · Bths · ½ Bths	6 · 3	6 · 3	4 · 4	8 · 3
Total Room #	12	12	12	14
Garage (Style/Stalls)	None	None	None	None
Basement (Yes/No)	Yes	Yes	Yes	Yes
Basement (% Fin)	100%	100%	100%	100%
Basement Sq. Ft.	900	1,060	840	988
Pool/Spa	--	--	--	--
Lot Size	0.03 acres	0.05 acres	0.08 acres	0.04 acres
Other	none	none	none	none

* Listing 3 is the most comparable listing to the subject.

¹ Comp's "Miles to Subject" was calculated by the system.² Comp's "Miles to Subject" provided by Real Estate Professional.³ Subject \$/ft based upon as-is sale price.**Listing Comments** Why the comparable listing is superior or inferior to the subject.**Listing 1** The comparable listing is located in the same market area, inferior in size, unit, similar in bathroom count, slightly superior in lot size.**Listing 2** The comparable listing is located in the same market area, superior in condition, lot size, bathroom count, inferior in size.**Listing 3** The comparable listing is located in the same market area, newer, slightly superior in lot size, inferior in size.

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221**TCM19073**
Loan Number**\$1,530,000**
As-Is Value**Recent Sales**

	Subject	Sold 1	Sold 2 *	Sold 3
Street Address	145 Stuyvesant Ave	704 Lexington Ave	950a Greene Ave	360 Jefferson Ave
City, State	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY
Zip Code	11221	11221	11221	11221
Datasource	Tax Records	MLS	MLS	MLS
Miles to Subj.	--	0.10 ¹	0.18 ¹	0.69 ¹
Property Type	Multifamily	Multifamily	Multifamily	Multifamily
Original List Price \$	--	\$1,650,000	\$1,750,000	\$2,500,000
List Price \$	--	\$1,650,000	\$1,750,000	\$1,950,000
Sale Price \$	--	\$1,640,000	\$1,500,000	\$1,850,000
Type of Financing	--	Conventional	Conventional	Conventional
Date of Sale	--	06/03/2022	05/03/2022	12/21/2021
DOM · Cumulative DOM	-- · --	23 · 219	78 · 78	388 · 402
Age (# of years)	123	117	123	117
Condition	Average	Good	Average	Average
Sales Type	--	Fair Market Value	Fair Market Value	Fair Market Value
Location	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
View	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
Style/Design	3 Stories colonial	3 Stories colonial	3 Stories colonial	3 Stories colonial
# Units	3	2	2	4
Living Sq. Feet	3,600	2,925	3,420	3,620
Bdrm · Bths · ½ Bths	6 · 3	4 · 4 · 1	7 · 3	10 · 4
Total Room #	12	12	11	20
Garage (Style/Stalls)	None	None	None	None
Basement (Yes/No)	Yes	Yes	Yes	Yes
Basement (% Fin)	100%	100%	100%	100%
Basement Sq. Ft.	900	956	855	955
Pool/Spa	--	--	--	--
Lot Size	0.03 acres	0.04 acres	0.04 acres	0.05 acres
Other	none	none	none	none
Net Adjustment	--	-\$46,000	+\$28,000	-\$13,000
Adjusted Price	--	\$1,594,000	\$1,528,000	\$1,837,000

* Sold 2 is the most comparable sale to the subject.

¹ Comp's "Miles to Subject" was calculated by the system.² Comp's "Miles to Subject" provided by Real Estate Professional.³ Subject \$/ft based upon as-is sale price.

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
● As-Is Value

Recent Sales - Cont.

Reasons for Adjustments Why the comparable sale is superior or inferior to the subject.

- Sold 1** The comparable sale is located in the same market area, inferior in size, unit, superior in bathroom count, condition. Dollar adjustment for GLA+\$99,000, Bathroom count-\$5,000, Unit+\$10,000, Condition-\$150,000.
- Sold 2** The comparable sale is located in the same market area, inferior in size, unit, similar in bathroom count. Dollar adjustment for GLA+\$18,000, Unit+\$10,000.
- Sold 3** The comparable sale is located in the same market area, slightly newer, slightly superior in size, superior in bathroom count, unit. Dollar adjustment for Bathroom count-\$3,000, Unit-\$10,000.

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Subject Sales & Listing History

Current Listing Status	Not Currently Listed	Listing History Comments					
Listing Agency/Firm		I've searched tax records, county records, public data and local mls system but haven't found any listing of the subject property.					
Listing Agent Name							
Listing Agent Phone							
# of Removed Listings in Previous 12 Months	0						
# of Sales in Previous 12 Months	0						
Original List Date	Original List Price	Final List Date	Final List Price	Result	Result Date	Result Price	Source

Marketing Strategy

	As Is Price	Repaired Price
Suggested List Price	\$1,600,000	\$1,640,000
Sales Price	\$1,530,000	\$1,570,000

Comments Regarding Pricing Strategy

The subject is zoned residential, no negative impact noted at the time of the exterior inspection. There are busy road, commercial buildings, school, park in the immediate vicinity of the subject, however no influence noted. Sold 1, Listing 1 have similar location. I feel it is worth \$1,530,000. I came up with this value by looking at the both sold and listed comps in the neighborhood. Values adjusted at the lower end of sold comps given that active lists are currently lower, therefore subject must be competitive. I would price this property aggressively in order to be able to compete with the inventory in the market and enable it to sell quickly without having to resort to subsequent price reductions. I went back 3 months, out in distance 0.5 miles, and even with relaxing search criteria I was able to located only 2 comps which fit the requirements. When I back 10 months I found 4 comps of which I could only 1 comps within 1 miles and the adjustments are sufficient for this area to account for the differences in the subject and comps.

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145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Clear Capital Quality Assurance Comments Addendum

Reviewer's Notes The broker's as-is conclusion reflects the market for the subject. Comps are within a reasonable distance, relatively current, and accurately reflect the subject's defining characteristics. Thus, the as-is conclusion appears to be adequately supported.

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Subject Photos



Front



Address Verification



Side



Side



Street



Street

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Subject Photos



Street



Other

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145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Listing Photos

L1 915 Greene Ave
Brooklyn, NY 11221



Front

L2 844 Greene Ave
Brooklyn, NY 11221



Front

L3 28 Grove St
Brooklyn, NY 11221



Front

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Sales Photos

S1 704 Lexington Ave
Brooklyn, NY 11221



Front

S2 950A Greene Ave
Brooklyn, NY 11221



Front

S3 360 Jefferson Ave
Brooklyn, NY 11221



Front

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by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

ClearMaps Addendum

Address ☆ 145 Stuyvesant Ave, Brooklyn, NY 11221
Loan Number TCM19073 **Suggested List** \$1,600,000 **Suggested Repaired** \$1,640,000 **Sale** \$1,530,000



Comparable

Comparable	Address	Miles to Subject	Mapping Accuracy
☆ Subject	145 Stuyvesant Ave, Brooklyn, NY 11221	—	Parcel Match
L1 Listing 1	915 Greene Ave, Brooklyn, NY 11221	0.13 Miles ¹	Parcel Match
L2 Listing 2	844 Greene Ave, Brooklyn, NY 11221	0.06 Miles ¹	Parcel Match
L3 Listing 3	28 Grove St, Brooklyn, NY 11221	0.55 Miles ¹	Parcel Match
S1 Sold 1	704 Lexington Ave, Brooklyn, NY 11221	0.10 Miles ¹	Parcel Match
S2 Sold 2	950a Greene Ave, Brooklyn, NY 11221	0.18 Miles ¹	Parcel Match
S3 Sold 3	360 Jefferson Ave, Brooklyn, NY 11221	0.69 Miles ¹	Parcel Match

¹ The Comparable "Distance from Subject" value has been calculated by the Clear Capital system.

² The Comparable "Distance from Subject" value has been provided by the Real Estate Professional.

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145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
● As-Is Value

Addendum: Report Purpose

Market Approach and Market Time

The Market Approach of this report, as established by the customer, is: **Fair Market Price**. (See definition below.)
The Marketing Time as specified by the customer is **Typical**. (See definition below.)

Definitions:

Fair Market Price	A price at which the property would sell between a willing buyer and a willing seller neither being compelled by undue pressure and both having reasonable knowledge of relevant facts.
Distressed Price	A price at which the property would sell between a willing buyer and a seller acting under duress.
Marketing Time	The amount of time the property is exposed to a pool of prospective buyers before going into contract. The customer either specifies the number of days, requests a marketing time that is typical to the subject's market area and/or requests an abbreviated marketing time.
Typical for Local Market	The estimated time required to adequately expose the subject property to the market resulting in a contract of sale.

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221TCM19073
Loan Number\$1,530,000
As-Is Value**Addendum: Report Purpose - cont.****Report Instructions**

This section shows the instructions that were approved by the customer and provided to the broker prior to completing the report.
Instructions last updated: 8/16/2017

Purpose:

Please determine a Fair market price for this property at which it would sell in a typical marketing time for the area.

Comparable Requirements:

If any of the following comparable criteria cannot be met, the commentary is required as to why you expanded your search, and what the effect on price will be.

1. Use comps from the same neighborhood, block or subdivision.
2. Use REO comparables only if the market is driven by REOs and they are comparable in characteristics and condition.
3. Use comps that have closed in the past 3 months to show the current market conditions. In rapidly changing markets, active listing comps should be given equal or greater weight than sold comps in your analysis.

Property Condition Definitions:

1. Poor: Uninhabitable or severely damaged from fire, flood, vandalism or mold
2. Fair: Repairs needed, may not be eligible for all forms of financing, below the neighborhood average
3. Average: Minor cosmetic or no repairs needed; typical for the neighborhood, move-in ready but no significant updates or renovations
4. Good: Above average, move in ready, no repairs necessary and has recent and significant updates and/or renovations (or, for customers that do not provide for 'Average', any move-in ready property)
5. Excellent: Newer construction (1-5 years) or high end luxury

Standard Instructions:

1. Clear Capital Code Of Conduct - Please make sure that you are always abiding by the Clear Capital Code of Conduct when completing valuation reports.
2. If the subject is currently listed, please consider all available information pertaining to the subject's condition. This information should be utilized when developing the assumption of the subject's condition.
3. Use the subject characteristics provided in the report Grid (if preloaded) to evaluate the property. This information is from a full interior appraisal and is assumed to be most accurate. If your inspection reveals obvious inaccuracies, please explain in the narrative of the report.
4. Include sufficient detail to help our mutual customer gain a complete understanding of the subject's neighborhood such as neighborhood desirability, amenities, parks, schools, commercial or industrial influences, REO activity, traffic, board-up-homes, etc.
5. Do not approach occupants or owners.
6. If the subject is a Commercial property, contact Clear Capital immediately at 530-582-5011 for direction on how to proceed with the report.
7. Please do not accept if you or your office has completed a report on this property in the last month, are currently listing this property, or have any vested interest in the subject property.
8. Clear Capital does not allow any log ins from IP addresses from foreign countries. This includes, but is not limited to; data entry services, form completion services, etc. Also, it is against Clear Capital code of conduct to share your password with anyone who is not a W2 employee in your office.
9. Clear Capital and our mutual customers greatly appreciate your expertise. If you cannot personally inspect the property, select comparables, and determine a price for the subject, please do not accept this report. Per the standards and guidelines adopted by Clear Capital and other industry leaders, the use of assistants to complete any of the aforementioned tasks is not permitted.
10. No part of your analysis or reporting may be based on the race, color, religion, sex, actual or perceived sexual orientation, actual or perceived gender identity, age, actual or perceived marital status, disability, familial status, national origin of either the prospective owners or occupants of the subject property, present owners or occupants of the property, or present owners or occupants of the properties in the vicinity of the subject property, or on any other basis prohibited by federal, state or local law.

Terms of Use, Code of Conduct and Professional Discretion

If you accept and perform this assignment, you do so in accordance with the Clear Capital Vendor Agreement Terms of Use and Code of Conduct to which you agreed.

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Report Instructions - cont.

All interactions with consumers (borrowers, homeowners, POCs, etc.) must be performed in a professional manner. Should you observe any concerning or suspicious activity while you engage with a consumer whether onsite or otherwise, please contact Clear Capital immediately. Please refrain from discussing anything related to the observation with the consumer directly. This includes suspected elder abuse, elder financial abuse, vulnerable adults, fraud, forgery or any violations of local, state or federal laws.

Due to the importance of an independent opinion of price, please do not discuss your price with anyone or be influenced by list price, pending offers, accept comp packets, repair estimates or the listing agent's opinion.

Photo Instructions:

In the case of camera malfunction and/ or if an inspector fails to inspect the property, it is prohibited to request another individual for photos.

1. Photos should be clear of car window glare, door frames, and mirrors. Please step outside of the vehicle when taking photos.
2. Current and original photos of all sides of the subject (back of the subject in available)
3. Damages (upload enough photos to support your repair cost estimates)
4. Please provide close up photos of the subjects roof
5. Two street scene photos, one looking each direction down the street
6. One view photo looking across the street from the subject
7. One address verification photo
8. MLS photos of all (3) sold comparables, if available
9. MLS photos of all (3) listing comparables, if available

DRIVE-BY BPO

by ClearCapital

145 STUYVESANT AVE
BROOKLYN, NY 11221

TCM19073
Loan Number

\$1,530,000
As-Is Value

Broker Information

Broker Name	Darina Petrova	Company/Brokerage	Charles Rutenberg Realty Inc
License No	10401222653	Address	354 91st Street Brooklyn NY 11209
License Expiration	07/07/2024	License State	NY
Phone	9174000138	Email	darinarealtor@gmail.com
Broker Distance to Subject	7.08 miles	Date Signed	08/24/2022

By confirming the above contact and real estate license information and submitting the report, the above signed hereby certifies and agrees that: 1) I personally took the pictures, selected comparables, and determined the price conclusion. 2) To the best of my knowledge, the statements of fact contained in this report are true and correct. 3) The reported analyses, opinions, and conclusions are my personal, impartial, and unbiased professional analyses, opinions, and conclusions. 4) I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved. 5) I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment. 6) My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined price point. 7) I did not base, either partially or completely, my analysis and/or opinion and conclusions in this report on race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law. 8) I maintain errors and omissions insurance, to the extent required by state law, for all liability associated with the preparation of this Report.

Disclaimer

This document is not an appraisal as defined by USPAP (Uniform Standards of Professional Appraisal Practice). It is not to be construed as an appraisal and may not be used as such for any purpose.

Unless otherwise specifically agreed to in writing:

The intended purpose of this report is to assist the Clear Capital account holder in making decisions within the scope of applicable statutory and regulatory requirements and performing required due diligence. This document is provided solely for the use of the Clear Capital account holder and not any other party, is not intended as any guarantee of value and/or condition of the subject property and should not be relied on as such. In the event that this document is found to be defective, incorrect, negligently prepared or unfit for its authorized use, Clear Capital's sole liability shall be to promptly refund the total fee expended by the account holder for this report or to replace it at no charge to the account holder, but in no event shall Clear Capital be responsible to the account holder for any indirect or consequential damages whatsoever. This warranty is in lieu of all other warranties, express or implied, except where otherwise required by law. The account holder shall notify Clear Capital within thirty (30) days of this report's delivery to the account holder if it believes that this document is defective, incorrect, negligently prepared or unfit for its authorized use. Under no circumstances may Clear Capital forms or their contents be published, copied, replicated, or mimicked.

EXHIBIT 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

_____ X

TOORAK CAPITAL PARTNERS, LLC,

Plaintiff/Petitioner,

v.

145 STUYVESANT AVE PROP LLC;
CHANON D. GORDON; NEW VISION
TRUST CUSTODIAN FBO ELVENYIA
BARTON-GIBSON IRA; ELVENYIA
BARTON-GIBSON; COMPLETE BUSINESS
SOLUTIONS GROUP, INC.
D/B/A PAR FUNDING; and JOHN DOE NO.
I THROUGH JOHN DOE NO. XXX,

Defendants/Respondents.

_____ X

Index No.: 500868/2021

(Mortgage Foreclosure Action)

Block 1621, Lot 7

Property known as:
145 Stuyvesant Avenue
Brooklyn, NY 11221

NOTICE OF STAY

Ryan K. Stumphauzer, Esquire as Receiver for Complete Business Solutions Group, Inc. d/b/a PAR Funding, by and through his counsel Pietragallo Gordon Alfano Bosick & Raspanti, LLP hereby requests a stay in this matter. Attached hereto as Exhibit A is a Litigation Injunction entered in the United States District Court Southern District of Florida, docketed Case No. 20-civ-81205, Document #56.

**PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP**

By: /s/ Eric G. Soller

Eric G. Soller, Esquire
NYS OCA No. 4595930
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219
(412) 253-2000 (office)
(412) 263-1836 (direct)

Date: March 8, 2021

(412) 263-2001 (fax)
egs@Pietragallo.com

*Attorney for Ryan K. Stumphauzer, Esquire
as Receiver for Plaintiff Complete Business
Solutions Group, Inc.*

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

**ORDER GRANTING PLAINTIFF'S URGENT MOTION TO AMEND ORDER
APPOINTING RECEIVER TO INCLUDE LITIGATION INJUNCTION**

THIS CAUSE comes before the Court upon Plaintiff Securities and Exchange Commission's ("Commission") Urgent Motion to Amend Order Appointing Receiver to Include Litigation Injunction [ECF No. 48] ("Motion"), filed on July 31, 2020. In the Motion, Plaintiff seeks to amend the Court's Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver [ECF No. 36] ("Order Appointing Receiver"), entered on July 27, 2020.

Specifically, Plaintiff seeks to amend the Order Appointing Receiver to include a litigation injunction in all cases and proceedings to which the following entities are a party: Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par Funding"), Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan ("ABFP"), ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC ("ABFP Management"), ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE

Income Fund 2 LLC (collectively, the “Receivership Entities”). The Receiver agrees with and joins in the request for this relief. For the reasons set forth in the Motion, it is hereby

ORDERED AND ADJUDGED that Plaintiff Securities and Exchange Commission’s Motion to Amend Order Appointing Receiver to Include Litigation Injunction [ECF No. 48] is **GRANTED**.

The Receiver, Ryan Stumphauzer, is authorized, empowered, and directed as follows until further Order of the Court:

1. To take custody, control, and possession of all Receivership Entity records, documents, and materials, and to safeguard these items until further Order of the Court;
2. To secure and safeguard the Receivership Entities’ information technology, data, documents, storage systems, and documents, including by making contact with any third-party vendors, such as movers and information technology personnel, to assist in this process;
3. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, lawyers, and paralegals (“Retained Personnel”);
4. To take any other action as necessary and appropriate for the preservation of the Receivership Entities’ property interests or to prevent the dissipation or concealment of such property interests; and
5. To take such other action as may be approved by this Court.
6. Additionally, the Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of each Receivership Entity, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

7. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and the Receiver's appointment.

8. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Entities' estates. The Receiver shall seek the Court's approval by filing a Motion for the reimbursement of expenses and compensation for time spent on the matters set forth herein.

9. The Receivership Entities and all persons receiving notice of this Order shall not hinder or interfere with the Receiver's efforts to take control or possession of the Receivership Entities' property interests identified above or hinder his efforts to preserve them.

STAY OF LITIGATION

"[W]hile it should be sparsely exercised, district courts possess the authority and discretion to enter anti-litigation orders" in the context of a Securities and Exchange Commission receivership. *Sec. & Exch. Comm'n v. Byers*, 609 F.3d 87, 89 (2d Cir. 2010); *see also Sec. & Exch. Comm'n v. Onix Capital, LLC*, No. 16-24678-CIV, 2017 WL 6728814, at *4 (S.D. Fla. Jul. 24, 2017) ("That the receivership is not 'substantially underway' is not a compelling factor to lift a stay against litigation when balanced against the Receiver's interest in preventing ancillary litigation during the early stages of the receivership."); *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) ("[T]he receivership court may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained.").

As set forth below, the following proceedings—excluding the instant proceeding—and all law enforcement, police, or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are hereby stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or any other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any of the Receivership Entities' property interests, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of a Receivership Entity's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

DONE AND ORDERED in Fort Lauderdale, Florida, this 31st day of July, 2020.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

EXHIBIT 5

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

TOORAK CAPITAL PARTNERS, LLC,

Index No.

Plaintiff(s),

Summons

-against-

347A QUINCY ST PROP LLC; CHANON D. GORDON; FAST ADVANCE FUNDING INC. and JOHN DOE NO. 1 THROUGH JOHN DOE NO. XXX, inclusive, the last thirty names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Date Index No. Purchased: January 25, 2021

Defendant(s).

To the above named Defendant(s)

347A Quincy St Prop LLC
991 Nostrand Avenue
Brooklyn, New York 11225

Chanon D. Gordon
119 Mayflower Street
Hartford, Connecticut 06610

Fast Advance Funding, Inc.
20 North 3rd Street
Philadelphia, Pennsylvania 19106

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is location of subject property, which is Kings County, New York.

Dated: Kansas City, Missouri
January 25, 2021

Polsinelli PC

by /s/ Amy E. Hatch

Amy E. Hatch
Attorneys for Plaintiff

900 West 48th Place, Suite 900
Kansas City, Missouri 64112
(816) 753-1000
ahatch@polsinelli.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

TOORAK CAPITAL PARTNERS, LLC,

Plaintiff,

-against-

347A QUINCY ST PROP LLC; CHANON D. GORDON;
FAST ADVANCE FUNDING INC.; JOHN DOE NO. I
THROUGH JOHN DOE NO. XXX, inclusive, the last thirty
names being fictitious and unknown to plaintiff, the persons
or parties intended being the tenants, occupants, persons or
corporations, if any, having or claiming an interest in or lien
upon the premises described in the complaint,

Defendants.

Index No.

VERIFIED COMPLAINT

(Mortgage Foreclosure Action)

Block 1804, Lot 65

Property known as:
347A Quincy Avenue
Brooklyn, NY 11216

Plaintiff Toorak Capital Partners, LLC (“**Plaintiff**”), by and through its attorneys, for its
Complaint against Defendants 347A Quincy St Prop LLC, Chanon D. Gordon, Fast Advance
Funding Inc., and John Doe No. I through John Doe No. XXX, states as follows:

The Parties

1. Plaintiff is a limited liability company organized and existing under the laws of
the Delaware with its main office located at 15 Maple Street, Second Floor West, Summit, NJ
07901.

2. Defendant 347A Quincy St Prop LLC (“**Borrower**”) is a New York limited
liability company and citizen of the State of New York with its principal place of business at 991
Nostrand Avenue, Brooklyn, NY 11225, or that can alternatively be served at 41 Flatbush
Avenue, Ste. 206, Brooklyn, NY 11204.

3. Defendant Chanon D. Gordon (“**Guarantor**”) is an individual and resident of
Connecticut, residing at 119 Mayflower Street, Hartford, CT 06610.

4. Defendant Fast Advance Funding, Inc. (“**Fast Advance**”) is a Pennsylvania corporation that maybe be served at 20 North 3rd Street, Philadelphia, PA 19106, and that is named herein as a party that may assert a junior lien on the property that is the subject of this mortgage foreclosure action in connection with a Mortgage made by Borrower dated May 13, 2019, and recorded on June 12, 2019, with the Office of the City Register of the City of New York (the “**Register**”) as CRFN 2019000183976.

5. Defendants John Does I through XXX are currently unknown to Plaintiff, but, on information and belief, are tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the Complaint.

Jurisdiction and Venue

6. Jurisdiction over this action is proper pursuant to CPLR §301.

7. Venue is proper in this Court pursuant to CPLR §503.

The Loan Transaction

8. Plaintiff is the owner and holder of a certain loan (the “**Loan**”), which is evidenced by: (i) that certain Commercial Promissory Note, dated as of April 17, 2019 (the “**Note**”), in the original principal amount of \$1,019,017.98, executed by Borrower and in favor of Firm Lending LLC (“**Original Lender**”) and (ii) that certain Building Loan Promissory Note (the “**Building Note**”), dated as of April 17, 2019, in the original principal amount of \$150,000, executed by Borrower and in favor of Original Lender. A true and correct copy of the Note is attached hereto as **Exhibit A**. A true and correct copy of the Building Note is attached hereto as **Exhibit B**.

9. The indebtedness owed under the Note and Building Note (collectively, the “**Notes**”) is secured by Borrower’s non-residential real property, and improvements thereon, with

a street address of 347A Quincy Avenue, Brooklyn, NY 11216, and all or substantially all of Borrower's personal property, as set forth in the Mortgages (defined below) (collectively, the "Property").

10. Plaintiff is the owner and holder of (i) that certain Commercial Mortgage, Security Agreement and Fixture Filing, dated as of April 17, 2019, the grantor under which is Borrower (as amended from time to time, the "Mortgage"), encumbering the Property and (ii) that certain Building Loan Mortgage, Security Agreement and Fixture Filing, dated as of April 17, 2019, the grantor under which is Borrower (as amended from time to time, the "Building Mortgage"), encumbering the Property. A true and correct copy of the Mortgage is attached hereto as **Exhibit C**. A true and correct copy of the Building Mortgage is attached hereto as **Exhibit D**.

11. The Mortgage was duly recorded with the Register on May 8, 2019, as CRFN 20190000145691, and the New York State recording tax was duly paid thereon. (Ex. C.)

12. The Building Mortgage was duly recorded with the Register on May 8, 2019, as CRFN 20190000145692, and the New York State recording tax was duly paid thereon. (Ex. D.)

13. Plaintiff is the owner and holder of certain Commercial Guaranty agreements, each dated as of April 17, 2019 (collectively, the "Guaranty Agreements"), under which Guarantor is identified as the guarantor for the Note and Building Note, respectively. True and correct copies of the Guaranty Agreements are attached hereto as **Exhibit E**.

14. The Notes, the Mortgage, the Building Mortgage, the Guaranty Agreements, and all other documents further evidencing, securing or executed in connection with the Loan are referred to herein collectively as the "Loan Documents."

15. Prior to the commencement of this action, Original Lender assigned the Note and Mortgage to Plaintiff. A true and correct copy of the assignment of the Mortgage is attached hereto as **Exhibit F**.

16. Prior to the commencement of this action, Original Lender assigned the Building Note and the Building Mortgage to Plaintiff. A true and correct copy of the assignment of the Building Mortgage is attached hereto as **Exhibit G**.

17. The original Loan Documents, including the Notes, were delivered to Plaintiff, and, thus, Plaintiff is the current holder and owner of the Loan Documents.

18. Prior to the commencement of this action, Plaintiff has been in exclusive possession of the original Notes and has not transferred the same to any other person or entity.

Default Under the Loan Documents

19. The Loan Documents provide, among other things:

- a. Borrower shall make monthly payments of principal and interest and other amounts;
- b. in the event of a default by the Borrower, the entire unpaid principal, accrued interest, and all other amounts payable under the Loan Documents may be accelerated at Plaintiff's option;
- c. in the event of a default by the Borrower, Borrower's license to collect the rents generated by the Property may be revoked;
- d. in any action to foreclose, Plaintiff shall be entitled to the appointment of a receiver without notice or regard to value;
- e. Plaintiff shall be entitled to legal expenses, costs and fees; and

f. in the event of a default by the Borrower, interest at the default rate set forth in the Loan Documents shall be owed by the Borrower.

20. Borrower defaulted under the Loan Documents by failing to make monthly payments of principal and interest required under the Loan Documents. By letter dated August 20, 2019 (the "Default Letter"), Plaintiff notified Borrower of its default under the Loan Documents and that Plaintiff had elected to accelerate the debt owed under the Notes, which was, as a result, then due and payable. A true and correct copy of the Default Letter sent to Borrower is attached hereto as **Exhibit H**.

21. Borrower has failed to cure the defaults and remains in default under the Loan Documents.

Amounts Due Under the Loan Documents

22. As of December 30, 2020, the following amounts are due and owing to Plaintiff under the Loan Documents:

- (a) Unpaid principal balance of \$1,019,017.98;
- (b) Interest accrued from June 1, 2019, through December 30, 2020, in the amount of \$161,061.45;
- (c) Interest at the per diem rate of \$283.06 from December 31, 2020, and thereafter;
- (d) Default interest accrued from July 1, 2019 through December 30, 2020, in the amount of \$198,340.53;
- (e) Default interest at the per diem rate of \$367.98 from December 31, 2020, and thereafter;
- (f) Late fees in the amount of \$16,106.15;

- (g) Disposition fee in the amount of \$20,000.00;
- (h) Special servicing fee in the amount of \$4,250.00
- (i) Legal fees in the amount of \$6,335.90;
- (j) Other fees and charged in the amount of \$399.00;
- (k) Any and all fees and costs incurred by Plaintiff, both to date and hereafter, in connection with the collection of the amounts due and owing under the Loan Documents for the protection, preservation and realization of the Property, including processing fees, late charges, inspection fees, environmental fees, appraisal fees, expenses, administrative fees, attorneys' fees, and costs incurred in connection with the issuance of the third-party reports in connection with the Property;
- (l) Prepayment consideration and any other amounts due and owing under the Loan Documents;
- (m) Less any funds paid by Borrower but not yet applied to the debt by Plaintiff; and
- (n) Any other amounts due and owing under the Loan Documents.

Right to Possession and Rents

23. Under 3.02 of the Mortgage and Building Mortgage (collectively, the "Mortgages"), upon a default under the Mortgages, Plaintiff is entitled to collect and receive the rents and the value of the use and occupation of the Property.

24. Plaintiff is entitled to an order directing all rents, issues and profits from the Property be remitted to Plaintiff in accordance with the terms of the Mortgages and other Loan

Documents and directing that any such amounts be used to reduce the indebtedness described above.

Right to Foreclosure

25. Under the Mortgages, upon an event of default, Plaintiff has the right to institute a proceeding for foreclosure. Thus, Plaintiff is entitled to an Order from the Court that the Mortgages be foreclosed, that the liens provided therein be declared as first and prior liens on the Property, and that Plaintiff be granted the right of immediate possession of the Property.

26. No other action has been brought to recover any part of the debt under the Mortgages, Notes, or other Loan Documents.

27. Plaintiff may not be deemed to have waived, altered, released, or changed its election to foreclose by reason of any payment made after the date of commencement of this action of any and all of the defaults identified herein.

28. Plaintiff specifically reserves the right to pursue a temporary injunction, appointment of receiver, or other relief with respect to its rights under the Loan Documents. Pursuant to N.Y. Real Prop. Acts. Law §1371, Plaintiff will move the Court to enter final judgment against Borrower and Guarantors for any residue of the debt under the Notes remaining unsatisfied after the foreclosure sale of the Property is completed.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff for foreclosure of the Property as follows:

- A. Finding that Plaintiff has a first and best lien on the Property;
- B. Ordering that Plaintiff has the legal right and is authorized to foreclose on the Property:

- (i) in one parcel according to law together with the fixtures and articles of personalty upon the premises;
- (ii) subject to zoning restrictions and ordinances adopted by any municipality or other governmental authority, and violations thereof;
- (iii) subject to any state of facts that an accurate survey would show;
- (iv) subject to covenants and restrictions of record, if any; and
- (v) subject to violations, if any, noted by any federal, state, city, town or village agency having authority over the premises;

C. Finding that such foreclosure will vest in the purchaser thereat free and clear title to the Property, free of any and all interests that are or might be asserted by the Defendants to this Complaint;

D. Ordering that Plaintiff has the right to credit bid at such foreclosure sale any and all amounts due to Plaintiff under the Loan Documents;

E. Ordering and directing that the Sheriff of Kings County, New York, or any referee appointed in this action, foreclose the Property and deliver title via a Sheriff's Deed or Referee's Deed, and bill of sale, as appropriate, to the successful bidder at such foreclosure;

- F. Ordering and directing that the proceeds of the sale be applied as follows:
- (i) to payment of the expenses of the sale;
 - (ii) to the payment of the debt owed to Plaintiff under the Notes;
 - (iii) to the payment of foreclosure costs and other accrued costs in connection with the foreclosure;

(iv) to the payment, at Plaintiff's option, of any real property taxes that may be due and unpaid in connection with the Property;

(v) to the payment, at Plaintiff's option, of all other assessments against or attributable to the Property; and

(vi) the surplus, if any, to the payment of debts secured by junior liens on the Property and then, to Borrower, in accordance with further order of the Court;

G. Ordering that Borrower has no right of redemption or reinstatement with respect to the Property;

H. Finding that Plaintiff has preserved its right to pursue any deficiency that may exist under the Notes and other Loan Documents after application of the proceeds of the foreclosure sale pursuant to N.Y. Real Prop. Acts. Law §1371 and may move the Court to enter final judgment against Borrower and Guarantors for such deficiency; and

I. Ordering all further relief is just, proper, and equitable.

Dated: Kansas City, Missouri
January 25, 2021

POLSINELLI PC

By: /s/ Amy E. Hatch
MORGAN C. FIANDER
600 Third Avenue, 42nd Floor
New York, New York 10016
(212) 684-0199
mfiander@polsinelli.com

AMY E. HATCH
900 West 48th Place, Suite 900
Kansas City, Missouri 64112
(816) 753-1000
ahatch@polsinell.com

ATTORNEYS FOR PLAINTIFF


STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

STEPHEN J. TYDE, being duly sworn, says that he is a Principal for Plaintiff Toorak Capital Partners, LLC, that he has read the foregoing Verified Complaint and said Verified Complaint is true to his own knowledge except as to matters therein stated to be alleged on information and belief and that as to those matters he believes them to be true.



Stephen J. Tyde
Toorak Capital Partners, LLC
Principal and Head of Special Servicing

Sworn to before me this
22nd day of January, 2021



Notary Public



FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO. 501908/2021

NYSCEF DOC. NO. 2

RECEIVED NYSCEF: 01/25/2021

Exhibit A

347A Quincy St Prop LLC
\$1,019,017.98
April 17, 2019

COMMERCIAL PROMISSORY NOTE¹

FOR VALUE RECEIVED, the undersigned, **347A Quincy St Prop LLC** a New York limited liability company having an office at **41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217** ("Maker"), promises to pay to the order of **FIRM LENDING LLC**, a Florida limited liability company at its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Lender"), or at such other place as the holder hereof may designate, the principal sum of One Million Nineteen Thousand Seventeen and 98/100 dollars (\$1,019,017.98) with interest on said unpaid balance computed from the date advanced (the "Commencement Date") hereinafter set forth, together with all taxes assessed upon this Note and together with any costs, expenses, and reasonable attorneys' fees incurred in the collection of this Note or in protecting, maintaining, or enforcing its security interest or any mortgage securing this Note or upon any litigation or controversy affecting this Note or the security given therefor, including, without limitation, proceedings under the Federal Bankruptcy Code.

1. Payments. Principal and interest hereunder shall be payable as follows:

A. From the Commencement Date, interest on the face amount of this Note shall accrue at the rate of **10%** for the period beginning on and including the Commencement Date to the last day of the month in which the Commencement Date occurs and shall be payable at the closing of the loan. Such short term interest shall be calculated on the basis of a 30 day month and a 360 day year.

B. The rate of interest of this Note, which shall remain effective until an Event of Default (as defined below), shall be fixed at **10%**. Interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

C. Beginning on the **June 01, 2019** and continuing on the 1st day of each and every month thereafter through and including the payment due on the **May 01, 2020**, Maker shall make payments of interest only on the face amount of this Note in arrears, in the amount due hereunder.

D. If not sooner paid, the entire balance due, principal, accrued interest, and together with all other sums due hereunder, shall be due and payable in full on **May 01, 2020** (the "Maturity Date"). It is understood and agreed by Maker that if sufficient prepayments of principal have not been made, a balloon payment will be due on the Maturity Date.

E. All payments received will be credited first to late charges and costs hereunder, then to interest accrued at the applicable interest rate hereinafter set forth, with the balance on account of principal.

F. At no time shall the interest rate exceed the maximum rate permitted by the usury statutes governing this Note, if any. If, by application of the above interest rate formula, the interest rate would exceed and violate such usury statutes, interest shall accrue at the maximum rate permitted by law.

¹ Full boat interest form.

2. Security. This Note is secured by a first priority Open-End Commercial Mortgage, Security Agreement, and Fixture Filing (the "Mortgage") on that certain piece or parcel of real property known as **347A Quincy Avenue, Brooklyn, NY 11216** being more specifically described in said Mortgage.

3. Default. If any of the following events occur (which is an "Event of Default"), Lender may declare the entire outstanding principal balance hereof, together with any other amounts that Maker owes to Lender, to be immediately due and payable:

- a. Maker fails to pay any installment of principal and/or interest or any other charges due under this Note within five (5) days after the same becomes due and payable;
- b. Maker defaults in any other obligations, liabilities, or indebtedness with Lender (whether now existing or hereafter arising);
- c. Maker sells, leases, or otherwise disposes of all or substantially all of its property, assets, or business, or if Maker ceases any of its business operations, dissolves, or commences reorganization;
- d. Makers makes or takes any action to make a general assignment for the benefit of its creditors or becomes insolvent or has a receiver, custodian, trustee in Bankruptcy, or conservator appointed for it or for substantially all or any of its assets;
- e. Makers files or becomes the subject of a petition in Bankruptcy or upon the commencement of any proceeding or action under any Bankruptcy laws, insolvency laws, relief of debtors laws, or any other similar law affecting Maker, provided, however, that Maker shall have sixty (60) days from the filing of any involuntary petition in Bankruptcy to have the same discharged and dismissed;
- f. Upon the failure by Maker to observe or perform, or upon default in, any covenants, agreements, or provisions in the Mortgage or in any other instrument, document, or agreement, executed and/or delivered in connection herewith or therewith;
- g. Any representation or statement made herein or any other representation or statement made or furnished to Lender by Maker was materially incorrect or misleading at the time it was made or furnished;
- h. In the event of any material adverse change in the financial condition of Maker or any guarantor of the loan; or
- i. Upon the death of any guarantor of the loan.

4. Default Rate. After the occurrence of an Event of Default, interest will accrue at the lesser of **(i)** twenty three (23%) percent per annum or **(ii)** the maximum rate allowed by law. Interest will continue to accrue at the default rate after judgment until the Note is paid in full.

5. Prepayment. The Principal Amount may be prepaid in whole or in part at any time without charge, penalty or premium. All prepayments shall be paid, together with accrued interest to the date of prepayment, upon at least fifteen (15) days' prior written notice to Payee of maker's intention to prepay.

Upon the giving of such notice of maker's intention to prepay the amount set forth in such notice, the amount to be prepaid shall become due and payable on the date specified in such notice.

Notwithstanding any other provision of this Note, all payments made hereunder shall be applied first to payment of interest on the Principal Amount outstanding hereunder from time to time, secondly, to sums payable hereunder or under the mortgage (hereinafter defined) other than interest and principal, and thirdly to principal.

6. Late Charge. It is further agreed that the holder hereof may collect a late charge equal to the greater of ten percent (10%) of any payment required hereunder or \$100.00, including the final payment, or required under any security agreement, mortgage, or any other instrument, document, or agreement executed and/or delivered in connection herewith which is not paid within five (5) days of the due date thereof. This late charge is to cover the extra expenses involved in handling delinquent payments and is not to be construed to cover other costs and attorneys' fees incurred in any action to collect this Note or to foreclose the mortgage securing the same. This provision shall not affect or limit the holder's rights or remedies with respect to any Event of Default.

7. Lien/Set Off. Maker hereby gives the holder hereof a lien and right of set off for all of Maker's liabilities to the holder hereof or Lender upon and against all deposits, credits, and other property of Maker now or hereafter in the possession or control of the holder hereof, or in transit to it, excepting however, funds held in trust by Maker. All payments shall be made in lawful currency of the United States of America in immediately available funds, without abatement, counterclaim, or set-off, and free and clear of, and without any deduction or withholding for, any taxes or other matters.

8. Purpose of Loan. Maker represents and warrants that the proceeds of this Note are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial or farming or agricultural purposes. Maker acknowledges that Lender is making this loan to Maker in reliance upon the above representation by Maker. The above representation by Maker will survive the closing of this loan and repayment of amounts due to Lender hereunder.

9. Other Obligations. To the extent that the outstanding balance of this Note is reduced or paid in full by reason of any payment to Lender by an accommodation maker, endorser, or guarantor, and all or any part of such payment is rescinded, avoided, or recovered from Lender for any reason whatsoever, including, without limitation, any proceedings in connection with the insolvency, bankruptcy, or reorganization of the accommodation maker, endorser, or guarantor, the amount of such rescinded, avoided, or returned payment shall be added to or, in the event this Note has been previously paid in full, shall revive the principal balance of this Note upon which interest may be charged at the applicable rate set forth in this Note and shall be considered part of the outstanding balance of this Note and all terms and provisions herein shall thereafter apply to the same.

10. WAIVER. MAKER (AND EACH AND EVERY ENDORSER, GUARANTOR, AND SURETY OF THIS NOTE) ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES THE RIGHT TO NOTICE AND HEARING THE NEW YORK GENERAL STATUTES, OR ANY SUCCESSOR STATUTE OF SIMILAR IMPORT, WITH RESPECT TO ANY PREJUDGMENT REMEDY AS DEFINED THEREIN, AND FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE, AND ALL RIGHTS UNDER ANY STATUTE OF LIMITATIONS, AND AGREES THAT THE TIME FOR PAYMENT OF THIS NOTE MAY BE CHANGED AND EXTENDED AS PROVIDED IN SAID MORTGAGE OR ANY SECURITY AGREEMENT, WITHOUT IMPAIRING MAKER'S

LIABILITY THEREON, AND FURTHER CONSENTS TO THE RELEASE OF ALL OR ANY PART OF THE SECURITY FOR THE PAYMENT HEREOF, OR THE RELEASE OF ANY PARTY LIABLE FOR THIS OBLIGATION WITHOUT AFFECTING THE LIABILITY OF THE OTHER PARTIES HERETO. ANY DELAY ON THE PART OF THE HOLDER HEREOF IN EXERCISING ANY RIGHT HEREUNDER SHALL NOT OPERATE AS A WAIVER OF ANY SUCH RIGHT, AND ANY WAIVER GRANTED FOR ONE OCCASION SHALL NOT OPERATE AS A WAIVER IN THE EVENT OF ANY SUBSEQUENT DEFAULT. MAKER FURTHER WAIVES TRIAL BY JURY AND ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, AND ONLY AFTER CONSIDERATION OF THE RAMIFICATIONS OF THE WAIVER BY ITS ATTORNEY.

11. Binding Effect. This Note shall be binding on Maker, its successors and assigns and shall inure to the benefit of Lender, any holder hereof, its successors and assigns.

12. Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to conflicts of laws principles thereof.

13. Joint and Several. Should this Note be signed by more than one Maker, references in this Note to Maker in the singular shall include the plural and all obligations herein contained shall be joint and several of each signer hereof.

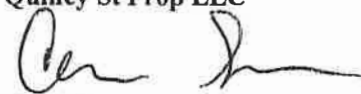
14. Maximum Rate. Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Maker under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Maker stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Maker and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Maker.

15. Rights Cumulative. The rights and remedies of Lender shall be cumulative and not in the alternative, and shall include all rights and remedies granted herein, in any document referred to herein or executed and/or delivered in connection herewith, and under all applicable laws, and the exercise of any one or more of them will not be a waiver of any other.

16. Severability. If any term, clause, or provision hereof shall be adjudged to be invalid or unenforceable by a court of appropriate jurisdiction, the validity and enforceability of the remainder shall not be affected thereby and each such term, clause, or provision shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned have executed this Commercial Promissory Note as of April 17, 2019.

BORROWER
347A Quincy St Prop LLC

By: 

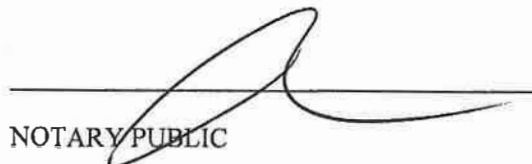
Name: Chanon D. Gordon
Title: Manager and Sole Member

STATE OF NY)

) ss:

COUNTY OF NY)

On April 17, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, Chanon D. Gordon, 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 as Manager and Sole Member of 347A Quincy St Prop LLC , and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.


NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 20 22

ALLONGE TO PROMISSORY NOTE

For purposes of further endorsement of the following described Note, this Allonge is affixed and becomes a permanent part of said Note:

Note Date: April 17, 2019

Original Amount: \$1,039,693.20

Borrower Name(s): **347A Quincy St Prop LLC**

Property Address: 347A Quincy Avenue, Brooklyn, NY 11216

PAYABLE TO THE ORDER OF

TCM Funding LLC

AS IS, WHERE IS, with recourse, representation or warranty expressed or implied

By: Firm Lending, LLC

Signature *[Handwritten Signature]*
Name: *Joachim Masvidal*
Title: *CEO*

ALLONGE TO PROMISSORY NOTE

For purposes of further endorsement of the following described Note, this Allonge is affixed and becomes a permanent part of said Note:

Note Date: April 17, 2019

Original Amount: \$1,019,017.98

Borrower Name: 347A Quincy St Prop LLC


Property Address: 347A Quincy Avenue, Brooklyn, New York 11216

PAYABLE TO THE ORDER OF

Toorak Capital Partners, LLC, a Delaware limited liability company

AS IS, WHERE IS, with recourse, representation or warranty expressed or implied

By: TCM Funding LLC

Signature: 
Name: Jordan Suppan
Title: Authorized Signatory

FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO. 501908/2021

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 01/25/2021

Exhibit B

347A Quincy St Prop LLC
\$150,000.00
April 17, 2019

**BUILDING LOAN
COMMERCIAL PROMISSORY NOTE¹**

FOR VALUE RECEIVED, the undersigned, **347A Quincy St Prop LLC**, a limited liability company having an address at **41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217** (the "Maker"), promises to pay to the order of **FIRM LENDING LLC**, a Florida limited liability company at its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Lender"), or at such other place as the holder hereof may designate, the principal sum of up to **One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00)** ("Maximum Principal Amount"), or so much as may be advanced hereunder, with interest on said unpaid balance from time to time outstanding computed from the date advanced (the Commencement Date") as hereinafter set forth, together with all taxes assessed upon this Note and together with any costs, expenses, and reasonable attorneys' fees incurred in the collection of this Note or in protecting, maintaining, or enforcing its security interest or any mortgage securing this Note or upon any litigation or controversy affecting this Note or the security given therefor, including, without limitation, proceedings under the Federal Bankruptcy Code.

1. Payments. Principal and interest hereunder shall be payable as follows:

A. From the Commencement Date, interest on the face amount of this Note shall accrue at the rate of **10%%** for the period beginning on and including the Commencement Date to the last day of the month in which the Commencement Date occurs and shall be payable at the closing of the loan. Such short term interest shall be calculated on the basis of a 30 day month and a 360 day year.

B. The rate of interest of this Note, which shall remain effective until an Event of Default (as defined below), shall be fixed at **10%**. Interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

C. Beginning on the **June 01, 2019** and continuing on the 1st day of each and every month thereafter through and including the payment due on the **May 01, 2020**, Maker shall make payments of interest only on the face amount of this Note, in arrears, in the amount due hereunder.

D. If not sooner paid, the entire balance due, principal, accrued interest, and together with all other sums due hereunder, shall be due and payable in full on **May 01, 2020** (the "Maturity Date"). It is understood and agreed by Maker that if sufficient prepayments of principal have not been made, a balloon payment will be due on the Maturity Date.

E. All payments received will be credited first to late charges and costs hereunder, then to interest accrued at the applicable interest rate hereinafter set forth, with the balance on account of principal.

¹ Full boat interest form.

F. At no time shall the interest rate exceed the maximum rate permitted by the usury statutes governing this Note, if any. If, by application of the above interest rate formula, the interest rate would exceed and violate such usury statutes, interest shall accrue at the maximum rate permitted by law.

2. Advances. All advances made hereunder will be made in accordance with the terms of the Loan Agreement of even date.

3. Security. This Note is secured by a second priority Building Loan Commercial Mortgage, Security Agreement and Fixture Filing (the "Mortgage") on that certain piece or parcel of real properties known as **347A Quincy Avenue, Brooklyn, NY 11216**, being more specifically described in said Mortgage.

4. Default. If any of the following events occur (which is an "Event of Default"), Lender may declare the entire outstanding principal balance hereof, together with any other amounts that Maker owes to Lender, to be immediately due and payable, on written notice of such acceleration to the borrower:

- a. Maker fails to pay any installment of principal and/or interest or any other charges due under this Note within five (5) days after the same becomes due and payable;
- b. Maker defaults in any other obligations, liabilities, or indebtedness with Lender (whether now existing or hereafter arising);
- c. Maker sells, leases, or otherwise disposes of all or substantially all of its property, assets, or business, or if Maker ceases any of its business operations, dissolves, or commences reorganization;
- d. Makers makes or takes any action to make a general assignment for the benefit of its creditors or becomes insolvent or has a receiver, custodian, trustee in Bankruptcy, or conservator appointed for it or for substantially all or any of its assets;
- e. Makers files or becomes the subject of a petition in Bankruptcy or upon the commencement of any proceeding or action under any Bankruptcy laws, insolvency laws, relief of debtors laws, or any other similar law affecting Maker, provided, however, that Maker shall have sixty (60) days from the filing of any involuntary petition in Bankruptcy to have the same discharged and dismissed;
- f. Upon the failure by Maker to observe or perform, or upon default in, any covenants, agreements, or provisions in the Mortgage, Loan Agreement or in any other instrument, document, or agreement, executed and/or delivered in connection herewith or therewith;
- g. Any representation or statement made herein or any other representation or statement made or furnished to Lender by Maker was materially incorrect or misleading at the time it was made or furnished;
- h. In the event of any material adverse change in the financial condition of Maker or any guarantor of the loan; or
- i. Upon the death of any guarantor of the loan.

5. Default Rate. After the occurrence of an Event of Default, interest will accrue at the lesser of (i) twenty three (23%) percent per annum or (ii) the Maximum Rate (as defined in Section 15 below) allowed by applicable law. Interest will continue to accrue at the default rate after judgment until the Note is paid in full.

6. Prepayment. The Principal Amount may be prepaid in whole or in part at any time without charge, penalty or premium. All prepayments shall be paid, together with accrued interest to the date of prepayment, upon at least fifteen (15) days' prior written notice to Payee of maker's intention to prepay. Upon the giving of such notice of maker's intention to prepay the amount set forth in such notice, the amount to be prepaid shall become due and payable on the date specified in such notice.

Notwithstanding any other provision of this Note, all payments made hereunder shall be applied first to payment of interest on the Principal Amount outstanding hereunder from time to time, secondly, to sums payable hereunder or under the mortgage (hereinafter defined) other than interest and principal, and thirdly to principal.

7. Late Charge. It is further agreed that the holder hereof may collect a late charge equal to the greater of ten percent (10%) of any payment required hereunder or \$100.00, including the final payment, or required under any security agreement, mortgage, or any other instrument, document, or agreement executed and/or delivered in connection herewith which is not paid within five (5) days of the due date thereof. This late charge is to cover the extra expenses involved in handling delinquent payments and is not to be construed to cover other costs and attorneys' fees incurred in any action to collect this Note or to foreclose the mortgage securing the same. This provision shall not affect or limit the holder's rights or remedies with respect to any Event of Default.

8. Lien/Set Off. Maker hereby gives the holder hereof a lien and right of set off for all of Maker's liabilities to the holder hereof or Lender upon and against all deposits, credits, and other property of Maker now or hereafter in the possession or control of the holder hereof, or in transit to it, excepting however, funds held in trust by Maker. All payments shall be made in lawful currency of the United States of America in immediately available funds, without abatement, counterclaim, or set-off, and free and clear of, and without any deduction or withholding for, any taxes or other matters.

9. Purpose of Loan. Maker represents and warrants that the proceeds of this Note are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial or farming or agricultural purposes. Maker acknowledges that Lender is making this loan to Maker in reliance upon the above representation by Maker. The above representation by Maker will survive the closing of this loan and repayment of amounts due to Lender hereunder.

10. Other Obligations. To the extent that the outstanding balance of this Note is reduced or paid in full by reason of any payment to Lender by an accommodation maker, endorser, or guarantor, and all or any part of such payment is rescinded, avoided, or recovered from Lender for any reason whatsoever, including, without limitation, any proceedings in connection with the insolvency, bankruptcy, or reorganization of the accommodation maker, endorser, or guarantor, the amount of such rescinded, avoided, or returned payment shall be added to or, in the event this Note has been previously paid in full, shall revive the principal balance of this Note upon which interest may be charged at the applicable rate set forth in this Note and shall be considered part of the outstanding balance of this Note and all terms and provisions herein shall thereafter apply to the same.

11. Waiver. MAKER (AND EACH AND EVERY ENDORSER, GUARANTOR, AND SURETY OF THIS NOTE) ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY

WAIVES THE RIGHT TO NOTICE AND HEARING UNDER APPLICABLE NEW YORK GENERAL STATUTES, OR ANY SUCCESSOR STATUTE OF SIMILAR IMPORT, WITH RESPECT TO ANY PREJUDGMENT REMEDY AS DEFINED THEREIN, AND FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE, AND ALL RIGHTS UNDER ANY STATUTE OF LIMITATIONS, AND AGREES THAT THE TIME FOR PAYMENT OF THIS NOTE MAY BE CHANGED AND EXTENDED AS PROVIDED IN SAID MORTGAGE OR ANY SECURITY AGREEMENT, WITHOUT IMPAIRING MAKER'S LIABILITY THEREON, AND FURTHER CONSENTS TO THE RELEASE OF ALL OR ANY PART OF THE SECURITY FOR THE PAYMENT HEREOF, OR THE RELEASE OF ANY PARTY LIABLE FOR THIS OBLIGATION WITHOUT AFFECTING THE LIABILITY OF THE OTHER PARTIES HERETO. ANY DELAY ON THE PART OF THE HOLDER HEREOF IN EXERCISING ANY RIGHT HEREUNDER SHALL NOT OPERATE AS A WAIVER OF ANY SUCH RIGHT, AND ANY WAIVER GRANTED FOR ONE OCCASION SHALL NOT OPERATE AS A WAIVER IN THE EVENT OF ANY SUBSEQUENT DEFAULT. MAKER FURTHER WAIVES TRIAL BY JURY AND ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, AND ONLY AFTER CONSIDERATION OF THE RAMIFICATIONS OF THE WAIVER BY ITS ATTORNEY.

12. Binding Effect. This Note shall be binding on Maker, its successors and assigns and shall inure to the benefit of Lender, any holder hereof, its successors and assigns.

13. Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New York. The Maker acknowledges and agrees that the transaction evidenced by this Note was negotiated and accepted in the State of New York and the performance of the obligations hereunder shall be deemed to be performed in the State of New York.

14. Joint and Several. Should this Note be signed by more than one Maker, references in this Note to Maker in the singular shall include the plural and all obligations herein contained shall be joint and several of each signer hereof.

15. Maximum Rate. Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Maker under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Maker stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Maker and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Maker.

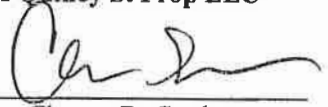
16. Rights Cumulative. The rights and remedies of Lender shall be cumulative and not in the alternative, and shall include all rights and remedies granted herein, in any document referred to herein or executed and/or delivered in connection herewith, and under all applicable laws, and the exercise of any one or more of them will not be a waiver of any other.

17. Severability. If any term, clause, or provision hereof shall be adjudged to be invalid or unenforceable by a court of appropriate jurisdiction, the validity and enforceability of the remainder shall not be affected thereby and each such term, clause, or provision shall be valid and enforceable to the fullest extent permitted by law.

[No further text on this page; signatures appear on following page]

IN WITNESS WHEREOF, the undersigned have executed this Commercial Promissory Note as of April 17, 2019.

BORROWER
347A Quincy St Prop LLC

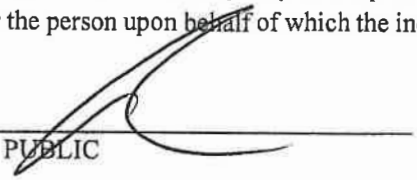
By: 

Name: Chanon D. Gordon

Title: Manager and Sole Member

STATE OF NY)
) ss:
COUNTY OF NY)

On April 17, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, Chanon D. Gordon, 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 as Manager and Sole Member of 347A Quincy St Prop LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.



NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

ALLONGE TO PROMISSORY NOTE

For purposes of further endorsement of the following described Note, this Allonge is affixed and becomes a permanent part of said Note:

Note Date: April 17, 2019

Original Amount: \$150,000.00

Borrower Name(s): 347A Quincy St Prop LLC

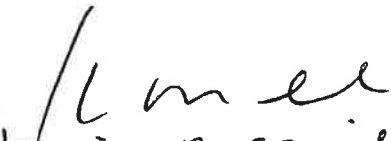
Property Address: 347A Quincy Avenue, Brooklyn, NY 11216

PAYABLE TO THE ORDER OF

TCM Funding LLC

AS IS, WHERE IS, with recourse, representation or warranty expressed or implied

By: Firm Lending, LLC

Signature 
 Name: Joaquin Masvidal
 Title: CEO

ALLONGE TO PROMISSORY NOTE

For purposes of further endorsement of the following described Note, this Allonge is affixed and becomes a permanent part of said Note:

Note Date: April 17, 2019

Original Amount: \$150,000.00

Borrower Name: 347A Quincy St Prop LLC


Property Address: 347A Quincy Avenue, Brooklyn, New York 11216

PAYABLE TO THE ORDER OF

Toorak Capital Partners, LLC, a Delaware limited liability company

AS IS, WHERE IS, with recourse, representation or warranty expressed or implied

By: TCM Funding LLC

Signature: 
Name: Jordan Suppan
Title: Authorized Signatory

FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO. 50198/2021

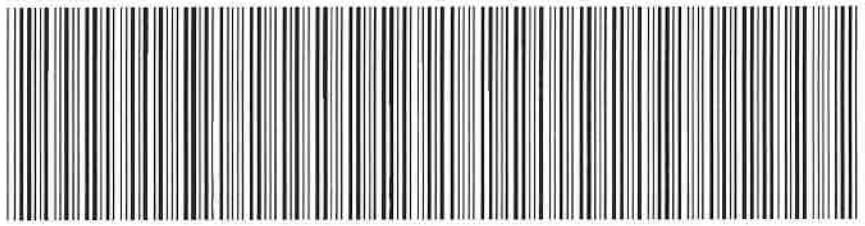
NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 01/25/2021

Exhibit C

**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.



2019050400016002002E40C3

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 22

Document ID: 2019050400016002

Document Date: 04-17-2019

Preparation Date: 05-06-2019

Document Type: MORTGAGE

Document Page Count: 21

PRESENTER:

RAM ABSTRACT LTD
2635 PETTIT AVENUE
SUITE 201 (RFA5450K)
BELLMORE, NY 11710
718-846-7800
SLEWIS@RAMTITLE.COM

RETURN TO:

FIRM LENDING LLC
31 WEST 34TH STREET, 4TH FLOOR
NEW YORK, NY 10001

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	1804	65	Entire Lot	347A QUINCY STREET
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

MORTGAGOR/BORROWER:

347A QUINCY ST PROP LLC
991 NOSTRAND AVE
BROOKLYN, NY 11225-2906

MORTGAGEE/LENDER:

FIRM LENDING LLC
150 SE 2ND AVENUE, SUITE 805
MIAMI, FL 33131

FEEES AND TAXES

Mortgage :

Mortgage Amount:	\$	1,019,017.98
Taxable Mortgage Amount:	\$	1,019,017.98
Exemption:		
TAXES: County (Basic):	\$	5,095.00
City (Additional):	\$	11,463.75
Spec (Additional):	\$	0.00
TASF:	\$	2,547.50
MTA:	\$	3,057.00
NYCTA:	\$	0.00
Additional MRT:	\$	0.00
TOTAL:	\$	22,163.25
Recording Fee:	\$	142.00
Affidavit Fee:	\$	0.00

Filing Fee:

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 05-08-2019 09:34
City Register File No.(CRFN):
2019000145691



Annette M. Hill

City Register Official Signature

RFA 5450

After Recording Return to:
 FIRM LENDING LLC
 31 West 34th Street, 4th Floor
 New York, NY 10001

347A Quincy St Prop LLC
 \$1,019,017.98
 April 17, 2019

THIS MORTGAGE DOES DOES NOT (CIRCLE ONE) ENCUMBER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS HAVING THEIR OWN SEPARATE COOKING FACILITIES.

COMMERCIAL MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

KNOW ALL MEN BY THESE PRESENTS that 347A Quincy St Prop LLC, a New York limited liability company having its principal place of business at 41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217 ("Mortgagor" or "Borrower", as the case maybe), for the consideration of One Million Nineteen Thousand Seventeen and 98/100 dollars (\$1,019,017.98) and other good and valuable consideration, received to its full satisfaction from FIRM LENDING LLC, a Florida limited liability company at its principal place of business at 150 SE 2nd Avenue, Suite 805, Miami, FL 33131 ("Mortgagee" or "Lender", as the case maybe) does hereby give, grant, bargain, sell, and confirm unto the said Mortgagee, its successors and assigns forever, the following:

- (A) All right, title and interest in and to those premises more commonly known as 347A Quincy Avenue, Brooklyn, NY 11216 (the "Property") which is more particularly described in SCHEDULE A (the "Premises") which is attached hereto and made a part hereof;
- (B) TOGETHER WITH (1) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Premises, and (2) all building materials, supplies and other property stored at or delivered to the Premises or any other location for incorporation into the improvements located or to be located on the Premises, and all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, and used or intended to be used in connection with, or with the operation of, or the occupancy of, the Premises, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of Mortgagor in and to such personal property which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (the "Improvements");
- (C) TOGETHER WITH (1) all estate, right, title and interest of Mortgagor, of whatever character, whether now owned or hereafter acquired, in and to (a) all streets, roads and public places, open or proposed, in front of or adjoining the Premises, and the land lying in the bed of such streets, roads and public places, and (b) all other sidewalks, alleys, ways, passages, strips and gores of land adjoining or used or intended to be used in connection with any of the property described in paragraphs (A) and (B) hereof, or any part thereof; and (2) all water courses, water rights, easements, rights-of-way and rights of use or passage, public or private, and all estates, interest, benefits, powers, rights (including, without limitation, any and all lateral support, drainage, slope, sewer, water, air, mineral, oil, gas and subsurface rights), privileges, licenses, profits, rents,

royalties, tenements, hereditaments, reversions and subreversions, remainders and subremainders and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property described in paragraphs (A) and (B) hereof, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor; and

- (D) TOGETHER WITH (a) all estate, right, title and interest of Mortgagor of, in and to all judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) or (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) or (C) hereof, or any part thereof; and Mortgagee is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor, and (if it so elects) to apply the same, after deducting therefrom any expenses incurred by Mortgagee in the collection and handling thereof, toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; and (b) all contract rights, general intangibles, governmental permits, licenses and approvals, actions and rights in action, including without limitation all rights to insurance proceeds and unearned premiums, arising from or relating to the property described in paragraphs (A), (B) and (C) above; and (c) all proceeds, products, replacements additions, substitutions, renewals and accessions of and to the property described in paragraphs (A), (B) and (C).

All of the property described in paragraphs (A), (B), (C) and (D) above, and each item of property therein described, is herein referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD the above granted and bargained Premises, with the appurtenances thereof, unto it, the said Mortgagee, its successors and assigns forever, to it and their own proper use and behoof. And also, the said Mortgagor does for itself, its successors and assigns, covenant with the said Mortgagee, its successors and assigns, that at and until the ensembling of these presents, they are well seized of the Premises as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free and clear of all encumbrances whatsoever.

AND FURTHERMORE, Mortgagor does by these presents bind itself, its legal representatives and its successors and assigns forever to WARRANT AND DEFEND the above granted and bargained Mortgaged Property to Mortgagee, its successors and assigns, against all claims and demands whatsoever.

THE CONDITION OF THIS MORTGAGE IS SUCH THAT:

WHEREAS, Mortgagor is indebted to Mortgagee by virtue of a commercial loan transaction (the "Loan") in the sum One Million Nineteen Thousand Seventeen and 98/100 dollars (\$1,019,017.98) as evidenced by (1) a certain Commercial Promissory Note in the principal amount of One Million Nineteen Thousand Seventeen and 98/100 dollars (\$1,019,017.98) (as same may be amended, restated, or modified from time to time, the "Note") dated on April 17, 2019 executed by Mortgagor and delivered to Mortgagee, with all amounts remaining unpaid thereon being finally due and payable on May 01, 2020 and (2) that certain Loan Agreement (as same may be amended, restated, or modified from time to time, "Loan Agreement") of even date herewith;

WHEREAS, the terms and repayment of such obligations of the Mortgagor are set forth in the Note;

WHEREAS, Mortgagor represents and warrants that it has full power and authority to execute and deliver the Note, this Mortgage, and all other documents, agreements and instruments required of it by Mortgagee in connection with the making of the Loan (the Note, this Mortgage, and all such other documents, agreements and instruments executed and delivered by Mortgagor in connection with the Loan being sometimes collectively referred to herein as the "Loan Documents").

NOW, THEREFORE, Mortgagor hereby covenants and agrees with Mortgagee as follows:

ARTICLE ONE: COVENANTS OF MORTGAGOR

1.01 Performance of Loan Documents. Mortgagor shall cause to be performed, observed and complied with all provisions hereof, of the Note and each of the Loan Documents, and will promptly pay to Mortgagee the principal, with interest thereon, and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of the Loan Documents when payment shall become due (the entire principal amount of the Note, all accrued interest thereon and all obligations and indebtedness thereunder and hereunder and under all of the Loan Documents described being referred to herein as the "Indebtedness").

1.02 General Representations, Covenants and Warranties. Mortgagor represents and covenants that (a) Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency case or proceeding is pending or contemplated by or against Mortgagor; (b) all reports, statements and other data furnished by Mortgagor to Mortgagee in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (c) this Mortgage, the Note and all other Loan Documents are legal, valid and binding obligations of Mortgagor enforceable in accordance with their respective terms and the execution and delivery thereof do not contravene any contract or agreement to which Mortgagor is a party or by which Mortgagor may be bound and do not contravene any law, order, decree, rule or regulation to which Mortgagor is subject; (d) there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting Mortgagor or any part of the Mortgaged Property; (e) all costs arising from construction of any improvements and the purchase of all equipment located on the Mortgaged Property which have been incurred prior to the date of this Mortgage have been paid; (f) the Mortgaged Property has frontage on, and direct access for, ingress and egress to the street(s) described in any survey submitted to Mortgagee; (g) electric, sewer, water facilities and any other necessary utilities are, or will be, available in sufficient capacity to service the Mortgaged Property satisfactorily during the term of the Note, and any easements necessary to the furnishing of such utility service by Mortgagor have been or will be obtained and duly recorded (evidence satisfactory to Mortgagee that all utility services required for the use, occupancy and operations of the Mortgaged Property shall be provided to Mortgagee immediately upon Mortgagee's request); (h) there has not been, is not presently and will not in the future be any activity conducted by Mortgagor or any tenant at or upon any part of the Mortgaged Property that has given or will give rise to the imposition of a lien on any part of the Mortgaged Property; (i) Mortgagor is not in default under the terms of any instrument evidencing or securing any indebtedness of Mortgagor, and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, or the passage of time or both; and (j) Mortgagee has legal capacity to enter into the Loan and to execute and deliver the Loan Documents, and the Loan Documents have been duly and properly executed on behalf of Mortgagee.

1.03 Compliance with Laws; Permits; Notice. Mortgagor covenants and warrants that the Mortgaged Property presently complies with and shall continue to comply with all applicable restrictive covenants, applicable zoning, wetlands and subdivision ordinances and building codes, all applicable health and environmental laws and regulations and all other applicable laws, statutes, rules, ordinances, codes, and

regulations, and Mortgagor has not received any notice that the Mortgaged Property is not in compliance with any such laws, statutes, rules, ordinances, codes and regulations. If Mortgagor receives notice from any federal, state or other governmental body that it is not in compliance with any such laws, statutes, rules, ordinances, codes and regulations, Mortgagor shall provide Mortgagee with a copy of such notice promptly. Mortgagor agrees to comply with all federal, state and municipal local laws, statutes, rules, ordinances, codes and regulations in connection with the construction and development of the Mortgaged Property. Mortgagor has obtained all licenses, permits, authorizations, consents and approvals necessary for the construction and development of the Mortgaged Property, and all such licenses, permits, authorizations, consents and approvals are in full force and effect and all appeal periods have expired. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the nature of the occupancy for which the Premises were intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without Mortgagee's prior written consent. Mortgagor warrants and represents that its use, and the use by any of its tenants, of the Mortgaged Property is in accordance and compliance with the terms and conditions of any and all rules, regulations, and laws that may be applicable to the Mortgaged Property, including, without limitation, all federal, state and local laws, ordinances, rules and regulations regarding hazardous and toxic materials and that Mortgagor shall maintain and continue such compliance and shall require and ensure its tenants' compliance with the same. Mortgagor shall maintain or shall cause their agent to maintain in its possession, available for the inspection of the Mortgagee, and shall deliver to the Mortgagee, upon three (3) business days' request, evidence of compliance with all such requirements. Mortgagor hereby indemnifies and holds Mortgagee free of and harmless from and against any and all claims, demands, damages or liabilities that Mortgagee may incur with regard thereto.

1.04 Taxes and Other Charges.

1.04.1 Impositions. Subject to the provisions of this Section 1.04, Mortgagor shall pay, at least five (5) days before the date due, all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Premises, and all other governmental levies and charges (collectively, the "Impositions"), of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, which shall be assessed, levied, confirmed, imposed or become a lien upon or against the Mortgaged Property or any part thereof, or which shall become payable with respect thereto. Mortgagor shall deliver to Mortgagee, within twenty (20) days after the due date of each payment in connection with the Impositions or any assessment for local improvements ("Assessment"), the original or a true Photostatic copy of the official receipt evidencing such payment or other proof of payment satisfactory to Mortgagee.

1.04.2 Insurance.

(a) Mortgagor shall keep all buildings erected on or to be erected on the Mortgaged Property insured against loss by fire and such other hazards as the Mortgagee may require and Mortgagor shall obtain and maintain insurance with respect to other insurable risks and coverage relating to the Mortgaged Property including, without limitation, fire, builder's risk, worker's compensation, physical damages, loss of rentals or business interruption, earthquake (if applicable), and liability insurance, all such insurance to be in such sums and upon such terms and conditions as Mortgagee reasonably may require, with loss proceeds by the terms of such policies made payable to the Mortgagee as its interest may appear. Mortgagor covenants that all insurance premiums shall be paid not later than fifteen (15) days prior to the date on which such policy could be cancelled for non-payment. If, to Mortgagor's knowledge, any portion of the Mortgaged Property is in an area identified by any federal governmental authority as having special flood hazards, and flood insurance is available, a flood insurance policy meeting the current

guidelines of the Federal Insurance Administration is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Loan, (2) the full insurable value of the Mortgaged Property, and (3) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973, as amended. All such insurance policies (collectively, the "hazard insurance policy") shall contain a standard mortgagee clause naming the Mortgagee and its successors and assigns as beneficiary, and may not be reduced, terminated, or canceled without thirty (30) days' prior written notice to the Mortgagee.

(b) Such insurance companies shall be duly qualified as such under the laws of the states in which the Mortgaged Property is located, duly authorized and licensed in such states to transact the applicable insurance business and to write the insurance provided, and companies whose claims paying ability is rated in the two highest rating categories by A.M. Best with respect to hazard and flood insurance. Such insurance shall be in amounts not less than the greater of: (i) the outstanding principal balance of the Loan, or (ii) the amount necessary to avoid the operation of any co-insurance provisions with respect to the Premises.

(c) All such policies shall provide for a minimum of thirty (30) days prior written cancellation notice to Mortgagee. Mortgagee, upon its request to Mortgagor, shall have the custody of all such policies and all other policies which may be procured insuring said Mortgaged Property, the same to be delivered, to Mortgagee at its office and all renewal policies to be delivered and premiums paid to Mortgagee at its office at least twenty (20) days before the expiration of the old policies; and Mortgagor agrees that upon failure to maintain the insurance as above stipulated or to deliver said renewal policies as aforesaid, or to pay the premiums therefor, Mortgagee may, without obligation to do so, procure such insurance and pay the premiums therefor and all sums so expended shall immediately be paid by Mortgagor and unless so paid, shall be deemed part of the debt secured hereby and shall bear interest at the rate set forth in the Note, and thereupon the entire principal sum unpaid, including such sums as have been paid for premiums of insurance as aforesaid, and any and all other sums which shall be payable hereunder shall become due and payable forthwith at the option of Mortgagee, anything herein contained to the contrary notwithstanding. In case of loss and payment by any insurance company, the amount of insurance money received shall be applied either to the Indebtedness secured hereby, or in rebuilding and restoring the damaged property, as Mortgagee may elect.

(d) Mortgagor has not engaged in and shall not engage in any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either including, without limitation, no unlawful fee, commission, kickback, or other unlawful compensation or value of any kind has been or will be received, retained, or realized by any attorney, firm, or other person, and no such unlawful items have been received, retained, or realized by Mortgagor.

(e) No action, inaction, or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable special hazard insurance policy or bankruptcy bond, irrespective of the cause of such failure of coverage.

1.04.3 Deposits for Impositions and Insurance. Notwithstanding anything to the contrary contained in any of the Loan Documents, upon demand by Mortgagee, after failure by Mortgagor to pay any of the amounts specified in Sections 1.04.1 or 1.04.2, Mortgagor shall deposit with Mortgagee on the first day of each month an amount equal to one twelfth (1/12th) of the sum of: (i) the aggregate annual

payments for the Impositions; (ii) the annual insurance premiums on the policies of insurance required to be obtained and kept in force by Mortgagor under this Mortgage; and (iii) all other periodic charges (other than interest and principal under the Note) arising out of the ownership of the Mortgaged Property or any portion thereof which are or with notice or the passage of time or both will become a lien against the Mortgaged Property or any part thereof (i), (ii), and (iii), collectively, the "Annual Payments"). Such sums will not bear interest and are subject to adjustment or additional payments in order to assure Mortgagee that it will have the full amount of any payment on hand at least one (1) month prior to its due date. Mortgagee shall hold said sums in escrow to pay said Annual Payments in the manner and to the extent permitted by law when the same become due and payable. Notwithstanding anything herein to the contrary, however, such deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Mortgagee. If the total payments made by Mortgagor to Mortgagee, on account of said Annual Payments up to the time when the same become due and payable, shall exceed the amount of payment for said Annual Payments actually made by Mortgagee, such excess shall be credited by Mortgagee against the next payment or payments due from Mortgagor to Mortgagee on account of said Annual Payments. If, however, said payments made by Mortgagor shall not be sufficient to pay said Annual Payments when the same become due and payable, Mortgagor agrees to promptly pay to Mortgagee the amount necessary to make up any deficiency. In case of default in the performance of any of the agreements or provisions contained in the Note, Mortgagee may, at its option, at any time after such default, apply the balance remaining of the sums accumulated, as a credit against the principal or interest of the mortgage Indebtedness, or both.

1.04.4 Late Charge. Mortgagee may collect a "late charge" of ten percent (10%) on any payment or installment due or required to be paid pursuant to the terms of this Mortgage or the Note which is not paid within five (5) days of when the same is required to be paid to cover the extra expenses involved in handling such delinquent payment.

1.04.5 Proof of Payment. Upon request of Mortgagee, Mortgagor shall deliver to Mortgagee, within twenty (20) days after the due date of any payment required in this Section 1.04, proof of payment satisfactory to Mortgagee.

1.05 Condemnation. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of, any damage or taking through condemnation, eminent domain or the like, and Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such condemnation, taking or the like and to settle or compromise any claim in connection therewith.

1.06 Care of Mortgaged Property; Demolition and Alteration. Mortgagor shall maintain the Mortgaged Property in good condition and repair, shall not commit or suffer any waste of the Mortgaged Property, and shall comply with or cause to be complied with, all statutes, laws, rules, ordinances and requirements of any governmental authority relating to the Mortgaged Property; and Mortgagor shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in Section 1.05. Mortgagor shall complete and pay for, within a reasonable time, any structure in the process of construction on the Mortgaged Property at any time during the term of the Loan; and Mortgagor shall not initiate, join in, or consent to any change in any private restrictive covenants, or private restrictions, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof, without the written consent of Mortgagee. Mortgagor agrees that no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished, or materially altered, without the prior written consent of Mortgagee, except that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal any such equipment shall be replaced with other

equipment of value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage.

1.07 Transfer and Encumbrance of Mortgaged Property.

(a) Mortgagor shall not sell, convey, transfer, suffer any type of change in title or ownership, lease, assign or further encumber any interest in any part of the Mortgaged Property, without the prior written consent of Mortgagee. Any such sale, conveyance, transfer, pledge, lease, assignment or encumbrance made without Mortgagee's prior written consent shall be null and void and shall constitute a default hereunder. Mortgagor shall not, without the prior written consent of Mortgagee, permit any further assignment of the rents, royalties, issues, revenues, income, profits or other benefits from the Mortgaged Property, or any part thereof, and any such assignment without the prior written consent of Mortgagee shall be null and void and shall constitute a default hereunder. Mortgagor agrees that in the event the ownership of the Mortgaged Property or any part thereof is permitted by Mortgagee to be vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage and the Note and other sums hereby secured without in any way vitiating or discharging Mortgagor's liability hereunder or upon the Note and other sums hereby secured. No sale of the Mortgaged Property and no forbearance to any person with respect to this Mortgage and no extension to any person of the time for payment of the Note and other sums hereby secured given by Mortgagee shall operate to release, discharge, modify, change or affect the original liability of Mortgagor either in whole or in part.

(b) If Mortgagor shall sell, convey, assign or transfer all or any part of the Mortgaged Property or any interest therein or any beneficial interest in Mortgagor without Mortgagee's prior written consent, Mortgagee may, at Mortgagee's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner on the Indebtedness, declare the Indebtedness to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, lease or transfer, and upon such declaration the entire unpaid balance of the Indebtedness shall be immediately due and payable.

(c) Mortgagor shall keep the Mortgaged Property free from mechanics' liens, materialmen's liens and encumbrances. If any prohibited lien or encumbrance is filed against the Mortgaged Property, Mortgagor shall cause the same to be removed and discharged of record within thirty (30) days after the date of filing thereof.

(d) Mortgagor shall obtain, upon request by Mortgagee, from all persons hereafter having or acquiring any interest in or encumbrance on the Mortgaged Property or the said equipment or accessions, a writing duly acknowledged, and stating the nature and extent of such interest or encumbrance and that the same is subordinate to this Mortgage and no offsets or defenses exist in favor thereof against this Mortgage or the Note hereby secured, and deliver such writing to Mortgagee.

1.08 Further Assurances. At any time and from time to time upon Mortgagee's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee and, where appropriate, shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refilled, at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all such further mortgages, instruments of further assurance, certificates and such other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, the obligations of Mortgagor under the Note and this Mortgage, the lien of this Mortgage as a lien upon all of the Mortgaged Property, and unto all and every person or persons deriving any estate,

right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.09 Uniform Commercial Code Security Agreement and Fixture Filing. This Mortgage is intended to be a security agreement and fixture filing which is to be filed for record in the real estate records pursuant to the Uniform Commercial Code in effect from time to time in the State of New York for any of the goods specified above in this Mortgage as part of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code and Mortgagor hereby agrees to execute and deliver any additional financing statements covering said goods from time to time and in such form as Mortgagee may require to perfect a security interest with respect to said goods. Mortgagor shall pay all costs of filing such financing statements and renewals and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements which Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created, pursuant to the Uniform Commercial Code, any other security interest in said goods, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Mortgage, including the covenants to pay when due all sums secured by this Mortgage, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies permitted by applicable law as to such goods.

AS IT IS RELATED HERETO:

DEBTOR IS: 347A Quincy St Prop LLC
41 Flatbush Avenue, Suite 206
Brooklyn, NY 11217

SECURED PARTY IS: FIRM LENDING LLC,
150 SE 2nd Avenue, Suite 805,
Miami, FL 33131

Mortgagor represents, covenants, and warrants that as of the date hereof as follows: Mortgagor's full, correct, and exact legal name is set forth immediately above in this Section 1.09. Mortgagor is an organization of the type and is incorporated in, organized, or formed under the laws of the state specified in the introductory paragraph to this Mortgage. In the event of any change in name or identity of Mortgagor, Mortgagor hereby authorizes Mortgagee to file such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon the Mortgaged Property which may be deemed personal property or fixtures, including future replacement thereof, which serves as collateral under this Mortgage.

1.10 Lease Covenants. Each and every covenant on the part of Mortgagor contained in any assignment of lessor's interest in leases or any assignment of rents, royalties, issues, revenues, profits, income or other benefits made collateral hereto is made an obligation of Mortgagor hereunder as if fully set forth herein.

1.11 After-Acquired Property. To the extent permitted by and subject to applicable law, the lien of this Mortgage will automatically attach, without further act, to all after-acquired property located in, on, or attached to, or used, or intended to be used, in connection with, or with the renovation of, the Mortgaged Property or any part thereof; provided, however, that, upon request of Mortgagee, Mortgagor shall execute and deliver such instrument or instruments as shall reasonably be requested by Mortgagee to confirm such lien, and Mortgagor hereby appoints Mortgagee its attorney-in-fact to execute all such instruments, which power is coupled with an interest and is irrevocable.

1.12 Expenses. Unless otherwise agreed in writing, Mortgagor will pay when due and payable all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, court costs, fees of inspecting architect(s) and engineer(s) and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Mortgagee in connection with: (a) the preparation and execution of the Loan Documents; (b) the funding of the Loan; (c) in the event an Event of Default occurs hereunder or under the Note or any of the Loan Documents, all costs, fees and expenses, including, without limitation, all reasonable attorneys' fees in connection with the enforcement under the Note or foreclosure under this Mortgage, preparation for enforcement of this Mortgage or any other Loan Documents, whether or not suit or other action is actually commenced or undertaken; (d) enforcement of this Mortgage or any other Loan Documents; (e) court or administrative proceedings of any kind to which Mortgagee may be a party, either as plaintiff or defendant, by reason of the Note, the Mortgage or any other Loan Documents; (f) preparation for and actions taken in connection with Mortgagee's taking possession of the Mortgaged Property; (g) negotiations with Mortgagor, its beneficiary, or any of its agents in connection with the existence or cure of any Event of Default or default; (h) any proposed refinancing by Mortgagor or any other person or entity of the debt secured hereby; (i) the transfer of the Mortgaged Property in lieu of foreclosure; (j) inspection of the Mortgaged Property pursuant to Section 1.15; and (k) the approval by Mortgagee of actions taken or proposed to be taken by Mortgagor, its beneficiary, or other person or entity which approval is required by the terms of this Mortgage or any other of the Loan Document. Mortgagor will, upon demand by Mortgagee, reimburse Mortgagee or any takeout lender for all such expenses which have been incurred or which shall be incurred by either of them; and will indemnify and hold harmless Mortgagee from and against, and reimburse it for, the same and for all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by it by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever or asserted against it on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property, or with this Mortgage or the Indebtedness.

1.13 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, Assessment, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition, agreement or term in this Mortgage, the Note or in any of the Loan Documents, Mortgagee may, without obligation to do so, to preserve its interest in the Mortgaged Property, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Mortgagee, together with interest thereon at the default rate, as provided in the Note, from the date incurred until paid by Mortgagor, shall be added to the Indebtedness and secured by the lien of this Mortgage to the extent permitted by law. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition, agreement or term, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.14 Financial Statements, Books, and Records. Mortgagor will furnish to Mortgagee, within thirty (30) days after a request therefor, a detailed statement in writing, covering the period of time specified in such request, showing all income derived from the operation of the Mortgaged Property, and all disbursements made in connection therewith, and containing a list of the names of all tenants and occupants of the Mortgaged Property, the portion or portions of the Mortgaged Property occupied by each such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements and the period covered by such leases or other agreements.

1.15 Inspection. Mortgagee, and any persons authorized by Mortgagee, shall have the right, at Mortgagee's option, to enter and inspect the Premises during the fourth (4th) month and at all other reasonable times during the term of the Loan. Mortgagor shall pay any professional fees and expenses, which may be incurred by Mortgagee in connection with such inspection.

1.16 Loan to Value Covenant. If at any one or more time(s) during the term of the Note the then aggregate outstanding and committed principal amount of the Note, plus accrued interest and fees thereon, plus all amounts outstanding under any debts secured by prior liens on the Mortgaged Property, is greater than eighty percent (80%) of the value of the Mortgaged Property, as determined by Mortgagee based upon Mortgagee's review of any appraisal and such other factors as Mortgagee may deem appropriate, then Mortgagor shall within thirty (30) days following a request by Mortgagee, prepay the Note by an amount sufficient to cause the then outstanding principal amount of the Note, plus accrued interest and fees thereon, to be reduced to an amount equal to or less than eighty percent (80%) of the value of the Mortgaged Property. The inability of Mortgagor to reduce the principal balance of the Note within thirty (30) days following request by Mortgagee shall be, at Mortgagee's option, an Event of Default, hereunder.

ARTICLE TWO: DEFAULTS

2.01 Event of Default. The term "Event of Default" or "default" wherever used in this Mortgage, shall mean anyone or more of the following events: (a) failure by Mortgagor to pay any installment of principal and/or interest under the Note within five (5) days after the same becomes due and payable; (b) failure by Mortgagor to observe or perform, or upon any default in, any other covenants, agreements or provisions herein, in the Note, or in any of the Loan Documents; (c) failure by Mortgagor to pay any Imposition, Assessment, other utility charges on or lien against the Mortgaged Property; (d) failure by Mortgagor to keep in force the insurance required in this Mortgage; (e) failure by Mortgagor to either deliver the policies of insurance described in this Mortgage or to pay the premiums for such insurance as provided herein; (f) failure by Mortgagor to pay any installment, which may not then be due or delinquent, of any Assessment for local improvements for which an official bill has been issued by the appropriate authorities and which may now or hereafter affect the Mortgaged Property, and may be or become payable in installments; (g) the actual or threatened waste, removal or demolition of, or material alteration to, any part of the Mortgaged Property, except as permitted herein; (h) the vesting of title, or any sale, conveyance, transfer, leasing, assignment or further encumbrance in any manner whatsoever of any interest in the Mortgaged Property, or any part thereof, in or to anyone other than the present owner, or any change in title or ownership of the Mortgaged Property, or any part thereof, without the prior written consent of Mortgagee; (i) all or a material portion of the Mortgaged Property being taken through condemnation, eminent domain, or any other taking such that Mortgagee has reason to believe that the remaining portion of the Mortgaged Property is insufficient to satisfy the outstanding balance of the Note, or the value of the Mortgaged Property being impaired by condemnation, eminent domain or any other taking, (which term when used herein shall include, but not be limited to, any damage or taking by any governmental authority or any other authority authorized by the laws of any state or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily for a period in excess of thirty (30) days, or permanently; (j) the merger or dissolution of Mortgagor or the death of any guarantor of the Note ("Guarantor"); (k) any representation or warranty of Mortgagor or Guarantor made herein or in any such guaranty or in any certificate, report, financial statement, or other instrument furnished in connection with the making of the Note, the Mortgage, or any such guaranty, shall prove false or misleading in any material respect; (l) Maker makes or takes any action to make a general assignment for the benefit of its creditors or becomes insolvent or has a receiver, custodian, trustee in Bankruptcy, or conservator appointed for it or for substantially all or any of its assets; (m) Mortgagor files, or becomes the subject of, a petition in bankruptcy, or upon the commencement of any proceeding or action under any bankruptcy laws, insolvency laws, relief of debtors

laws, or any other similar law affecting Mortgagor, provided however, that Mortgagor shall have sixty (60) days from the filing of any involuntary petition in bankruptcy to have the same discharged and dismissed; (n) the Mortgaged Property becomes subject to (1) any tax lien which is superior to the lien of the Mortgage, other than a lien for local real estate taxes and assessments not due and payable or (2) any mechanic's, materialman's, or other lien which is, or is asserted to be, superior to the lien of the Mortgage and such lien shall remain undischarged for thirty (30) days, (o) Mortgagor fails to promptly cure any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property; (p) in the event of any material adverse change in the financial condition of Mortgagor; or (q) any of the aforementioned events occur with respect to any Guarantor.

ARTICLE THREE: REMEDIES

In the event that an Event of Default or default shall have occurred, the remedies available to Mortgagee include, but are not limited to, any and all rights and remedies available hereunder, any and all rights and remedies available at law, in equity, or by statute. Without limiting the foregoing, the rights and remedies available to Mortgagee shall include, but not be limited to, any one or more of the following:

3.01 Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may, at its option, declare without demand or notice all of the outstanding Indebtedness to be due and payable immediately, and upon such declaration such Indebtedness shall immediately become and be due and payable without demand or notice.

3.02 Mortgagee's Right to Enter and Take Possession. If an Event of Default shall have occurred, Mortgagor, upon demand on Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property and Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of the Mortgaged Property, collect and receive the rents and income therefrom, and to apply so much of said rents and income as may be required in the necessary expenses of running said Premises, including reasonable attorneys' fees, management agents' fees, and if the Mortgagee manages the Premises with its own employees, an amount equal to the customary management agents' fees charged for similar property in the area where the Premises are located, and to apply the balance of said rents and income to the payment of the amounts due upon said Note, or in payment of taxes assessed against the Premises, or both. And for this purpose, and in case of such default, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee the rents and income accruing from said Premises. Nothing contained in the foregoing provisions shall impair or affect any right or remedy which the Mortgagee might now or hereafter have, were it not for such provisions, but the rights herein given shall be in addition to any others which the Mortgagee may have hereunder.

3.03 Receiver. If an Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled to apply for the appointment of a receiver of the rents and profit of the Mortgaged Property without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Mortgaged Property as security for the amounts due Mortgagee, or the solvency of any person or limited liability company liable for the payment of such amounts.

3.04 Waiver of Appraisalment, Valuation, Stay, Exemption, and Redemption Laws, etc.; Marshaling. Mortgagor agrees to the full extent permitted by law that after an Event of Default neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, exemption, moratorium, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure hereof.

3.05 Suits to Protect the Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable in order to (a) prevent any impairment of the Mortgaged Property, (b) foreclose this Mortgage, (c) preserve and protect its interest in the Mortgaged Property, and (d) to restrain the enforcement of, or compliance with, any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

3.06 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial case or proceeding affecting Mortgagor, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such case or proceeding for the entire Indebtedness at the date of the institution of such case or proceeding, and for any additional amounts which may become due and payable by Mortgagor after such date.

3.07 Application of Monies by Mortgagee. After the occurrence of an Event of Default, any monies collected or received by Mortgagee shall be applied in such priority as Mortgagee may determine in its sole and absolute discretion, to such matters including, but not limited to, the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee, to deposits for Impositions and Insurance and insurance premiums due, to the cost of insurance, Impositions, Assessments, and other charges and to the payment of the Indebtedness.

3.08 No Waiver. Notwithstanding any course of dealing or course of performance, neither failure nor delay on the part of Mortgagee to exercise any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

3.09 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any of the Indebtedness; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other of the Loan Documents; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other of the Loan Documents or releases or any party liable under the Note; (e) consents to the filing of any map, plat or replat of the Premises; (f) consents to the granting of any easement on the Premises; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage be altered thereby.

3.10 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other of the Loan Documents is exclusive of any other right, power and remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other of the Loan Documents, or now or hereafter existing at law, in equity or by statute.

3.11 Interest after Event of Default; Default Rate. If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and this Mortgage shall, at Mortgagee's option, bear interest at the default rate set forth in the Note.

ARTICLE FOUR: MISCELLANEOUS PROVISIONS

4.01 Heirs, Successors and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

4.02 Addresses for Notices, etc.

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage shall be in writing, signed by the party giving or making the same, and shall be sent by certified mail, return receipt requested, as follows:

MORTGAGOR: 347A Quincy St Prop LLC
41 Flatbush Avenue, Suite 206
Brooklyn, NY 11217

Copy to:

MORTGAGEE: FIRM LENDING LLC,
150 SE 2nd Avenue, Suite 805,
Miami, FL 33131

Copy to: LaRocca Hornik Rosen, et al
Attn: Jonathan L. Hornik,
Esq. 83 South Main Street,
Suite 302 Freehold, NJ 07728

(b) Either party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

4.03 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or expand or otherwise affect any of the terms hereof.

4.04 Provisions Subject to Applicable Laws; Severability All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable. In the event that any of the covenants, agreements, terms or provisions contained in the Note, or in this Mortgage or in any other Loan Documents shall be deemed invalid, illegal or unenforceable in any respect by a court with appropriate jurisdiction, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

4.05 Modification. This Mortgage, the Note, and all other Indebtedness are subject to modification. Neither this Mortgage, nor any term hereof, may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or termination is sought.

4.06 Governing Law. THIS MORTGAGE IS MADE BY MORTGAGOR AND ACCEPTED BY MORTGAGEE IN THE STATE OF NEW YORK EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED IN THE MORTGAGED PROPERTY UNDER THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED. TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER (BUT THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT LENDER'S RIGHTS WITH RESPECT TO SUCH SECURITY INTEREST CREATED IN THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED).

4.07 Prejudgment Remedies. THE MORTGAGOR HEREBY REPRESENTS, COVENANTS, AND AGREES THAT THE PROCEEDS OF THE LOAN SECURED BY THIS MORTGAGE, AND EVIDENCED BY THE LOAN AGREEMENT, AND THE NOTE SHALL BE USED FOR GENERAL COMMERCIAL PURPOSES AND THAT SUCH LOAN IS A "COMMERCIAL TRANSACTION" AS DEFINED BY THE STATUTES OF THE STATE OF NEW YORK. THE MORTGAGOR HEREBY WAIVES SUCH RIGHTS AS IT MAY HAVE TO NOTICE AND/OR HEARING UNDER ANY APPLICABLE FEDERAL OR STATE LAWS INCLUDING, WITHOUT LIMITATION, NEW YORK GENERAL STATUTES PERTAINING TO THE EXERCISE BY THE MORTGAGEE OF SUCH RIGHTS AS THE MORTGAGEE MAY HAVE INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK PREJUDGMENT REMEDIES AND/OR TO DEPRIVE THE MORTGAGOR OF OR AFFECT THE USE OF OR POSSESSION OR ENJOYMENT OF THE MORTGAGOR'S PROPERTY PRIOR TO THE RENDITION OF A FINAL JUDGMENT AGAINST THE MORTGAGOR. THE MORTGAGOR FURTHER WAIVES ANY RIGHT IT MAY HAVE TO REQUIRE THE MORTGAGEE TO PROVIDE A BOND OR OTHER SECURITY AS A PRECONDITION TO OR IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT BY THE MORTGAGEE, AND WAIVES ANY OBJECTION TO THE ISSUANCE OF SUCH PREJUDGMENT REMEDY BASED ON ANY OFFSETS, CLAIMS, DEFENSES, OR COUNTERCLAIMS TO ANY ACTION BROUGHT BY THE MORTGAGEE. FURTHER, THE MORTGAGOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISAL, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

4.08 Effects of Changes and Laws Regarding Taxation. In the event of an enactment of any law deducting from the value of the Mortgaged Property any mortgage lien thereon, or imposing upon Mortgagee the payment of any or part of the Impositions, charges, or Assessments previously paid by Mortgagor pursuant to this Mortgage, or change in the law relating to the taxation of mortgages, debts secured by mortgages or Mortgagee's interest in the Mortgaged Property so as to impose new incidents of taxes on Mortgagee, then Mortgagor shall pay such Impositions or Assessments or shall reimburse Mortgagee therefor; provided that, however, if in the opinion of counsel to Mortgagee such payment cannot lawfully be made by Mortgagor, then Mortgagee may, at Mortgagee's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Mortgagor, and Mortgagee may invoke any remedies permitted by applicable law.

4.09 Purpose of Loan. Mortgagor represents and warrants that the proceeds from this Loan are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial or farming or agricultural purposes. Mortgagor acknowledges that Mortgagee has made this Loan to Mortgagor in reliance upon the above representation. Said representation will survive the closing and repayment of the Loan.

4.10 Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

4.11 Usury Laws. This Mortgage, the Note, and the other Loan Documents are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate permitted by applicable law. If, by the terms of this Mortgage, the Note, or any of the Loan Documents, Mortgagor is at any time required or obligated to pay interest on the debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

4.12 Construction. This Mortgage and the Note shall be construed without regard to any presumption or other rule requiring construction against the party causing this Mortgage and the Note to be drafted.

4.13 Release of Mortgage. If all of Mortgagor's obligations under the Loan Documents are paid in full in accordance with the terms of the Loan Documents and all amounts due under the Mortgage and accompanying loan documents are paid in full, no Default then exists hereunder and no Event of Default then exists under any other Loan Document, and if Mortgagor shall well and truly perform all of Mortgagor's covenants contained herein, then this conveyance shall become null and void and be released, and the Mortgaged Property shall be released to Mortgagor, at Mortgagor's request and expense.

4.14 Entire Agreement. This Mortgage, together with the other Loan Documents executed in connection herewith, constitutes the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements, and understandings relating to such subject matter. In entering into this Mortgage, Mortgagor acknowledges that it is not relying on any representation, warranty, covenant, promise, assurance, or other statement of any kind made by the Mortgagee or by any employee or agent of the Mortgagee.

4.15 Provisional Remedies: Foreclosure And Injunctive Relief: Nothing shall be deemed to apply to limit the right of Lender to: (a) exercise self-help remedies, (b) foreclose judicially or non-judicially against any real or personal property collateral, or to exercise judicial or non-judicial power of sale rights, (c) obtain from a court provisional or ancillary remedies (including, but not limited to, injunctive relief, a writ of possession, prejudgment attachment, a protective order or the appointment of a receiver) or (d) pursue rights against Borrower or any other party in a third party proceeding in action brought against Lender (including, but not limited to, actions in bankruptcy court). Lender may exercise the rights set forth in the foregoing clauses (a) through (d), inclusive, before, during, or after the pendency of any proceeding

4.16 State Specific Provisions.

Foreclosure. Mortgagee may institute an action to foreclose this Mortgage 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, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate stipulated in the Note to the date of default, and thereafter at the Default Rate specified in the Note, together with all other sums due by Mortgagor in accordance with the provisions of the Note and this Mortgage, including all sums which may have been loaned by Mortgagee to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for taxes, water or sewer rents, charges or claims, payments on prior liens, completion of construction of improvements, insurance or repairs to the Mortgaged Property, all costs of suit, together with interest at such Default Rate on any judgment obtained by Mortgagee from and after the date of any foreclosure sale until actual payment is made as of the full amount due Mortgagee, and reasonable attorneys' fees for collection, or Mortgagee may foreclose only as to the sum past due with interest and costs as above provided, without injury to this Mortgage or the displacement or impairment of the remainder of the lien thereof, and at such foreclosure sale the Mortgaged Property shall be sold subject to all remaining items of Indebtedness; and Mortgagee may again foreclose, in the same manner, as often as there may be any sum past due. In the event Mortgagee forecloses this Mortgage against the Mortgaged Property, Mortgagee may, at its option and in its sole and absolute discretion, assume all rights (but not the obligation unless consented to by Mortgagee) as owner of the Mortgaged Property, and to assume all rights and privileges of Mortgagor thereunder; or

If the Indebtedness shall have become due and payable, whether by lapse of time or by acceleration, then and in every such case Mortgagor confer upon Mortgagee the authority and power to proceed to protect and enforce its rights by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or in the Loan Documents, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Mortgage by advertisement or action, or for the enforcement of any other appropriate legal or equitable remedy.

Section 291-f Agreement.

- a) This Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby.
- b) Mortgagor shall deliver notice of this Mortgage to any tenant (unless such notice is contained in such tenant's Lease), which notice shall be to all present and future holders of any interest in any Lease, by assignment or otherwise, and shall take such action as may now or hereafter be reasonably required to afford Mortgagee the full protections and benefits of such Section 291-f; and
- c) Mortgagor shall request the recipient of any such notice to acknowledge the receipt thereof.

Covenant to Appointment of Receiver. Upon an Event of Default, Mortgagor hereby covenants that Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Obligations, without any showing of fraud or mismanagement on the part of Mortgagor or the insolvency of any party bound for its payment, to the appointment of a receiver or the immediate appointment of Mortgagee to take possession of and to operate the Mortgaged Property, and to collect and apply the rents, issues, profits and revenues thereof. The foregoing shall constitute a covenant and Mortgagee shall be entitled to all of the rights and remedies provided in the RPL (including without limitation, §254(10) of the RPL).

Assignment of Mortgage Lien. Provided no Event of Default has occurred, at that time when the holder of the Note shall have been paid in full in an amount equal to the Obligations under the Loan Documents have been performed, Mortgagee shall, upon request by Mortgagor, assign the lien of this Mortgage to a subsequent Mortgagee, provided that Mortgagor shall reimburse Mortgagee for all costs associated with that assignment (including, without limitation, reasonable attorneys' fees) and that assignment shall, otherwise, be without any cost or expense to Mortgagee and without representation, warranty or covenants by, or recourse against, Mortgagee.

New York Real Property Law. The clauses and covenants contained herein which are construed by Section 254 of the RPL shall be construed as provided in that section except as otherwise provided in this Mortgage and the additional clauses and covenants contained herein shall afford rights supplemental to and not exclusive of the rights conferred by the clauses and covenants construed by that Section 254 (or any other laws of the State of New York, including, without limitation, Sections 271 and 272 of the RPL) and shall not impair, modify, alter or defeat those rights, notwithstanding that those additional clauses and covenants may relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as the clauses and covenants construed by Section 254 or other provisions of the RPL or other laws of the State of New York. Mortgagee's rights arising under the clauses and covenants contained in the RPL and/or other laws of the State of New York and/or herein shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others and no act of the Mortgagee shall be construed as an election to proceed under any one such provision to the exclusion of any other provision, notwithstanding anything to the contrary contained herein.

Documentary Taxes and Recording Taxes. Mortgagor will pay all filing, registration or recording fees, together with all required recording taxes, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges (including any documentary stamp tax or intangible tax) arising out of or in connection with the execution and delivery or recording of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do (herein collectively called the "Documentary Taxes). Mortgagor hereby agrees that, in the event that it is determined that additional Documentary Taxes are due hereon or on the Note or any other mortgage or promissory note executed in connection herewith, Mortgagor shall indemnify and hold harmless Mortgagee for all those Documentary Taxes including all penalties and interest assessed or charged in connection therewith. Mortgagor shall pay same within ten (10) days after demand for payment from Mortgagee and the payment of those sums shall be secured by this Mortgage and shall bear interest at the Default Rate (as defined in the Note) until paid in full.

Lien Law. Mortgagor, in compliance the New York Lien Law (as amended and in effect; the "NYLL"), including, without limitation Section 13 thereof, will receive the advances (including the Loan proceeds) secured hereby and will hold the right to receive those advances as a trust fund to be applied first for the purpose of paying the cost of improvements and will apply those funds first to the payment of the cost of any improvement before using any part of the total of any advance for any other purpose.

Trust Funds. Mortgagor will receive the advances secured hereby and will hold the right to receive those advances as a trust fund to be applied first for the purpose of paying the cost of any improvements before using any part of those advances for any other purpose. The covenants of this Section are made subject to and in compliance with the trust fund provision of Section 13 of the NYLL.

Future Advances. Any and all future advances (if any), with interest thereon, shall, to the fullest extent permitted by NYLL, be secured by this Mortgage unless the parties shall otherwise agree in writing. This Mortgage secures not only existing Obligations and advances made contemporaneously with the execution hereof, but also future advances, whether obligatory, or optional, or both, to the same extent as if such future advances were made contemporaneously with the execution of this Mortgage, even if no advance is made at the time of the execution of this Mortgage and even if no Obligations are outstanding at the time any advance is made.

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NOW, THEREFORE, if the Note and any Indebtedness secured by this Mortgage shall be well and truly paid according to their tenor and if all the terms, covenants, conditions, and agreements of the Mortgagor contained hereon and in the Note and Loan Documents, shall be fully and faithfully performed, observed, and complied with, then this mortgage deed shall be void, but shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage on April 17, 2019 Signed,

Sealed, and Delivered in the Presence of:

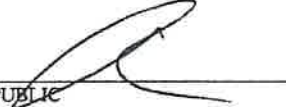
MORTGAGOR
347A Quincy St Prop LLC

Name: 
Name:

By: 
Name: Chanon D. Gordon
Title: Manager and Sole Member

STATE OF NY)
) ss:
COUNTY OF NY)

On April 17, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, Chanon D. Gordon, 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 as Manager and Sole Member of 347A Quincy St Prop LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.


NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

SCHEDULE A
PROPERTY DESCRIPTION

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, designated as Block 1804 Lot 65 on the Tax Map of Brooklyn, bounded and described as follows:

BEGINNING at a point on the northerly side of Quincy Street, distant 239 feet 7 inches easterly from the corner formed by the intersection of the northerly side of Quincy Street and the easterly side of Marcy Avenue;

RUNNING THENCE northerly parallel with Marcy Avenue and part of the distance through a party wall, 163 feet 3-3/8 inches to land now or formerly of Rev. M. Van Doren;

THENCE easterly along said land, 14 feet 3-5/8 inches;

THENCE southerly and parallel with Marcy Avenue, 105 feet 3 inches and part of the distance through a party wall to the northerly side of Quincy Street;

THENCE westerly along the northerly side of Quincy Street, 14 feet 2 inches to the point or place of **BEGINNING**.

NOTE: Being Lot(s) Lot: 65, Block: 1804; Tax Map of the Borough of Brooklyn, County of Kings, State of New York.

NOTE: Lot and Block shown for informational purposes only.

Property address is commonly known as: 347A Quincy Avenue, Brooklyn, NY 11216

"Said premises is
or will be improved by
a *three* family
dwelling only."

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SCHEDULE B
PERMITTED ENCUMBRANCES

As outlined on Schedule B of the Lender's title policy.

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Exhibit D

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.	 2019050400016003001E70FE
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RECORDING AND ENDORSEMENT COVER PAGE PAGE 1 OF 39

Document ID: 2019050400016003 Document Date: 04-17-2019 Preparation Date: 05-04-2019
 Document Type: MORTGAGE
 Document Page Count: 38

PRESENTER: RAM ABSTRACT LTD 2635 PETTIT AVENUE SUITE 201 (RFA5450K) BELLMORE, NY 11710 718-846-7800 SLEWIS@RAMTITLE.COM	RETURN TO: LAROCCA, HORNIK, ROSEN, GREENBERG & BLAHA 83 SOUTH STREET, SUITE 302 FREEHOLD, NJ 07728 ATTN: JONATHAN L. HORNIK, ESQ.
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PROPERTY DATA			
Borough	Block	Lot	Unit Address
BROOKLYN	1804	65	Entire Lot 347A QUINCY STREET
Property Type: DWELLING ONLY - 3 FAMILY			

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES	
MORTGAGOR/BORROWER: 347A QUINCY ST PROP LLC 991 NOSTRAND AVE BROOKLYN, NY 11225-2906	MORTGAGEE/LENDER: FIRM LENDING LLC 150 SE 2ND AVENUE, SUITE 805 MIAMI, FL 33131

FEES AND TAXES			
Mortgage :		Filing Fee:	\$ 0.00
Mortgage Amount:	\$ 150,000.00	NYC Real Property Transfer Tax:	\$ 0.00
Taxable Mortgage Amount:	\$ 150,000.00	NYS Real Estate Transfer Tax:	\$ 0.00
Exemption:			
TAXES: County (Basic):	\$ 750.00		
City (Additional):	\$ 1,687.50		
Spec (Additional):	\$ 0.00		
TASF:	\$ 375.00		
MTA:	\$ 450.00		
NYCTA:	\$ 0.00		
Additional MRT:	\$ 0.00		
TOTAL:	\$ 3,262.50		
Recording Fee:	\$ 227.00		
Affidavit Fee:	\$ 0.00		

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

Recorded/Filed 05-08-2019 09:34
 City Register File No.(CRFN):
2019000145692


Annette McHill
City Register Official Signature

RFA 5450

BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

347A Quincy St Prop LLC

(Mortgagor)

to

FIRM LENDING LLC

(Mortgagee)

Dated: April 17, 2019

Property Address: 347A Quincy Avenue, Brooklyn, NY 11216

**Block: 1804
Lot: 65
County: Kings
State: New York**

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

**LaRocca, Hornik, Rosen, Greenberg & Blaha
Att: Jonathan L. Hornik, Esq.
83 South Street
Suite 302
Freehold, NJ 07728**

THIS MORTGAGE DOES/DOES NOT (CIRCLE ONE) ENCUMBER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS HAVING THEIR OWN SEPARATE COOKING FACILITIES.

THIS BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT ("Mortgage"), made April 17, 2019, between 347A Quincy St Prop LLC, a New York with an address of 41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217 (the "Mortgagor"), **FIRM LENDING LLC**, a Florida limited liability company at its principal place of business at 150 SE 2nd Avenue, Suite 805, Miami, FL 33131 ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is the holder of the fee simple interest in the real property described in Schedule A attached hereto (hereinafter, collectively, the "**Premises**") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "**Improvements**");

WHEREAS, Mortgagor has delivered this Mortgage on this date to secure (1) the payment of an indebtedness in the principal sum of up to **One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00)**, lawful money of the United States of America, to be paid with interest according to a certain Building Loan Secured Promissory Note dated the date hereof made by Mortgagor to Mortgagee (the secured promissory note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "**Note**") and all other sums due hereunder, under the other Loan Documents (hereinafter defined) and under the Note (said indebtedness and interest due under the Note and all other sums due hereunder, under the Note and under the other Loan Documents being hereinafter collectively referred to as the "**Debt**") and (2) performance of Mortgagor's obligations under the Loan Documents (as hereinafter defined).

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "**Mortgaged Property**"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building

equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "Equipment"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "Leases") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (hereinafter collectively referred to as the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, 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 Mortgaged Property;

(f) all accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "Intangibles");

(g) all agreements and/or contracts now or hereafter entered into by the Mortgagor relating to the sale, leasing, brokerage, development, construction (including architectural and engineering contracts), equipping, management, maintenance, marketing, and/or operation of the Premises or the Improvements, including all moneys due and to become due thereunder;

(h) the plans and specifications and working drawings relating to the construction of any Improvements at the Premises;

- (i) all options and agreements with respect to any additional real property for the use or development in connection with operation of the Premises and/or construction of any Improvements;
- (j) all consents, certificates, authorizations, variances, waivers, licenses, permits and approvals from any governmental authority relating to the Premises and/or the construction of any Improvements;
- (k) all rights, interest and benefits of Mortgagor to 421-a certificates; and
- (l) all proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

GENERAL PROVISIONS

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor shall pay all monthly installments of interest and principal as provided for in the Note and shall repay the Debt on or before the Maturity Date, as such term is defined in the Note (the "**Maturity Date**") at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents including, without limitation, the Note, this Mortgage and that certain Building Loan Agreement, dated the date hereof, among Mortgagor and Mortgagee (the "**Building Loan Agreement**"), now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and this Mortgage (the "**Loan Documents**") are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. The Note is evidence of that certain loan made to the Mortgagor by the Mortgagee (the "**Loan**").

2. Warranty of Title. Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable first (1st) lien on and security interest in the Mortgaged Property, subject only to the lien of the Land Loan (as defined in the Building Loan Agreement) and said exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance.

(a) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain during the entire term of this Mortgage (the "Term") policies of insurance against loss or damage by fire, lightning, wind and such other perils as are included in a standard "all risk" or "special causes of loss" form, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the greatest of (i) the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, (ii) the outstanding principal balance of the Loan, and (iii) such amount that the insurer would not deem Mortgagor a coinsurer under said policies. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation and an "Agreed Amount Endorsement". The policies shall have a deductible no greater than \$10,000 unless agreed to by Mortgagee in writing.

(b) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the Term the following policies of insurance:

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal amount of the Loan or the maximum limit of coverage available with respect to the Improvements and Equipment under said Program, whichever is less.

(ii) Commercial General Liability insurance, including coverage for contractual liability, property damage, bodily injury (including death resulting therefrom), personal injury, advertising injury and a liquor liability endorsement if liquor is sold on the Mortgaged Property, containing minimum limits per occurrence of \$1,000,000.00 and \$2,000,000.00 in the aggregate for any policy year. The policy shall also name the Mortgagee as an additional insured and include coverage for; the discharge or release of pollutants from a hostile fire; cross suits arising from claims or suits brought by additional insureds; a retention not to exceed \$15,000 per occurrence and; extended completed operations coverage for a period of 6 years following the completion of construction with limits per occurrence of \$1,000,000.00 and \$2,000,000 in the aggregate for the 6 year period. The policy shall not include any reduction in coverage for failure to maintain certificates of insurance or indemnity agreements from subcontractors or independent contractors.

(iii) Automobile liability coverage covering all owned, hired and non-owned vehicles with a limit of \$1,000,000.00 per occurrence.

(iv) Umbrella liability coverage providing coverage over the commercial general liability, automobile liability and employers liability insurance policies containing minimum limits per occurrence of \$5,000,000.00 and \$5,000,000.00 in the aggregate for any policy year. The policy shall include extended completed operations coverage for a period of 6 years following the completion of construction with limits per occurrence of \$5,000,000.00 and \$5,000,000.00 in the aggregate for the six year period.

(v) Rental loss and/or business interruption insurance for a period of twelve (12) months in an amount equal to the greater of (A) estimated gross revenues from the operations of the Mortgaged Property over twelve (12) months or (B) the projected operating expenses (including stabilized management fees, applicable reserve deposits, and debt service) for the maintenance and operation of the

Mortgaged Property over twelve (12) months. The amount of such insurance shall be increased in Mortgagee's reasonable discretion from time to time during the Term as and when new Leases and renewal Leases are entered into and the Rents increase or the annual estimate of (or the actual) gross revenue, as may be applicable, increases.

(vi) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), in an amount at least equal to the outstanding principal amount of the Note or \$2,000,000.00 whichever is less.

(vii) Worker's compensation and employer's liability insurance with respect to any employees or uninsured subcontractors and sub-subcontractors of Mortgagor, and as required by any governmental authority or legal requirement.

(viii) "Builder's Risk, Completed Value, Non-Reporting Form", or other form approved by the Mortgagee, with "all-risk" extended coverage (including vandalism and malicious mischief) and coverage for "completion and/or premises occupancy" for the full insurable value of all work incorporated in the Improvements and all materials and equipment on or about the Mortgaged Property intended for permanent use in the Improvements or incident to the construction thereof in form and substance acceptable to Mortgagee.

(ix) Law and ordinance coverage in an amount satisfactory to Mortgagee if the Mortgaged Property, or any part thereof, shall constitute a nonconforming use under applicable zoning ordinances, sub-division and building codes or other laws, ordinances, orders and requirements.

(x) Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

(c) All policies of insurance (the "Policies") required pursuant to this paragraph: (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of "BBB" or better by Standard & Poor's Ratings Services, a division of McGraw-Hill Companies, Inc. and a rating of "A:VII" or better in the current Best's Insurance Reports; (ii) shall name Mortgagee and its successors and/or assigns as their interest may appear as the mortgagee; (iii) shall contain a Non-Contributory Standard Mortgagee Clause and a Lender's Loss Payable Endorsement, or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Mortgagee; (v) shall be maintained throughout the Term without cost to Mortgagee; (vi) shall be assigned and the originals or certified copies delivered to Mortgagee (including certified copies of the Policies in effect on the date hereof within thirty (30) days after the closing of the Loan); (vii) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee in its reasonable discretion as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to Mortgagee evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee (provided, however, that Mortgagor is not required to furnish such evidence of payment to Mortgagee in the event that such Insurance Premiums have been paid by Mortgagee pursuant to Paragraph 5 hereof). If Mortgagor does not furnish such evidence and

receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Mortgagor agrees to reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

(d) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of an Insured Casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(e) In case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of an Insured Casualty that does not exceed ten percent (10%) of the original principal amount of the Note, Mortgagee shall settle and adjust any claim without the consent of Mortgagee and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receipt for any such insurance proceeds.

(ii) In the event an Insured Casualty shall exceed ten percent (10%) of the original principal amount of the Note, then and in that event, Mortgagor shall settle and adjust any claim and agree with the insurance company or companies on the amount to be paid on the loss and the proceeds of any such policy shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Mortgage. Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact, coupled with an interest, to settle and adjust any such claims and endorse any checks payable to the order of Mortgagee. Mortgagor hereby releases Mortgagee from any liability with respect to the settlement or adjustment by Mortgagee of any Insured Casualty.

(iii) In the event of an Insured Casualty where the loss is in an aggregate amount less than thirty percent (30%) of the original principal balance of the Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months and prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iv) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall be without any Prepayment Premium (as such term is defined in the Note, except that if an Event of Default has occurred and is continuing then the Mortgagor shall pay to Mortgagee an additional amount equal to the Prepayment Premium (as such term is defined in the Note), if any. Any such application to the Debt shall (A) be applied to those payments of principal and interest last due under the Note but shall not postpone any payments otherwise required pursuant to the Note other than such last due payments and (B) cause the Note to be re-amortized in accordance with its terms and conditions.

(v) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee in its reasonable discretion prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be retained by Mortgagee as additional collateral for the Loan. Any reimbursement of insurance proceeds to Mortgagor shall be made pursuant to and consistent with the terms of the Building Loan Agreement.

(f) In the event of any conflict, inconsistency or ambiguity between the provisions of this Paragraph 3 and 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, the provisions of Paragraph 3 hereof shall control.

4. **Payment of Taxes, Etc.** Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. Mortgagor will deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Mortgagor is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid

by Mortgage pursuant to Paragraph 5 hereof).

5. **Tax and Insurance Escrow Fund.** At Mortgagee's request, Mortgagor shall pay to Mortgagee on the first (1st) day of each calendar month (a) 110% of one-twelfth of the Taxes that Mortgagee estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) 110% of one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "**Tax and Insurance Escrow Fund**"). The Tax and Insurance Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Tax and Insurance Escrow Fund in a timely fashion to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 3 and 4 hereof. In making any payment relating to the Tax and Insurance Escrow Fund, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or Mortgagor's insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 3 and 4 hereof, Mortgagee shall, in its sole discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If at any time Mortgagee determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay the items set forth in (a) and (b) above, Mortgagee shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Mortgagee by the amount that Mortgagee estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Tax and Insurance Escrow Fund to the payment of the Debt in any order in its sole discretion. Until expended or applied as above provided, any amounts in the Tax and Insurance Escrow Fund shall constitute additional security for the Debt. The Tax and Insurance Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. The Tax and Insurance Escrow Fund may, at Mortgagee's sole option, be held in an interest bearing account in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. All earnings or interest on the Tax and Insurance Escrow Fund, if any, shall be, and become, part of such Tax and Insurance Escrow Fund and shall be disbursed as provided in this Paragraph 5. If Mortgagee so elects at any time, Mortgagor shall provide, at Mortgagor's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the Term.

Notwithstanding the foregoing, the Mortgagor and Mortgagee covenant and agree that provided no Event of Default has occurred under the Note, this Mortgage or any other Loan Documents, and provided further that Mortgagor furnishes Mortgagee with proof that all Taxes, Insurance Premiums and Other Charges are being paid as required under this Mortgage, Mortgagee shall not require Mortgagor to make monthly installments for the payment of Taxes, Insurance Premiums and Other Charges to the Tax and Insurance Escrow Fund.

6. **Condemnation.** Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a

"Condemnation") and shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Mortgagor, regardless of whether an Award (hereinafter defined) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment (**"Award"**) for any taking accomplished through a Condemnation (a **"Taking"**) and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Mortgage. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for in the Note, in this Mortgage and the other Loan Documents and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Mortgagee to expenses of collecting the Award and to discharge of the Debt. Mortgagee shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than twenty-five percent (25%) of the original principal balance of the Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months of the Taking and at least six (6) months prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default shall have occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Condemnation, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award to be made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Debt shall be without any Prepayment Premium except that if an Event of Default has occurred and is continuing then the Mortgagor shall pay to Mortgagee an additional amount equal to the Prepayment Premium, if any. Any such application to the Debt shall (i) be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments and (ii) cause the Note to be re-amortized in accordance with its terms and conditions. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the Debt.

(d) In the event Mortgagor is entitled to reimbursement out of the Award received by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence reasonably satisfactory to it of the estimated cost of completion of the restoration, repair,

replacement and rebuilding resulting from such condemnation, (2) finds or, at Mortgagee's option, receives assurances reasonably satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, in the sole and absolute discretion of Mortgagee, be retained by Mortgagee and applied to payment of the Debt provided that such application to the Debt shall be without any Prepayment Premium as long as no Event of Default has occurred and is continuing.

7. Leases and Rents.

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee, all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into any leases for the Mortgaged Property without Mortgagee's prior written consent which consent may be granted or withheld in Mortgagee's sole discretion. All residential leases shall be written on the standard form of residential lease which has been approved by Mortgagee and all commercial leases shall be written on the standard form of commercial lease which has been approved by Mortgagee. No material changes may be made to the Mortgagee-approved standard residential or commercial lease except for customary alterations made in the ordinary course of business. All Leases shall provide that they are subordinate to lien, terms and provisions of this Mortgage and that the tenant agrees to attorn to Mortgagee. All renewals of residential leases and all proposed residential leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. None of the commercial leases shall contain any non-disturbance or similar recognition

agreement, any requirement that the Mortgagor rebuild the Mortgaged Property in connection with a casualty or condemnation of any portion of the Mortgaged Property, or any other similar provisions which adversely affect the Mortgaged Property or which might adversely affect the rights of any holder of the Loan without the prior written consent of Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all residential and commercial leases.

(c) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which can lead to an offset of Rents or termination of the applicable Lease that Mortgagor shall send or receive thereunder; (iii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall use its best efforts to deliver to Mortgagee, upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee, provided that Mortgagor shall not be required to deliver such certificates more frequently than four (4) times in any calendar year; and (vii) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require. Except to the extent Mortgagor is acting in the ordinary course of business as a prudent operator of property similar to the Mortgaged Property, Mortgagor (A) shall not, alter, modify or change the terms of the Leases in any material respect without the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed; (B) shall not convey or transfer or suffer or permit a conveyance or transfer of the Mortgaged Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, tenants under the Leases; (C) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (D) shall not cancel or terminate the Leases or accept a surrender thereof, except if a tenant is in default thereunder; provided, however, that any Lease may be cancelled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the cancelled Lease.

(d) Mortgagor may enter into proposed new commercial leases and proposed renewals or extensions of existing commercial leases without the prior written consent of Mortgagee if such proposed commercial leases or extension: (i) is not for greater than or equal to ten percent (10%) of the gross leaseable area of the Mortgaged Property, or greater than or equal to ten percent (10%) of the total gross rental revenues of the Mortgaged Property; (ii) shall have an initial term of not less than three (3) years or greater than ten (10) years; (iii) shall provide for rental rates comparable to existing local market rates and shall be an arms-length transaction; (iv) shall not contain any options for renewal or expansion by the tenant thereunder at rental rates which are either below comparable market levels or less than the rental rates paid by the tenant during the initial lease term; (v) shall be to a tenant which is experienced, creditworthy and reputable; and (vi) shall comply with the requirements of subparagraph (b), above. Mortgagor may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (vi) immediately above only with the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed. Mortgagor expressly understands that any and all new or proposed commercial leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Mortgage and the other Loan Documents.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced

by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

8. **Representations and Covenants Concerning the Loan.** Mortgagor represents, warrants and covenants as follows:

(a) The Note, this Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(b) All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Mortgaged Property have been obtained and are in full force and effect. The Mortgaged Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Mortgaged Property. The Mortgagor shall comply with all of the recommendations concerning the maintenance and repair of the Mortgaged Property which are contained in the inspection and engineering report which was delivered to Mortgagee in connection with the origination of the Loan.

(c) All of the Improvements which were included in determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against by title insurance. All of the Improvements comply with all material requirements of any applicable zoning, building codes, fire codes and subdivision laws and ordinances.

(d) The Mortgaged Property is not subject to any Leases other than the Leases described in the rent roll delivered to Mortgagee in connection with this Mortgage. No person has any possessory interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder.

(e) The survey of the Mortgaged Property delivered to Mortgagee in connection with this Mortgage, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Mortgaged Property is situated, is certified to the Mortgagee, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Mortgaged Property or the title thereto.

(f) The Mortgaged Property is and shall at all times remain in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

(g) Mortgagor operates the Mortgaged Property and has not entered into any agreement with any third party relating to the operation and management of the Mortgaged Property, and no third party is entitled to any management fee or any portion of the Rents.

9. **Trust Fund.** 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 improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

10. **Maintenance of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof subject to the applicable provisions of this Mortgage. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property that is destroyed by any casualty, or becomes damaged, worn or dilapidated or that is affected by any proceeding of the character referred to in Paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or to any portion thereof (iii) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of management or (iv) amend or modify any easement, covenant or restrictions which benefits or burden the Mortgaged Property. Mortgagor will not install or permit to be installed on the Premises any underground storage tank.

Notwithstanding the foregoing or anything to the contrary contained herein, Mortgagor shall be permitted to improve and renovate the Mortgaged Property, strictly in accordance with terms of that certain Building Loan Agreement dated as of the date hereof (the "**Building Loan Agreement**"), as executed and delivered by Mortgagor in connection with this Mortgage.

11. **Transfer or Encumbrance of the Mortgaged Property.**

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property and control of its interest in the Ground Lease as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property and the Ground Lease so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, have the right to sell,

transfer, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or its interest in the Ground Lease or any part thereof or permit the Mortgaged Property or its interest in the Ground Lease or any part thereof (inclusive of any air rights, developments right or similar) to be sold, conveyed, alienated, leased, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 11 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property or its interest in the Ground Lease for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any persons or entity(ies) guaranteeing the Loan and/or any of Mortgagee's obligations under the Loan Documents (collectively the "Guarantor"), or any general partner of Mortgagor or Guarantor is a company, the voluntary or involuntary sale, conveyance or transfer of such company's stock (or the stock of any corporation directly or indirectly controlling such company by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such company; (iv) if Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member; (v) any pledge, hypothecation, assignment, transfer or other encumbrance of any ownership interest in Mortgagor; and (vi) any change in the management structure or control of the Mortgagor, whether directly or indirectly accomplished.

(c) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof made in contravention of this paragraph shall be null and void and of no force and effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

12. **Estoppel Certificates and No Default Affidavits.**

(a) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the

Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a certificate reaffirming all representations and warranties of Mortgagor set forth herein and in the other Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

(c) Mortgagor shall deliver to Mortgagee upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee provided that Mortgagor shall not be required to deliver such certificates more frequently than four (4) times in any calendar year.

13. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable, provided that Mortgagor shall not be required to pay any Prepayment Premium in connection herewith unless an Event of Default has occurred and is continuing.

14. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

15. **Controlling Agreement.** It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Paragraph 15 shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt, and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to

accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

16. **Financial Statements.**

(a) The financial statements heretofore furnished to Mortgagee are, as of the dates specified therein, complete and correct and fairly present the financial condition of the Mortgagor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles. Mortgagor does not have any liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mortgagor and reasonably likely to have a materially adverse effect on the Mortgaged Property or the operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Mortgagor from that set forth in said financial statements.

(b) Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish to Mortgagee on or before fifteen (15) days after the end of each calendar month the following items, each certified by Mortgagor as being true and correct: (i) leasing and operating reports including a written statement (rent roll) dated as of the last day of each such calendar month identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any material defaults or payment delinquencies thereunder; and (ii) monthly and year to date operating statements prepared for each calendar month during each such calendar month, each of which shall include an itemization of actual (not pro forma) capital expenditures during the applicable period, each report covering such month to date on a year-to-date basis, contrasted against the comparable period of the previous year and the then approved budget. Within fifteen (15) days after the end of each quarter, certified quarterly financial statements and operating statements covering such quarter to date and on a year-to-date basis, contrasted against the comparable period of the previous year and the then approved budget. Within sixty (60) days following the end of each calendar year, Mortgagor shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Mortgagor in such detail as Mortgagee may reasonably request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year. Mortgagor's annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Mortgagor or the general partner of Mortgagor, as applicable, stating that each such annual financial statement presents fairly the financial condition of the Mortgaged Property being reported upon and has been prepared in accordance with good and sound accounting principles consistently applied. Mortgagor's annual financial statements shall include (i) a list of commercial tenants, if any, occupying more than twenty (20%) percent of the total floor area of the Improvements, and (ii) a breakdown showing the year in which each commercial lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which commercial leases shall expire in each such year, each such percentage to be expressed on both a per year and a cumulative basis. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial data as Mortgagee or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property.

17. **Performance of Other Agreements.** Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

18. **Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing

statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage or for facilitating the sale of the Loan and the Loan Documents (if Mortgagee elects to do so.) Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. It is expressly agreed that any such receiver shall be permitted to do any further acts as the Mortgagee may determine to be necessary to complete the development and construction of any Improvements at the Mortgaged Property pursuant to the Building Loan Agreement and the Draw Schedule (annexed thereto). All such costs and expenses of such receiver that are advanced by the Mortgagee pursuant to the Building Loan Agreement to develop and construct the Improvements as aforesaid shall, to the extent permitted by the Building Loan Agreement and applicable law and subject to the terms of hereof, be added to the Indebtedness, and secured by this Mortgage. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

19. **Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

20. **Reporting Requirements.** Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any Guarantor.

21. **Events of Default.** The Debt shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "Event of Default"):

(a) if any portion of the Debt is not paid when due, including the failure to repay the Debt on or before the Maturity Date;

(b) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable in accordance with Paragraph 4 and Paragraph 5 of this Mortgage;

(c) if the Policies are not kept in full force and effect or are not delivered to Mortgagee upon request and in accordance with the requirements contained in this Mortgage;

(d) if Mortgagor transfers or encumbers any portion of the Mortgaged Property without Mortgagee's prior written consent, it being expressly agreed and acknowledged by Mortgagor that subordinate financing is prohibited by this Mortgage;

(e) if any material representation or warranty of Mortgagor, or of any Guarantor, made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if the indebtedness secured by any other mortgage or security agreement covering any part of the Mortgaged Property, whether it be superior or junior in lien to this Mortgage, is accelerated due to default thereunder;

(i) subject to Mortgagor's rights set forth in Paragraph 28 of this Mortgage, if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien in excess of \$10,000.00 except a lien for local real estate taxes and assessments not then due and payable;

(j) if Mortgagor fails to cure properly any (i) building department violations, or (ii) rent impairing violations affecting or which may be interpreted to affect the Mortgaged Property and which have or may have a negative adverse impact on Rents in the sole judgment of Mortgagee within thirty (30) days after Mortgagor first receives notice of any such violations;

(k) except as permitted in this Mortgage and the Building Loan Agreement executed on the date hereof between Mortgage and Mortgagee, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Mortgagee;

(l) if Mortgagor shall continue to be in default under any term, covenant, or provision of the Note or any of the other Loan Documents, beyond applicable cure periods contained in those documents;

(m) if Mortgagor fails to cure a default under any other term, covenant or provision of this Mortgage within thirty (30) days after Mortgagor first receives notice of any such default;

provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional thirty (30) days to cure such default provided that Mortgagor diligently and continuously pursues such cure;

(n) if, without Mortgagee's prior written consent, such consent not to be unreasonably withheld or delayed, (i) Mortgagor ceases to act as the manager of the Mortgaged Property, (ii) Mortgagor shall enter into a management agreement with any party or there is any material change in any management agreement approved by Mortgagee, (iii) the management of the Mortgaged Property is transferred to a person or entity other than Mortgagor, (iv) there is any material change in the management, operation or control of the Mortgaged Property (v) if Mortgagor shall own or manage any property other than the Mortgaged Property or (vi) the Mortgagor modifies or amends its operating agreement or similar governing document;

(o) if Mortgagor ceases to continuously operate the Mortgaged Property or any material portion thereof for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken with the consent of Mortgagee);

(p) damage to the Mortgaged Property in any manner which is not covered by insurance solely as a result of Mortgagor's failure to maintain insurance required in accordance with this Mortgage;

(q) if any adverse change occurs in the financial condition of Mortgagor or any Guarantor which Mortgagee shall, in good faith, deem to be material or to otherwise materially impair the prospect of payment or performance by Mortgagor of its obligations evidenced by the Note and secured by this Mortgage or any Loan Document;

(r) if an Event of Default shall have occurred and be continuing under the Building Loan Agreement;

(s) the occurrence of any default, beyond the expiration of any applicable notice, grace or cure period, under any other loans made by Mortgagee to Mortgagor, any Guarantor or any principal of Mortgagor giving rise to a right to accelerate payment thereof including, without limitation, any secured or unsecured loans;

(t) if, upon application by Mortgagee to two (2) or more fire insurance companies which are lawfully doing business in the State of New York and which are issuing policies of fire insurance upon buildings situated within the area wherein the Mortgaged Property is situated, such companies shall refuse to issue such policies.

(v) The failure by Borrower to satisfy the conditions to the Final Advance set forth in Section 2.4 of the Building Loan Agreement on or before the Scheduled Completion Date (as defined therein);

(w) The cessation of Construction Work (as defined in the Building Loan Agreement) for any period of thirty (30) consecutive business days;

(x) A casualty loss such that Lender is not obligated under this Mortgage to advance insurance proceeds to Mortgagor provided that a breach of this Section 21(x) shall not be deemed a default for purposes of the Note if the Mortgagee is reasonably satisfied that the Mortgagor has sufficient available funds without the insurance proceeds to complete the Construction Work (as defined in the Building Loan Agreement) prior to the Completion Date (as defined in the Building Loan Agreement);

(y) The failure or refusal by Title Company (as defined in the Building Loan Agreement) to issue an endorsement to the Title Policy (as defined in the Building Loan Agreement) in the manner set forth in subsection 2.3(c) of the Building Agreement following notice and failure to cure within ten days thereof;

(z) The institution by any lienor of a foreclosure action against the Mortgaged Property or any part thereof;

(aa) The issuance of a "stop work order" or any similar order, notice or requirement that prohibits the Mortgagor from continuing to perform work at the Mortgaged Property which condition is not remedied within thirty (30) days of issuance; or

(bb) The death of any Guarantor or other obligor of the obligations of Mortgagor under the Loan, provided, however, Mortgagor shall have sixty (60) days from the death of such Guarantor to either, (i) provide evidence to Mortgagee that the remaining Guarantors have the financial means on their own to continue to guarantee all obligations of Mortgagor under the Note, this Mortgage and the Loan Documents, as provided by the Guarantee executed by Guarantor on the date hereof, which evidence shall be subject to Mortgagee's approval in its sole but reasonable discretion, or (ii) provide to Mortgagee a substitute guarantor, and all financial documentation concerning said substitute guarantor that Mortgagee requests, which substitute guarantor shall be subject to Mortgagee's approval in its sole but reasonable discretion.

22. **Late Payment Charge and Default Rate.**

(a) If any portion of the Debt is not paid within five (5) days upon the date on which it is due, Mortgagor shall pay to Mortgagee, upon demand, an amount equal to ten percent (10%) of such unpaid portion of the Debt in order to defray a portion of the expenses incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be deemed to be secured by this Mortgage.

(b) From and after the occurrence of an Event of Default, regardless of whether or not there has been a notice of default issued by Mortgagee, interest shall accrue on the outstanding Principal Sum at a rate equal to lesser of (i) 23%, or (ii) the maximum rate allowed by law (the "Default Rate"). The Default Rate shall remain in effect until any and all Events of Default shall have been cured. In addition, the Default Rate shall remain in effect during any period of default even upon the acceleration of the Debt. The Default Rate shall be in effect at all times after the maturity of the Debt (whether by acceleration or otherwise). Upon acceleration or maturity, the Default Rate shall remain in effect until all sums due under the Note, the Mortgage and the Loan Documents shall have been paid in full.

23. **Right To Cure Defaults.** Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

24. **Remedies.**

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property by Mortgagee itself or otherwise, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or non-judicial under Article 14 of the RPAPL, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, Mortgagor expressly consents to a non-judicial foreclosure by power of sale under RPAPL Section 14, or similar, applicable statute;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;
- (iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in any of the other Loan Documents;
- (vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;
- (vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;
- (viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and

every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property (other than alterations contemplated pursuant to the terms of the Building Loan Agreement); (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Mortgaged Property to the payment of Debt, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

- (i) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Building Loan Agreement or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect under the Building Loan Agreement;
- (ii) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code; or
- (xi) exercise any of its rights and remedies under any of the Loan Documents (including, without limitation, any guaranty executed in connection with the Loan).

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto in accordance with all applicable laws, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights

sold. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage and the other Loan Documents.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this paragraph at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Note, this Mortgage or in any of the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Mortgage or in any of the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Note, this Mortgage or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Mortgage or any of the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 24 (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Note, this Mortgage or any of the other Loan Documents shall not be impaired by any indulgence, including, without limitation, (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Debt.

(j) Upon the occurrence of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Mortgaged Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of the Mortgaged Property for non-payment of rent, however designated.

(k) In any suit to foreclose the lien hereof (including any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs which may be estimated as items to be expended after entry of the decree of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title or the value of the Mortgaged Property.

25. **Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property with 24 hours' notice at any reasonable time during the Term. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

26. **Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing

the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Note, this Mortgage and the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

27. **Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt. Mortgagor hereby irrevocably authorizes Mortgagee to file UCC Financing Statements, Amendments and/or Continuations in order to perfect or continue the perfection of Mortgagee's security interest in the Collateral.

28. **Contest of Certain Claims.** Notwithstanding the provisions of Paragraphs 4 hereof, but subject in any event to the provisions of Paragraph 5 hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within ten (10) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, cancelled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

29. **Recovery of Sums Required to be Paid.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

30. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

31. **Hazardous Substances.** Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge: (a) the Mortgaged Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state super-lien and environmental clean-up statutes and all regulations adopted in respect to the foregoing laws (collectively, "Environmental Laws"); (b) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants including without limitation, petroleum, tremolite, anthophyllite, actinolite or polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively, "Hazardous Substances"); (c) no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Mortgaged Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property other than in compliance with all Environmental Laws; (d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Mortgaged Property; and (e) no underground storage tanks exist on any of the Mortgaged Property. So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor (i) shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws, (ii) shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on or near the Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws and/or if Mortgagor shall become aware of any condition on or near the Mortgaged Property which shall pose a threat to the health, safety or welfare of humans, (iii) shall remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law, promptly after Mortgagor becomes aware of same, at Mortgagor's sole expense (or as shall be required by Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by Mortgagee ("Mortgagee's Consultant") and (iv) shall comply with all of the recommendations

contained in the environmental report which was delivered to Mortgagee in connection with the origination of the Loan. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. The obligations and liabilities of Mortgagor under this Paragraph 33 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

32. Asbestos. Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, no asbestos or any substance or material containing asbestos ("Asbestos") is located on the Mortgaged Property. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, Asbestos and shall remove any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. The obligations and liabilities of Mortgagor under this Paragraph 32 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

33. Environmental Monitoring. Mortgagor shall give prompt written notices to Mortgagee of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Mortgaged Property, (b) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance or Asbestos, and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Mortgagor shall permit Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or Hazardous Substance, and Mortgagor shall pay all attorneys' fees and disbursements incurred by Mortgagee in connection therewith. Upon Mortgagee's reasonable request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide (i) an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on, in or near the Mortgaged Property, and (ii) an inspection or audit of the Mortgaged Property prepared by a duly qualified engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Mortgaged Property. The cost and expense of such audit or inspection shall be paid by Mortgagor. If Mortgagor fails to provide any inspection or audit required pursuant to this Paragraph 33 within thirty (30) days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added to the Debt and shall bear interest thereafter until paid at the Default Rate. In the event that any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at Mortgagor's expense upon request of Mortgagee. In the event that any investigation, site monitoring, containment cleanup, removal, restoration or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "Remedial Work"), Mortgagor shall commence all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law) and thereafter diligently prosecute to

completion all such Remedial Work within ninety (90) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law). All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

34. **Indemnification.** In addition to any other indemnifications provided herein or in the other Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees, whether in-house staff, retained firms, or otherwise, and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any Remedial Work, attorneys' and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Mortgaged Property to comply with any Access Laws; (k) any representation or warranty made in the Note, this Mortgage or any of the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto, including mortgage brokerage fees; (m) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and the Loan Documents and the Debt (including, but not limited to, all costs and any reappraisals of the Mortgaged Property or any other collateral for the Debt), (n) the claims of any lessee of any or any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease, (o) any amounts payable to Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date the loss or damage is sustained by Mortgagee until paid and any amendment to, or restructuring of, the Debt and the Loan Documents, (p) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (q) the past, current and/or future sale or offering for sale of any interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky

laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and shall bear interest at the Default Rate. The obligations and liabilities of Mortgagor under this Paragraph 34 shall survive the termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

Mortgagor agrees that the Mortgaged Property shall at all times comply in all material respects and to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws"). Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee. Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws. Mortgagor shall protect, defend, indemnify and save harmless Mortgagee, its successors and assigns, from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees, whether in-house staff, retained firms, or otherwise, and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of against any liability incurred by reason of any actions, claims, violations, costs, fees or liabilities related to or arising from the Access Laws.

35. **Notices.** Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor (and in the case of Mortgagor, with a copy to **347A Quincy St Prop LLC, having an address at 41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217**

1) or Mortgagee, as the case may be (and in the case of Mortgagee, with a copy to LaRocca, Hornik, Rosen, Greenberg & Blaha, PC, 40 Wall Street, 32nd Fl., New York, NY 10005, Att: Jonathan L. Hornik, Esq.), shall designate in writing, and shall be deemed to be received by the addressee on (i) the day such notice is personally delivered to such addressee, (ii) the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, (iii) the day following the day on which such notice is delivered to a nationally recognized overnight courier delivery service, or (iv) the day facsimile transmission is confirmed after transmission of such notice by telecopy to such telecopier number as Mortgagor or Mortgagee, as the case may be, shall have previously designated in writing.

36. **Authority.** (a) Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

37. **Non-Waiver.** The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, or any of the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any of the other Loan Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

38. **No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

39. **Liability.** The obligations and liabilities of each party constituting the Mortgagor shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

40. **Inapplicable Provision.** If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

41. **Headings, Etc.** The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

42. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

43. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein

shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

44. **Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

45. **Waiver of Jury Trial.** MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

46. **Miscellaneous.**

(a) The Loan Documents contain the entire agreement between Mortgagor and Mortgagee relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.

(b) Mortgagor represents and warrants to Mortgagee that there has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note or under any of the other Loan Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

(c) Mortgagor acknowledges that, with respect to the Loan, Mortgagor is relying solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Mortgagee or any parent, subsidiary or affiliate of Mortgagee. Mortgagor acknowledges that Mortgagee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of the Mortgagor or its affiliates. Mortgagor acknowledges that it is represented by competent counsel and has consulted counsel before executing the Loan Documents.

(d) Mortgagor covenants and agrees to pay Mortgagee upon receipt of written notice from Mortgagee, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and the costs and expenses of any title insurance company, appraisers, engineers or surveyors) incurred by Mortgagee in connection with (i) the preparation, negotiation, execution

and delivery of this Mortgage and the other Loan Documents; (ii) Mortgagor's performance of and compliance with Mortgagor's respective agreements and covenants contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Mortgagee's performance and compliance with all agreements and conditions contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Mortgage and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Mortgagee pursuant to this Mortgage and the other Loan Documents.

(e) This Mortgage shall be governed by and construed in accordance with the laws of the State of New York and the applicable laws of the United States of America.

(f) Mortgagee shall not be obligated to perform or discharge any obligation of the Mortgagor as a result of the collateral assignment hereby effected, and the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all liability, loss or damage which the Mortgagee may incur by reason of any act of the Mortgagee under this Mortgage, other than as a result of the Mortgagee's willful misconduct or gross negligence. Should the Mortgagee incur any such liability, loss or damage by reason of this Mortgage and which is covered by the foregoing indemnity, or in defense against any such claims or demands, or perform any acts or covenants on the part of Mortgagor to be performed under any lease, or pay for the account of the Mortgagor any and all sums, costs and expenses for the discharge of taxes, assessments, water rents or other liens against the Mortgaged Property or any part thereof, or on account of insurance premiums or repairs, and also any amounts and expenses necessary to perform any covenants and conditions to be performed on the part of the Mortgagor under any lease, the amount thereof, including costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date such expenses were paid by the Mortgagee to the date of payment to the Mortgagee by the Mortgagor, shall be included in the obligations secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor upon demand.

(g) Anything in this Mortgage or the other Loan Documents to the contrary notwithstanding, Mortgagor shall indemnify and hold Mortgagee harmless and defend it at Mortgagor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of Mortgagee's counsel, whether in-house staff, retained firms, or otherwise) and all claims, actions, procedures and suits arising out of or in connection with (a) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and the Loan Documents and the Debt (including, but not limited to, all costs and any reappraisals of the Mortgaged Property or any other collateral for the Debt, (b) any amendment to, or restructuring of, the Debt and the Loan Documents, (c) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (d) the past, current and/or future sale or offering for sale of any interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and shall bear interest at the Default Rate.

(h) That this Mortgage is made pursuant to the Building Loan Agreement intended to be filed in the Office of the Clerk of the County in which the Mortgaged Property are located on or before the date of recording of this Mortgage, and this Mortgage is subject to all of the provisions of such Building Loan Agreement, including, without limitation, the provisions thereof entitling Mortgagee to declare the entire indebtedness secured hereby to be immediately due and payable, all of which provisions

are incorporated herein with the same force and with like effect as if they were fully set forth herein at length and made a part hereof.

47. **Section 291-f Agreement.** This Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby. Mortgagor shall (unless such notice is contained in such commercial lease) deliver notice of this Mortgage in form and substance reasonably acceptable to Mortgagee, to all present and future holders of any interest in any commercial lease, by assignment or otherwise, and shall take such other action as may now or hereafter be reasonably required to afford Mortgagee the full protections and benefits of Section 291f. Mortgagor shall request the recipient of any such notice to acknowledge the receipt thereof.

48. **Transfer Tax Provisions.** (a) Mortgagor covenants and agrees that, in the event of a sale of the Mortgaged Property or other transfer, it will duly complete, execute and deliver to Mortgagee contemporaneously with the submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix any and all applicable state and local real estate transfer taxes, including, without limitation, any real estate transfer taxes payable under Article 31 of the New York State Tax Law or under Title 11, Chapter 21 of the Administrative Code of the City of New York, if applicable, or any successor provisions thereto (collectively, "**Transfer Taxes**") by reason of such sale or other transfer or recording of the deed evidencing such sale or other transfer. This subsection (a) shall apply only if this Mortgage remains outstanding after any such sale or transfer.

(b) Mortgagor shall pay all transfer Taxes that may hereafter become due and payable with respect to any transfer, and in default thereof Mortgagee may pay the same and the amount of such payment shall be added to the Debt and, unless incurred in connection with a foreclosure of this Mortgage, be secured by this Mortgage. The provisions of this Section shall survive any transfer and the delivery of the deed in connection with any transfer.

49. **Maximum Principal Amount.** NOTWITHSTANDING ANY PROVISION SET FORTH HEREIN TO THE CONTRARY, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE AT EXECUTION, OR WHICH UNDER ANY CONTINGENCY MAY BECOME SECURED HEREBY AT ANY TIME HEREAFTER, IS U.S. **One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00)** PLUS ALL INTEREST PAYABLE UNDER THE NOTE AND ALL AMOUNTS EXPENDED BY MORTGAGEE AFTER DEFAULT BY MORTGAGOR (A) FOR THE PAYMENT OF TAXES, CHARGES OR ASSESSMENTS WHICH MAY BE IMPOSED BY LEGAL REQUIREMENTS UPON THE MORTGAGED PROPERTY; (B) TO MAINTAIN THE INSURANCE REQUIRED UNDER THIS MORTGAGE; (C) FOR ANY EXPENSES INCURRED IN MAINTAINING THE MORTGAGED PROPERTY AND UPHOLDING THE LIEN OF THIS MORTGAGE, INCLUDING, BUT NOT LIMITED TO, THE EXPENSE OF ANY LITIGATION TO PROSECUTE OR DEFEND THE RIGHTS AND LIEN CREATED BY THIS MORTGAGE, AND (D) FOR ANY AMOUNT, COST OR CHARGE TO WHICH MORTGAGEE BECOMES SUBROGATED, UPON PAYMENT, WHETHER UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY, OR UNDER EXPRESS STATUTORY AUTHORITY.

50. **Covenants in Addition to RPL.** All covenants hereof shall be construed as affording to Mortgagee rights in addition to and not exclusive of the rights conferred under the provisions of Sections 254, 271, 272, 273 and 291-f of the Real Property Law of the State of New York or any other applicable legal requirement.

51. **Patriot Act Compliance.** (u) Mortgagor will use its good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of

governmental authorities having jurisdiction of the Mortgagor and the Mortgaged Property, including those relating to money laundering and terrorism. The Mortgagee shall have the right to audit the Mortgagor's compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction of the Mortgagor and the Mortgaged Property, including those relating to money laundering and terrorism. In the event that the Mortgagor fails to comply with the Patriot Act or any such requirements of governmental authorities, then the Mortgagee may, at its option, cause the Mortgagor to comply therewith and any and all reasonable costs and expenses incurred by the Mortgagee in connection therewith shall be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

Neither the Mortgagor nor any partner in the Mortgagor or member of such partner nor any owner of a direct or indirect interest in the Mortgagor (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is not currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("OFAC"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists".

52. **Assignment of Mortgage.** Upon payment of the Debt in full, Mortgagee agrees to assign this Mortgage to the Mortgagor's designee for mortgage tax-savings purposes, provided Mortgagor pays Mortgagee's attorney's reasonable fees for preparing and delivering the required assignment documentation.

53. **Cross-Default.** This Mortgage, the Note, and the Loan Documents are cross defaulted with any other loans made by Mortgagee (or its affiliates) for which the guarantor(s) of this Mortgage, Note, and Loan Documents, is a surety or guarantor (the "**Cross Default Loans**"). Upon the occurrence of an Event of Default hereunder, Mortgagee shall be permitted to exercise all remedies under the mortgage, the accompanying promissory note and the loan documents of the Cross Default Loans. Upon the occurrence of a default under any of the Cross Default Loans beyond all applicable notice, grace and/or cure periods, Mortgagee shall be permitted to exercise all remedies under this Mortgage, the Note and Loan Documents.

54. **Cross Collateralization.** This Mortgage is cross-collateralized against all property, rights, interests and estates of Mortgagor in and to the Mortgaged Property. Upon the occurrence of an Event of Default under this Mortgage, the Note or any of the Loan Documents, Mortgagee reserves the right, in its

sole and absolute discretion, to exercise its remedies against each of such property, rights, interests and estates, in any such order determined by Mortgagee, or to foreclose simultaneously on all such property, rights, interests and estates. Further, the foreclosure on any less than all of such property, rights, interests and estates shall in no way be considered the exclusive remedy of Mortgagee, and Mortgagee shall be permitted to foreclose with respect to all of the Mortgaged Property until the entire indebtedness due under the Note is satisfied or paid in full. The contemporaneous or separate foreclosure on all or any of such property, rights, interests and estates shall not constitute an election of remedies by Mortgagee.

55. No Occupancy by Mortgagor et al. None of (i) Mortgagor, (ii) any guarantor of Mortgagor, (iii) any person holding an equity or other ownership interest in Mortgagor or any guarantor of Mortgagor or (iv) any member of the immediate family of the persons identified in (i), (ii) and (iii) shall occupy or inhabit (or permit the occupancy or habitation of) any part of the Mortgaged Property, including without limitation, any building, structure or other improvement located thereon.

[INTENTIONALLY LEFT BLANK - SIGNATURE PAGE TO FOLLOW]

FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO: 501908/2021

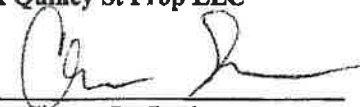
NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 01/25/2021

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor and Mortgagee on the day and year first above written.

MORTGAGOR:

347A Quincy St Prop LLC

By: 

Name: Chanon D. Gordon

Title: Manager and Sole Member

STATE OF NY)
) ss:
COUNTY OF NY)

On April 17, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared, Chanon D. Gordon, 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 as Manager and Sole Member of 347A Quincy St Prop LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

NOTARY PUBLIC 

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 20_ 22

SCHEDULE "A"
Property Description

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, designated as Block 1804 Lot 65 on the Tax Map of Brooklyn, bounded and described as follows:

BEGINNING at a point on the northerly side of Quincy Street, distant 239 feet 7 inches easterly from the corner formed by the intersection of the northerly side of Quincy Street and the easterly side of Marcy Avenue;

RUNNING THENCE northerly parallel with Marcy Avenue and part of the distance through a party wall, 103 feet 3-3/8 inches to land now or formerly of Rev. M. Van Doren;

THENCE easterly along said land, 14 feet 3-5/8 inches;

THENCE southerly and parallel with Marcy Avenue, 105 feet 3 inches and part of the distance through a party wall to the northerly side of Quincy Street;

THENCE westerly along the northerly side of Quincy Street, 14 feet 2 inches to the point or place of **BEGINNING**.

NOTE: Being Lot(s) Lot: 65, Block: 1804; Tax Map of the Borough of Brooklyn, County of Kings, State of New York.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 347A Quincy Avenue, Brooklyn, NY 11216

"Said premises is
or will be improved by
a *Three* family
dwelling only."

FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO. 501908/2021

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 01/25/2021

Exhibit D

<p>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</p> <p>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.</p>	 <p>2019050400016003001E70FE</p>
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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 39**

Document ID: 2019050400016003 Document Date: 04-17-2019 Preparation Date: 05-04-2019
 Document Type: MORTGAGE
 Document Page Count: 38

<p>PRESENTER: RAM ABSTRACT LTD 2635 PETTIT AVENUE SUITE 201 (RFA5450K) BELLMORE, NY 11710 718-846-7800 SLEWIS@RAMTITLE.COM</p>	<p>RETURN TO: LARocca, HORNIK, ROSEN, GREENBERG & BLAHA 83 SOUTH STREET, SUITE 302 FREEHOLD, NJ 07728 ATTN: JONATHAN L. HORNIK, ESQ.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Borough	Block	Lot	Unit	Address
BROOKLYN	1804	65	Entire Lot	347A QUINCY STREET
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA


CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES	
<p>MORTGAGOR/BORROWER: 347A QUINCY ST PROP LLC 991 NOSTRAND AVE BROOKLYN, NY 11225-2906</p>	<p>MORTGAGEE/LENDER: FIRM LENDING LLC 150 SE 2ND AVENUE, SUITE 805 MIAMI, FL 33131</p>

FEES AND TAXES			
Mortgage :		Filing Fee:	
Mortgage Amount:	\$ 150,000.00		\$ 0.00
Taxable Mortgage Amount:	\$ 150,000.00	NYC Real Property Transfer Tax:	\$ 0.00
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 750.00	NYS Real Estate Transfer Tax:	\$ 0.00
City (Additional):	\$ 1,687.50		\$ 0.00
Spec (Additional):	\$ 0.00		
TASF:	\$ 375.00		
MTA:	\$ 450.00		
NYCTA:	\$ 0.00		
Additional MRT:	\$ 0.00		
TOTAL:	\$ 3,262.50		
Recording Fee:	\$ 227.00		
Affidavit Fee:	\$ 0.00		

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

Recorded/Filed 05-08-2019 09:34
 City Register File No.(CRFN):
2019000145692



Annette M Hill
City Register Official Signature

RFA 5450

BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

347A Quincy St Prop LLC

(Mortgagor)

to

FIRM LENDING LLC

(Mortgagee)

Dated: April 17, 2019

Property Address: 347A Quincy Avenue, Brooklyn, NY 11216

**Block: 1804
Lot: 65
County: Kings
State: New York**

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

**LaRocca, Hornik, Rosen, Greenberg & Blaha
Att: Jonathan L. Hornik, Esq.
83 South Street
Suite 302
Freehold, NJ 07728**

THIS MORTGAGE DOES/DOES NOT (CIRCLE ONE) ENCUMBER REAL PROPERTY PRINCIPALLY IMPROVED OR TO BE IMPROVED BY ONE OR MORE STRUCTURES CONTAINING IN THE AGGREGATE NOT MORE THAN SIX (6) RESIDENTIAL DWELLING UNITS HAVING THEIR OWN SEPARATE COOKING FACILITIES.

THIS BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT ("Mortgage"), made April 17, 2019, between **347A Quincy St Prop LLC**, a New York with an address of **41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217** (the "**Mortgagor**"), **FIRM LENDING LLC**, a Florida limited liability company at its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("**Mortgagee**").

WITNESSETH:

WHEREAS, Mortgagor is the holder of the fee simple interest in the real property described in Schedule A attached hereto (hereinafter, collectively, the "**Premises**") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "**Improvements**");

WHEREAS, Mortgagor has delivered this Mortgage on this date to secure (1) the payment of an indebtedness in the principal sum of up to **One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00)**, lawful money of the United States of America, to be paid with interest according to a certain Building Loan Secured Promissory Note dated the date hereof made by Mortgagor to Mortgagee (the secured promissory note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "**Note**") and all other sums due hereunder, under the other Loan Documents (hereinafter defined) and under the Note (said indebtedness and interest due under the Note and all other sums due hereunder, under the Note and under the other Loan Documents being hereinafter collectively referred to as the "**Debt**") and (2) performance of Mortgagor's obligations under the Loan Documents (as hereinafter defined).

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "**Mortgaged Property**"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building

equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "**Equipment**"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "**Leases**") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (hereinafter collectively referred to as the "**Rents**"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, 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 Mortgaged Property;

(f) all accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "**Intangibles**");

(g) all agreements and/or contracts now or hereafter entered into by the Mortgagor relating to the sale, leasing, brokerage, development, construction (including architectural and engineering contracts), equipping, management, maintenance, marketing, and/or operation of the Premises or the Improvements, including all moneys due and to become due thereunder;

(h) the plans and specifications and working drawings relating to the construction of any Improvements at the Premises;

- (i) all options and agreements with respect to any additional real property for the use or development in connection with operation of the Premises and/or construction of any Improvements;
- (j) all consents, certificates, authorizations, variances, waivers, licenses, permits and approvals from any governmental authority relating to the Premises and/or the construction of any Improvements;
- (k) all rights, interest and benefits of Mortgagor to 421-a certificates; and
- (l) all proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

GENERAL PROVISIONS

1. **Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay all monthly installments of interest and principal as provided for in the Note and shall repay the Debt on or before the Maturity Date, as such term is defined in the Note (the "**Maturity Date**") at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents including, without limitation, the Note, this Mortgage and that certain Building Loan Agreement, dated the date hereof, among Mortgagor and Mortgagee (the "**Building Loan Agreement**"), now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and this Mortgage (the "**Loan Documents**") are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. The Note is evidence of that certain loan made to the Mortgagor by the Mortgagee (the "**Loan**").

2. **Warranty of Title.** Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable first (1st) lien on and security interest in the Mortgaged Property, subject only to the lien of the Land Loan (as defined in the Building Loan Agreement) and said exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance.

(a) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain during the entire term of this Mortgage (the "Term") policies of insurance against loss or damage by fire, lightning, wind and such other perils as are included in a standard "all risk" or "special causes of loss" form, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the greatest of (i) the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, (ii) the outstanding principal balance of the Loan, and (iii) such amount that the insurer would not deem Mortgagor a coinsurer under said policies. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation and an "Agreed Amount Endorsement". The policies shall have a deductible no greater than \$10,000 unless agreed to by Mortgagee in writing.

(b) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the Term the following policies of insurance:

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal amount of the Loan or the maximum limit of coverage available with respect to the Improvements and Equipment under said Program, whichever is less.

(ii) Commercial General Liability insurance, including coverage for contractual liability, property damage, bodily injury (including death resulting therefrom), personal injury, advertising injury and a liquor liability endorsement if liquor is sold on the Mortgaged Property, containing minimum limits per occurrence of \$1,000,000.00 and \$2,000,000.00 in the aggregate for any policy year. The policy shall also name the Mortgagee as an additional insured and include coverage for; the discharge or release of pollutants from a hostile fire; cross suits arising from claims or suits brought by additional insureds; a retention not to exceed \$15,000 per occurrence and; extended completed operations coverage for a period of 6 years following the completion of construction with limits per occurrence of \$1,000,000.00 and \$2,000,000 in the aggregate for the 6 year period. The policy shall not include any reduction in coverage for failure to maintain certificates of insurance or indemnity agreements from subcontractors or independent contractors.

(iii) Automobile liability coverage covering all owned, hired and non-owned vehicles with a limit of \$1,000,000.00 per occurrence.

(iv) Umbrella liability coverage providing coverage over the commercial general liability, automobile liability and employers liability insurance policies containing minimum limits per occurrence of \$5,000,000.00 and \$5,000,000.00 in the aggregate for any policy year. The policy shall include extended completed operations coverage for a period of 6 years following the completion of construction with limits per occurrence of \$5,000,000.00 and \$5,000,000.00 in the aggregate for the six year period.

(v) Rental loss and/or business interruption insurance for a period of twelve (12) months in an amount equal to the greater of (A) estimated gross revenues from the operations of the Mortgaged Property over twelve (12) months or (B) the projected operating expenses (including stabilized management fees, applicable reserve deposits, and debt service) for the maintenance and operation of the

Mortgaged Property over twelve (12) months. The amount of such insurance shall be increased in Mortgagee's reasonable discretion from time to time during the Term as and when new Leases and renewal Leases are entered into and the Rents increase or the annual estimate of (or the actual) gross revenue, as may be applicable, increases.

(vi) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), in an amount at least equal to the outstanding principal amount of the Note or \$2,000,000.00 whichever is less.

(vii) Worker's compensation and employer's liability insurance with respect to any employees or uninsured subcontractors and sub-subcontractors of Mortgagor, and as required by any governmental authority or legal requirement.

(viii) "Builder's Risk, Completed Value, Non-Reporting Form", or other form approved by the Mortgagee, with "all-risk" extended coverage (including vandalism and malicious mischief) and coverage for "completion and/or premises occupancy" for the full insurable value of all work incorporated in the Improvements and all materials and equipment on or about the Mortgaged Property intended for permanent use in the Improvements or incident to the construction thereof in form and substance acceptable to Mortgagee.

(ix) Law and ordinance coverage in an amount satisfactory to Mortgagee if the Mortgaged Property, or any part thereof, shall constitute a nonconforming use under applicable zoning ordinances, sub-division and building codes or other laws, ordinances, orders and requirements.

(x) Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

(c) All policies of insurance (the "Policies") required pursuant to this paragraph: (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of "BBB" or better by Standard & Poor's Ratings Services, a division of McGraw-Hill Companies, Inc. and a rating of "A:VII" or better in the current Best's Insurance Reports; (ii) shall name Mortgagee and its successors and/or assigns as their interest may appear as the mortgagee; (iii) shall contain a Non-Contributory Standard Mortgagee Clause and a Lender's Loss Payable Endorsement, or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Mortgagee; (v) shall be maintained throughout the Term without cost to Mortgagee; (vi) shall be assigned and the originals or certified copies delivered to Mortgagee (including certified copies of the Policies in effect on the date hereof within thirty (30) days after the closing of the Loan); (vii) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee in its reasonable discretion as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to Mortgagee evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee (provided, however, that Mortgagor is not required to furnish such evidence of payment to Mortgagee in the event that such Insurance Premiums have been paid by Mortgagee pursuant to Paragraph 5 hereof). If Mortgagor does not furnish such evidence and

receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Mortgagor agrees to reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

(d) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of an Insured Casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(e) In case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of an Insured Casualty that does not exceed ten percent (10%) of the original principal amount of the Note, Mortgagee shall settle and adjust any claim without the consent of Mortgagee and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receipt for any such insurance proceeds.

(ii) In the event an Insured Casualty shall exceed ten percent (10%) of the original principal amount of the Note, then and in that event, Mortgagor shall settle and adjust any claim and agree with the insurance company or companies on the amount to be paid on the loss and the proceeds of any such policy shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Mortgage. Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact, coupled with an interest, to settle and adjust any such claims and endorse any checks payable to the order of Mortgagee. Mortgagor hereby releases Mortgagee from any liability with respect to the settlement or adjustment by Mortgagee of any Insured Casualty.

(iii) In the event of an Insured Casualty where the loss is in an aggregate amount less than thirty percent (30%) of the original principal balance of the Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months and prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iv) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall be without any Prepayment Premium (as such term is defined in the Note, except that if an Event of Default has occurred and is continuing then the Mortgagor shall pay to Mortgagee an additional amount equal to the Prepayment Premium (as such term is defined in the Note), if any. Any such application to the Debt shall (A) be applied to those payments of principal and interest last due under the Note but shall not postpone any payments otherwise required pursuant to the Note other than such last due payments and (B) cause the Note to be re-amortized in accordance with its terms and conditions.

(v) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee in its reasonable discretion prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be retained by Mortgagee as additional collateral for the Loan. Any reimbursement of insurance proceeds to Mortgagor shall be made pursuant to and consistent with the terms of the Building Loan Agreement.

(f) In the event of any conflict, inconsistency or ambiguity between the provisions of this Paragraph 3 and 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, the provisions of Paragraph 3 hereof shall control.

4. Payment of Taxes, Etc. Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. Mortgagor will deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Mortgagor is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid

by Mortgagee pursuant to Paragraph 5 hereof).

5. **Tax and Insurance Escrow Fund.** At Mortgagee's request, Mortgagor shall pay to Mortgagee on the first (1st) day of each calendar month (a) 110% of one-twelfth of the Taxes that Mortgagee estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) 110% of one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "**Tax and Insurance Escrow Fund**"). The Tax and Insurance Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Tax and Insurance Escrow Fund in a timely fashion to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Paragraphs 3 and 4 hereof. In making any payment relating to the Tax and Insurance Escrow Fund, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or Mortgagor's insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 3 and 4 hereof, Mortgagee shall, in its sole discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If at any time Mortgagee determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay the items set forth in (a) and (b) above, Mortgagee shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Mortgagee by the amount that Mortgagee estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Tax and Insurance Escrow Fund to the payment of the Debt in any order in its sole discretion. Until expended or applied as above provided, any amounts in the Tax and Insurance Escrow Fund shall constitute additional security for the Debt. The Tax and Insurance Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. The Tax and Insurance Escrow Fund may, at Mortgagee's sole option, be held in an interest bearing account in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. All earnings or interest on the Tax and Insurance Escrow Fund, if any, shall be, and become, part of such Tax and Insurance Escrow Fund and shall be disbursed as provided in this Paragraph 5. If Mortgagee so elects at any time, Mortgagor shall provide, at Mortgagor's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the Term.

Notwithstanding the foregoing, the Mortgagor and Mortgagee covenant and agree that provided no Event of Default has occurred under the Note, this Mortgage or any other Loan Documents, and provided further that Mortgagor furnishes Mortgagee with proof that all Taxes, Insurance Premiums and Other Charges are being paid as required under this Mortgage, Mortgagee shall not require Mortgagor to make monthly installments for the payment of Taxes, Insurance Premiums and Other Charges to the Tax and Insurance Escrow Fund.

6. **Condemnation.** Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a

“**Condemnation**”) and shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Mortgagor, regardless of whether an Award (hereinafter defined) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Mortgagee is hereby irrevocably appointed as Mortgagor’s attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment (“**Award**”) for any taking accomplished through a Condemnation (a “**Taking**”) and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Mortgage. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for in the Note, in this Mortgage and the other Loan Documents and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Mortgagee to expenses of collecting the Award and to discharge of the Debt. Mortgagee shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than twenty-five percent (25%) of the original principal balance of the Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months of the Taking and at least six (6) months prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default shall have occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Condemnation, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award to be made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Debt shall be without any Prepayment Premium except that if an Event of Default has occurred and is continuing then the Mortgagor shall pay to Mortgagee an additional amount equal to the Prepayment Premium, if any. Any such application to the Debt shall (i) be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments and (ii) cause the Note to be re-amortized in accordance with its terms and conditions. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the Debt.

(d) In the event Mortgagor is entitled to reimbursement out of the Award received by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence reasonably satisfactory to it of the estimated cost of completion of the restoration, repair,

replacement and rebuilding resulting from such condemnation, (2) finds or, at Mortgagee's option, receives assurances reasonably satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, in the sole and absolute discretion of Mortgagee, be retained by Mortgagee and applied to payment of the Debt provided that such application to the Debt shall be without any Prepayment Premium as long as no Event of Default has occurred and is continuing.

7. Leases and Rents.

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee, all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into any leases for the Mortgaged Property without Mortgagee's prior written consent which consent may be granted or withheld in Mortgagee's sole discretion. All residential leases shall be written on the standard form of residential lease which has been approved by Mortgagee and all commercial leases shall be written on the standard form of commercial lease which has been approved by Mortgagee. No material changes may be made to the Mortgagee-approved standard residential or commercial lease except for customary alterations made in the ordinary course of business. All Leases shall provide that they are subordinate to lien, terms and provisions of this Mortgage and that the tenant agrees to attorn to Mortgagee. All renewals of residential leases and all proposed residential leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. None of the commercial leases shall contain any non-disturbance or similar recognition

agreement, any requirement that the Mortgagor rebuild the Mortgaged Property in connection with a casualty or condemnation of any portion of the Mortgaged Property, or any other similar provisions which adversely affect the Mortgaged Property or which might adversely affect the rights of any holder of the Loan without the prior written consent of Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all residential and commercial leases.

(c) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which can lead to an offset of Rents or termination of the applicable Lease that Mortgagor shall send or receive thereunder; (iii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall use its best efforts to deliver to Mortgagee, upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee, provided that Mortgagor shall not be required to deliver such certificates more frequently than four (4) times in any calendar year; and (vii) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require. Except to the extent Mortgagor is acting in the ordinary course of business as a prudent operator of property similar to the Mortgaged Property, Mortgagor (A) shall not, alter, modify or change the terms of the Leases in any material respect without the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed; (B) shall not convey or transfer or suffer or permit a conveyance or transfer of the Mortgaged Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, tenants under the Leases; (C) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (D) shall not cancel or terminate the Leases or accept a surrender thereof, except if a tenant is in default thereunder; provided, however, that any Lease may be cancelled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the cancelled Lease.

(d) Mortgagor may enter into proposed new commercial leases and proposed renewals or extensions of existing commercial leases without the prior written consent of Mortgagee if such proposed commercial leases or extension: (i) is not for greater than or equal to ten percent (10%) of the gross leaseable area of the Mortgaged Property, or greater than or equal to ten percent (10%) of the total gross rental revenues of the Mortgaged Property; (ii) shall have an initial term of not less than three (3) years or greater than ten (10) years; (iii) shall provide for rental rates comparable to existing local market rates and shall be an arms-length transaction; (iv) shall not contain any options for renewal or expansion by the tenant thereunder at rental rates which are either below comparable market levels or less than the rental rates paid by the tenant during the initial lease term; (v) shall be to a tenant which is experienced, creditworthy and reputable; and (vi) shall comply with the requirements of subparagraph (b), above. Mortgagor may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (vi) immediately above only with the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed. Mortgagor expressly understands that any and all new or proposed commercial leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Mortgage and the other Loan Documents.

(e) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced

by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

8. **Representations and Covenants Concerning the Loan.** Mortgagor represents, warrants and covenants as follows:

(a) The Note, this Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(b) All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Mortgaged Property have been obtained and are in full force and effect. The Mortgaged Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Mortgaged Property. The Mortgagor shall comply with all of the recommendations concerning the maintenance and repair of the Mortgaged Property which are contained in the inspection and engineering report which was delivered to Mortgagee in connection with the origination of the Loan.

(c) All of the Improvements which were included in determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against by title insurance. All of the Improvements comply with all material requirements of any applicable zoning, building codes, fire codes and subdivision laws and ordinances.

(d) The Mortgaged Property is not subject to any Leases other than the Leases described in the rent roll delivered to Mortgagee in connection with this Mortgage. No person has any possessory interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder.

(e) The survey of the Mortgaged Property delivered to Mortgagee in connection with this Mortgage, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Mortgaged Property is situated, is certified to the Mortgagee, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Mortgaged Property or the title thereto.

(f) The Mortgaged Property is and shall at all times remain in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

(g) Mortgagor operates the Mortgaged Property and has not entered into any agreement with any third party relating to the operation and management of the Mortgaged Property, and no third party is entitled to any management fee or any portion of the Rents.

9. **Trust Fund.** 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 improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

10. **Maintenance of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof subject to the applicable provisions of this Mortgage. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property that is destroyed by any casualty, or becomes damaged, worn or dilapidated or that is affected by any proceeding of the character referred to in Paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or to any portion thereof (iii) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of management or (iv) amend or modify any easement, covenant or restrictions which benefits or burden the Mortgaged Property. Mortgagor will not install or permit to be installed on the Premises any underground storage tank.

Notwithstanding the foregoing or anything to the contrary contained herein, Mortgagor shall be permitted to improve and renovate the Mortgaged Property, strictly in accordance with terms of that certain Building Loan Agreement dated as of the date hereof (the "**Building Loan Agreement**"), as executed and delivered by Mortgagor in connection with this Mortgage.

11. **Transfer or Encumbrance of the Mortgaged Property.**

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property and control of its interest in the Ground Lease as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property and the Ground Lease so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, have the right to sell,

transfer, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or its interest in the Ground Lease or any part thereof or permit the Mortgaged Property or its interest in the Ground Lease or any part thereof (inclusive of any air rights, developments right or similar) to be sold, conveyed, alienated, leased, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 11 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property or its interest in the Ground Lease for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any persons or entity(ies) guaranteeing the Loan and/or any of Mortgagee's obligations under the Loan Documents (collectively the "Guarantor"), or any general partner of Mortgagor or Guarantor is a company, the voluntary or involuntary sale, conveyance or transfer of such company's stock (or the stock of any corporation directly or indirectly controlling such company by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such company; (iv) if Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member; (v) any pledge, hypothecation, assignment, transfer or other encumbrance of any ownership interest in Mortgagor; and (vi) any change in the management structure or control of the Mortgagor, whether directly or indirectly accomplished.

(c) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any portion thereof made in contravention of this paragraph shall be null and void and of no force and effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

12. Estoppel Certificates and No Default Affidavits.

(a) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the

Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a certificate reaffirming all representations and warranties of Mortgagor set forth herein and in the other Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

(c) Mortgagor shall deliver to Mortgagee upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee provided that Mortgagor shall not be required to deliver such certificates more frequently than four (4) times in any calendar year.

13. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable, provided that Mortgagor shall not be required to pay any Prepayment Premium in connection herewith unless an Event of Default has occurred and is continuing.

14. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

15. **Controlling Agreement.** It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Paragraph 15 shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt, and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to

accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

16. **Financial Statements.**

(a) The financial statements heretofore furnished to Mortgagee are, as of the dates specified therein, complete and correct and fairly present the financial condition of the Mortgagor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles. Mortgagor does not have any liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mortgagor and reasonably likely to have a materially adverse effect on the Mortgaged Property or the operation thereof, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Mortgagor from that set forth in said financial statements.

(b) Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish to Mortgagee on or before fifteen (15) days after the end of each calendar month the following items, each certified by Mortgagor as being true and correct: (i) leasing and operating reports including a written statement (rent roll) dated as of the last day of each such calendar month identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any material defaults or payment delinquencies thereunder; and (ii) monthly and year to date operating statements prepared for each calendar month during each such calendar month, each of which shall include an itemization of actual (not pro forma) capital expenditures during the applicable period, each report covering such month to date on a year-to-date basis, contrasted against the comparable period of the previous year and the then approved budget. Within fifteen (15) days after the end of each quarter, certified quarterly financial statements and operating statements covering such quarter to date and on a year-to-date basis, contrasted against the comparable period of the previous year and the then approved budget. Within sixty (60) days following the end of each calendar year, Mortgagor shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Mortgagor in such detail as Mortgagee may reasonably request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year. Mortgagor's annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Mortgagor or the general partner of Mortgagor, as applicable, stating that each such annual financial statement presents fairly the financial condition of the Mortgaged Property being reported upon and has been prepared in accordance with good and sound accounting principles consistently applied. Mortgagor's annual financial statements shall include (i) a list of commercial tenants, if any, occupying more than twenty (20%) percent of the total floor area of the Improvements, and (ii) a breakdown showing the year in which each commercial lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which commercial leases shall expire in each such year, each such percentage to be expressed on both a per year and a cumulative basis. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial data as Mortgagee or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property.

17. **Performance of Other Agreements.** Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

18. **Further Acts, Etc.** Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing

statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage or for facilitating the sale of the Loan and the Loan Documents (if Mortgage elects to do so.) Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. It is expressly agreed that any such receiver shall be permitted to do any further acts as the Mortgagee may determine to be necessary to complete the development and construction of any Improvements at the Mortgaged Property pursuant to the Building Loan Agreement and the Draw Schedule (annexed thereto). All such costs and expenses of such receiver that are advanced by the Mortgagee pursuant to the Building Loan Agreement to develop and construct the Improvements as aforesaid shall, to the extent permitted by the Building Loan Agreement and applicable law and subject to the terms of hereof, be added to the Indebtedness, and secured by this Mortgage. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

19. **Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

20. **Reporting Requirements.** Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any Guarantor.

21. **Events of Default.** The Debt shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "Event of Default"):

(a) if any portion of the Debt is not paid when due, including the failure to repay the Debt on or before the Maturity Date;

(b) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable in accordance with Paragraph 4 and Paragraph 5 of this Mortgage;

(c) if the Policies are not kept in full force and effect or are not delivered to Mortgagee upon request and in accordance with the requirements contained in this Mortgage;

(d) if Mortgagor transfers or encumbers any portion of the Mortgaged Property without Mortgagee's prior written consent, it being expressly agreed and acknowledged by Mortgagor that subordinate financing is prohibited by this Mortgage;

(e) if any material representation or warranty of Mortgagor, or of any Guarantor, made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days:

(h) if the indebtedness secured by any other mortgage or security agreement covering any part of the Mortgaged Property, whether it be superior or junior in lien to this Mortgage, is accelerated due to default thereunder;

(i) subject to Mortgagor's rights set forth in Paragraph 28 of this Mortgage, if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien in excess of \$10,000.00 except a lien for local real estate taxes and assessments not then due and payable;

(j) if Mortgagor fails to cure properly any (i) building department violations, or (ii) rent impairing violations affecting or which may be interpreted to affect the Mortgaged Property and which have or may have a negative adverse impact on Rents in the sole judgment of Mortgagee within thirty (30) days after Mortgagor first receives notice of any such violations;

(k) except as permitted in this Mortgage and the Building Loan Agreement executed on the date hereof between Mortgage and Mortgagee, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Mortgagee;

(l) if Mortgagor shall continue to be in default under any term, covenant, or provision of the Note or any of the other Loan Documents, beyond applicable cure periods contained in those documents;

(m) if Mortgagor fails to cure a default under any other term, covenant or provision of this Mortgage within thirty (30) days after Mortgagor first receives notice of any such default;

provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional thirty (30) days to cure such default provided that Mortgagor diligently and continuously pursues such cure;

(n) if, without Mortgagee's prior written consent, such consent not to be unreasonably withheld or delayed, (i) Mortgagor ceases to act as the manager of the Mortgaged Property, (ii) Mortgagor shall enter into a management agreement with any party or there is any material change in any management agreement approved by Mortgagee, (iii) the management of the Mortgaged Property is transferred to a person or entity other than Mortgagor, (iv) there is any material change in the management, operation or control of the Mortgaged Property (v) if Mortgagor shall own or manage any property other than the Mortgaged Property or (vi) the Mortgagor modifies or amends its operating agreement or similar governing document;

(o) if Mortgagor ceases to continuously operate the Mortgaged Property or any material portion thereof for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken with the consent of Mortgagee);

(p) damage to the Mortgaged Property in any manner which is not covered by insurance solely as a result of Mortgagor's failure to maintain insurance required in accordance with this Mortgage;

(q) if any adverse change occurs in the financial condition of Mortgagor or any Guarantor which Mortgagee shall, in good faith, deem to be material or to otherwise materially impair the prospect of payment or performance by Mortgagor of its obligations evidenced by the Note and secured by this Mortgage or any Loan Document;

(r) if an Event of Default shall have occurred and be continuing under the Building Loan Agreement;

(s) the occurrence of any default, beyond the expiration of any applicable notice, grace or cure period, under any other loans made by Mortgagee to Mortgagor, any Guarantor or any principal of Mortgagor giving rise to a right to accelerate payment thereof including, without limitation, any secured or unsecured loans;

(t) if, upon application by Mortgagee to two (2) or more fire insurance companies which are lawfully doing business in the State of New York and which are issuing policies of fire insurance upon buildings situated within the area wherein the Mortgaged Property is situated, such companies shall refuse to issue such policies.

(v) The failure by Borrower to satisfy the conditions to the Final Advance set forth in Section 2.4 of the Building Loan Agreement on or before the Scheduled Completion Date (as defined therein);

(w) The cessation of Construction Work (as defined in the Building Loan Agreement) for any period of thirty (30) consecutive business days;

(x) A casualty loss such that Lender is not obligated under this Mortgage to advance insurance proceeds to Mortgagor provided that a breach of this Section 21(x) shall not be deemed a default for purposes of the Note if the Mortgagee is reasonably satisfied that the Mortgagor has sufficient available funds without the insurance proceeds to complete the Construction Work (as defined in the Building Loan Agreement) prior to the Completion Date (as defined in the Building Loan Agreement);

(y) The failure or refusal by Title Company (as defined in the Building Loan Agreement) to issue an endorsement to the Title Policy (as defined in the Building Loan Agreement) in the manner set forth in subsection 2.3(c) of the Building Agreement following notice and failure to cure within ten days thereof;

(z) The institution by any lienor of a foreclosure action against the Mortgaged Property or any part thereof;

(aa) The issuance of a "stop work order" or any similar order, notice or requirement that prohibits the Mortgagor from continuing to perform work at the Mortgaged Property which condition is not remedied within thirty (30) days of issuance; or

(bb) The death of any Guarantor or other obligor of the obligations of Mortgagor under the Loan, provided, however, Mortgagor shall have sixty (60) days from the death of such Guarantor to either, (i) provide evidence to Mortgagee that the remaining Guarantors have the financial means on their own to continue to guarantee all obligations of Mortgagor under the Note, this Mortgage and the Loan Documents, as provided by the Guarantee executed by Guarantor on the date hereof, which evidence shall be subject to Mortgagee's approval in its sole but reasonable discretion, or (ii) provide to Mortgagee a substitute guarantor, and all financial documentation concerning said substitute guarantor that Mortgagee requests, which substitute guarantor shall be subject to Mortgagee's approval in its sole but reasonable discretion.

22. **Late Payment Charge and Default Rate.**

(a) If any portion of the Debt is not paid within five (5) days upon the date on which it is due, Mortgagor shall pay to Mortgagee, upon demand, an amount equal to ten percent (10%) of such unpaid portion of the Debt in order to defray a portion of the expenses incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be deemed to be secured by this Mortgage.

(b) From and after the occurrence of an Event of Default, regardless of whether or not there has been a notice of default issued by Mortgagee, interest shall accrue on the outstanding Principal Sum at a rate equal to lesser of (i) 23%, or (ii) the maximum rate allowed by law (the "Default Rate"). The Default Rate shall remain in effect until any and all Events of Default shall have been cured. In addition, the Default Rate shall remain in effect during any period of default even upon the acceleration of the Debt. The Default Rate shall be in effect at all times after the maturity of the Debt (whether by acceleration or otherwise). Upon acceleration or maturity, the Default Rate shall remain in effect until all sums due under the Note, the Mortgage and the Loan Documents shall have been paid in full.

23. **Right To Cure Defaults.** Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

24. **Remedies.**

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property by Mortgagee itself or otherwise, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or non-judicial under Article 14 of the RPAPL, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, Mortgagor expressly consents to a non-judicial foreclosure by power of sale under RPAPL Section 14, or similar, applicable statute;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;
- (iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in any of the other Loan Documents;
- (vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;
- (vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;
- (viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and

every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property (other than alterations contemplated pursuant to the terms of the Building Loan Agreement); (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Mortgaged Property to the payment of Debt, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

- (i) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Building Loan Agreement or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect under the Building Loan Agreement;
- (ii) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code; or
- (xi) exercise any of its rights and remedies under any of the Loan Documents (including, without limitation, any guaranty executed in connection with the Loan).

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto in accordance with all applicable laws, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights

sold. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage and the other Loan Documents.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this paragraph at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Note, this Mortgage or in any of the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Mortgage or in any of the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Note, this Mortgage or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Mortgage or any of the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 24 (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Note, this Mortgage or any of the other Loan Documents shall not be impaired by any indulgence, including, without limitation, (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Debt.

(j) Upon the occurrence of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Mortgaged Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of the Mortgaged Property for non-payment of rent, however designated.

(k) In any suit to foreclose the lien hereof (including any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs which may be estimated as items to be expended after entry of the decree of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title or the value of the Mortgaged Property.

25. **Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property with 24 hours' notice at any reasonable time during the Term. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

26. **Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing

the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Note, this Mortgage and the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

27. **Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt. Mortgagor hereby irrevocably authorizes Mortgagee to file UCC Financing Statements, Amendments and/or Continuations in order to perfect or continue the perfection of Mortgagee's security interest in the Collateral.

28. **Contest of Certain Claims.** Notwithstanding the provisions of Paragraphs 4 hereof, but subject in any event to the provisions of Paragraph 5 hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within ten (10) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, cancelled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

29. **Recovery of Sums Required to be Paid.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

30. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

31. **Hazardous Substances.** Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge: (a) the Mortgaged Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state super-lien and environmental clean-up statutes and all regulations adopted in respect to the foregoing laws (collectively, "Environmental Laws"); (b) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants including without limitation, petroleum, tremolite, anthlophylic, actinolite or polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively, "Hazardous Substances"); (c) no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Mortgaged Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property other than in compliance with all Environmental Laws; (d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Mortgaged Property; and (e) no underground storage tanks exist on any of the Mortgaged Property. So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor (i) shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws, (ii) shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on or near the Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws and/or if Mortgagor shall become aware of any condition on or near the Mortgaged Property which shall pose a threat to the health, safety or welfare of humans, (iii) shall remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law, promptly after Mortgagor becomes aware of same, at Mortgagor's sole expense (or as shall be required by Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by Mortgagee ("Mortgagee's Consultant") and (iv) shall comply with all of the recommendations

contained in the environmental report which was delivered to Mortgagee in connection with the origination of the Loan. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. The obligations and liabilities of Mortgagor under this Paragraph 33 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

32. Asbestos. Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, no asbestos or any substance or material containing asbestos ("Asbestos") is located on the Mortgaged Property. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, Asbestos and shall remove any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. The obligations and liabilities of Mortgagor under this Paragraph 32 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

33. Environmental Monitoring. Mortgagor shall give prompt written notices to Mortgagee of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Mortgaged Property, (b) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance or Asbestos, and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Mortgagor shall permit Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or Hazardous Substance, and Mortgagor shall pay all attorneys' fees and disbursements incurred by Mortgagee in connection therewith. Upon Mortgagee's reasonable request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide (i) an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on, in or near the Mortgaged Property, and (ii) an inspection or audit of the Mortgaged Property prepared by a duly qualified engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Mortgaged Property. The cost and expense of such audit or inspection shall be paid by Mortgagor. If Mortgagor fails to provide any inspection or audit required pursuant to this Paragraph 33 within thirty (30) days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added to the Debt and shall bear interest thereafter until paid at the Default Rate. In the event that any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at Mortgagor's expense upon request of Mortgagee. In the event that any investigation, site monitoring, containment cleanup, removal, restoration or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "**Remedial Work**"), Mortgagor shall commence all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law) and thereafter diligently prosecute to

completion all such Remedial Work within ninety (90) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law). All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

34. **Indemnification.** In addition to any other indemnifications provided herein or in the other Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees, whether in-house staff, retained firms, or otherwise, and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any Remedial Work, attorneys' and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Mortgaged Property to comply with any Access Laws; (k) any representation or warranty made in the Note, this Mortgage or any of the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto, including mortgage brokerage fees; (m) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and the Loan Documents and the Debt (including, but not limited to, all costs and any reappraisals of the Mortgaged Property or any other collateral for the Debt), (n) the claims of any lessee of any or any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease, (o) any amounts payable to Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date the loss or damage is sustained by Mortgagee until paid and any amendment to, or restructuring of, the Debt and the Loan Documents, (p) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (q) the past, current and/or future sale or offering for sale of any interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky

laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and shall bear interest at the Default Rate. The obligations and liabilities of Mortgagor under this Paragraph 34 shall survive the termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

Mortgagor agrees that the Mortgaged Property shall at all times comply in all material respects and to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws"). Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee. Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws. Mortgagor shall protect, defend, indemnify and save harmless Mortgagee, its successors and assigns, from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees, whether in-house staff, retained firms, or otherwise, and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of against any liability incurred by reason of any actions, claims, violations, costs, fees or liabilities related to or arising from the Access Laws.

35. **Notices.** Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor (and in the case of Mortgagor, with a copy to **347A Quincy St Prop LLC, having an address at 41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217**

1) or Mortgagee, as the case may be (and in the case of Mortgagee, with a copy to LaRocca, Hornik, Rosen, Greenberg & Blaha, PC, 40 Wall Street, 32nd Fl., New York, NY 10005, Att: Jonathan L. Hornik, Esq.), shall designate in writing, and shall be deemed to be received by the addressee on (i) the day such notice is personally delivered to such addressee, (ii) the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, (iii) the day following the day on which such notice is delivered to a nationally recognized overnight courier delivery service, or (iv) the day facsimile transmission is confirmed after transmission of such notice by telecopy to such telecopier number as Mortgagor or Mortgagee, as the case may be, shall have previously designated in writing.

36. **Authority.** (a) Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

37. **Non-Waiver.** The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, or any of the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any of the other Loan Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

38. **No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

39. **Liability.** The obligations and liabilities of each party constituting the Mortgagor shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

40. **Inapplicable Provision.** If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

41. **Headings, Etc.** The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

42. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

43. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "**Mortgagor**" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "**Mortgagee**" shall mean "Mortgagee and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "**person**" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the words "**Mortgaged Property**" shall include any portion of the Mortgaged Property and any interest therein and the words "**attorneys' fees**" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein

shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

44. **Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

45. **Waiver of Jury Trial.** MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

46. **Miscellaneous.**

(a) The Loan Documents contain the entire agreement between Mortgagor and Mortgagee relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.

(b) Mortgagor represents and warrants to Mortgagee that there has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note or under any of the other Loan Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

(c) Mortgagor acknowledges that, with respect to the Loan, Mortgagor is relying solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Mortgagee or any parent, subsidiary or affiliate of Mortgagee. Mortgagor acknowledges that Mortgagee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of the Mortgagor or its affiliates. Mortgagor acknowledges that it is represented by competent counsel and has consulted counsel before executing the Loan Documents.

(d) Mortgagor covenants and agrees to pay Mortgagee upon receipt of written notice from Mortgagee, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and the costs and expenses of any title insurance company, appraisers, engineers or surveyors) incurred by Mortgagee in connection with (i) the preparation, negotiation, execution

and delivery of this Mortgage and the other Loan Documents; (ii) Mortgagor's performance of and compliance with Mortgagor's respective agreements and covenants contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Mortgagee's performance and compliance with all agreements and conditions contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Mortgage and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Mortgagee pursuant to this Mortgage and the other Loan Documents.

(e) This Mortgage shall be governed by and construed in accordance with the laws of the State of New York and the applicable laws of the United States of America.

(f) Mortgagee shall not be obligated to perform or discharge any obligation of the Mortgagor as a result of the collateral assignment hereby effected, and the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all liability, loss or damage which the Mortgagee may incur by reason of any act of the Mortgagee under this Mortgage, other than as a result of the Mortgagee's willful misconduct or gross negligence. Should the Mortgagee incur any such liability, loss or damage by reason of this Mortgage and which is covered by the foregoing indemnity, or in defense against any such claims or demands, or perform any acts or covenants on the part of Mortgagor to be performed under any lease, or pay for the account of the Mortgagor any and all sums, costs and expenses for the discharge of taxes, assessments, water rents or other liens against the Mortgaged Property or any part thereof, or on account of insurance premiums or repairs, and also any amounts and expenses necessary to perform any covenants and conditions to be performed on the part of the Mortgagor under any lease, the amount thereof, including costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date such expenses were paid by the Mortgagee to the date of payment to the Mortgagee by the Mortgagor, shall be included in the obligations secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor upon demand.

(g) Anything in this Mortgage or the other Loan Documents to the contrary notwithstanding, Mortgagor shall indemnify and hold Mortgagee harmless and defend it at Mortgagor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of Mortgagee's counsel, whether in-house staff, retained firms, or otherwise) and all claims, actions, procedures and suits arising out of or in connection with (a) any ongoing matters arising out of the transaction contemplated by this Mortgage, the Note and the Loan Documents and the Debt (including, but not limited to, all costs and any reappraisals of the Mortgaged Property or any other collateral for the Debt, (b) any amendment to, or restructuring of, the Debt and the Loan Documents, (c) any and all lawful action that may be taken by Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (d) the past, current and/or future sale or offering for sale of any interests in Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky laws. All sums expended by Mortgagee shall be payable on demand and, until reimbursed by Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and shall bear interest at the Default Rate.

(h) That this Mortgage is made pursuant to the Building Loan Agreement intended to be filed in the Office of the Clerk of the County in which the Mortgaged Property are located on or before the date of recording of this Mortgage, and this Mortgage is subject to all of the provisions of such Building Loan Agreement, including, without limitation, the provisions thereof entitling Mortgagee to declare the entire indebtedness secured hereby to be immediately due and payable, all of which provisions

are incorporated herein with the same force and with like effect as if they were fully set forth herein at length and made a part hereof.

47. **Section 291-f Agreement.** This Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby. Mortgagor shall (unless such notice is contained in such commercial lease) deliver notice of this Mortgage in form and substance reasonably acceptable to Mortgagee, to all present and future holders of any interest in any commercial lease, by assignment or otherwise, and shall take such other action as may now or hereafter be reasonably required to afford Mortgagee the full protections and benefits of Section 291f. Mortgagor shall request the recipient of any such notice to acknowledge the receipt thereof.

48. **Transfer Tax Provisions.** (a) Mortgagor covenants and agrees that, in the event of a sale of the Mortgaged Property or other transfer, it will duly complete, execute and deliver to Mortgagee contemporaneously with the submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix any and all applicable state and local real estate transfer taxes, including, without limitation, any real estate transfer taxes payable under Article 31 of the New York State Tax Law or under Title 11, Chapter 21 of the Administrative Code of the City of New York, if applicable, or any successor provisions thereto (collectively, "**Transfer Taxes**") by reason of such sale or other transfer or recording of the deed evidencing such sale or other transfer. This subsection (a) shall apply only if this Mortgage remains outstanding after any such sale or transfer.

(b) Mortgagor shall pay all transfer Taxes that may hereafter become due and payable with respect to any transfer, and in default thereof Mortgagee may pay the same and the amount of such payment shall be added to the Debt and, unless incurred in connection with a foreclosure of this Mortgage, be secured by this Mortgage. The provisions of this Section shall survive any transfer and the delivery of the deed in connection with any transfer.

49. **Maximum Principal Amount.** NOTWITHSTANDING ANY PROVISION SET FORTH HEREIN TO THE CONTRARY, THE MAXIMUM AMOUNT OF PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE AT EXECUTION, OR WHICH UNDER ANY CONTINGENCY MAY BECOME SECURED HEREBY AT ANY TIME HEREAFTER, IS U.S. **One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00)** PLUS ALL INTEREST PAYABLE UNDER THE NOTE AND ALL AMOUNTS EXPENDED BY MORTGAGEE AFTER DEFAULT BY MORTGAGOR (A) FOR THE PAYMENT OF TAXES, CHARGES OR ASSESSMENTS WHICH MAY BE IMPOSED BY LEGAL REQUIREMENTS UPON THE MORTGAGED PROPERTY; (B) TO MAINTAIN THE INSURANCE REQUIRED UNDER THIS MORTGAGE; (C) FOR ANY EXPENSES INCURRED IN MAINTAINING THE MORTGAGED PROPERTY AND UPHOLDING THE LIEN OF THIS MORTGAGE, INCLUDING, BUT NOT LIMITED TO, THE EXPENSE OF ANY LITIGATION TO PROSECUTE OR DEFEND THE RIGHTS AND LIEN CREATED BY THIS MORTGAGE, AND (D) FOR ANY AMOUNT, COST OR CHARGE TO WHICH MORTGAGEE BECOMES SUBROGATED, UPON PAYMENT, WHETHER UNDER RECOGNIZED PRINCIPLES OF LAW OR EQUITY, OR UNDER EXPRESS STATUTORY AUTHORITY.

50. **Covenants in Addition to RPL.** All covenants hereof shall be construed as affording to Mortgagee rights in addition to and not exclusive of the rights conferred under the provisions of Sections 254, 271, 272, 273 and 291-f of the Real Property Law of the State of New York or any other applicable legal requirement.

51. **Patriot Act Compliance.** (u) Mortgagor will use its good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of

governmental authorities having jurisdiction of the Mortgagor and the Mortgaged Property, including those relating to money laundering and terrorism. The Mortgagee shall have the right to audit the Mortgagor's compliance with the Patriot Act and all applicable requirements of governmental authorities having jurisdiction of the Mortgagor and the Mortgaged Property, including those relating to money laundering and terrorism. In the event that the Mortgagor fails to comply with the Patriot Act or any such requirements of governmental authorities, then the Mortgagee may, at its option, cause the Mortgagor to comply therewith and any and all reasonable costs and expenses incurred by the Mortgagee in connection therewith shall be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable. For purposes hereof, the term "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

Neither the Mortgagor nor any partner in the Mortgagor or member of such partner nor any owner of a direct or indirect interest in the Mortgagor (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is not currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("OFAC"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Mortgagee notified Mortgagor in writing is now included in "Governmental Lists".

52. **Assignment of Mortgage.** Upon payment of the Debt in full, Mortgagee agrees to assign this Mortgage to the Mortgagor's designee for mortgage tax-savings purposes, provided Mortgagor pays Mortgagee's attorney's reasonable fees for preparing and delivering the required assignment documentation.

53. **Cross-Default.** This Mortgage, the Note, and the Loan Documents are cross defaulted with any other loans made by Mortgagee (or its affiliates) for which the guarantor(s) of this Mortgage, Note, and Loan Documents, is a surety or guarantor (the "**Cross Default Loans**"). Upon the occurrence of an Event of Default hereunder, Mortgagee shall be permitted to exercise all remedies under the mortgage, the accompanying promissory note and the loan documents of the Cross Default Loans. Upon the occurrence of a default under any of the Cross Default Loans beyond all applicable notice, grace and/or cure periods, Mortgagee shall be permitted to exercise all remedies under this Mortgage, the Note and Loan Documents.

54. **Cross Collateralization.** This Mortgage is cross-collateralized against all property, rights, interests and estates of Mortgagor in and to the Mortgaged Property. Upon the occurrence of an Event of Default under this Mortgage, the Note or any of the Loan Documents, Mortgagee reserves the right, in its

sole and absolute discretion, to exercise its remedies against each of such property, rights, interests and estates, in any such order determined by Mortgagee, or to foreclose simultaneously on all such property, rights, interests and estates. Further, the foreclosure on any less than all of such property, rights, interests and estates shall in no way be considered the exclusive remedy of Mortgagee, and Mortgagee shall be permitted to foreclose with respect to all of the Mortgaged Property until the entire indebtedness due under the Note is satisfied or paid in full. The contemporaneous or separate foreclosure on all or any of such property, rights, interests and estates shall not constitute an election of remedies by Mortgagee.

55. **No Occupancy by Mortgagor et al.** None of (i) Mortgagor, (ii) any guarantor of Mortgagor, (iii) any person holding an equity or other ownership interest in Mortgagor or any guarantor of Mortgagor or (iv) any member of the immediate family of the persons identified in (i), (ii) and (iii) shall occupy or inhabit (or permit the occupancy or habitation of) any part of the Mortgaged Property, including without limitation, any building, structure or other improvement located thereon.

[INTENTIONALLY LEFT BLANK - SIGNATURE PAGE TO FOLLOW]

SCHEDULE "A"
Property Description

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, designated as Block 1804 Lot 65 on the Tax Map of Brooklyn, bounded and described as follows:

BEGINNING at a point on the northerly side of Quincy Street, distant 239 feet 7 inches easterly from the corner formed by the intersection of the northerly side of Quincy Street and the easterly side of Marcy Avenue;

RUNNING THENCE northerly parallel with Marcy Avenue and part of the distance through a party wall, 103 feet 3-3/8 inches to land now or formerly of Rev. M. Van Doren;

THENCE easterly along said land, 14 feet 3-5/8 inches;

THENCE southerly and parallel with Marcy Avenue, 105 feet 3 inches and part of the distance through a party wall to the northerly side of Quincy Street;

THENCE westerly along the northerly side of Quincy Street, 14 feet 2 inches to the point or place of **BEGINNING**.

NOTE: Being Lot(s) Lot: 65, Block: 1804; Tax Map of the Borough of Brooklyn, County of Kings, State of New York.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 347A Quincy Avenue, Brooklyn, NY 11216

"Said premises is
or will be improved by
a *Three* family
dwelling only."

FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO: 501908/2021

NYSCEF DOC. NO. 6

RECEIVED NYSCEF: 01/25/2021

Exhibit E

347A Quincy St Prop LLC
\$1,019,017.98
April 17, 2019

COMMERCIAL GUARANTY

FOR VALUE RECEIVED, the undersigned **Chanon D. Gordon of 1 North Main Street, Windsor Locks, CT 06096** ("Guarantor") hereby unconditionally and absolutely guarantees the prompt payment and performance of a certain Commercial Non-Revolving Line of Credit Promissory Note (the "Note") made by **347A Quincy St Prop LLC**, a New York limited liability company having its principal place of business at **41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217** ("Borrower") dated **April 17, 2019** in favor of **FIRM LENDING LLC**, a Florida limited liability company at its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Lender"), said Note being in the original principal amount of **One Million Nineteen Thousand Seventeen and 98/100 dollars (\$1,019,017.98)** and all monies coming due thereunder, or under any mortgage or any other document granted to secure said Note (all of the foregoing hereinafter collectively referred to as the "Security Instruments") and any environmental indemnification agreement, and any other document executed in relation to and simultaneously with the Note (all of the foregoing hereinafter collectively referred to as the "Documents") (the said Note, Security Instruments, and Documents are hereinafter collectively referred to as the "Loan Documents"). The loan made by Lender to Borrower pursuant to the Note and the Loan Documents is referred to herein as the "Loan".

This Guaranty is intended to guaranty each payment of principal and interest due under said Note and all of the obligations set forth in the Loan Documents and the performance of the Borrower's obligations under the Loan Documents. This Guaranty also includes all costs of collection and attorneys' fees and all other costs, which are required to be paid under the Loan Documents, including but not limited to, any change in the collateral provided in the Loan Documents or any change with respect to the parties who may be liable with respect to the Loan Documents, all without notice to or further assent by Guarantor. Guarantor is to remain bound upon this Guaranty, notwithstanding any such change or extension or release, substitution, exchange or other indulgence granted any maker of said Note. Guarantor hereby waives all defenses, counterclaims, or offsets which Guarantor might have by reason of any change in or to the Loan Documents or any release, exchange, surrender, or impairment of security, or any addition or release of any party liable with respect to the Loan Documents.

(2) Default. Upon any default of Borrower in the payment or performance under any of the Loan Documents, the holder of the Note may enforce this Guaranty immediately against Guarantor without the necessity of any suit or action against Borrower or any other party and without resorting to and without regard to any collateral or any other guarantee or any other source of payment. In the event of default under any of the Loan Documents, Guarantor further agrees to pay all costs, without limitation, attorneys' fees, incurred or expended by the holder of the Note in the collection or attempted collection under this Guaranty and in realization of any lien or security interest securing amounts due hereunder, including, without limitation, those incurred as a result of the Note holder's participation in any proceeding involving Guarantor under the Federal Bankruptcy Code.

(3) Delay or Omission No Waiver. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right; and a waiver one on occasion shall not be a bar to or waiver of any right on any other occasion.

(4) **Continuing Guaranty.** This is a continuing guaranty which shall take effect on its delivery and shall remain in full force and effect and be binding upon Guarantor until the complete satisfaction of all of the obligations set forth in the Loan Documents.

(5) **Waiver.** Guarantor hereby waives demand, presentment, protest, and notice of acceptance of this Guaranty by Lender, and of any loans made, extensions granted or other action taken in reliance hereon and all other demands and notices of any description in connection with this Guaranty, or under the Loan Documents.

(6) **Representations and Warranties.**

(a) Guarantor represents and warrants that Guarantor is deriving direct financial benefit from the loans evidenced by the Note.

(b) Guarantor further represents and warrants that Guarantor is not now insolvent and will not be rendered insolvent by the execution hereof or performance hereunder.

(c) There are no actions, suits or proceedings pending, or to the knowledge of the Guarantor, threatened against or affecting the Guarantor or the properties of the Guarantor before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Guarantor, would have a material adverse effect on the financial condition, properties or operations of the Guarantor.

(d) The most recent financial statements of the Guarantor, copies of which statements have been furnished to the Lender, fairly present the financial condition of the Guarantor as of such dates in accordance with generally accepted accounting principles applied on a consistent basis, and since the date of each of such financial statements, there has been no material adverse change in such condition or operations.

(e) Guarantor is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any charter or other restriction which would have a material adverse effect on the ability of the Guarantor to carry out Guarantor's obligations under this Guaranty.

(f) No information, exhibit or report furnished by the Guarantor to the Lender in connection with the negotiation of this Guaranty contained as of the date thereof, or, if there be no such date, the date of furnishing thereof, any untrue statements of a material fact and do not omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(g) This Guaranty constitutes the valid and legally binding obligation of the Guarantor, enforceable in accordance with its terms, except as the enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally.

(h) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery of this Guaranty, or in connection with the performance of the Guarantor's obligations hereunder, if any, have been obtained as required hereunder or by law.

(7) **Financial Information.** Guarantor shall provide all financial information reasonably requested by Lender. Guarantor shall provide all financial information in such format and containing such information required by Lender.

(8) Dealing with Borrower and Others. Without incurring responsibility to Guarantor and without impairing or releasing the liabilities and obligations of Guarantor hereunder, Lender may, at any time and from time to time, without the consent of or notice to Guarantor, upon any terms or conditions and in whole or in part shall have the right to:

(a) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order, any property by whomsoever at any time pledged, assigned, mortgaged or in which a security interest is given to secure, or howsoever securing, the liabilities and obligations of Borrower;

(b) exercise or refrain from exercising any rights against Borrower or other persons or entities (including Guarantor) or against any security given by Borrower or other persons or entities (including Guarantor), or otherwise act or refrain from acting;

(c) settle or compromise any liabilities and obligations of Borrower to Lender, dispose of any security therefor, with or without consideration, or any liability incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liabilities and obligations of Borrower (whether due or not) to creditors of Borrower other than Lender and Guarantor; and

(d) apply any sums by whomsoever paid and howsoever realized for the benefit of Borrower to any liabilities and obligations of Borrower, subject to the provisions of the Loan Documents.

(9) Subrogation. So long as any of the Note remains unpaid, any liabilities and obligations of Borrower exist under the Loan Documents or Guarantor under this Agreement, Guarantor waives any and all rights of indemnification, reimbursement, subrogation or contribution which Guarantor may otherwise have now or hereafter as a matter of law against Borrower.

(10) Obligations Absolute. The liabilities and obligations of Guarantor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Note or any other Loan Document; (ii) the insolvency of, or the voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting Borrower any other guarantor or any of their assets; or (iii) any other circumstance or claim which otherwise might constitute a defense available to, or a discharge of, Borrower with respect to its liabilities and obligations under the Loan Documents, or of Guarantor with respect to this Agreement.

(11) No Impairment. No invalidity, irregularity or unenforceability of all or any part of any liabilities and obligations of Borrower or the impairment or loss of any security therefor, whether caused by any actions or inactions of Lender, or otherwise, shall affect, impair or be a defense to this Agreement.

(12) Joint and Several Liability. The liability of each Guarantor under this Agreement shall be joint and several with that of each and every other Guarantor.

(13) Rights Cumulative. All rights, powers and remedies afforded to Lender by reason of this Agreement are separate and cumulative remedies, and no one of such remedies whether or not exercised by Lender shall be deemed to exclude any of the other remedies available to Lender nor prejudice the availability of any other legal or equitable remedy which Lender may have with respect to the Loan.

(14) Commercial Transaction. GUARANTOR HEREBY REPRESENTS, COVENANTS AND AGREES THAT THE LOAN IS A "COMMERCIAL TRANSACTION" AS DEFINED BY THE STATUTES OF THE STATE OF NEW YORK. THE GUARANTOR HEREBY WAIVES SUCH RIGHTS AS IT MAY HAVE TO NOTICE AND/OR HEARING UNDER ANY APPLICABLE FEDERAL OR STATE LAWS INCLUDING, WITHOUT LIMITATION, NEW YORK GENERAL STATUTES, PERTAINING TO THE EXERCISE BY THE LENDER OF SUCH RIGHTS AS THE LENDER MAY HAVE INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK PREJUDGMENT REMEDIES AND/OR TO DEPRIVE THE GUARANTOR OF OR AFFECT THE USE OF OR POSSESSION OR ENJOYMENT OF THE GUARANTOR'S PROPERTY PRIOR TO THE RENDITION OF A FINAL JUDGMENT AGAINST THE GUARANTOR. THE GUARANTOR FURTHER WAIVES ANY RIGHT IT MAY HAVE TO REQUIRE THE LENDER TO PROVIDE A BOND OR OTHER SECURITY AS A PRECONDITION TO OR IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT BY THE LENDER, AND WAIVES ANY OBJECTION TO THE ISSUANCE OF SUCH PREJUDGMENT REMEDY BASED ON ANY OFFSETS, CLAIMS, DEFENSES OR COUNTERCLAIMS TO ANY ACTION BROUGHT BY THE LENDER. FURTHER, THE GUARANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISAL, HOMESTEAD, EXEMPTION, STAY REDEMPTION AND MORATORIUM LAWS.

(15) Successors and Assigns. This Guaranty shall inure to the benefit of Lender, and its successors and assigns, and it shall be binding upon Guarantor and the executors, administrators, heirs, successors, and assigns, of each of the Guarantor.

(16) Governing Law and Jurisdiction. THIS GUARANTY SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. THE UNDERSIGNED AGREES THAT THE EXECUTION AND DELIVERY OF THIS GUARANTY, AS WELL AS THE PERFORMANCE OF ANY OBLIGATIONS REQUIRED HEREIN, CONSTITUTE THE TRANSACTION OF BUSINESS WITHIN THE STATE OF NEW YORK. THE UNDERSIGNED ACKNOWLEDGES THAT BY VIRTUE OF TRANSACTING BUSINESS WITHIN THE STATE OF NEW YORK THE UNDERSIGNED SHALL BE SUBJECT TO PERSONAL JURISDICTION IN THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS GUARANTY AND THE UNDERSIGNED APPOINTS THE NEW YORK SECRETARY OF STATE AS ITS ATTORNEY AND AGREES THAT ANY PROCESS IN ANY CASE OF CONTROVERSY ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY MAY BE SERVED UPON THE NEW YORK SECRETARY OF STATE AND SHALL HAVE THE SAME VALIDITY AS IF SERVED UPON THE UNDERSIGNED PERSONALLY. NOTWITHSTANDING THE FOREGOING, THE UNDERSIGNED AGREES TO SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS GUARANTY AND, IN FURTHERANCE OF SUCH AGREEMENT, THE UNDERSIGNED HEREBY AGREES AND CONSENTS THAT WITHOUT LIMITING OTHER METHODS OF OBTAINING JURISDICTION, PERSONAL JURISDICTION OVER THE UNDERSIGNED IN ANY SUCH ACTION OR PROCEEDING MAY BE OBTAINED WITHIN OR WITHOUT THE JURISDICTION OF ANY COURT LOCATED IN NEW YORK AND THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING MAY BE SERVED UPON THE UNDERSIGNED BY REGISTERED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF THE UNDERSIGNED, WHETHER SUCH ADDRESS BE WITHIN OR WITHOUT THE JURISDICTION OF ANY SUCH COURT. THE UNDERSIGNED AGREE THAT ANY APPROPRIATE STATE OR FEDERAL DISTRICT COURT LOCATED IN THE

STATE OF NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CASE OR CONTROVERSY ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY AND SHALL BE A PROPER FORUM IN WHICH TO ADJUDICATE SUCH CASE OR CONTROVERSY.

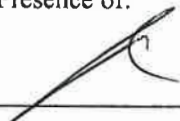
(17) Jury Trial Waiver. GUARANTOR AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE GUARANTOR OR LENDER ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE UNDERSIGNED WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS GUARANTY.

(18) Headings. The descriptive headings of the several sections of this Guaranty are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

[Remainder of page intentionally left blank]


IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of **April 17, 2019**

Signed in the Presence of:

Name: 

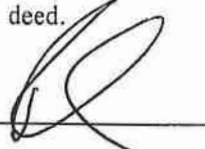
Name: 

GUARANTOR


Chanon D. Gordon, individually

STATE OF NY)
) ss.:
COUNTY OF NY)

On April 17, 2019 before me personally came Chanon D. Gordon, who being by me duly sworn, did depose and say that he/she signed this instrument as his/her voluntary act and deed.


NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 20 22

347A Quincy St Prop LLC
\$150,000.00
April 17, 2019

COMMERCIAL GUARANTY

FOR VALUE RECEIVED, the undersigned **Chanon D. Gordon** of **1 North Main Street, Windsor Locks, CT 06096** ("Guarantor") hereby unconditionally and absolutely guarantees the prompt payment and performance of a certain Building Loan Commercial Promissory Note (the "Note") made by **347A Quincy St Prop LLC**, a New York limited liability company having its principal place of business at **41 Flatbush Avenue, Suite 206, Brooklyn, NY 11217** ("Borrower") dated on **April 17, 2019** in favor of **FIRM LENDING LLC**, a Florida limited liability company at its principal place of business at **150 SE 2nd Avenue, Suite 805, Miami, FL 33131** ("Lender"), said Note being in the original principal amount of **One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00)** and all monies coming due thereunder, or under any mortgage or any other document granted to secure said Note (all of the foregoing hereinafter collectively referred to as the "Security Instruments") and any environmental indemnification agreement, and any other document executed in relation to and simultaneously with the Note (all of the foregoing hereinafter collectively referred to as the "Documents") (the said Note, Security Instruments, and Documents are hereinafter collectively referred to as the "Loan Documents"). The loan made by Lender to Borrower pursuant to the Note and the Loan Documents is referred to herein as the "Loan".

This Guaranty is intended to guaranty each payment of principal and interest due under said Note and all of the obligations set forth in the Loan Documents and the performance of the Borrower's obligations under the Loan Documents. This Guaranty also includes all costs of collection and attorneys' fees and all other costs, which are required to be paid under the Loan Documents.

(1) Consent to Modifications. Guarantor consents to any change in the terms and conditions of the Loan Documents, including but not limited to, any change in the collateral provided in the Loan Documents or any change with respect to the parties who may be liable with respect to the Loan Documents, all without notice to or further assent by Guarantor. Guarantor is to remain bound upon this Guaranty, notwithstanding any such change or extension or release, substitution, exchange or other indulgence granted any maker of said Note. Guarantor hereby waives all defenses, counterclaims, or offsets which Guarantor might have by reason of any change in or to the Loan Documents or any release, exchange, surrender, or impairment of security, or any addition or release of any party liable with respect to the Loan Documents.

(2) Default. Upon any default of Borrower in the payment or performance under any of the Loan Documents, the holder of the Note may enforce this Guaranty immediately against Guarantor without the necessity of any suit or action against Borrower or any other party and without resorting to and without regard to any collateral or any other guarantee or any other source of payment. In the event of default under any of the Loan Documents, Guarantor further agrees to pay all costs, without limitation, attorneys' fees, incurred or expended by the holder of the Note in the collection or attempted collection under this Guaranty and in realization of any lien or security interest securing amounts due hereunder, including, without limitation, those incurred as a result of the Note holder's participation in any proceeding involving Guarantor under the Federal Bankruptcy Code.

(3) Delay or Omission No Waiver. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right; and a waiver one on occasion shall not be a bar to or waiver of any right on any other occasion.

(4) Continuing Guaranty. This is a continuing guaranty which shall take effect on its delivery and shall remain in full force and effect and be binding upon Guarantor until the complete satisfaction of all of the obligations set forth in the Loan Documents.

(5) Waiver. Guarantor hereby waives demand, presentment, protest, and notice of acceptance of this Guaranty by Lender, and of any loans made, extensions granted or other action taken in reliance hereon and all other demands and notices of any description in connection with this Guaranty, or under the Loan Documents.

(6) Representations and Warranties.

(a) Guarantor represents and warrants that Guarantor is deriving direct financial benefit from the loans evidenced by the Note.

(b) Guarantor further represents and warrants that Guarantor is not now insolvent and will not be rendered insolvent by the execution hereof or performance hereunder.

(c) There are no actions, suits or proceedings pending, or to the knowledge of the Guarantor, threatened against or affecting the Guarantor or the properties of the Guarantor before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Guarantor, would have a material adverse effect on the financial condition, properties or operations of the Guarantor.

(d) The most recent financial statements of the Guarantor, copies of which statements have been furnished to the Lender, fairly present the financial condition of the Guarantor as of such dates in accordance with generally accepted accounting principles applied on a consistent basis, and since the date of each of such financial statements, there has been no material adverse change in such condition or operations.

(e) Guarantor is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any charter or other restriction which would have a material adverse effect on the ability of the Guarantor to carry out Guarantor's obligations under this Guaranty.

(f) No information, exhibit or report furnished by the Guarantor to the Lender in connection with the negotiation of this Guaranty contained as of the date thereof, or, if there be no such date, the date of furnishing thereof, any untrue statements of a material fact and do not omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(g) This Guaranty constitutes the valid and legally binding obligation of the Guarantor, enforceable in accordance with its terms, except as the enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally.

(h) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery of this Guaranty, or in connection with the performance of the Guarantor's obligations hereunder, if any, have been obtained as required hereunder or by law.

(7) Financial Information. Guarantor shall provide all financial information reasonably requested by Lender. Guarantor shall provide all financial information in such format and containing such information required by Lender.

(8) Dealing with Borrower and Others. Without incurring responsibility to Guarantor and without impairing or releasing the liabilities and obligations of Guarantor hereunder, Lender may, at any time and from time to time, without the consent of or notice to Guarantor, upon any terms or conditions and in whole or in part shall have the right to:

(a) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order, any property by whomsoever at any time pledged, assigned, mortgaged or in which a security interest is given to secure, or howsoever securing, the liabilities and obligations of Borrower;

(b) exercise or refrain from exercising any rights against Borrower or other persons or entities (including Guarantor) or against any security given by Borrower or other persons or entities (including Guarantor), or otherwise act or refrain from acting;

(c) settle or compromise any liabilities and obligations of Borrower to Lender, dispose of any security therefor, with or without consideration, or any liability incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liabilities and obligations of Borrower (whether due or not) to creditors of Borrower other than Lender and Guarantor; and

(d) apply any sums by whomsoever paid and howsoever realized for the benefit of Borrower to any liabilities and obligations of Borrower, subject to the provisions of the Loan Documents.

(9) Subrogation. So long as any of the Note remains unpaid, any liabilities and obligations of Borrower exist under the Loan Documents or Guarantor under this Agreement, Guarantor waives any and all rights of indemnification, reimbursement, subrogation or contribution which Guarantor may otherwise have now or hereafter as a matter of law against Borrower.

(10) Obligations Absolute. The liabilities and obligations of Guarantor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Note or any other Loan Document; (ii) the insolvency of, or the voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting Borrower any other guarantor or any of their assets; or (iii) any other circumstance or claim which otherwise might constitute a defense available to, or a discharge of, Borrower with respect to its liabilities and obligations under the Loan Documents, or of Guarantor with respect to this Agreement.

(11) No Impairment. No invalidity, irregularity or unenforceability of all or any part of any liabilities and obligations of Borrower or the impairment or loss of any security therefor, whether caused by any actions or inactions of Lender, or otherwise, shall affect, impair or be a defense to this Agreement.

(12) Joint and Several Liability. The liability of each Guarantor under this Agreement shall be joint and several with that of each and every other Guarantor.

(13) Rights Cumulative. All rights, powers and remedies afforded to Lender by reason of this Agreement are separate and cumulative remedies, and no one of such remedies whether or not exercised by Lender shall be deemed to exclude any of the other remedies available to Lender nor prejudice the availability of any other legal or equitable remedy which Lender may have with respect to the Loan.

(14) Commercial Transaction. GUARANTOR HEREBY REPRESENTS, COVENANTS AND AGREES THAT THE LOAN IS A "COMMERCIAL TRANSACTION" AS DEFINED BY THE STATUTES OF THE STATE OF NEW YORK. THE GUARANTOR HEREBY WAIVES SUCH RIGHTS AS IT MAY HAVE TO NOTICE AND/OR HEARING UNDER ANY APPLICABLE FEDERAL OR STATE LAWS INCLUDING, WITHOUT LIMITATION, NEW YORK GENERAL STATUTES, PERTAINING TO THE EXERCISE BY THE LENDER OF SUCH RIGHTS AS THE LENDER MAY HAVE INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK PREJUDGMENT REMEDIES AND/OR TO DEPRIVE THE GUARANTOR OF OR AFFECT THE USE OF OR POSSESSION OR ENJOYMENT OF THE GUARANTOR'S PROPERTY PRIOR TO THE RENDITION OF A FINAL JUDGMENT AGAINST THE GUARANTOR. THE GUARANTOR FURTHER WAIVES ANY RIGHT IT MAY HAVE TO REQUIRE THE LENDER TO PROVIDE A BOND OR OTHER SECURITY AS A PRECONDITION TO OR IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT BY THE LENDER, AND WAIVES ANY OBJECTION TO THE ISSUANCE OF SUCH PREJUDGMENT REMEDY BASED ON ANY OFFSETS, CLAIMS, DEFENSES OR COUNTERCLAIMS TO ANY ACTION BROUGHT BY THE LENDER. FURTHER, THE GUARANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISAL, HOMESTEAD, EXEMPTION, STAY REDEMPTION AND MORATORIUM LAWS.

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STATE OF NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY CASE OR CONTROVERSY ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY AND SHALL BE A PROPER FORUM IN WHICH TO ADJUDICATE SUCH CASE OR CONTROVERSY.

(17) Jury Trial Waiver. GUARANTOR AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE GUARANTOR OR LENDER ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE UNDERSIGNED WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS GUARANTY.

(18) Headings. The descriptive headings of the several sections of this Guaranty are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of April 17,

2019 Signed in the Presence of:

Name: 

Name: 

GUARANTOR

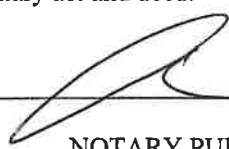


Chanon D. Gordon, individually

STATE OF NY)
COUNTY OF NY)

ss.:

On April 17, 2019 before me personally came Chanon D. Gordon, who being by me duly sworn, did depose and say that he/she signed this instrument as his/her voluntary act and deed.


NOTARY PUBLIC

RANDALL CHALMERS
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CH6155359
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES NOV. 13 2022

Exhibit F

**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.



RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 5**

Document ID: 2020022700511001 Document Date: 02-20-2020 Preparation Date: 02-27-2020
 Document Type: ASSIGNMENT, MORTGAGE
 Document Page Count: 4

PRESENTER:
 POLSINELLI PC
 900 WEST 48TH PLACE, SUITE 900
 KANSAS CITY, MO 64112


RETURN TO:
 POLSINELLI PC
 900 WEST 48TH PLACE, SUITE 900
 KANSAS CITY, MO 64112

PROPERTY DATA				
Borough	Block	Lot	Unit	Address
BROOKLYN	1804	65	Entire Lot	347A QUINCY STREET
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA

CRFN: 2019000145691

PARTIES	
ASSIGNOR/OLD LENDER: FIRM LENDING, LLC 150 SE 2ND AVENUE, SUITE 805 MIAMI, FL 33131	ASSIGNEE/NEW LENDER: TOORAK CAPITAL PARTNERS, LLC 15 MAPLE STREET, SECOND FLOOR WEST SUMMIT, NJ 07901

FEES AND TAXES			
Mortgage :			
Mortgage Amount:	\$	0.00	Filing Fee: \$ 0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax: \$ 0.00
Exemption:			NYS Real Estate Transfer Tax: \$ 0.00
TAXES: County (Basic):	\$	0.00	<p align="center">RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK</p> <p>Recorded/Filed 02-27-2020 12:37 City Register File No.(CRFN): 2020000075749</p>  City Register Official Signature
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	

Prepared by:

Polsinelli PC

Amy E. Hatch, Esq.

900 W. 48th Place, Ste. 900

Kansas City, MO 64112

**ASSIGNMENT OF COMMERCIAL MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FILING**

KNOW THAT Firm Lending, LLC, a Florida limited liability company at its principal place of business at 150 SE 2nd Avenue, Suite 805, Miami, FL 33131 ("**Assignor**") in consideration of Ten (\$10.00) or more Dollars, paid by **Toorak Capital Partners, LLC, A Delaware Limited Liability Company** at its principal place of business at 15 Maple Street, Second Floor West, Summit, NJ 07901 ("**Assignee**"), hereby assigns, sells, transfers and delivers unto Assignee, those certain Commercial Mortgage, Security Agreement and Fixture Filing described in **Exhibit A** (the "**Assigned Loan Documents**") annexed hereto and incorporated herein by this reference, covering the premises commonly known as **347A Quincy Avenue, Brooklyn, NY 11216**, designated on the official tax map of the City of New York and County of Kings as Block 1804, Lot 65 and more particularly described on **Exhibit B** attached hereto and made a part hereof (the "**Premises**").

Such Assigned Loan Documents having been given to secure payment of \$1,019,017.98, which Mortgage is of record in the Office of the City Register of the City of New York, County of Kings, at CRFN 2019000145691, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Assigned Loan Documents.

TOGETHER with the bonds, notes or other obligations described in said Assigned Loan Documents, and the monies due and to grow thereon with interest;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns forever.

The Assigned Loan Documents hereby have not been further assigned except as set forth herein.

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IN WITNESS WHEREOF, the Assignor has duly executed this assignment as of February 09, 2020.

ASSIGNOR:

Firm Lending, LLC

By: Joachim Masvidal
Name: Joachim Masvidal
Title: Manager

STATE OF FL)
) ss.:
COUNTY OF DADE)

I certify that on Feb 20, 2020, Joachim Masvidal came before me in person and stated to my satisfaction that he/she:

(a) made the attached instrument; and

(b) was authorized to and did execute this instrument on behalf of and as Manager of Firm Lending, LLC (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its partnership agreement and partners.

Marlene Azpuru
NOTARY PUBLIC



EXHIBIT A

A Mortgage, Security Agreement, And Fixture Filing and Collateral Assignment Of Leases And Rents between Firm Lending, LLC and 347A QUINCY ST PROP LLC dated April 17, 2019 with regard to the Property located at 347A Quincy Avenue, Brooklyn, NY 11216 in the Mortgage amount of One Million Nineteen Thousand and Seventeen and 98/100 Dollars (\$1,019,017.98).

EXHIBIT B

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, designated as Block 1804 Lot 65 on the Tax Map of Brooklyn, bounded and described as follows:

BEGINNING at a point on the northerly side of Quincy Street, distant 239 feet 7 inches easterly from the corner formed by the intersection of the northerly side of Quincy Street and the easterly side of Marcy Avenue;

RUNNING THENCE northerly parallel with Marcy Avenue and part of the distance through a party wall, 103 feet 3-3/8 inches to land now or formerly of Rev. M. Van Doren;

THENCE easterly along said land, 14 feet 3-5/8 inches;

THENCE southerly and parallel with Marcy Avenue, 105 feet 3 inches and part of the distance through a party wall to the northerly side of Quincy Street;

THENCE westerly along the northerly side of Quincy Street, 14 feet 2 inches to the point or place of **BEGINNING**.

NOTE: Being Lot(s) Lot: 65, Block: 1804; Tax Map of the Borough of Brooklyn, County of Kings, State of New York.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 347A Quincy Avenue, Brooklyn, NY 11216

FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO: 501908/2021

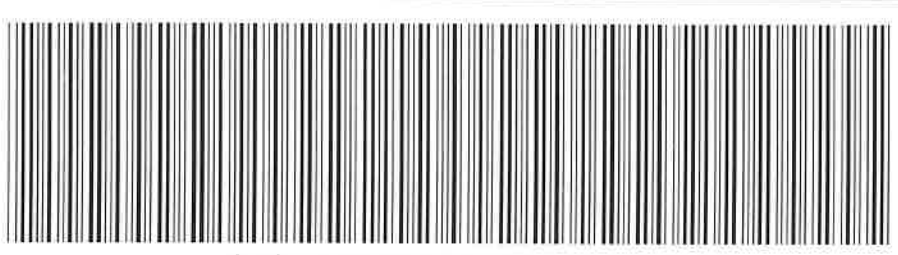
NYSCEF DOC. NO. 8

RECEIVED NYSCEF: 01/25/2021

Exhibit G

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 OFFICE OF THE CITY REGISTER**

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2020022700531001001E33A8

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 5

Document ID: 2020022700531001 Document Date: 02-20-2020 Preparation Date: 02-27-2020
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 KANSAS CITY, MO 64112

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 KANSAS CITY, MO 64112

PROPERTY DATA				
Borough	Block	Lot	Unit	Address
BROOKLYN	1804	65	Entire Lot	347A QUINCY STREET
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA

CRFN: 2019000145692

PARTIES

ASSIGNOR/OLD LENDER:
 FIRM LENDING, LLC
 150 SE 2ND AVENUE, SUITE 805
 MIAMI, FL 33131

ASSIGNEE/NEW LENDER:
 TOORAK CAPITAL PARTNERS, LLC
 15 MAPLE STREET, SECOND FLOOR WEST
 SUMMIT, NJ 07901

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:	\$ 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 02-27-2020 12:37
 City Register File No.(CRFN):
 2020000075757



Annette McMill

City Register Official Signature

Prepared by:

Polsinelli PC

Amy E. Hatch, Esq.

900 W. 48th Place, Ste. 900

Kansas City, MO 64112

ASSIGNMENT OF BUILDING LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

KNOW THAT Firm Lending, LLC, a Florida limited liability company at its principal place of business at 150 SE 2nd Avenue, Suite 805, Miami, FL 33131 (“**Assignor**”) in consideration of Ten (\$10.00) or more Dollars, paid by **Toorak Capital Partners, LLC, A Delaware Limited Liability Company** at its principal place of business at 15 Maple Street, Second Floor West, Summit, NJ 07901 (“**Assignee**”), hereby assigns, sells, transfers and delivers unto Assignee, those certain Building Loan Mortgage, Assignment Of Leases And Rents and Security Agreement described in **Exhibit A** (the “**Assigned Loan Documents**”) annexed hereto and incorporated herein by this reference, covering the premises commonly known as **347A Quincy Avenue, Brooklyn, NY 11216**, designated on the official tax map of the City of New York and County of Kings as Block 1804, Lot 65 and more particularly described on **Exhibit B** attached hereto and made a part hereof (the “**Premises**”).

Such Assigned Loan Documents having been given to secure payment of \$150,000, which Mortgage is of record in the Office of the City Register of the City of New York, County of Kings, at CRFN 2019000145692, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Assigned Loan Documents.

TOGETHER with the bonds, notes or other obligations described in said Assigned Loan Documents, and the monies due and to grow thereon with interest;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns forever.

The Assigned Loan Documents hereby have not been further assigned except as set forth herein.

[Balance of Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the Assignor has duly executed this assignment as of February 10, 2020.

ASSIGNOR:

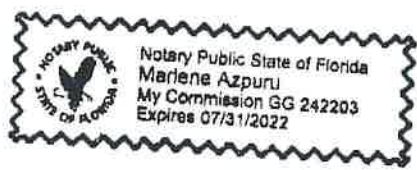
Firm Lending, LLC

By: [Signature]
Name: Joacim Masvidal
Title: Manager

STATE OF FL)
) ss.:
COUNTY OF Dade)

I certify that on Feb 10, 2020, Joacim Masvidal came before me in person and stated to my satisfaction that he/she:

- (a) made the attached instrument; and
(b) was authorized to and did execute this instrument on behalf of and as Manager of Firm Lending, LLC (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its partnership agreement and partners.



[Signature]
NOTARY PUBLIC

EXHIBIT A

A Building Loan Mortgage, Assignment Of Leases And Rents and Security Agreement between Firm Lending, LLC and 347A QUINCY ST PROP LLC dated April 17, 2019 with regard to the Property located at 347A Quincy Avenue, Brooklyn, NY 11216 in the Mortgage amount of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000).

EXHIBIT B

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, designated as Block 1804 Lot 65 on the Tax Map of Brooklyn, bounded and described as follows:

BEGINNING at a point on the northerly side of Quincy Street, distant 239 feet 7 inches easterly from the corner formed by the intersection of the northerly side of Quincy Street and the easterly side of Marcy Avenue;

RUNNING THENCE northerly parallel with Marcy Avenue and part of the distance through a party wall, 103 feet 3-3/8 inches to land now or formerly of Rev. M. Van Doren;

THENCE easterly along said land, 14 feet 3-5/8 inches;

THENCE southerly and parallel with Marcy Avenue, 105 feet 3 inches and part of the distance through a party wall to the northerly side of Quincy Street;

THENCE westerly along the northerly side of Quincy Street, 14 feet 2 inches to the point or place of BEGINNING.

NOTE: Being Lot(s) Lot: 65, Block: 1804; Tax Map of the Borough of Brooklyn, County of Kings, State of New York.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 347A Quincy Avenue, Brooklyn, NY 11216

FILED: KINGS COUNTY CLERK 01/25/2021 04:02 PM

INDEX NO: 501908/2021

NYSCEF DOC. NO. 9

RECEIVED NYSCEF: 01/25/2021

Exhibit H



900 W. 48th Place, Suite 900, Kansas City, MO 64112-1895 • 816.753.1000

August 20, 2019

Amy E. Hatch
(816) 360-4178
(816) 572-5178 Direct Fax
ahatch@polsinelli.com

VIA CERTIFIED MAIL

NOTICE OF ACCELERATION

347A Quincy St Prop LLC
41 Flatbush Ave.
Suite 206
Brooklyn, NY 11217

Chanon D. Gordon
1 North Main Street
Windsor Locks, CT 06096

**Re: Borrower: 347A Quincy St Prop LLC
Original Loan Amount: \$1,019,017.98 and \$150,000.00**

Ladies and Gentlemen:

This Firm is counsel to Normandy Capital Trust (“**Lender**”). Lender is the owner and holder of that certain Commercial Promissory Note dated April 17, 2019, in the original principal amount of \$1,019,017.98 and that certain Building Loan Commercial Promissory Note in the original principal amount of \$150,000 (collectively and as amended from time to time, the “**Notes**,” and the loan evidenced thereby being hereinafter referred to as the “**Loan**”), the original maker of which is 347A Quincy St Prop, LLC (“**Borrower**”). In connection with the Loan, Chanon D. Gordon (“**Guarantor**”) executed that certain Guaranty dated April 17, 2019 (the “**Guaranty**”), pursuant to which Guarantor irrevocably and unconditionally guaranteed performance of certain obligations owed in connection with the Loan.

In order to secure the indebtedness owed in connection with the Loan, Borrower executed that certain Commercial Mortgage, Security Agreement and Fixture Filing dated as of April 17, 2019 and that certain Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement (as amended from time to time, the “**Security Instruments**”). Under the Security Instruments, Lender has a lien on and security interest in certain real property, and improvements thereon, and certain personal property associated therewith, all as further identified in the Security Instruments (collectively, the “**Property**”). Lender is the current holder and owner of the Notes, the Guaranty, the Security Instruments, and all other documents and instruments further evidencing, securing, or executed in connection with the Loan (collectively, the “**Loan Documents**”).

polsinelli.com

Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli LLP in California



347A Quincy St Prop LLC
August 20, 2019
Page 2

Lender has previously notified Borrower that Borrower is in default under the Notes and other Loan Documents as a result of Borrower's failure to timely make payments due and owing thereunder. Borrower has failed to cure the defaults under the Loan, and, as a result, Borrower and Guarantor remain in default under their respective obligations owed under the Loan Documents. Accordingly, Lender has elected to accelerate the indebtedness owed under the Notes and other Loan Documents, and, as a result of such acceleration, Borrower's license under the Loan Documents to receive, collect and make use of rents, profits and income of any other type (the "**Rents**") is hereby revoked, and all such Rents are now the property of Lender. You shall hold the Rents in trust for the benefit of Lender. The revocation of Borrower's license to collect and make use of the Rents shall remain in full force and effect until such time as Lender and Borrower otherwise agree in a signed writing.

Lender may pursue any other available rights and remedies under the Loan Documents or at law or in equity, without further notice or demand, and all as Lender may determine in its sole discretion. Such rights and remedies include, but are not limited to, the appointment of a receiver to take possession of and administer the Property and foreclosure of the Property.

Lender, or Lender's servicer or other agents, may, from time to time, generate automated billing statements or other statements that are forwarded to Borrower or to other persons or entities on a monthly or other periodic basis. The forwarding to you of any billing statement from this time forward, including any billing statement that purports to state amounts due and owing by Borrower that are different from the accelerated indebtedness owed, may not be relied upon by Borrower, does not act to de-accelerate or reinstate the debt in any manner, and does not result in any waiver of Lender's rights as set forth herein, all of which are reserved in their entirety.

Any partial payment made by Borrower, or acceptance of any partial payment by Lender or any of its representatives or loan servicing agents, of any amount that is not sufficient to pay the amounts owed Lender in full is not intended, and shall not be deemed, to constitute a waiver of any of Lender's rights, remedies or recourse under the Loan Documents or at law or in equity. Any application of any such payment is not intended, and shall not be deemed, to be a modification, rearrangement or extension of the existing Loan Documents. Any such payment shall be applied in such order and manner as Lender may elect in its sole discretion or as may be provided in the Loan Documents, without any waiver by Lender of its right to pursue any of its rights or remedies under the Loan Documents or at law or in equity.

Any past or future negotiation between you or your representatives or agents on the one hand and Lender and its representatives or agents on the other do not and shall not constitute a

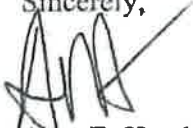


347A Quincy St Prop LLC
August 20, 2019
Page 3

waiver of Lender's right to exercise its rights and remedies under the Loan Documents or at law or in equity. Any alleged waiver of any of Lender's rights shall not be effective unless in writing duly executed by an authorized representative of Lender. Neither Borrower nor any other obligor for the indebtedness owed under the Loan Documents shall be entitled to rely upon any oral statements made or purported to be made by or on behalf of Lender or its agents in connection with any alleged agreement by or on behalf of Lender to refrain from exercising any of Lender's rights under the Loan Documents or otherwise at law or in equity.

Nothing set forth herein is intended, and nothing herein shall be deemed, to modify, limit, release, reduce, or waive any of Lender's rights, remedies, or privileges under any of the Loan Documents, or at law or in equity, all of which are hereby specifically reserved. Furthermore, the enumeration of any specific default herein is not intended, and shall not be deemed, to waive other defaults that may currently exist under the Loan Documents.

Thank you for your attention to this matter.

Sincerely,

Amy E. Hatch

AEH:jag

cc: Clark Rogers (via electronic mail)

Ship Request Form

Ship Request #: 017856 9214 8901 6350 3900 0267 16



Sender	Recipient
Name: Annle Chllton	Attn To: Chanon D. Gordon
Matter #: 101672-614759	Company: Chanon D. Gordon
Phone: 816-360-4169	Address: 1 North Main Street
Email: achllton@polsinelli.com	
Mail Stop:	City: Windsor Locks
Building:	State: CT
Floor:	Zip: 06096
Tracking #: 9214890163503900026716	Country: US

Shipping Instructions

Items					
Units	Description	Code	Origin	Unit Value	Total Value

Ship Request Form

Ship Request #: 017855 9214 8901 6350 3900 0267 09



Sender

Name: Annie Chilton
Matter #: 101672-614759
Phone: 816-360-4169
Email: achilton@polsinelli.com
Mail Stop:
Building
Floor:
Tracking #: 9214890163503900026709

Recipient

Attn To: 347A Quincy St Prop LLC
Company: 347A Quincy St Prop LLC
Address: 41 Flatbush Ave.
Suite 206
City: Brooklyn
State: NY
Zip: 11217
Country: US

Shipping Instructions

Items

Units	Description	Code	Origin	Unit Value	Total Value
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EXHIBIT 6

<p>NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER</p> <p>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.</p>	 <p>2019052200081001002EF2A6</p>
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RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 13**

Document ID: 2019052200081001 Document Date: 05-13-2019 Preparation Date: 06-10-2019

Document Type: MORTGAGE
Document Page Count: 12

<p>PRESENTER: SEARCHTEC INC. D/B/A ST2 INC. 314 N. 12TH STREET STE# 100 PHILADELPHIA, PA 19107 215-963-0888 RECORDINGDOCS@SEARCHTEC.COM</p>	<p>RETURN TO: SEARCHTEC INC. D/B/A ST2 INC. 314 N. 12TH STREET STE# 100 PHILADELPHIA, PA 19107 215-963-0888 RECORDINGDOCS@SEARCHTEC.COM</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------

PROPERTY DATA				
Borough	Block	Lot	Unit	Address
BROOKLYN	1804	65	Entire Lot	347A QUINCY
Property Type: DWELLING ONLY - 3 FAMILY				

CROSS REFERENCE DATA


CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES	
<p>MORTGAGOR/BORROWER: 347A QUINCY ST PROP LLC 347S QUINCY STREET BROOKLYN, NY 11216</p>	<p>MORTGAGEE/LENDER: FAST ADVANCE FUNDING INC. 20 NORTH 3RD ST., STE 100 PHILADELPHIA, PA 19106</p>

FEES AND TAXES			
Mortgage :		Filing Fee:	
Mortgage Amount:	\$ 396,000.00		\$ 0.00
Taxable Mortgage Amount:	\$ 396,000.00	NYC Real Property Transfer Tax:	\$ 0.00
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 1,980.00	NYS Real Estate Transfer Tax:	\$ 0.00
City (Additional):	\$ 3,960.00		\$ 0.00
Spec (Additional):	\$ 0.00		
TASF:	\$ 990.00		
MTA:	\$ 1,188.00		
NYCTA:	\$ 0.00		
Additional MRT:	\$ 0.00		
TOTAL:	\$ 8,118.00		
Recording Fee:	\$ 97.00		
Affidavit Fee:	\$ 0.00		

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

Recorded/Filed 06-12-2019 10:05
City Register File No.(CRFN):
2019000183976



Annette McMill
City Register Official Signature

ORDER# CBS00172
Record & Return to: SearchTec
314 N 12th St, Suite 100 Phila. Pa. 19107
215-963-0688



THIS IS A 3-6 FAMILY DWELLING.

SECURITY AGREEMENT

- (A) **“Security Instrument”** means this document, which is dated 5/13/19, together with any and all Riders to this document.
- (B) **“Mortgagor”** is 347A Quincy St Prop LLC, with an address of 347A Quincy Street, Brooklyn, NY 11216.
- (C) **“Mortgagee”** is Fast Advance Funding Inc. Mortgagee is a corporation organized and existing under the laws of the State of Delaware. Mortgagee’s address is 20 North 3rd Street, Philadelphia, Pennsylvania 19106. Mortgagee is the mortgagee under this Security Instrument.
- (D) **“Agreement”** means (singly or collectively, as the case may be) the Agreement(s) For The Purchase And Sale Of Future Receivables signed by GORDON MANAGEMENT GROUP LLC DBA GORDON MANAGEMENT GROUP (“GORDON”) and dated as of May 10, 2019. The Agreement states that GORDON owes Mortgagee \$396,000.00 plus fees.
- (E) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”
- (F) **“Advance”** means the debt evidenced by the Agreement, plus fees, any prepayment charges and late charges due under the Agreement, and all sums due under this Security Instrument, plus fees.
- (G) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- (H) **“Electronic Funds Transfer”** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic

instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(I) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) "Periodic Payment" means the regularly scheduled amount due for (i) principal and fees under the Agreement, plus (ii) any amounts under Section 3 of this Security Instrument.

(K) "Successor in Interest of Mortgagor" means any party that has taken title to the Property, whether or not that party has assumed Mortgagor's obligations under the Agreement and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Mortgagee: (i) the repayment of the Advance, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Mortgagor's and GORDON's covenants and agreements under this Security Instrument and the Agreement. For this purpose, Mortgagor does hereby mortgage, grant and convey to Mortgagee, with power of sale, the following described property: 347A Quincy Street a/k/a 347 A Quincy Street, Brooklyn, NY ("Property Address") (see Exhibit "A" hereto).

TOGETHER WITH all the improvements now or hereafter erected on the Property Address, and all easements, appurtenances, and fixtures now or hereafter a part of the Property Address. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

MORTGAGOR COVENANTS that Mortgagor is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Mortgagor warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances whether or not of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and nonuniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Mortgagor and Mortgagee covenant and agree as follows:

1. Payment of Principal, Fees, Prepayment Charges, and Late Charges. GORDON shall pay when due the principal of, and fees on, the debt evidenced by the Agreement and any prepayment charges and late charges due under the Agreement. Payments due under the Agreement and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Mortgagee as payment under the Agreement or this Security Instrument is returned to Mortgagee unpaid, Mortgagee may require that any or all subsequent payments due under the Agreement and this Security Instrument be made in one or more of the following forms, as selected by Mortgagee: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Mortgagee when received at the location designated in the Agreement or at such other location as may be designated by Mortgagee in accordance with the notice provisions in Section 13. Mortgagee may return any payment or partial payment if the payment or partial payments are insufficient to bring the Advance current. Mortgagee may accept any payment or partial

payment insufficient to bring the Advance current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Mortgagee is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Mortgagee need not pay Fees on unapplied funds. Mortgagee may hold such unapplied funds until GORDON makes payment to bring the Advance current. If GORDON does not do so within a reasonable period of time, Mortgagee shall either apply such funds or return them to GORDON. If not applied earlier, such funds will be applied to the outstanding principal balance under the Agreement immediately prior to foreclosure. No offset or claim which GORDON might have now or in the future against Mortgagee shall relieve GORDON from making payments due under the Agreement and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Mortgagee shall be applied in the following order of priority: (a) fees due under the Agreement; (b) principal due under the Agreement. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Agreement.

If Mortgagee receives a payment from GORDON for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Mortgagee may apply any payment received from Mortgagor to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Agreement.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Charges; Liens. Mortgagor shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Mortgagor shall promptly discharge any lien which has priority over this Security Instrument unless Mortgagor: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Mortgagee, but only so long as Mortgagor is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Mortgagee's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Mortgagee subordinating the lien to this Security Instrument. If Mortgagee determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Mortgagee may give Mortgagor a notice identifying the lien. Within 10 days of the date on which that notice is given, Mortgagor shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Mortgagee may require Mortgagor to pay a one-time charge for a real estate tax verification and/or reporting service used by Mortgagee in connection with this Advance.

4. Property Insurance. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Mortgagee requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Mortgagee requires. What Mortgagee requires pursuant to the preceding sentences can change during the term of the Advance. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Mortgagee's right to disapprove Mortgagor's choice, which right shall not be exercised unreasonably. Mortgagee may require Mortgagor to pay, in connection with this Advance, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone

determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Mortgagor shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Mortgagor.

If Mortgagor fails to maintain any of the coverages described above, Mortgagee may obtain insurance coverage, at Mortgagee's option and Mortgagor's expense. Mortgagee is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Mortgagee, but might or might not protect Mortgagor, Mortgagor's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Mortgagor acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Mortgagor could have obtained. Any amounts disbursed by Mortgagee under this Section 4 shall become additional debt of GORDON secured by this Security Instrument. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest within 30 days after the date of the Notice.

All insurance policies required by Mortgagee and renewals of such policies shall be subject to Mortgagee's right to disapprove such policies, shall include a standard mortgage clause, and shall name Mortgagee as mortgagee and/or as an additional loss payee. Mortgagee shall have the right to hold the policies and renewal certificates. If Mortgagee requires, Mortgagor shall promptly give to Mortgagee all receipts of paid premiums and renewal notices. If Mortgagor obtains any form of insurance coverage, not otherwise required by Mortgagee, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Mortgagee as mortgagee and/or as an additional loss payee.

In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor. Unless Mortgagee and Mortgagor otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Mortgagee, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Mortgagee's security is not lessened. During such repair and restoration period, Mortgagee shall have the right to hold such insurance proceeds until Mortgagee has had an opportunity to inspect such Property to ensure the work has been completed to Mortgagee's satisfaction, provided that such inspection shall be undertaken promptly. Mortgagee may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Mortgagee shall not be required to pay Mortgagor any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Mortgagor shall not be paid out of the insurance proceeds and shall be the sole obligation of Mortgagor. If the restoration or repair is not economically feasible or Mortgagee's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Mortgagor abandons the Property, Mortgagee may file, negotiate and settle any available insurance claim and related matters. If Mortgagor does not respond within 30 days to a notice from Mortgagee that the insurance carrier has offered to settle a claim, then Mortgagee may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Mortgagee acquires the Property under Section 19 or otherwise, Mortgagor hereby assigns to Mortgagee (a) Mortgagor's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Security Instrument, and (b) any other of Mortgagor's rights (other than the right to any refund of unearned premiums paid by Mortgagor) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Mortgagee may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Security Instrument, whether or not then due.

5. Occupancy. Mortgagor or GORDON, as appropriate, shall, within 60 days after

the execution of this Security Instrument, either: (a) occupy, establish, and use the Property as its principal residence or principal place of business/business residence, or (b) if the Property is an investment property, ensure that the Property is occupied. Any occupation of the Property shall continue for at least one year after the date of occupancy, unless Mortgagee otherwise consents in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Mortgagor's or GORDON's control.

6. Preservation, Maintenance and Protection of the Property; Inspections. Mortgagor shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Mortgagor is residing in the Property, Mortgagor shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Mortgagor shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Mortgagor shall be responsible for repairing or restoring the Property only if Mortgagee has released proceeds for such purposes. Mortgagee may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Mortgagor is not relieved of Mortgagor's obligation for the completion of such repair or restoration.

Mortgagee or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Mortgagee may inspect the interior of the improvements on the Property. Mortgagee shall give Mortgagor notice at the time of or prior to such an interior inspection specifying such reasonable cause.

7. GORDON's Advance Application. Mortgagor shall be in default hereunder if, during the Advance application process, Mortgagor or any persons or entities acting at the direction of GORDON or with GORDON's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Mortgagee (or failed to provide Mortgagee with material information) in connection with the Advance.

8. Protection of Mortgagee's Interest in the Property and Rights Under this Security Instrument. If (a) Mortgagor fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Mortgagee's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Mortgagor has abandoned the Property, then Mortgagee may do and pay for whatever is reasonable or appropriate to protect Mortgagee's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Mortgagee's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Mortgagee may take action under this Section 8, Mortgagee does not have to do so and is not under any duty or obligation to do so. It is agreed that Mortgagee incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Mortgagee under this Section 8 shall become additional debt of GORDON secured by this Security Instrument. These amounts shall bear Fees at the Agreement rate from the date of disbursement and shall be payable, with such Fees, upon notice from Mortgagee to Mortgagor requesting payment.

9. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Mortgagee.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Mortgagee's security is not lessened. During such repair and restoration period, Mortgagee shall have the right to hold such Miscellaneous Proceeds until Mortgagee has had an opportunity to inspect such Property to ensure the work has been completed to Mortgagee's satisfaction, provided that such inspection shall be undertaken promptly. Mortgagee may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Mortgagee shall not be required to pay Mortgagor any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Mortgagee's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Mortgagor and Mortgagee otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Mortgagor.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Mortgagor and Mortgagee otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Mortgagor, or if, after notice by Mortgagee to Mortgagor that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Mortgagor fails to respond to Mortgagee within 30 days after the date the notice is given, Mortgagee is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Mortgagor Miscellaneous Proceeds or the party against whom Mortgagor has a right of action in regard to Miscellaneous Proceeds.

Mortgagor shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Mortgagee's judgment, could result in forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Mortgagee's judgment, precludes forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Mortgagee's interest in the Property are hereby assigned and shall be paid to Mortgagee.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

10. Forbearance By Mortgagee Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Mortgagee to GORDON or any Successor in Interest of GORDON shall not operate to release the liability of Mortgagor or any Successors in Interest of Mortgagor. Mortgagee shall not be required to commence proceedings

against any Successor in Interest of GORDON or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Mortgagor or any Successors in Interest of GORDON. Any forbearance by Mortgagee in exercising any right or remedy including, without limitation, Mortgagee's acceptance of payments from third persons, entities or Successors in Interest of GORDON or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

11. Joint and Several Liability; Co-signers; Successors and Assigns Bound. If more than one, Mortgagor covenants and agrees that Mortgagor's obligations and liability under this Security Instrument shall be joint and several. However, any Mortgagor who co-signs this Security Instrument but does not execute the Agreement (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Mortgagee and any other Mortgagor can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Agreement without the co-signer's consent.

Subject to the provisions of Section 16, any Successor in Interest of Mortgagor who assumes Mortgagor's obligations under this Security Instrument in writing, and is approved by Mortgagee, shall obtain all of Mortgagor's rights and benefits under this Security Instrument. Mortgagor shall not be released from Mortgagor's obligations and liability under this Security Instrument unless Mortgagee agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 17) and benefit the successors and assigns of Mortgagee.

12. Advance Charges. Mortgagee may charge Mortgagor fees for services performed in connection with Mortgagor's default hereunder, for the purpose of protecting Mortgagee's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees, which fees may be incurred prior to or in connection with any bankruptcy proceedings. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Mortgagor shall not be construed as a prohibition on the charging of such fee. Mortgagee may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Advance is subject to a law which sets maximum Advance charges, and that law is finally interpreted so that the fees or other Advance charges collected or to be collected in connection with the Advance exceed the permitted limits, then: (a) any such Advance charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Mortgagor which exceeded permitted limits will be refunded. Mortgagee may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to GORDON. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). The acceptance of any such refund made by direct payment to GORDON will constitute a waiver of any right of action GORDON might have arising out of such overcharge.

13. Notices. All notices given by Mortgagor or Mortgagee in connection with this Security Instrument must be in writing. Any notice to Mortgagor in connection with this Security Instrument shall be deemed to have been given to Mortgagor when mailed by first class mail or when actually delivered to Mortgagor's notice address if sent by other means. Notice to any one Mortgagor shall constitute notice to all Mortgagors unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Mortgagor has designated a substitute notice address by notice to Mortgagee. Mortgagor shall promptly notify Mortgagee of Mortgagor's change of address. If Mortgagee specifies a procedure for reporting Mortgagor's change of address, then Mortgagor shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Mortgagee shall be given by delivering it or by mailing it by first class mail to Mortgagee's address stated herein unless Mortgagee has designated another address by notice to Mortgagor.

Any notice in connection with this Security Instrument shall not be deemed to have been given to Mortgagee until actually received by Mortgagee. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

14. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Agreement which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

15. Mortgagor's Copies. If request therefor is made to Mortgagee in writing, Mortgagor shall be given one copy of the Agreement and of this Security Instrument. To the extent there is any missing, incomplete, or incorrect information (including but not limited to information required to record this Security Instrument) in this Security Instrument, Mortgagor agrees that Mortgagee may serve as Mortgagor's attorney-in-fact for the limited purpose of correcting, completing, or supplying such information in the Security Instrument.

16. Transfer of the Property or a Beneficial Interest in Mortgagor. As used in this Section 16, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Mortgagor at a future date to a Mortgagee.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Mortgagor is not a natural person and a beneficial interest in Mortgagor is sold or transferred) without Mortgagee's prior written consent, Mortgagee may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Mortgagee if such exercise is prohibited by Applicable Law.

If Mortgagee exercises this option, Mortgagee shall give Mortgagor notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 13 within which all sums secured by this Security Instrument must be paid. If such sums are not paid prior to the expiration of this period, Mortgagee may invoke any remedies permitted by this Security Instrument without further notice or demand.

17. Mortgagor's Right to Reinstate After Acceleration. If Mortgagor meets certain conditions, Mortgagor shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Mortgagor's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Mortgagor or GORDON: (a) pays Mortgagee all sums which then would be due under this Security Instrument and the Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Mortgagee's interest in the Property and rights under this Security Instrument; and (d) takes such action as Mortgagee may reasonably require to assure that Mortgagee's interest in the Property and rights under this Security Instrument, and the obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Mortgagee may require that such reinstatement sums and expenses are paid in one or more of the following forms, as selected by Mortgagee: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement, this Security Instrument and obligations secured hereby

shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 16.

18. Sale of Agreement; Change of Advance Servicer; Notice of Grievance. The Agreement or a partial interest in the Agreement (together with this Security Instrument) can be sold one or more times without prior notice to Mortgagor. A sale might result in a change in the entity (known as the "Advance Servicer") that collects Periodic Payments due under the Agreement and/or this Security Instrument and performs other mortgage servicing obligations under the Agreement, this Security Instrument, and Applicable Law. There also might be one or more changes of the Advance Servicer unrelated to a sale of the Agreement. If there is a change of the Advance Servicer, GORDON and Mortgagor will be given written notice of the change which will state the name and address of the new Advance Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Agreement is sold and thereafter the Advance is serviced by an Advance Servicer other than the Mortgagee, the mortgage servicing obligations to GORDON and/or Mortgagor will remain with the Advance Servicer or be transferred to a successor Advance Servicer and are not assumed by the Mortgagee unless otherwise provided by the Agreement.

Neither Mortgagor nor Mortgagee may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Mortgagor or Mortgagee has notified the other party (with such notice given in compliance with the requirements of Section 13) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Mortgagor pursuant to Section 20 and the notice of acceleration given to Mortgagor pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 18.

19. Hazardous Substances. As used in this Section 19: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup. Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Mortgagor shall promptly give Mortgagee written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Mortgagor has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Mortgagor learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of

any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Mortgagee for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Mortgagor and Mortgagee further covenant and agree as follows:

20. Acceleration; Default; Remedies. Subject to the provisions of this Section 20, Mortgagee may accelerate and require immediate payment in full of all sums secured by this Security Instrument. Unless Applicable Law does not require the provision of notice as described in this Section 20, Mortgagee shall give notice to Mortgagor and GORDON prior to acceleration following Mortgagor's breach of any covenant, representation, warranty, term, provision, or agreement in this Security Instrument (but not prior to acceleration under Section 16 unless Applicable Law provides otherwise) or following GORDON's breach of any covenant, representation, warranty, term, agreement, or provision of the Agreement or breach of any addendum to the Agreement. Any such breach of this Security Instrument or the Agreement or any addendum thereto shall be considered an event of default under this Security Instrument. The aforementioned notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Mortgagee at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding or, if permissible, by non-judicial proceedings. Mortgagee shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 20, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

21. Release. Upon payment of all sums secured by this Security Instrument, Mortgagee shall release this Security Instrument. Mortgagee may charge Mortgagor a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

22. Waiver of Valuation and Appraisalment. Mortgagor waives all right of valuation and appraisalment.

BY SIGNING BELOW, Mortgagor accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Mortgagor and recorded with it.

347A Quincy St Prop LLC

By: *Chanon D. Gordon*
Chanon D. Gordon, Managing Member

Attest:

Karen Brinkman
(Signature)

Karen Brinkman, Notary Public
(Print Name & Title)

State of Connecticut

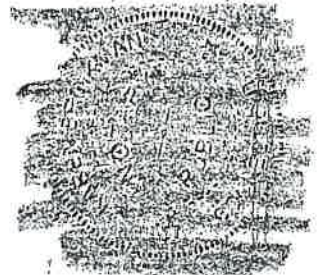
County of Hartford

On this 15th day of May, in the year 2019 before me, the undersigned Notary Public, personally appeared Chanon D. Gordon, 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 as Managing Member of 347A Quincy St Prop LLC, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument, and that such individual made such appearance before the undersigned in the city/town/township/borough/village of Bloomfield, in the county of Hartford, in the state of Connecticut.

SEAL

Karen Brinkman
Notary Public

My Commission Expires: _____
KAREN BRINKMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31, 2019



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, designated as Block 1804 Lot 65 on the Tax Map of Brooklyn, bounded and described as follows:

BEGINNING at a point on the northerly side of Quincy Street, distant 239 feet 7 inches easterly from the corner formed by the intersection of the northerly side of Quincy Street and the easterly side of Marcy Avenue;

RUNNING THENCE northerly parallel with Marcy Avenue and part of the distance through a party wall, 103 feet 3-3/8 inches to land now or formerly of Rev. M. Van Dorcu;

THENCE easterly along said land, 14 feet 3-5/8 inches;

THENCE southerly and parallel with Marcy Avenue, 165 feet 3 inches and part of the distance through a party wall to the northerly side of Quincy Street;

THENCE westerly along the northerly side of Quincy Street, 14 feet 2 inches to the point or place of **BEGINNING**.

NOTE: Being Lot(s) Lot: 65, Block: 1804; Tax Map of the Borough of Brooklyn, County of Kings, State of New York.

NOTE: Lot and Block shown for informational purposes only.

Premises known as: 347A Quincy Avenue, Brooklyn, NY 11216

EXHIBIT "A"

EXHIBIT 7

DRIVE-BY BPO

by ClearCapital

347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

\$1,460,000
As-Is Value

Please Note: This report was completed with the following assumptions: Market Approach: **Fair Market Price**, Marketing Time: **Typical**, Important additional information relating to this report, including use and restrictions, is contained in an attached addendum which is an integral part of this report.

Address	347a Quincy Street, Brooklyn, NY 11216	Order ID	8393072	Property ID	33206716
Inspection Date	08/23/2022	Date of Report	08/24/2022		
Loan Number	TCM19074	APN	3018040065		
Borrower Name	347A Quincy St Prop LLC	County	Kings		

Tracking IDs

Order Tracking ID	TCM19074	Tracking ID 1	TCM19074
Tracking ID 2	--	Tracking ID 3	--

General Conditions

Owner	TGG REINVEST LLC
R. E. Taxes	\$2,660
Assessed Value	\$13,325
Zoning Classification	R6B
Property Type	Multifamily
Occupancy	Occupied
Ownership Type	Fee Simple
Property Condition	Average
Estimated Exterior Repair Cost	\$0
Estimated Interior Repair Cost	\$0
Total Estimated Repair	\$0
HOA	No
Visible From Street	Visible
Road Type	Public

Condition Comments

No adverse conditions were noted at the time of inspection. Unable to determine possible interior repairs due to exterior inspection only. Positive features: location contributes value, well maintained condition. Negative features: none observed.

Neighborhood & Market Data

Location Type	Urban
Local Economy	Stable
Sales Prices in this Neighborhood	Low: \$2,200 High: \$2,825,000
Market for this type of property	Increased 6 % in the past 6 months.
Normal Marketing Days	<180

Neighborhood Comments

The subject property is located in residential area of Brooklyn, the percentage of renters within subject's area is 78%, demand for housing and rent is stable. Supply and demand are in balance.

DRIVE-BY BPO

by ClearCapital

347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

\$1,460,000
As-Is Value

Current Listings

	Subject	Listing 1	Listing 2 *	Listing 3
Street Address	347a Quincy Street	614 Madison St	322 Madison St	725 Quincy St
City, State	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY
Zip Code	11216	11221	11216	11221
Datasource	Tax Records	MLS	MLS	MLS
Miles to Subj.	--	0.68 ¹	0.19 ¹	0.90 ¹
Property Type	Multifamily	Multifamily	Multifamily	Multifamily
Original List Price \$	\$	\$1,500,000	\$1,595,000	\$1,600,000
List Price \$	--	\$1,500,000	\$1,595,000	\$1,600,000
Original List Date		09/15/2021	08/09/2022	03/08/2022
DOM - Cumulative DOM	-- - --	341 - 343	13 - 15	168 - 169
Age (# of years)	123	123	107	123
Condition	Average	Average	Average	Average
Sales Type	--	Fair Market Value	Fair Market Value	Fair Market Value
Location	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
View	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
Style/Design	3 Stories Colonial	2 Stories Colonial	3 Stories Colonial	3 Stories Colonial
# Units	3	3	2	2
Living Sq. Feet	3,004	2,520	3,200	3,360
Bdrm - Bths - ½ Bths	5 - 2	3 - 3	6 - 3	7 - 4
Total Room #	10	11	14	17
Garage (Style/Stalls)	None	None	None	None
Basement (Yes/No)	Yes	Yes	Yes	Yes
Basement (% Fin)	100%	100%	100%	100%
Basement Sq. Ft.	751	840	800	840
Pool/Spa	--	--	--	--
Lot Size	0.03 acres	0.05 acres	0.05 acres	0.05 acres
Other	none	none	none	none

* Listing 2 is the most comparable listing to the subject.

¹ Comp's "Miles to Subject" was calculated by the system.

² Comp's "Miles to Subject" provided by Real Estate Professional.

³ Subject \$/ft based upon as-is sale price.

Listing Comments Why the comparable listing is superior or inferior to the subject.

Listing 1 The comparable listing is located in the same market area, inferior in size, similar in garage count, age, superior in lot size, bathroom count.

Listing 2 The comparable listing is located in the same market area, superior in size, bathroom count, lot size, similar in garage count, inferior in unit count, newer.

Listing 3 The comparable listing is located in the same market area, superior in size, bathroom count, lot size, similar in garage count, age, inferior in unit count.

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by ClearCapital

347A QUINCY STREET
BROOKLYN, NY 11216**TCM19074**
Loan Number**\$1,460,000**
As-Is Value**Recent Sales**

	Subject	Sold 1 *	Sold 2	Sold 3
Street Address	347a Quincy Street	266 Monroe St	374 Madison St	43 Brevoort Pl
City, State	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY	Brooklyn, NY
Zip Code	11216	11216	11221	11216
Datasource	Tax Records	MLS	MLS	MLS
Miles to Subj.	--	0.18 ¹	0.24 ¹	0.63 ¹
Property Type	Multifamily	Multifamily	Multifamily	Multifamily
Original List Price \$	--	\$1,450,000	\$1,500,000	\$2,100,000
List Price \$	--	\$1,450,000	\$1,500,000	\$1,750,000
Sale Price \$	--	\$1,410,000	\$1,450,000	\$1,500,000
Type of Financing	--	Conventional	Conventional	Conventional
Date of Sale	--	12/06/2021	09/08/2021	04/05/2022
DOM · Cumulative DOM	-- · --	76 · 161	174 · 272	225 · 321
Age (# of years)	123	140	123	112
Condition	Average	Average	Average	Average
Sales Type	--	Fair Market Value	Fair Market Value	Fair Market Value
Location	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
View	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential	Neutral ; Residential
Style/Design	3 Stories Colonial	2 Stories Colonial	2 Stories Colonial	3 Stories Colonial
# Units	3	3	3	3
Living Sq. Feet	3,004	2,400	2,700	3,400
Bdrm · Bths · ½ Bths	5 · 2	5 · 3	5 · 3	5 · 4
Total Room #	10	10	8	9
Garage (Style/Stalls)	None	None	None	None
Basement (Yes/No)	Yes	Yes	Yes	Yes
Basement (% Fin)	100%	100%	100%	100%
Basement Sq. Ft.	751	800	900	833
Pool/Spa	--	--	--	--
Lot Size	0.03 acres	0.05 acres	0.05 acres	0.03 acres
Other	none	none	none	new floors, eik
Net Adjustment	--	+\$62,000	+\$27,000	-\$57,000
Adjusted Price	--	\$1,472,000	\$1,477,000	\$1,443,000

* Sold 1 is the most comparable sale to the subject.

¹ Comp's "Miles to Subject" was calculated by the system.² Comp's "Miles to Subject" provided by Real Estate Professional.³ Subject \$/ft based upon as-is sale price.

DRIVE-BY BPO

by ClearCapital

347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

\$1,460,000
As-Is Value

Recent Sales - Cont.

Reasons for Adjustments Why the comparable sale is superior or inferior to the subject.

- Sold 1** The comparable sale is located in the same market area, inferior in size, superior in bathroom count, lot size, similar in garage count, older. Dollar adjustment for GLA +\$63,000, Bathroom count -\$3,000, Lot size -\$2,000, Age +\$4,000.
- Sold 2** The comparable sale is located in the same market area, inferior in size, superior in bathroom count, lot size, similar in garage count, age. Dollar adjustment for GLA +\$32,000, Bathroom count -\$3,000, Lot size -\$2,000.
- Sold 3** The comparable sale is located in the same market area, superior in size, bathroom count, similar in lot size, garage count, slightly newer, has new floors, eik. Dollar adjustment for GLA -\$41,000, Bathroom count -\$6,000, Condition -\$10,000.

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As-Is Value

Subject Sales & Listing History

Current Listing Status	Not Currently Listed		Listing History Comments				
Listing Agency/Firm			There is no known sale or transfer of subject per MLS system and tax records.				
Listing Agent Name							
Listing Agent Phone							
# of Removed Listings in Previous 12 Months	0						
# of Sales in Previous 12 Months	0						
Original List Date	Original List Price	Final List Date	Final List Price	Result	Result Date	Result Price	Source

Marketing Strategy

	As Is Price	Repaired Price
Suggested List Price	\$1,480,000	\$1,480,000
Sales Price	\$1,460,000	\$1,460,000

Comments Regarding Pricing Strategy

The address was verified by gps, mailman and next door neighbor. The subject is zoned residential, no negative impact noted at the time of the inspection. There are busy roads, school, park, small commercial buildings, playground in the immediate vicinity of the subject, however no influence noted. Sold1, Sold2, Listing2 have similar location. I feel it is worth \$1,460,000 I came up with this value by looking at the both sold and listed comps in the neighborhood. Values adjusted at the lower end of sold comps given that active lists are currently lower, therefore subject must be competitive. I would price this property aggressively in order to be able to compete with the inventory in the market and enable it to sell quickly without having to resort to subsequent price reductions. The subject's market area is made up of mixed older and newer homes. There is lack of comps with similar lot size as the subject property. There are mostly 2 unit houses in the neighborhood, therefore I had to exceed guideline parameters and use 2 unit comps in the report. I've made an adjustment for unit count because more units generate more income.

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Clear Capital Quality Assurance Comments Addendum

Reviewer's Notes The current report has included the most current and most proximate data available to support the price conclusion. The broker's comps are appropriate for the subject's attributes, surrounding amenities and market conditions. Thus, the price conclusion appears to be adequately supported

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347A QUINCY STREET
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As-Is Value

Subject Photos



Front



Address Verification



Side



Side



Side



Street

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347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

\$1,460,000
As-Is Value

Subject Photos



Street



Street



Other



Other

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347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

\$1,460,000
As-Is Value

Listing Photos

L1 614 MADISON ST
Brooklyn, NY 11221



Front

L2 322 MADISON ST
Brooklyn, NY 11216



Front

L3 725 QUINCY ST
Brooklyn, NY 11221



Front

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347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

\$1,460,000
As-Is Value

Sales Photos

S1 266 MONROE ST
Brooklyn, NY 11216



Front

S2 374 MADISON ST
Brooklyn, NY 11221



Front

S3 43 BREVOORT PL
Brooklyn, NY 11216



Front

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347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
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\$1,460,000
As-Is Value

ClearMaps Addendum

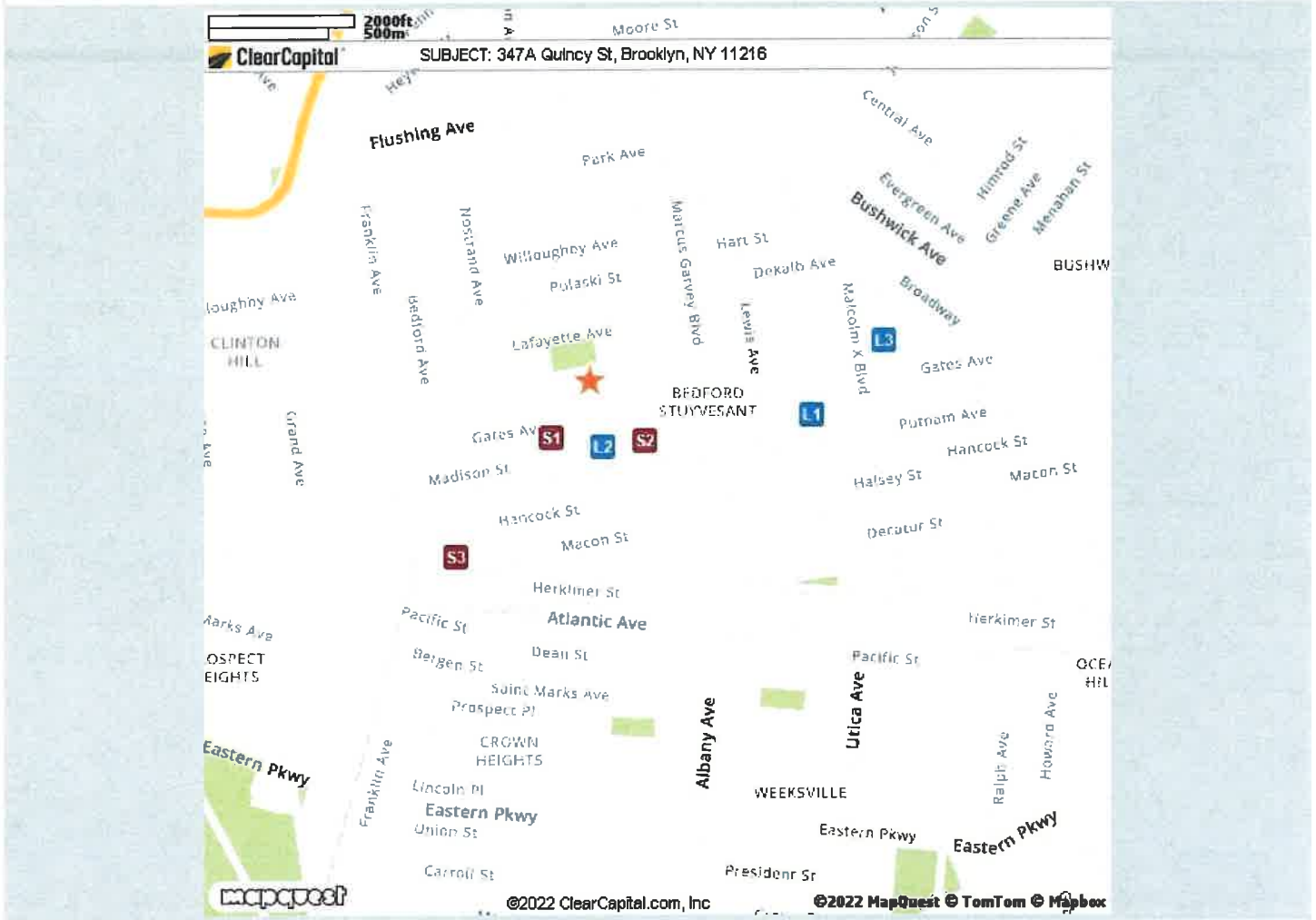
Address ☆ 347a Quincy Street, Brooklyn, NY 11216

Loan Number TCM19074

Suggested List \$1,480,000

Suggested Repaired \$1,480,000

Sale \$1,460,000



Comparable

Comparable	Address	Miles to Subject	Mapping Accuracy
★ Subject	347a Quincy Street, Brooklyn, NY 11216	--	Parcel Match
L1	614 Madison St, Brooklyn, NY 11221	0.68 Miles ¹	Parcel Match
L2	322 Madison St, Brooklyn, NY 11216	0.19 Miles ¹	Parcel Match
L3	725 Quincy St, Brooklyn, NY 11221	0.90 Miles ¹	Parcel Match
S1	266 Monroe St, Brooklyn, NY 11216	0.18 Miles ¹	Parcel Match
S2	374 Madison St, Brooklyn, NY 11221	0.24 Miles ¹	Parcel Match
S3	43 Brevoort Pl, Brooklyn, NY 11216	0.63 Miles ¹	Parcel Match

¹ The Comparable "Distance from Subject" value has been calculated by the Clear Capital system.

² The Comparable "Distance from Subject" value has been provided by the Real Estate Professional.

DRIVE-BY BPO

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347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

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As-Is Value

Addendum: Report Purpose

Market Approach and Market Time

The Market Approach of this report, as established by the customer, is: **Fair Market Price**. (See definition below.)

The Marketing Time as specified by the customer is **Typical**. (See definition below.)

Definitions:

Fair Market Price	A price at which the property would sell between a willing buyer and a willing seller neither being compelled by undue pressure and both having reasonable knowledge of relevant facts.
Distressed Price	A price at which the property would sell between a willing buyer and a seller acting under duress.
Marketing Time	The amount of time the property is exposed to a pool of prospective buyers before going into contract. The customer either specifies the number of days, requests a marketing time that is typical to the subject's market area and/or requests an abbreviated marketing time.
Typical for Local Market	The estimated time required to adequately expose the subject property to the market resulting in a contract of sale.

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by ClearCapital

16
347A QUINCY STREET
BROOKLYN, NY 11216TCM19074
Loan Number\$1,460,000
As-Is Value**Addendum: Report Purpose - cont.****Report Instructions**

This section shows the instructions that were approved by the customer and provided to the broker prior to completing the report.
Instructions last updated: 8/16/2017

Purpose:

Please determine a Fair market price for this property at which it would sell in a typical marketing time for the area.

Comparable Requirements:

If any of the following comparable criteria cannot be met, the commentary is required as to why you expanded your search, and what the effect on price will be.

1. Use comps from the same neighborhood, block or subdivision.
2. Use REO comparables only if the market is driven by REOs and they are comparable in characteristics and condition.
3. Use comps that have closed in the past 3 months to show the current market conditions. In rapidly changing markets, active listing comps should be given equal or greater weight than sold comps in your analysis.

Property Condition Definitions:

1. Poor: Uninhabitable or severely damaged from fire, flood, vandalism or mold
2. Fair: Repairs needed, may not be eligible for all forms of financing, below the neighborhood average
3. Average: Minor cosmetic or no repairs needed; typical for the neighborhood, move-in ready but no significant updates or renovations
4. Good: Above average, move in ready, no repairs necessary and has recent and significant updates and/or renovations (or, for customers that do not provide for 'Average', any move-in ready property)
5. Excellent: Newer construction (1-5 years) or high end luxury

Standard Instructions:

1. Clear Capital Code Of Conduct - Please make sure that you are always abiding by the Clear Capital Code of Conduct when completing valuation reports.
2. If the subject is currently listed, please consider all available information pertaining to the subject's condition. This information should be utilized when developing the assumption of the subject's condition.
3. Use the subject characteristics provided in the report Grid (if preloaded) to evaluate the property. This information is from a full interior appraisal and is assumed to be most accurate. If your inspection reveals obvious inaccuracies, please explain in the narrative of the report.
4. Include sufficient detail to help our mutual customer gain a complete understanding of the subject's neighborhood such as neighborhood desirability, amenities, parks, schools, commercial or industrial influences, REO activity, traffic, board-up-homes, etc.
5. Do not approach occupants or owners.
6. If the subject is a Commercial property, contact Clear Capital immediately at 530-582-5011 for direction on how to proceed with the report.
7. Please do not accept if you or your office has completed a report on this property in the last month, are currently listing this property, or have any vested interest in the subject property.
8. Clear Capital does not allow any log ins from IP addresses from foreign countries. This includes, but is not limited to; data entry services, form completion services, etc. Also, it is against Clear Capital code of conduct to share your password with anyone who is not a W2 employee in your office.
9. Clear Capital and our mutual customers greatly appreciate your expertise. If you cannot personally inspect the property, select comparables, and determine a price for the subject, please do not accept this report. Per the standards and guidelines adopted by Clear Capital and other industry leaders, the use of assistants to complete any of the aforementioned tasks is not permitted.
10. No part of your analysis or reporting may be based on the race, color, religion, sex, actual or perceived sexual orientation, actual or perceived gender identity, age, actual or perceived marital status, disability, familial status, national origin of either the prospective owners or occupants of the subject property, present owners or occupants of the property, or present owners or occupants of the properties in the vicinity of the subject property, or on any other basis prohibited by federal, state or local law.

Terms of Use, Code of Conduct and Professional Discretion

If you accept and perform this assignment, you do so in accordance with the Clear Capital Vendor Agreement Terms of Use and Code of Conduct to which you agreed.

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347A QUINCY STREET
BROOKLYN, NY 11216

TCM19074
Loan Number

\$1,460,000
As-Is Value

Report Instructions - cont.

All interactions with consumers (borrowers, homeowners, POCs, etc.) must be performed in a professional manner. Should you observe any concerning or suspicious activity while you engage with a consumer whether onsite or otherwise, please contact Clear Capital immediately. Please refrain from discussing anything related to the observation with the consumer directly. This includes suspected elder abuse, elder financial abuse, vulnerable adults, fraud, forgery or any violations of local, state or federal laws.

Due to the importance of an independent opinion of price, please do not discuss your price with anyone or be influenced by list price, pending offers, accept comp packets, repair estimates or the listing agent's opinion.

Photo Instructions:

In the case of camera malfunction and/ or if an inspector fails to inspect the property, it is prohibited to request another individual for photos.

1. Photos should be clear of car window glare, door frames, and mirrors. Please step outside of the vehicle when taking photos.
2. Current and original photos of all sides of the subject (back of the subject in available)
3. Damages (upload enough photos to support your repair cost estimates)
4. Please provide close up photos of the subjects roof
5. Two street scene photos, one looking each direction down the street
6. One view photo looking across the street from the subject
7. One address verification photo
8. MLS photos of all (3) sold comparables, if available
9. MLS photos of all (3) listing comparables, if available

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Broker Information

Broker Name	Darina Petrova	Company/Brokerage	Charles Rutenberg Realty Inc
License No	10401222653	Address	354 91st Street Brooklyn NY 11209
License Expiration	07/07/2024	License State	NY
Phone	9174000138	Email	darinarealtor@gmail.com
Broker Distance to Subject	6.46 miles	Date Signed	08/24/2022

By confirming the above contact and real estate license information and submitting the report, the above signed hereby certifies and agrees that: 1) I personally took the pictures, selected comparables, and determined the price conclusion. 2) To the best of my knowledge, the statements of fact contained in this report are true and correct. 3) The reported analyses, opinions, and conclusions are my personal, impartial, and unbiased professional analyses, opinions, and conclusions. 4) I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved. 5) I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment. 6) My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined price point. 7) I did not base, either partially or completely, my analysis and/or opinion and conclusions in this report on race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law. 8) I maintain errors and omissions insurance, to the extent required by state law, for all liability associated with the preparation of this Report.

Disclaimer

This document is not an appraisal as defined by USPAP (Uniform Standards of Professional Appraisal Practice). It is not to be construed as an appraisal and may not be used as such for any purpose.

Unless otherwise specifically agreed to in writing:

The intended purpose of this report is to assist the Clear Capital account holder in making decisions within the scope of applicable statutory and regulatory requirements and performing required due diligence. This document is provided solely for the use of the Clear Capital account holder and not any other party, is not intended as any guarantee of value and/or condition of the subject property and should not be relied on as such. In the event that this document is found to be defective, incorrect, negligently prepared or unfit for its authorized use, Clear Capital's sole liability shall be to promptly refund the total fee expended by the account holder for this report or to replace it at no charge to the account holder, but in no event shall Clear Capital be responsible to the account holder for any indirect or consequential damages whatsoever. This warranty is in lieu of all other warranties, express or implied, except where otherwise required by law. The account holder shall notify Clear Capital within thirty (30) days of this report's delivery to the account holder if it believes that this document is defective, incorrect, negligently prepared or unfit for its authorized use. Under no circumstances may Clear Capital forms or their contents be published, copied, replicated, or mimicked.

EXHIBIT 8

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

_____ x

TOORAK CAPITAL PARTNERS, LLC,

Plaintiff/Petitioner,

v.

347A QUINCY ST PROP LLC; CHANON D. GORDON; FAST ADVANCE FUNDING INC.; JOHN DOE NO. I THROUGH JOHN DOE NO. XXX, inclusive, the last thirty names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Defendants/Respondents.

_____ x

Index No.: 501908/2021

(Mortgage Foreclosure Action)

Block 1804, Lot 65

Property known as:
347A Quincy Avenue
Brooklyn, NY 11216

NOTICE OF STAY

Ryan K. Stumphauzer, Esquire As Receiver For Fast Advance Funding, Inc., by and through his counsel Pietragallo Gordon Alfano Bosick & Raspanti, LLP hereby requests a stay in this matter. Attached hereto as Exhibit A is a Litigation Injunction entered in the United States District Court Southern District Of Florida, Docketed Case No. 20-Civ-81205, Document #56.

**PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP**

By: /s/ Eric G. Soller

Eric G. Soller, Esquire
NYS OCA No. 4595930
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219
(412) 253-2000 (office)
(412) 263-1836 (direct)
(412) 263-2001 (fax)

Date: July 27, 2021

FILED: KINGS COUNTY CLERK 07/27/2021 04:52 PM

INDEX NO: 501908/2021

NYSCEF DOC. NO. 19

RECEIVED NYSCEF: 07/27/2021

egs@Pietragallo.com

*Attorney for Ryan K. Stumphauzer, Esquire
as Receiver for Defendant/Respondent Fast
Advance Funding, Inc.*

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

**ORDER GRANTING PLAINTIFF'S URGENT MOTION TO AMEND ORDER
APPOINTING RECEIVER TO INCLUDE LITIGATION INJUNCTION**

THIS CAUSE comes before the Court upon Plaintiff Securities and Exchange Commission's ("Commission") Urgent Motion to Amend Order Appointing Receiver to Include Litigation Injunction [ECF No. 48] ("Motion"), filed on July 31, 2020. In the Motion, Plaintiff seeks to amend the Court's Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver [ECF No. 36] ("Order Appointing Receiver"), entered on July 27, 2020.

Specifically, Plaintiff seeks to amend the Order Appointing Receiver to include a litigation injunction in all cases and proceedings to which the following entities are a party: Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par Funding"), Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan ("ABFP"), ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC ("ABFP Management"), ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE

Income Fund 2 LLC (collectively, the “Receivership Entities”). The Receiver agrees with and joins in the request for this relief. For the reasons set forth in the Motion, it is hereby

ORDERED AND ADJUDGED that Plaintiff Securities and Exchange Commission’s Motion to Amend Order Appointing Receiver to Include Litigation Injunction [ECF No. 48] is **GRANTED**.

The Receiver, Ryan Stumphauzer, is authorized, empowered, and directed as follows until further Order of the Court:

1. To take custody, control, and possession of all Receivership Entity records, documents, and materials, and to safeguard these items until further Order of the Court;
2. To secure and safeguard the Receivership Entities’ information technology, data, documents, storage systems, and documents, including by making contact with any third-party vendors, such as movers and information technology personnel, to assist in this process;
3. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, lawyers, and paralegals (“Retained Personnel”);
4. To take any other action as necessary and appropriate for the preservation of the Receivership Entities’ property interests or to prevent the dissipation or concealment of such property interests; and
5. To take such other action as may be approved by this Court.
6. Additionally, the Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of each Receivership Entity, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

7. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and the Receiver's appointment.

8. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Entities' estates. The Receiver shall seek the Court's approval by filing a Motion for the reimbursement of expenses and compensation for time spent on the matters set forth herein.

9. The Receivership Entities and all persons receiving notice of this Order shall not hinder or interfere with the Receiver's efforts to take control or possession of the Receivership Entities' property interests identified above or hinder his efforts to preserve them.

STAY OF LITIGATION

"[W]hile it should be sparsely exercised, district courts possess the authority and discretion to enter anti-litigation orders" in the context of a Securities and Exchange Commission receivership. *Sec. & Exch. Comm'n v. Byers*, 609 F.3d 87, 89 (2d Cir. 2010); *see also Sec. & Exch. Comm'n v. Onix Capital, LLC*, No. 16-24678-CIV, 2017 WL 6728814, at *4 (S.D. Fla. Jul. 24, 2017) ("That the receivership is not 'substantially underway' is not a compelling factor to lift a stay against litigation when balanced against the Receiver's interest in preventing ancillary litigation during the early stages of the receivership."); *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) ("[T]he receivership court may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained.").

As set forth below, the following proceedings—excluding the instant proceeding—and all law enforcement, police, or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are hereby stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or any other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any of the Receivership Entities' property interests, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of a Receivership Entity's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

DONE AND ORDERED in Fort Lauderdale, Florida, this 31st day of July, 2020.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

EXHIBIT 9



900 W. 48th Place, Suite 900, Kansas City, MO 64112 • (816) 753-1000

June 21, 2022

Amy E. Hatch
(816) 360-4178
(816) 572-5178 Direct Fax
ahatch@polsinelli.com

VIA CERTIFIED MAIL
VIA ELECTRONIC MAIL

Timothy A. Kolaya
Stumphauzer Foslid Sloman
Ross & Kolaya, PLLC
Two South Biscayne Blvd.
Suite 1600
Miami, FL 33131
tkolaya@sflaw.com

Gaetan J. Alfano
Pietragallo Gordon Alfano
Bosick & Raspanti, LLP
1818 Market Street, Suite 3402
Philadelphia, PA 19103
gja@pietragallo.com

Re: Securities Exchange Commission v. Complete Business Solutions Group, Inc. d/b/a Par Funding, et al. (Case No. 20-CV-81205-RAR) (the “Subject Case”)

Counsel:

This Firm is counsel to Toorak Capital Partners, LLC (“Toorak”). Toorak is the owner and holder of certain Loan Documents, defined below. As a result of defaults under these Loan Documents, Toorak initiated two foreclosure actions in New York state courts styled *Toorak Capital Partners, LLC v. 145 Stuyvesant Ave Prop LLC et al.*, Index No. 500868/2021 (the “**145 Stuyvesant Foreclosure Action**”) and *Toorak Capital Partners, LLC v. 347A Quincy St Prop LLC, et al.*, Index No. 501908/2021 (the “**347A Quincy Foreclosure Action**” and collectively, the “**Foreclosure Actions**”). Copies of the complaints filed, as well as all exhibits thereto, are attached hereto as **Exhibit 1**.

Following counsel for the Receiver’s appearance in the Foreclosure Actions, Toorak learned that the Foreclosure Actions were subject to a certain litigation injunction order entered in the Subject Case (the “**Litigation Injunction**”). For the benefit of all parties involved, Toorak requests that the Receiver consent to a lift of the Litigation Injunction for the limited purpose of allowing Toorak to proceed with the Foreclosure Actions. Further information regarding the Foreclosure Actions and Toorak’s relation with the Subject Case is below.

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Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington
Polsinelli PC, Polsinelli LLP in California

Timothy A. Kolaya
June 21, 2022
Page 2

The 145 Stuyvesant Loan and 145 Stuyvesant Foreclosure Action

Toorak is the owner and holder of that certain Promissory Note dated March 11, 2019 and that certain Building Loan Promissory Note dated March 11, 2019, in the original principal amounts of \$1,132,625.00 and \$131,475.00, respectively (collectively the “**145 Stuyvesant Notes**,” and the loan evidenced thereby being hereinafter referred to as the “**145 Stuyvesant Loan**”), the original maker of which is 145 Stuyvesant Ave Prop LLC (the “**145 Stuyvesant Borrower**”).

In order to secure the indebtedness owed in connection with the 145 Stuyvesant Loan, the 145 Stuyvesant Borrower executed that certain Commercial Mortgage, Security Agreement and Fixture Filing dated as of March 11, 2019 and that certain Building Loan Mortgage, Security Agreement and Fixture Filing dated as of March 11, 2019 (collectively, the “**145 Stuyvesant Mortgages**”). Under the 145 Stuyvesant Mortgages, Lender has a first-priority lien on and security interest in certain real property, and improvements thereon, and certain personal property associated therewith, all as further identified in the Security Instrument and commonly known as 145 Stuyvesant Ave., Brooklyn, NY 11221 (collectively, the “**145 Stuyvesant Property**”).

The 145 Stuyvesant Borrower defaulted under the 145 Stuyvesant Loan Documents by failing to pay amounts due and owing to Toorak. As a result, of the 145 Stuyvesant Borrower’s default, Toorak initiated the 145 Stuyvesant Foreclosure Action on January 12, 2021, wherein it requested the court enter judgment in favor of Toorak for foreclosure of the 145 Stuyvesant Property against the 145 Stuyvesant Borrower and all parties who may claim an interest in the 145 Stuyvesant Property. In particular, Complete Business Solutions Group, Inc. d/b/a Par Funding (“**CBSG**”) was named as a defendant because it may claim a *junior* interest in the 145 Stuyvesant Property by virtue of a Mortgage Security Agreement dated April 17, 2019 (the “**CBSG Mortgage**”). A copy of the CBSG Mortgage is attached hereto as **Exhibit 2**.

Over \$1.9 million is currently due and owing to Toorak under the 145 Stuyvesant Loan Documents, and interest continues to accrue on this amount. The indebtedness due to Toorak exceeds the value of the 145 Stuyvesant Property. A copy of the valuation report for the 145 Stuyvesant Property, which shows the value as \$1,500,000.00, is attached hereto as **Exhibit 3**.

The 347A Quincy and 347A Quincy Foreclosure Action

Toorak is also the owner and holder of that certain Commercial Promissory Note dated April 17, 2019, and that certain Building Loan Promissory Note dated April 17, 2019, in the original principal amounts of \$1,019,017.00 and \$150,000.00, respectively (collectively the

Timothy A. Kolaya
June 21, 2022
Page 3

“**347A Quincy Notes**,” and the loan evidenced thereby being hereinafter referred to as the “**347A Quincy Loan**”), the original maker of which is 347A Quincy St Prop LLC (the “**347A Quincy Borrower**”).

In order to secure the indebtedness owed in connection with the 347A Quincy Loan, the 347A Quincy Borrower executed that certain Commercial Mortgage, Security Agreement and Fixture Filing dated as of April 17, 2019 and that certain Building Loan Mortgage, Security Agreement and Fixture Filing dated as of April 17, 2019 (collectively, the “**347A Quincy Mortgages**”). Under the 347A Quincy Mortgages, Lender has a first-priority lien on and security interest in certain real property, and improvements thereon, and certain personal property associated therewith, all as further identified in the Security Instrument and commonly known as 347A Quincy Avenue, Brooklyn, NY 11216 (collectively, the “**347A Quincy Property**”).

The 347A Quincy Borrower defaulted under the 347A Quincy Loan Documents by failing to pay amounts due and owing to Toorak. As a result, of the 347A Quincy Borrower’s default, Toorak initiated the 347A Quincy Foreclosure Action on January 25, 2021, wherein it requested the court enter judgment in favor of Toorak for foreclosure of the 347A Quincy Property against the 347A Quincy Borrower and all parties who may claim an interest in the 347A Quincy Property. In particular, Fast Advance Funding Inc. (“**Fast Advance**”) was named as a defendant because it may claim a *junior* interest in the 347A Quincy Property by virtue of a Mortgage Security Agreement dated May 13, 2019 (the “**Fast Advance Mortgage**”). A copy of the Fast Advance Mortgage is attached hereto as **Exhibit 4**.

Over \$1.7 million is currently due and owing to Toorak under the 347A Quincy Loan Documents, and interest continues to accrue on this amount. The indebtedness due to Toorak exceeds the value of the 347A Quincy Property. A copy of the valuation report for the 347A Quincy Property, which shows the value as \$1,322,000.00, is attached hereto as **Exhibit 5**.

Further delay in Toorak’s ability to foreclose on the 145 Stuyvesant Property and the 347A Quincy Property will result in irreparable harm to Toorak. Indeed, the amounts the 145 Stuyvesant Borrower and 347A Quincy Borrower owe Toorak will continue to increase, the values of the 145 Stuyvesant Property and 347A Quincy Property may continue to fluctuate, and the risk of inadequate protection and preservation of the Properties will continue to rise.

Further, the indebtedness due and owing to Toorak exceeds the values of the Properties. And, in the unlikely event any surplus proceeds from the foreclosure sales remain, CBSG, Fast Advance, or the Receiver can petition the court to participate in the surplus proceeds.

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Accordingly, Toorak requests that the Receiver consent to a lift of the Litigation Injunction for the limited purpose of allowing Toorak to proceed with the Foreclosure Actions.

Nothing set forth herein is intended, and nothing herein shall be deemed, to modify, limit, release, reduce, or waive any of Toorak's rights, remedies, or privileges under any of the Loan Documents, or at law or in equity, all of which are hereby specifically reserved.

Please contact me with any questions and to discuss the Receiver's position on this issue. Thank you for your attention to this matter.

Sincerely,



Amy E. Hatch

Enclosures

Cc: Amie Riggle Berlin
United States Securities Exchange Commission
801 Brickell Avenue
Suite 1800
Miami, FL 33131
berlina@sec.gov

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Exhibit 1: Foreclosure Complaints

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Exhibit 2: CBSG Mortgage

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Exhibit 3: Valuation Report for 145 Stuyvesant

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Exhibit 4: Fast Advance Mortgage

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Exhibit 5: Valuation Report for 347A Quincy