



CONDOMINIUM OFFERING PLAN  
**75 COLUMBIA CONDOMINIUM**

75 Columbia Street, Brooklyn New York 11201

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**TOTAL AMOUNT OF OFFERING**

|                                                                                                           |                      |
|-----------------------------------------------------------------------------------------------------------|----------------------|
| 11 Residential Units                                                                                      | \$ 12,845,000.00     |
| 9 Parking Spaces                                                                                          | 675,000.00           |
| and licenses to 9 storage spaces                                                                          | 89,750.00            |
| Total Amount of Offering                                                                                  | \$ 13,819,750.00     |
|                                                                                                           | <u>** (3,000.00)</u> |
| Less Working Capital Fund<br>(may be reduced to \$1,000.00 as a result of closing adjustments See p. 124) |                      |
|                                                                                                           | \$ 13,816,750.00     |

Net Amount of Offering Plan

*\*\*See section entitled "WORKING CAPITAL FUND" for full details.*

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**SPONSOR:**

SDS COLUMBIA LLC  
132 REMSEN STREET  
BROOKLYN, NEW YORK 11201

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**SELLING AGENT:**

HEIGHTS REAL ESTATE ADVISORS LLC  
140 REMSEN STREET, 2ND FLR  
BROOKLYN, NEW YORK 11201

The Date of Acceptance for filing of this Plan is SEPTEMBER 27, 2012

This Plan may not be used after SEPTEMBER 26, 2013 unless extended by a duly filed amendment.

THIS PLAN CONTAINS SPECIAL RISKS TO THE PURCHASER. SEE PAGE I.

*THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL THESE CONDOMINIUM UNITS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY CONDOMINIUM UNIT. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.*

*BECAUSE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER THAN SELL UNITS, THIS PLAN MAY NOT RESULT IN THE CREATION OF A CONDOMINIUM IN WHICH A MAJORITY OF THE UNITS ARE OWNED BY OWNER -OCCUPANTS OR INVESTORS UNRELATED TO THE SPONSOR. PURCHASERS FOR THEIR OWN OCCUPANCY MAY NEVER GAIN CONTROL OF THE BOARD OF MANAGERS UNDER THIS PLAN. HOWEVER, IT IS THE SPONSORS INTENTION TO SELL ALL UNITS OFFERED PURSUANT TO THE TERMS OF THE PLAN. (SEE SPECIAL RISK SECTION OF THE PLAN.)*

PREPARED BY:  
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New York, New York 10038  
(212) 791-5500

## **TABLE OF CONTENTS**

|                                                                                               |     |
|-----------------------------------------------------------------------------------------------|-----|
| SPECIAL RISKS .....                                                                           | i   |
| INTRODUCTION .....                                                                            | 1   |
| DEFINITIONS .....                                                                             | 9   |
| DESCRIPTION OF PROPERTY AND IMPROVEMENTS .....                                                | 13  |
| LOCATION AND AREA INFORMATION.....                                                            | 16  |
| SCHEDULE A - OFFERING PRICES AND RELATED INFORMATION .....                                    | 22  |
| SCHEDULE A-1 STORAGE UNIT .....                                                               | 24  |
| NOTES TO SCHEDULE A .....                                                                     | 25  |
| SCHEDULE B BUDGET FOR FIRST YEAR OF CONDOMINIUM OPERATION .....                               | 33  |
| NOTES TO BUDGET FOR FIRST YEAR OF CONDOMINIUM OPERATION .....                                 | 34  |
| SCHEDULE B-1 PROJECTED BUDGET FOR INDIVIDUAL ENERGY COSTS .....                               | 42  |
| PARKING SPACE UNITS.....                                                                      | 43  |
| STORAGE SPACES .....                                                                          | 44  |
| COMPLIANCE WITH REAL PROPERTY LAW SECTION 339(i) .....                                        | 45  |
| CHANGES IN PRICES AND UNITS .....                                                             | 46  |
| PROCEDURE TO PURCHASE .....                                                                   | 48  |
| FINANCING THAT MAY BE AVAILABLE TO PURCHASERS .....                                           | 56  |
| EFFECTIVE DATE .....                                                                          | 58  |
| CLOSING OF TITLE TO UNITS .....                                                               | 61  |
| CLOSING COSTS AND ADJUSTMENTS .....                                                           | 68  |
| RIGHTS AND OBLIGATIONS OF SPONSOR .....                                                       | 73  |
| CONTROL BY THE SPONSOR .....                                                                  | 79  |
| RIGHTS AND OBLIGATIONS OF UNIT OWNERS.....                                                    | 82  |
| RIGHTS AND OBLIGATIONS OF BOARD OF MANAGERS AND SUMMARY<br>OF BY-LAWS AND DECLARATION .....   | 90  |
| TAXES - DEDUCTIONS TO UNIT OWNERS, AND TAX STATUS OF CONDOMINIUM...                           | 102 |
| REAL ESTATE TAXES FOR INDIVIDUAL UNITS ASSESSED VALUATION BEFORE<br>and AFTER RENOVATION..... | 105 |
| 421 (a) BENEFITS OPINION LETTER .....                                                         | 119 |
| WORKING CAPITAL FUND .....                                                                    | 124 |
| RESERVE FUND .....                                                                            | 125 |
| IDENTITY OF PARTIES .....                                                                     | 126 |
| MANAGING AGENT .....                                                                          | 128 |
| REPORTS TO UNIT OWNERS .....                                                                  | 129 |
| DOCUMENTS ON FILE .....                                                                       | 130 |
| GENERAL .....                                                                                 | 131 |
| SPONSORS STATEMENT OF BUILDING CONDITION .....                                                | 134 |
| COUNSEL'S TAX OPINION .....                                                                   | 135 |
| COUNSEL'S OPINION - RPL §339(i).....                                                          | 156 |

## Table of Contents (Continued)

### PART II

|                                                                                                                                                          |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| DESCRIPTION OF PROPERTY, SPECIFICATIONS AND<br>BUILDING CONDITION AND FLOOR PLANS.....                                                                   | A-1 |
| PURCHASE AGREEMENT .....                                                                                                                                 | B-1 |
| POWER OF ATTORNEY.....                                                                                                                                   | C-1 |
| FORM OF UNIT DEED.....                                                                                                                                   | D-1 |
| STORAGE SPACE LICENSE AGREEMENT.....                                                                                                                     | E-1 |
| DECLARATION OF CONDOMINIUM.....                                                                                                                          | F-1 |
| CONDOMINIUM BY-LAWS.....                                                                                                                                 | G-1 |
| ATTORNEY GENERAL MODEL FORM FOR ESCROW AGREEMENT<br>APPLICATION TO THE ATTORNEY GENERAL FOR THE<br>DETERMINATION ON THE DISPOSITION OF DOWN PAYMENTS.... | H-1 |
| CERTIFICATIONS                                                                                                                                           |     |
| SPONSOR.....                                                                                                                                             | I-1 |
| SPONSOR'S ARCHITECT.....                                                                                                                                 | I-3 |
| SPONSOR'S EXPERT CONCERNING ADEQUACY OF BUDGET.....                                                                                                      | I-5 |

## **SPECIAL RISKS**

### **1. A. Purchase Agreement**

If the Purchase Agreement is subject to the purchaser obtaining a mortgage, the Purchaser shall have thirty (30) days from the signing of the Purchase Agreement to obtain the mortgage commitment. In the event that the Purchaser fails to obtain a commitment within the thirty-day period, either party may cancel the Purchase Agreement on five days written notice to the other party, and the purchaser shall be entitled to a prompt refund of his/her Down Payment. IN THE EVENT THAT THE SPONSOR'S ATTORNEY DOES NOT RECEIVE THE NOTICE WITHIN THE SPECIFIED TIME PERIOD, THE PURCHASER SHALL BE EXPECTED TO CLOSE WHETHER OR NOT THE PURCHASER HAS RECEIVED FINANCING, UNLESS THE SELLER CANCELS THE PURCHASE AGREEMENT. See section entitled "PROCEDURE TO PURCHASE".

### **B. Prequalification by a Lender to be designated by Sponsor**

The financing contingency section of the Purchase Agreement shall only be effective upon the Purchaser providing to the Sponsor evidence that Purchaser has been pre-qualified for purchase money financing by Home Owners Mortgage Express ("HOME"). Purchaser must provide such evidence of pre-qualification either prior to or within five (5) days after the date (the "Contract Date") on which a fully executed copy of the Purchase Agreement is delivered to Purchaser's attorney. HOME has agreed to pre-qualify Purchasers and provide a letter of pre-qualification within twenty-four (24) hours, excluding weekends and holidays, of Purchaser's request for pre-qualification, at no cost or further obligation to Purchaser. In the event that Purchaser does not provide evidence of pre-qualification within five (5) days of the Contract Date, then the Sponsor may either cancel the Purchase Agreement or treat the Purchase Agreement as an "All Cash" transaction, and in which case the financing contingency shall not apply.

The prequalification is solely for the benefit of the Sponsor in ascertaining the purchaser's creditworthiness and likelihood of obtaining financing. No representation is made that purchasers who are prequalified will actually receive mortgage financing for the purchase of their Unit and shall be bound by the terms of the mortgage contingency provisions of the Offering Plan and Purchase Agreement. See sections entitled: "PROCEDURE TO PURCHASE" and "PURCHASE AGREEMENT".

### **2. Amending By-Laws**

The By-Laws may be amended, altered, repealed and added to by a vote of Unit Owners of at least 66-2/3% in number and common interest of all Unit Owners at a meeting of Unit Owners duly held for such purpose. FOR AS LONG AS THE SPONSOR REMAINS THE OWNER OF ONE OR MORE UNITS, THESE BY-LAWS INCLUDING THE RULES AND REGULATIONS OF THE CONDOMINIUM MAY NOT



BE AMENDED OR MODIFIED IN ANY WAY AS TO ADVERSELY AFFECT THE SPONSOR WITHOUT THE SPONSOR'S PRIOR WRITTEN CONSENT. See section entitled "RIGHTS AND OBLIGATIONS OF THE BOARD OF MANAGERS AND SUMMARY OF BY-LAWS AND DECLARATION".

3. Warranty on Workmanship or Materials

The Sponsor makes no representation or warranty as to the work, materials, appliances, equipment or fixtures other than as set forth in this Plan, nor will the Sponsor indemnify the Board of Managers or defend lawsuits that arise which are not the result of the Sponsor's acts or omissions. Each prospective Purchaser may have the Building and apartments therein inspected by an architect or engineer of his or her own choosing to determine the quality of materials and workmanship. Any and all representations and obligations, which are imposed by the Sponsor by virtue of this Offering Plan or the General Business Law, the performance of which shall occur after the transfer of title shall survive delivery of the deed. However, nothing herein is intended to abrogate the responsibility of the Sponsor under the General Obligations Law, the General Business Law and the Regulations promulgated by the Department of Law. See section entitled "SPONSOR'S STATEMENT OF BUILDING CONDITION".

4. Insurance Does Not Cover Full Investment

Although sufficient to replace the structure if totally destroyed, the fire and extended coverage is below the total purchase price of the property. In addition, pursuant to Section 254 of the Real Property Law, the holder of a mortgage encumbering the Unit has the right to retain the proceeds of the fire insurance policies in the event of damage by fire. This means that a Purchaser could lose their entire investment, including their down payment unless they have their own insurance to cover their individual Unit and the contents thereof. See "NOTES TO SCHEDULE B".

5. No Construction or Common Charge Bond

The Sponsor represents and warrants that at this time it has the financial resources to enable it to meet the obligations it has under the Offering Plan. HOWEVER, NO BOND OR OTHER SECURITY HAS BEEN FURNISHED BY THE SPONSOR, AND THE SPONSOR'S ABILITY TO FINISH CONSTRUCTION AND TO FULFILL ITS OBLIGATION FOR THE PAYMENT OF COMMON CHARGES, REAL ESTATE TAXES AND ASSESSMENTS ON THE UNSOLD UNITS WILL DEPEND SOLELY UPON ITS FINANCIAL CONDITION. In the event the Sponsor is unable to fulfill his obligations for the payment of common charges, the plan will be so amended and the Sponsor will be required to suspend sales of the Units. In such event, prospective Purchasers will be offered the right to rescind their Purchase Agreements. See section entitled "RIGHTS AND OBLIGATIONS OF SPONSOR".

6. Reserve Fund

There is no separate Reserve Fund provided for in this Plan. Inasmuch as the building is new construction, it is anticipated that the major components of the building will live out their anticipated life expectancies. Accordingly, the Board of Managers will have to make whatever arrangements they deem necessary to provide for the future replacement of these major building components at such future time as they shall need to be replaced. See section entitled "RESERVE FUND". However, a ten percent (10%) reserve fund is included in the budget to comply with potential requirements of the FHA or other lenders. This amount is 10% of the specific expenses enumerated in Schedule B and will be funded through Residential Common Charges which will be set aside in the future to open a Reserve Fund Account for the Building. See Schedule B and Notes to Schedule B for specific amounts.

7. New York State Transfer Tax and New York City Real Property Transfer Tax and Mansion Tax

In addition to the Purchase Price and other closing costs, Purchasers will pay an amount equal to both the New York State Transfer Tax and the New York City Real Property Transfer Tax ("Transfer Taxes") due on the closing of title to the Unit. The New York City Real Property Transfer Tax is at the rate of 1% of the consideration for purchase prices up to \$500,000.00, and at the rate of 1.425% of the consideration for purchase prices in excess of \$500,000.00, plus a filing fee. The New York State Transfer Tax is at the rate of \$4.00 for \$1,000.00 of consideration. Purchasers should note that consideration includes both the Purchase Price of the Unit and the Transfer Tax being paid by the Purchaser. Accordingly, the consideration on the sale of Purchaser's unit for transfer tax purposes is computed by adding the Purchase Price plus the New York City Real Property Transfer Tax computed at 1% or 1.425% on the consideration plus the New York State Real Property Transfer Tax computed at \$4.00 for each \$1,000.00 of consideration. These transfer taxes are customarily paid by the Seller, however pursuant to the terms and conditions of this Offering Plan, these taxes will be the responsibility of the purchaser(s) upon closing of title to a Unit in the premises. NYS Transfer Tax ("Mansion Tax") is due in the conveyance of residential real property of one million (\$1,000,000.00) dollars or more. This will be the responsibility of and will be paid by the Purchaser ("the Grantee") at the rate of one (1%) percent of the consideration of the Unit. See section entitled "CLOSING COSTS AND ADJUSTMENTS".

8. Minimum Sales Requirements

Pursuant to existing law and regulation the Sponsor may declare the Plan effective by selling a minimum of fifteen (15%) percent of the Residential Units in the Building. Even if the Plan is declared effective with a minimum number of sales, it is possible that the Sponsor may be able to convert the Building with fewer than the minimum number of sales, if Purchasers counted towards effectiveness do not ultimately purchase a Residential Unit.

Purchasers should note that in the current real estate market, banks and other lenders are imposing various restrictions on purchase financing. Such restrictions include requiring that a certain percentage of apartments in a building or group of buildings be sold before a lender will consider making a loan. Thus, it may be possible for a Purchaser to experience difficulty obtaining a loan in a building or group of buildings where the Sponsor or holder of Unsold Shares has not sold a substantial percentage of the apartments in the building or group of buildings, which in some cases may be as high as 70%. Moreover, some lenders will not provide financing in a building or group of buildings where an investor other than the original Sponsor has an ownership interest of 10% or more. It also may be difficult for a Purchaser to resell an apartment if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions.

In addition, if a Purchaser obtains a mortgage, his/her aforesaid rights to sell, sublet and surrender possession of his/her Unit will be subject to the rights of the lender set forth in the mortgage, which normally would restrict the Purchaser from exercising these rights while the mortgage is outstanding. See section entitled "FINANCING THAT MAY BE AVAILABLE TO PURCHASERS".

9. Special or Additional Work and Rescission of Purchase Agreement

If a Purchaser desiring to purchase a Unit requests that the Sponsor perform special work on such Unit or provide extra furnishings, including, but not limited to, any deviation from the materials or specifications described in "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION", Part II of this Plan, and the Sponsor agrees to perform such special work and/or provide such furnishings, then the Sponsor may require such person to deposit an amount greater than ten (10%) percent of the offering price of such Unit. Said deposit for such special work shall initially be deposited with the Sponsor's escrow agent as discussed in the section of the Offering Plan entitled "PROCEDURE TO PURCHASE". However, Purchasers should note that said funds for special work may be released from the escrow account by the escrow agent as long as the Sponsor uses these funds for such special work.

In the event that a Purchaser rescinds his/her Purchase Agreement in accordance with the terms and conditions contained therein, then the Down Payment shall be fully returned to the Purchaser with interest, if any (except for the cost incurred of any additional work ordered by the Purchaser). See section entitled "PROCEDURE TO PURCHASE".

10. Attorneys' Fees

The following fees shall be imposed in the following circumstances by Forman & Associates, pc, 80 Maiden Lane, Suite 2204, New York, New York 10038, attorney for the Sponsor, which will be payable by a Purchaser at the Closing of his/her Unit:



(a) It shall be the sole responsibility of the Purchaser to pay the Sponsor's closing attorney and escrow agent, Forman & Associates, pc, a fee of \$2,000.00 at closing for the preparation of closing documents.

(b) If the closing is held at a place other than the office of Forman & Associates, pc, or such other place as designated by the Sponsor (but within New York City) there will be an additional fee of \$500.00 per Unit payable to the Sponsor's attorney, which will be the sole responsibility of the Purchaser. There will be a reasonable fee for Closings outside of New York City depending upon distance, but in no event less than \$500.00.

(c) If the closing is adjourned at other than the Sponsor's request, there will be an additional fee of \$500.00 per Unit, which will be the sole responsibility of the Purchaser.

(d) In the event that a purchaser defaults, a fee of \$500.00 will be payable at closing to Forman & Associates, pc, for preparation of a letter of default.

Furthermore, if a Purchaser requests an adjournment of closing, such purchaser shall be responsible for common charges and real estate taxes from the originally scheduled closing date until the closing date of his/her Unit.

All checks for the above fees must be paid by CERTIFIED or BANK CHECK at the closing. The above closing fees are cumulative to the extent applicable to an individual closing. See section entitled "CLOSING COSTS AND ADJUSTMENTS".

11. Power of Attorney

At each Closing, among other documents, the Purchasers will execute and deliver a Unit Power of Attorney, in the form set forth in Part II of the Plan. The Unit Power of Attorney irrevocably designates the Board of Managers as such Unit Owner's attorney-in-fact for the sole purpose of managing, selling, mortgaging, leasing, or otherwise dealing with (but not voting the votes appurtenant thereto) any Unit acquired by the Board of Manager in accordance with the provisions of the By-Laws, also set forth in Part II of the Plan. See Section entitled: "POWER OF ATTORNEY" on page C-1 of the Plan and the section entitled: "RIGHTS AND OBLIGATIONS AND SUMMARY OF BY-LAWS" for a more detailed description of the rights conferred to the Board of Managers under the terms of the Power of Attorney.

12. Control By Sponsor

The By-Laws provide that the Sponsor will exercise voting control of the Board of Mangers up to (2) years after the closing of the first Unit or until such time as the Unsold Units constitute less than 50% of the Common Interest, whichever is sooner.

The By-Laws further provide that until such time, the Board of Managers may not take certain actions unless Unit owners having at least fifty-one (51%) percent of the Common Interest appurtenant to the Residential Units of the Condominium approve in writing or by vote, in person or by proxy, at a duly constituted meeting called for such purposes. See section entitled "BY-LAWS" in Part II of the Plan.

13. Board of Managers Foreclosure for Common Charges

In the event that the Board of Managers forecloses on a Unit for unpaid Common Charges and the proceeds of the sale are not sufficient enough to pay the outstanding Common Charges, the balance of the amount due may be proportionately assessed to all Units Owners as Common Expense. See section entitled: "RIGHTS AND OBLIGATIONS OF UNIT OWNERS".

14. Indemnification of Board of Managers

The members of the Board of Managers shall not be liable to the Unit Owners for any mistake of judgment, or gross negligence, except for willful misconduct or bad faith. The Unit Owners shall severally indemnify the members of the Board of Managers against any liability or claims except those arising out of the bad faith or willful misconduct of a member or members of the Board of Managers. The amount budgeted in Schedule B does not provide for coverage for officers and directors liability. The Board of Managers may wish to add the cost of this coverage to the budget in the future, which will increase Common Charges proportionately.

15. Deposits

The parties hereto do hereby certify that they are aware that the Federal Deposit Insurance Corporation ("FDIC") coverage's apply only to a cumulative maximum amount of \$250,000.00 for each individual deposit for all of the depositor's accounts at the same or related institution.

Escrow Agent makes no guarantee of the solvency of any of the escrow banks. If the FDIC insurance limits change in any manner in the future, the Escrow Agent will have no obligation to make any changes to the Escrow Accounts.

The parties further understand that Escrowee assumes no responsibility for, nor will said parties hold Escrowee liable for a loss occurring which arises from the fact that the amount of the above account may cause the aggregate amount of any individual depositor's accounts to exceed \$250,000.00 and that the excess amount is not insured by the Federal Deposit Insurance Corporation.

16. 421(a) Tax Benefits

The Sponsor will apply for 421(a) tax, which may result in a reduction in real



estate taxes for Unit Owners. The Sponsor will use its best efforts to obtain these benefits, but there is no guarantee that 421(a) benefits will be granted-. The 421(a) tax abatement may not be in effect upon the date of the First Unit Closing. Updated information as to the status of these benefits will be disclosed in a future amendment to this Plan. See "REAL ESTATE TAXES FOR INDIVIDUAL UNITS" and "SCHEDULE A" for further details.

17. Sponsor's Unconditional Right to Rent

The Sponsor unconditionally reserves the right to rent and not to sell Units. This may require modifying or replacing the existing financing with a mortgage or with terms, which are more conducive to a rental property. In the event Sponsor finds itself in an unfavorable market and commences the renting of Unsold Units, Purchasers should be aware that there is therefore no representation to sell more units than the 15% needed to declare the Plan effective and Unit Owners may never gain effective control and management of the condominium.

The Premises is currently encumbered by four (4) mortgages and all held by BUILDER'S BANK, an Illinois Banking Corporation, with offices at 225 West Wachen Drive, Chicago, IL. Upon closing, each Unit will be released from these liens. The release price will be based on an amount for generating a payoff letter plus one hundred (100%) of the Net Sale Proceeds generated from a sale. If the Sponsor was to default on its loan, the lender would step into the Sponsor's shoes and would be obligated under the terms of the Offering Plan as though it was the original Sponsor from the beginning. See Sections entitled "INTRODUCTION" and "RIGHTS AND OBLIGATIONS OF SPONSOR" for further details.

in the total amount of \$5,600,000.00.

18. Temporary and final Certificate of Occupancy.

The Sponsor is not obligated to obtain a final certificate of occupancy before the First Unit Closing.

Purchasers are advised that in New York City, newly constructed and newly renovated buildings are sometimes offered as Condominium projects without a final certificate of occupancy ("FCO") covering the entire Building but with only a temporary certificate of occupancy ("TCO"), and sometimes with several successive temporary certificates of occupancy. Certificates of Occupancy are generally governed by Section 301 of the New York Multiple Dwelling Law and, local building codes and rules. Both TCOs and FCOs are issued by the New York City Department of Buildings ("DOB"). A TCO is intended to indicate that the property is safe for occupancy, but means that not all of the construction work and/or inspections have been performed, or that not all of the required documents have been submitted to the DOB. All TCOs have an expiration date. A TCO typically expires 90 days after the date of issuance. When a TCO expires and is not renewed, it may be difficult or impossible to buy insurance, refinance, or sell units. In

New York City, it is common for Sponsors to commence unit closings when some or all units are covered by a TCO rather than a FCO. Sponsor anticipates this scenario may occur. Sponsor and its principals will undertake the responsibility for extending each TCO received prior to expiration thereof, and ultimately for obtaining a FCO covering the entire Building within two years from the date of the issuance of the first TCO. However, Sponsor and its principals make no representation or guarantee that DOB will issue the FCO within such two year period. Notwithstanding the foregoing, Sponsor and its principals are obligated to procure the FCO for the entire Building, and shall exercise best efforts to obtain the FCO within such two year period while keeping the TCO current. Unit Owners and the Board of Managers shall be obligated to cooperate with and refrain from obstructing Sponsor in these undertakings.

Furthermore, because Sponsor and the By-laws of the Condominium may permit Unit Owners to undertake renovations to individual units prior to the procurement of a FCO, such renovations may cause additional delays in the issuance thereof. Notwithstanding the foregoing, Sponsor and its principals are obligated to procure the FCO.

Buyers are advised to visit the DOB website for further recommendations when purchasing a unit in a building that does not have a FCO. A Factsheet on Certificates of Occupancy is available on the DOB website at: [http://www.nyc.gov/html/dob/downloads/pdf/co\\_factsheet.pdf](http://www.nyc.gov/html/dob/downloads/pdf/co_factsheet.pdf)

19. Square Footages of Units.

The square footages shown in the "Schedule A" are within five (5%) percent of the true measurements of the observable living spaces. Purchasers should verify each room and closet dimensions for their liking prior to closing. Purchasers should be aware that a decrease in area of less than five (5%) percent could be material and trigger a right of rescission. Please consult with your attorney and engineer/architect on this issue prior to closing.

## **INTRODUCTION**

The purpose of this Offering Plan is to set forth all of the material terms of the offer for sale of eleven (11) Residential Units, nine (9) parking space Units and licenses to nine (9) storage spaces located at 75 Columbia Street in the Cobble Hill section of Brooklyn.

75 Columbia Street is steps from Brooklyn Heights and is bordered by Congress Street to the North and Warren Street to the South.

The Residential Units are being sold as Condominium Units. The property is convenient to shopping, transportation, schools and religious institutions, and there is ready access to Manhattan. Parking is permitted on local streets subject to local parking rules.

This Introduction is intended to describe many of the important highlights of this Offering Plan, but does not summarize all of the Plan's relevant and major features. Prospective Purchasers should carefully read this Introduction together with the Plan for a more complete analysis of these and other material aspects of this Offering.

### **The Condominium and Condominium Act**

The Condominium shall be known as "75 COLUMBIA STREET CONDOMINIUM" (the "Condominium"). The Condominium is subject to the New York Condominium Act, New York Real Property Law Article 9-B, Sections 339-d to ii (the "Condominium Act").

### **The Sponsor**

SDS COLUMBIA LLC, a New York limited liability company (the "Sponsor") hereby presents an Offering Plan (the "Plan") for the conversion to Condominium ownership of the Building located at 75 Columbia Street, Brooklyn, New York (the "Building"). The Land and Building are collectively referred to herein as the "Property". SDS COLUMBIA LLC acquired the property on September 23, 2008.

### **The Offer**

Under this Plan, eleven (11) Residential Condominium Units (herein referred to as "Units" or "Apartments"), nine (9) parking space Units and licenses to nine (9) storage spaces will be sold by The Sponsor.

Except for the Working Capital Fund to be retained by the Condominium (as discussed below), all the proceeds realized from the sale of Units under this Plan will be paid to the Sponsor.

The Sponsor represents that it will endeavor in good faith to sell Units rather than rent the Units. However, the Sponsor unconditionally reserves the right to rent and not to sell Units. This may require modifying or replacing the existing financing with a mortgage with terms which are more conducive to a rental property. In the event Sponsor finds itself in such a market and commences the renting of Unsold Units. Purchasers should be aware that there is therefore no representation to sell more Units than the 15% needed to declare the Plan effective and Unit Owners may never gain effective control and management of the Condominium.

If the Sponsor makes a bulk sale of all or some of its Unsold Units, the transferee Successor-Sponsor is bound by the Sponsor's representation regarding its commitment to sell Units.

The Premises is currently encumbered by four (4) mortgages one of which was consolidated and all held by Builder's Bank an Illinois banking corporation, 225 West Wachen Drive, Chicago, IL.

The Loan documents contain a provision for the release of Units upon payment of a sum which equals the "Net Sales Proceeds" of the Unit. The Net Sales Proceeds shall mean the value of all consideration received in connection with the sale of the Unit less the reasonable and customary costs and expenses for the sale incurred by the Sponsor and paid to persons not affiliated with the Sponsor.

#### Features of Condominium Ownership Under This Plan

A. The ownership of a Condominium Unit is similar in many respects to the ownership of a private home in which each owner of a Unit ("Unit Owner") owns title to his/her Unit. These rights and benefits include, but are not limited to, the following:

- (1) the right to exclusive possession of the purchased Unit;
- (2) the right to use all parts of the Property in addition to his/her own Unit, which a Unit Owner owns in common with the owners of all other Units in the Condominium such as entryways, stairways and similar elements of the Building which Unit Owners may benefit from or use to the exclusion of none of the other owners (the "Common Elements"). A Unit Owner will share the non-exclusive right to use the Common Elements, with all other Unit Owners;
- (3) the right to exclusive use of Limited Common Elements (those areas appurtenant to a particular Unit or Units, the use of which is restricted to the owner(s) of such Unit or Units), if applicable;
- (4) the right, in the opinion of Counsel set forth below, to deduct from his/her adjusted gross income for Federal, New York State and New York City income tax purposes his/her real estate taxes and mortgage interest;



(5) the right to sell or lease his/her Unit to anyone without restriction or limitation, but any sale or lease of a Unit by a Unit Owner will be subject to a right by the Board of Managers of the Condominium to acquire or lease such Unit, or to produce a third party to acquire or lease such Unit, on the same terms as were offered to the owner of such Unit (see "RIGHTS AND OBLIGATIONS OF UNIT OWNERS"). An owner of an Unsold Unit, however, is not required to give the Board of Managers such right of first refusal;

(6) the right to mortgage his/her Unit; and,

(7) the right of each Unit Owner to vote for the members of the Board of Manager.

(8) the right to use his/her Unit in any way permissible under applicable laws; if a Purchaser of a Residential Unit wants to use his or her Unit for other than residential purposes, he or she will need Board approval to change the Certificate of Occupancy. The Board may unreasonably refuse to grant approval to change the Certificate of Occupancy.

(9) the Condominium Board does not have the right to approve or disapprove Purchasers. While the Sponsor has no present intention or plan to specifically market the units to investors, the Sponsor is not restricting itself from doing so. Therefore, there is no limit on the number of owners who may purchase for investment rather than for personal occupancy and there may always be a substantial percentage of owners who are non-residents.

B. As is customary in ownership of Condominium Units, each Purchaser shall be obligated to:

- (1) pay "Common Charges" as provided for under the By-Laws of the Condominium, and special assessments, if any;
- (2) be responsible for the payment of real estate taxes appurtenant to his/her Unit as each Unit will be taxed as a separate tax lot;
- (3) abide by the terms of the Condominium By-Laws;
- (4) abide by the decisions of the Board of Managers; and,
- (5) be responsible for maintenance and repairs within his/her Unit.

Individual Purchasers should explore obtaining insurance coverage, which would be at their own cost and expense, to insure them for such risks such as fire and

casualty losses of personal property and/or improvements added by the Unit Owner within their Units, as well as liability insurance for each occurrence which might occur within their respective Units. Individual Purchasers should note that they could be potentially liable for injury to workers, invitees and guests within their respective Units.

### Obtaining Financing

Various savings and commercial banks in New York State financed from 50% to 70% or more of the total cash purchase price of Units for Purchasers whose credit, income and reputation are acceptable to the bank making the loan. However, many banks have established a threshold for the number of Units in a condominium to be sold, 50% or more, prior to their making loans. No representation is made as to the terms, conditions or availability of such financing at this time or in the future.

If a Purchaser obtains a mortgage, his/her aforesaid rights to sell, sublet and surrender possession of his/her Unit will be subject to the rights of the lender set forth in the mortgage, which normally would restrict the Purchaser from exercising these rights while the mortgage is outstanding.

### Prequalification by a lender designated by the Sponsor.

The financing contingency section of the Purchase Agreement shall only be effective upon the Purchaser providing to the Sponsor evidence that Purchaser has been pre-qualified for purchase money financing by Home Owners Mortgage Express ("HOME"), 215 Park Avenue South, Suite 1302, New York, NY 10003, Rolan Shnayder, P: 646-421-2246. Purchaser must provide such evidence of pre-qualification either prior to or within five (5) days after the date (the "Contract Date") on which a fully executed copy of the Purchase Agreement is delivered to Purchaser's attorney. HOME has agreed to pre-qualify Purchasers and provide a letter of pre-qualification within twenty-four (24) hours, excluding weekends and holidays, of Purchaser's request for pre-qualification, at no cost or further obligation to Purchaser. In the event that Purchaser does not provide evidence of pre-qualification within five (5) days of the Contract Date, then the Sponsor may either cancel the Purchase Agreement or treat the Purchase Agreement as an "All Cash" transaction, and in which case the financing contingency shall not apply. The prequalification is solely for the benefit of the Sponsor in ascertaining the purchaser's creditworthiness and likelihood of obtaining financing. No representation is made that purchasers who are prequalified will actually receive mortgage financing for the purchase of their Unit and shall be bound by the terms of the mortgage contingency provisions of the Plan and Purchase Agreement. See sections entitled: "PROCEDURE TO PURCHASE" and "PURCHASE AGREEMENT".

### Common Charges and Special Assessments

In accordance with the New York Condominium Act, Sections 339(i) and (m), similar to other Condominiums, the Common Charges payable under the By-Laws will be based strictly on the projected cash requirements of ownership and operation of the

Property and may include a reserve for contingencies, replacements and/or repairs. IT IS ASSUMED THAT COMMON CHARGES WILL INCREASE AS CASH REQUIREMENTS OF THE CONDOMINIUM RISE DUE TO INFLATION AND OTHER FACTORS. Furthermore, the Board of Managers may impose special assessments in order to meet emergencies, contingencies or other unforeseen events, which will become the financial obligation of each Purchaser of a Condominium Unit. These assessments will be levied on a pro rata share basis.

The estimated Common Charges for the first year of Condominium operation and the estimated real estate taxes are set forth in Schedule A. The projected budget for the first year of Condominium operation is set forth in Schedule B.

### Purchase Price

The Total Cash Purchase Price for each Condominium Unit is set forth in Schedule A. THE TOTAL CASH PURCHASE PRICE FOR EACH CONDOMINIUM UNIT IS BASED ON THE PRICE OF THE PROPERTY ESTABLISHED BY THE SPONSOR-SELLER WITHOUT ARMS-LENGTH NEGOTIATION. THESE PRICES ARE NOT SUBJECT TO REVIEW OR TO APPROVAL BY ANY GOVERNMENTAL AGENCY, INCLUDING THE DEPARTMENT OF LAW, STATE OF NEW YORK.

The general Common Elements of the Condominium shall include, but not be limited to those listed in the section entitled "RIGHTS AND OBLIGATIONS OF UNITS OWNERS".

Each Unit, the fixtures and personal property contained therein, and the Common Elements are being sold in their newly-installed condition, subject to reasonable use, wear, tear and natural deterioration between the date of the Purchase Agreement and the closing of title to the Unit as described in "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION" as set forth in Part II beginning on Page A-1 of the Plan.

### Legal Documents

The agreement to purchase the Condominium Unit is called a "PURCHASE AGREEMENT" and may be found in Part II, starting on page B-1.

A detailed description of the physical condition of the Property prepared by the GF 55 PARTNERS is set forth in Part II, beginning on page A-1 and should be carefully reviewed by each prospective Purchaser.

The form of Declaration, the recorded, written instrument by which the Property is submitted to the provisions of the New York Condominium Act is set forth on page E-1 in Part II.

The form of Unit Deed is reproduced in Part II beginning on page D-1.

The Condominium's By-Laws which govern the operation of the Condominium and the rights, powers and duties of its officers and directors are summarized in the section entitled "RIGHTS AND OBLIGATIONS OF BOARD OF MANAGERS AND SUMMARY OF BY-LAWS" and are reproduced in full in Part II beginning on page F-1.

### Special Risk Factors

There are certain factors of this Offering Plan which constitute special risks. Please see "SPECIAL RISKS" section beginning on page i.

### Effective Date

Prior to the First Closing of a Unit, the Sponsor will enter into Purchase Agreements with the prospective Purchasers. When fifteen (15%) percent of Purchase Agreements have been executed, the Plan will be declared effective as stated in the Section entitled "EFFECTIVE DATE". Thereafter, closings on individually purchased Units will occur pursuant to the terms of such Purchase Agreements. By the First Closing of a Unit a temporary or permanent Certificate of Occupancy will be obtained for all or part of the premises.

### Sponsor to Pay Offering Expenses

The Sponsor will pay for all costs and expenses relative to the promulgation and consummation of this Plan, including but not limited to its legal fees and disbursements, commissions, if any, filing fees, engineers' fees, accounting fees, printing and any other fees, expenses and disbursements related to the filing and processing of this Plan, but not fees for the individual Unit Closings which are discussed in the section entitled "CLOSING COSTS AND ADJUSTMENTS".

### Expenses

The expenses of the Condominium accruing to and inclusive of the First Closing of the Units (the "Adjustment Date"), shall be the financial obligation of the Sponsor, which may, at the Sponsor's option, be paid from the proceeds of the sale of Units, with the exception of those expenses which are to be apportioned at the time of Closing in accordance with the Purchase Agreement including but not limited to: real estate and all other taxes; water charges and sewer rents; permit and license fees for assignable fees and licenses, if any; premiums on transferable insurance policies in effect as of the Closing of Title, if any; fuel; and utility deposits (including escrows), if any.

### Amendments to the Plan

The Sponsor of this Plan may amend it from time to time by filing an amendment with the Department of Law, State of New York. In the event that there is an



amendment to the Plan, said amendment shall be served upon:

- (1) Purchasers who have executed and delivered Purchase Agreements to the Sponsor or the Condominium, provided that said Purchaser is not in default pursuant to his/her Purchase Agreement; and,
- (2) any other person entitled to service pursuant to local law or regulation; (collectively known as the "Offerees").

Service shall be provided in the following manner:

- (1) personal delivery; or,
- (2) mailing addressed to the Offeree at the last known residence address of such Offeree, or if Offeree has provided written information of an alternative address for notices, addressed to the Offeree at the alternative address. If the Sponsor has no information of the last known residence address, but has written information of the place of business or employment of such Offeree, the mailing shall be addressed to such last known business or employment address; and,
- (3) service shall be deemed complete upon completion of personal delivery to all Offerees or on the fifth day after the date of mailing to all Offerees not personally served.

#### Document Copies

COPIES OF THE PLAN, AS WELL AS ALL AMENDMENTS THERETO, ALL DOCUMENTS REFERRED TO IN THE PLAN AND ALL EXHIBITS SUBMITTED TO THE DEPARTMENT OF LAW IN CONNECTION WITH THE FILING OF THE PLAN INCLUDING ALL SCHEDULES AND THE EXHIBITS, WILL BE AVAILABLE FOR INSPECTION UPON REASONABLE NOTICE WITHOUT CHARGE AND FOR COPYING AT A REASONABLE CHARGE TO PROSPECTIVE PURCHASERS AND THEIR ATTORNEYS AT THE OFFICE OF THE ATTORNEYS WHO PREPARED THIS OFFERING PLAN FOR THE SPONSOR, FORMAN & ASSOCIATES, pc, 80 Maiden Lane, Suite 2204, New York New York 10038.

#### Lawful Limitations For Purchase of Units

In accordance with the provisions of the Laws of the City of New York, the Sponsor represents that neither the Sponsor nor the Condominium will discriminate against any person because of his/her race, creed, color, sex, national origin, ancestry, or any other reason prohibited by civil rights law in the sale of Units offered by this Plan, or in the leasing of any Unit in the Building.

PART I AND PART II, INCLUDING ALL SCHEDULES AND THE EXHIBITS,

TOGETHER CONSTITUTE THE ENTIRE OFFERING PLAN. THIS PLAN CONTAINS ALL OF THE DETAILED TERMS OF THIS TRANSACTION. ALL DOCUMENTS REFERRED TO IN THIS OFFERING PLAN ARE IMPORTANT. IT IS RECOMMENDED THAT YOU CONSULT YOUR OWN ATTORNEY OR FINANCIAL ADVISOR BEFORE PURCHASING AND PROVIDE HIM/HER WITH A COPY OF THIS OFFERING PLAN.

EACH UNIT SHOULD BE INSPECTED PRIOR TO PURCHASE TO DETERMINE THE EXACT LAYOUT AND PHYSICAL CONDITION.

THE PURCHASE OF A CONDOMINIUM UNIT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND CONSULT WITH AN ATTORNEY BEFORE SIGNING AN AGREEMENT TO PURCHASE A CONDOMINIUM.

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## **DEFINITIONS**

1. **ADJUSTMENT DATE** - Refers to the date of First Closing of title to a Unit.
2. **APPURTENANT INTERESTS** - Refers to the interest of a Unit Owner in (i) the Common Elements, (ii) any Units acquired by the Board of Managers, or its designee, on behalf of all Unit Owners, or the proceeds of the sale therefrom or lease thereof, if any, and (iii) any other assets of the Condominium.
3. **BOARD OF MANAGERS** - Shall mean the board that represents the Unit Owners and manages the Condominium pursuant to the provisions of the By-Laws and of the Plan.
4. **BUILDING** - Refers to the structures and improvements, including below grade segments, at 75 Columbia Street, Brooklyn, New York.
5. **BY-LAWS** - Refers to the By-Laws governing the operations of the Condominium, the form of which is set forth in Part II of the Plan.
6. **CLOSING, CLOSING OF TITLE** - Refers to the time, place and procedure by which fee title to the Unit in question is conveyed to the Purchaser pursuant to a Purchase Agreement.
7. **CLOSING DATE** - Refers to the date on which closing for sale of a Unit occurs.
8. **COMMON CHARGES** - Refers to an assessment levied by the Board of Managers against every Unit Owner in an amount measured by such Unit Owner's percentage interest in the Common Elements, based strictly upon the projected cash requirements of ownership representation of the Property.
9. **COMMON ELEMENTS** - Refers to the Land, all parts of the Building (except the Units), including the foundations and supports of the Building, and all areas or facilities for the common use of the Units and the Unit Owners as described in the Declaration.
10. **COMMON EXPENSES** - Expenses incurred by all Unit Owners for the purpose of paying costs in connection with the repair, maintenance, replacement, restoration or operation of, and any alteration, addition or improvement to, the Common Elements.
11. **COMMON INTERESTS** - The proportionate, undivided interest in the Common Elements, appurtenant to each Unit, expressed as a numerical percentage, as such interest is determined in accordance with the Declaration.
12. **CONDOMINIUM** - The Property, when converted to Condominium ownership in accordance with the provisions of this Plan, at which time it will be known as the 75 COLUMBIA STREET CONDOMINIUM.

13. CONDOMINIUM ACT - Refers to the New York Condominium Act, as amended from time to time and presently found in the New York Real Property Law, Articles 9-B, Section 339-d to Section 339 ii.
14. CONTROL PERIOD – Two (2) years after the closing of the First Unit or whenever the Unsold Units constitute less than 50% of the common interests, whichever is sooner.
15. DECLARATION - The instrument creating the Condominium, as same may be amended from time to time, by which the Property is submitted to the Condominium Act, the form of which is set forth in Part II of the Plan.
16. DOWN PAYMENT - Refers to the money that a person desiring to purchase a Unit must deliver to the Sponsor at the time such person delivers an executed Purchase Agreement to the Sponsor.
17. EFFECTIVE DATE - Refers to the date the Plan is declared effective (see "EFFECTIVE DATE" in Part I).
18. FIRST CLOSING - The date fee title to a Condominium Unit is first conveyed to a Purchaser pursuant to the Plan.
19. FLOOR PLANS - Refers to the floor plans of the Building, as same may be amended from time to time, filed in the Kings County office of the City Register, when the Plan is declared effective.
20. LAND - Refers to the Property, excluding the Building.
21. LIMITED COMMON ELEMENTS - Refers to Common Elements, the use of which is limited exclusively to specifically designated Unit(s).
22. MANAGING AGENT - The Managing Agent will be CONDOMINIUM MANAGEMENT SERVICES LLC.
23. OFFEREE - Refers to (i) Purchasers who have executed and delivered Purchase Agreements and are not in default thereunder; (ii) any other person who, pursuant to law, is an Offeree of the Plan.
24. PERCENTAGE OF RESIDENTIAL COMMON INTEREST - The proportionate, undivided interest in the Common Elements, appurtenant to the Residential Units, expressed as a numerical percentage, as such interest is determined in accordance with the Declaration.
25. PERCENTAGE OF TOTAL COMMON INTEREST- The proportionate, undivided interest in the Common Elements, appurtenant to all of the Units, expressed as a numerical percentage, as such interest is determined in accordance with the



Declaration.

26. PERMITTED ENCUMBRANCES - Refers to those liens and encumbrances to which fee title to each Unit shall be subject.

27. PRESENTATION DATE OF AN AMENDMENT - The last date that any amendment accepted for filing by the Department of Law hereto or any other document, as the case may be, is personally delivered to all Offerees or five days after mailing to all Offerees not personally served, whichever date is latest.

28. PLAN - Refers to this Offering Plan for the conversion of the Property to Condominium ownership, as it may be amended from time to time.

29. PROPERTY - Refers to the Land and Buildings situated at 75 Columbia Street, Brooklyn, New York, that the Sponsor plans to convert to Condominium ownership pursuant to the provisions of this Plan.

30. PURCHASE AGREEMENT - Refers to that contract of purchase and sale for a Unit set forth as Exhibit B in Part II of the Plan.

31. PURCHASER - Refers to person(s) named as Purchaser(s) in a Purchase Agreement which has been duly executed by such person and accepted by the Sponsor.

32. PUNCH LIST - Refers to a memorandum of work, prepared in the event the Sponsor fails to complete the improvements which the Sponsor is obligated to complete by the Closing Date for the Unit in question, in which the Sponsor and Purchaser agree to the work Sponsor must complete, and which obligation of the Sponsor shall survive closing of title to such unit.

33. RESIDENTIAL UNIT - A Unit that can only be used as a dwelling Unit and is a separate Condominium Unit.

34. SELLING AGENT - The Selling Agent is HEIGHTS REAL ESTATE ADVISORS LLC.

35. SPONSOR - Refers to SDS COLUMBIA LLC.

36. SUCCESSOR-SPONSOR - The owners of at least 10 Units or 20% of the total number of Units in the Condominium, whichever is less, which are not purchased for occupancy by the owner or one or more members of his/her immediate family who are financially responsible entities or individuals, who will assume the status and all of the obligations of the Sponsor for those Units under the offering plan, applicable laws or regulations. The obligations of a Sponsor will apply only to those Units owned by such designee.

37. TOTAL CASH PURCHASE PRICE – The amount set forth in Schedule A.

38. UNAVOIDABLE DELAYS - Means delays due to strike, lockout, or other labor or industrial disturbance (whether or not on the part of employees or contractors of the Sponsor), civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, war, act of the public enemy, riot, sabotage, blockade, embargo, shortage of or failure or inability to secure materials or labor by reason of priority or similar regulation or order of any government or regulatory body, lightning, earthquake, fire, storm, hurricane, flood washout, explosion, act of God or any cause whatsoever beyond the reasonable control of Sponsor whether or not similar to any of the causes hereinabove stated; provided, however, that for purposes of this definition, lack of funds or inability to obtain financing shall not be deemed to be a cause beyond the control of the Sponsor.

39. UNIT, APARTMENT, APARTMENT UNIT OR CONDOMINIUM UNIT - Refers to a space designated as a Unit in the Declaration, consisting generally, of a specific Unit in the Building and an appurtenant undivided interest in the Common Elements. Such Units are collectively referred to as "Units" or "Condominium Units".

40. UNIT OWNER - Refers to the owner of fee title to a Unit.

41. UNSOLD UNIT - Refers to a Unit owned or retained by Sponsor or its designee, or a Unit for which a prospective Purchaser is in default under the terms of his/her Purchase Agreement past any applicable cure period, or a Unit the Sponsor has not sold, or a Unit that is acquired, individually or collectively, by one or more members of a group that consists of the Sponsor or a partner of the Sponsor, or by a group that consists of the Sponsor or a partner of the Sponsor and a person or persons joined with the Sponsor, or any entity or person, as designated by the Sponsor.

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## **DESCRIPTION OF PROPERTY AND IMPROVEMENTS**

The property at 75 Columbia Street is located in the Cobble Hill section of Brooklyn, steps from Brooklyn Heights. Cobble Hill is a historically Italian neighborhood and served by two commercial main streets, Court and Smith Streets.

The Property will consist of a newly constructed Condominium containing eleven (11) Residential Units, nine (9) parking space Units and licenses to nine (9) storage spaces being sold by the Sponsor. The Common Elements will include a 550 square foot recreational lounge and fitness area on the ground floor. The Sponsor will provide electrical outlets and a painted room with carpeting in this area. There will also be a 687 square foot Common Area terrace on the roof. The Sponsor will provide concrete pavers and a gas outlet for a grill on this area of the roof. Any other amenities for these Common Areas shall be furnished at the cost of the Unit Owners as authorized by the Board of Managers. The property also comprises the Land on which the Condominium Units are situated.

The Building will consist of a cellar, plus seven floors. See: **"DESCRIPTION OF PROPERTY SPECIFICATIONS AND BUILDING CONDITION AND FLOOR PLANS"**. The main entrance for the residential Units will be on Warren Street.

Construction of the premises is expected to be completed by September, 2012. The first Unit is expected to close on or about January 1, 2013, subject to unavoidable delays.

The Sponsor reserves the right to amend or modify, in any way, the plans and specifications for the Building ("Plans and Specifications") (including without limitation, changing materials, appliances, equipment, fixtures and other construction details) and substitute in place of any materials, appliances, equipment and/or fixtures set forth therein or in **"DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION"**, beginning on page A-1 in Part II of the Plan, materials, appliances, equipment and/or fixtures of substantially equal or better quality, provided only that any necessary approval of any governmental authority having jurisdiction thereover is first obtained. Any or all of the foregoing amendments or changes may be made without prior notice or amendment to the Plan. However, no change will be made in the size, layout, number of Units or quality of the Common Elements, except by amendment to this Offering Plan. Furthermore, no change will be made in the size, location of Building or Units or other improvements or common elements, if such changes affect the percentage of common interests or adversely affect the value of any Unit to which title has closed or for which a Purchase Agreement has been executed and is in effect unless all affected Unit Owners and contact vendors consent in writing to such change.

The Property will be constructed in accordance with all applicable zoning and building laws, with the exception of waivers, and regulations, codes and other

requirements, including requirements of the New York City Building Code and Landmark Preservation Commission, if any.

A copy of the Plans for the construction of the premises which have been approved in accordance with Section 300 of the Multiple Dwelling Law have been submitted to the Department of Law as Exhibit C-1 and are on file with the Department of Law, Investment Protection Bureau, 120 Broadway, New York, New York 10271. Such approved Plans were submitted prior to this Offering Plan being accepted for filing by the Department of Law.

The Sponsor represents that it, at its sole cost and expense, shall cure or cause to be cured all notices or violations of record, municipal ordinances, orders or requirements issued by the Department of Buildings, Department of Housing Preservation and Development, Fire Department, Labor Department, Health Department or other municipal departments having jurisdiction against or affecting the Property on the Closing Date. The Sponsor represents that it will eliminate all known dangerous and hazardous conditions of which it has received notice. The Sponsor shall comply with all work orders received from mortgagees. In the event that the Sponsor has not cured violations of record by the date of Title Closing, the Sponsor shall cure said violations of record within 180 days thereafter.

The general Common Elements of the Condominium shall include, but not be limited to those listed in the section entitled "RIGHTS AND OBLIGATIONS OF UNIT OWNERS".

Each Unit, the fixtures and personal property contained therein, and the Common Elements are being sold in their newly-installed condition, subject to reasonable use, wear, tear and natural deterioration between the date of the Purchase Agreement and the Closing of title to the Unit.

The Sponsor will maintain and may construct Common Elements up to the First Closing and will maintain and may construct each Unit and the fixtures and personal property contained therein as described in "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION" as set forth in Part II beginning on page A-1 of the Plan up to the time of the transfer of title to the Unit in question.

A Unit Owner may only use his/her Unit for a purpose consistent with local zoning ordinances, as amended from time to time, any other applicable ordinances or statutes, and any regulation of a governmental authority that has jurisdiction over the Condominium, including but not limited to, local building codes and Multiple Dwelling Law, as such statutes, ordinances and regulations may be amended from time to time, but in no event may a Unit Owner use his/her Unit for a use that violates the By-Laws of the Condominium (see "CONDOMINIUM BY-LAWS" set forth beginning on page F-1, in Part II of this Plan).

References should be made to the "DESCRIPTION OF PROPERTY,



SPECIFICATIONS AND BUILDING CONDITION" set forth beginning on page A-1 in Part II of the Plan for a more detailed description of the Building and its physical condition.

## **LOCATION AND AREA INFORMATION**

The Property is located at 75 Columbia Street, Brooklyn, New York in the Cobble Hill section, steps from the Brooklyn Heights and Downtown Brooklyn

## **LOCATION AND SURROUNDING AREA**

The Cobble Hill neighborhood is part of Brooklyn Community Board 6 and bordered by Degraw Street to the South and Atlantic Avenue to the North; Columbia Street to the West and Court Street to the East. The neighborhood sits adjacent to Boerum Hill and Brooklyn Heights with Carroll Gardens to the south.

Cobble Hill, a historically Italian neighborhood, is served by two commercial main streets, Court and Smith Streets. Family-run shops, - Italian meat markets and old time barbershops are mixed with many new restaurants. .

Cobble Hill is also known for its Italianate style private brownstones and brick row houses. The neighborhood is close in proximity to, Wall Street.

## **TRANSPORTATION**

Brooklyn's transportation network allows it to draw from Manhattan, Queens, the Bronx, Staten Island, Long Island and New Jersey. With 14 subway lines, 11 bus routes and the Long Island Railroad (LIRR) serving the area, Downtown Brooklyn has the "most convenient public transportation network. Direct bus service connects Downtown Brooklyn to John F. Kennedy and Newark International Airports.

Cobble Hill is served by the F and G subway lines and is a short walk to the Borough Hall subway terminal that accesses six subway lines. Travel time between Cobble Hill and the Wall Street area of Manhattan, by subway is under 30 minutes. Typical travel time to Midtown Manhattan (Times Square) is approximately 40 minutes.

### **BUS LINES:**

B61- Columbia Street/ Atlantic Ave  
B63- Atlantic Ave  
B65- Bergen Street  
B71- Sackett Street  
B75- Court Street

### **SUBWAY LINES:**

2, 3, 4, 5, M, R- Borough Hall Station: Court and Joralemon/ Montague Street  
F, G- Bergen Street Station: Bergen and Smith Street  
A, C, G- Hoyt-Schermerhorn Station: Hoyt and Schermerhorn Street

## **AREA AMENITIES**

**SCHOOLS:**

PS 29 John M Harrigan  
425 Henry St  
Brooklyn, NY 11201  
(718) 330-9277

PS 146  
610 Henry St  
Brooklyn, NY 11231  
(718) 923-4750

PS 261 Philip Livingston  
314 Pacific St  
Brooklyn, NY 11201  
(718) 330-9275

PS 58 The Carroll  
330 Smith St  
Brooklyn, NY 11231  
(718) 330-9322

Brooklyn International High School  
49 Flatbush Avenue Ext  
Brooklyn, NY 11201  
(718) 643-9315

Cobble Hill School of American Study  
347 Baltic St  
Brooklyn, NY 11201  
(718) 403-9544

Freedom Academy High School  
116 Nassau St  
Brooklyn, NY 11201  
(718) 694-8357

George Westinghouse High School  
105 Tech Pl  
Brooklyn, NY 11201  
(718) 625-6130

Pacific High School  
112 Schermerhorn St  
Brooklyn, NY 11201  
(718) 855-7155

**COLLEGES, UNIVERSITIES AND CONTINUING EDUCATION:**

Brooklyn Law School  
250 Joralemon St  
Brooklyn, NY 11201  
(718) 625-2200

Long Island University- Brooklyn Campus  
1 University Plz  
Brooklyn, NY 11201  
(718) 488-1000

Polytechnic University- Brooklyn Campus  
6 Metrotech Center  
Brooklyn, NY 11201  
(718) 260-3600

St Francis College  
180 Remsen St  
Brooklyn, NY 11201  
(718) 522-2300

**HOSPITALS:**

Brooklyn Hospital Center  
121 Dekalb Ave  
Brooklyn, NY 11201  
(718) 250-8080

Long Island College Hospital  
339 Hicks St  
Brooklyn, NY 11201  
(718) 780-1000

New York Methodist Hospital  
506 6th Street  
Brooklyn, NY 11215  
(718) 780-3000

**POLICE STATIONS:**

Brooklyn 76th Precinct Police  
191 Union St  
Brooklyn, NY 11231  
(718) 834-3211

Brooklyn 84th Precinct Police  
301 Gold St  
Brooklyn, NY 11201



(718) 875-6811

Brooklyn 78th Precinct Police  
65 6th Avenue  
Brooklyn, NY 11217  
(718) 636-6411

**FIRE DEPARTMENT:**

Engine 202 Ladder 101  
31 Richards Street  
Brooklyn, NY 11231  
(718) 625-8353

Engine 224  
274 Hicks street  
Brooklyn, NY 11201

Engine 226  
409 State Street  
Brooklyn, NY 11217

**LIBRARIES:**

Brooklyn Heights Library  
280 Cadman Plz W  
Brooklyn, NY 11201  
(718) 623-7100

Carroll Gardens Branch Library  
396 Clinton St  
Brooklyn, NY 11231  
(718) 596-6972

Brooklyn Public Library  
71 Sullivan St  
Brooklyn, NY 11231  
(718) 852-1643

**RELIGIOUS INSTITUTIONS:**

Antioch Pentecostal Church  
201 Atlantic Avenue  
Brooklyn, NY 11201  
(718) 596-2970

Brooklyn Heights Synagogue  
131 Remsen St  
Brooklyn, NY 11201

(718) 522-2070

First Spanish Baptist Church  
301 Pacific St  
Brooklyn, NY 11201  
(718) 852-6046

New Brown Memorial Baptist Church  
609 Clinton St  
Brooklyn, NY 11231  
(718) 624-4780

New Day Baptist Church  
365 Jay St  
Brooklyn, NY 11201  
(718) 330-0300

Our Lady of Lebanon Roman Catholic Church  
113 Remsen St  
Brooklyn, NY 11201  
(718) 624-7228

Pentecostal Christian Church  
92 Summit St  
Brooklyn, NY 11231  
(718) 237-0432

Saint Nicholas Antiochian Orthodox Church  
355 State Street  
Brooklyn, NY 11217  
(718) 855-6225

St Agnes Roman Catholic Church  
433 Sackett St  
Brooklyn, NY 11231  
(718) 625-1717

St Ann & The Holy Trinity Church  
157 Montague St  
Brooklyn, NY 11201  
(718) 875-6960

St Boniface Church  
190 Duffield St  
Brooklyn, NY 11201  
(718) 875-2096

St Charles Borromeo Church  
21 Sidney Pl  
Brooklyn, NY 11201  
(718) 625-1177

St Peter St Paul Our Lady Church  
234 Congress St  
Brooklyn, NY 11201  
(718) 624-3425

Strong Place Baptist Church  
273 Court St  
Brooklyn, NY 11231  
(718) 625-4776

**POST OFFICES:**

Us Post Office  
210 Joralemon St # 1  
Brooklyn, NY 11201

Us Post Office  
271 Cadman Plz E # 1  
Brooklyn, NY 11201

Us Post Office  
615 Clinton St  
Brooklyn, NY 11231

**75 Columbia Street  
Brooklyn, New York 11201**

**Schedule A  
Offering Prices and Related Information**

(All Projected Charges are for the Twelve Month Period Commencing Jan. 1, 2013 and Ending December 31, 2013 except as noted)

| Unit              | No. Bedrooms & Baths | Approx.<br>Sq. Ft. of<br>Units | Approx Exterior<br>Sq. Ft. | Offering Price      | Percentage<br>Residential<br>Only | Percentage of<br>Total Common<br>Interest | Projected<br>Monthly<br>Common<br>Charges | Projected<br>Annual Common<br>Charges | Projected<br>Monthly Real<br>Estate Taxes<br>with 421a Tax<br>Benefits | Projected<br>Monthly Real<br>Estate Taxes<br>without 421a Tax<br>Benefits | Projected Monthly<br>Carrying Charges<br>with 421a Tax<br>Benefits | Projected Monthly<br>Carrying Charges<br>without 421a Tax<br>Benefits |
|-------------------|----------------------|--------------------------------|----------------------------|---------------------|-----------------------------------|-------------------------------------------|-------------------------------------------|---------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------|
| (1)               | (2)                  | (3)                            | (4)                        | (5)                 | (6)                               | (8)                                       | (9)                                       | (10)                                  | (11)                                                                   | (12)                                                                      | (13)                                                               | (14)                                                                  |
| 1                 | 1 BR/ 1 BA           | 610                            |                            | \$485,000           | 4.1292%                           | 3.7701%                                   | \$ 455.37                                 | \$ 5,464.49                           | \$ 47.35                                                               | \$ 308.02                                                                 | \$ 502.72                                                          | \$ 763.39                                                             |
| 2A                | 3 BR/ 2 BA + H       | 1,265                          |                            | \$990,000           | 8.7495%                           | 7.9886%                                   | \$ 964.91                                 | \$ 11,578.87                          | \$ 100.33                                                              | \$ 652.67                                                                 | \$ 1,065.23                                                        | \$ 1,617.57                                                           |
| 2B                | 3 BR/ 2 BA + H       | 1,273                          |                            | \$995,000           | 8.8048%                           | 8.0392%                                   | \$ 971.01                                 | \$ 11,652.10                          | \$ 100.96                                                              | \$ 656.79                                                                 | \$ 1,071.97                                                        | \$ 1,627.80                                                           |
| 3A                | 3 BR/ 2 BA + H       | 1,265                          |                            | \$1,060,000         | 8.7495%                           | 7.9886%                                   | \$ 964.91                                 | \$ 11,578.87                          | \$ 100.33                                                              | \$ 652.67                                                                 | \$ 1,065.23                                                        | \$ 1,617.57                                                           |
| 3B                | 3 BR/ 2 BA + H       | 1,273                          |                            | \$1,065,000         | 8.8048%                           | 8.0392%                                   | \$ 971.01                                 | \$ 11,652.10                          | \$ 100.96                                                              | \$ 656.79                                                                 | \$ 1,071.97                                                        | \$ 1,627.80                                                           |
| 4A                | 3 BR/ 2 BA + H       | 1,281                          |                            | \$1,130,000         | 8.8602%                           | 8.0897%                                   | \$ 977.11                                 | \$ 11,725.33                          | \$ 101.60                                                              | \$ 660.92                                                                 | \$ 1,078.71                                                        | \$ 1,638.03                                                           |
| 4B                | 3 BR/ 2 BA + H       | 1,273                          |                            | \$1,135,000         | 8.8048%                           | 8.0392%                                   | \$ 971.01                                 | \$ 11,652.10                          | \$ 100.96                                                              | \$ 656.79                                                                 | \$ 1,071.97                                                        | \$ 1,627.80                                                           |
| 5A                | 3 BR/ 2 BA + H       | 1,281                          |                            | \$1,200,000         | 8.8602%                           | 8.0897%                                   | \$ 977.11                                 | \$ 11,725.33                          | \$ 101.60                                                              | \$ 660.92                                                                 | \$ 1,078.71                                                        | \$ 1,638.03                                                           |
| 5B                | 3 BR/ 2 BA           | 1,273                          |                            | \$1,205,000         | 8.8048%                           | 8.0392%                                   | \$ 971.01                                 | \$ 11,652.10                          | \$ 100.96                                                              | \$ 656.79                                                                 | \$ 1,071.97                                                        | \$ 1,627.80                                                           |
| 6                 | 4 BR/ 2.5 BA + T     | 1,896                          | 282                        | \$1,895,000         | 13.1139%                          | 11.9735%                                  | \$ 1,446.22                               | \$ 17,354.59                          | \$ 150.37                                                              | \$ 978.23                                                                 | \$ 1,596.59                                                        | \$ 2,424.44                                                           |
| 7                 | 4 BR 2 BA + T + RT   | 1,781                          | 90 T; 489 RT               | \$1,895,000         | 12.3183%                          | 11.2471%                                  | \$ 1,358.48                               | \$ 16,301.79                          | \$ 141.25                                                              | \$ 918.88                                                                 | \$ 1,499.73                                                        | \$ 2,277.37                                                           |
| <b>Res. Total</b> |                      | <b>14,471</b>                  |                            | <b>\$13,055,000</b> | <b>100.0000%</b>                  | <b>91.3041%</b>                           | <b>\$ 11,028.14</b>                       | <b>\$ 132,337.67</b>                  | <b>\$ 1,146.66</b>                                                     | <b>\$ 7,459.49</b>                                                        | <b>\$ 12,174.80</b>                                                | <b>\$ 18,487.63</b>                                                   |

T = Terrace directly accessible from the unit; RT = Roof Terrace accessible from the unit; H = Hallway Shared Common Element; LCE = Limited Common Element for sole unit



75 Columbia Street  
Brooklyn, New York 11201

Schedule A. con't.  
Offering Prices and Related Information

(All Projected Charges are for the Twelve Month Period Commencing Jan 1, 2013 and Ending Dec. 31, 2013 except as noted)

| Unit                  | No. Bedrooms &<br>Baths | Approx.<br>Sq. Ft. of<br>Units | Aprox<br>Exterior Sq.<br>Ft. | Offering Price | Percentage<br>Garage<br>Common<br>Interest | Percentage of<br>Total<br>Common<br>Interest | Projected<br>Monthly<br>Common<br>Charges | Projected<br>Annual<br>Common<br>Charges | Projected<br>Monthly Real<br>Estate Taxes<br>with 421a<br>Tax Benefits | Projected<br>Monthly Real<br>Estate Taxes<br>without 421a<br>Tax Benefits | Projected Monthly<br>Carrying Charges<br>with 421a Tax<br>Benefits | Projected Monthly<br>Carrying Charges<br>without 421a Tax<br>Benefits |
|-----------------------|-------------------------|--------------------------------|------------------------------|----------------|--------------------------------------------|----------------------------------------------|-------------------------------------------|------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------|
| (1)                   | (2)                     | (3)                            | (4)                          | (5)            | (6)                                        | (8)                                          | (9)                                       | (10)                                     | (11)                                                                   | (12)                                                                      | (13)                                                               | (14)                                                                  |
| Parking Spaces        |                         |                                |                              |                |                                            |                                              |                                           |                                          |                                                                        |                                                                           |                                                                    |                                                                       |
| 1                     |                         | 153                            | -                            | \$75,000       | 11.1120%                                   | 0.9663%                                      | \$ 33.80                                  | \$ 405.59                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.84                                                           | \$ 68.82                                                              |
| 2                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.55                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| 3                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.55                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| 4                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.55                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| 5                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.55                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| 6                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.56                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| 7                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.56                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| 8                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.56                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| 9                     |                         | 153                            | -                            | \$75,000       | 11.1110%                                   | 0.9662%                                      | \$ 33.80                                  | \$ 405.56                                | \$ 5.04                                                                | \$ 35.02                                                                  | \$ 38.83                                                           | \$ 68.81                                                              |
| Parking Total         |                         | 1,377                          |                              | \$675,000      | 100.0000%                                  | 8.6959%                                      | \$ 304.17                                 | \$ 3,650.04                              | \$ 45.33                                                               | \$ 315.17                                                                 | \$ 349.50                                                          | \$ 619.34                                                             |
| Res and Parking Total |                         | 15,848                         |                              | \$13,730,000   |                                            | 100.0000%                                    |                                           |                                          |                                                                        |                                                                           |                                                                    |                                                                       |
|                       |                         |                                |                              |                |                                            |                                              |                                           |                                          |                                                                        |                                                                           |                                                                    |                                                                       |
| Storage               |                         | 461                            | -                            | \$89,750       |                                            |                                              |                                           |                                          |                                                                        |                                                                           |                                                                    |                                                                       |
|                       |                         |                                |                              |                |                                            |                                              |                                           |                                          |                                                                        |                                                                           |                                                                    |                                                                       |
| TOTAL                 |                         | 16,309                         |                              | \$13,819,750   |                                            |                                              |                                           | \$ 135,987.71                            |                                                                        |                                                                           |                                                                    |                                                                       |

**76 Columbia Street  
Brooklyn, New York 11201**

**Schedule A - 1 Storage Units  
Offering Prices and Related Information  
(All Projected Charges are for the Twelve Month Period  
Commencing January 1, 2013 and Ending December 31, 2013 except as noted)**

| Storage Unit | Approx Size<br>SF | Monthly License<br>Fee | Annual License<br>Fee | License<br>Purchase |
|--------------|-------------------|------------------------|-----------------------|---------------------|
| 1            | 32                | \$ 25.00               | \$ 300.00             | \$ 10,250.00        |
| 2            | 32                | \$ 25.00               | \$ 300.00             | \$ 10,250.00        |
| 3            | 41                | \$ 25.00               | \$ 300.00             | \$ 12,500.00        |
| 4            | 51                | \$ 25.00               | \$ 300.00             | \$ 15,000.00        |
| 5            | 21                | \$ 25.00               | \$ 300.00             | \$ 7,500.00         |
| 6            | 26                | \$ 25.00               | \$ 300.00             | \$ 8,750.00         |
| 7            | 26                | \$ 25.00               | \$ 300.00             | \$ 8,750.00         |
| 8            | 25                | \$ 25.00               | \$ 300.00             | \$ 8,500.00         |
| 9            | 24                | \$ 25.00               | \$ 300.00             | \$ 8,250.00         |
|              |                   | \$ 225.00              | \$ 2,700.00           | \$ 89,750.00        |

## NOTES TO SCHEDULE A

EACH CONDOMINIUM UNIT SHOULD BE INSPECTED PRIOR TO PURCHASE TO DETERMINE ITS ACTUAL DIMENSIONS, LAYOUT AND PHYSICAL CONDITION.

ACTUAL DIMENSIONS AND LAYOUTS MAY DIFFER FROM THE FLOOR PLANS.

- (1) See Sponsor's description of Units beginning on "Schedule A". The Room count is calculated providing the number of bedrooms and baths in each Unit. In addition, since the measurements run to and from the center line of demising walls, the square footage may significantly exceed the actual floor area of the units. See also "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION" which contains floor plans for the individual Units beginning on Page A-1 in Part II of the Plan for further details.
- (2) ***There are two percentages set forth herein, (i) Percentage of Residential Common Interest and (ii) Percentage of Total Common Interest. See section entitled "DEFINITIONS" for the meaning of each of these terms. The reason for two sets of percentages is to provide the total percent of interest for the Residential Units and the total percent of interest for all units, including the Parking space Units since some and not all of the line items in the budget are shared by both the Residential Unit and the Parking space Units.***

The allocation of these budget line items, based on their percentage of the Total Common Interest cannot be changed without the consent of the owners of the Parking space Units.

The amounts to be paid by the parking space Units shall be deducted from the total budget and the net balance shall be allocated among the Residential Units, in accordance with each Unit's percentage of the Residential Common Interest.

NO CHANGE IN THE AMOUNT OF THE CASH PURCHASE PRICE OR IN THE PERCENTAGE INTEREST ALLOCATED THERETO, WILL BE MADE WITH RESPECT TO ANY UNIT FOR WHICH A PURCHASE AGREEMENT HAS BEEN ACCEPTED AND WHICH HIS NOT THEN IN DEFAULT UNLESS WRITTEN CONSENT IS FIRST OBTAINED FROM THE PURCHASER OF SUCH UNIT.

- (3) Subject to the conditions hereinafter set forth and the approval of the Sponsor, the Sponsor reserves the right, at any time to change the amount of the Cash Purchase Price of any of the Units from the amount shown in Schedule A, provided that the Sponsor files an amendment to this Plan. Such change shall also include the right to change other terms of sale and the manner of payment in respect to any such Unit. Consequently, Purchasers of Units affected by such

change may pay or may have paid more or less than other Purchasers under this Plan for the same percentage of Common Elements for similar Units, but this shall not affect any prior or later sale of a Unit as to which the amount of Cash Purchase Price was changed. Individually negotiated decreases in the amount of Cash Purchase Price to be paid may be made without prior notice or amendment. The Plan must be amended to reflect any increase, a general price change affecting a group, line, or other category of Units or any price change to be advertised in a newspaper or any other media.

NO CHANGE IN THE AMOUNT OF THE CASH PURCHASE PRICE OR IN THE PERCENTAGE INTEREST ALLOCATED THERETO, WILL BE MADE WITH RESPECT TO ANY UNIT FOR WHICH A PURCHASE AGREEMENT HAS BEEN ACCEPTED AND WHICH IS NOT THEN IN DEFAULT UNLESS WRITTEN CONSENT IS FIRST OBTAINED FROM THE PURCHASER OF SUCH UNIT.

See "CHANGES IN PRICES AND UNITS" for a full discussion.

Each Purchaser shall have to pay his/her attorney a legal fee in connection with the signing of a Purchase Agreement and the closing of the Unit and the cost of title insurance for the Unit. In the event that a Purchaser obtains a mortgage for a portion of the Cash Purchase Price from a lending institution, such Purchaser should expect to pay any charges imposed by the lending institution including, but not limited to, an application fee, origination fee (points) and a legal fee to the lending institution's attorneys. Each prospective Purchaser also is advised that the charges levied and interest rate charged by different lending institutions vary, and that any given lending institution may impose fees which are subject to change. Each prospective Purchaser is advised to consult with the lending institution of his/her choice regarding any charges imposed by it. Each Purchaser shall also pay NYC and NYS transfer taxes on his/her Unit and other miscellaneous legal fees. (See "CLOSING COSTS & ADJUSTMENTS").

See "CLOSING COSTS AND ADJUSTMENTS" for fuller discussing of costs.

- (4) In accordance with New York Real Property Law Article 9-B, Section 339-i(1)(iv) of the Condominium Act, the percentage interests of the respective Units in the Common Elements have been determined on the basis of the floor space, subject to the location of such space and the additional factors of relative value to other space in the condominium, the uniqueness of the Unit, the availability of common elements for exclusive or shared use, and the overall dimensions of the particular Unit. This sub-section of §339-i-(1)(ii) and is based upon the approximate proportion that the floor area of all the Units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all Units in part or parts of the Common Elements

The common charges for the parking space Units are based primarily on the



application of their proportionate share of the floor area as defined by the zoning laws, limited to those budget line items in which it benefits.

- (5) These estimates were based upon projected monthly Common Charges as set forth in "SCHEDULE B - BUDGET FOR FIRST YEAR OF CONDOMINIUM OPERATION" for the year beginning January 1, 2013. The Schedule represents an estimate not a guarantee. The actual first year of operation may begin earlier or later than January 1, 2013. If the first year of operation begins later Common Charges may be higher.

Estimated Common Charges include gas, air conditioning, heat, electricity for Common Elements, water charges, sewer rents and fees, as discussed above, and other operational expenses. They do not include the cost of real estate taxes, or the cost of electricity for the individual Units. Nor do they include the cost of repairing and maintaining the individual Units, or electricity for the individual Units as each Unit shall be separately metered and billed and will be the responsibility of each Unit Owner. In addition, each Unit Owner will be responsible for the cost of interior repairs in, and the maintenance, painting and decoration of his or her Unit (including, without limitation, the equipment and appliances contained therein) as well as the cost of any insurance he or she may desire to obtain covering (i) his/her furniture, belongings, equipment and other personal property and (ii) liability to others for personal injury or property damage as a result of occurrence within his or her Unit.

Further, the mortgage payments of a Purchaser obtaining his or her own mortgage shall be the responsibility of such Purchaser and the same is not included in the estimated Common Charges but shall be in addition thereto. In addition, each Unit Owner shall be responsible for his/her closing costs (see "CLOSING COSTS AND ADJUSTMENTS").

- (6) Each Condominium Unit will be taxed as a separate tax lot for real estate tax purposes. Each Unit Owner will be responsible for the payment of real estate taxes on his/her Unit. However no Unit Owner will be responsible for the payment of real estate taxes on a Unit not owned by him/her, nor will his/her Unit be subjected to any lien arising from the non-payment of taxes on other Units.

If the Units have not been separately assessed for real estate tax purposes prior to the closing of title to the first Unit, the Board of Managers will collect the taxes as proportioned in Schedule A. The Board of Managers will hold said amount in escrow for the payment of taxes.

In the event that the first Unit Closing does not take place and therefore the Condominium's first year of operation does not begin on the date estimated in this Plan, the real estate taxes for the Condominium's first year of operation may be higher than this amount.



DUE TO POSSIBLE INCREASES IN THE TAX RATE AND/OR POSSIBLE FURTHER INCREASES IN THE PROPERTY'S ASSESSED VALUATION, REAL ESTATE TAXES MAY BE HIGHER THAN AS SET FORTH ABOVE, IN FUTURE YEARS.

Pursuant to Section 164 of the Internal Revenue Code, real estate taxes are deductible within the limitations set by the Code. Investors should note that recent changes in the income tax laws could limit these as well as other deductions.

The Condominium's first year of operation is assumed to be January 1, 2013 through December 31, 2013.

The Sponsor has consulted with Jerome Mazursky of the Mazursky Group Inc., who estimated real estate taxes for the entire Residential Unit for the first year of operation without 421(a) benefits at \$89,514.00 and \$13,760.00 with 421(a) benefits for the first year of operation.

Real estate taxes for the parking space Units for the first year of operation have been estimated at \$3,782.00 without 421(a) benefits and \$544.00 with 421(a) benefits.

Mr. Mazursky has estimated that the post completion Assessed Valuation of the property shall be as follows:

| <u>2013/14</u>     | <u>Land</u>     | <u>Total</u>     |
|--------------------|-----------------|------------------|
| Actual:            | \$265,500       | \$1,225,000      |
| Transitional:      | \$133,900       | \$1,093,400      |
| <br><u>2014/15</u> | <br><u>Land</u> | <br><u>Total</u> |
| Actual:            | \$265,500       | \$1,225,000      |
| Transitional:      | \$183,100       | \$1,142,600      |

See Section entitled: "REAL ESTATE TAXES FOR INDIVIDUAL UNITS" and 421(a) BENEFITS OPINION LETTER" for a full discussion and the basis for Mr. Mazursky estimates.

- (7) THIS AMOUNT DOES NOT INCLUDE INTEREST PAID BY PURCHASERS WHO FINANCE THE PURCHASE OF THEIR UNITS WHICH MAY ALSO BE TAX DEDUCTIBLE. PLEASE SEE "COUNSEL'S TAX OPINION".
- (8) Areas of the Building not set forth herein as belonging or appurtenant to an Unit are called "Common Elements". They include, but are not limited to: the 550 square foot recreational lounge and fitness area on the ground floor, the 687 square foot common area terrace on the roof, boiler, meter and pump rooms, public halls, public stairways, and scuttle or bulkhead if any, as delineated on the

floor plans. The Common Elements are owned and are to be maintained by the Condominium. The following areas are Limited Common Elements.

1. The terraces shall be deemed Limited Common Elements, and shall be exclusively used and maintained by the Owner(s) of Units 6 and 7 who shall be responsible for their repair and maintenance, except that, anything to the contrary herein notwithstanding, the use of the terraces shall be subject to the conditions and limitations set forth below. The Unit Owners may modify these areas which may require permits from the Department of Buildings and provided no zone variance is required, if allowed by law, provided such work is done in a good and workmanlike manner in accordance with any applicable rules and regulations of the Board of Managers of the Condominium and governmental agencies having jurisdiction thereof. However, certain structures cannot be built as of right and require a zoning variance from the Board of Standards and Appeals. An application for a zoning variance may be opposed by the Board of Managers of the Condominium. The Board of Managers of the Condominium may regulate the following aspects with regard to construction: the time periods during which work is permitted; the manner in which construction debris will be handled, the measures which must be taken to prevent compromising the security of the building under construction and liability insurance for contractors during construction.

a. The Condominium and its agents shall have the use of this space for the following purposes, subject to the following obligations:

(i) Access to Common Elements for inspection, repair and maintenance purposes to the extent that same affect the repair and maintenance of the Building's structure, which shall be the sole and only obligation of the Condominium with regard to the terraces;

(ii) For ingress and egress from the Building in case of fire or for other emergency;

(iii) For any purpose as required by law, appropriate governmental rule or regulation or the Building's Certificate of Occupancy.

b. The Owner(s) of Units 6 and 7 shall have exclusive use of and shall be solely responsible for the maintenance of their terraces as shown on the floor plans.

2. The roof terrace shall be deemed Limited Common Elements, and shall be exclusively used and maintained by the Owner(s) of Unit 7 who shall be responsible for its repair and maintenance, except that, anything to the contrary herein notwithstanding, the use of the roof terrace shall be subject to the conditions and limitations set forth below. The Unit Owners

may modify these areas which may require permits from the Department of Buildings and provided no zoning variance is required, if allowed by law, provided such work is done in a good and workmanlike manner in accordance with any applicable rules and regulations of the Board of Managers of the Condominium and governmental agencies having jurisdiction thereof. However, certain structures cannot be built as of right and require a zoning variance from the Board of Standards and Appeals. An application for a zoning variance may be opposed by the Board of Managers of the Condominium. The Board of Managers of the Condominium may regulate the following aspects with regard to construction: the time periods during which work is permitted; the manner in which construction debris will be handled, the measures which must be taken to prevent compromising the security of the building under construction and liability insurance for contractors during construction.

a. The Condominium and its agents shall have the use of this space for the following purposes, subject to the following obligations:

- (i) Access to Common Elements for inspection, repair and maintenance purposes to the extent that same affect the repair and maintenance of the Building's structure, which shall be the sole and only obligation of the Condominium with regard to the terraces;
- (ii) For ingress and egress from the Building in case of fire or for other emergency;
- (iii) For any purpose as required by law, appropriate governmental rule or regulation or the Building's Certificate of Occupancy.

b. The Owner(s) of Unit 7 shall have exclusive use of and shall be solely responsible for the maintenance of the roof terrace as shown on the floor plans.

3. A portion of the end of the hallways for Units 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B shall be deemed Limited Common Elements, and shall be exclusively used and maintained by the Owner(s) of Units 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B who shall be responsible for its repair and maintenance, except that, anything to the contrary herein notwithstanding, the use of their portion of the end of the hallway shall be subject to the conditions and limitations set forth below. The Unit Owners may modify these areas which may require permits from the Department of Buildings and provided no zoning variance is required, if allowed by law, provided such work is done in a good and workmanlike manner in accordance with any applicable rules and regulations of the Board of Managers of the Condominium and governmental agencies having jurisdiction thereof. However, certain structures cannot be built as of right and require a

zoning variance from the Board of Standards and Appeals. An application for a zoning variance may be opposed by the Board of Managers of the Condominium. The Board of Managers of the Condominium may regulate the following aspects with regard to construction: the time periods during which work is permitted; the manner in which construction debris will be handled, the measures which must be taken to prevent compromising the security of the building under construction and liability insurance for contractors during construction.

a. The Condominium and its agents shall have the use of this space for the following purposes, subject to the following obligations:

(i) Access to Common Elements for inspection, repair and maintenance purposes to the extent that same affect the repair and maintenance of the Building's structure, which shall be the sole and only obligation of the Condominium with regard to the terraces;

(ii) For ingress and egress from the Building in case of fire or for other emergency;

(iii) For any purpose as required by law, appropriate governmental rule or regulation or the Building's Certificate of Occupancy.

b. The Owner(s) of Units 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B shall have exclusive use of and shall be solely responsible for the maintenance of their portion of the end of the hallway as shown on the floor plans.

4. Unit #1 shall have an easement to use the pump room which may be accessed directly from Unit #1 and can also be accessed directly from the common areas of the Building.

Purchasers should note that they may be personally liable for injury to their guests, invitee(s) and/or workers in their Limited Common Elements, as well as in their Units.

IT IS RECOMMENDED THAT A PURCHASER CONSULT WITH HIS/HER OWN ATTORNEY OR FINANCIAL ADVISOR BEFORE PURCHASING A UNIT AND PROVIDE HIM/HER WITH A COPY OF THIS OFFERING PLAN.

IN THE OPINION OF THE SPONSOR, THE PROJECTED RECEIPTS ARE ADEQUATE TO MEET THE ESTIMATED EXPENSES FOR THE CONDOMINIUM'S FIRST YEAR OF OPERATION. THE FOREGOING SCHEDULE, HOWEVER, IS NOT INTENDED AND SHOULD NOT BE TAKEN AS A GUARANTEE BY ANYONE THAT THE ANNUAL COMMON CHARGES OR EXPENSES FOR THE FIRST OR ANY SUBSEQUENT YEAR OF OPERATION OF THE BUILDING BY THE CONDOMINIUM WILL BE AS SET FORTH IN SAID SCHEDULE, AND IT IS LIKELY THAT THE



ACTUAL COMMON CHARGES OR EXPENSES WILL EXCEED OR BE LESS THAN THE AMOUNT SHOWN IN THE SCHEDULE.

THE SPONSOR HAS RESERVED THE RIGHT TO MODIFY, RENEW AND REPLACE EXISTING SERVICE, MAINTENANCE, EMPLOYMENT, CONCESSIONAIRE AND OTHER AGREEMENTS, IF ANY, AND INSURANCE POLICIES, AND TO ENTER INTO NEW AGREEMENTS AND POLICIES ON BEHALF OF THE CONDOMINIUM WHICH WILL CONTINUE IN EFFECT AFTER THE FIRST CLOSING HEREUNDER, PROVIDED ANY MATERIAL INCREASE IN THE FIRST YEAR'S ESTIMATED COMMON CHARGES RESULTING THEREFROM WILL BE (i) DISCLOSED BY AN AMENDMENT TO THE PLAN, AND (ii) APPROVED OR RATIFIED IN WRITING BY A MAJORITY OF ALL THEN-EXISTING PURCHASERS (CONTRACT VENDEES) OR BY RESOLUTION ADOPTED WITHIN NINETY (90) DAYS AFTER THE FIRST CLOSING BY A MAJORITY OF THE MEMBERS UNRELATED TO THE SPONSOR.

IN THE EVENT THAT THE PROJECTED COMMENCEMENT OF THE BUDGET YEAR DIFFERS FROM THE ANTICIPATED DATE OF CLOSING BY SIX (6) MONTHS OR LONGER, THIS PLAN WILL BE AMENDED TO INCLUDE A REVISED BUDGET DISCLOSING THE THEN CURRENT PROJECTIONS. IF SUCH AMENDED PROJECTIONS EXCEED THE ORIGINAL PROJECTIONS BY 25% OR MORE, AS BUDGETED, THE SPONSOR WILL OFFER ALL PURCHASERS THE RIGHT TO RESCIND HIS/HER PURCHASE AGREEMENT AND ANY DEPOSIT PAID THEREUNDER WILL BE RETURNED WITHIN TEN (10) DAYS OF RESCISSION, PLUS INTEREST, IF ANY. SAID RIGHT OF RESCISSION MUST BE EXERCISED WITHIN THIRTY (30) DAYS FROM THE DATE OF SERVICE OF SUCH AMENDMENT ON THE PURCHASER.



**SCHEDULE B**

**BUDGET FOR FIRST YEAR OF CONDOMINIUM OPERATION  
Commencing January 1, 2013 and Ending December 31, 2013**

| <b>Projected Income</b>       |                      |
|-------------------------------|----------------------|
| Residential Common Charges    | \$ 132,337.86        |
| Parking Spaces Common Charges | \$ 3,650.00          |
| (1) Total Common Charges      | \$ 135,987.86        |
| (4) Storage License Fees      | \$ 2,700.00          |
| <b>TOTAL PROJECTED INCOME</b> | <b>\$ 138,687.86</b> |

| <b>Projected Expenses</b>            | <b>Total<br/>Condominium</b> |
|--------------------------------------|------------------------------|
| (5) Labor: Superintendent            | \$ 10,311.40                 |
| (6) Gas: Heating                     | \$ 18,900.00                 |
| Hot Water                            | \$ 750.00                    |
| Cooking                              | \$ 1,782.00                  |
| Ventilation                          | \$ 1,620.00                  |
| Sales Tax                            | \$ 1,037.34                  |
| (7) Electricity                      | \$ 13,697.86                 |
| (8) Water Charges and Sewer          | \$ 8,818.00                  |
| (9) Repairs Maintenance and Supplies | \$ 5,000.00                  |
| (10) Service Contracts               | \$ 32,239.64                 |
| (11) Insurance                       | \$ 17,923.63                 |
| (12) Management Fees                 | \$ 9,000.00                  |
| (13) Legal Fees and Audit Fees       | \$ 5,000.00                  |
| (14) Operating Reserve (10%)         | \$ 12,607.99                 |
| <b>TOTAL PROJECTED EXPENSES</b>      | <b>\$ 138,687.86</b>         |

## NOTES TO SCHEDULE B

IN THE OPINION OF THE SPONSOR'S EXPERTS, THE PROJECTED RECEIPTS ARE ADEQUATE TO MEET THE ESTIMATED EXPENSES FOR THE CONDOMINIUM'S FIRST YEAR OF OPERATION, ASSUMING SUCH FIRST YEAR BE THE FISCAL YEAR COMMENCING ON JANUARY 1, 2013. THE FORGOING SCHEDULES, HOWEVER, ARE NOT INTENDED AND SHOULD NOT BE TAKEN AS A GUARANTEE BY ANYONE THAT THE COMMON CHARGES, OTHER INCOME OR EXPENSES FOR THE FIRST OR ANY SUBSEQUENT YEAR OF OPERATION OF THE CONDOMINIUM WILL BE AS SET FORTH IN SAID SCHEDULES, AND IT IS LIKELY THAT THE ACTUAL INCOME AND EXPENSES WILL VARY FROM THE AMOUNT SHOWN IN THE SCHEDULE.

THE SPONSOR HAS RESERVED THE RIGHT TO MODIFY, RENEW AND REPLACE EXISTING SERVICE, MAINTENANCE, EMPLOYMENT, CONCESSIONAIRE AND OTHER AGREEMENTS AND INSURANCE POLICIES, AND TO ENTER INTO NEW AGREEMENTS AND POLICIES THAT WILL BE BINDING ON THE CONDOMINIUM ON THE CLOSING DATE. HOWEVER, NO SERVICE OR MAINTENANCE CONTRACT WILL BE MADE WHICH WOULD MATERIALLY INCREASE THE FIRST YEAR'S ESTIMATED MAINTENANCE CHARGES, UNLESS THE PLAN IS AMENDED.

IF THE ACTUAL OR ANTICIPATED DATE OF COMMENCEMENT IS TO BE DELAYED FROM THE BUDGET YEAR PROJECTED IN THE PLAN BY MORE THAN (6) MONTHS, THE PLAN WILL BE AMENDED TO INCLUDE A REVISED BUDGET DISCLOSING CURRENT PROJECTIONS . IF SUCH AMENDED PROJECTIONS EXCEED THE ORIGINAL PROJECTIONS BY 25% OR MORE, THE SPONSOR WILL OFFER ALL PURCHASERS THE RIGHT TO RESCIND AND A REASONABLE PERIOD OF TIME THAT IS NOT LESS THAN 15 DAYS AFTER THE DATE OF PRESENTATION TO EXERCISE THE RIGHT. WHETHER OR NOT SPONSOR OFFERS TO GUARANTEE THE PREVIOUS BUDGET PROJECTION, SPONSOR WILL RETURN ANY DOWN PAYMENT OR DEPOSIT PROMPTLY TO SUBSCRIBERS WHO RESCIND.

|                                 |                       |
|---------------------------------|-----------------------|
| <b>(1) Total Common Charges</b> | <b>(\$138,687.86)</b> |
|---------------------------------|-----------------------|

This figure represents the total annual Common Charges to be levied against and collected from the Residential Unit Owners and the Garage Condominium Unit Owners during the first year of Condominium operation following the First Closing. The Common Charges will be utilized by the Condominium Board to defray common expenses incurred in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to the Common Elements. The Common Expenses projected for the first year of Condominium operation were allocated among the Residential Units in accordance with the Residential Common Interest.

**(2) Storage License Fees (\$2,700.00)**

Based upon the cumulative License Fees to be collected for the exclusive use of nine (9) basement level storage units there will be additional income to the Residential Condominium of \$2,700 per year.

**(3) Labor (\$10,311.40)**

Based upon the cost of a non-resident, non-union superintendent on a part time basis (ten (10) hours per week), the superintendent would be responsible for cleaning and various repairs and maintenance of the Common Elements. The cost of New York State Disability insurance and the payment of Worker's Compensation, which shall be included a Common Expense of the Condominium, is included in the projection for insurance. The remuneration received by the Superintendent for the number of hours on will comply with the State Wage Order for Building Service employees.

The projection of wages is based upon \$16 per hour x 10 hours per week x 54.5 weeks (to allow a replacement during 2.5 weeks of combined paid vacation and holiday time) = \$8,720.00.

Other possible employee benefits include:

FICA costs which are calculated on the first 6.2% of gross payroll.  
( $\$6,976.00 \times 6.2\% = \$432.51$ )

State Unemployment Tax Act (SUTA) costs, which are calculated at the rate of 4.4% of an employees wages.  
( $\$8,720.00 \times 4.4\% = \$ 540.64$ )

Medicare Tax, calculated at 1.45% of an employees wages.  
( $\$8,720.00 \times 1.45\% = \$383.68$ )

Federal Unemployment Tax Act (FUTA) costs, which are calculated at the rate of 6.2% of an employees wages.  
( $\$8,720.00 \times 6.2\% = \$540.64$ )

Summary of Labor Costs

|              |               |
|--------------|---------------|
| Wages        | \$ 8,720.00   |
| FICA         | 540.64        |
| SUTA         | 383.68        |
| Medicare Tax | 126.44        |
| FUTA         | <u>540.64</u> |

Total Wages and Fringes \$10,311.40

Since the Sponsor has reserved the right, to rent, without limitation, and since the plan can be declared effective with two sales, the Building may have nine (9) rental units. The Administrative Code of the City of New York, Section 27-2052, et seq., requires one of the following when a building has nine (9) or more (rental) units: (1) that the owner performs the janitorial services; or (2) that there be a full time superintendent who resides in the Building or within 200 feet of the Building; or (3) that there be a janitorial service approved by the Department of Buildings available 24 hours a day. However, The Sponsor is committed to selling not less than three (3) Units in which there is no equipment to have such services and the above services budgeted for labor are within the requirements of the law.

**(4) Gas (\$24,089.34)**

The following is based on the Gas & Electrical Energy Cost Report prepared by Benjamin Klein, 1428 East 10<sup>th</sup> Street, Brooklyn, NY 11230, dated May 16, 2012. The cost for gas consumption is calculated at the rate of \$1.50 /therm; this is an estimated rate and does not include 4.5% sales tax.:

Heating: The estimated cost of gas consumption for heating is  
 $12,600 \text{ therms} \times \$1.50 / \text{therm} = \$18,900 / \text{year}$

Hot Water: The estimated cost of gas consumption for domestic hot water is:  
 $600 \text{ therms} \times \$1.50 / \text{therm} = \$750.00 / \text{year}$

Cooking: The estimated cost of gas consumption for cooking is:  
 $1,188 \text{ terms} \times \$1.50 / \text{therm} = \$1,782.00 / \text{year}$

Ventilation Common Area: The estimated cost of gas consumption for common area is:  
 $1,080 \text{ therms} \$1.50 / \text{therm} = \$1,620.00$

|                  |                 |
|------------------|-----------------|
| Heating:         | \$18,000        |
| Hot Water:       | 750             |
| Cooking:         | 1,782           |
| Ventilation:     | 1,620           |
| Subtotal         | \$23,052        |
| Sales Tax @ 4.5% | <u>1,037.34</u> |

**TOTAL ANNUAL USEAGE \$24,089.34 or \$2,007 per month**

**(5) Electrical (\$13,697.86)**

The following is based on the Gas & Electrical Energy Cost Report prepared by Benjamin Klein, 1428 East 10<sup>th</sup> Street, Brooklyn, NY 11230, dated May 16, 2012. The cost for electricity is calculated using the rate of \$0.30 /KWHs; this includes services charges but not .4.5% sales tax.



The budgeted amount includes electrical charges for Common Elements including the light in common areas; exhaust fans, miscellaneous motor driven equipment including exhaust fan, the elevator; and booster pump; and electric heater. Unit Owners will be responsible for payment of the cost of electricity in their respective Units, which will be separately metered and billed.

|                  |                        |         |
|------------------|------------------------|---------|
| Lighting Cost    | 4,000 kw/yr x \$.30/kw | \$2,400 |
| Elevator         | 5,400 kw/yr x \$.30/kw | 1,620   |
| Compactor        | 1,215 kw/yr x \$.30/kw | 365     |
| Booster Pump     | 3,645 kw/yr x \$.30/kw | 1,094   |
| Electric Heaters | 9,000 kw/yr x \$.30/kw | 2,700   |

|                                                |                        |       |
|------------------------------------------------|------------------------|-------|
| Exhaust Fans for Kitchens/Toilets/Common Areas |                        |       |
|                                                | 3,726 kw/yr x \$.30/kw | 1,118 |
| Hot Water Re-Circulating Pump                  |                        |       |
|                                                | 608 kw/yr x \$.30/kw   | 182   |

|           |                         |              |
|-----------|-------------------------|--------------|
| Hot Water | Circulating Pump        |              |
|           | 12,096 kw/yr x \$.30/kw | <u>3,629</u> |

|                                   |                                       |
|-----------------------------------|---------------------------------------|
| Subtotal Annual Electrical Useage | \$13,108.00                           |
| Sales Tax @4.5%                   | <u>589.86</u>                         |
| <b>TOTAL ANNUAL ELECTRICAL</b>    | <b>\$13,697.86 or \$1,141 per mo.</b> |

**(6) Water Charges and Sewer Rents (\$8,818.00)**

The following is based on the Gas & Electrical Energy Cost Report prepared by Benjamin Klein, 1428 East 10<sup>th</sup> Street, Brooklyn, NY 11230, dated May 16, 2012. The estimated annual cost for Water and Sewer is based on New York City rate of \$3.17 per hundred cubic feet (HCF) of water and the average of 200 gallons per day per apartment. Charges for water and storm sewer services based on \$5.04 per HCF, for a combined rate of \$8.21

11 apartments x 200 gallons x 365 days = 803,000 gal = 1,074 HCF

**TOTAL ANNUAL WATER/ SEWER 1,074 HCF x \$8.21 = \$8,818.00 per year**

**(7) Repairs, Maintenance and Supplies (\$5,000.00)**

This figure provides for the maintenance of and repairs to the Common Elements of the Building for the first year of Condominium operation including but not limited to, interior and exterior repairs, painting of the interior and exterior Common Elements, and general maintenance of the Building (\$3,000), and supplies (\$2,000) required to operate, repair and maintain the building. After the first year of Condominium operation, the Board of Managers of the Condominium may decide to increase the budgeted amount for repairs and maintenance.

Individual Unit Owners shall be responsible for the repair and maintenance as well as the painting of their respective Units.

**(8) Service Contracts (\$32,239.54)**

Remote Concierge Service \$15,804.24

The Sponsor received a proposal from Virtual Service., 104 West 40<sup>th</sup> Street, New York, NY 10018, dated April 16, 2012 for services to monitor CCTV and card access control from a remote center to give access to visitors and deliveries, monitor CCTV camera transmissions for security purposes, and notify unit owners of deliveries or visitors via cell phone or email (at the owner's request), report all observed security. The projected annual charge for this is 12 x \$1317.01 month including sales tax of 8.375% = \$13,476. 24, which includes , the additional cost for internet and phone service estimated at \$187.00 per month plus sales tax. Ten percent (10%) has been added to this estimated amount for inflation.

Pest Control \$1,502.08

The Sponsor received a proposal from Keith Zarek of Metro Pest Control, Inc., 70-09 73<sup>rd</sup> Place, Glendale, NY 11385, dated March 20, 2012 for pest control services for the Building, common Areas and the individual units. The projected annual total is 12 x \$105 per month plus sales tax of 8.375% = \$1,365.53 annually. Ten percent (10%) has been added to this estimated amount for inflation.

Elevator Maintenance \$3,014.00

The Sponsor received a proposal from John Wenzler of Kone, Inc., 47-36 36<sup>th</sup> Street, Long Island City, NY 11101, dated March 15, 2012 for Standard Agreement (exam & lubrication) for vertical transportation. The projected annual total is 12 x 200.00 per month = \$2,400.00 annually. In addition, the cost of one year inspection (.20% of \$1,700 = \$340) per John Wenzler's letter of May 30, 2012 was added and ten percent (10%) was added to the total t estimated amount for inflation.

Boiler Maintenance \$6,347.00

The Sponsor received a proposal from M.M.I. Mechanical Inc., 137 Highlawn Avenue, Brooklyn NY 11223, dated March 22, 2012 for burner service and boiler maintenance. The projected annual total is \$5,700 plus sales tax of 8.375% = \$5,770.00. Ten percent (10%) has been added to this estimated amount for inflation.

Sprinkler Inspections \$401.50

The Sponsor received a proposal from Louisa Montenero of Irwin Friedman & Son, Inc., Inc., 139 Banker Street, Brooklyn, NY 11222, dated March 28, 2012 for sprinkler inspection and certificate of fitness. The projected annual total is

\$365.00 plus sales tax of 8.375% = \$397.39. Ten percent (10%) has been added to this estimated amount for inflation.

Fire Alarm Monitoring

\$1,122.00

The Sponsor received a proposal from American Security Systems, Inc., 5-44 50<sup>th</sup> Avenue, Long Island City, NY 11101, dated March 20, 2012 for monitoring of the FDNY approved central station equipment. The projected annual total is 12 x 85.00 month or 1,020.00 annually. Ten percent (10%) has been added to this estimated amount for inflation.

**(9) Insurance**

**(\$17,923.63)**

This includes the following annual insurance premiums and reserves as proposed for the subject Condominium as proposed in a letter dated March 21, 2012 from HUB International 100 Sunnyside Boulevard, Suite A, Woodbury, NY 11797.

Property: All Risks\*/Agreed Amount/Special Form

\*Including Water Damage

Valuation: Replacement Cost

Co-Insurance: None

Building Limit: (based on \$275 a SqFt) \$ 5,775,000

Rent Loss/Common (Maintenance) Charge Limit: \$ 1,800,000

Flood Limit: \$1,000,000 Annual Aggregate

Earthquake Limit: \$1,000,000 Annual Aggregate

Deductibles: \$5,000 All perils except \$25,000 on Flood & Earthquake

General \$1,000,000 Per Occurrence\*

Liability: \$2,000,000 Aggregate

\$1,000,000 Non Owned/Hired Car (Auto) Coverage

\$1,000,000 Products and completed operations

\$1,000,000 Hired and non-owned auto

\$1,000,000 Personal & Adv. Injury

\$ 100,000 Fire Damage Legal Liability

\*Includes Elevator Collision

\*Includes parking 24 spaces

**Estimated Package Premium: \$12,944. plus any taxes and fees**

Umbrella Excess Liability: \$100,000,000 Per occurrence/Aggregate

**Estimated Umbrella Premium: \$4,200. plus any taxes and fees**

Worker's Compensation: Statutory Limits/Coverages

(Based on one employee, Building Superintendent)

**Estimated WC Premium: \$750.00. plus any taxes and fees**

Disability Benefit: Statutory Limits/Coverages  
(Based on one employee, Building Superintendent)  
**Estimated DBL Premium: \$29.88 plus any taxes and fees**

The above captioned Property policy waives co-insurance (Agreed Amount Clause) and is written on a replacement cost basis.

The Sponsor represents that it shall initially provide on behalf of the Condominium at the Condominium's expense, to be effective at the First Unit Closing, fire and casualty insurance in the amounts as set forth above. The policy will provide that each Unit Owner will be additional insured and if permitted by the insurer, that there will be no cancellation without notice to the Board of Managers and the Unit Owners. In addition, the policy will contain a waiver of subrogation, a waiver because of the acts of the Insured and Unit Owners and will waive a pro rata reduction if additional Unit Owners obtain coverage.

No coverage is provided for such risks as fire and casualty losses to each individual Unit, nor does the coverage take into account any future replacements or additions to either the units or the fixtures and improvements contained therein. In addition, no liability coverage for an individual Unit Owner is included in the coverage provided above. Prospective purchasers should consult their attorney for insurance agent to determine the advisability of obtain insurance for their own risk for liability and fire and casualty losses.

Additional available insurance that is not included in Operating Expenses but which the Board of Managers may wish to purchase in the future includes:

Crime/Employee Dishonesty/Forgery      \$ 500,000 Per Occurrence limit  
\$ 2,500 Deductible

**Estimated Crime Premium: \$650.00 plus any taxes and fees**

Directors & Officers Liability:      \$ 1,000,000 Limit  
\$ 2,500 Retention

**Estimated Directors and Officers Liability Premium: \$1,121.00. plus any taxes and fees**

Boiler & Machinery:      \$ 6,352,000 Limit  
\$ 1,000 /72 Hour Deductible

**(10) Management Fees      (\$9,000.00)**

Management of the Building entails doing or hiring employees to perform all janitorial and maintenance functions such as cleaning, repairing, altering such items including, but not limited to, electrical, plumbing and carpentry and complying with local building codes and regulations. Managing the Building also



requires the paying or causing to be paid all bills for maintaining and operating the Building, billing for Common Charges and other charges, setting up and keeping in good order a separate accurate set of books for the Condominium, hiring accountants for the preparation of federal, state and other income tax returns required by governmental authorities and generally doing all things reasonably deemed necessary and/or desirable for the proper management of the Property. If the of Managers decides to hire a Managing Agent, Common Charges will likely be increased

**(11) Legal Fees and Audit Fees (\$5,000.00)**

The budgeted figure consists, in the main, of the accountant's fee for the preparation of the Condominium's first year's certified financial statements and its federal, state and city tax returns. The Sponsor received a proposal from Wagner, Ferber, Fine & Ackerman, PLLC, 65 Tyson Avenue, Floral Park, NY 110011, dated March 17, 2012 for an annual charge of \$4,500. An additional small sum has been factored in for miscellaneous legal series (\$500) of a minor nature, though it is not anticipated that the Board of Managers shall have the need to engage an attorney.

**(12) Operating Reserve (\$12,607.99)**

A ten percent (10%) reserve fund is included in the Operating Expenses in order to comply with potential requirements of the FHA and other lenders. This is amount is 10% of the specific operating expenses enumerated above and in Schedule B and will be funded through Residential Common Charges.

**75 Columbia Street  
Brooklyn, NY  
Schedule B - 1  
Projected Budget for Individual Energy Costs**

| <b>Unit</b> | <b>Estimated Average Monthly<br/>Cost of Electricity of<br/>Individual Units (1)</b> | <b>Estimated Average Annual<br/>Cost of Electricity of<br/>Individual Units (1)</b> |
|-------------|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| 1           | \$ 119                                                                               | \$ 1,432                                                                            |
| 2A          | \$ 173                                                                               | \$ 2,076                                                                            |
| 2B          | \$ 173                                                                               | \$ 2,076                                                                            |
| 3A          | \$ 173                                                                               | \$ 2,076                                                                            |
| 3B          | \$ 173                                                                               | \$ 2,076                                                                            |
| 4A          | \$ 173                                                                               | \$ 2,076                                                                            |
| 4B          | \$ 173                                                                               | \$ 2,076                                                                            |
| 5A          | \$ 173                                                                               | \$ 2,076                                                                            |
| 5B          | \$ 173                                                                               | \$ 2,076                                                                            |
| 6           | \$ 229                                                                               | \$ 2,753                                                                            |
| 7           | \$ 229                                                                               | \$ 2,753                                                                            |

These estimates are based on a letter dated May 16, 2012 by Benjamin Klein, PE, 1428 East 10th Street, Brooklyn, NY 11230 predicting cost for electrical power and lighting.

### **PARKING SPACE UNITS**

The Sponsor will be offering nine (9) parking space Units for sale under this Plan. These spaces will have their own individual tax lots and Owners of such spaces will be responsible for payment of real estate taxes. There is an entrance door from the drive-way of the parking area into the hallway of the first floor of the Building. The purchase of Parking space Units will be on a first-come, first serve basis.

## **STORAGE SPACE LICENSES**

The Sponsor will be offering licenses for nine (9) storage spaces as shown on the floor plans. Since there are not enough storage spaces for each Unit Owner, they will be made available on a first-come, first-serve basis. The Purchase Price for each storage bin is set forth in Schedule A-1. There will be a Master License Agreement between the Board of Managers of the Condominium, as Lessor and the Sponsor, as Lessee. The Sponsor will issue Sub-License Agreements to such Purchasers who wish to acquire a storage bin upon payment of the Purchase Price. The Sponsor shall have the right to assign each Sub-License Agreement to the Board of Managers of the Condominium at any time. In addition, each storage bin shall be charged a monthly license fee as set forth in Schedule A-1 for the maintenance and upkeep of the area surrounding the storage bin areas. This is a monthly expense that is in addition to Common Charges.

Copies of the Storage Bin Master License Agreement, Storage Bin Sub-License Agreement are reproduced in Part II of the Plan.





**COMPLIANCE WITH REAL PROPERTY LAW SECTION 339(i)**

**June 30, 2012**

SDS Columbia LLC  
132 Remsen Street Brooklyn, NY 11201

Re: 100 Columbia Street Brooklyn, New York Ladies and Gentlemen:

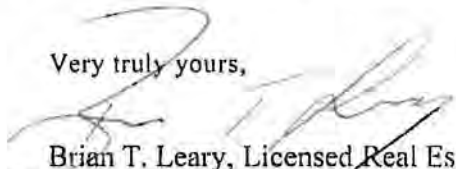
I am a licensed real estate broker that has been in business for over 10 years. I have been involved in the sale of cooperative and condominiums during this time and have experience with Offering Plans, having authored several certifications such as this.

I am neither the Selling Agent nor the Managing Agent for the captioned property. I have no financial or other beneficial interest in the Sponsor, nor will I participate in the profits derived from this condominium conversion.

The percentage of each unit's common interest was calculated pursuant to Real Property Law 339-i-(1)(ii) and is based upon the approximate proportion that the floor area of all the Units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements.

You have advised me of your intention to incorporate this letter in the Plan and I hereby consent to such inclusion.

Very truly yours,

  
Brian T. Leary, Licensed Real Estate Broker

## **CHANGES IN PRICES AND UNITS**

In order to meet the possible varying demands for number and type of Unit or to meet the particular requirements of prospective Purchasers or for any other reason, the Sponsor reserves the right at any time, without prior notice but by amendment to the Plan to (i) change the size, or number of Units, (ii) subdivide one or more Units into separate Units, (iii) combine separate Units into one or more Units and (iv) change the size of any Unit (by altering the boundary walls of such Units or otherwise); provided that the consent of all governmental authorities having jurisdiction (if such approval is required by law) is obtained. Any reallocation of space will vary the estimated annual Common Charges for the Unit or Units affected thereby from the amount estimated in Schedule A.

However, no change will be made in the size, layout, number of Units or quality of the Common Elements except by amendment to this Plan. In the event such amendment is filed and any Purchase Agreements have previously been executed, each affected Purchaser (not in default under the terms of his or her Purchase Agreement) shall be given a right to rescind his/her Purchase Agreement and obtain the return of his/her Down Payment provided that within fifteen (15) days of the Presentation Date of the amendment, the Purchaser sends to the Sponsor written notice of such rescission by certified mail, return receipt requested.

The Sponsor reserves the right, prior to and after the First Closing, to place "For Sale" signs in, at or on the Building and to maintain and staff one or more vacant and unsold Unit(s). The Sponsor also reserves the right, prior to and after the First Closing, without prior notice or amendment to this Plan, to use vacant and Unsold Units in the Building for the purpose of storing construction materials and supplies, provided such use is in a safe, neat and workmanlike manner and does not create a nuisance to other tenants.

After the First Closing, the Successor-Sponsor (as defined hereinbefore) will have the same right as the Sponsor to change the size (either as a result of subdivision, combination, alteration of boundary walls or otherwise) and/or layout of any Unit owned by them, subject only to compliance with the By-Laws of the Condominium. Such Successor-Sponsor will also have the right to place "For Sale" signs in, at or on the Building, to maintain one or more vacant and Unsold Units in the Building as a sales office and to store construction materials and supplies. The rights of the Successor-Sponsor may be exercised without the consent or approval of the Condominium, its Unit Owners or others and without payment of any charge or fee to the Board of Managers, or others. Successors – Sponsors may resell their Unit(s) for any price established by them, provided that the Plan is amended to reflect any increase in the Cash Purchase Price as set forth in Schedule A. Notwithstanding the foregoing, the Plan must be amended to reflect a general price change by the Successor-Sponsor affecting a group, line, or other category of Units or any increase or any price change to be advertised.

Subject to the conditions hereinafter set forth the Sponsor reserves the right, at

anytime, to change the amount of the Cash Purchase Price of any Unit from the amount shown in Schedule "A", column entitled "TOTAL CASH PURCHASE PRICE". Such change shall also include the right to change other terms of sale and the manner of payment with respect to any such Units. Consequently, Purchasers of Units affected by such change may pay or may have paid more or less than other Purchasers under this Plan for the same percentage of Common Elements allocated to similar Units, but this shall not affect any prior or later sale of Units as to which the amount of Cash Purchase Price was changed. Individually negotiated decreases in the amount of Cash Purchase Price to be paid may be made without prior notice or amendment. The Plan must be amended to reflect an increase, a general price change affecting a group, line, or other category of Units or any price change to be advertised.

Notwithstanding the foregoing, no changes will be made in the size or number of Units, their respective percentage of Common Elements and no material change will be made in the size or quality of Common Elements except by amendment to the Plan and to the Declaration. However, no change may be made unless it conforms with the method set forth in Section 339-i(1)(iv) of the New York Real Property Law.

**NO MATERIAL CHANGE IN THE UNIT SIZE, LAYOUT OR PERCENTAGE OF COMMON INTEREST OR IN THE AMOUNT OR QUALITY OF COMMON ELEMENTS DIRECTLY AFFECTING OR SERVICING THE UNIT, WILL BE MADE WITH RESPECT TO ANY UNIT FOR WHICH A PURCHASE AGREEMENT HAS BEEN ACCEPTED AND WHICH IS NOT THEN IN DEFAULT UNLESS WRITTEN CONSENT IS FIRST OBTAINED FROM THE PURCHASER OF SUCH UNIT.**

Unless all Purchasers consent, no material change will be made in the size and no material change will be made in the quality of common elements. However, Sponsor reserves the right to make non-material changes to the common elements without the consent of Purchasers.

The Sponsor reserves the right, but shall not be obligated, to negotiate with Purchasers, all aspects of the Purchase Price of the Unit, including but not limited to: improvements to the Unit or the fixtures or equipment contained therein or credits or allowances therefore; reduced down payment deposit towards Purchase Price (but at least \$1,000.00); extension of period to secure financing; common charge subsidies or rebates as credit against the Purchase Price or payable on a periodic basis; application of rent toward purchase price; payment of all or part of Purchaser's financing costs such as closing costs, attorneys' fees, origination fees, commitment fees, buy-down of interest rate, and any and all other costs relating to the cost of acquiring title to the Unit. Furthermore, the Sponsor reserves the right to amend the Plan from time to time to add and/or delete negotiable terms or to expand the applicability of such negotiable terms to all Purchasers following the Closing Date. In the event Sponsor decides to offer financing to Purchasers, the terms of such financing will be disclosed in an amendment to the Plan.



## **PROCEDURE TO PURCHASE**

***The Sponsor expects the first unit closing to take place on or about January 1, 2013. This is an estimate, not a guarantee. The actual first year of operation may begin earlier or later than January 1, 2013.*** A person desiring to purchase a Unit will be required to execute in triplicate a Purchase Agreement in the form contained in Part II of this Plan beginning on page B-1 and return it to the Sponsor, c/o Forman & Associates, pc, 80 Maiden Lane, Suite 2204, New York, New York 10038, together with a check for 10% of the purchase price drawn to the order of "FORMAN & ASSOCIATES SPECIAL 75 COLUMBIA ESCROW ACCOUNT".

All such funds will be handled by the Sponsor and FORMAN & ASSOCIATES, PC, in accordance with the escrow and trust fund provisions of Sections 352-e(2)(b) and 352-h of the New York General Business Law and Section 71(a)(3) of the New York Lien Law and the Attorney General's regulations promulgated pursuant thereto. WARREN L. FORMAN, ESQ., pc will sign for any release of Purchaser's funds.

Nothing herein contained shall diminish or impair the Sponsor's statutory obligation to each Purchaser pursuant to GBL Section 352-h to hold in trust all deposits, advances or payments made in connection with the offer until consummation of the transaction with such Purchaser. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL Section 352-h. Funds from the escrow account remain the property of the Purchaser until consummation of the transaction, except in the event of a Purchaser's default or authorized release as set forth herein. Such funds shall not be part of the estate of the Sponsor or the escrow agent upon any bankruptcy, incapacity or death.

Any provision of any contract or agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of the Attorney General's regulations concerning escrow/trust funds shall prevail over any conflicting or inconsistent provision in the Offering Plan or in a Purchase Agreement. Purchasers shall not be obligated to pay any legal or other expense of the Sponsor in connection with the establishment, maintenance or defense of obligations arising from the handling or disposition of trust funds.

All deposits, down payments, or advances made by Purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the Plan, will be placed, within five (5) business days after the agreement is signed by all necessary parties, in a special escrow account of FORMAN & ASSOCIATES, PC, the Escrow Agent, whose address is 80 Maiden Lane, Suite 2204, New York, New York 10038 and whose telephone number is 212-791-5500. The signatory on this account authorized to withdraw funds is WARREN L. FORMAN. The name of the "master" account will be "FORMAN & ASSOCIATES SPECIAL 75 COLUMBIA ESCROW ACCOUNT", located in ESQUIRE BANK, 64 Court Street, Brooklyn, New York. This bank is covered by federal bank deposit insurance to a

maximum of \$250,000.00 per individual deposit. Each initial deposit made into this account will be segregated into a sub-account of the master account.

Each sub-account will be interest-bearing and, the interest rate to be earned will be the prevailing rate for these accounts, which is currently approximately .10%. However, this rate is periodically subject to change. Interest will begin to accrue within nine (9) business days of tender of the down payment.

All instruments shall be made payable or endorsed to the order of "FORMAN & ASSOCIATES SPECIAL 75 CONGRESS. ESCROW ACCOUNT", as escrow agent.

Within ten (10) business days after tender of the deposit submitted with the Purchase Agreement, the escrow agent will notify the Purchaser that such funds have been deposited into the escrow account and will provide the account number and the initial interest rate. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the deposit, the Purchaser may cancel the purchase and rescind so long as the right to rescind is exercised within ninety (90) days after tender of the deposit. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited and requisite notice was timely mailed to the Purchaser in conformity with the Attorney General's regulations.

Since all Purchase Agreements are contingent upon the Plan's becoming effective, under no circumstance shall the Sponsor apply for release of the escrowed funds of a defaulting purchaser until after consummation of the Plan.

The escrow agent will hold funds in escrow until otherwise directed in:

- (i) a writing signed by both the Sponsor and Purchaser;
- (ii) a determination of the Attorney General pursuant to the dispute resolution procedures contained in the Attorney General's regulations;
- or
- (iii) a judgment or order of a court of competent jurisdiction.

If there is no written agreement between the parties to release the escrowed funds, the escrow agent will not pay the funds to the Sponsor until the escrow agent has given the Purchaser written notice of not fewer than ten (10) business days. Thereafter, the funds may be paid to the Sponsor unless the Purchaser has already made application to the Department of Law pursuant to dispute resolution provisions of the Attorney General regulations and has so notified the escrow agent in accordance with such provisions.

The Sponsor will not object to the release of the escrowed funds to: (i) a Purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an amendment to the Plan; (ii) all Purchasers after an amendment abandoning the Plan is accepted for filing by the Department of Law.



Purchasers and the escrow agent may apply to the Attorney General in the event of a dispute for a determination on the disposition of the down payment and any interest thereon. The Sponsor must avail itself of this procedure if there is a dispute which needs to be resolved. A form for this purpose is reproduced in Part II of this Plan. The party applying for a determination must send all other parties a copy of the application.

Pending the determination of the Attorney General to grant or deny the application, the Sponsor, the Purchaser and the escrow agent shall abide by any interim directive issued by the Attorney General. If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted. The Attorney General shall act upon the application within thirty (30) days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons. If the application seeking release of funds is denied, the escrow agent shall continue to hold the deposit and any interest earned thereon until: (i) both the Sponsor and Purchaser direct payment to a specified party in accordance with a written direction signed by both the Sponsor and Purchaser; or (ii) a judgment or order of a court of competent jurisdiction is served on the escrow agent; or (iii) the escrow agent deposits the disputed amount into court. In no event shall the escrow agent release funds in dispute, other than a payment of such funds into court, until such dispute is finally resolved either by determination of the Attorney General or by order or judgment of a court of competent jurisdiction or by written agreement of the Sponsor and Purchaser.

Also reproduced in Part II of this Plan is a copy of the escrow agreement which incorporates the terms of the Attorney General's regulations.

The escrow agent will maintain all records concerning the escrow account for seven (7) years after the release of funds.

At the Sponsor's option, either before or after the deposit of the Down Payment with the escrow agent, the Sponsor may post a bond or letter of credit with the Purchaser, issued by a licensed surety company or bank, in accordance with the Attorney General's regulations, guaranteeing the return of such monies to the Purchaser if the Purchase Agreement or Plan requires such return. The Sponsor will amend the Plan prior to posting such a bond or letter of credit or entering such a contract of indemnity to provide all necessary information in connection with such bond or letter of credit at which point the Down Payments will be released to the Sponsor for its own use. All interests earned on the Down Payments, if any, will be returned to the Purchaser, unless the Purchaser defaults under the Purchase Agreement.

In the event that a Purchaser rescinds his/her Purchase Agreement in accordance with the terms and conditions contained therein, then the Down Payment shall be fully returned to the Purchaser with interest, if any (except for the cost incurred

for any additional work ordered by the Purchaser).

Each prospective Purchaser should note that the Sponsor is only obligated to provide the equipment, fixtures and furnishings, if any, described in Part II of this Plan in the section entitled "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION". If a person desiring to purchase a Unit requests that the Sponsor perform special work on such Unit or provide extra furnishings, including, but not limited to, any deviation from the materials or specifications described in "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION", Part II of this Plan, and the Sponsor agrees to perform such special work and/or provide such furnishings, then the Sponsor may require such person to deposit an amount greater than ten (10%) percent of the offering price of such Unit. All funds received by the Sponsor for upgrades or extras must initially be placed in the escrow account. However, Purchasers should note as a special risk that such funds may be released from the escrow account by the escrow agent as long as the Sponsor uses the funds for such upgrades or extras. As a result, in the event a Purchaser is entitled to rescission, the Purchaser will not receive a refund of any funds used for upgrades or extras. In no event shall the presence of any furniture, furnishings, equipment or decorations in any model Unit imply or represent that any Unit will contain such furniture, furnishings, equipment or decorations upon delivery of the Unit to the Purchaser unless the Purchaser agrees to pay the Sponsor an amount as determined by the Sponsor in addition to the Purchase Price of such Unit. Each prospective Purchaser should inspect thoroughly and measure the dimensions of each Unit before executing any document in connection with the purchase of a Unit.

The actual layout and dimensions of such Unit may differ from the layout and dimensions described on the Floor Plans. If a Purchaser desires any changes in the Unit or any special or additional work or furnishings not described in Part II of this Plan, in the Section entitled "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION", the Purchaser and Sponsor must insert a description of such work or furnishings as an addition to the Purchase Agreement.

Prior to the acceptance of Purchase Agreements for 80% of the Units, in the event that insufficient funds are raised through the Offering to effectuate the purchase of the Units and the consummation of the Plan, or if a Purchaser rescinds his/her Purchase Agreement in accordance with the terms and conditions contained therein, or if the Plan is abandoned, then such monies shall be fully returned to those Purchasers under their respective Purchase Agreements, with interest earned thereon, within ten (10) days after the date of abandonment of the Plan as hereinafter provided. With respect to any Purchaser who has defaulted under his/her Purchase Agreement and who has failed to cure the default within the applicable grace period, or whose Purchase Agreement had previously been cancelled, the Sponsor shall retain as liquidated damages all payments made thereunder (but in no event to exceed ten (10%) percent of the Total Cash Purchase Price plus the cost incurred of any special work in the Unit ordered by Purchaser), together with any interest earned thereon (hereinafter collectively called the "Liquidated Sum"). Any such sums deposited in

excess thereof (together with any interest earned on such excess amounts) will be refunded to the delinquent Purchaser within fifteen (15) days thereafter.

Purchasers shall be offered a right of rescission in the event the First Closing to a Unit is delayed for twelve (12) months or longer beyond the anticipated date of First Closing. Purchasers shall exercise the right of rescission within thirty (30) days of notice from Sponsor and shall receive the return of their down payment within ten (10) days of the exercise of the right to rescind.

Purchasers shall be given at least thirty (30) days advance written notice of the Closing of title to the Unit. Purchasers may close earlier and waive such 30-day notice by signing the form of waiver to be included in the amendment declaring the Plan effective. Purchasers shall have the right to inspect their respective Units and the Building's Common Elements at least five days prior to paying the balance of the funds and the Closing Date.

After the Plan is declared effective, each Purchaser will be given thirty (30) days written notice by regular mail, or registered mail, or certified mail, with or without return receipt requested, to the Purchaser or his/her attorney at his/her last known address, in which a closing date will be fixed.

If within the aforesaid thirty (30) day period a Purchaser fails to close, and any such failure is not cured within a further period of thirty (30) days after Sponsor sends written notice thereof, Sponsor's sole remedy is to cancel the Purchase Agreement and retain as and for liquidated damages all payments made thereunder (but in no event to exceed ten (10%) percent of the Purchase Price plus the cost of any special work incurred in the Unit ordered by Purchaser), together with any interest earned thereon (the "Liquidated Sum"). Any payments received in excess of the Liquidated Sum, together with any interest earned on such excess payments, shall be refunded to the Purchaser with reasonable promptness after cancellation. TIME IS OF THE ESSENCE IN CURING A DEFAULT UNDER THE PURCHASE AGREEMENT. "Time is of the essence" means that no further adjournment, extension or grace period may be permitted to the Purchaser within which he/she will be permitted to consummate his/her purchase of the Unit and that the provision regarding liquidated damages shall thereupon immediately be applicable. In the event the Purchase Agreement is cancelled, the Sponsor will have the right to sell the Unit to others as though said Purchase Agreement had never been signed (and without accounting to Purchaser for the proceeds of such sale), and Purchaser, the Sponsor and the Condominium shall be relieved of all further liability and obligation thereunder and under the Plan.

All Purchasers shall be offered not less than three (3) business days to review the Offering Plan and all filed amendments prior to executing a Purchase Agreement.

No Purchase Agreement is assignable or transferable without the written consent of the Sponsor.



Notwithstanding anything to the contrary contained in this section, the financing contingency section of the Purchase Agreement shall only be effective upon the Purchaser providing to the Sponsor evidence that Purchaser has been pre-qualified for purchase money financing by Home Owners Mortgage Express ("HOME"). Purchaser must provide such evidence of pre-qualification either prior to or within five (5) days after the date (the "Contract Date") on which a fully executed copy of the Purchase Agreement is delivered to Purchaser's attorney. HOME has agreed to pre-qualify Purchasers and provide a letter of pre-qualification within twenty-four (24) hours, excluding weekends and holidays, of Purchaser's request for pre-qualification, at no cost or further obligation to Purchaser. In the event that Purchaser does not provide evidence of pre-qualification within five (5) days of the Contract Date, then the Sponsor may either cancel the Purchase Agreement or treat the Purchase Agreement as an "All Cash" transaction, and in which case the financing contingency shall not apply. The prequalification is solely for the benefit of the Sponsor in ascertaining the purchaser's credit worthiness and likelihood of obtaining financing. No representation is made that purchaser's who are prequalified will actually receive mortgage financing for the purchase of their Unit and shall be bound by the terms of the mortgage contingency provisions of the Offering Plan and Purchase Agreement. See sections entitled: "PROCEDURE TO PURCHASE" and "PURCHASE AGREEMENT".

If the Purchase Agreement is subject to the Purchaser obtaining a loan in an amount which shall be specified, at the prevailing rate of interest, whether "fixed" or "variable", the Purchaser shall have 30 days from the signing of the Purchase Agreement to obtain the loan commitment. In the event that the Purchaser fails to obtain a commitment within the 30 day period, either party may cancel the Purchase Agreement on 5 days written notice to the other party by personal delivery or by certified mail return receipt requested after the expiration of the thirty (30) day period. The Purchaser shall be entitled to a prompt refund of his/her Down Payment in the event of such cancellation. The Purchaser shall apply for a Mortgage and notify the Sponsor or the Sponsor's attorney within ten (10) days from the date of receipt of a fully executed Purchase Agreement as to the identity of the lending institution to which the Purchaser has applied and further the Purchaser shall immediately (within five days) notify the Sponsor or the Sponsor's attorney when a loan commitment or declination has been obtained and deliver a copy of such commitment or declination to the Sponsor's attorneys within nine (9) days of receipt thereof. IN THE EVENT THAT THE SPONSOR'S ATTORNEY DOES NOT RECEIVE THE ABOVE NOTICE TO CANCEL WITHIN SAID TIME PERIOD, THE PURCHASER SHALL BE EXPECTED TO CLOSE WHETHER OR NOT THE PURCHASER HAS RECEIVED FINANCING UNLESS THE PURCHASE AGREEMENT IS CANCELLED BY THE SPONSOR.

Purchasers should note that financing commitments for the purchase of Units may have expiration dates prior to which Closing of Title to the Unit may occur, unless the commitment is extended. If such extension is granted, or another commitment issued, no guarantee can be made that the terms will be the same as the expired commitment. ONCE A BANK COMMITMENT IS ISSUED, THE PURCHASER WILL BE REQUIRED TO USE DUE DILIGENCE IN OBTAINING AND MAINTAINING ANY

AND ALL EXTENSIONS NECESSARY TO MAINTAIN SUCH COMMITMENT IN FORCE AND EFFECT OR TO OBTAIN ANOTHER COMMITMENT. Failure to do so will constitute a default under the Purchase Agreement and the loss of the Downpayment plus the cost incurred of any special work ordered by the Purchaser. If the Purchaser is unable to obtain an extension of the commitment by the Closing Date or within thirty (30) days after expiration of his/her commitment whichever is longer, the Purchaser shall notify the Sponsor within five days of the time period specified by certified mail return receipt requested, whereupon the Purchase Agreement shall become null and void and the Down Payment shall be returned by the Seller.

Purchasers should also note that the Purchase Agreement will provide that failure to apply for a Mortgage as set forth herein, or provide information to the lender promptly upon request thereof, or to accept a commitment issued to the Purchaser by the lender on terms set forth in the Purchase Agreement shall constitute a default by the Purchaser under the Agreement, whereupon Sponsor shall have remedies as set forth hereinabove.

The Seller may cancel this Agreement by forwarding its check in the full amount paid by the Purchaser, with interest, together with a notice in writing, addressed to the Purchaser, at the address hereinabove set forth in the event of the occurrence of either of the following: (1) that any governmental bureau, department or subdivision thereto shall impose restrictions on the manufacture, sale, distribution and/or use of material necessary in the construction of residential housing and such restriction shall prevent the Seller from obtaining such materials from its regular suppliers or from using same in the construction and/or completion of the dwellings; or (2) that the Seller is unable to obtain materials from its usual sources due to strike, lockouts, war, military operations and requirements, national emergencies, or the installation of public utilities is restricted or curtailed.

Risk of loss to the property by fire or other casualty shall remain with the Sponsor until legal title has passed to the Unit, or, as to an affected Unit only, a Purchaser is given prior possession of a Unit pursuant to a written agreement with the Sponsor, whichever occurs first.

Any conflict between the Plan and the Purchase Agreement shall be resolved according to the terms of the Plan.

After a Purchaser executes a Purchase Agreement and tenders the Down Payment thereunder, the Sponsor, within 20 days thereafter, must either accept the executed Purchase Agreement and return a duly executed counterpart to the Purchaser, or reject the Purchase Agreement. In the event the Sponsor rejects the Purchase Agreement, the Sponsor shall be required to return the full contract deposit previously tendered. The failure of the Sponsor to execute a Purchase Agreement which has been duly delivered within 20 days of receipt thereof shall be deemed a rejection of the Purchase Agreement. The Down Payment, plus interest, will be returned within 15 days of such rejection.



On the Closing Date for each Unit, fee simple title to the Unit, free and clear of all liens and encumbrances other than those set forth in the Plan and any mortgages obtained by the Purchaser in question, will be conveyed to the Purchaser, and the Purchaser will thereupon become obligated for the payment of Common Charges from the Closing Date, whether or not such Purchaser has taken possession of the Unit. A Deed to a Unit will be issued to Purchaser as of the Closing Date for his/her Unit and will be delivered on the applicable Closing Date or promptly thereafter.

The Purchase Agreement may not contain or be modified to contain, a provision waiving the Purchaser's rights or abrogating the Sponsor's obligations under the Offering Plan or under Article 23-A of the General Business Law.

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## **FINANCING THAT MAY BE AVAILABLE TO PURCHASERS**

### **Availability of Mortgages From Other Institutional Lenders**

Various savings and commercial banks in New York State have generally financed from 50% to 80% or more of the total cash purchase price of Units for Purchasers whose credit, income and reputation are acceptable to the bank making the loan. However, many banks have established a threshold, 50% for the number of units in a condominium to be sold prior to their making loans. No representation is made as to the terms, conditions or availability of such financing at this time or in the future.

If a Purchaser obtains a mortgage, his/her aforesaid rights to sell, sublet and surrender possession of his/her Unit will be subject to the rights of the lender set forth in the mortgage, which normally would restrict the Purchaser from exercising these rights while the mortgage is outstanding.

In the event that a Purchaser finances a portion of the Total Cash Purchase Price from a lending institution, such Purchaser should expect to pay any charges imposed by the lending institution including, but not limited to, an application fee, title insurance, origination fee (points), appraisal fee, survey charge, credit report fee and a legal fee to the lending institution's attorneys. Each prospective Purchaser also is advised that the charges levied by different lending institutions, as well as interest rates, vary, and that any given lending institution may impose fees which are subject to change. Each prospective Purchaser is advised to consult with the lending institution of his/her choice regarding any interest rates and charges imposed by it.

### **Responsibility of Purchaser to Obtain Financing**

The Condominium and the Sponsor are not obligated to obtain financing on behalf of any Purchaser. Consequently, each person who desires to finance the purchase of any Unit is solely responsible for obtaining a commitment for such financing from the lender of his/her choice. Accordingly, Purchasers should inquire about the availability, terms, cost, and Purchaser's eligibility for such financing before signing and returning the Purchase Agreement.

### **Prequalification through a lender designated by the Sponsor**

Notwithstanding anything to the contrary contained in this Section, the financing contingency section of the Purchase Agreement shall only be effective upon the Purchaser providing to the Sponsor evidence that Purchaser has been pre-qualified for purchase money financing by Home Owners Mortgage Express ("HOME"). Purchaser must provide such evidence of pre-qualification either prior to or within five (5) days after the date (the "Contract Date") on which a fully executed copy of the Purchase Agreement is delivered to Purchaser's attorney. HOME has agreed to pre-qualify

Purchasers and provide a letter of pre-qualification within twenty-four (24) hours, excluding weekends and holidays, of Purchaser's request for pre-qualification, at no cost or further obligation to Purchaser. In the event that Purchaser does not provide evidence of pre-qualification within five (5) days of the Contract Date, then the Sponsor may either cancel the Purchase Agreement or treat the Purchase Agreement as an "All Cash" transaction, and in which case the financing contingency shall not apply. The prequalification is solely for the benefit of the Sponsor in ascertaining the purchaser's credit worthiness and likelihood of obtaining financing. No representation is made that purchaser's who are prequalified will actually receive mortgage financing for the purchase of their Unit and shall be bound by the terms of the mortgage contingency provisions of the Offering Plan and Purchase Agreement. See sections entitled: "PROCEDURE TO PURCHASE" and "PURCHASE AGREEMENT".

NO WARRANTY IS MADE THAT BANK FINANCING WILL BE AVAILABLE TO ANYONE WHO PURCHASES A UNIT UNDER THE PLAN OR AS TO THE TERMS, COSTS AND CONDITION UPON WHICH SUCH FINANCING MAY BE GRANTED OR THE COST OF OBTAINING SAME.

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## **EFFECTIVE DATE**

This offer to sell is contingent upon the Plan being declared effective. In order for the Plan to be declared effective, compliance with the relevant conditions described in this Offering Plan is required.

The following provisions will determine whether and when the Plan will be declared effective:

1. The Plan may not be declared effective until executed Purchase Agreements of bona fide Purchasers for occupancy have been accepted by the Sponsor for not less than fifteen (15%) percent of the Units (2 Units) offered under the Plan.
2. The Plan must be declared effective when Purchase Agreements are executed and accepted for 80% of the Units (or 9 Units) offered under this Plan.

The Plan shall be declared effective by written notice. Said notice shall be served on (i) Purchasers who have executed and delivered Purchase Agreements to the Sponsor or to the Condominium, and are not in default thereunder; and (ii) any other person entitled to service pursuant to local law or regulation, (collectively known as "Offerees"), in the following manner:

- (1) personal delivery; or,
- (2) mailing addressed to the Offeree at the last known residence of such Offeree or if Offeree has provided written information of an alternative address for notice, addressed to the Offeree at the alternative address.

Service shall be deemed complete upon completion of personal delivery to all Offerees or on the fifth day after the date of mailing to all Offerees not personally served.

The Sponsor shall submit an amendment to the Department of Law within five business days thereafter to disclose that the Plan has been declared effective on a specific date together with an affidavit of Service. No Closing of title to the Units shall occur until the amendment disclosing that the Plan has been declared effective is accepted for filing by the Department of Law, State of New York.

The Sponsor must submit to the Department of Law, if requested, copies of all Purchase Agreements (and any amendments or modifications) within five (5) business days after the request is made.

In determining whether the Plan may or must be declared effective: the Plan will



not be declared effective based upon the Purchase Agreements: (1) containing provisions requiring the filing an amendment to the Plan, which have not yet been accepted for filing by the Department of Law; (2) Purchasers who have been granted a right of rescission which has not yet expired; (3) Purchasers who have not had at least three (3) days to review the Offering Plan; and (4) any Purchaser who is the Sponsor, the Selling Agent, or the Managing Agent, or is a principal of the Sponsor, the Selling Agent, or the Managing Agent, or is related to the Sponsor, the Selling Agent, or the Managing Agent, or to any principal of the Sponsor, or the Selling Agent, or the Managing Agent by blood, marriage or adoption or as a business associate, an employee, a shareholder, or limited partner, except that such Purchaser other than the Sponsor, or a principal of the Sponsor may be included if the Sponsor has submitted proof satisfactory to the New York State Department of Law that the Purchaser is bona fide.

The Plan may be abandoned by the Sponsor at its sole option before it has been declared effective and before 80% of the Units are purchased. In the event of such abandonment the Sponsor shall promptly file a notice of abandonment on form RS-3 or any such form as the Department of Law may require setting forth the reasons for such abandonment and accounting for the disposition of all funds previously received pursuant to this Offering.

Upon such abandonment all Purchase Agreements executed by Purchasers shall terminate, thus becoming null and void. Furthermore, upon such abandonment the rights of any Purchaser pursuant to this Plan shall cease. All monies paid by Purchasers shall be refunded to said parties within 15 days from the filing with the Department of Law of the notice of abandonment, with interest, if any.

The Sponsor may not abandon the Offering Plan after the Effective Amendment is accepted for filing by the Department of Law for any reason other than (i) a defect in title which cannot be cured without litigation or cannot be cured for less than one-half ( $\frac{1}{2}$ ) of one (1%) percent of the total amount of the Offering, or (ii) work orders of a mortgagee or violations that cannot be cured for less than one-half ( $\frac{1}{2}$ ) of one (1%) percent of the total amount of the Offering, or (iii) substantial damage or destruction of the Building by fire or other casualty which cannot be cured for less than one-half ( $\frac{1}{2}$ ) of one (1%) percent of the total amount of the Offering, (iv) the taking of any material portion of the property by condemnation or eminent domain. Sponsor must provide that any stated dollar amount relied upon as the basis for abandonment after effectiveness must exclude any attorneys fees or any such title defects or determinations of any authority or regulatory association which exist on the date of presentation of the Plan and either are known to the Sponsor or are a matter of public record.

After the Plan has been declared effective, and prior to or simultaneously with the First Closing, the Declaration and By-Laws will be recorded, and the Floor Plans will be filed in the Kings County Office of the City Register (see "CLOSING OF TITLE TO UNITS").

Purchasers will not be obligated to pay the balance due under his/her Purchase Agreement until a date which is at least thirty (30) days after the amendment disclosing that the Plan has been declared effective has been accepted for filing by the Department of Law and notice thereof provided to Purchasers, unless Purchasers waive such thirty (30) day notice.

This Plan cannot be used 12 months from the Acceptance Date of the Offering Plan, unless it is extended by amendment.

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## **CLOSING OF TITLE TO UNITS**

The term "Closing of Title" or "Closing", as used herein, means the time, place and procedure by which fee title to the Unit in question is conveyed to the Purchaser pursuant to such Purchaser's Purchase Agreement. Closing will take place concurrently with or after occurrence of the following events:

1. Issuance of a temporary or final Certificate of Occupancy for the Building. If a temporary Certificate of Occupancy is issued, the Sponsor agrees to obtain a permanent Certificate of Occupancy within two (2) years of closing of the first Unit (or at such sooner time as the temporary Certificate of Occupancy, as renewed, replaced or extended, expires);
2. The recording or filing as required by law, of the Declaration, By-Laws, Floor Plans and Architect's and tax authority Certifications required by Section 339-p of the New York Condominium Act;
3. The due recording of the release of every mortgage and other liens affecting the Unit to be closed and its undivided Common Interest as required by Section 339-r of the Condominium Act;
4. The Sponsor has given each Purchaser at least thirty days' prior written notice of the date on which title to his/her Unit will close and of the opportunity to inspect the Unit and Common Elements, such inspection to be during normal business hours and to be undertaken in the company of the Sponsor's Agent;
5. If the Purchaser has requested title insurance, the issuance to the Purchaser (at Purchaser's expense) of a policy of title insurance, in at least the amount of the Purchase Price of the Unit, insuring (i) that the Purchaser has fee title to his/her Unit free and clear of all liens and encumbrances except for Permitted Encumbrances (as hereinafter defined) except any mortgage and related documents which a Purchaser executes as part of the Purchase Price of the Unit, and (ii) the Condominium has been validly created pursuant to the Condominium Act;
6. The Sponsor has amended the Plan to disclose that it has been declared effective and to confirm that any Units to be closed have been constructed substantially in accordance with any applicable plans and specifications; and the Sponsor has complied with the applicable requirements of this section of the Plan;
7. The Sponsor's assigning to each Purchaser all manufacturers' warranties in the Sponsor's possession, if any, for appliances, fixtures and personal property installed in the Purchaser's Unit and, to the Board of Managers,

all manufacturers' warranties in Sponsor's possession, if any, as of the First Closing which relate to equipment and appliances installed in the Common Elements; and,

8. The Sponsor delivers a bargain and sale deed with covenants against grantor's acts in the proper form for recording in the form set forth beginning on page D-1 in Part II of the Plan, free and clear of all liens and encumbrances other than the following "Permitted Encumbrances":

a. The terms, burdens, conditions, covenants, restrictions, easements and provisions, all as set forth in the Declaration, the By-Laws and the Rules and Regulations made thereunder; the Power of Attorney from Purchaser to the Board of Managers; and Floor Plans, all as may be amended from time to time;

b. Any state of facts which an accurate survey or inspection of the Unit would show provided such facts do not render title unmarketable and would not prevent the use of the Unit for dwelling purposes;

c. Covenants, restrictions, easements and agreements of record if any, provided the same do not prevent the use and maintenance of the structure;

d. Zoning regulations and ordinances which are not violated by the existing structures;

e. Consents by the Seller or any former owner of the premises for the erection of any structure or structures on, under or above any street or streets on which any premises may abut;

f. Beams and beam rights, and party wall and party wall agreements, if any;

g. Possible lack of right to maintain vault or vaulted areas under and coal chutes in the sidewalks;

h. Projections and encroachments, if any, of retaining walls, doors, ledges, water tables, standpipes, chimneys, lintels, coal chutes, windows, bay windows, trim, coping, cornices, ornamental projections, fences and retaining walls;

i. Mechanics' liens, if any, provided that any reputable title company licensed to do business in the State of New York agrees to insure the Purchaser against the collection thereof out of the Unit but not against the Property;



- j. Rights, if any, acquired by any utility or licensed public service company to maintain and operate lines, wires, cables, poles and distribution boxes in, over and upon said Property;
- k. Variations if any, between tax lot and lines of record title;
- l. Existing Interim Leases, should the same be provided for in an amendment to this Offering Plan;
- m. Party wall agreements;
- n. Legislative restrictions, if any;
- o. Standard printed exceptions contained in the form of title insurance to be issued by the title insurance company insuring the Purchaser's title to the Property, included but not limited to:
  - (i) Defects and encumbrances arising or becoming a lien after the date of the title policy, except as therein provided;
  - (ii) Consequences of the exercise and enforcement or attempted enforcement of any governmental war or police powers over the Property;
  - (iii) Any laws, regulations or ordinances (including, but not limited to zoning, building, environmental protection) as to the use, occupancy, sub-division or improvement of the premises; adopted or imposed by any governmental body, or the effect of any non-compliance with, or any violation thereof;
  - (iv) Judgments against the insured or estates, interests, defects, objections, liens or encumbrances created, suffered, assumed or agreed to by or with the privity of the insured;
  - (v) Title to any property beyond the lines of the premises or to areas within or rights or easements in any abutting streets, roads, avenues, lanes, ways or waterways, with a right to maintain train vaults, tunnels, ramps or any other structure or improvement, unless the policy specifically provides that such titles, rights or easements are insured. Notwithstanding any provision in this paragraph to the contrary, the policy, unless otherwise excepted, shall insure the ordinary rights of access and egress belonging to the abutting owners;

- (vi) Title to any personal property, whether the same be attached to or used in connection with said premises or otherwise.
- p. Service, maintenance and license agreements, if any, of other Units or portions of Common and Limited Common Elements;
- q. The lien of any unpaid Common Charges, real estate tax, water and sewer charges provided the same are adjusted at the Closing;
- r. The lien of any unpaid assessment payable in installments (other than assessments levied by the Board of Managers) except that the Sponsor shall pay all such assessments due prior to the Closing Date and the Purchaser shall pay all assessments from and after such date (however, the then current installment shall be adjusted at Closing);
- s. Any other Declaration or other instrument affecting the Property which the Sponsor deems necessary or appropriate to comply with any law, ordinance, regulation, zoning, resolution or requirement of the Department of Buildings, the City Planning Commission, the Board of Standards and Appeals, or any other public authority, applicable to the demolition, construction, alteration, repair or restoration of the Building;
- t. Certificate of Occupancy (temporary or permanent) to be secured by Sponsor;
- u. Violations noted or issued of record after the First Closing by any governmental authority. Any violations which the Sponsor is obligated to remove will not be an objection to the closing of Units after the date of First Closing, provided Sponsor agrees in writing with Board of Managers to remove same of record.

Purchasers are free to use any title company of their choice. However, **Philip O'Hara Associates, Inc., 55 Washington Street, Brooklyn, NY (718) 875-7506** prepared the specimen policy for the Offering Plan and is fully familiar with title on the premises. Using them may expedite title clearance and expedite closing dates. Title will be subject to the provisions set out in "CLOSING OF TITLE TO UNITS" section of the Offering Plan and the standard printed exceptions contained in the form of title-insurance-policy-promulgated exceptions by the New York Board of Title Underwriters.

The existence of mortgages, liens and encumbrances, other than the Permitted Encumbrances, shall not be objections to title, provided that properly executed

instruments, in form for recording, necessary to satisfy or release Units from such impermissible liens or encumbrances are delivered at Closing and proper adjustments made for the cost of recording or filing such instruments. The Sponsor will bear the responsibility and cost of recording or filing such instruments, other than recording of mortgages placed on the Unit by the Purchasers.

The Sponsor may abandon the Offering Plan prior to declaring the Plan effective and prior to the execution of Purchase Agreements for 80% of the Units offered under the Plan. In the event that this Offering is abandoned by the Sponsor or in the event the Sponsor is unable to convey title to the Purchaser in accordance with the Purchase Agreement, then the Purchase Agreement will be null and void and neither party will have any rights as against or obligations to the other parties.

At the Closing of Title, Sponsor will convey to the Purchaser all fixtures and articles of personal property which are attached to or used in connection with the operation of the Unit. Such fixtures and articles of personal property (including kitchen appliances, equipment and fixtures) will be conveyed by the Sponsor to the Purchaser in the condition in which they are described in the "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION", in Part II beginning at page A-1. All kitchen appliances and lighting fixtures in the Unit owned by the Sponsor at the Closing of Title will become the property of the Purchaser as of the Closing of Title. The Sponsor makes no representation or warranty as to the work, materials, appliances, equipment or fixtures other than as set forth in this Plan, nor will the Sponsor indemnify the Board of Managers or defend lawsuits, which are not a result of the Sponsor's acts or omissions.

The Sponsor will assign any transferable manufacturer's warranties with respect to the equipment and appliances installed in a Unit to the Purchasers for that Unit and will assign any warranties with respect to equipment and appliances installed in Common Areas to the Condominium.

In the event that the net closing adjustments are in favor of the Purchaser, the amount thereof shall be paid or credited to the Purchaser at closing.

If any of the foregoing items to be apportioned cannot be adjusted as of the Closing of Title because they are not fully ascertainable, they shall be apportioned and adjusted at such Closing of Title to the extent reasonably possible and the balance as soon thereafter as the undetermined amounts are ascertained.

If proceedings are pending for the reduction of real estate taxes on the Unit for the tax year in which the closing occurs, the Condominium will continue such proceedings with the attorney previously employed by the Sponsor. The Sponsor shall have the sole right to negotiate and settle all claims in connection with such proceedings. The cost of such proceedings and (in the event taxes are reduced) any refund shall be apportioned between the Sponsor and the Board of Managers according to the ownership of the Property during respective portions of the tax year

prior to the Closing of Title. Any refund covering a period prior to the Closing of Title and all expenses incurred in connection with obtaining such refund, shall belong to and be incurred by the Sponsor alone. There are no certiorari proceedings pending at present. If there are any changes the Plan will be amended to so state.

The Sponsor will in no event be liable to the Purchaser in the event of a delay in the Closing of Title caused by a delay in repairing damage resulting from fire or other casualty. In repairing said damage, Purchasers shall be responsible for any special work ordered by the Purchaser.

Risk of loss to the property by fire or other casualty shall remain with the Sponsor until the Closing Date as defined herein above. Risk of loss to the individual Unit shall stay with the Sponsor until a Purchaser is given possession, or Closing of Title to the Unit, whichever occurs first.

Any conflict between the Plan and the Purchase Agreement shall be resolved in favor of the Plan.

Any and all representations and obligations which are imposed upon the Sponsor by virtue of this Offering Plan or the General Business Law, the performance of which shall occur after the transfer of title, shall survive delivery of the deed.

The Condominium shall have public liability insurance after it takes title to the Unit. This representation shall survive delivery of the deed.

The acceptance of a deed by a Purchaser shall be deemed an acknowledgment that the Sponsor has performed and discharged every agreement and obligation on the part of the Sponsor to be performed under the Plan except those (if any) to survive delivery of the deed, which may be expressly stated in the Plan, in the Purchase Agreement, in 13 NYCRR, Part 20 (the regulations of the Attorney General of the State of New York governing the acceptance for filing of the Plan) and General Business Law G352-e. If Sponsor fails to complete Sponsor's improvements as described in this Plan (see "DESCRIPTION OF PROPERTY, SPECIFICATIONS AND BUILDING CONDITION", set forth beginning on page A-1) for a particular Unit, the Sponsor and the Unit Owner in question will prepare a Punch List and enter into an agreement under which the Sponsor will agree to complete the work described on the Punch List following the Closing Date for the Unit in question.

At each closing, the Purchasers will also execute and deliver a Unit Power of Attorney, coupled with an interest, in the form set forth on page C-1 in Part II of the Plan. The Unit Power of Attorney irrevocably designates the Board of Managers as such Unit Owner's attorney-in-fact for the purpose, among other things, of determining and collecting common charges, contracting for necessary services, employing and dismissing personnel, adopting and amending rules and regulations, acquiring, managing, selling, mortgaging, leasing, or otherwise dealing with (but not voting the votes appurtenant thereto) any Unit and the undivided interest in the Common Elements appurtenant thereto acquired by the Board of Managers in accordance with



the provisions of the By-Laws set forth on page F-1 in Part II of the Plan.

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## **CLOSING COSTS AND ADJUSTMENTS**

### **Closing Costs**

The Purchaser will pay the following estimated Closing costs at the time of Closing of Title for the Purchaser's Unit. These estimates are based on current costs and charges, which are subject to change:

(a) If a Purchaser elects to obtain fee title insurance, the Purchaser will pay the premium therefor which will vary depending upon the Purchase Price of the Unit. Fee title insurance charges, if ordered, in accordance with the schedule of rates set by the New York Board of Title Underwriters and filed with the New York State Insurance Department are currently \$502.00 on a Purchase Price up to \$50,000.00 and approximately \$5.43 for each additional thousand dollars or fraction thereof up to a Purchase Price of \$100,000.00 and approximately \$4.36 for each additional thousand dollars or fraction up to a Purchase Price of \$500,000.00, approximately and \$3.98 for each additional (\$1,000.00) one thousand dollars or fraction up to a Purchase Price of \$1,000,000.00 and approximately \$3.66 for a purchase price of \$1,000,000.00 to \$5,000,000.00. If a mortgage policy is issued simultaneously with the fee policy, a Purchaser will be entitled to a reduced rate of 70% of the regularly scheduled rate for the fee policy and 21% of the regularly scheduled rate for the mortgage policy if the Condominium contains more than ten (10) Units. The reduced rates apply to initial Sponsor sales.

(b) Fees for recording the deed and Unit Power of Attorney in favor of the Board of Managers;

The current amount of such fees are \$35.00 per document plus \$5.00 per page (including cover page), plus a \$75.00 company service charge per instrument;

(c) If the Purchaser obtains a mortgage loan, the Purchaser will pay a mortgage tax, which is currently (subject to certain possible adjustments) 2.05% of the principal amount of the mortgage if under \$500,000.00 and 2.175% of the principal amount if the mortgage is \$500,000.00 or more less \$30.00. If a mortgage tax credit becomes available pursuant to Section 339-ee(2) of the Condominium Act, such credit will inure to the benefit of the Sponsor. Accordingly, at Closing, each Purchaser electing mortgage financing will pay the full amount (but not in excess thereof) of the mortgage recording tax chargeable on the entire amount being financed. The Sponsor, at Closing, will be reimbursed to the extent of any mortgage tax credit allowed;

(d) All legal costs, fees and expenses charged by the Purchaser's attorney will be the sole responsibility of each Purchaser;

(e) New York City Real Property Transfer taxes currently 1% of the Purchase Price of a Condominium Unit, if under \$500,000.00 and 1.425% of the Purchase Price of a Condominium Unit \$500,000.00 or more, plus additional consideration of 1.4% or 1.825% of the purchase price, plus a filing fee, will be the sole responsibility of the Purchaser. Consideration includes both the purchase price of the Unit and the Transfer Tax being paid by the Purchaser. (see "SPECIAL RISKS");

(f) New York State Transfer Taxes presently \$4.00 per \$1,000.00 of the Purchase Price of a Unit plus additional consideration as set forth in (e) above, will be the sole responsibility of the Purchaser. Consideration includes both the purchase price of the Unit and the Transfer Tax being paid by the Purchaser. (see "SPECIAL RISKS");

(g) NYS Transfer Tax ("Mansion Tax") is due in the conveyance of residential real property of one million (\$1,000,000.00) dollars or more. This will be the responsibility of and will be paid by the Purchaser ("the Grantee") at the rate of one (1%) percent of the consideration of the Unit. See section entitled "CLOSING COSTS AND ADJUSTMENTS".

(h) ACRIS preparation fee;

(i) Each Purchaser will be required to make a contribution to the Working Capital Fund in an amount equal to two month's estimated Common Charges for such Purchaser's Unit. See Schedule A for the estimate of such amounts;

(j) All costs with regard to any mortgage that the Purchaser will place on his/her Unit; and

(k) Purchaser's proportionate share of the insurance premium on the Condominium for the first year of operation.

For example: A Unit with a purchase price of \$950,000.00 with a total percentage of Total Common Interest of 3.7701% would have the following (estimated) costs based upon the above categories:

(a) Title and Mortgage Insurance (with an 80% loan): approximately \$3,188.00 for bulk rate and \$4,554.00 for non-bulk rate;

(b) Recording fees: \$125.00;

- (c) Mortgage tax on \$760,000.00 mortgage: \$16,500.00;
- (d) Legal fees: \$3,500.00 plus expenses (this price will vary depending on what different attorneys charge for closings);
- (e) NYC RPTT: \$13,784.85;
- (f) NYS RPTT: \$3,869.35;
- (g) Mansion Tax: \$N/A
- (h) ACRIS – between \$150.00 and \$200.00
- (i) Working Capital Contribution: \$911.40;
- (j) Mortgage costs will vary depending on mortgage;
- (k) Proportionate share of Insurance Premium = \$675.74

ALL QUOTES FOR RECORDING CHARGES, MORTGAGE, TRANSFER AND OTHER TAXES ARE DESCRIBED GENERALLY HEREIN, ARE SUBJECT TO CHANGE. PURCHASERS SHOULD DISCUSS ACTUAL CHARGES APPLICABLE TO THEM WITH THEIR OWN ATTORNEY.

Those Purchasers obtaining mortgage loans will be responsible for the payment of all Closing costs and expenses in connection therewith in amounts determined by the applicable lender. These costs and expenses will probably include an origination fee ("points"), appraisal fee, fees of lender's counsel, and a fee for mortgage title insurance, as well as other related fees. In addition to the specified costs and expenses, a mortgage on a Unit probably will provide that the Unit Owner deposit monthly with the lender one-twelfth of the estimated annual real estate taxes, water rates, sewer charges and assessments which are assessed or to be assessed against the Unit, together with one-twelfth of the annual fire and casualty insurance policy premium for the Unit, or other amounts, and at the Closing of Title the Purchaser may be required to deposit with the lender, a multiple of the aggregate of one month's real estate taxes, water rates, sewer charges, assessments and insurance premiums, or other amounts so that sufficient funds will be available for the lender to pay real estate taxes, sewer charges, water rates and insurance premiums when due. No representation or warranty is made with respect to the amount of such Closing costs and expenses or the availability or cost of mortgage loans from any source.

It shall be the sole responsibility of the Purchaser to pay the Sponsor's closing attorney, Forman & Associates, pc, a fee of \$2,000.00 at closing for the preparation of closing documents.

If the closing is held at a place other than the office of the Sponsor's closing



attorney, Forman & Associates, pc, or such other place as designated by the Sponsor (but within New York City) there will be an additional fee of \$500.00 per Unit payable to the Sponsor's attorney, which will be the sole responsibility of the Purchaser. There will be a reasonable fee for Closings outside of New York City depending upon distance, but in no event less than \$500.00.

If the closing is adjourned at other than the Sponsor's request, there will be an additional fee of \$500.00 per Unit which will be the sole responsibility of the Purchaser.

In the event that a purchaser defaults, a fee of \$500.00 will be payable at closing to the attorney for the Sponsor, Forman & Associates, pc, for preparation of a letter of default.

All checks for the above fees must be paid by CERTIFIED or BANK CHECK at the Closing. The above Closing fees are cumulative to the extent applicable to an individual Closing.

Common Charges assessed during the period in which Closing occurs shall be adjusted as of the originally scheduled Closing Date for each Unit. The Board of Managers will fix the amount of such Common Charges to be assessed against each Unit. It is estimated that the Common Charges for the first year of operation of the Building will not exceed the amounts for each Unit set forth in Schedule A in Part I of the Plan, but such amounts may vary to the extent that the costs of services change and/or to the extent the Board of Managers decides to provide increased services or discontinue any present services within the framework of the By-Laws (see "BY-LAWS", beginning on page F-1 in Part II of the Plan).

Real estate taxes for each Unit for the tax year in which title to a Unit closes and the estimated Common Charges and Expenses for each Unit (as shown in Schedule A in Part I of the Plan) for the month in which a Closing occurs, will be apportioned between the Sponsor and the Purchaser of each Unit as of the originally scheduled Closing Date. In the event that a Unit has not been separately assessed on the Closing Date for the current tax year, the apportionment of real estate taxes shall be based upon the projected assessment for the Property and such Unit's percentage interest in the Common Elements as set forth in Schedule A in Part I of the Plan.

If the Units have not been separately assessed for real estate tax purposes prior to the First Closing, the Sponsor will place in escrow an amount equal to the unpaid real estate taxes (or estimates thereof based on current assessments) due for the next ensuing six months (or until the Units are separately assessed, whichever is shorter), provided, however, that as Closings occur, the portion of such funds held in escrow which represent the portion allocable to the Unit being sold shall be disbursed to the Sponsor, with interest accrued thereon, if any. All interest accrued on such escrow, if any, shall inure to the benefit of, and belong to, the Sponsor. The Sponsor will pay the real estate taxes from the escrow account when taxes are due and payable and is entitled to reimbursement from Unit Owners or alternatively, the Sponsor will pay an

amount equal to the unpaid real estate taxes (or estimates thereof based on current assessments) due for the next ensuing six months (or until the Units are separately assessed, whichever is shorter). Unit Owners will reimburse the Sponsor for their proportionate share of the paid real estate taxes.

The following items will be apportioned between the Sponsor and the Board of Managers on behalf of the Unit Owners as of the First Closing (hereinafter referred to as the "Adjustment Date"):

1. Water and Sewer charges;
2. Charges for electricity and other utilities, if any, for the Common Elements;
3. Charges and receipts in connection with service and maintenance and concession contracts, if any;
4. Wages and payroll expenses, if any;
5. Deposits with utility companies, if any, and fees for assignable permits and leases;
6. Cost of Building supplies on hand (plus sales tax); and,
7. Other customary adjustments.

If any of the foregoing items to be apportioned cannot be adjusted as of the Adjustment Date because they are not fully ascertainable, they shall be apportioned and adjusted on the Adjustment Date to the extent reasonably possible and the balance as soon thereafter as the undetermined amounts are ascertained.

Any Closing adjustments Sponsor owes the Board of Managers will be paid by the Sponsor into the Condominium's Working Capital Fund. Any Closing adjustments the Board of Managers owes the Sponsor will be paid by the Board of Managers from the Condominium's Working Capital Fund. However, the Closing adjustment to be paid by the Board of Managers to the Sponsor at the First Closing shall not reduce the Working Capital Fund below \$1,000.00. The Sponsor hereby waives all Closing adjustments on the Adjustment Date that will reduce the Working Capital Fund below \$1,000.00.

Except as specifically set forth in this Plan, the Sponsor must pay all costs and expenses incurred in connection with the promulgation and consummation of this Plan, the creation of the Condominium and the initial sale of Units including, but not limited to, all selling expenses and commissions payable for initial sale of Units pursuant to this Plan, advertising, printing, architects' & engineers' fees, the fees of Sponsor's attorney, engineering, appraisal costs and governmental filing fees, incurred prior or subsequent to the effective date of the Plan in connection with the obligations of the Sponsor.

## **RIGHTS AND OBLIGATIONS OF SPONSOR**

The Sponsor is using its own capital and that of a construction loan to complete the construction of the Units as set forth herein, and represents that it has adequate resources to complete same.

The Sponsor will complete the work set forth in this Offering Plan relating to the Building and the Units contained therein in accordance with the plans filed and approved by the Department of Buildings of the City of New York, and as set forth in this Offering Plan.

It is the Sponsor's intention in formulating and filing this Plan to offer and sell all of the Units being offered for sale, and it will make a good faith effort to do so. However, Sponsor makes no representation that it will be able to do so and makes no covenant, inherently or by implication, that it will be able to do so. The Sponsor is presently obligated to sell the Condominium Units in order to satisfy its current mortgage. Notwithstanding its intentions and the requirements of its mortgage, a dramatic shift in the real estate market may preclude sales as being either virtually impossible or, at the least, economically unadvisable, in which event the Sponsor reserves the right to rent its Unsold Units until such time as the market conditions reverse themselves and restore the economic viability of selling Units. This may require modifying or replacing the existing financing with a mortgage or with terms, which are more conducive to a rental property.

The Sponsor may make changes in design, layout and arrangement of Units in accordance with all required amendments to the approved building plans, and substitute equipment or material except that the Sponsor may not:

- (a) substitute equipment or materials of lesser quality or design; or,
- (b) change the size, location or value of any Units, or of other improvements or Common Elements if such changes adversely affect Common Elements or adversely affect the value of any Unit to which title has closed or for which a Purchase Agreement has been fully executed and is in effect, unless:
  - (i) all affected Purchasers consent in writing to such changes;
  - (ii) each affected Purchaser not in default of his/her Purchase Agreement, has been given the right to rescind his/her Purchase Agreement and obtain the return of his/her Down Payment (said Purchaser shall have fifteen (15) days from the Presentation Date of the Amendment to send written notice to the Sponsor of his/her rescission by certified mail, return receipt requested; and,
  - (iii) an amendment to this Plan is filed.



(See also "CHANGES IN PRICES AND UNITS" for further information regarding such changes).

The Sponsor has filed building plans with the Department of Buildings of the City of New York, County of Kings, for eleven (11) Residential Units and nine (9) parking space Units. At the time a Unit is conveyed to a Unit Owner, the Sponsor will produce a temporary or permanent Certificate of Occupancy for such Unit.

If the Sponsor fails to obtain a permanent Certificate of Occupancy for the Property prior to the First Closing, the Sponsor will be obligated to: (i) hold and maintain all monies received pursuant to all Purchase Agreements in the special trust account required by the General Business Law of the State of New York, Sections 352-e(2)(b) and 352(h), originally established with the Escrow Agent for the purpose of holding such deposits, provided however, that if Sponsor's Architect certifies that a lesser amount than the amount held in the special trust account is reasonably necessary to complete the work needed to obtain a permanent Certificate of Occupancy, then the amount exceeding the sum so certified by the Sponsor's Architect shall be released from the special escrow account to the Sponsor, or (ii) the Sponsor shall deposit with Escrow Agent an unconditional, irrevocable letter of credit or post a surety bond in an amount the Sponsor's Architect, from time to time, certifies is reasonably necessary to complete the work needed to obtain the permanent Certificate of Occupancy, provided the Sponsor has amended the Plan to disclose such facts and promptly notifies all Purchasers with Purchase Agreements outstanding and not in default beyond any applicable grace period, of such amendment.

In the event the work on the Building as set forth herein is not fully completed at the time the Building becomes occupied, the Sponsor will have the right to enter the premises to complete work the Sponsor deems necessary to fulfill its obligations under this Plan. Any such entry shall be conducted in such a manner as to produce a minimum of discomfort to Unit Owner, and may do so provided:

- (a) such work is performed on Common Elements and vacant Units only between 8 A.M. and 10 P.M. on any day;
- (b) such work is performed in any occupied Unit only between 8 A.M. and 6 P.M. on non-holiday weekdays;
- (c) any damage created by virtue of such work whether to the Common Elements or any Unit is repaired in a good and workmanlike manner.

The Sponsor's obligations, regardless of any limitations in this offering plan, is to construct the premises in accordance with all applicable codes and filed plans and specifications. The Housing Merchant Implied Warranty does not apply to this Building because it is more than five stories. The Sponsor, however, shall assign to each Unit's Purchaser all warranties, if any, in the Sponsor's possession at the closing for the Unit.



All warranties, if any, in the Sponsor's possession as of the First Closing which relate to Common Elements will be assigned to the Condominium at the First Closing. In no event shall the Sponsor be responsible for the partial or total death of any trees, or other landscape improvements; damage to walkways or other concrete areas caused by the application of salt or de-icers; nail pops, ridging, normal lumber shrinkage, normal settlement or any consequential damage resulting therefrom; water problems caused by ice dams; normal plumbing, heating and lumber noises or carpet stretching; normal settlement cracks on concrete foundations, patios, sidewalks, other flat work; leakage resulting from "ice dams" forming on roofs; scuffing on kitchen cabinets or vanity surfaces; and minor chips (nicks) to formica tops, and tubs (edges and surface or grooves). Subsequent to the conveyance of title to a Unit, the Sponsor shall not be responsible for paint touch-ups, repair of dented appliances, porcelain or formica chips and scratches, mars, breaks or other blemishes in windows, sliding glass doors, screens, electric fixtures, painted surfaces, sinks, basins, tubs, kitchen cabinets and countertops, medicine cabinets, ceramic tile, saddles, resilient flooring, woodwork, doors and appliances. The Sponsor has no obligation to make any repair to the Units or the Common Elements except as expressly set forth in the Offering Plan. The Sponsor will not indemnify the Board of Managers or defend lawsuits, which are not a result of the Sponsor's acts or omissions. Nothing herein is intended to abrogate the responsibilities of the Sponsor under the New York State General Business Law, the Offering Plan or 13 NYCRR, Part 20 (the regulations of the Attorney General of the State of New York governing the acceptance for filing of the Plan). Each prospective Purchaser may have the Building and Units therein inspected by an architect or engineer of his or her choosing to determine the quality of materials and workmanship.

The Sponsor will pay for the authorized and proper work involved in the renovation, establishment and sale of the Units that the Sponsor is obligated to complete under this Plan. All mechanic's liens that are lodged against the Property by virtue of work done by the Sponsor or on the Sponsor's behalf will be promptly discharged or appropriately bonded.

The Sponsor represents that it will endeavor in good faith to sell Units rather than rent the Units. However, the Sponsor unconditionally reserves the right to rent and not sell Units. This may require modifying or replacing the existing financing with a mortgage or with terms, which are more conducive to a rental property. In the event the Sponsor finds itself in such a market and commences the renting of Unsold Units, Purchasers should be aware that there is therefore no representation to sell more Units than the 15% needed to declare the Plan effective and Unit Owners may never gain effective control over management of the Condominium.

The Premises is currently encumbered by four (4) mortgages and all held by BUILDER'S BANK, an Illinois Banking Corporation, with offices at Closing 225 West Wachen Drive, Chicago, IL.

The Loan documents contain a provision for the release of Units upon payment of a sum which equals the "Net Sales Proceeds" of the Unit. The Net Sales Proceeds

shall mean the value of all consideration received in connection with the sale of the Unit less the reasonable and customary costs and expenses for the sale incurred by the Sponsor and paid to persons not affiliated with the Sponsor.

The Sponsor is obligated to pay the Common Charges, real estate taxes and assessments with respect to Unsold Units. The Sponsor represents that it has the financial resources to meet its obligations with respect to Unsold Units and shall fund its financial obligations to the Condominium by means of proceeds from the projected sales of Units in the premises and from other income of the Sponsor in the event that projected sales are not made. After title to the last Unit is closed and there are no Unsold Units, the obligation of the Sponsor under the Offering Plan will cease.

The Sponsor will secure a policy covering fire and liability insurance at Closing, which will be an agreed amount value policy, thus avoiding the requirements of co-insurance. The premium for such policy shall be paid by the Condominium and the cost thereof is provided for in Schedule B (See footnote to Schedule B for further details).

The Property will be conveyed free and clear of all liens except Permitted Encumbrances.

NO BOND OR OTHER SECURITY HAS BEEN FURNISHED TO SECURE SPONSOR'S OBLIGATIONS HEREUNDER INCLUDING SPONSOR'S OBLIGATIONS TO COMPLETE THE CONSTRUCTION SET FORTH HEREIN.

Copies of this Offering Statement-Plan of Condominium Organization and all exhibits or documents referred to herein including Parts A, B and C of the Exhibits, shall be available for inspection by prospective Purchasers and by any person who shall have purchased Units under this Plan or shall have participated in the offering of such Units, at the office of the attorneys who prepared this Offering Plan for the Sponsor, FORMAN & ASSOCIATES, pc, 80 Maiden Lane, Suite 2204, New York New York 10038, and shall remain available for a period of six years from the date of First Closing for such inspection. All documents may be copied at a reasonable charge after reasonable notice.

Any and all representations and obligations, which are imposed upon the Sponsor by virtue of this Offering Plan or the General Business Law, the performance of which shall occur after the transfer of title, shall survive delivery of a deed of a Unit.

The Sponsor will deliver to the Board of Managers all books of account and records pertaining to the Building's operation, which are in the Sponsor's possession on the First Closing.

The Sponsor has the right to designate the first members of the Board of Managers of the Condominium, and such members shall have voting control of the Board until the first meeting of Unit Owners. So long as the Sponsor or its designee shall continue to hold at least 50% of the Common Interest of the Condominium, but in

no event later than the second anniversary of the First Closing of Units, the Board of Managers may not undertake certain actions without the Sponsor's prior written consent.

After the First Closing and until the first meeting of Unit Owners, the Board of Managers shall consist of three members designated by the Sponsor. The Sponsor shall call the first meeting of Unit Owners, at which time all the Unit Owners, including the Sponsor, or the Sponsor's designee, shall elect a new Board of Managers. However, immediately after such first annual meeting of Unit Owners, the Sponsor shall not have voting control of the Board of Managers unless Sponsor and its designees are able to cast sufficient votes (as owners of the then Unsold Units) to establish such control. The Sponsor, however, retains the right to vote on certain actions taken by the Board of Managers. Please see next section entitled "CONTROL BY SPONSOR".

The Sponsor shall indemnify the Board of Managers and Purchasers against any liability incurred before Closing. In the event that there are any judgments or liens or if litigation has been commenced, the Sponsor shall amend the Plan to so state.

The Sponsor, SDS COLUMBIA LLC, a New York limited liability company, has its principal office within the State of New York. All Units owned by the Sponsor are Unsold Units

All Units which are Unsold Units retain their character as such, regardless of transfer, until (a) such Units become the property of a Purchaser for bona fide occupancy (by himself/herself or a member of his/her family), or (b) a Holder of such Units or a member of his/her family becomes a bona fide occupant of the Unit.

The Sponsor, and any Successor-Sponsor, agrees to fulfill all its obligations pursuant to the By-Laws, including the payment of all Common Charges thereunder, and the Condominium will have a lien upon the Units to secure payment of all Common Charges by the Sponsor as Successor-Sponsor. The Sponsor represents and warrants that at this time it has the financial resources to enable it to meet the obligations with respect to Unsold Units. HOWEVER, NO BOND OR OTHER SECURITY HAS BEEN FURNISHED BY THE SPONSOR, AND THE SPONSOR'S ABILITY TO PERFORM WILL DEPEND SOLELY UPON ITS FINANCIAL CONDITION.

The Sponsor, and any Successor-Sponsor, may sell, assign, pledge or hypothecate such Units and lease or sublet its Unit(s) without the requirement of any consents. Any Successor-Sponsor acquired subsequently shall have the right to use, lease, sublet, sell, pledge, hypothecate or transfer the Unsold Units subject only to the consent of the Sponsor, without first obtaining the consent of the Board of Managers and without being charged any fee, levy or any assessment arising from such occurrence. The Successor-Sponsor will have the same right as the Sponsor to change the size (either as a result of subdivision, combination, alteration of boundary walls, or otherwise) and/or layout of any Unit owned by them, or any of them, and to reallocate the percentages of Common Charges in connection with such changes, subject only to



compliance with the Condominium By-Laws, provided that the total percentage of Common Charges reallocated to all Units will not vary as a result of such reallocation. Such Successor-Sponsor will also have the right to place "For Sale" signs in, at or on the Building, to maintain one or more vacant and Unsold Units in the Building as a sales office and to use Units to store construction materials and supplies. The rights of the Successor-Sponsor may be exercised without the consent or approval of the Board of Managers, its Unit Owners or others and without payment of any charge or fee to the Condominium, or others. In addition, such Successor-Sponsor may resell their Units for any price established by them, provided that any increase in the Cash Purchase Price as set forth in Schedule A will be made by an amendment to this Plan. Individually negotiated decreases in price will not be subject to either prior notice or amendment to this Plan. Notwithstanding the foregoing, the Plan must be amended to reflect a general price change by the Successor-Sponsor affecting a group, line or other category of Units (as distinguished from an isolated price change affecting an individual Unit) or any price change to be advertised. Any subsequent individual Holder of Unsold Units may elect to become the occupant of his/her Unit.

The Sponsor and the Successor-Sponsor shall comply with the trust fund and escrow provisions of General Business Law §352-h and §352-e(2-b). The Successor-Sponsor shall provide prospective Purchasers with a copy of the Offering Plan and all filed amendments, until the Units held by the Successor-Sponsor have been sold to bona fide Purchasers.

In the event of dissolution or liquidation of the Sponsor or the transfer of ten (10) or more Units or twenty (20%) percent or more of the total number of units in the Condominium, whichever is less, the principals of the Sponsor will provide financially responsible entities or individuals who will assume the status and all of the obligations of the Sponsor for those units under the Offering Plan, applicable laws and regulations.

All Building signage shall be uniform and consistent with that which was developed under and approved by design architect.



## **CONTROL BY THE SPONSOR**

The Sponsor's control of the Board of Managers of the Condominium will be subject to the following:

The By-Laws are reproduced in Part II, beginning on page F-1. A summary of certain pertinent provisions of these By-Laws is set forth below. The By-Laws limit the number of Board of Managers (hereinafter called "Managers") to not less than five (5) and not more than seven (7) members. The first Board of Managers to be elected by the Unit Owners shall consist of five (5) members.

At the time of the First Closing there will be three Managers designated by the Sponsor. However, the Managers will resign in favor of Managers who will be elected by the Purchasers at a meeting to be convened within a reasonable time after First Closing; they may, however, be re-elected at such time.

The By-Laws include a provision that a majority of the Board of Managers must be owner-occupants or members of an owner-occupant's household who are unrelated to the Sponsor and its principals after the end of the initial control period.

Managers shall be elected by a plurality of the votes cast at a meeting at which a quorum shall be present. When voting for the Board, each Unit Holder shall be entitled to cast for each Board member to be elected the number of votes equal to the percentage of the Common Interest (each .000001) owned by him/her. The Successor-Sponsor, who will be the Sponsor or natural persons procured by the Sponsor, or both, shall be entitled to vote all of the votes appurtenant to Units held by it for the Managers. To assure that Purchasers under this Plan will be represented on the Board of Managers, the By-Laws provide that at least one less than a majority of Managers to be elected shall be unrelated to the Sponsor or principal of the Sponsor (i.e., if three (3) Managers are to be elected, at least one (1) must be unrelated to the Sponsor or principals of the Sponsor). The By-Laws further provide that the Sponsor shall not exercise voting control of the Board of Managers for more than two (2) years after the closing of the First Unit or whenever the Unsold Units constitute less than 50% of the common interests, whichever is sooner (the "Control Period"). Within thirty (30) days of the expiration of the Control Period, the Sponsor will call an election to elect a new Board of Managers unrelated to it or its principals. In this context, "Sponsor" means the principals of the Sponsor or persons related to them by blood, marriage or business relationship. Additionally, at the time the Sponsor relinquishes control of the Board due to the expiration of two years after the First Closing, a majority of the members of the Board shall be elected by resident owners; the minority of the members shall be elected by all non-resident owners, including the Sponsor and investors.

The Board of Managers will be responsible for the operation of the affairs of the Condominium, including but not limited to, the fiscal operations, repairs and maintenance of the Common Elements of the Property, replacement and capital

improvements to the Common Elements of the Property, the hiring, supervision and discharging of employees and Managing Agent (if any), and the enforcement of the provisions of the By-Laws of the Condominium. The Managers shall serve without compensation or remuneration.

At the First Closing, each Successor-Sponsor will agree in writing that, so long as their Units constitute, in the aggregate, fifty (50%) percent of the votes appurtenant to the Condominium Units: (i) he/she will vote his/her Unsold Units for not more than a bare majority of the Board of Managers to be elected; and, (ii) at all elections held after the second (2<sup>nd</sup>) anniversary of the Closing Date, he/she will vote his/her Unsold Units for not more than one less than a majority of the Board of Managers to be elected.

The Condominium will have a lien on the Units of each Unit Owner to secure payment of Common Charges and other indebtedness under the By-Laws as well as the faithful performance of all other terms, covenants and conditions of the By-Laws.

So long as a majority of the Board of Managers consists of the Successor-Sponsor or persons elected by them or others who do not reside in the Building, said non-resident Board of Managers members elected by the Sponsor, may not exercise veto power over expenses described in Schedule B, or over expenses required: (i) to comply with applicable laws or regulations; or (ii) to remedy any notices of violation; or (iii) to remedy any work order by an insurer.

Sponsor may exercise veto power over expenses other than those described above for a period ending not more than five (5) years after the closing of the first Unit or whenever the Unsold Units constitute less than twenty-five percent (25%) of the common interest, whichever is sooner.

However, notwithstanding anything contained herein to the contrary, the Sponsor, or Successor-Sponsor, shall not veto the expenses set forth in Schedule B, capital repairs, or expenditures required to comply with applicable laws or regulations and/or expenses necessary to remedy notices of violations of law or of an insurance carrier.

THE BY-LAWS MAY BE AMENDED, ALTERED, REPEALED AND ADDED TO BY VOTE OF UNIT OWNERS OF AT LEAST 66-2/3% IN NUMBER AND IN COMMON INTEREST OF ALL UNIT OWNERS AT A MEETING OF UNIT OWNERS DULY HELD FOR SUCH PURPOSE. FOR AS LONG AS THE SPONSOR REMAINS THE OWNER OF ONE OR MORE UNITS, THE BY-LAWS, INCLUDING THE RULES AND REGULATIONS OF THE CONDOMINIUM, MAY NOT BE AMENDED OR MODIFIED IN ANY WAY SO AS TO ADVERSELY AFFECT SPONSOR WITHOUT SPONSOR'S PRIOR WRITTEN CONSENT.

All Board Members shall serve without compensation. Any member of the Board of Managers, who is a designee of the Sponsor, may contract or deal with Sponsor, or a partner, affiliate or entity controlled by the Sponsor, provided said member does not

breach its fiduciary obligation.

Any Manager or Officer may be removed from office at any time with or without cause upon the affirmative vote of the Unit Owners who have at least 50% of the Common Interest of the Condominium at a Unit Owner's meeting duly called for the purpose; provided, however, that the Manager(s) elected by the Sponsor can be removed only for cause by vote of a majority of the Unit Owners or without cause by the Holders of Unsold Units.

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## **RIGHTS AND OBLIGATIONS OF UNIT OWNERS**

Each Unit Owner will have the right to sell or lease his/her Unit without restriction as to price if prior to or simultaneously with the Closing he/she satisfies any arrears in the payment of Common Charges and expenses, and provided that he/she shall first give to the Board of Managers, on behalf of all other Unit Owners, an opportunity to purchase or lease such Unit, at the same price and on the same terms as were offered by the proposed Purchaser, as more specifically provided for in the By-Laws of the Condominium. The Board of Managers, however, may not exercise its right of first refusal to purchase a Unit without the approval of a majority of the Unit Owners and the unanimous consent of the Successor-Sponsor. In any vote of all the Unit Owners, the Unit Owner desiring to sell or lease his/her Unit (the "Transferor") shall have the right to vote in any vote conducted by the Board of Managers for the purpose of determining whether the Board of Managers shall exercise its right of first refusal to purchase or lease the Transferor's Unit. In the event the Board of Managers does not have sufficient funds on hand for a purchase which has been approved by a majority of the Unit Owners, the Board of Managers may either borrow such funds or may assess the Unit Owners for the purchase price by an increase in the Common Charges and Expenses in proportion to their respective interests in the Common Elements. The Board of Managers shall have no liability (except their liability as individual Unit Owners) for payment of any such assessment. The Board of Managers may not discriminate against any person on the basis of race, creed, color, nationality, origin, sex, age, disability, marital status, or other grounds prohibited by law.

A Unit Owner may only sell or lease the entire Unit. A Unit Owner may not sell or rent only a portion of a Unit. No transient tenant may be accommodated in a Unit, except in Unsold Units.

A Unit Owner may sell or lease his/her Unit to his/her spouse or to any of his/her adult children or to his/her parent or parents or to his/her brothers or sisters, or to any one or more of them, without first offering to sell to or obtaining the consent of the Board of Managers, and may devise his/her Unit by will, or have it pass by intestacy, without any such restriction.

The restrictions upon the sale and lease of Units set forth in this Section shall not apply to Units owned or retained by the Sponsor or Successor-Sponsor; each of them shall be free to sell or lease without first offering to sell or lease to, or obtaining the consent of, the Board of Managers.

The restrictions and limitations upon the sale and lease of Units set forth in this section may be amended from time to time by 66-2/3% in number in common interest of all Unit Owners as specifically provided in By-Laws of the Condominium.

In order to provide for congenial occupancy of the Building and for the protection of the values of the Units, the By-Laws provide that the use of the Units shall be



restricted to and be in accordance with the following provisions:

- (a) A Unit Owner may only use his/her Unit for a purpose consistent with the local zoning ordinance, as amended from time to time, any other applicable ordinance or statute, and any regulation of a governmental authority that has jurisdiction over the Condominium, including but not limited to, local building codes and the Multiple Dwelling Law, as such statutes, ordinances and regulations may be amended from time to time, but in no event may a Unit Owner use his/her Unit for a use that violates the By-Laws of the Condominium.
- (b) The Common Elements shall be used for the furnishing of the services and facilities for which they are reasonably suited and capable and which are incident to the use and occupancy of Units.
- (c) No nuisances shall be allowed on the Property nor shall any use or practice be allowed which interferes with the peaceful possession or use of the Property by its residents or occupants.
- (d) No unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having or claiming jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations, or requirements of any governmental agency having or claiming jurisdiction thereof, relating to any portion of the Property, shall be eliminated by and at the sole expense of the respective Unit Owners or by the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property, or comply with such law.
- (e) No "For Sale", "For Rent", "For Lease" sign, or any other sign evidencing a similar purpose, or other window display or advertising shall be maintained or permitted on any part of the Property or in any Unit therein, except that these sign restrictions shall not apply with respect to Unsold Units. All Building signage shall be uniform and consistent with that which was developed under and approved by the design architect. Each Unit Owner shall keep his/her Unit in good state of preservation and cleanliness and each Unit Owner shall be obligated to maintain and keep in good order and repair his/her own Unit in accordance with the provisions of the By-Laws and the rules and regulations of municipal departments or agencies having jurisdiction thereof.
- (f) Birds, dog, cats or other animals shall be allowed in the Building provided they do not disturb other occupants of the Condominium as a result of noise, odor or unruliness. The Unit Owners shall indemnify the Board of Managers and hold it harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having any animal in

the Building.

Each Unit Owner will have an undivided interest in the Common Elements in the respective percentages set forth in Schedule A Part 1. Subject to the provisions of the By-Law and Rule and Regulations the Common Elements are appurtenant to, serve and benefit each Unit to the extent of such Unit's percentage of the Common Elements, and the Common Elements are for the

Provided that the mortgage shall be substantially in the form of the New York statutory form of mortgage (with such changes as may be necessary to enable a particular lending institution to make the loan), each Purchaser will be permitted to finance his/her purchase of a Unit by obtaining a mortgage on his/her Unit in such amount, and to such percentage of its value, as he/she chooses or is able to secure, from an institutional lender; the Sponsor makes no representations with respect to the availability, amount, rate, term or any other condition or feature of mortgage financing of the Units. However, due to the present market conditions, many banks have established a threshold for the number of units in a condominium to be sold prior to their making loans.

The percentage of interest in the Common Elements applicable to each Unit, ("Common Interest"), as shown in Schedule A was determined by the Sponsor, on the basis of the floor space, subject to the location of such space and the additional factors of relative value to other space in the condominium, the uniqueness of the unit, the availability of common elements for exclusive or shared use, and the overall dimensions of the particular unit, as permitted under subsection (1)(ii) of Section 339-i of the Condominium Act. This sub-section of §339-i(1) has been used due to the differing nature of the residential units from that of the Parking space Units. Generally, the common charges for the residential units are based upon the approximate proportion that the floor area of the each unit at the date of the Declaration bears to the then aggregate floor area of all the residential units, but also reflecting the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements. The common charges for the Parking space Units are based primarily on the application of its proportionate share of the floor area as defined by the zoning laws, limited to those budget line items in which it benefits.

The total of all Unit Owners' Common Interests equals one hundred (100%) percent, and each percentage determines, among other things, each Unit Owner's share of any distributions of condemnation or insurance proceeds and distributions upon termination of the Condominium. The percentages are not alterable except as set out in "CHANGE IN PRICES AND UNITS" in Part I.

The Board of Managers shall from time to time, but at least annually: prepare a budget for the Condominium; determine the amount of the Common Charges payable by the Unit Owners to be paid monthly by the Unit Owners to meet the Common Expenses of the Condominium; and allocate and assess such Common Charges among the Unit Owners according to the Common Interests in the Common Elements.

The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers. The Common Expenses may also include such amounts as the Board of Managers may deem proper for the operation and maintenance of the Property, including, without limitation, an amount for working capital of the Condominium, for a general operation reserve, for a Reserve Fund for replacements, and to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, of any Unit whose owner has elected to sell or lease such Unit, or of any Unit which is to be sold at a foreclosure or other judicial sale. The Board of Managers shall advise all Unit Owners, promptly, in writing, of the amount of Common Charges payable by each of them, respectively, as determined by the Board of Managers, as aforesaid, and shall furnish copies of each budget on which such Common Charges are based, to all Unit Owners and to their mortgagees of record.

Under the provisions of Section 339-z of the Condominium Act, the Board of Managers on behalf of the Unit Owners shall have a lien on each Unit for unpaid Common Charges assessed against such Unit by the Board of Managers, together with interest thereon. Such lien shall be subordinate only to liens for real estate taxes on the Unit and to any sums unpaid on the first mortgage of record on such Unit.

The Sponsor will cause the Board of Managers to file a lien as provided for in Section 339-aa of the Real Property Law on Units in which the Sponsor is more than thirty (30) days in arrears, while it is in control of the Board of Managers.

Any lien for unpaid Common Charges against a Unit shall be effective from and after the filing of a notice thereof in the Kings County Office of the City Register, and until all sums secured thereby with the interest thereon shall have been fully paid or until six years from the date of filing (unless foreclosure of such lien is started within such six-year period), whichever may be earlier. Such lien may be foreclosed by a suit brought in the name of the Board of Managers acting on behalf of the Unit Owners in like manner as the foreclosure of a mortgage on real property, or an action may be brought by the Board of Managers to recover the unpaid Common Charges without foreclosing the lien.

The proceeds from the sale of any Unit pursuant to foreclosure shall be used first to pay the unpaid Common Charges, unpaid assessments, plus reasonable attorney's fees and administrative costs and other lawful liens on the defaulting Unit. Amounts above this, if any, will be the property of the defaulting Unit Owner. If after the sale of the Unit for the nonpayment of the Common Charges or assessments, the sale does not recover the full amount due and owing the Condominium, the Board of Managers has the right to assess all the Unit Owners as a Common Expense for the difference between the amount received by the Condominium from the sale of the Unit and the amount owed to the Condominium.



Prior to the permissible sale, transfer or other conveyance of a Unit, any seller or Purchaser of a Unit shall be entitled to a statement (an "Estoppel Letter") from the Board of Managers, setting forth the amount of the unpaid Common Charges accrued against the Unit and neither such seller nor Purchaser shall be liable for, nor shall the Unit be conveyed subject to a lien for, any unpaid Common Charges against such Unit accrued prior to such conveyance in excess of the amount set forth in such statement.

No Unit Owner may exempt himself/herself from liability for his/her Common Charges or Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his/her Unit. The liability of each Unit Owner for the payment of the Common Charges and Expenses thereafter assessed or becoming due against his/her Unit shall terminate upon a permissible sale, transfer or other conveyance of such Unit, together with the appurtenant interests in the Common Elements (as defined in the By-Laws) in accordance with the applicable provisions of the By-Laws.

In addition, any Unit Owner may, subject to the terms and conditions specified in the By-Laws, convey his/her Unit together with the said appurtenant interests to the Board of Managers or its nominee on behalf of all other Unit Owners, and in such event be exempt from all Common Charges and Expenses thereafter assessed.

Except as set forth above pursuant to an Estoppel Letter, a Purchaser of a Unit shall be required by the Board of Managers to pay unpaid Common Charges, with interest thereon, and expenses assessed against his/her Unit prior to his/her acquisition of such Unit, except that either (i) a mortgagee acquiring title to a Unit or (ii) a Purchaser at a foreclosure sale shall not be liable and the Unit shall not be subject to a lien for the payment of the Common Charges and Expenses assessed prior to the acquisition of title to such Unit. IN THE EVENT THE BOARD OF MANAGERS FORECLOSES A STATUTORY LIEN FOR UNPAID COMMON CHARGES, AND THE PROCEEDS OF THE FORECLOSURE SALE ARE INSUFFICIENT TO PAY THE UNPAID COMMON CHARGES, THE UNPAID BALANCE MAY BE PROPORTIONATELY CHARGED TO ALL UNIT OWNERS AS A COMMON EXPENSE.

All maintenance of and repairs to any Unit, ordinary or extraordinary, and to the doors and windows (except the painting and decoration of the side of the stairwell doors which do not face into a Unit and the exterior side of windows), electrical (except Common Elements), heating (except Common Elements), and plumbing (except Common Elements) within the Unit or belonging to the Unit Owner, shall be at the Unit Owner's expense, except for structural elements as specifically required herein.

All maintenance, repairs and replacement to the Common Elements (including the exterior walls of the Building and exterior sides of the windows) and the painting and stair well doors which do not face into a Unit shall be made at the direction of the Board of Managers and be proportionately charged to all the Unit Owners as a Common Expense, except to the extent that the same are necessitated by the negligence,



misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner.

No Unit Owner may make any structural addition, alteration or improvement in his/her Unit, or do any work which would reduce the value thereof or impair any easement or hereditament of the Property, without the prior written approval of the Board of Managers. Prior to, and as a condition of, the granting of its consent to the making of a structural alteration, addition, improvement or repair in or to a Unit, the Board of Managers may, at its option, require the Unit Owner to execute an agreement in form and substance satisfactory to the Board of Managers setting forth the terms and conditions under which such alteration, addition, improvement or repair may be made, including, without limitation, the days and hours during which any work may be done. No application shall be filed with any governmental authority for a permit covering an addition, alteration or improvement to be made in a Unit, unless approved and executed by the Board of Managers; such approval, however, shall not result in liability on the part of the Board of Managers or any of them, to any contractor, subcontractor, materialman, architect or engineer, by reason of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom. The provisions of this paragraph shall not apply to an Unsold Unit provided that any alteration to such Unsold Units shall be in accordance with, and only as permitted by, the Condominium Act and all governmental regulations.

Non-structural alterations and improvements to Units that do not affect the exterior of the Building or the value of other Units may be made without the prior approval of the Board of Managers.

The Board of Managers will execute any application or other document required to be filed with any governmental authority having or asserting jurisdiction in connection with any such structural addition, alteration or improvement, provided, however, that neither the Board of Managers nor the Unit Owners shall be subjected to any expense or liability by virtue of the execution of the application or such other document.

The Board of Managers shall obtain and maintain, to the extent obtainable and to the extent determined by the Board of Managers to be appropriate or relevant: (1) fire insurance, with extended coverage, vandalism and malicious mischief endorsements insuring the Building and Units (but not including furniture, furnishings or other personal property supplied to or installed by Unit Owners), together with all service machinery contained therein (collectively, the "Insured Property"), covering the interests of the Condominium, the Board of Managers and all Unit Owners and their mortgagees, as their interest may appear, in an amount equal to the full replacement value of the insured property without deduction for depreciation; (2) machinery insurance; (3) water damage legal liability insurance; (4) such other insurance as the Board of Managers may determine. Each of the policies shall contain a New York standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Board of

Managers in the event of casualty or condemnation.

Unit Owners shall be entitled to carry casualty insurance protection for their furniture and any improvements added by the Owners to their Units and for personal liability coverage for their own benefit at their own expense, provided that such policies contain waivers of subrogation and further provided that the liability of the carriers issuing insurance procured by the Board of Managers shall not be affected or diminished by reason of any other insurance carried by a Unit Owner.

A Unit Owner shall grant, and by acceptance of a deed for his/her Unit shall have granted, a right of access to his/her Unit and storage areas, if any, to the Managing Agent and/or any other person authorized by the Board of Managers or the Managing Agent, for the purposes of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his/her Unit or elsewhere in the Building in which the Unit is located, to remove violations, cure defaults by a Unit Owner, and for any other purpose provided in the Plan, Declaration or as may be required by law or governmental regulation, provided that requests for entry (except in emergency situations) are made in advance and that any such entry (except in emergency situations) is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not. Provided reasonable care is exercised to safeguard the Unit Owner's property, such entry shall not render the Board of Managers or its authorized agents liable for damage incurred in connection with the exercise of such right of entry. Each Unit Owner will deposit with the President of the Board of Managers a key to his/her Unit to allow for entry in any emergency. The Board of Managers may designate responsible individual(s) to hold such keys.

Each Unit Owner shall be required to pay the Common Charges and Expenses levied by the Board of Managers (see Schedules A and B in Part I). All Unit Owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner, are subject to the By-Laws, the Declaration and the Rules and Regulations. A copy of the Declaration and By-Laws and Rules and Regulations appear in Part II of this Plan. The violation of any of the Rules and Regulations or the breach of any By-Laws or provision of the Declaration shall give the Board of Managers, in addition to other rights set forth in specific provisions of the By-Laws, the right to: (i) enter any Unit in which, or as to which, such violation or breach exists and to abate and remove summarily, at the expense of the defaulting Unit Owner, any structure, thing or condition causing such violation or breach and the Board of Managers shall not thereby be deemed guilty or liable in any matter of trespass nor be liable for any damage to the Unit, personal property or fixtures incurred in connection with such rights unless such damage is caused by negligence on the part of the Board of Managers; or (ii) enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach. The costs incurred by the Board by virtue of the exercise of its rights to correct such breaches or violations, including attorney's fees, shall be due upon demand from the Unit Owner in question, and shall constitute a Common

Expense against his/her Unit.

Under the provisions of Section 339-j of the Condominium Act, the Board of Managers have the right to enforce any obligation of the Unit Owner by foreclosure of the statutory lien against the Unit for the amount of any unpaid Common Charges; by suit brought to collect same; by injunction; or by other appropriate relief (see "OBLIGATIONS TO PAY COMMON CHARGES AND EXPENSES" in Part I).

Pursuant to Section 339-kk of the Real Property Law, all rental payments from the tenant of a Unit being rented by a non-occupying Unit Owner shall be made payable to the Condominium in the event the non-occupying Unit Owner fails to make payments for common charges, assessments or late fees within sixty (60) days of the expiration of any grace period after they are due. The Board of Managers shall provide written notice to the tenant and the non-occupying Unit Owners that all subsequent rental payments are to be payable to the Condominium and delivered to the address listed on the notice. When payments are once again current, notice shall be given to the tenant and non-occupying Unit Owner within three (3) business days and all subsequent rent payments shall be payable to the non-occupying Unit Owner.

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## **RIGHTS AND OBLIGATIONS OF BOARD OF MANAGERS AND SUMMARY OF BY-LAWS AND DECLARATION**

The By-Laws and Declaration of the Condominium are reproduced in Part II, beginning on page F-1 and the Declaration on page E-1. A summary of certain pertinent provisions of these By-Laws and Declaration are set forth below.

The By-Laws limit the number of Managers to not less than five (5) nor more than seven (7). The first Board of Managers to be elected by Unit Owners shall consist of five (5) members.

The By-Laws include a provision that a majority of the Board of Managers must be owner-occupants or members of an owner-occupant's household who are unrelated to the Sponsor and its principals after the end of the initial Control Period.

Annual meetings shall be held each year at the time and place designated by the Board. Special meetings of Unit Owners, other than those the calling of which is regulated by statute, may be called at any time by the President or Secretary or by a majority of the Board of Managers, or whenever requested in writing by Unit Owners owning at least twenty-five percent (25%) in number and Common Interest of the Condominium.

At the time of the First Closing, the Officers and Managers shall be designated by the Sponsor and will be: LINDA GRECO a, principal of the Sponsor; and WARREN L. FORMAN, ESQ., the Sponsor's attorney. However, these Officers and Managers will resign in favor of Officers and Managers which will be elected by the Unit Owners at a meeting to be convened within sixty (60) days after the First Closing; they may however, be re-elected at such time by the Unit Owners.

Managers shall be elected by a plurality of the votes cast at a meeting at which a quorum shall be present. When voting for Managers, each Unit Owner shall be entitled to cast for each Manager to be elected the number of votes appurtenant to the common interest attributed to his/her Unit (.000001). The Successor-Sponsor, who will be the Sponsor or natural persons procured by the Sponsor, or both, shall be entitled to vote all the votes held by them for the number of Managers listed below. To assure that Purchasers under this Plan will be represented on the Board of Managers, the By-Laws provide that at least one less than a majority of Managers to be elected shall be unrelated to the Sponsor and/or Successor-Sponsor; (i.e., if five (5) Managers are to be elected, at least two (2) must be unrelated to the Sponsor and/or Successor-Sponsor). The By-Laws further provide that the Sponsor shall not exercise voting control of the Board of Managers for more than two (2) years after the closing of the First Unit or whenever the Unsold Units constitute less than 50% of the common interests, whichever is sooner (the "Control Period"). In this context, "Sponsor" means the principals of the Sponsor or persons related to them by blood, marriage or business relationship. Additionally, at the time the Sponsor relinquishes control of the Board due



to the expiration of two years from the First Closing, a majority of the members of the Board shall be elected by resident owners; the minority of the members shall be elected by all non-resident owners, including the Sponsor and investors.

The Officers and Board of Managers will be responsible for the operation of the affairs of the Condominium, including but not limited to, the fiscal operation, repairs and maintenance of the Common Elements of the Property, replacement and capital improvements to the Common Elements of the Property, the hiring, supervision and discharging of employees and Managing Agent (if any), and the enforcement of the provisions of the By-Laws. The Officers and Managers shall serve without compensation or remuneration.

Any Manager may resign at any time by written notice delivered in person or sent by certified or registered mail to the President or Secretary of the Condominium. Such resignation shall take effect at the time specified therein, and unless specifically requested, acceptance of such resignation shall not be necessary to make it effective.

Any Manager may be removed from office at any time with or without cause upon the affirmative vote of the Unit Owners whose aggregate interest in the Common Elements is at least 50% of the Common Interest of the Condominium (a quorum) at a Unit Owner's meeting duly called for that purpose; provided, however, that the Manager(s) elected by the Sponsor can be removed only for cause by vote of a majority of the Unit Owners or without cause by the Holders of Unsold Units.

Vacancies in the Board of Managers caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by vote of a majority of the remaining members of the Board of Managers at a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum (50%), and each person so elected shall be a member of the Board of Managers until a successor shall be elected at the next annual meeting of the Unit Owners to serve the remaining term. Notwithstanding the foregoing, any vacancy on the Board by a member designated or elected (in its capacity as Holder of Unsold Units) by Sponsor, whether arising from resignation, removal, death or otherwise, shall be filled only by Sponsor.

The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except as by law or by the Declaration or by the By-Laws may not be delegated to the Board of Managers by the Unit Owners. Such powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the Common Elements.
- (b) Determination of the Common Expenses required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the

Property.

- (c) Collection of the Common Charges from the Unit Owners.
- (d) Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Elements.
- (e) Adoption and amendment of the Rules and Regulations covering the details of the operation and use of the Property subject to a right of the Unit Owners to overrule the Board.
- (f) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefor.
- (g) Purchasing or leasing or otherwise acquiring in the name of the Board of Managers, or its designee (corporate or otherwise), on behalf of all Unit Owners, Units offered for sale or lease or surrendered by their owners to the Board of Managers.
- (h) Purchasing of Units at foreclosure or other judicial sales in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners.
- (i) Selling, leasing, mortgaging (but not voting the votes appurtenant to), or otherwise dealing with Units acquired by, and subleasing Units leased by, the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners.
- (j) Organizing corporations to act as designees of the Board of Managers in acquiring title to or leasing of Units on behalf of all Unit Owners.
- (k) Obtaining and reviewing of insurance for the Property, including the Units, pursuant to the By-Laws.
- (l) Making of repairs, additions and improvements to or alterations of the Property and repairs to and restoration of the Property in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (m) With written ratification of Unit Owners, the Board may undertake to commence proceedings to reduce real estate taxes on the Units.
- (n) Accumulate reserves for the expenditure of capital improvements as restricted by the By-Laws.
- (o) Acquiring any Unit in default as provided in the By-Laws and subletting or

selling same on behalf of all Unit Owners.

(p) To enter into and upon the Units when necessary and act with as little inconvenience as possible in connection with the maintenance, care and preservation of the property.

The members of the Board of Managers shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for willful misconduct or bad faith. The Unit Owners shall severally indemnify the members of the Board of Managers against any liability or claims except those arising out of the bad faith or willful misconduct of a member or members of the Board of Managers. It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium. The original Board of Managers, who are designated by the Sponsor, may contract with the Sponsor and affiliated corporations without being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers or out of the aforesaid indemnity in favor of the members of the Board of Managers shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements bears to the aggregate interest in the Common Elements of all the Unit Owners. Every agreement made by the Board of Managers or by the Managing Agent on behalf of the Condominium shall provide that the members of the Board of Managers, or the Managing Agent as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners or except for willful misconduct or bad faith), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements bears to the aggregate interest in the Common Elements of all Unit Owners.

### OFFICERS

The principal officers of the Condominium shall be the President, the Vice President, who are automatically Board Members, the Secretary and the Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President, but no other officers, need be members of the Board of Managers.

The officers of the Condominium shall be elected annually by the Board of Managers at the organization meeting of each new Board of Managers and each officer shall hold office at the pleasure of the Board of Managers or until his/her successor is elected or until his/her resignation or upon his/her death.

Upon the affirmative vote of a majority of the members of the Board of Managers, any officer may be removed, either with or without cause, and his/her successor may be elected at any regular meeting of the Board of Managers, or at any special meeting of the Board of Managers called for such purpose.



The President shall be the chief executive officer of the Condominium. He/she shall have all of the general powers and duties which are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he/she may in his/her discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

The Vice-President shall take the place of the President and perform his/her duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Managers shall appoint some other member of the Board of Managers to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him/her by the Board of Managers or by the President.

The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Managers; he/she shall have charge of such books and papers as the Board of Managers may direct; and he/she shall in general perform all the duties incident to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York.

The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. He/she shall be responsible for the deposit of all monies and other valuable effects in the name of the Board of Managers, or the Managing Agent, in such depositories as may from time to time be designated by the Board of Managers, and he/she shall, in general, perform all the duties incident to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York.

No officer shall be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for willful misconduct or bad faith. The Unit Owners shall severally indemnify each officer against any liability or claims except those arising out of the bad faith or willful misconduct of an officer. It is intended that each officer shall have no personal liability with respect to any contract made by him/her on behalf of the Condominium. It is and shall be permissible for each officer who is appointed by the original Board of Managers (designees of the Sponsor), to contract with the Sponsor and affiliated corporations without fear of being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by an officer or out of the aforesaid indemnity in favor of each officer shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements bears to the aggregate interest in the Common Elements of all the Unit Owners. Every agreement made by an officer on behalf of the Condominium shall provide that each officer is acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the



Common Elements bears to the aggregate interest in the Common Elements of all Unit Owners.

All maintenance of and repairs to any Unit, ordinary or extraordinary, and to the doors and windows (except the painting and decorating of the stairwell doors which do not face into a Unit and the exterior side of windows), electrical (except Common Elements), plumbing (except Common Elements) shall be at the Unit Owner's expense, excepting as otherwise specifically provided herein.

All maintenance, repairs and replacements to the Common Elements as defined in the Declaration shall be made by the Board of Managers and be charged to all the Unit Owners as a Common Expense, excepting to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner.

#### REPAIR AFTER FIRE OR OTHER CASUALTY

In the event of damage to or destruction of the Building containing the Units as a result of fire or other casualty, unless seventy-five (75%) percent or more of the Building containing the Units is destroyed or substantially damaged and eighty (80%) percent or more of the Unit Owners do not duly and promptly resolve to proceed with repair or restoration, the Board of Managers shall arrange for the prompt repair and restoration of the Building containing the Units (including any damaged Units, and any kitchen or bathroom fixtures initially installed therein on the date of recordation of the Declaration, but not including any wall, ceiling, or floor decorations or coverings or other furniture, furnishing, fixtures, appliances or equipment installed in the Units by the Unit Owners). Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a Common Expense and the Board of Managers may assess all the Unit Owners for such deficit as part of the Common Charges.

If seventy-five (75%) percent or more of the Building containing the Units is destroyed or substantially damaged (as determined by the Board of Managers) and eighty (80%) percent or more of the Unit Owners do not duly and promptly resolve to proceed with repair or restoration, the Property shall be subject to an action for partition at the suit of any Unit Owner or lienor, as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the above paragraph, and the amount of insurance proceeds shall have exceeded the cost of such repairs or restoration, then the excess of such insurance proceeds) shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements, after first paying out of the share of each Unit Owner the amount of any unpaid liens on his/her Unit, in the order of the priority of such liens.

No portion of insurance proceeds shall be applied to the payment of the mortgage indebtedness of any Unit Owner unless the Unit Owners determine not to repair, restore or rebuild the Building.

## INSURANCE

The Board of Managers shall be required to obtain and maintain, to the extent obtainable, the following insurance: (1) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the Building containing the Units (including all of the Units and fixtures initially installed therein by the Sponsor or by prior construction and any other property usual to the servicing and general occupancy, but not including furniture, furnishings, or other personal property supplied or installed by Unit Owners) together with other service machinery and equipment contained therein and covering the interests of the Condominium, the Board of Managers and all Unit Owners and their mortgagees with certificates of insurance, as their interests may appear, in the amount to be determined by the Board of Managers but in no event not to be less than eighty (80%) percent of the full replacement cost of the Building, including above noted items but exclusive of footings and foundations, as approved by a fire insurance company or a qualified insurance broker; each of said policies shall contain a Condominium Property Endorsement and a New York standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee, as herein provided; (2) worker's compensation insurance, if the Condominium has employees; (3) disability benefits insurance, if the Condominium has employees; and (4) such other insurance as the Board of Managers may determine. All policies of physical damage insurance shall provide that adjustment of loss shall be made by the Board of Managers (with the approval of the Insurance Trustee, if any, if more than \$50,000.00), and that the total proceeds thereof, if \$50,000.00 or less, shall be payable to the Board of Managers and if more than \$50,000.00 shall be billed to the Insurance Trustee, if any.

All policies of physical damage insurance shall contain waivers of subrogation and the individual Unit Owners as well as the Condominium shall be primary insureds to the extent of their interests shall also appear. Such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the insureds, including all mortgagees of Units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of Units at least ten (10) days prior to expiration of the then current policies.

The Board of Managers shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of Managers may from time to time determine, covering each member of the Board of Managers, the Managing Agent, the Manager and each Unit Owner. Such public liability coverage shall also cover cross liability claims of one insured against another.

Unit Owners shall not be prohibited from carrying other insurance for their own benefit, provided that all such policies shall contain waivers of subrogation and further

provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Such policies shall be so endorsed as to state that they will in no way conflict with any insurance carried by the Board of Managers.

### REPORTS

The Board of Managers, the Managing Agent, or the Secretary shall keep detailed records of the actions of the Board of Managers and the Managing Agent, minutes of the meetings of the Board of Managers, minutes of the meetings of the Unit Owners, and financial records and books of account of the Condominium. In addition, an annual audited financial report of the receipts and expenditures and financial condition of the Condominium, certified by an independent Certified Public Accountant, shall be rendered by the Board of Managers to all Unit Owners within three months after the end of each fiscal year. In addition, the Board of Managers shall also send to each Unit Owner an income tax deduction statement by March 1 of each calendar year.

### NOTICE OF MEETING

The Secretary shall mail a notice of each annual or special meeting to all Unit Owners of record. The notice shall state the purpose of the meeting as well as the time and place where it is to be held, and the notice will be given at least ten but not more than forty days prior to such meeting.

### EXAMINATION OF BOOKS AND RECORDS

Each Unit Owner and each mortgagee of a Unit shall, upon prior request, be permitted to examine the books of account of the Condominium and other records of the Condominium during normal business hours on business days at the office of the Condominium.

### AMENDMENTS TO BY-LAWS

The By-Laws may be modified or amended by the vote of 66-2/3% in number and in common interest of all unit owners at a meeting of unit owners duly held for such purpose. Anything herein contained to the contrary notwithstanding, so long as the sponsor is the owner of one or more unsold units, the By-Laws may not be altered, amended, repealed or added to in any way that adversely affects the Sponsor without the written consent of the Sponsor.



### AMENDMENT TO THE DECLARATION

The Declaration may be amended, modified, added to or deleted from by vote of at least 66-2/3% in number and in Common Interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, or in lieu of a meeting, any amendment may be approved, in writing by 66-2/3% in numbers and in Common Interest of all Unit Owners. However Holders of Unsold Units and adversely affected mortgagees and Unit Owners must consent in writing. The Sponsor or its designees has the right to amend the Declaration at any time for the sole purpose of filing Floor Plans required by the New York Real Property Law Section 339-p.

### TERMINATION OF CONDOMINIUM

The Condominium shall continue (unless terminated by reason of casualty loss or by condemnation) until such time as the Condominium shall be legally abandoned and terminated as a result of the vote of at least eighty (80%) percent in number and in common interest of the Unit Owners, at which time the Property shall be subject to an action for partition by any Unit Owner or any lienor as if owned in common, and the net proceeds of the sale resulting therefrom shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, after first applying the share of the net proceeds of such sale otherwise payable to each Unit Owner to the payment of any liens on his/her Unit in the order of the priority of such liens.

### SALES, LEASES AND MORTGAGES OF UNITS

No Unit Owner other than the Sponsor or Successor-Sponsor, may sell or lease his/her Unit or any interest therein except by complying with the following provisions:

Any Unit Owner who receives a bona fide offer for the sale or lease of his/her Unit ("Outside Offer"), which he/she intends to accept, shall notify the Board of Managers of such offer and of such intention, the name and address of the proposed Purchaser or lessee, the terms of the proposed transaction and such other information as the Board of Managers may reasonably require, and shall offer ("Board Offer") to sell such Unit to the Condominium, on the same terms and conditions as contained in such Outside Offer. The giving of such notice shall constitute a warranty and representation by the Unit Owner who has received an Outside Offer to purchase such Unit or lease such Unit, as the case may be, on behalf of all other Unit Owners, on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the offering Unit Owner.

In the event the Board of Managers shall elect to purchase such Unit or to lease such Unit, title shall close or the lease shall be executed in accordance with the terms of such Offer, but in no event less than 30 days after the giving of notice by the Board of Managers of its election to accept the Board Offer. If the selling Unit Owner's existing mortgage is not satisfied, the Board of Managers will purchase the Unit and



assume or take title subject to said existing mortgage, if possible.

In the event the Board of Managers or its designee shall fail to accept such offer within 30 days after receipt of notice as aforesaid, the offering Unit Owner shall be free to contract to sell such Unit, or to lease such Unit, as the case may be, within 30 days after the expiration of the period in which the Board of Managers or its designee might have accepted such offer, to the person making the Outside Offer. Any such deed to an Outside Offeror shall provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. Any such lease shall be consistent with the By-Laws and shall provide that it may not be modified, amended, extended or assigned, without the prior consent in writing of the Board of Managers, that the tenant shall not sublet the demised premises or any part thereof without the prior consent in writing of the Board of Managers, and that the Board of Managers shall have the power to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of default by the tenant in the performance of such lease. The terms of such lease shall be approved in writing by the Board of Managers.

Any purported sale or lease of a Unit in violation of this section shall be voidable at the election of the Board of Managers.

The Board of Managers shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of a majority of the Unit Owners and the unanimous consent of Owner(s) of Unsold Units. The Board of Managers may use the Unit in any manner as long as such use is in conformity with all applicable laws, regulations and provisions and the By-Laws particularly Article VI, Section 11 of the By-Laws, see pages F-17 and F-18.

Subject to the provisions described above requiring the Board of Managers to obtain the consent of unit owners and the consent of holders(s) of unsold units, acquisition of units by the board of managers may be made from the working capital and common charges in the hands of the Board of Managers, or if such funds are insufficient, the board of managers may levy an assessment against each unit owner in proportion to his/her ownership in the common elements, as a common charge, or the Board of Managers, in their discretion, may borrow money to finance the acquisition of such unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the unit to be acquired by the Board of Managers.

The provisions describing the Board of Managers' right of first refusal shall not apply with respect to any sale or conveyance by a Unit Owner of his/her Unit, to his/her spouse or to any of his/her children, grandchildren or to his/her parent or parents or to his/her brothers or sisters, or any one or more of them; and they shall not apply to a Unit owned by the Sponsor or Sponsor-designee, or the acquisition or sale of a Unit by a mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of

foreclosure. However, the provisions describing the right of first refusal shall apply with respect to any Purchaser of such Unit from such mortgagee.

### NO SEVERANCE OF COMMON ELEMENTS

No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his/her Unit without including therein the Unit Owner's interest in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Unit Owner's interest in the Common Elements may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit or as part of a sale, transfer or other disposition of the specific interest in the Common Elements by all Unit Owners.

### EASEMENTS

Each Unit Owner shall have an easement in common with the owners of all other Units over Common Elements serving such other Units and located in such other Units. The Sponsor and its designees, successors, assignees, agents and employees shall have an easement to complete construction under the Offering Plan and use of the common property for any lawful purpose including advertisement and sale of the Units.

### POWER OF ATTORNEY

Each Unit Owner shall grant the Board of Managers an irrevocable power of attorney coupled with an interest to acquire title to or lease any Unit whose owner desires to surrender, sell or lease the same (but not vote the votes appurtenant thereto), to acquire the interest of a Unit Owner in any other Units theretofore acquired by the Board of Managers and to acquire the interest of a Unit Owner in all other assets of the Condominium which are subject to foreclosure or judicial sale. See section entitled "Power of Attorney" on page C-1 of the Plan and the above discussion for a more detailed description of the rights conferred to the Board of Managers under the terms of the Power of Attorney.

### TEXT OF DECLARATION AND BY-LAWS

The Common Elements consist of the Land and all other parts of the Property that serve and benefit each Unit including, without limitation, the following:

- (a) The Land on which the Building is erected and all other land within the boundaries of the Condominium, together with all easements, rights and privileges appurtenant thereto;

- (b) All foundations, footings, columns, girders, beams and supports of the Building;
- (c) All exterior walls of the Building, not including the portions thereof on the Unit side of the block work or metal studs of such walls; all walls and partitions separating Units from corridors, stairs, and mechanical equipment spaces, other than the portions thereof between the Unit side of such walls and partitions and the block work or studs of such walls and partitions; the block work of all walls and partitions separating Units and containing block work; the studs used in all walls and partitions separating Units and containing studs; and concrete floor slabs;
- (d) Halls, corridors, passageways, lobbies, stairs and stairways (excepting those contained entirely within a Unit, if any), landings, and entrances to and exits from the Building;
- (e) Portions of the roof and other areas used in connection therewith, and all storage spaces and trash rooms except for storage rooms, (if any), located within the Units;
- (f) All space devoted to the lodging or use by the superintendent, if any, if the superintendent is not a Unit Owner or other persons employed in connection with the operation of the Property;
- (g) All central and appurtenant installations for services such as power, light, telephone, television, gas, hot and cold water, heat, and heat distribution system, (including all pipes, ducts, chutes, cables, and conduits used in connection therewith) located in Common Areas and all other mechanical equipment;
- (h) All tanks, pumps, motors, fans, compressors and control equipment and their appurtenant facilities except if a part of a self-contained mechanical unit located solely within a Condominium Unit;
- (i) All sewer pipes;
- (j) All portions of common flues used by more than one Unit Owner, and all exterior chimneys connected to a fireplace, if any; and,
- (k) All other parts of the Property and all apparatus and installations existing in the Building, on the Property, or in a Unit for common use or necessary or convenient to the existence, maintenance or safety of the Property.

A copy of the Declaration and a copy of the By-Laws are set forth in Part II of the Plan. A prospective Purchaser should read the Plan in its entirety.



## **TAXES - DEDUCTIONS TO UNIT OWNERS, AND** **TAX STATUS OF CONDOMINIUM**

The following discussion provides a summary of certain significant Federal income tax consequences of, or relating to, the ownership of a Unit and the Federal income taxation of the Condominium. No income tax rulings will be requested from the Internal Revenue Service ("IRS") or any other administrative agency with respect to any of the income tax consequences attributable to the Condominium's activities or ownership of a Unit. Although the Sponsor will receive an opinion of FORMAN & ASSOCIATES, pc, (hereinafter referred to as the "Opinion" and "Counsel" respectively) with respect to the includability of Common Charges in the gross income of the Condominium and with respect to the deductibility of mortgage interest and real estate taxes with respect to the Units, such Opinion is not binding on the IRS. Each Purchaser should consult his/her own tax counsel as to the tax consequences of the Plan and of Unit ownership.

It is the opinion of counsel, that, for the reasons set forth in the discussion below and assuming the Condominium makes a timely election, the Condominium would qualify under IRS Section 528 as a home owners association and be exempt from federal income taxes in Common Charges and only be taxed on the non-exempt income, if any.

The statements set forth herein are based upon an analysis of the Internal Revenue Code of 1986, as amended (the "Code"), New York State Tax Law, the Administrative Code of the City of New York, the applicable regulations promulgated or proposed thereunder, the current position of the applicable administrative agency, in particular, the position of the IRS stated in published Revenue Rulings and Revenue Procedures, and judicial decisions. It is emphasized, however, that legislative, judicial or administrative changes may be made which would require modification of such statements or that the IRS or other applicable administrative agency may disagree with Counsel's interpretations and conclusions.

Each Unit Owner will own his/her Unit and an undivided interest in the Common Elements in fee simple. Each Unit will be a separate tax lot for purposes of real estate taxes and assessments. Since each Unit Owner owns his/her Unit in fee simple, he/she may mortgage his/her Unit and become individually liable for the payment of the principal and any finance charges or interest on such mortgage indebtedness.

Unit Owners who itemize their deductions may, for Federal income tax purposes, be entitled to a deduction for mortgage interest and real estate taxes in the year paid or accrued, under Sections 163 and 164 of the Code. THESE DEDUCTIONS ARE SUBJECT, HOWEVER, TO CERTAIN EXCEPTIONS AND LIMITATIONS THAT ARE MORE PARTICULARLY DISCUSSED IN THE OPINION INCLUDING BUT NOT LIMITED TO LIMITATIONS OF INTEREST DEDUCTIONS ON RESIDENCES TO FIRST AND SECOND HOMES AND PASSIVE LOSS LIMITATIONS ON DEDUCTIONS



FOR INVESTORS. Each individual Unit Owner may also, for New York State and New York City income tax purposes, be entitled to similar deductions for the mortgage interest and real estate taxes paid or accrued during the taxable year.

THERE ARE RECENT CHANGES IN THE TAX LAW THAT WOULD AFFECT DEDUCTIONS PARTICULARLY FOR NON-RESIDENT INVESTORS. IT IS RECOMMENDED THAT EACH PURCHASER CONSULT HIS/HER OWN TAX ADVISOR REGARDING THE PROPOSED CHANGES IN FEDERAL INCOME TAX CODE.

The Condominium will be governed by a Board of Managers. The Board of Managers will assess and collect Common Charges from the Unit Owners and will have certain discretionary powers over the operating expenses and the application of the assessments. While there is presently no direct authority as to the tax status of the Condominium for Federal income tax purposes, Sponsor's counsel is of the opinion that the Condominium will be treated as an association taxable as a corporation. As a result, the Condominium will be subject to Federal corporate income tax and New York State Corporation Franchise Tax and New York City corporate income tax to the extent of its taxable income, if any, unless subject to the exemption under §528 of the Code discussed below.

The Condominium will be deemed to be a management association in the business of rendering services to the members of its organization. As such, its receipt of assessments for operating expenditures will constitute gross income. The Condominium will be entitled to offset against this income the expenses incurred in providing such services. However, it will be deemed to have taxable income to the extent that the Common Charges for operating expenditures exceed the expenses of the management association. Furthermore any interest earned from the temporary investment of the Common Charges will be taxable income to the Condominium.

Under certain circumstances, excess assessments (assessments collected by the Condominium in excess of the actual requirements for the years' operating expenditures) and special assessments may not be includable in the income of the Condominium. Excess assessments will not be included when the management association has no discretion as to the application of the excess funds. See Counsel's Tax Opinion for instances in which the IRS has determined that special assessments and excess assessments were not includable in the Condominium's taxable income.

Furthermore, if the Condominium satisfies the requirements of Section 528 of the Code and if it has filed a timely election to have this section apply, the Condominium may be exempt from Federal income taxes on the Common Charges and will be taxed on its other non-exempt income at the rate of thirty (30%) percent. The general requirements which must be met for Section 528 to apply are the following:

- (i) The Condominium management association must be organized and operated solely to provide for the acquisition, construction, management, maintenance, and care of association property;

- (ii) Sixty percent or more of the gross income of the Condominium management association must consist of assessments from residential Unit Owners;
- (iii) Ninety percent of the expenditures of the Condominium management association must be for the acquisition, construction, management, maintenance, and care of the Condominium management association's property;
- (iv) No part of the net earnings can inure to the benefit of private individuals other than by the acquisition, construction, management, or maintenance of the Condominium management association's property; and,
- (v) Substantially all of the Units must be used as residences.

Under the Treasury Regulations issued pursuant to Code Section 528, a Condominium management association must qualify annually for the election under Code Section 528 and make a separate election for each taxable year. Assuming a timely election is filed, it is the opinion of counsel for the Sponsor that, as presently constituted, the condominium meets the general requirements set forth above and would qualify as a homeowners association within the meaning of Code Section 528.

**EACH PURCHASER SHOULD CONSULT HIS/HER OWN TAX EXPERT AS TO THE TAX CONSEQUENCES OF THE PLAN AND OF UNIT OWNERSHIP.**

**NEITHER THE SPONSOR NOR COUNSEL FOR THE SPONSOR MAKE ANY WARRANTY THAT THE UNITED STATES TREASURY DEPARTMENT OR THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE OR THE DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK WILL ALLOW THE DEDUCTIONS, OR EXEMPTIONS OR THAT THE TAX LAW OR THE REGULATIONS OR RULINGS ISSUED THEREUNDER, OR ANY JUDICIAL INTERPRETATION THEREOF, UPON WHICH COUNSEL TO THE SPONSOR BASES ITS OPINION, WILL NOT CHANGE SO AS TO DISALLOW THE DEDUCTIONS OR EXEMPTIONS IN WHOLE OR IN PART.**

See section entitled "COUNSEL'S TAX OPINION".

**REAL ESTATE TAXES FOR INDIVIDUAL UNITS**  
**ASSESSED VALUATION BEFORE and AFTER RENOVATION**

The Sponsor has consulted with Jerome Mazursky, The Mazursky Group Inc., Real Estate Tax Consultants and Appraisal, 42 Broadway, Suite 1744, New York, New York 10004, for an opinion as to the history of the assessed valuation of the property, the projected assessed valuation after completion of construction and real estate taxes payable by the Condominium as they relate to these estimates.

Based on a consultation with Jerome Mazursky and Meir Mishkoff of Mishkoff Associates LLC as to an opinion and the applicability of the City of New York's program for partial real estate exemption under Section 421-A of the Real Property Tax Law, the Sponsor will apply for a partial exemption for real estate taxes for the premises. Generally, 100% of the increased assessed value above the pre-construction assessed value is exempt from taxation during construction and for ten years following the first taxable date immediately following completion of construction. The exemption then declines 80% of the increased assessed value for the 11<sup>th</sup> year and is further reduced by an additional 20% for each of the succeeding years until the 15<sup>th</sup> year when Unit Owners will pay real estate taxes based on the full assessed value of their Units without exemption.

The Sponsor will use its best efforts to obtain 421(a) benefits for the Condominium. There is no guarantee that such benefits will be granted. Updated information as to the status of these benefits will be disclosed on a future amendment to this Plan.

Mr. Mazursky has advised the Sponsor that the recent history of assessed valuation of 75 Columbia Street is as follows:

| <u>2011/12</u> | <u>Land</u> | <u>Total</u> |
|----------------|-------------|--------------|
| Actual:        | \$39,495    | \$39,495     |
| Transitional:  | \$39,495    | \$39,495     |
| <u>2012/13</u> | <u>Land</u> | <u>Total</u> |
| Actual:        | \$265,500   | \$468,000    |
| Transitional:  | \$ 84,696   | \$287,196    |

It is Mr. Mazursky's judgment that after construction is completed, the property will be assessed as follows:

| <u>2013/14</u> | <u>Land</u> | <u>Total</u> |
|----------------|-------------|--------------|
| Actual:        | \$265,500   | \$1,225,000  |
| Transitional:  | \$133,900   | \$1,093,400  |

| <u>2014/15</u> | <u>Land</u> | <u>Total</u> |
|----------------|-------------|--------------|
| Actual:        | \$265,500   | \$1,225,000  |
| Transitional:  | \$183,100   | \$1,142,600  |

In a letter dated May 16, 2012 Mr. Mazursky states: "it is my understanding that the Sponsor is seeking 421-a real estate tax exemption benefits. If granted, the benefits provide a varied exemption of increases in assessed value over the 2006/07 base tax year. There may be up to a 100% exemption of the increase in value during the construction period (not to exceed three years) and the first eleven years of operation. In the twelfth year, the exemption decreases to 80%, in the thirteenth year it is reduced to 60% and to 40% in the fourteenth year. In the fifteenth year the exemption is further reduced to 20%, after which the property will be fully taxed".

Mr. Mazursky estimates the real estate tax liability during the first year of operation without 421a benefits will be \$89,514.00 for the Residential Units and \$3,782.00 for the parking space Units. His estimate for the real estate tax liability with 421 a benefits is \$13,760 for the Residential Units and \$544 for the parking space Units". Mr. Mazursky's calculations are as follows:

#### **First Year of Operation without 421a Exemption Benefits**

##### **Residential Units**

1/1/13 – 6/30/13

$$(\$287,196^1 \times .95^2) \times .1365^3 \times .5^4 = \$18,621$$

7/1/13 – 12/31/13

$$(\$1,093,400^5 \times .95^2) \times .1365^3 \times .5^4 = \$70,893$$

$$\text{Total: } \$89,514$$

##### **Parking Units**

1/1/13 – 6/30/13

$$(\$287,196^1 \times .05^2) \times .1365^3 \times .5^4 = \$980$$

7/1/13 – 12/31/13

$$(\$1,093,400^5 \times .05^2) \times .1025^6 \times .5^4 = \$2,802$$

$$\text{Total: } \$3,782$$

#### **First Year of Operation with 421a Exemption Benefits**

##### **Residential Units**

1/1/13 – 12/31/13

$$\$106,110^9 \times .95^2 \times .1365^3 = \$13,760$$

##### **Parking Units**

1/1/13 – 12/31/13

$$\$106,110^9 \times .05^2 \times .1025^3 = \$544$$



The tax liability during the second year of operation without 421a benefits is estimated at \$144,976 for the Residential Units and \$5,730 for the parking space Units. The calculations are as follows:

**Second Year of Operation without 421a Exemption Benefits**

**Residential Units**

1/1/14 – 6/30/14

$$(\$1,093,400^5 \times .95^2) \times .1365^3 \times .5^4 = \$70,893$$

7/1/14 – 12/31/14

$$(\$1,142,600^7 \times .95^2) \times .1365^3 \times .5^4 = \$74,083$$

**Total: \$144,976**

**Parking Units**

1/1/14 – 6/30/14

$$(\$1,093,400^5 \times .05^2) \times .1025^6 \times .5^4 = \$2,802$$

7/1/14 – 12/31/14

$$(\$1,142,600^7 \times .05^2) \times .1025^6 \times .5^4 = \$2,928$$

**Total: \$5,730**

Each Unit will be given a separate tax lot number. Individual tax liability may be estimated by apportioning the total tax among the unit owners in proportion to the relative value of their space as indicated by the Offering Plan prices.

The Sponsor has consulted further with Mr. Mishkoff of Mishkoff Associates LLC who has advised the Sponsor:

"If the foregoing information and assumptions [provided by the Sponsor] are accurate and valid, and all of the 421-a requirements... are met, the Project should receive a partial exemption from taxation for local purposes, other than assessments for local improvements, for the construction period not to exceed three years, and for fifteen years after the taxable status date immediately following the completion of construction. The real estate taxes on the Project will be partially exempted in declining percentages during the fifteen years following completion of construction, as set forth below:

| <u>Year Following<br/>Completion of Construction</u> | <u>Percentage of Value<br/>Which is Exempt</u> |
|------------------------------------------------------|------------------------------------------------|
| 1 <sup>st</sup> - 11 <sup>th</sup>                   | 100%                                           |
| 12 <sup>th</sup>                                     | 80%                                            |
| 13 <sup>th</sup>                                     | 60%                                            |
| 14 <sup>th</sup>                                     | 40%                                            |
| 15 <sup>th</sup>                                     | 20%                                            |
| 16 <sup>th</sup>                                     | 0%                                             |

1. Estimated 2012/12 Taxable Assessed Value
2. Percentage of value for this type of space
3. Estimated Class 2 Tax Rate
4. One-half year
5. Estimated 2013/14 Taxable Assessed Value
6. Estimated Class 4 Tax Rate
7. Estimated 2012/15 Taxable Assessed Value
8. The mini-tax is the minimum tax paid each year that the property receives 421a benefits. It is based upon the taxable assessed value in the tax year preceding the tax year in which construction started.
9. The 2006/07 base year taxable assessed value.

These percentages of exemption will be diminished to the extent that any commercial, community facility and accessory use space exceeds twelve percent of the total aggregate floor area of the Project."

A copy of Mr. Mishkoff's letter follows this section.

The Sponsor will use its best efforts to obtain 421-A benefits for the Building, however, does not guarantee that the 421(a) tax benefits will be in place on the date of the First Unit Closing. However, it is likely that implementation of the section 421-a exemption will take place following the first year of operation of the Condominium and Unit Owners may be liable for a higher real estate tax payment until the 421-a exemption is granted.

After the Units are separately assessed, each Unit will be taxed as a separate tax lot for real estate tax purposes and that the Unit Owner will not be responsible for the payment of, nor will the Unit be subjected to, any lien arising from the non-payment of taxes on other Units. If the Units have not been separately assessed for real estate tax purposes prior to the closing of title to the first Unit, the Sponsor or Board of Managers may advance any real estate taxes due and the Unit Owners will make payments towards real estate taxes to the Sponsor or Board of Managers.

THE ABOVE PROJECTION IS AN ESTIMATE AS IT IS UNLIKELY THAT THE POST-CONSTRUCTION ASSESSED VALUE OR TAX RATE WILL REMAIN CONSTANT FOR THE 15-YEAR SECTION 421-A EXEMPTION PERIOD, THUS, THE ACTUAL ASSESSMENT AND REAL ESTATE TAX-FOR EACH UNIT MAY BE MORE OR LESS THAN THE UNIT'S PROPORTIONATE SHARE OF THE TOTAL ASSESSMENT AND TAX AMOUNT SHOWN. IF ANY OF THE FOREGOING REQUIREMENTS OR CONDITIONS, HOWEVER, SHOULD NOT BE MET TO THE SATISFACTION OF HPD, OR IF ANY OF THE FOREGOING REPRESENTATIONS SHOULD PROVE TO BE INACCURATE, THEN, UNLESS THE REGULATIONS ARE MODIFIED TO REMOVE OR CHANGE ANY REQUIREMENT OR CONDITION THAT IS NOT MET, THE BUILDING WOULD NOT QUALIFY FOR THE PARTIAL REAL ESTATE TAX EXEMPTION PROVIDED UNDER SECTION 421-A.

THE ESTIMATE OF THE ACTUAL ASSESSED VALUATIONS SET FORTH HEREIN ARE GOOD FAITH ESTIMATES, IT IS NOT POSSIBLE TO ESTIMATE IT WITH ANY DEGREE OF CERTAINTY, AND THUS SUCH ASSESSED VALUATION

WHEN ACTUALLY MADE, MAY BE LESSER OR GREATER THAN AS ESTIMATED. IN NO EVENT WILL THE SPONSOR, THE SPONSORS' COUNSEL, THE CONDOMINIUM BOARD OR ANY OTHER PERSON BE LIABLE IF THE ASSESSED VALUATION WHEN ACTUALLY MADE, IS LESSER OR GREATER THAN PREDICTED IF THE ADMINISTRATIVE CODE AND THE APPLICABLE RULES AND REGULATIONS OF THE CITY OF NEW YORK ARE IN THE FUTURE CHANGED OR IF THE FACTS AS REPRESENTED TO MY FIRM PROVE TO BE UNTRUE.

THE CITY OF NEW YORK MAY ASSESS EACH UNIT ON A BASIS THAT DIFFERS FROM THE ALLOCATION OF COMMON INTERESTS AND MAY BE EITHER HIGHER OR LOWER THAN REFLECTED IN SCHEDULE "A" IN FUTURE YEARS.

DUE TO POSSIBLE INCREASES IN THE TAX RATE AND/OR POSSIBLE FURTHER INCREASES IN THE PROPERTY'S ASSESSED VALUATION, REAL ESTATE TAXES MAY BE HIGHER THAN AS SET FORTH ABOVE, AFTER THE FIRST YEAR OF OPERATION AND IN FUTURE YEARS.

NO WARRANTY IS OR CAN BE MADE THAT THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OR THE NEW YORK CITY REAL PROPERTY ASSESSMENT DEPARTMENT, OR ANY OTHER AGENCY WITH JURISDICTION, WILL APPROVE SPONSOR'S APPLICATION FOR 421(a) TAX BENEFITS, AND NEITHER THE SPONSOR NOR ITS COUNSEL SHALL BE LIABLE IF, BECAUSE OF A CHANGE IN LAWS AND/OR REGULATIONS OR THE INTERPRETATION OF LAWS AND/OR REGULATIONS, IF THE FACTS REPRESENTED BY SPONSOR PROVE INCORRECT THE PROPERTY FAILS TO OBTAIN 421(a) BENEFITS. SHOULD TAX BENEFITS BE DENIED, IN WHOLE OR IN PART, THEN THE UNIT OWNERS WILL BE RESPONSIBLE FOR ALL OF THE TAXES DUE AND OWING.

See section entitled "COUNSEL'S TAX OPINION" for further details.

The projected income tax deduction may vary in the future due to changes in real property taxes resulting from changes in the Assessed Valuation, the tax rate or the method of assessing real property.

The Board of Managers may make its own motion or by vote of a majority of the Unit Owners, to file a petition to challenge the real estate tax assessment in the Units. Otherwise, a Unit Owner shall have the right to individually challenge the real estate tax assessment on his/her Unit by filing the appropriate certiorari petition in a timely fashion. See Article IV Section 2.q. of the By-Laws.

**Real Estate Tax Estimate  
for  
75 Columbia Street  
Brooklyn, New York**

**Prepared for:  
SDS Columbia LLC  
c/o Second Development Services, Inc.  
132 Remsen Street  
Brooklyn, N.Y. 11201**

**May 16, 2012**



May 16, 2012

SDS Columbia LLC  
c/o Second Development Services, Inc.  
132 Remsen Street  
Brooklyn, N.Y. 11201

Re: 75 Columbia Street, Brooklyn

I, JEROME MAZURSKY, CERTIFY:

THAT I am a real estate appraiser and have many years of experience in the assessment of real estate for tax purposes both as an Assessor in the Borough of Manhattan and as the Department of Finance's Assistant Commissioner of the Real Property Assessment Division;

THAT I have been retained by SDS Columbia LLC, to estimate for inclusion in an Offering Plan to be submitted to the Attorney General, the assessed valuation and real estate taxes of the above-captioned property after completion of its construction;

THAT in estimating the assessed valuation of the property, I am aware of the construction costs, rental values and offering prices of the units;

THAT I have consulted with personnel in the Property Division of the Department of Finance regarding the current practice in assessing newly constructed condominiums. Specifically, discussions centered around appropriate land and building factors and income projections for properties similar to the subject in type and location.

I have discovered the following:

- 1) The subject property is located at 75 Columbia Street in the borough of Brooklyn. The sponsor is in the process of constructing a new 7-story condominium that will contain eleven (11) residential units and nine (9) open parking units. Prior to the start of construction, May 2008, the property was improved with a 1-story warehouse, which has since been demolished.

The site has 60' frontage on the easterly side of Columbia Street and extends 90' in depth along the northerly side of Warren Street. It is irregularly-shaped and contains approximately 5,400 square feet of ground area. The property is currently identified on the city's tax records as Block 299 Lot 1.

- 2) Construction is scheduled to be completed in September 2012. The building will contain the following approximate square foot areas and uses:

| <u>FLOORS</u> | <u>AREA</u> | <u>USE</u>                                                         |
|---------------|-------------|--------------------------------------------------------------------|
| Cellar        | 1,765       | Boiler, Mechanical and Meter Rooms, 9-Storage Rooms                |
| 1             | 5,164       | Lobby, Gym, 1-1BR Apartment, Compactor Rm and 9-Open Parking Units |
| 2             | 3,088       | 2-3BR Apartments                                                   |
| 3-5           | 9,264       | 6-3BR Apartments                                                   |
| 6             | 2,387       | 1-4BR Apartment with Florida Room                                  |
| 7             | 2,283       | 1-4BR Apartment                                                    |

- 3) The property is currently assessed in Tax Class 2. After completion of construction, the residential units will continue to be assessed in Tax Class 2 and the parking units will be assessed in Tax Class 4 under the classification system adopted by the State Legislature in its revision of the Real Property Tax Law (Section 305, Article 1802, and Section 581, applicable to the assessment of cooperative apartments and condominiums).

3) continued

Tax Class 4 includes parking spaces and uses other than residential. Tax Class 2 consists of primarily residential rentals, cooperatives or condominiums containing more than ten units. The City's assessment ratio policy for both tax classes is to assess at 45% of market value based upon the value as an income-producing property. Increased values, other than for physical changes, are unlimited but must be phased in over five years. The taxable value is the lower of the Actual and Transitional Assessed Values

The 2011/12 average Class 2 tax rate is \$13.433 per \$100. The Class 4 rate is \$10.152. I estimate the tax rates for the 2012/13, 2013/14 and 2014/15 tax years at \$13.65 per \$100 for Class 2 and \$10.25 per \$100 for Class 4.

4) The recent history of assessed valuations of 75 Columbia Street is as follows:

| <u>2011/12</u>     | <u>Land</u>     | <u>Total</u>     |
|--------------------|-----------------|------------------|
| Actual:            | \$ 39,495       | \$ 39,495        |
| Transitional:      | \$ 39,495       | \$ 39,495        |
| <br><u>2012/13</u> | <br><u>Land</u> | <br><u>Total</u> |
| Actual:            | \$ 265,500      | \$ 468,000       |
| Transitional:      | \$ 84,696       | \$ 287,196       |

5) I estimate the assessed value, after completion of construction, as follows:

| <u>2013/14</u>     | <u>Land</u>     | <u>Total</u>     |
|--------------------|-----------------|------------------|
| Actual:            | \$ 265,500      | \$ 1,225,000     |
| Transitional:      | \$ 133,900      | \$ 1,093,400     |
| <br><u>2014/15</u> | <br><u>Land</u> | <br><u>Total</u> |
| Actual:            | \$ 265,500      | \$ 1,225,000     |
| Transitional:      | \$ 183,100      | \$ 1,142,600     |

- 6) The tax liability during the first year of operation, without 421a exemption benefits, is estimated at \$89,514 for the residential units and \$3,782 for the parking units. During the second year, it is estimated at \$144,976 and \$5,730, respectively. The calculations are as follows:

**First Year of Operation without 421-a Exemption Benefits**

**Residential Units:**

1/1/13- 6/30/13

$$(\$287,196^1 \times .95^2) \times .1365^3 \times .5^4 = \$18,621$$

7/1/13 - 12/31/13

$$(\$1,093,400^5 \times .95^2) \times .1365^3 \times .5^4 = \underline{70,893}$$

**Total: \$ 89,514**

**Parking Units:**

1/1/13- 6/30/13

$$(\$287,196^1 \times .05^2) \times .1365^3 \times .5^4 = \$980$$

7/1/13 - 12/31/13

$$(\$1,093,400^5 \times .05^2) \times .1025^6 \times .5^4 = \underline{2,802}$$

**Total: \$ 3,782**

**Second Year of Operation without 421-a Exemption Benefits**

**Residential Units:**

1/1/14- 6/30/14

$$(\$1,093,400^5 \times .95^2) \times .1365^3 \times .5^4 = \$70,893$$

7/1/14 - 12/31/14

$$(\$1,142,600^7 \times .95^2) \times .1365^3 \times .5^4 = \underline{74,083}$$

**Total: \$ 144,976**

**Parking Units:**

1/1/14- 6/30/14

$$(\$1,093,400^5 \times .05^2) \times .1025^6 \times .5^4 = \$2,802$$

7/1/14 - 12/31/14

$$(\$1,142,600^7 \times .05^2) \times .1025^6 \times .5^4 = \underline{2,928}$$

**Total: \$ 5,730**

1. 2012/13 Taxable Assessed Value
2. Percentage of value for this type of space
3. Estimated Class 2 Tax Rate
4. One-half year
5. Estimated 2013/14 Taxable Assessed Value
6. Estimated Class 4 Tax Rate
7. Estimated 2014/15 Taxable Assessed Value



6) continued

Each unit will be given a separate tax lot number. Individual tax liability may be estimated by apportioning the total tax among the unit owners in accordance with its percentage of common interest as indicated in Schedule A of the Offering Plan.

- 7) It is my understanding that the sponsor is seeking 421-a real estate tax exemption benefits. If granted, the benefits provide a varied exemption of increases in assessed value over the 2006/07 base tax year. There may be up to a 100% exemption of building value during the construction period (not to exceed three years) and the first eleven years of operation. In the twelfth year the exemption decreases to 80%, in the thirteenth year it is reduced to 60% and it is reduced to 40% in the fourteenth. In the fifteenth year, the exemption is further reduced to 20%, after which the property will be fully taxed.

The 421a exemption generally applies to the entire taxable assessed value, over and above the "mini-tax."<sup>8</sup> In the first year of operation, I have estimated the tax with 421a exemption benefits at \$ 13,760 for the residential units and \$ 544 for the parking units. The calculations are as follows:

**First Year of Operation with 421-a Exemption Benefits**

**Residential Units:**

1/1/13- 12/31/13

$$(\$106,110^9 \times .95^2) \times .1365^3 = \$ 13,760$$

**Parking Units:**

1/1/13- 12/31/13

$$(\$106,110^9 \times .05^2) \times .1025^6 = \$ 544$$

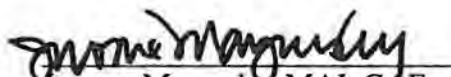
- 8) The co-op/condominium real estate tax abatement law, that over the past few years has had a favorable effect on the real estate tax burden of residential co-op and condominium unit owners, is scheduled to expire June 30, 2012. The Legislature indicated its intention in passing this law was to address the disparity between the tax burden of one to three family homeowners and that of residential co-op and condominium unit owners. If the abatement law is extended and granted to this condominium, the law will allow up to a 17.5% abatement of the real estate tax bill of a unit owner who will own fewer than four units on the city's taxable status date of January 5, 2013. Excluded from receiving the abatement benefits are co-ops and condominiums that receive tax exemption or abatement benefits.

8. The mini-tax is the minimum tax paid each year that the property receives 421a benefits. It is based upon the taxable assessed value in the tax year preceding the tax year in which construction started.

9. The 2006/07 base year taxable assessed value

- 9) This estimate of the assessed valuation has been prepared for inclusion in the Offering Plan, and I consent to its use for this purpose. Although the aforesaid estimate of the Actual Assessed Valuation is a good-faith estimate, it is not possible to estimate same with any degree of certainty. Assessed valuations, when actually made, may be lesser or greater based on our interpretation of the administrative code and the applicable rules and regulations of the City of New York. Although I believe my opinions are well-founded, they are not intended, and should not be construed as warranties as to future assessed valuations of the property under discussion.

In no event will this firm, the Sponsor, the Sponsor's counsel or any other person be liable if the assessed valuation, when actually made, is lesser or greater than that estimated above, or if the administrative code and the applicable rules and regulations of the City of New York are changed in the future, or if the facts as represented prove to be untrue.

  
Jerome Mazursky, MAI, CAE

**JEROME MAZURSKY, MAI, CAE**  
**President**

NYS Certified General R.E. Appraisers  
# 46000001594

## QUALIFICATIONS

### EDUCATION

N.Y.U. School of Commerce - B.S.

Real Estate Courses

Appraising I, II

Advanced Assessing

Appraising Problems

Computerized Mass Assessing

Various Appraisal Courses

CUNY

Cornell University

University of Connecticut

I.A.A.O.

Appraisal Institute

### PROFESSIONAL DESIGNATIONS EARNED

|     |                                          |
|-----|------------------------------------------|
| MAI | (Member of the Appraisal Institute)      |
| CAE | (Certified Assessment Evaluator, IAAO)   |
| IAO | (Institute of Assessing Officers, NYSAA) |

### EMPLOYMENT

Assessor - Manhattan

Interim Acting Tax Commissioner for Staten Island

Assistant Commissioner (in charge of the Real Property Assessment Division  
of the Department of Finance)

Real Estate Tax Consultant/Fee Appraiser

### MEMBERSHIPS HELD IN PROFESSIONAL ORGANIZATIONS

International Association of Assessing Officers

N.Y.S. Association of Assessors

Appraisal Institute

American Arbitration Association

### ARTICLES PUBLISHED

"The Future of Assessed Valuations in New York City"  
Assessment Digest  
The Valuer's Line

Book Review of "You Can Get Your Real Estate Reduced"  
Real Estate Review

"Reflections of an Acting Tax Commissioner"  
Real Values

"Real Estate Taxes and the Review Process"  
C.P.A. Journal

"The New Real Estate Tax in New York City"  
C.P.A. Journal

"Battling Taxes From a Different Vantage Point"  
Real Estate Weekly

"Forecast of Real Estate Taxes in NYC"  
Real Estate Weekly

"Real Estate Tax Burden Shifting in New York"  
REW - Review & Forecast

### SCOPE OF APPRAISAL EXPERIENCE

Over a period of twenty-five years, I have valued thousands of properties of almost every conceivable type in New York City. Some of the more notable properties for which I have performed tax projections for offering plans are:

The Plaza Hotel Condominium  
500 West End Avenue  
350 West 42nd Street  
The Corinthian Condominium  
Trump Parc Condominium  
The Stanhope Condominium  
330 East 72nd Street  
823 Park Avenue  
123 West 44th Street



*Mishkoff Associates, LLC*

*38-08 Bell Boulevard*

*Bayside, New York 11361*

*Tel: 718-281-4972 ♦ Fax: 718-281-4975*

July 9, 2012

SDS Columbia LLC  
132 Remsen Street  
Brooklyn, NY 11201

**Re: Section 421-a Partial Tax Exemption  
75 Columbia Street, Brooklyn, New York  
Block 299 Lot 1**

To Whom It May Concern:

You have requested that we render our opinion as to the eligibility of the above referenced property to receive partial real estate tax exemption benefits pursuant to §421-a of the Real Property Tax Law, §11-245 of the New York City Administrative Code and the Rules and Regulations governing the §421-a program (collectively, "the 421-a program") and the procedures for obtaining such benefits. Unless specifically stated otherwise, the analyses and conclusions set forth herein are based on facts given to us by you or your agents.

We have been advised that the above referenced property is to be developed as a residential condominium and is expected to contain a total of 11 residential units with 9 parking spaces ("the Project"). In order for a completed property to be eligible for partial real estate tax exemption benefits pursuant to the §421-a program, the following major requirements will have to be satisfied:

1. Upon completion, the property must consist of a new multiple dwelling containing not less than four dwelling units. We have been advised that you plan to construct a new seven-story structure with 11 dwelling units. The Project will be performed pursuant to a New Building permit issued by the Department of Buildings in June, 2008. Thus, this requirement will be satisfied.

2. The land over which the Project is to be constructed must have been vacant, predominantly vacant, under-utilized, or improved with a non-conforming use on the operative date, i.e., thirty-six months prior to the commencement of construction.

We have been advised that construction of the Project will commence, as that term is defined in the Rules and Regulations, in June, 2008, in the 2007/2008 fiscal year. The operative date, therefore, is in the 2004/2005 fiscal year. On the operative date, the property was improved with a one-story manufacturing building whose total floor area (5,496 square feet) was less than 75% of the of the floor area of the new building (16,472 square feet).

Therefore, on the operative date occurring in the 2004/2005 fiscal year, the property satisfied the definition of under-utilized land as per Section 6-02 (f)(3)(F) of the Rules.

3. The §421-a Rules state that the property may not be mapped as a public park or utilized for ten or more consecutive years prior to October 1, 1971 as a private park. We have been advised that this requirement has been satisfied.
4. Section 421-a (2) (b) (iv) of the Real Property Tax Law provides that, if the project contains more than one hundred dwelling units, at least 15 percent of such units must contain at least 3.5 rooms and, in addition, at least 10 percent of such units must contain at least 4.5 rooms. As we have been advised that the Project will contain 11 dwelling units, this requirement will not apply.
5. Section 6-02(e) of the 421-a Rules and Regulations provides that, if the project contains more than twenty dwelling units, the new multiple dwelling must contain at least five dwelling units for each dwelling unit in existence immediately prior to commencement of construction. As we have been advised that the site will contain 11 dwelling units, this requirement will not apply.
6. The construction, as that term is defined in the §421-a Rules and Regulations, of the Project must commence no later than June 15, 2015. We have been advised that the construction of the Project commenced in June, 2008 thus satisfying this requirement.

7. Section 11-245 of the Administrative Code of the City of New York provides that §421-a tax exemption benefits shall not be available for construction commenced after November 29, 1985 if the property is located in the Geographic Exclusion Area (GEA) unless certain requirements are met. The Project is not located within the GEA.
8. Projects which commence construction after June 30, 2008 are subject to more stringent requirements and restrictions of the §421-a program if the Project is located in the newly expanded GEA. This property is located in the new GEA. The Rules define commencement of construction as the latter date of issuance of a New Building permit, the commencement of work on the foundation, and approval of the plumbing, structural and architectural plans. We have been advised that commencement of construction took place June 26, 2008 with the issuance of the New Building permit. As such, the Project will not be subject to the more stringent restrictions and requirements of the §421-a Program.

Notwithstanding the above, the Rules and Regulations of the Program require that a project be completed without undue delay, defined in the Rules as within 36 months of commencement. Though this project will not be completed within this time period, the Rules and Regulations allow for a waiver of this time restriction under certain conditions and if the applicant takes certain steps. The Sponsor has agreed to take any and all necessary steps to overcome the fact that the Project has not been completed within the statutorily required period of time, in order to retain the Project's eligibility to receive 421-a partial tax exemption.

9. The application for the Preliminary Certificate of Eligibility must be filed with HPD after the commencement of construction but prior to completion of construction. The final Application must be completed within 90 days of the issuance of a Permanent Certificate of Occupancy or a Temporary Certificate of Occupancy covering all residential space in the building. Both the Preliminary and Final Certificates of Eligibility must be filed with the Real Property Assessment Bureau of the New York City Department of Finance. We have been advised that these requirements will be met.
10. The §421-a Rules and Regulations provide that apartments in a rental building receiving §421-a benefits must be registered as rent stabilized for the §421-a benefit period, unless exempt from rent regulation by reason of the cooperative or condominium status of the units. Inasmuch as the units will be owned in a condominium form of ownership, the units will be exempt from rent regulation.

11. Pursuant to §6-02(d)(1) of the Rules and Regulations, the Project will qualify for a fifteen-year post construction partial real estate tax exemption.

With respect to incidental requirements applicable to this Project, such as the current payment of water and sewer charges and real estate taxes, the payment of HPD filing fees equal to .4% (four-tenths of one percent) of total development costs, and the availability of books and records in the event the project is selected for audit by HPD, we have advised that these requirements will be satisfied.

If the foregoing information and assumptions are accurate and valid, and all of the §421-a requirements discussed herein are met, the Project should receive a partial exemption from real estate taxation for the increase in assessed value attributable to the new construction, during the construction period not to exceed three years, and for fifteen years following the completion of construction,. The real estate taxes on the Project will be partially exempted in declining percentages during the fifteen years following completion of construction, as set forth below:

| <u>Year Following<br/>Completion of Construction</u> | <u>Percentage of Increase in<br/>Value Which is Exempt</u> |
|------------------------------------------------------|------------------------------------------------------------|
| 1 <sup>st</sup> - 11 <sup>th</sup>                   | 100%                                                       |
| 12 <sup>th</sup>                                     | 80%                                                        |
| 13 <sup>th</sup>                                     | 60%                                                        |
| 14 <sup>th</sup>                                     | 40%                                                        |
| 15 <sup>th</sup>                                     | 20%                                                        |
| 16 <sup>th</sup>                                     | 0%                                                         |

These percentages of exemption will be diminished to the extent that any commercial, community facility and accessory use space ("Commercial Space") exceeds twelve percent of the aggregate floor area of the Project. Inasmuch as no commercial space is planned, there will be no such reduction in the exemption.

Sponsor's tax consultant, The Mazursky Group, Inc., in a report dated May 16, 2012, has projected that without any §421-a exemption benefits, the total real estate taxes for the first year of operation (January 1, 2013 - December 31, 2013) would be \$93,296 and for the second year of operation (January 1, 2014 - December 31, 2014) the total real estate taxes would be \$150,706. The Mazursky Group, Inc. has projected that with §421-a exemption benefits the real estate taxes for the first year of operation would be \$14,304.



75 Columbia Street, Brooklyn  
July 9, 2012  
Page 5

The tax exemption will be apportioned to all the units in the condominium. The current policy of the Department of Finance is to apportion the exemption based on each unit's percentage of common interest. However, there is no guarantee that the Department of Finance will apportion the exemption benefits on this basis, or use some other formula or basis for the apportionment.

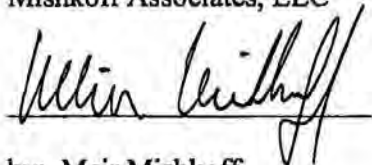
Please be advised, that it is possible that implementation of the §421-a exemption by the Department of Finance will take place following commencement of the operation of the condominium. As such, a unit owner may be liable for a higher real estate tax payment for the 2013/2014 tax year until the 421a exemption is effective. Any real estate taxes paid by a unit owner and subsequently reduced by the retroactive implementation of the §421-a exemption will be credited to the account of the tax lot. A unit owner may apply to receive a refund of the credit or may request that the credit be applied to future tax payments.

The opinions expressed above are based on our interpretations of the Real Property Tax Law, the Administrative Code of the City of New York, and the applicable HPD regulations in effect as of the date hereof. Please be aware that the laws, regulations, practices and positions of the Buildings Department, Department of Finance and HPD upon which this opinion is predicated may in the future be revised in a manner adverse to your interests, or that there may be an adverse interpretation of the law or regulations by one or more agencies of the City of New York, or Courts of competent jurisdiction. We shall not be liable if, because of any change of laws and/or regulations, or any adverse interpretation of the laws or regulations, the Project fails to obtain, in whole or in part, §421-a benefits.

No warranties are made herein nor are any assurances or representations given that HPD, the New York City Department of Finance or any other agency with jurisdiction, will approve the §421-a application, nor is any warranty made or assurance or representation given that a court of competent jurisdiction will determine that the Project is entitled to, in whole or in part, §421-a benefits

Very truly yours,

Mishkoff Associates, LLC



by: Meir Mishkoff

MM:hs

## **WORKING CAPITAL FUND**

At Closing of Title to each Unit, the Unit Owner for such Unit will contribute an amount equal to two month's of estimated Common Charges for such Unit (see Schedule A) to the capital of the Condominium as a Working Capital Fund (see "CLOSING COSTS AND ADJUSTMENTS"). The Working Capital Fund will be used as a Working Capital Fund and will be applied towards the down payment and closing costs for the purchase of the Super's Unit, as a reserve for repairs or for such other appropriate purposes as will be determined by the Board of Managers and will be augmented by allocations from the monthly Common Charges collected from each Unit. See also "DESCRIPTION OF PROPERTY AND IMPROVEMENTS and SCHEDULE B". While the Sponsor controls the Board of Managers (see "CONTROL BY SPONSOR"), the Working Capital Fund will not be used to reduce Common Charges.

The Sponsor, from the first proceeds obtained at the First Closing with a Purchaser pursuant to a Purchase Agreement, will establish a Working Capital Fund in the sum of \$3,000.00. This Working Capital Fund will be used (i) to pay the closing adjustments to the extent set forth below and (ii) the balance thereof may be held for working capital, to make repairs and improvements, and for appropriate purposes as determined by the Board of Managers, particularly to meet emergencies not budgeted for in "Schedule B."

If the net closing adjustments referred to below are in favor of the Condominium, the amount thereof will be paid or credited to the Board of Managers. If the net closing adjustments are in favor of the Sponsor, the Sponsor waives any net closing adjustments in its favor on the First Closing, which would reduce the Working Capital Fund below the sum of \$1,000.00.

No representation is made that the Working Capital Fund will be adequate to cover current or future expenses. If additional funds are required over and above the Working Capital Fund, it may be necessary to increase Common Charges or separately assess all Unit Owners.

THE PROPERTY IS OFFERED IN ITS NEWLY CONSTRUCTED CONDITION EXCEPT AS SET FORTH IN THIS OFFERING PLAN, WITHOUT ANY OBLIGATION BY SPONSOR OR THE CONDOMINIUM TO MAKE ANY OTHER REPAIRS AND/OR IMPROVEMENTS. NEITHER THE DEPARTMENT OF LAW NOR ANY OTHER GOVERNMENT AGENCY HAS PASSED UPON OR WILL PASS UPON THE ADEQUACY OF THE WORKING CAPITAL FUND OR ON THE PHYSICAL CONDITION OF THE BUILDING.

## **RESERVE FUND**

Inasmuch as the building is new construction, it is anticipated that the major components of the building will live out their anticipated life expectancies. Accordingly, the Board of Managers will have to make whatever arrangements they deem necessary to provide for the future replacement of these major building components at such time as they shall need to be replaced. However, a ten percent (10%) reserve fund is included in the budget to comply with potential requirements of the FHA or other lenders. This amount is 10% of the specific expenses enumerated in Schedule B and will be funded through Residential Common Charges which will be set aside in the future to open a Reserve Fund Account for the Building. See "SCHEDULE B" and "NOTES TO SCHEDULE B" for specific amounts.

## **IDENTITY OF PARTIES**

### **The Sponsor**

The Sponsor is SDS COLUMBIA LLC, a New York Limited Liability Company, with offices at 132 Remsen Street, Brooklyn, New York 11201 whose sole member is LINDA GRECO.

LINDA GRECO has been an investor in real estate for more than 25 years and has been involved as a principal of the Sponsor in the following recent public offerings:

| <b><u>ADDRESS</u></b>                        | <b><u>ACCEPTED<br/>FOR FILING</u></b> | <b><u>APPROXIMATE<br/>CLOSING DATE</u></b> |
|----------------------------------------------|---------------------------------------|--------------------------------------------|
| 100 Congress Street, Brooklyn, NY            | 5/4/10                                | 3/10/11                                    |
| 1 Grand Army Plaza, Brooklyn, NY             | 9/8/06                                | 12/23/08                                   |
| 425 W. 53 <sup>rd</sup> Street, New York, NY | 3/8/09                                | 10/22/11                                   |
| 56 Court Street, Brooklyn, NY                | 6/4/2010                              | 8/15/11                                    |
| 60 Court Street, Brooklyn, NY                | 3/21/01                               | 10/25/01                                   |
| 78-80 Leonard Street, New York, NY           | 11/17/08                              | 6/29/09                                    |
| 90 William Street, New York, NY              | 1/23/07                               | 6/25/08                                    |
| 153 Lincoln Place, Brooklyn, NY              | 7/31/08                               | 2/17/09                                    |

Prior to this, SDS COLUMBIA LLC has not taken part in any prior public offerings in or from New York.

The Sponsor and/or principals of the above named projects in which they own 10% or more of the Unsold Units are current on their financial obligations including, but not limited to payment of common charges, taxes, reserve or working capital fund payments, assessments, if any, payments for repairs and improvements promised in the plan, and payments of underlying mortgages or construction loans if any.

### **Selling Agent**

The Selling Agent is HEIGHTS REAL ESTATE ADVISORS LLC, 140 Remsen Street, Brooklyn, New York 11201. Rachel Foster is the sole member of Heights Real Estate Advisors LLC, LINDA GRECO is an investor in HEIGHTS REAL ESTATE ADVISORS LLC. The Selling Agent has over twelve years of experience in selling and renting real estate.

Except as discussed above, neither the Sponsor, the Selling Agent or the Managing Agent have any prior bankruptcies, felony convictions, injunctions or judgments against it that would be material to the Offering Plan or to an offering of securities.



### Counsel

FORMAN & ASSOCIATES, pc, 80 Maiden Lane, Suite 2204, New York, New York is counsel for the Sponsor and has been retained by the aforesaid Sponsor to prepare the Offering Plan, represent the Sponsor on all Unit sales and closings, including acting as the escrow agent for purchasers' down payments, and will be compensated by it for the legal representation. WARREN L. FORMAN, ESQ. of said firm prepared this Offering Plan. The Condominium, therefore, does not have independent legal counsel. FORMAN & ASSOCIATES, pc does not represent prospective Purchasers. IT IS SUGGESTED AND EXPECTED THAT EACH PURCHASER WILL CONSULT WITH AND BE REPRESENTED BY HIS/HER OWN COUNSEL IN CONNECTION WITH THIS OFFERING. The firm has no financial interest in the Property, the Sponsor, the Condominium, or any other party interested in this transaction, except for the fee for its services rendered in connection with its preparation of this Plan and representation of the Sponsor.

### Architect

The architect, GF 55 PARTNERS, with offices at 19 West 21st Street, New York, New York, has examined the physical condition of the Building and has rendered its report thereof as set forth in Part II beginning on page A-1 and has been retained by the Sponsor to provide architectural services for the construction of the Property. GF 55 PARTNERS, are Registered Architects of New York State. The partnership consists of David E. Gross, AIA, Leonard Fusco, AIA and Shay Alster, AIA. The signatories of the plans and specifications filed with the New York Department of Building and other governmental agencies are David E. Gross. The architect has no financial interest in the Property, the Sponsor, the Condominium, or any other party interested in this transaction, except for the fee for services rendered in connection with such report.

## **MANAGING AGENT**

The Sponsor has received a proposal from CONDOMINIUM MANAGEMENT SERVICES LLC, 132 Remsen Street, Brooklyn, New York, to manage and maintain the building's financial and maintenance matters for the first year of Condominium operation. In a proposal CONDOMINIUM MANAGEMENT SERVICES LLC advised the Sponsor that the annual fee for management services for the Building would be \$9,000.00 annually. The management contract will be for a term of one year.

The Managing Agent will perform services including, but not limited to the following: hire, pay and supervise persons to operate and maintain the building; cause the Building to be maintained; handle accounts receivable and accounts payable etc. Either party may cancel the agreement upon sixty (60) days notice at any time.

The following is a list of buildings that principals of CONDOMINIUM MANAGEMENT SERVICES LLC or its affiliates have managed:

|                                          |              |
|------------------------------------------|--------------|
| 132 Remsen Street, Brooklyn              | 1987-Present |
| 322 Hicks Street, Brooklyn               | 2005-2008    |
| 204 Livingston Street, Brooklyn          | 2006-present |
| 153 Lincoln Place, Brooklyn              | 2007-present |
| 78-80 Leonard Street, Manhattan          | 2008-2011    |
| 79 Worth Street, Manhattan               | 2008-2011    |
| 1 Grand Army Plaza, Brooklyn             | 2008-2010    |
| 425 W. 53 <sup>rd</sup> Street, New York | 2011-present |

The Board of Managers will have the obligation to reimburse the Managing Agent for any expenses advanced on behalf of the Condominium and will be required to indemnify the Managing Agent against liability for acts properly performed by it pursuant to their agreement. The Management Agreement will not be assignable by the Managing Agent.

### **REPORTS TO UNIT OWNERS**

It will be the obligation of the Board of Managers of the Condominium to give all Unit Owners annually:

- (1) A financial statement of the Condominium prepared by a certified public accountant or public accountant by a specified date which shall be set by the Board of Managers. Such statement shall be certified while the Sponsor is in control of the Board of Managers;
- (2) Prior notice of the annual Unit Owners' meeting; and
- (3) A copy of the proposed annual budget of the Condominium by a specified number of days prior to the date set for adoption thereof by the Board of Managers. While the Sponsor is in control of the Board of Managers, such budget shall be certified in compliance with Section 20.4(d) of Title 13 NYCRR, the regulations governing vacant Condominiums.

### **DOCUMENTS ON FILE**

The Sponsor shall keep copies of the Plan, all documents referred to in the Plan, and all Exhibits submitted to the Department of Law in connection with the filing of the Plan, on file and available for inspection without charge and for copying at a reasonable charge at the office of FORMAN & ASSOCIATES, pc, 80 Maiden Lane, Suite 2204, New York New York 10038 for six (6) years from the date of the first closing. The Sponsor shall deliver to the Board of Managers a copy of all documents filed with the appropriate recording office at the time of the closing of the first unit.



## GENERAL

This Plan does not knowingly omit any material fact or knowingly contain any untrue statement of a material fact. This Plan does not contain a full summary of all the provisions of the various documents referred to herein. True copies of the Declaration, Deed, Affidavit, Purchase Agreement, By-Laws and Rules and Regulations are contained in Part II hereof. Statements made herein as to the provisions of such documents are qualified in all respects by the contents of such documents.

There are no lawsuits or other proceedings now pending, or any judgments outstanding, either against the Sponsor or the Condominium or any person or persons, which might become a lien against the Property or which, in any way, will materially or adversely affect this Plan or the operation of the Condominium.

In accordance with the provisions of the Laws of the City of New York, the Sponsor represents that the Sponsor, the Condominium, and the Sponsor as Successor-Sponsor, will not discriminate against any person because of his/her race, creed, color, sex, national origin, ancestry, disability, marital status or on any basis prohibited by civil rights laws in the sale of Units offered by this Plan, or in the leasing of any Unit in the Building.

The Sponsor reserves the right to amend this Plan at any time (a) before this Plan is declared effective provided that, if the amendment effects any material change in this Plan for uncontracted Units and is not made for the purpose of declaring this Plan effective or increases Schedule B by more than 25%, anyone who has previously submitted an executed Purchase Agreement to the Sponsor shall be given not less than 15 days in which to elect to reaffirm or to cancel the Purchase Agreement and, in the latter event, to obtain a refund, in full, of the Down Payment made therewith; or (b) after this Plan is declared effective, subject to the rights of persons who have previously submitted executed Purchase Agreements to the Sponsor unless, at the election of the Sponsor, anyone who has submitted to the Sponsor an executed Purchase Agreement is given an election to reaffirm or cancel his/her agreement as provided in the preceding clause (a) of this sentence.

Any material misrepresentation of fact or untrue statement set forth herein may be a violation of the Martin Act.

With the exception as to any willful material representation or other fraudulent acts, in the event any of the material representations and warranties set forth in the Plan shall be untrue or incorrect on or prior to the date of the First Closing for an individual Unit, or if the Sponsor shall fail to pay or perform any of its foregoing undertakings, then the sole contractual right or remedy of a Purchaser in good standing under the Plan shall be to rescind his/her Purchase Agreement and be refunded his/her entire Down Payment, with interest. Such rescission, as to a Purchaser who first became an occupant of the Building after the Plan was originally presented shall be

conditioned on the cancellation of the Use and Occupancy Agreement, if the Plan is subsequently amended to provide for prior occupancy of the Unit and surrender of possession of his/her Unit within thirty (30) days after the exercise of such right to cancel. Those Purchasers electing to proceed, nevertheless, with the purchase of his Units will not be entitled to any credit against, or abatement in the purchase price and will have no claim or right of action against the Sponsor or the Condominium by reason thereof, except that there shall be no limitation on Purchaser's remedies as to any defaulted obligation to be paid or performed by the Sponsor subsequent to the Closing Date.

The Sponsor represents that the Property has not previously been the subject of any prior public offering.

As of the date the Offering Plan is accepted for filing, neither the Sponsor, nor any representative or agent thereof will have raised funds or made any preliminary offering or binding agreements to or with prospective Purchasers with respect to any Unit in the Building.

No contract or agreement, written or oral, has been entered into for the sale or transfer of any of the Units offered in the Plan.

No deposits or advances of funds have been taken by or on behalf of the Sponsor in connection with the reservation, sale or transfer of such Units, prior to submission of the Plan to the New York State Department of Law.

None of the Units in 75 Columbia Street, Brooklyn, New York were occupied by residential or commercial tenants as of the date of submission of the Plan to the New York State Department of Law.

No person has been authorized to make any statement or representation which is not expressly contained herein. Information, data or representations not contained herein, or in the exhibits referred to herein, must not be relied upon. This Plan may not be changed or modified orally.

Any references in this Plan to any one gender, masculine, feminine, or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context otherwise requires.

The "DESCRIPTION OF THE PROPERTY, SPECIFICATIONS AND BUILDING CONDITION", prepared by GF 55 PARTNERS, has been included in this Plan and all statements and representations made in this Plan with respect thereto, have been made in reliance upon the said architect in preparing same and his authority as an expert.

The Sponsor agrees to pay such interest on deposits as a court may consider just and proper as part of an order granted pursuant to Section 354 of the General Business Law.

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## **SPONSORS STATEMENT OF BUILDING CONDITION**

The Sponsor hereby adopts the "DESCRIPTION OF THE PROPERTY AND BUILDING CONDITION" as set forth in Part II of this Plan at page A-1. With reference to the Sponsor's preparation of such material, it consulted with GF 55 PARTNERS, with offices at 19 West 21st Street, New York, New York. The Sponsor represents that it does not know of any material defects, or need for major repairs except as set forth in the "DESCRIPTION OF THE PROPERTY AND BUILDING CONDITION". To the best of the Sponsor's knowledge, the description accurately describes the condition of the Building and its equipment. (See "DESCRIPTION OF PROPERTY AND BUILDING CONDITION" in Part II of the Plan).

The Property is offered in its newly constructed condition. The Sponsor's obligation regardless of any limitations in this Offering Plan is to construct the premises in accordance with all applicable codes, filed plans and specifications. The Housing Merchant Implied Warranty does not apply to this Building since it is higher than 5 stories.

The Sponsor represents that it, at its sole cost and expense, shall cure or cause to be cured all notices or violations, municipal ordinances, orders or requirements issued by the Department of Buildings, Department of Housing, Preservation and Development, Fire Department, Labor Department, Health Department or other municipal departments having jurisdiction against or affecting the Property on the First Closing. The Sponsor represents that it will eliminate all known dangerous and hazardous conditions of which it has received notice. The Sponsor shall comply with all work orders received from mortgagees. Except for hazardous conditions which shall be cured prior to closing, in the event that the Sponsor has not cured violations by the First Closing, the Sponsor shall cure said violations within 180 days thereafter.

If any violations are not cured prior to the First Closing, the Sponsor's closing attorney will hold the funds required to cure such violations, an amount to be determined by an independent Architect or Engineer in a special escrow account at SIGNATURE BANK, 26 Court Street, Brooklyn, New York, New York, until such violations are removed from record.

Neither the Sponsor nor the Condominium makes any representations or warranties as to the condition of the Building other than as set forth above and in the "DESCRIPTION OF THE PROPERTY AND BUILDING CONDITION" as set forth in Part II of this Offering Plan, upon which the Sponsor has relied entirely. Prospective purchasers are urged to carefully review this report particularly those sections of the report which may indicate that repairs and/or improvements to the Building or Units may be required. PROSPECTIVE PURCHASERS ARE CAUTIONED TO CAREFULLY INSPECT THE PHYSICAL CONDITION OF THE UNIT WHICH THEY INTEND TO ACQUIRE. ALL UNITS ARE TO BE CONVEYED IN THEIR RENOVATED CONDITION EXCEPT AS SPECIFICALLY SET FORTH HEREIN.



# FORMAN & ASSOCIATES, PC

Counselors at Law

Warren L. Forman

Irving Cohen  
of Counsel

80 Maiden Lane – Suite 2204  
New York, New York 10038  
(212) 791-5500  
Fax (212) 791-5544

Gina Costa  
Paralegal

## COUNSEL'S TAX OPINION

June 4, 2012

SDS COLUMBIA LLC  
132 Remsen Street  
Brooklyn, New York 11201

Re: Offering Plan for the Conversion to  
Condominium Ownership of Premises:  
75 Columbia Street, Brooklyn, New York

Ladies & Gentlemen:

You have requested our opinion concerning (i) the availability of certain deductions for Federal, New York State and New York City income tax purposes to individual persons who purchase Residential Units for residential use ("Unit Owners") under the Offering Plan for 75 COLUMBIA STREET CONDOMINIUM (the "Plan") and (ii) the Federal income tax treatment of the Common Charges received by the condominium association of the condominium (the "Condominium"). We make no opinion or representation as to possible tax benefits or obligations as they would relate to corporations or partnerships, which might hold a residential unit. In addition, you have requested our opinion concerning the availability of partial real estate tax exemptions under Section 421(a) of the Real Property Law of the State of New York ("421(a) benefits").

In connection with rendering this opinion as to the federal, state and city tax matters, we have reviewed the Plan, the schedules and exhibits thereto, the Declaration of the Condominium Plan (the "Declaration"), the By-Laws of the Condominium (the "By-Laws"), the relevant sections of the Internal Revenue Code of 1986, as amended, (the "Code"), including the Regulations promulgated thereunder by the Treasury Department (the "Treas. Regs"), the New York State Tax Law, the Administrative Code of the City of New York, revenue rulings, case law and such other materials as we have deemed relevant. In connection with rendering our opinion as to potential 421(a) benefits, we have read the Plan, schedules and exhibits and the analysis and projections of Jerome Mazursky and Meir Mishkoff, the specialists retained by the

# FORMAN & ASSOCIATES, PC

Sponsor to provide such analysis and projections.

## AS TO FEDERAL, STATE AND CITY TAX MATTERS:

### FACTS

You have advised us that, to the best of your knowledge, the following statements are an accurate summary of the relevant facts, and our opinion is conditioned upon the accuracy of such facts.

SDS COLUMBIA LLC, a New York limited liability company, (the "Sponsor") will apply to the Department of Law of the State of New York to establish the premises located at 75 Columbia Street, Brooklyn, New York as a condominium pursuant to the provisions of New York State's Condominium Act. See Article 9-B of the Real Property Law of the State of New York.

The Condominium will consist of eleven (11) Residential Units (the "Units") being offered for sale, nine (9) parking space Units and licenses to nine (9) storage spaces being offered for sale. Each holder of a Unit will own his/her own Unit plus an individual interest in the elements common to all Units (the "Common Elements"). Each Unit Owner will be entitled to the exclusive ownership and possession of his/her unit and will receive a separate deed to the Unit.

The Condominium will be operated by a Board of Managers, which pursuant to Article III, Section 2 of the By-Laws, will act only as an agent of all Unit Owners. The Board of Managers will be comprised of at least five (5) but not more than seven (7) members, who shall each be elected by the Unit Owners. See Article IV, Section 1 of the By-Laws. The primary function of the Board of Managers will be to supervise the maintenance and operation of the Common Elements, and collect charges (the "Common Charges") necessary to maintain and operate the Common Elements.

In accordance with New York Real Property Law Article 9-B, Section 339-i(1)(ii) of the Condominium Act, the percentage interests of the respective Units in the Common Elements have been determined. The percentage of each unit's common interest was calculated pursuant to Real Property Law 339-i(1)(ii) and is based upon the approximate proportion that the floor area of all the Units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements. This sub-section of §339-i(1) has been used due to the differing nature of the residential units from that of the Parking space Units. Generally, the common charges for the residential units are based upon the approximate proportion that the floor area of the each unit at the date of the Declaration bears to the then aggregate floor area of all the residential units, but also reflecting the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements. The common charges for the Parking space Units are

# FORMAN & ASSOCIATES, PC

based primarily on the application of its proportionate share of the floor area as defined by the zoning laws, limited to those budget line items in which it benefits.

## DISCUSSION

### I. Mortgage Interest and Real Estate Taxes and Other Deductions

Under the Condominium Act, each Unit Owner will own his/her Unit and its appurtenant interest in the Common Elements in fee simple, and each Unit will be taxed as a separate tax lot for real estate tax purposes. See Sections 339-g and 339-y of the Condominium Act. Each Unit Owner may mortgage his/her Unit and become individually liable for the payment of the principal and any finance charges or interest on such mortgage indebtedness. See Article VIII, Section 11 of the By-Laws. Failure to pay his/her share of the Common Charges will result in the Board of Managers having a lien on the Unit for the unpaid Common Charges. See Section 339-Z of the Condominium Act.

The deductibility of the mortgage interest and real estate taxes paid or accrued by the Unit Owner during his/her taxable year will be governed by sections 163 and 164 of the Code. Section 163 of the Code allows a taxpayer to deduct all interest paid or accrued during the taxable year on qualified indebtedness. To be entitled to this deduction for interest, there is no requirement that the debt arise out of a trade or business or be profit-motivated; however, the indebtedness must be bona fide. However, if such indebtedness is not in connection with the Unit Owner's trade of business or for investment, such deductions will be limited to qualified interest. Qualified residential interest generally is interest on a debt, which is secured under local law by the taxpayers primary residence or a second home. Furthermore, such interest may not be in excess of the lesser of the fair market value of the property or the taxpayer's original basis in the Unit only adjusted by improvements and qualified indebtedness increased by amounts borrowed for qualified medical expenses incurred after August 16, 1986 and qualified educational expenses incurred after August 16, 1986. However, the taxpayer's basis in the residence is determined without other adjustments in basis such as depreciation. If a Unit Owner has more than two residences he/she will not be able to deduct his/her interest on the mortgage. Furthermore, if a taxpayer refinanced or received an equity loan, interest deductions would be limited to the original basis in the Unit adjusted only by improvements and qualified education and medical expenses as discussed above. Section 164 of the Code allows a taxpayer to deduct real estate taxes paid or accrued during the taxable year. Since Sections 339-g and 339-y of the Condominium Act provide that each Unit and its common interest shall be taxed as a separate tax lot for real estate purposes, Unit Owners shall be entitled to deduct real estates tax paid or incurred on their Units during the taxable year. In no event shall the aggregate of the assessment of the individual Units plus their common interests exceed the total valuation of the Property were it assessed as a single parcel. See Section 339-y of the Condominium Act.

The deduction under Section 163 of the Code for interest is subject to certain



## FORMAN & ASSOCIATES, PC

other provisions of the Code which may limit the amount of the deduction in any one taxable year. For example under Section 461(g) of the Code, prepaid interest is not deductible by a cash basis taxpayer in the year of payment but must be allocated to the taxable year or years to which it is chargeable. However, the payment of "points" (bank origination fee) is deductible under certain circumstances in the year of payment, provided that the indebtedness was incurred by the taxpayer in connection with the purchase or improvement of his/her principal residence, and the other requirements of Code Section 461(g)(2) are complied with.

We note that a taxpayer who purchases a Unit for investment may find his/her interest deduction limited by Code Section 163(d). Under this Section, a taxpayer other than a corporation will be subject to a ceiling on his/her deductions including interest to the total of net investment income. Investment interest is defined as interest paid or accrued on indebtedness incurred or continued to purchase or carry property for investment. Net investment income is the excess of investment income less investment expense. To the extent that the taxpayer has investment interest (defined as the gross income from interest, dividends, rents, royalties, net short term capital gains and recapture income), he/she will only be able to deduct such interest against net investment income and will not be able to use such deductions to offset earned income or income from his/her trade or business. See generally Code Section 163(d).

We also note that Code Section 265(2) may impact on the interest deduction otherwise allowable to a taxpayer in the event that he/she incurs debt to finance his/her purchase of a Unit rather than liquidate his/her portfolio of tax exempt securities. Under these circumstances Code Section 265(2) may disallow the taxpayer's interest deduction since he/she would be deemed to have incurred the debt to "continue to carry" the tax-exempt obligations. However, revenue rulings have made an exception for debt incurred to purchase the taxpayer's principal residence, so that only the taxpayer who is purchasing for investment should consider the possible impact of this section.

In Revenue Ruling 64-31, 1964-1 C.B. 300, the Internal Revenue Service (the "Service") considered the deductibility of mortgage interest and real estate taxes incurred by the owner of a condominium unit. The Service ruled that Sections 163 and 164 of the Code, respectively, permitted these deductions by the Condominium Unit Owner provided that he/she itemized his/her deductions in filing his/her Federal income tax returns.

In our opinion, under Code Sections 163 and 164 respectively, a Unit Owner will, for Federal income tax purposes, be entitled to a deduction for qualified interest paid or accrued with respect to any mortgage indebtedness and for real estate taxes paid or accrued with respect to his/her ownership of a Unit during a taxable year, in accordance with his/her method of accounting and in accordance with the limitations discussed herein.

Prospective purchasers should be aware of the possible impact of the alternative



## FORMAN & ASSOCIATES, PC

minimum tax. Section 55 of the Code provides for an alternative minimum tax to twenty-one (21%) percent of the taxpayers adjusted gross income, after certain exclusions and deductions are allowed. If the alternative minimum tax exceeds the tax otherwise payable by the taxpayer on his/her income, it becomes the tax due. The effect of the alternative minimum tax is to cut back the tax benefits of itemized deductions, which include deductions for real estate taxes and mortgage interest. Prospective purchasers should consult with their tax professionals to determine whether they will be subject to the alternative minimum tax, and also with regard to possible recent changes in the alternative minimum tax.

Unit Owners who lease their Units to another in connection with a Unit Owner's trade or business, for the purposes of investment, or for the production of income, as well as Unit Owners who have home/office combinations are allowed deductions for depreciation. However, under the Act accelerated depreciation has been eliminated and a longer (27.5) year straight-line recovery period is now used for residential real estate. The result of this is that depreciation deductions have been reduced and it will take an investor 27.5 years to recover his/her investment in the property. Furthermore, depreciation deductions may not exceed the adjusted basis of the Unit in the taxable year in which the deduction is incurred and further deductions are limited in the case of home/office combinations to the Unit Owners net income from the business. However, any amount disallowed in a taxable year may be carried forward in succeeding taxable years subject to new income limitations in such years and provided the depreciation deduction meets the requirements of Section 167(a) of the Code.

Code Section 465 provides specific "at risk" provisions and special partnership "at risk" provisions. Section 465 provides that an investor in certain specified types of activities cannot deduct the losses incurred in such activities for a given year that are in excess of the amounts that the investor has "at risk" in such activities at the end of the year.

Further, the Act has extended the "at risk" rules to the holding of real property with an exception for qualified nonrecourse financing secured by real property used in the activity to the effect that the taxpayer is treated "at risk" with respect to such financing. Nonrecourse means that no person is personally liable for the repayment of the debt. Qualified nonrecourse financing includes financing secured by real property used in the activity and loaned by a Federal State or local government or instrumentality; or guaranteed by same or loaned by a Qualified Person. Qualified Persons are those actively engaged in the business of lending money. Such would generally, include governmentally regulated banks, savings and loan associations, credit unions, or a pension trust. Qualified Persons do not include any person from whom the property was acquired, (or a person related to such person), or who receives a fee with respect to the taxpayers' investment (or a person related to such a person). Seller or promoter financing are therefore not considered qualified nonrecourse financing.

Investors are advised that their aggregate allowable deductions and losses from

## FORMAN & ASSOCIATES, PC

an investment herein, may, for a number of reasons, be limited to the amount of their investment herein as adjusted.

Pursuant to the Act losses from passive activity will be limited in deductibility in any tax year, to passive investment income for that tax year. Investors are advised to seek tax council in regard to what constitutes a passive activity and passive investment income.

Deductions from passive activities, to the extent that they exceed income from all such activities (exclusive of portfolio income), generally may not be deducted against other income of the taxpayer. Similarly, credits from passive activities generally are limited to the tax allocable to the passive activities. Suspended losses and credits are carried forward and treated as deductions and credits from passive activities in the next taxable year. When the taxpayer disposes of his/her entire interest in an activity, any remaining suspended loss incurred in connection with the activity is allowed in full.

Rental activity is by definition passive income. Losses from passive activity can with one exception discussed below, only be deducted from passive income and cannot be used to offset non-passive income. However an individual who actively participates in managing rental activity may offset up to \$25,000.00 of above income provided his/her adjusted gross income does not exceed \$100,000.00. Starting at \$100,000.00 the amount of the offset is reduced and is totally eliminated for adjusted gross incomes of \$150,000.00 and above. Examples of actively participating in rental activity would include approving new tenants, deciding on the terms of such tenants leases, arranging for repairs and approving expenses and capital improvements within the Unit.

The Act requires that net passive activity loss (the excess of aggregate passive activity loss after subtraction of aggregate passive income for a taxable year), will not be allowed as a deduction in a taxable year, but instead will be "suspended" as above. Loss from a passive activity generally are deductible only against income from that or another passive activity. Disallowed passive activity loss for a taxable year will be carried over ("suspended") and treated as a deduction in the immediately subsequent year against passive activity income. A taxpayer's passive activity income must be reduced first by current and suspended passive deductions before non-passive and net operating loss may be considered in calculating his/her return, except for those actively involved in managing rental activity provided the adjusted gains income of the investor does not exceed \$100,000.00.

The "At-Risk" and "Investment Interest" deduction limitations (see above) must be applied in calculation of a passive activity loss before application of the passive loss limitation.

The deferment of a deduction pursuant to the "At-Risk" of "Investment Interest" provisions for a tax year are not also deferred pursuant to that tax year's passive loss limitation. The "At-Risk" and "Investment Interest" deductions, although previously subject to suspension in later years may be subject to the passive loss limitation.

## FORMAN & ASSOCIATES, PC

If several of the taxpayers passive activities produce loss in any one year, the amount carried over is calculated by taking the net loss from each activity for that taxable year and dividing it by the aggregate net loss from all activities that produced net losses that tax year.

Suspended passive activity losses may be carried forward indefinitely (but not back) and may be allowed in subsequent years against passive activity income.

Non-passive loss and net operating losses may be taken into account only after passive income is reduced by current and suspended activities (although not below zero).

Losses carried over are allowed in full upon a taxable disposition of the passive activity interest. Loss on disposition will be deducted first against gain recognized on disposition then against net income for that taxable year from passive activities, then finally against other income.

In the event of installment sales, the suspended loss will be released pro-rata as installment gain is recognized.

In the event of disposition caused by the death of an investor/taxpayer, the carried over loss will be available to the extent carry-over loss exceeds any gain from the decedent/taxpayer's interest at the time of death (or, if applicable, alternate valuation date). Passive losses carried over equal to such gain may not be utilized.

In the event of gift of an interest suspended loss is added to the basis of the interest prior to disposition. Proportionate loss is added if only a portion of the interest is given away. In either event, the donee's basis is affected by the loss. Suspended losses of the donor are eliminated when added to the donee's basis and the remainder of losses continue to be suspended in the donor's hands.

Dispositions in transactions pursuant to §351, 721 or 1031 of the Internal Revenue Code of 1954 as amended by the Act (non taxable transactions) do not release suspended losses. See referenced I.R.C. Sections for analysis.

Credits arising from passive activity generally will be treated in the same manner as deductions so that credits from passive activity may not be used to offset tax attributable to other taxes (non-passive) of income. Generally, credit in regard to passive activities may be carried forward indefinitely (not back).

It is also our opinion that each Unit Owner will, for New York State and New York City income tax purposes, be entitled to the same deduction which is allowed for Federal income tax purposes for the mortgage interest and real estate taxes paid or accrued during the taxable year. See Section 615 of the New York State Tax Law. It should be noted, however, that for New York City income tax purposes, the benefit of



# FORMAN & ASSOCIATES, PC

such deduction may be reduced if the Unit Owner has more than the specified amount of tax preference items. See Sections 615, 622 and 623 of the New York State Tax Law; Sections T46-115.00, T46-122.0 and T46-123.0 of the City Code.

## II Common Charges - Federal Income Taxation of the Condominium

### A. Introduction

In accordance with the New York Condominium Act, Section 339(i) and (m), similar to other Condominiums, the Common Charges will be borne by the Unit Owners and assessed and collected by the Board of Managers. The Common Charges will be used to fund annual operational costs and capital improvements or to establish and maintain reserve funds therefor. In determining whether Common Charges will be includable in income of the Condominium or the Unit Owners and the tax effect of such assessment and collection, it is necessary to set forth our analysis with respect to the tax status of the Condominium and its exemption from Federal income taxation.

### B. Tax Status of the Condominium

A condominium under New York law is not a corporation but a unincorporated association. See General Associations Law of the State of New York and Section 339-v of the Condominium Act. Such an unincorporated association may be treated as a partnership or as an association taxable as a corporation for Federal income tax purposes.

The Treasury Regulations in Section 301.7701-2(a)(i) set forth the factors to be considered in determining whether an association will be treated for Federal income tax purposes as a partnership or as a corporation. Two of the six factors enumerated therein as characteristic of a corporation having associates, an objective to carry on business and divide the gains, are shared by both partnerships and corporations and are therefore irrelevant to the inquiry. Treas. Regs. section 301.7701-2(a)(2). Of the remaining four characteristics of centralization of management, continuity of life, free transferability of interest and limited liability, the condominium possess three: centralization of management via the Board of Managers, continuity of life pursuant to Article VI, IX of the By-Laws, and a modified form of free transferability of interest. Since an unincorporated organization will be treated as a corporation if it has more corporate characteristics than non-corporate characteristics, (see Treas. Regs. Section 301.7701-2(a)(3), Phillip G. Larson, 66 T.C. 159 (1976) acq., Rev. Rul. 79-106, 1979-1 C.B. 448), it is our opinion that, although there exists no direct authority on this point, that the condominium will be treated as an association taxable as a corporation for Federal income tax purposes.

In such event, and in the absence of any specific exception, the Condominium would be subject to Federal corporate income tax, New York State Corporation Franchise Tax and the New York City General Corporation Tax to the extent of its taxable income, if any. Additional assessments to meet this tax liability would be



## FORMAN & ASSOCIATES, PC

required. The additional amount received through this assessment may itself be subject to tax. *Old Colony Trust v. Commissioner*, 279 U.S. 716 (1929), cf. Revenue Ruling 75-1974-1 C.B. 19.

### C. Taxation of Common Charges

Assuming that the Condominium is treated as an association taxable as a corporation, the receipt of Common Charges, or substantially all of such Common Charges, may be excluded from the income of the Condominium in the event that (i) the Condominium is acting as agent of the Unit Owners as to collection and receipt of such funds; (ii) the Condominium is not acting as agent and receives the Common Charges as non-taxable contributions of capital, or receives the Common Charges as service income which is fully offset by the Condominium's service expenses; or (iii) the Condominium elects to be taxed under Code Section 528 and the condominium has only "exempt function income" within the meaning of such Section.

1. Condominium as Agent of the Unit Owners. In Revenue Ruling 75-370, 1975-2 C.B. 257, the shareholders of a condominium management corporation approved special accounts which were not commingled with the general funds of the condominium management association.

The assessments could be used only to replace the roof and the elevators located in the common elements of the condominium property. The Service ruled that these special assessments were not includable in the Condominium's gross income since they did not benefit the condominium which had a fiduciary obligation to expend the funds collected in the manner approved by its Unit Owners. The Service found that there was an agent and principal relationship between the condominium and its Unit Owners insofar as the special assessments were concerned.

However Rev. Rule. 75-370 specifically exempted funds collected by a condominium management corporation to provide services for which it was formed such as the maintenance of the common elements. Thus, funds collected by the Board for painting, general repairs, gardening and janitorial services would constitute gross income to the Condominium.

Article IV, Section 2 of the By-Laws provides that the Board of Managers will act as the agent of the Unit Owners. Article VI, Section 12 of the By-Laws requires that all capital improvements in excess of \$50,000.00 be approved by a vote of the Unit Owners. If Common Charges for such special capital improvements are specifically designated for capital improvements, deposited in special accounts and not commingled with the general funds, then such Common Charges should not be included in the income of the Condominium, according to Revenue Ruling 75-370, *supra*. Common Charges for assessments of less than \$50,000.00 or operational expenditures would not be excluded from the income of the Condominium, based on the theory that the Condominium is acting as the agent of the Unit Owners as to these Common Charges, because the Board of Managers does not have mere ministerial

# FORMAN & ASSOCIATES, PC

powers with respect to the operations of the Condominium.

2. Assessments as Non-Taxable Contributions to Capital. Under certain circumstances, special assessments for specific capital improvements may be considered non-taxable contributions to the capital of the association, pursuant to Code Section 118.

In Revenue Ruling 75-371, 1975-2 C.B. 52, the condominium management corporation collected special assessments which were assessed pro-rata upon each unit owner to replace outdoor furniture. The By-Laws required that any assessments had to be approved at a stockholder meeting by a majority vote of the unit owner-stockholders. The special assessment was approved and the proceeds were deposited in a special account and were not commingled with the general assessment funds. The assessment could only be used for the specific purpose intended. The Service held that the Special Assessment was a nontaxable contribution to the capital of the condominium management corporation. *Id.*; See also Rev. Rul. 74-563, 1974-2 C.B. 38 (special assessments to pave a parking lot of the homeowners association are contributions to the capital of the association).

Under the Plan the Unit Owners must approve all special improvement in excess of \$50,000.00. Therefore, as to such amounts of Common Charges, which are specifically designated for capital improvements, deposited in special accounts and not commingled with the general funds, such Common Charges should not be characterized as income of the condominium, according to Revenue Ruling 75-371, *supra*, but would constitute contributions to the capital of the Condominium. Even if a special capital assessment is not specifically voted upon and approved by the Unit Owners of the Condominium, there is judicial authority, which would support the characterization of such assessment as capital contribution. See, *Concord Village, Inc.*, 65 T.C. 142 (1975).

It should be noted that if the special assessments are treated as contributions to the capital of the Condominium, the subsequent expenditure of these funds (together with any other funds accumulated by the Condominium) may be viewed by the Service as a distribution to the Unit Owners, taxable under Section 301 of the Code. Each Unit Owner may therefore be subject to tax on his/her pro-rata share of the amounts expended.

Rev. Rul. 75-371 went on to distinguish special assessments from assessments collected for the purpose of normal operating expenses and excess assessments, which could be returned directly to the individual unit owner-stockholders. These general assessments and the excess assessments, which are not credited to subsequent taxable years or returned to the Unit Owners, were held to constitute gross income to the condominium under Section 61 of the Code.

We note however that to the extent to which the Condominium will be deemed to have service income by virtue of its performance of its management functions, it will be

## FORMAN & ASSOCIATES, PC

entitled to deduct as business expenses its expenditures required to provide such services from its gross income. See *Concord Village, Inc.*, 65 T.C. 142, 157 (1975); *Park Place*, 57 T.C. 767, 778 (1972). Thus, it will have taxable income only in the amount of the excess of its income from all sources over its allowable deductions.

3. Excess Common Charges. Any amount of net income attributable to overassessments might constitute taxable income of the Condominium for the taxable year of receipt, even if such excess is distributed or applied to the subsequent year's assessments. However, in Revenue Ruling 70-604, 1970-2 C.B. 9, a condominium management corporation was held not to have taxable income where the stockholders decided at an annual meeting at the end of the year to distribute the excess pro-rata to the stockholders, or to apply such excess to reduce the assessments for the taxable year over and above the actual expenses paid and incurred for the purposes described above, since such excess, in effect, has been returned to the stockholders. *Id.* In *Concord Village, Inc.*, *supra*, the Tax Court held that the excess reserve fund for the corporation is income of the cooperative housing corporation because the board of the corporation had discretion with respect to its disposition and the stockholders did not have the right to determine the use of such excess. In effect, a management association will not earn income when it has no discretion as to the application of the excess.

In the instant case, we understand that the Board of Managers will have discretion as to the application of the excess Common Charges, and that the Condominium does not intend to return excess Common Charges, if any, but intends to apply such excess to the next year's expenditures. Therefore, it is possible that the excess common charges will constitute taxable income to the Condominium.

A Condominium may be subject to income tax in much the same manner as a regular business corporation. Thus, to the extent that the Condominium's gross income for the year exceeds its allowable deductions, it will have taxable income. Gross income includes all income received whether received from Unit Owners as a whole as maintenance charges, or from Unit Owners in return for specific services such as parking leases, laundry receipts, and vending machines, plus any income derived from non-owners as in the case of the rental of commercial space and interest on working capital funds.

To offset the Condominium's gross income, it is allowed to deduct all expenditures, which it has paid or accrued for taxes, interest, insurance, management services, and other expenses attributable to the building.

The deductions for expenses incurred in providing services to its tenant-stockholders are limited, however, by Section 277 of the Code. These expenditures, called "membership expenses", may be deducted only to the extent that the Condominium has derived income from its Residential Unit Owners (called "membership income"). The excess of membership expenses over membership income is not allowable as a loss in the taxable year incurred, but must be applied against



## FORMAN & ASSOCIATES, PC

membership income in the succeeding taxable year or years. See I.R.S. §277(a); Prop. Regs. 1.277-1(d)(1)(ii).

The purpose of Section 277 is to prevent membership organizations such as Condominiums from using its losses incurred in providing services to its members to offset commercial income. The Proposed Regulations issued by the Treasury do not impose any time limits on the carryover, see Prop. Regs. 1.277-1(e)(1), but do provide that carryovers will be lost if the Condominium should fail to qualify in any taxable year. Prop. Regs. 1.277-1(e)(2).

According to Schedule B of the Plan the Condominium does not anticipate the receipt of commercial income. However, interest received from the investment of the Working Capital Fund will be "non-membership income" which will be taxable to the extent it exceeds any expenses incurred in producing this income.

Section 277 of the Code would be applicable to income received from the rental of commercial or professional space plus any income received by the Condominium from non-rental sources such as investment income from the Working Capital Fund.

If the total of the income from this source or any other source unrelated to the furnishing of services to its members exceeds the aggregate of the expenses attributable to earning such income, such excess income will be taxable to you. In such event, if the Working Capital Fund or any budgeted reserve for contingencies is insufficient to pay the resulting taxes, it may be necessary to increase the maintenance charges payable by Unit Owners to cover such tax payment.

In 1996, in a case involving a conventional cooperative, the United States Tax Court ruled that Subchapter T of the Code, not Section 277, applied to housing cooperatives that qualify under Section 216 of the Code. Subchapter T requires allocation of "patronage" and "non-patronage" source income. Since condominiums, by their nature, are "membership organizations" and do not share the dichotomy of shareholder/patron and non-shareholder/non-patron, they should be taxed under §277 as set forth above and not under Subchapter T.

4. Election to be Taxed Under Code Section 528. Code Section 528 provides a tax exemption for an organization that qualifies as a "homeowners association" which term includes a "condominium management association". A "condominium management association" is defined as an organization organized and operated to provide for the acquisition, construction, management, maintenance, and care of a condominium, provided substantially all of the units are used by individuals for residences. See Code Sections 528(c)(1)(A), and 528 (c)(2). "Substantially all" the units will be considered used by individuals for residences if at least 85% of the total square footage of all units within the project is used, or is intended to be used, by individuals for residential purposes or purposes auxiliary to residential use, such as storage rooms, laundry and maintenance areas. See Treas. Regulations, Section 1.528-4(b). The organization itself will be considered "organized and operated" for the



## FORMAN & ASSOCIATES, PC

acquisition, construction, management, maintenance, and care of such condominium, if the facts and circumstances indicate such to be the case. See Treas. Regs. Section 1.528-2. However if the articles of the Condominium reflect that is the purpose of the association, then the condominium management association will be presumed to be operated for such purpose. See Treas. Regs. Section 1.528-2(a). We note that these are two "non-residential" units under the Plan; the Parking space Units and the Temple Unit, consisting of 6,052 square feet under the zoning law and 2,140 square feet, which is substantially less than the 15% of total square footage which would jeopardize benefits. Additionally, there is substantial support for the argument that the Garage Unit, as an accessory use under zoning law, would meet the criteria of "purposes auxiliary to residential use".

In addition to the organization and operation test, the tests set forth below must be satisfied under code Section 528(c)(1) in order for a condominium to qualify as a "homeowner's association".

(1) Sixty (60%) percent or more of the gross income of the organization must be "exempt function income," that is, income derived from the payment of dues or fees from the residential unit owners in their capacity as owner-members rather than in the capacity as customers for services. Code Section 528(c)(1)(A) and Treas. Regs. Sections 1.528-5, and 1.528-9. "Exempt function income" includes income, which is attributable to assessments that arise as a result of the members' ownership interest, either based on value or size of their units, and used for the purpose of enhancing or maintaining the value of the residences. See Treas. Reg., Section 1.528-9(a). For example, the regulations indicate that assessments for the purpose of paying real estate taxes, removing garbage, or removing snow is "exempt function income". See Treas. Reg Section 1.528-9(b). Income attributable to the use of laundry machines and interest earned on sinking funds is not exempt function income; See Treas. Regs. Section 1.528-9(c). Any assessments attributable to special capital improvements, which are treated as capital contributions, are not included in gross income, and therefore, are not part of the calculation of the gross income test. See Treas. Regs. Section 1.528-9(a).

(2) Ninety (90%) percent or more of the expenditures of the organization for the taxable year must be used for the acquisition, construction, management, maintenance and care of the organization's property. See Code Section 528(c)(1)(C). These expenditures include operating and capital expenditures during the taxable year. Investments in a reserve fund for future expenditures are not included in this calculation.

(3) No part of the net earnings of the organization may inure to the benefit of any individual. See Code Section 528(c)(1)(D). The Code expressly excludes benefits received by a unit owner attributable to the homeowners association performing its exempt function, such as the benefit from the homeowners association acquiring, constructing, managing, maintaining and taking care of the association property.

# FORMAN & ASSOCIATES, PC

(4) The organization must properly and timely elect to have Code Section 528 apply for the taxable year. See Code Section 528(c)(1)(E).

Based upon our understanding of the manner in which the Condominium will be operated, it is our opinion that the Condominium will be eligible to qualify as a homeowners association within the meaning of Code Section 528(c)(1) for any taxable year provided the Condominium properly and timely elects to be taxed under Section 528 for such taxable year so long as it remains as it is presently constituted. However, because of the nature of these tests, we cannot express an opinion at this time as to whether the Condominium would qualify to make such election.

The qualification as a homeowners association means that all "exempt function income" will not be included in income and subject to tax. See Code Sections 528(b) and 528(d)(1). However, as noted above, "non-exempt function income," such as interest earned on the working capital fund and the operation of certain services, reduced by expenses attributable thereto, will be subject to the corporate tax rate. See Code Section 528(b). If the Condominium should have excess Common Charges constituting "exempt function income" which would otherwise be includable in taxable income, the Condominium could elect to have Section 528 apply and realize no taxable income attributable to such excess Common Charges, provided the Condominium has satisfied all applicable requirements for the taxable year. While we can't offer an opinion as to future situations and events, it is our opinion, based upon the budget and projections of the Sponsor that the Condominium will be eligible for taxpayer status under Code Section 528 should it elect to take such exemption for its first year of operation.

## III. Tax Benefits

The Sponsor has advised that it intends to apply for 421(a) tax benefits for the Condominium. Please see the section entitled "REAL ESTATE TAXES FOR INDIVIDUAL UNITS, ASSESSED VALUATION BEFORE AND AFTER RENOVATION" for a full discussion of the Condominium's eligibility for real estate tax benefits.

Based on the opinions set forth by Jerome Mazursky and Meir Mishkoff we believe that the Condominium will qualify under the conditions as set forth in the Statute and the Regulations and that the Condominium will be eligible for tax benefits of partial real estate tax exemption/abatement.

NO WARRANTY IS OR CAN BE MADE BY THE SPONSOR OR THE SPONSOR'S COUNSEL THAT THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OR THE NEW YORK CITY REAL PROPERTY ASSESSMENT DEPARTMENT, OR ANY OTHER AGENCY WITH JURISDICTION WILL APPROVE THE SPONSOR'S APPLICATION FOR 421(a) TAX BENEFITS OR THAT THE PER UNIT ASSESSED VALUATIONS WILL FALL WITHIN THE PARAMETERS SET FORTH. NEITHER THE SPONSOR NOT ITS COUNSEL

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SHALL BE LIABLE IF, BECAUSE OF CHANGE IN LAWS AND/OR REGULATION OR THE INTERPRETATION OF LAWS AND/OR REGULATIONS (OR, AS TO FORMAN & ASSOCIATES, PC, IF THE FACTS PRESENTED BY THE SPONSOR PROVE INCORRECT) THE PROPERTY IS ASSESSED IN EXCESS OF THE PARAMETERS PROJECTED HEREIN, AND THE PROPERTY FAILS TO OBTAIN IN WHOLE OR PART 421(a) BENEFITS. SHOULD TAX ABATEMENT BE DENIED, IN WHOLE OR PART, THEN THE UNIT OWNERS WILL BE RESPONSIBLE FOR ALL OF THE TAXES DUE AND OWING.

THE OPINIONS EXPRESSED ABOVE ARE BASED ON OUR INTERPRETATION OF THE NEW YORK REAL PROPERTY LAW AND THE APPLICABLE RULES AND REGULATIONS OF THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, AS ALL OF SAME EXIST ON THE DATE HEREOF. WHILE WE BELIEVE OUR OPINIONS ARE WELL-FOUNDED, THEY ARE NOT INTENDED, AND SHOULD NOT BE CONSTRUED AS WARRANTIES THAT THE EXISTING REQUIREMENTS OF 421(a) OR THE REGULATIONS WILL BE SATISFIED. YOU SHOULD BE AWARE OF THE POSSIBILITY THAT THE NEW YORK REAL PROPERTY LAW UPON WHICH WE HAVE PREDICATED OUR OPINION MAY IN THE FUTURE BE REVISED IN A MANNER ADVERSE TO YOU AND THE UNIT OWNERS OF THE CONDOMINIUM. FINALLY WE HAVE NOT PASSED ON THE ACCURACY OF ANY FIGURES OR ESTIMATES AND DO NOT WARRANT THE AMOUNT OF THE REAL ESTATE TAX EXEMPTION/ABATEMENT IF ANY TO BE GRANTED.

#### IV. Conclusion

WE EXPRESS NO VIEW AS TO ANY FEDERAL, NEW YORK STATE AND/OR NEW YORK CITY TAX CONSEQUENCES OR AS TO ANY ASPECTS OF THE PLAN OTHER THAN THOSE CONSEQUENCES AND ASPECTS EXPLICITLY DISCUSSED IN THIS OPINION, OR AS TO THE TAX CONSEQUENCES OF THE PLAN UNDER THE LAWS OF ANY OTHER STATE OR FOREIGN JURISDICTION. THIS OPINION DOES NOT FULLY DISCUSS THE TAX CONSEQUENCES WHICH MAY RESULT FROM THE OWNERSHIP OR THE LEASING OF A UNIT TO ANOTHER, IN CONNECTION WITH A UNIT OWNER'S TRADE OR BUSINESS, FOR PURPOSES OF INVESTMENT, OR FOR THE PRODUCTION OF INCOME, NOR DISCUSS AT ALL THE TAX CONSEQUENCES WHICH MAY RESULT TO A FOREIGN UNIT OWNER BY REASON OF HIS FOREIGN STATUS. THIS OPINION ALSO DOES NOT CONSIDER THE TAX CONSEQUENCES WHICH MAY ARISE IF UNITS ARE ACQUIRED AND/OR LEASED BY THE BOARD OF MANAGERS OR THE ISSUE OF WHETHER A UNIT OWNER MAY BE DEEMED TO BE A RESIDENT OF NEW YORK STATE DUE TO OWNERSHIP OF A UNIT AND THE ATTENDANT INCOME, ESTATE OR OTHER TAX CONSEQUENCES. WE THEREFORE ADVISE EACH PERSON CONTEMPLATING THE PURCHASE OF A UNIT TO CONSULT HIS/HER OWN TAX ADVISOR AS TO ALL SUCH TAX MATTERS, AS WELL AS WITH RESPECT TO THE TAX MATTERS DISCUSSED IN THIS OPINION.



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The opinions expressed herein are based solely upon our current understanding and interpretation of the existing law, regulations, decided cases and rulings of administrative agencies and upon information set forth herein. If there has been any misstatement of a fact or omission of any fact which may be material, or any amendment or change in the By-Laws or the Plan, we should be notified, since any such omission, misstatement or change may require modification of part or all of this opinion. Moreover, it should be specifically noted that this opinion is not binding on the Service, the New York State Department of Taxation and Finance, or the New York City Department of Taxation, and that such entities may not agree with any or all of the views stated above. Further, the Federal and State tax laws and Regulations and the rulings and decisions there- under may change and thereby effect the views stated above in whole or in part.

IN OUR OPINION, THE UNIT OWNERS WILL BE ELIGIBLE FOR THE REAL ESTATE TAX BENEFITS DESCRIBED ABOVE, WITHIN THE LIMITATIONS SET FORTH ABOVE. HOWEVER, THIS OPINION IS NOT A GUARANTEE: IT IS BASED ON EXISTING RULES OF LAW AND NO ASSURANCES CAN BE GIVEN THAT THE TAX LAWS UPON WHICH COUNSEL BASED THIS OPINION WILL NOT CHANGE. IN NO EVENT WILL THE SPONSOR, THE SPONSOR'S COUNSEL, THE BOARD OF MANAGERS OF THE CONDOMINIUM, OR ANY OTHER PERSON BE LIABLE IF THERE ARE CHANGES IN THE FACTS ON WHICH COUNSEL RELIED IN ISSUING THIS OPINION OR IF THERE ARE CHANGES IN THE APPLICABLE STATUTES, REGULATIONS, DECISIONAL LAW OR INTERNAL REVENUE SERVICE RULINGS ON WHICH COUNSEL RELIED WHICH CAUSE THE CONDOMINIUM TO CEASE TO MEET THE REQUIREMENTS OF SECTION 528 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR THE NEW YORK STATE TAX LAW, AS AMENDED, AND UNIT OWNERS NOT TO BE ENTITLED TO INCOME TAX DEDUCTIONS (OR WHICH CAUSE UNIT OWNERS NOT TO BE OR TO CEASE TO BE ENTITLED TO THE BENEFITS OR THE LEVEL OR DURATION OF BENEFITS DESCRIBED ABOVE.

The Sponsor has consulted with Jerome Mazursky, The Mazursky Group Inc., Real Estate Tax Consultants and Appraisal, 42 Broadway, Suite 1744, New York, New York 10004, for an opinion as to the history of the assessed valuation of the property, the projected assessed valuation after completion of construction and real estate taxes payable by the Condominium as they relate to these estimates.

Based on a consultation with Jerome Mazursky and Meir Mishkoff of Mishkoff Associates LLC as to an opinion and the applicability of the City of New York's program for partial real estate exemption under Section 421-A of the Real Property Tax Law, the Sponsor will apply for a partial exemption for real estate taxes for the premises. Generally, 100% of the increased assessed value above the pre-construction assessed value is exempt from taxation during construction and for ten years following the first taxable date immediately following completion of construction. The exemption then declines 80% of the increased assessed value for the 11<sup>th</sup> year and is further reduced by an additional 20% for each of the succeeding years until the 15<sup>th</sup> year when Unit



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Owners will pay real estate taxes based on the full assessed value of their Units without exemption.

The Sponsor will use its best efforts to obtain 421(a) benefits for the Condominium. There is no guarantee that such benefits will be granted. Updated information as to the status of these benefits will be disclosed on a future amendment to this Plan.

Mr. Mazursky has advised the Sponsor that the recent history of assessed valuation of 75 Columbia Street is as follows:

| <u>2011/12</u> | <u>Land</u> | <u>Total</u> |
|----------------|-------------|--------------|
| Actual:        | \$39,495    | \$39,495     |
| Transitional:  | \$39,495    | \$39,495     |
| <u>2012/13</u> | <u>Land</u> | <u>Total</u> |
| Actual:        | \$265,500   | \$468,000    |
| Transitional:  | \$ 84,696   | \$287,196    |

It is Mr. Mazursky's judgment that after construction is completed, the property will be assessed as follows:

| <u>2013/14</u> | <u>Land</u> | <u>Total</u> |
|----------------|-------------|--------------|
| Actual:        | \$265,500   | \$1,225,000  |
| Transitional:  | \$133,900   | \$1,093,400  |
| <u>2014/15</u> | <u>Land</u> | <u>Total</u> |
| Actual:        | \$265,500   | \$1,225,000  |
| Transitional:  | \$183,100   | \$1,142,600  |

In a letter dated May 16, 2012 Mr. Mazursky states: "it is my understanding that the Sponsor is seeking 421-a real estate tax exemption benefits. If granted, the benefits provide a varied exemption of increases in assessed value over the 2006/07 base tax year. There may be up to a 100% exemption of the increase in value during the construction period (not to exceed three years) and the first eleven years of operation. In the twelfth year, the exemption decreases to 80%, in the thirteenth year it is reduced to 60% and to 40% in the fourteenth year. In the fifteenth year the exemption is further reduced to 20%, after which the property will be fully taxed".

Mr. Mazursky estimates the real estate tax liability during the first year of operation without 421a benefits will be \$89,514.00 for the Residential Units and \$3,782.00 for the parking space Units. His estimate for the real estate tax liability with 421 a benefits is \$13,760 for the Residential Units and \$544 for the parking space Units". Mr. Mazursky's calculations are as follows:

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## First Year of Operation without 421a Exemption Benefits

### **Residential Units**

1/1/13 – 6/30/13

$$(\$287,196^1 \times .95^2) \times .1365^3 \times .5^4 = \$18,621$$

7/1/13 – 12/31/13

$$(\$1,093,400^5 \times .95^2) \times .1365^3 \times .5^4 = \$70,893$$

$$\text{Total: } \$89,514$$

### **Parking Units**

1/1/13 – 6/30/13

$$(\$287,196^1 \times .05^2) \times .1365^3 \times .5^4 = \$980$$

7/1/13 – 12/31/13

$$(\$1,093,400^5 \times .05^2) \times .1025^6 \times .5^4 = \$2,802$$

$$\text{Total: } \$3,782$$

## First Year of Operation with 421a Exemption Benefits

### **Residential Units**

1/1/13 – 12/31/13

$$\$106,110^9 \times .95^2 \times .1365^3 = \$13,760$$

### **Parking Units**

1/1/13 – 12/31/13

$$\$106,110^9 \times .05^2 \times .1025^3 = \$544$$

The tax liability during the second year of operation without 421a benefits is estimated at \$144,976 for the Residential Units and \$5,730 for the parking space Units. The calculations are as follows:

## Second Year of Operation without 421a Exemption Benefits

### **Residential Units**

1/1/14 – 6/30/14

$$(\$1,093,400^5 \times .95^2) \times .1365^3 \times .5^4 = \$70,893$$

7/1/14 – 12/31/14

$$(\$1,142,600^7 \times .95^2) \times .1365^3 \times .5^4 = \$74,083$$

$$\text{Total: } \$144,976$$

### **Parking Units**

1/1/14 – 6/30/14

$$(\$1,093,400^5 \times .05^2) \times .1025^6 \times .5^4 = \$2,802$$

7/1/14 – 12/31/14

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$$(\$1,142,600^7 \times .05^2) \times .1025^6 \times .5^4 = \underline{\$2,928}$$

**Total:        \$5,730**

Each Unit will be given a separate tax lot number. Individual tax liability may be estimated by apportioning the total tax among the unit owners in proportion to the relative value of their space as indicated by the Offering Plan prices.

The Sponsor has consulted further with Mr. Mishkoff of Mishkoff Associates LLC who has advised the Sponsor:

"If the foregoing information and assumptions [provided by the Sponsor] are accurate and valid, and all of the 421-a requirements... are met, the Project should receive a partial exemption from taxation for local purposes, other than assessments for local improvements, for the construction period not to exceed three years, and for fifteen years after the taxable status date immediately following the completion of construction. The real estate taxes on the Project will be partially exempted in declining percentages during the fifteen years following completion of construction, as set forth below:

| <u>Year Following<br/>Completion of Construction</u> | <u>Percentage of Value<br/>Which is Exempt</u> |
|------------------------------------------------------|------------------------------------------------|
| 1 <sup>st</sup> -11 <sup>th</sup>                    | 100%                                           |
| 12 <sup>th</sup>                                     | 80%                                            |
| 13 <sup>th</sup>                                     | 60%                                            |
| 14 <sup>th</sup>                                     | 40%                                            |
| 15 <sup>th</sup>                                     | 20%                                            |
| 16 <sup>th</sup>                                     | 0%                                             |

These percentages of exemption will be diminished to the extent that any commercial, community facility and accessory use space exceeds twelve percent of the total aggregate floor area of the Project." A copy of Mr. Mishkoff's letter is reproduced in another section of this Plan.

The Sponsor will use its best efforts to obtain 421-A benefits for the Building, however, does not guarantee that the 421(a) tax benefits will be in place on the date of the First Unit Closing. However, it is likely that implementation of the section 421-a exemption will take place following the first year of operation of the Condominium and Unit Owners may be liable for a higher real estate tax payment until the 421-a exemption is granted.

After the Units are separately assessed, each Unit will be taxed as a separate tax lot for real estate tax purposes and that the Unit Owner will not be responsible for the payment of, nor will the Unit be subjected to, any lien arising from the non-payment of taxes on other Units. If the Units have not been separately assessed for real estate tax purposes prior to the closing of title to the first Unit, the Sponsor or Board of Managers may advance any real estate taxes due and the Unit Owners will make

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payments towards real estate taxes to the Sponsor or Board of Managers.

THE ABOVE PROJECTION IS AN ESTIMATE AS IT IS UNLIKELY THAT THE POST-CONSTRUCTION ASSESSED VALUE OR TAX RATE WILL REMAIN CONSTANT FOR THE 15-YEAR SECTION 421-A EXEMPTION PERIOD, THUS, THE ACTUAL ASSESSMENT AND REAL ESTATE TAX-FOR EACH UNIT MAY BE MORE OR LESS THAN THE UNIT'S PROPORTIONATE SHARE OF THE TOTAL ASSESSMENT AND TAX AMOUNT SHOWN. IF ANY OF THE FOREGOING REQUIREMENTS OR CONDITIONS, HOWEVER, SHOULD NOT BE MET TO THE SATISFACTION OF HPD, OR IF ANY OF THE FOREGOING REPRESENTATIONS SHOULD PROVE TO BE INACCURATE, THEN, UNLESS THE REGULATIONS ARE MODIFIED TO REMOVE OR CHANGE ANY REQUIREMENT OR CONDITION THAT IS NOT MET, THE BUILDING WOULD NOT QUALIFY FOR THE PARTIAL REAL ESTATE TAX EXEMPTION PROVIDED UNDER SECTION 421-A.

THE ESTIMATE OF THE ACTUAL ASSESSED VALUATIONS SET FORTH HEREIN ARE GOOD FAITH ESTIMATES, IT IS NOT POSSIBLE TO ESTIMATE IT WITH ANY DEGREE OF CERTAINTY, AND THUS SUCH ASSESSED VALUATION WHEN ACTUALLY MADE, MAY BE LESSER OR GREATER THAN AS ESTIMATED. IN NO EVENT WILL MY FIRM, THE SPONSOR, THE SPONSORS' COUNSEL, THE CONDOMINIUM BOARD OR ANY OTHER PERSON BE LIABLE IF THE ASSESSED VALUATION WHEN ACTUALLY MADE, IS LESSER OR GREATER THAN PREDICTED IF THE ADMINISTRATIVE CODE AND THE APPLICABLE RULES AND REGULATIONS OF THE CITY OF NEW YORK ARE IN THE FUTURE CHANGED OR IF THE FACTS AS REPRESENTED TO MY FIRM PROVE TO BE UNTRUE.

THE CITY OF NEW YORK MAY ASSESS EACH UNIT ON A BASIS THAT DIFFERS FROM THE ALLOCATION OF COMMON INTERESTS AND MAY BE EITHER HIGHER OR LOWER THAN REFLECTED IN SCHEDULE "A" IN FUTURE YEARS.

DUE TO POSSIBLE INCREASES IN THE TAX RATE AND/OR POSSIBLE FURTHER INCREASES IN THE PROPERTY'S ASSESSED VALUATION, REAL ESTATE TAXES MAY BE HIGHER THAN AS SET FORTH ABOVE, AFTER THE FIRST YEAR OF OPERATION AND IN FUTURE YEARS.

NO WARRANTY IS OR CAN BE MADE THAT THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OR THE NEW YORK CITY REAL PROPERTY ASSESSMENT DEPARTMENT, OR ANY OTHER AGENCY WITH JURISDICTION, WILL APPROVE SPONSOR'S APPLICATION FOR 421(a) TAX BENEFITS, AND NEITHER THE SPONSOR NOR ITS COUNSEL SHALL BE LIABLE IF, BECAUSE OF A CHANGE IN LAWS AND/OR REGULATIONS OR THE INTERPRETATION OF LAWS AND/OR REGULATIONS, IF THE FACTS REPRESENTED BY SPONSOR PROVE INCORRECT THE PROPERTY FAILS TO OBTAIN 421(a) BENEFITS. SHOULD TAX BENEFITS BE DENIED, IN WHOLE OR IN PART, THEN THE UNIT OWNERS WILL BE RESPONSIBLE FOR ALL OF THE



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## TAXES DUE AND OWING.

See section entitled "COUNSEL'S TAX OPINION" for further details.

The projected income tax deduction may vary in the future due to changes in real property taxes resulting from changes in the Assessed Valuation, the tax rate or the method of assessing real property.

The Board of Managers may make its own motion or by vote of a majority of the Unit Owners, to file a petition to challenge the real estate tax assessment in the Units. Otherwise, a Unit Owner shall have the right to individually challenge the real estate tax assessment on his/her Unit by filing the appropriate certiorari petition in a timely fashion. See Article IV Section 2.q. of the By-Laws.

We here by authorize the use of this opinion, or a reproduction thereof, in the Plan.

Very truly yours,

FORMAN & ASSOCIATES, pc



WARREN L. FORMAN

# FORMAN & ASSOCIATES, PC

Counsellors at Law

Warren L. Forman

Irving Cohen  
of Counsel

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New York, New York 10038  
(212) 791-5500  
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Gina Costa  
Paralegal

June 4, 2012

SDS COLUMBIA LLC  
132 Remsen Street  
Brooklyn, New York 11201

**RE: Offering Plan for the Conversation  
to Condominium Ownership of Premises:  
75 Columbia Street Condominium, Brooklyn, New York**

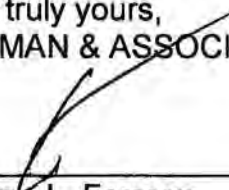
Ladies & Gentlemen:

You have requested our opinion concerning compliance with Real Property Law §339(i) in assigning the percentage of common interest to each Unit.

It is our opinion that, based upon the information provided by Brian Leary in his letter dated June 4, 2012, the Condominium is in compliance with Real Property Law Section 339(i)(1)(iv) in assigning the percentage of common interest to each Unit on the basis of the floor space, subject to the location of such space and the additional factors of relative value to other space in the condominium, the uniqueness of the unit, the availability of common elements for exclusive or shared use, and the overall dimensions of the particular unit. This sub-section of §339-i (ii) has been used due to the differing nature of the residential units from that of the Parking space Units. Generally, the common charges for the residential units are based upon the percentage of each unit's common interest was calculated pursuant to Real Property Law 339-i-(1)(ii) and is based upon the approximate proportion that the floor area of all the Units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements. The common charges for the Parking space Units are based primarily on the application of its proportionate share of the floor area as defined by the zoning laws, limited to those budget line items in which it benefits.

Very truly yours,  
FORMAN & ASSOCIATES, pc

By:

  
Warren L. Forman

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## **PART II**



**DESCRIPTION OF PROPERTY  
AND  
SPECIFICATION  
For  
75 Columbia Street, Brooklyn, NY**

a) Location and Use of Property

- 1) Address: 75 Columbia Street, Brooklyn, NY 11201
- 1) Block: 299, Lot: 1
- 2) Zoning: R6A
- 3) Permissible Uses: Residential
- 4) The building was designed under New City Quality Housing Program regulations (ZR28) and complies with the following:

28-11 Bulk Regulations

*Proposed building meets all bulk regulations: Max FAR allowed = 16,488 SF; max provided = 16,472.5 SF.*

28-12 Street Tree Planting

Provide and maintain along the entire street length of the zoning lot, one street Tree for every 25' of street frontage of the zoning lot.

Required:  $150'/25' = 6$  trees; but planting is limited by the corner location

*Provided: 3 trees: one tree every 25' feet & 40' feet away from street corners*

*(Payment will be made to the NYC Department of park for the rest of 3 trees to meet zoning requirement)*

28-21 Size of Dwelling Units

A dwelling unit shall have an area of at least 400 SF of floor area.

Provided: min. sf. of dwelling unit is 610 sf.; (the average GFS is 1315.5 SF)

28-22 Windows

All windows in the residential portion of the building shall be double glazed.

*Specified windows have two laminated glass layers separated by a 1/2" air space; the window assembly is rated 36 STC and 29 OITC.*

28-23: Refuse storage

Residential storage and removal locations shall be provided at the rate of 2.9 cubic feet per dwelling unit. A refuse disposal room of 12 SF min. with no dimension less than 3 feet shall be provided on each floor that has entrances to dwelling units..

Required: 11 D.U. X 2.9 CF = 31.9 CF total and 12 SF on each floor.

*Provided: 1st floor refuse room: 143 SF x 8.5'=1215.5 CF and the refuse area on each floor 2nd to 7<sup>th</sup> floors is min. 41 SF.*

*Minimum dimension of refuse disposal room: 5'-0" x 5'-0"*

28-25 Daylight In Corridors

Daylight is provided in corridor in each floor, visible from 50 percent of the corridor or from the vertical circulation core.

*Plan conforms to this: window is visible to entire corridor.*

**28-33 Planting Areas**

Space between street and street wall to be planted.

*Plan conforms to this.*

**28-41 Density for Corridor**

50% of corridor can be excluded from FAR calculation if each corridor serves less than 11 (R6) units.

*No corridor serves more than 2 units.*

**28-31 Required Recreation Space**

All development, enlargements, extensions and conversions with nine or more dwelling units or rooming units, shall provide a recreation area at least 3.3% of residential floor area.

*Total proposed building units: 11 (>9); Proposed residential floor area = 16,472.5 SF*

*Required recreation space =  $16,472.5 \times 3.3 = 544$  SF*

*Provided indoor recreation space: 405.6 SF + outdoor common roof terrace = 687 SF*

**28-32 Standards for Recreation Space**

(a) Proposed recreation space is accessible to the residents of the building.

*Plan conforms to this.*

(b) The minimum dimension of any recreation space shall be 15 feet. The minimum size of any outdoor recreation space shall be 225 square feet, and the minimum size of any indoor recreation space shall be 300 square feet.

*Proposed indoor recreation room:  $16'-4" \times 21'+5'-6" \times 9.6" = 405.6$  SF*

(c) Any indoor recreation room located in a story shall have 9.5 percent of the total floor space of the room and such windows shall meet the applicable requirements of Section 24-60 (court regulations and minimum distance between windows and walls or lot lines).

*Proposed recreation room is provided with window of total glazing area 161 SF*

*(29.6%), all facing street*

**28-50 Parking**

Parking spaces for 50% of proposed dwelling units should be provided

*$0.5 \times 11 = 5.5$  parking spaces. Spaces provided: 9*

**28-51 Screening**

All open accessory off-street group parking facilities shall be screened from dwelling units, adjacent zoning lots and "streets" in accordance with paragraph (a) of Section ZR 25-66.

*There will be no residential unit that has an opening facing directly into the proposed parking facility. Screening wall will be provided between street and parking on grade.*

This project is self-certified. GF 55 Partners, the Architect of Record, was not retained to perform controlled inspections. Sponsor retained Kline Engineering, P.C. for controlled inspections.

b) Status of Construction

- 1) Year Built: 2011-2012.
- 2) It is anticipated that new construction will be substantially complete as of October 2012.
- 3) Construction Classification: Class 1D, Fire-Resistive – New York City Building Code.
- 4) Certificate of Occupancy: The Certificate of Occupancy is pending substantial completion. Buyers are advised to visit the NYC DOB website (consumer tips) for recommendations when purchasing units in a condominium that does not have a Final Certificate of Occupancy. It is anticipated that a final Certificate of Occupancy will be obtained by Sponsor by April 2013.
- 5) New Building: Permit for application # 310151956 originally issued June 9, 2008.
- 6) A.D.A.: The building will comply with Local Law 58 of 1987 (Handicapped Access Law).

c) Site

The building is to be located within the boundaries of New York City in the Borough of Brooklyn on the block bounded by Columbia Street and Hicks Street and Warren Street and Congress Street.

- 1) The site area is 5,496 square feet.
- 2) The site will be occupied by one seven-story residential-use building with a cellar.
- 3) There are no streets owned or maintained by the project. However, the Condominium will be responsible for maintaining the sidewalks in accordance with the requirements of NYC Department of Transportation.
- 4) No sidewalk vaults are included in the construction.
  - i. The street exists and is paved with asphalt blacktop concrete and maintained by the New York City Department of Transportation and is in good condition.
  - ii. The curbing is steel faced concrete.
  - iii. Sewer catch basins for storm water run-off exist and are located at the curb and are also maintained by the New York City Department of Environmental Protection.
  - iv. Street lighting exists and is maintained by the New York City Department of Transportation.
- 5) There will be a driveway curb cut for grade level parking access. Existing sidewalks provide the pedestrian access into the building.
  - i. The sidewalk paving will be concrete, which will be placed in accordance with New York City Department of Transportation standards. Sidewalks are new, free of tripping hazards and ponding. Ramps and aprons will be ADA compliant.
  - ii. The curbing will be steel faced concrete.
  - iii. There are no catch basins on the sidewalks.
  - iv. The street lighting is the same as discussed in the previous paragraph.
  - v. All above items are or will be in conformity with applicable local Codes.

d) Utilities

National Grid supplies the building with gas and Con Edison supplies the building with electricity. The water is supplied by the New York City Department of Environmental Protection. The house sewer is connected to the New York City sewer system. Gas is metered one for heating and domestic hot water with a separate one for cooking. Electricity is master metered for common power and lighting and individually metered for each unit. Water service is master metered. There is a combined storm water and sanitary sewer in Warren Street, which services the site.

e) Sub-Soil Conditions

The building's foundation is concrete.. According to the Remedial Action Plan (RAP) by CA Rich Consultants, Inc. dated April 2008, revised June 2008, no Volatile Organic Compounds (VOC's) were detected in the on-site, however in accordance with the Limited Notice to Proceed –For Foundations (LNTP), dated June 23, 2008, issued by the NYC Department of Environmental Protection, the Sponsor installed a 15-mil STEGO Wrap vapor barrier below the basement slab and a passive subsoil depressurization system. A copy of the LNTP, NTP and the RAP are appended at the end of this report.

There is no sub-grade drainage system; but there is 6"-1'-0" of gravel below and around all foundation walls. There is 2" rigid insulation on the interior of the perimeter foundation walls to mitigate ad-freezing stresses.

According to FEMA maps, the building is located in a low to moderate risk area with an annual chance of flooding less than 1%. As the area is relatively flat, there is little potential for mudslide or erosion in the area.

f) Landscaping and Enclosures

- 1) The rear yard of the site will be paved with asphalt and provide outdoor parking for nine cars.
- 2) There are street trees on the sidewalks 42'-10" apart. Planted trees are based on New York City Parks Department requirements.
- 3) There is an existing 6' brick wall that encloses the rear yard on the north that is in fair to good condition and a new 8'-0" wall will enclose it on the south. This wall will be a combination of brick piers and iron railings; in compliance with ZR 35-66 it will be no more than 50% open, The adjacent brick building to the east completes the enclosure of the yard. This building was built in 1931, is 2 stories high and is in fair to good condition.
- 4) There will be no display pools or fountains.

g) Building Size

- 1) The height of the building is 70'-0" to the top of the highest structural roof slab.
- 2) There is a cellar in the building.
- 3) The maximum number of floors is seven.
- 4) There is a stair bulkhead 9'-0" above the roof on the building.
- 5) There are air conditioning condensers and toilet and kitchen exhaust fans on the roof. All other mechanical equipment is in the cellar.
- 6) The parapets of the building are a minimum of 3'-6" above the finished surface of the roof.



h) Occupancy

The Residential Units consist of 11 apartments.

i) Structural Systems

The building is supported on concrete foundations bearing on soil with a minimum bearing capacity of 3 Tons per square foot. The cellar floor is a concrete slab on grade. The floors above are concrete on metal deck slab supported by lightweight steel framing and masonry bearing walls. The basement and the portion of the floor slab that is on-grade is waterproofed with 60 mils thick Bituthene sheet waterproofing membrane.

The building is designed for the following floor loads:

|                   |                   |                  |                    |
|-------------------|-------------------|------------------|--------------------|
| First Floor Apt.: | Live Load: 40psf  | Dead Load: 70psf | Total Load: 110psf |
| Lobby & Gym       | Live Load: 100psf | Dead Load: 85psf | Total Load: 185psf |
| Typical Floor:    | Live Load: 40psf  | Dead Load: 85psf | Total Load: 125psf |
| Terraces:         | Live Load: 60psf  | Dead Load: 85psf | Total Load: 145psf |
| Roof:             | Live Load: 60psf  | Dead Load: 85psf | Total Load: 145psf |

The Structural Engineer is Structural Engineering Technologies P.C.

1) Exterior of Building:

- i. The south and west walls are concrete block (CMU) with brick veneer. The east wall is metal studs with brick veneer. The north wall is EIFS panels on CMU. There is 1" or 2" rigid insulation between brick and CMU with an additional 2.5" batt insulation on the interior side of the CMU walls. Portions of the south and east walls of the building have precast stone panels on the ground floor level. The roof is insulated with rigid tapered insulation with an average R-value of 20. Insulation is compliant with NYS ECCC. R and U values have been calculated as follows:

|                                              | U-Factor | (Wall R Value) |
|----------------------------------------------|----------|----------------|
| <b>South Wall</b>                            |          |                |
| 1-7th Floor Street Walls-CMU+1"<br>Ext.Insul | 0.077    | 12.99          |
| 6-7th Floor Balcony - Stud+1"<br>Ext.Insul   | 0.073    | 13.70          |
| <b>West Wall</b>                             |          |                |
| 1-7th Floor Street Walls - CMU+2"<br>Ext Ins | 0.056    | 17.86          |
| 6-7th Floor Balcony - Stud+1"<br>Ext.Insul   | 0.073    | 13.70          |
| <b>North Wall</b>                            |          |                |
| 1-7th FL                                     |          |                |
| CMU+Insulation or EIFS (2" Ext.<br>Insul)    | 0.056    | 17.86          |

|                                        |       |       |
|----------------------------------------|-------|-------|
| East Wall                              |       |       |
| 1-7th Floor TYP.- Stud + 1" Ext. Insul | 0.073 | 13.70 |
| Stair wall-CMU + 1" Ext. Insul         | 0.077 | 12.99 |

- ii. All residential windows will be aluminum with a clear anodized finish, caulked with acrylic caulking throughout.
  - iii. Windows are mounted on blocking and brick with aluminum sills. Manufacturer's air infiltration and water resistant rating are sufficient to withstand ambient weather condition. As per manufacturer, all aluminum window and patio door sash and main frames are warranted against structural failure for 20 years period from the date of purchase. Aluminum window and terrace doors are standard anodized finish and are warranted against cracking, peeling, flaking, blistering, or corroding for a period of 8 years from a date of purchase. Windows shall be Gamcorp or equal 1 1/8" insulated glass casement windows consisting of 3/8" laminated exterior, 1/2" airspace and 1/4" laminated interior, with an Outdoor-Indoor Transmission Class (OITC) rating of 30 dBA minimum. Light and air requirements of the NYC ZR Section 28-22 have been met.
  - iv. Terrace Doors: 2 1/4" doors consisting of 1/4" glass ply, 1/2" airspace and 1/4" ply with 0.03 PVB layer with an OITC of 30 dBA.
  - v. The building shall comply with the requirements of NYC Local Law 11. The first inspection shall be five years after the date of the first Temporary Certificate of Occupancy.
- 2) Parapet and Copings:
- The parapets are framed with CMU, finished with brick veneer on the outside on the south, and the west façades, framed with CMU, finished with E.I.F.S. on the outside of the north façade, framed with structural steel stud and finished with brick veneer on the east façade; with stucco inside. There will be a metal coping and flashing over wood blocking anchored to the masonry wall below.
- 3) Chimney and Caps:
- i. There is one chimney flue for the boiler and vent for the garbage chute; these are brick veneer on block with metal flashing and caps.
  - ii. Chimney for boiler vent shall be 304/316 aluminum steel double wall with 1" air space insulated.
- 4) Terraces:
- i. Sixth Floor Apartment 6 has a 282 SF private terrace.
  - ii. Seventh Floor Apartment 7 has a 90 SF private terrace on the seventh floor and a 489 SF terrace at the roof level.
  - iii. There is a 687 SF common space recreation area on the roof. This area will have 2'x2'x 2" thick concrete pavers the finished surface. It area will be accessible to the building elevator and the 2 fire stairs. There will be a natural gas supply line for a barbecue grill and a frost free hose bibb for common use. There will be no plantings or other furnishings supplied by Sponsor.

- iv. The 42" parapet walls enclosing this common roof area will have six wall mounted down lights to provide for general illumination of this common space.
- v. A combination waterproof GFCI and AFCI electrical receptacle and a wall mounted light is typical for each terrace.
- vi. All terraces will have concrete pavers.
- vii. All exterior metals, including fasteners, shall be corrosion resistant.
- viii. Horizontal railings, if any, without protection for ladder effect pose a serious safety risk for children.
- ix. All terraces are provided with roof drains, either 3" diameter or 4" diameter, depending on the size of the terrace. Roofs pitch to the drain and pavers are set on spacers to allow for drainage. Perimeter edge drip grooves will not be used.
- x. Balconies and terraces must remain open as-built. If the owner wants to install an enclosure, and the condominium by-laws would allow it, the enclosure must be built with the proper approvals and in strict compliance with the requirements of the NYC DOB.

#### 5) Exterior Entrance:

The Residential Unit will have one exterior residential lobby entrance from the Warren Street side of the building.

- i. The exterior residence entrance door to the lobby area is a 1/2" tempered frameless glass door by Gamcorp with a 1" diameter tubular stainless steel door pull with brushed finish (US32D) by Rockwood or equal; door shall have an Adams Rite electric strike, 12v or equal..
- ii. There is no drainage provided for the entrance, which is within 1'-6" from the property line. However, the side walk in front of the entrance pitches to west and should be provide adequate drainage.
- iii. The vestibule door and frame are similar to the lobby entrance.
- iv. Main entrance to be graded to create accessible pedestrian as well as barrier free entry from sidewalk. Exterior entrances shall be built free of tripping hazards.
- v. The door to the parking area shall be 90 minute fire rated self-closing hollow metal door with commercial grade lever lock, brushed nickel finish by Yale Lock or equal.
- vi. Mailboxes, located in the vestibule, are horizontal front-loading, front locking and made of extruded aluminum.
- vii. There is fluorescent lighting at the exterior entrance door.
- viii. Corrosion resistant locks, hardware/fasteners shall be provided.
- ix. Rolling door to parking area: metal mesh grill, chain hoist operated using motor operation. Curtains are to be fabricated of horizontal rods spaced not more than 2" on centers that run continuously from jamb to jamb.. Bottom of curtain to be reinforced with two steel angles of equal weight, not less than 1/8 thick. Guides: Are to be of extruded aluminum with double wool piling to contact both faces of grille. Brackets: are to be of steel. Sealed ball bearings to support the counter balance assembly. Brackets to form end closures and support hoods. Stainless steel to be #4 satin finish. Steel surfaces are to be painted one shop coat of rust inhibiting primer.

6) Service Entrance:

There is an entrance door from the driveway of the parking area into the hallway of the first floor and double doors from the Compactor Room into the driveway of the parking area.

7) Roof and Roof Structures:

The building's roof is newly surfaced as part of the construction.

i. Type of roofs

1. The material used on the roof is a double ply torch down applied modified bitumen membrane. Roof to include Johns Manville (JM) Asphalt Primer; one ply JM DynaWeld Base SBS modified bitumen base sheet, JM Tapered ENRGY 3 polyisocyanurate roof insulation, one layer JM ½" Dura Board cover, and 2FID-HW roofing membrane consisting of one SBS modified bitumen base ply JM DynaWeld Base and one SBS modified bitumen cap ply of JM DynaWeld Cap FR.
2. The normal expected life of the roof is 10 to 12 years.
3. The roof manufacturer will provide a 10-year guarantee for materials and labor.
4. Roof insulation is 4.5"-5" tapered rigid insulation, min R value = 30.
5. Flashing materials used are aluminum sheet as per manufacturer's recommendations.
6. All exterior metals, including fasteners shall be corrosion resistant.
7. Dunnage for equipment shall be primed with a rust inhibiting primer that is VOC and HAPS compliant and contain no heavy metals. Two coats of alkyd paint shall be applied over the primer.
8. Rooftop mounted mechanical equipment shall be mounted on 1" thick natural rubber load bearing pads with maximum deflection of 0.125".

ii. Drains. The roof is pitched for water run-off of storm water.

1. There are three drains on the roof, and one drain each on the 6<sup>th</sup> floor and 7<sup>th</sup> floor terraces. There are floor drains in the boiler room, water meter room, pump room, and refuse/recycle room. There are three ground drains in the parking area. All roof, floor and ground drains will have cast iron bodies.
2. There are continuous aluminum gutters at one side of the bulkheads leading to a splash block on the main roof.

iii. There are no skylights, except above the interior stair in Apt. 7. Ventilation is provided by windows with louvers at the bulkheads, as required by New York City code for ventilation.

iv. There are bulkheads for stairs and the elevator. All bulkheads will have a E.I.F.S. finish. Bulkheads to have metal fascia/coping at the top and metal flashing at base typical.

v. Rooftop Facilities: Unit owners shall not have any right to install structures or to perform any construction on private terraces, cabanas or roof areas without approval of a third party architect retained by the condominium board.

8) Fire Escapes:

There are no fire escapes.



9) Yards and Parking:

There is no rear yard or rear yard requirement. Open space in the rear of the building is paved with asphalt to provide parking.

The parking area is provided with three 4" dia. garage drains and 2 clean outs. Nine parking spaces are provided, including one that is handicapped accessible. Signage, striping and pavement markings shall conform to all NYC DOB and DOT requirements.

10) Interior Stairs:

There are two interior fire stairs in the building.

- i. These are serving as means of egress from each floor of the building.
- ii. The egress stairs are within a stair shaft constructed of fire rated wall assembly.
- iii. All stairs are concrete filled metal pan stairs. Stringers shall be C10 x 2 ¼ x ½".
- iv. Stair hand rails and guardrails are 1 ½ " diameter ASTM A 53 steel. Fittings and brackets shall be flush type malleable iron.
- v. Stair pans for concrete treads shall be 12 gauge steel pre-formed treads.

11) Sound Insulation

Units on the north side of the building (A Units) are separated from the building core by a 5/8" layer of gypsum board on 1 5/8" metal stud with a 1½" batt insulation and 2" air space and 6" CMU wall. For units on the south side of the building (B Units): two layers of 5/8" gypsum board on each side of 6" stud walls and 2½" batt insulation provides sound insulation between the interior of the unit and the building corridor. Interior partitions within the apartments are one layer of 5/8" insulation on either side of a 3 5/8" stud with 2½" batt insulation. Ceilings have 3" batt insulation between joists and one layer of 5/8" gypsum board.

12) Interior Doors and Frames:

- i. Apartment entry door from a public corridor are 1½-hour rated hollow metal door in metal frame with self-closing hinges. All interior apartment doors are wood solid core doors.
- ii. All egress stair doors are 1½-hour rated hollow metal door in metal frame with spring hinges.
- iii. Roof doors are 1½-hour rated hollow metal in metal frame with a self-closing device.
- iv. All self-closing fire rated doors shall be labeled.

13) Elevators and elevator cabs:

- i. There is one passenger elevator.
- ii. Elevator is by Kone, 150 FPM with maximum capacity of 2500 lbs.
- iii. Elevator is automatic with overhead traction.
- iv. Floors served are first floor – roof (eight landings).
- v. Doors are automatic sliding side doors.
- vi. Elevator equipment closet is located on the roof level.
- vii. Inside cab height is 8'-0".
- viii. Elevator cab finishes are stone or tile floor to match lobby and stainless steel panels. The elevator is furnished with an aluminum saddle.

j) Auxiliary Facilities

- i. There is a refuse room on the ground floor and on each of the floors. There is a refuse compactor/ recycling system Model #TRC-2S by Tower Recycling. The garbage chute shall be 24" diameter, 16 gauge stainless steel.
- ii. There is no incinerator.
- iii. Public pick-up of refuse is by the City of New York.
- iv. Public parking in the vicinity is adequate. In addition, there is on grade parking for 9 spaces in the rear of the building.
- v. There is no common area laundry facility. All units are equipped with a clothes washer and dryer, as specified below,
- vi. There is a 547sf multi-purpose room accessible from the building lobby on the first floor/ It will be finished with painted gypsum wallboard on the walls and ceiling. The floor will be finished with 2'x2' rubber backed glue down carpet tiles. Painted wood trim will be installed along the wall base and around the doors. The ceiling will have recessed fluorescent light fixtures and ceiling mounted diffusers for heat and air conditioning. Convenience electrical outlets along the walls in this room will be in accordance with the code. There will be an outlet for cable television located up high along the east wall in this space. No other furnishings will be supplied by Sponsor. This room is adjacent to a unisex handicapped compliant restroom with tiled floor..
- vii. There are no fireplaces.

k) Plumbing and Fire Protection.

On the date of this submission, the following permits had been obtained:

- 31015196-02-PL: Mechanical, Boiler and Plumbing, issue date: Oct. 17, 2011
- 320440634-01-EW—SP: Sprinkler, issue date: May 7, 2012

Sponsor will be obtaining a permit for the Fire Alarm system.

1. Domestic Water

- a. A new four-inch combined domestic and fire service will enter the cellar. Both services are metered and provided with a back flow prevention device. A hydrant flow test was performed on July 1, 2011 by the Department of Environmental Protection. The test results are as follows: 55 pounds static, 54 pounds residual with 500 gpm flowing. The service will feed all fixtures by a duplex domestic water booster pump. Hot and cold water distribution for domestic uses are provided via copper and brass piping. Hot and cold water piping throughout the building is insulated with 1" fiberglass insulation.
- b. Domestic hot water for each dwelling unit is provided by a duplex central gas fired hot water heater/boiler in the basement and pump and storage tank system located in the Boiler room in the cellar. The boilers/heaters are rated for 750 MBH each with two TurboMax T- 109 indirect storage tanks or equal.
- c. Dedicated hot water and hot water return risers are provided. Distribution of the risers is via a pipe chase from the cellar to the 7<sup>th</sup> floor.
- d. Water pressure will be maintained with two duplex water pumps located on in the ground floor pump room.

- e. The main shut off valve and backflow preventer are located in the Water Meter Room in the southwest corner of the cellar.
  - f. Undersides of sinks will be checked for leaks after installation.
  - g. Instant hot water devices will not be provided.
2. Sanitary Drainage System
- a. Cast iron bell and spigot and no-hub sanitary risers to each floor provide sanitary drainage and venting. Sanitary waste from each fixture will drain by gravity to a combined sanitary and storm sewer in the cellar.
  - b. A combined sanitary and storm sewer is the only sewer available at this location.
  - c. Cast iron vent pipes shall be manufactured by Charlotte Pipe and Foundry Company. Vent pipes shall be 7' min. above accessible roofs and 2' above bulkhead roofs.
3. Storm Drainage
- a. All storm drainage from roof and terraces is directed to a detention tank located under the grade level parking area. The restricted discharge from the detention tank will run to the existing 6" combined public sewer in Warren Street. Storm and sanitary will combine inside the building property line and connect to the combined sewer on Warren Street with a 6-inch line.
  - b. Approximately 3 roof drains, 2 terrace drains and 2 ground drains will collect storm water from various levels of the roof.
  - c. Storm drainage piping is bell and spigot and no-hub cast iron.
4. Natural Gas
- a. A new National Grid gas service will enter the cellar and split to three meters. One twin set meter is dedicated for apartment gas cooking ranges and the second will serve gas boilers.
  - b. Black steel risers will provide gas to each unit for cooking in each apartment.
5. Fire Protection
- a. One 4" combined domestic and sprinkler water service will enter the cellar. The service will come from a 6" water main in Warren Street. Based on the available street pressure a 400 gpm sprinkler booster pump is required. The 4-inch service will feed one sprinkler riser in the hallway and one sprinkler riser in the garbage chute.
  - b. Each floor is fully sprinklered, connected to the sprinkler riser and have a 2 ½" floor control valve assembly, complete with OS&Y valve, flow switch and inspectors test connection and drain riser. The riser is located in the stair. The system is provided with two Siamese connections.
  - c. Sprinkler piping is steel with threaded joints. Piping and fittings 2-inches and larger may be provided with Victaulic type fittings.
  - d. The tenant and heated areas are provided with a wet system. Sprinklers are quick response residential pendant or side wall type and upright type in exposed ceilings.

- e. On the date of submission of this Offering Plan, sprinkler service will not yet be complete therefore a sprinkler inspection is not currently available. Sponsor will follow through with all required inspections.

l) Heating, Ventilation and Air Conditioning

1. Space Heating

The heating system is designed to maintain 70 deg. F in apartments when outdoor temperature is 0 deg. F.

- a. There are two (2) boilers, 750 MBH input capacity each. Boilers are manufactured by Laars Co., Model PNCH-750 or equal by Weil McLain. Boilers are rated for 85% efficiency.  
Boilers' control is furnished by manufacturer. The temperature control is electronic type with touchpad and will control the boiler stage firing. The heater display will have diagnostic lights which include power on, call for heat, pump on stage 1, stage 2 and service. The heater display is visible without the removal of any jacket panels or control panels.
- b. Single pipe system perimeter fin tube radiators will supply heating to the units; radiators shall be by Zehnder Rittling or equal by Runtal.
- c. Boilers' capacity is based on the required heating and domestic hot water load. Domestic hot water is supplied through an indirect heater.
- d. Operation and Maintenance manuals will be provided to building management.

2. Air Conditioning

- a. Air conditioning is provided to each unit by air cooled condensers located on the roof (one each for units on Floors 1-5, two each for units on the 6<sup>th</sup> and 7<sup>th</sup> floors), with cooling capacity sized between 2-3 tons, Trane Models 4TTB3024D, 4TTB3030D or 4TTB3036D, or equal, depending on the area served. Air handlers are located within each unit (one each for units on Floors 1-5, two each for units on the 6<sup>th</sup> and 7<sup>th</sup> floors) with 600, 900 or 1200 CFM capacity, Trane Models TAM4A0A24S21SA, TAM4A0A30S21SA, TAM4A0A36S21SA, or equal, depending on location. Air handlers are provided with vibration isolators and flexible duct connections.
- b. Air conditioning ducts shall be insulated with 1.5" thick Johns Manville insulation, ASTM G21/22 with R = 4.2.
- c. Roof mounted air condensers are by Carrier and have sound level 74 dBA with accessory sound blanket.
- d. Air conditioning is provided to the Gym/Recreation Room by a 4 ton Trane air cooled condenser, Model 4TTB3048D, or equal, located on the roof. The air handler has 4 ton capacity, Trane Model GAMB5AOC48M41SA and is located within the room. It is provided with vibration isolators and flexible duct connections.
- e. All exterior metals, including fasteners shall be corrosion resistant.

3. Ventilation

- a. Mechanical exhaust is provided for all bathrooms at 50 CFM.



- b. Building's corridors are ventilated by a through wall unit in each corridor. Units will introduce 100% outdoor air to corridors at 100 CFM at each floor and shall be Greenheck, Model CSP-A110.
- c. The Compactor Room and Trash Closet on each floor are ventilated with exhaust fans Greenheck G-090-VG at 550 CFM.
- d. There is no required ventilation for laundry closets, clothes dryers and storage spaces.
- e. Toilet and kitchen ventilation fans are rated at 55-56 dbA at the roof level. Insulation is provided to reduce sound within dwelling units.

m) Electrical Systems

1. Electrical Service

- a. The building incoming service shall be 120/208 volts, 3 phase, 4 wire.
- b. The service is provided by three (3) service switches: (1) at 400 Ampere will service the house loads; (1) 400 ampere will service tenant meter centers; and (1) 400 ampere will service the fire pump.
- c. Three bedroom apartments will each have 125 Ampere 120/208 volt, 1 phase, 3 wire service. The one bedroom apartment will each have a 100 Ampere 120/208 volt, 1 phase, 3 wire.
- d. Each unit is provided with a dedicated Con Ed meter and a single meter is provided for all house loads. All house, tenant metering and distribution switchboard is located in the main electric room in the cellar.
- e. All residential units shall have at least four (4) appliance circuits, two (2) lighting circuits, at least four (4) receptacle circuits and one individual air conditioning circuit for each one or 3 bedroom unit; and 2 individual air conditioning circuits for the apartments on the 6<sup>th</sup> and 7<sup>th</sup> floors. GFCI type receptacles are provided in all bathrooms and kitchens and AFCI circuits are provided in compliance with all applicable codes. Branch circuiting is provided in accordance with Article 210 of the 2005 N.E.C. / N.Y.C. supplement. There are no three way switches.
- f. Each unit is provided with lighting fixtures in hallways, kitchen, bathrooms, living rooms and bedrooms. Bedrooms are also provided with switched receptacles.
- g. An average of five (5) outlets is provided in each kitchen, bedroom and living areas. In accordance with the air conditioning unit manufacturer's recommendation, a dedicated 20 or greater amp outlet is provided for each of the condenser and air-handling units. Receptacles are provided in accordance with Article 210 of the 2005 N.E.C. / N.Y.C. supplement.
- h. All electrical receptacles in Child Play areas, if any, shall be tamper resistant. Electrical receptacles in exterior locations shall be water resistant.

2. Low Voltage Systems

- a. Each unit is provided with a video intercom station to provide communication between each unit and the entrance. In addition, a remote, video concierge service is provided.
- b. Each unit shall be provided with cable television outlets with connections to either Time Warner or Verizon.
- c. Security cameras are provided in the elevator and at all entrances.
- d. Each unit with is provided with telephone outlets in bedrooms, living areas and kitchens wired back to the local structured wiring cabinet.

3. Lighting
- a. Lighting circuits in the common areas are fluorescent fixtures and connected to the house meter.
  - b. Lighting in hallways not used for emergency lighting shall be controlled by occupancy sensors.
  - c. Main doorway entry lighting is either fluorescent or HID (High Intensity Discharge) lighting and controlled via time clock and connected to the house meter.
  - d. Emergency lighting is provided in all public spaces.
- n) Safety Devices  
Hardwire smoke and carbon monoxide detectors shall be provided per NYC Building Code. Maintenance of these devices within the dwelling units shall be the responsibility of the unit owner. Devices in common areas shall be maintained by the Condominium's building management.
- o) Intercommunication Devices  
A virtual doorman service will be provided by Virtual Security System, allowing for screening of visitors to the building and for deliveries to a secured closet, as well as monitoring of security cameras in various locations.
- p) Television Reception Facilities  
Building is wired for cable television.
- q) Public Area Lighting  
Adequate lighting is provided in all public areas.
- r) Recreation Facilities  
There is no swimming pool.  
There are no tennis courts.  
There is a 547 sf common area recreational lounge/gym at ground level.  
There is a 687 sf common area terrace on the roof.
- q) Additional Items  
Permits and inspection include:  
Building Permit, Plumbing, Sprinkler, Air Conditioning Equipment, Boiler Equipment, Elevators, Electrical. A Final Certificate of Occupancy will be issued only after all inspections are complete.  
All controlled inspections are being done by:  
Arnold Kline, P.E.  
Kline Engineering, P.C.  
52 Central Drive  
Farmingdale, NY 11735

There are 2 ECB violations on record as active at this time:

34921526M dated 11/15/2011 regards monitoring of adjacent buildings during excavation. This work was performed and this violation will be corrected with the filing of a certificate of correction prior to seeking a certificate of occupancy.

34921527Y dated 11/15/2011 was for failure to perform inspection and document conditions of existing structure. Pre-construction surveys had been conducted prior to construction, however these were not available on site at the time of the inspection. This violation will be corrected with the filing of a certificate of correction prior to seeking a certificate of occupancy

There is one DOB violation on record as active at this time:

091208CEX01ADS dated 9/12/08 for failure to approved plans at the time of inspection, when foundation work was being performed: the job super was offsite at time of section. This violation will be addressed prior ot seeking a certificate of occupancy.

There are two active complaints:

3418287 dated 7/16/12 with regard to noise on a Saturday morning before 10 a.m. This situation has been rectified, and the DOB has not taken action on this item.

3421761 dated 8/19/12 with regard to afterhours work. This situation has been rectified, and the DOB has not taken action on this item.

r) Residential Unit Information

The square footages listed below are the GROSS area of each unit. The approximate floor to ceiling height is 8'-4" on the first floor, 8'-10" on the second, third floors, and fourth floors, 8'-8" in Apt. 5A and 8'-0" in portions of Apt. 5B, 8'-8" on the 6<sup>th</sup> and 7<sup>th</sup> floors, except in some bathrooms, kitchens, and other soffitted areas that have dropped ceilings, which are a minimum of 7'-6", as allowed by New York City Building Code.

Square feet for each Unit

| Unit | No. Bedrooms & Baths | Approx. Sq Unit. Ft. of Units | Approx Exterior Sq. Ft. | Approx LCE Sq. Ft. |
|------|----------------------|-------------------------------|-------------------------|--------------------|
| 1    | 1 BR/ 1 BA           | 610                           |                         | 135                |
| 2A   | 3 BR/ 2 BA + H       | 1,265                         |                         | 40 (Shared)        |
| 2B   | 3 BR/ 2 BA + H       | 1,273                         |                         | 40 (Shared)        |
| 3A   | 3 BR/ 2 BA + H       | 1,265                         |                         | 40 (Shared)        |
| 3B   | 3 BR/ 2 BA + H       | 1,273                         |                         | 40 (Shared)        |
| 4A   | 3 BR/ 2 BA + H       | 1,281                         |                         | 40 (Shared)        |
| 4B   | 3 BR/ 2 BA + H       | 1,273                         |                         | 40 (Shared)        |
| 5A   | 3 BR/ 2 BA + H       | 1,281                         |                         | 40 (Shared)        |
| 5B   | 3 BR/ 2 BA + H       | 1,273                         |                         | 40 (Shared)        |
| 6    | 4 BR/2.5 BA + D + T  | 1,896                         | 282                     | 282                |
| 7    | 4 BR/2 BA +T + RT    | 1,781                         | 90 T; 489 RT            | 579                |

D = Den      T = Terrace      RT = Roof Terrace      LCE = Limited Common Element

The above dimensions are based on the plans; as built room sizes may vary within 5% of this. Purchasers should verify each room and closet dimensions to their satisfaction prior to closing.

The portion of the end of the hallway for Units 2A and 2B; Units 3A and 3B; Units 4A and 4B; units 5A and 5B will be a shared Limited Common Element (LCE) which shall be for the sole use of and maintained by the owners of said Units. Unit 1 shall have an entrance from within the unit and an easement for use of the Pump Room for storage, however the condominium shall have an entrance and access to this room from the common area for maintenance.

Type of finishes in apartments:

| Space            | Floor                | Base            | Wall                                                                                                    | Ceiling     |
|------------------|----------------------|-----------------|---------------------------------------------------------------------------------------------------------|-------------|
| Living / Dining  | Wood                 | Wood            | Painted GWB                                                                                             | Painted GWB |
| Bedrooms         | Wood                 | Wood            | Painted GWB                                                                                             | Painted GWB |
| Kitchens         | Wood                 | Wood            | Painted GWB<br>Thermofoil kitchen cabinets; high gloss Caesarstone counter tops with corian backsplash. | Painted GWB |
| Bathrooms Junior | Stone Tile 12" x 24" | Stone Tile Base | Painted GWB, Ceramic tile on on the wet wall.                                                           | Painted GWB |
| Bathrooms Master | Stone Tile 12" x 24" | Stone Tile Base | Painted GWB, Ceramic tile on wet walls                                                                  | Painted GWB |

All gypsum board dry wall shall be locally produced and shall not contain strontium sulfide.

All painted surfaces, prime coat and two coats minimum.

All wood flooring is 3/4" oak wood installed over a 3/4" plywood subfloor.

Bathroom fixtures: Bathrooms are equipped with the following:

- i. Toilet: Toto, MS853113E
- ii. Shower in Master Bath: Kohler - Archer K-1122 or equal; drain: Kohler - Clearflo - K-7272 or equal
- iii. Bathtub 2nd Bath: American Standard - Cambridge -2460.002; Drain - Gerber - Roman - 41-813 or equal
- iv. Shower Body at tubs: Danza 500058T, stainless steel or equal.
- v. Lavatories: cultured marble with integral sink or equal.
- vi. Faucet Master/ Junior: Danza D331558, stainless steel or equal.

Kitchen equipment is provided as follows:

- i. Cabinets base and upper: white thermofoil.
- ii. Countertops: Caesarstone countertops with corian backsplash.
- iii. Sink: Kohler K-2330 or K2297, depending on kitchen size: under counter stainless steel sink except where under sink dishwasher is installed; GE GPF96 or equal with under sink dishwasher.
- iv. Faucet: Danza D457058, stainless steel



- v. Stove: Bertazzoni 30" Open Burner Range X304GGVX. In Unit 1 only: Bertazonni, 24" X244GGVX
- vi. Microwave LG Electronics Model # LCRT2010ST.
- vii. Refrigerator: Fisher Paykel E522BRX.
- viii. Dishwasher: Bosch SHX43RUC except in Apt 1; GE GSM2260VSS undersink model in Apt. 1

**Washer / Dryers**

All apartments are furnished with 27" washer/ and vented gas dryers within closets, Kenmore Model 71532.

**t) Finish Schedule for Common Interior Spaces**

| Space                           | Floor    | Base            | Wall                  | Ceiling     |
|---------------------------------|----------|-----------------|-----------------------|-------------|
| Lobby                           | Tile     | Tile            | Painted GWB           | Painted GWB |
| First Floor Lounge              | Carpet   | Vinyl           | Painted GWB           | Painted GWB |
| Boiler, Meter and Storage Rooms | Concrete | Painted Masonry | Masonry / GWB Painted | Painted GWB |

**u) Safety Devices**

Hard-wired smoke and carbon monoxide detectors are installed adjacent to bedrooms in all apartments.

**v) Additional Information**

Unit / Boundaries are the inner face of walls surrounding each unit. All other area, including demising walls between units, exterior walls and building party walls are Common Areas. All Service Areas are Common Areas.

**Documents to be transferred to the Condominium Management**

The following documents shall be transferred to the condominium management upon transfer of control; to the extent such documents exist:

Operation & Maintenance manuals for mechanical equipment

Electronic systems manuals

Decommissioning manual (if applicable)

Equipment warranties

Roof Warranty

Major equipment start up sheets

Control system as built

Original test and Balance Report for HVAC system

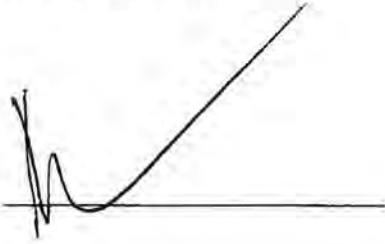
In-Door Air Quality report

Final as built drawings as maintained during construction

- w) There is no asbestos used in the construction of the development.
- x) There is no lead paint used in the construction of the development.
- y) There will be no further development on this property.

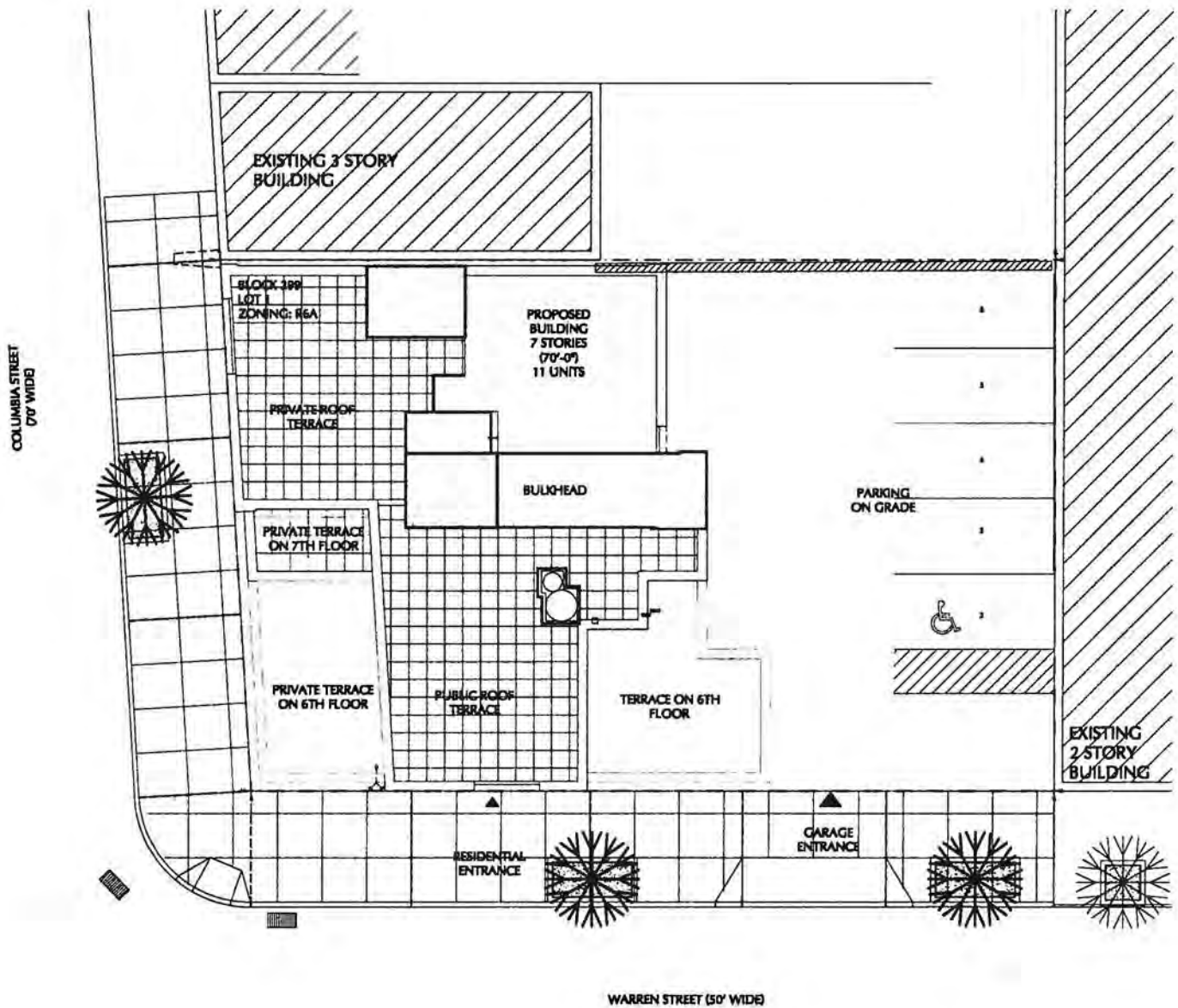
NAME: David E. Gross, RA, AIA  
FOR GF55 Partners

SIGNATURE:

A handwritten signature in black ink, starting with a vertical line, followed by a series of loops and a long, sweeping diagonal stroke that extends upwards and to the right.

SEAL

PROPOSED REVISION WILL BE IMPLEMENTED IN STRICT COMPLIANCE WITH DOB'S REQUIREMENTS, AND THE SAME WILL BE REFLECTED IN THE FINAL CERTIFICATE OF OCCUPANCY.



## SITE PLAN

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

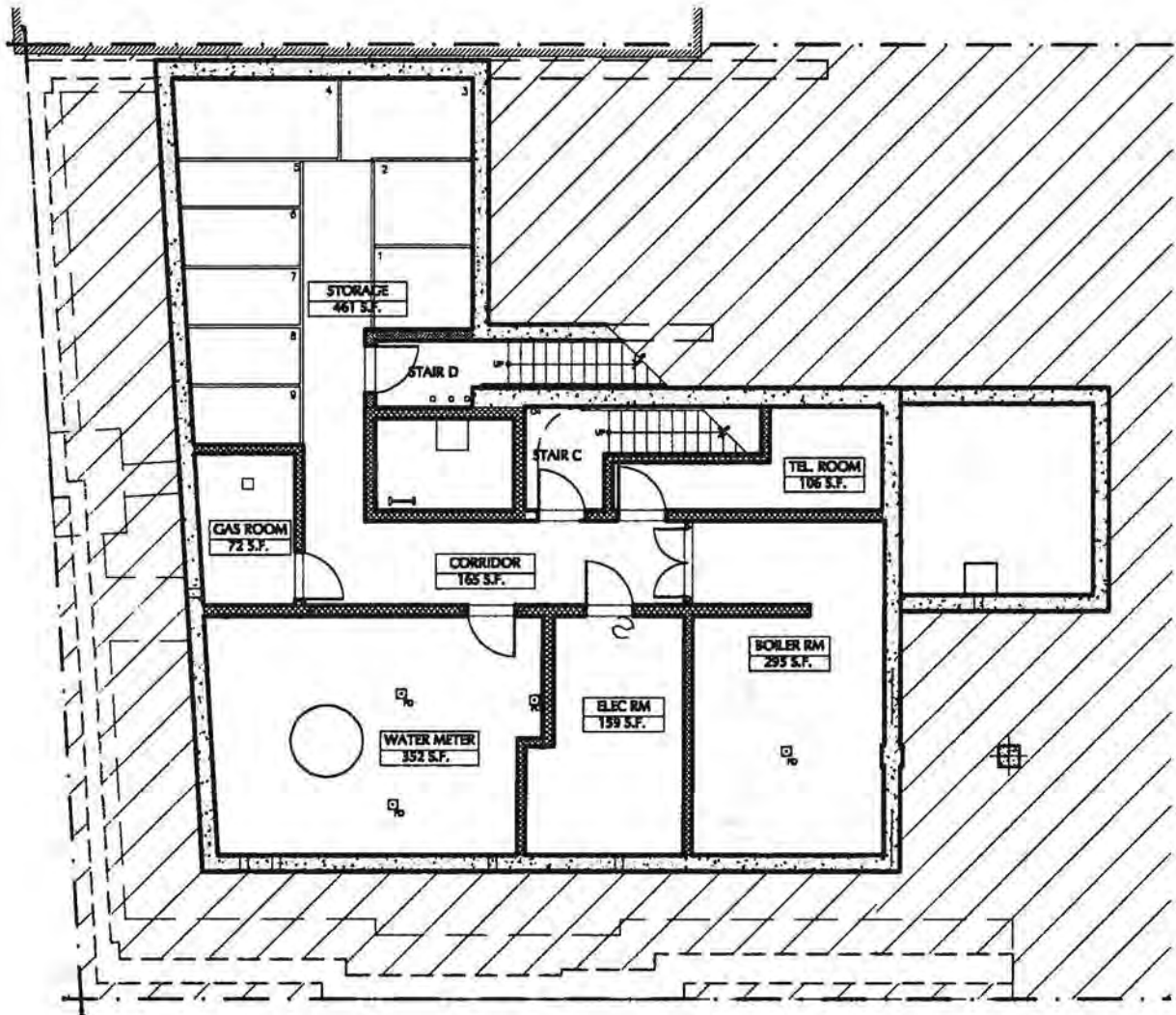
75 COLUMBIA CONDOMINIUM

75 COLUMBIA STREET  
BROOKLYN, NY

Date: August 24, 2012



PROPOSED REVISION WILL BE IMPLEMENTED IN STRICT COMPLIANCE WITH DOB'S REQUIREMENTS, AND THE SAME WILL BE REFLECTED IN THE FINAL CERTIFICATE OF OCCUPANCY.



**CELLAR**

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

## 75 COLUMBIA CONDOMINIUM

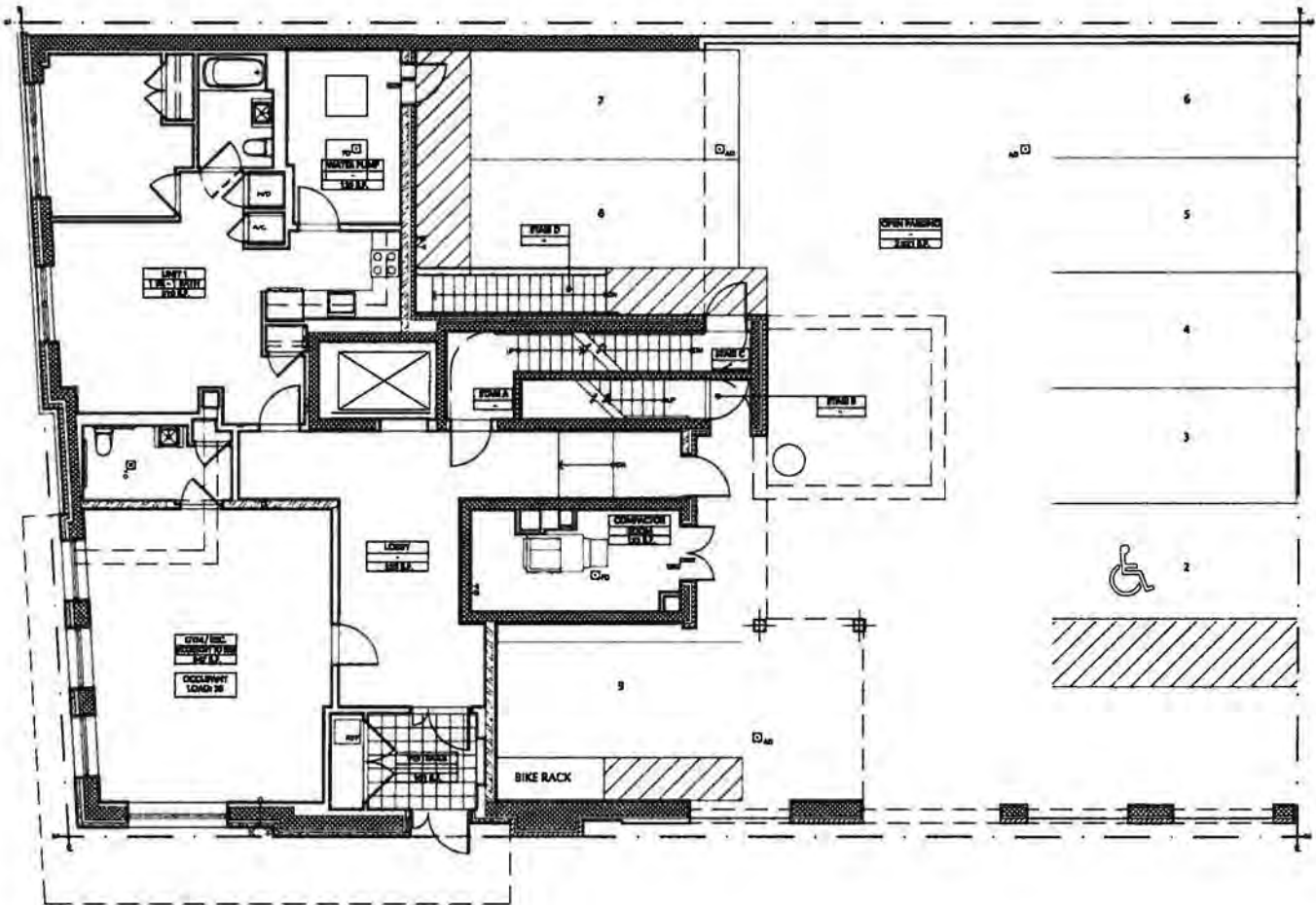
75 COLUMBIA STREET  
BROOKLYN, NY

Date: August 24, 2012





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**FIRST FLOOR**

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

**75 COLUMBIA CONDOMINIUM**

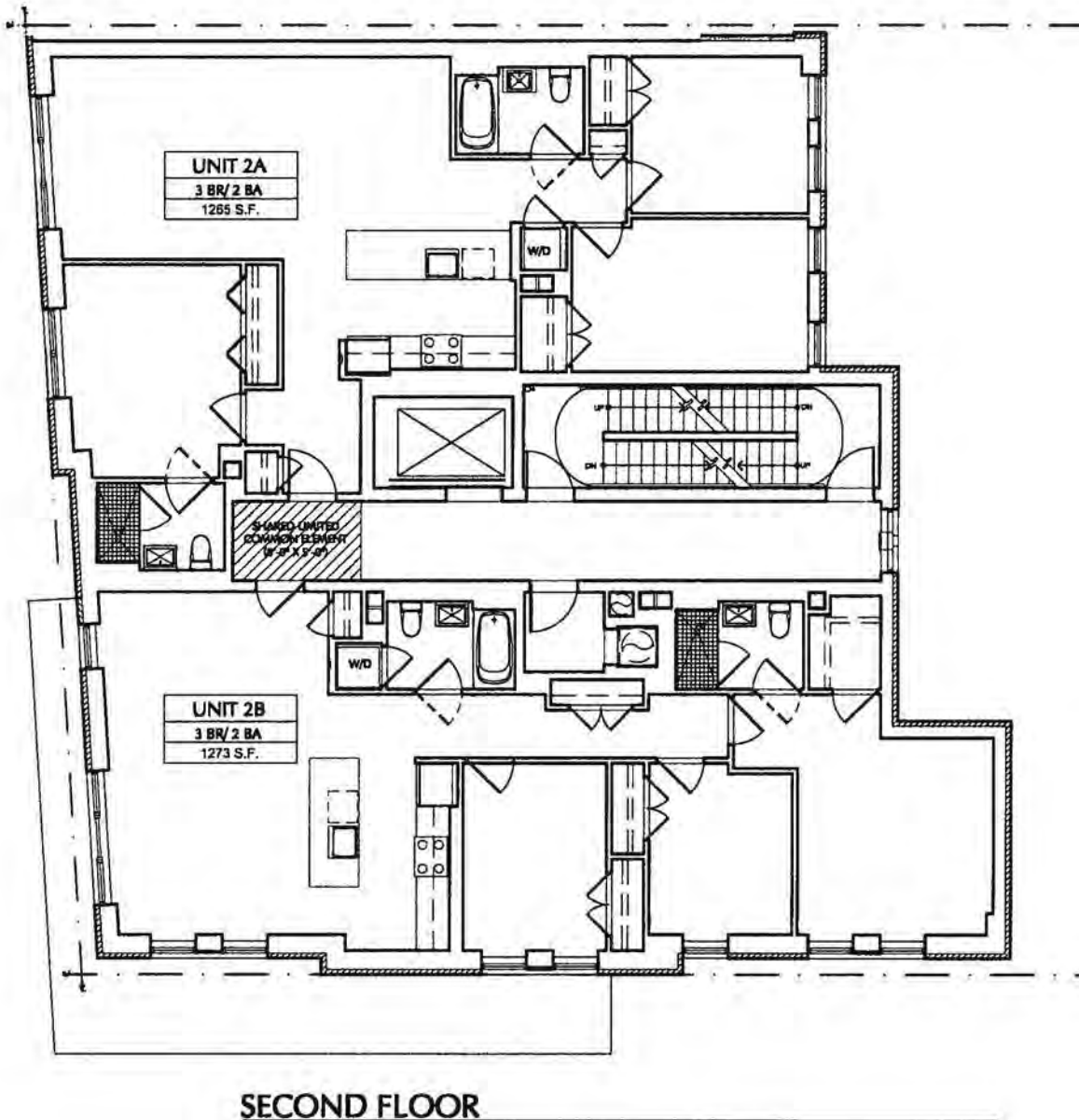
**75 COLUMBIA STREET  
BROOKLYN, NY**



Date: August 24, 2012



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75 COLUMBIA CONDOMINIUM

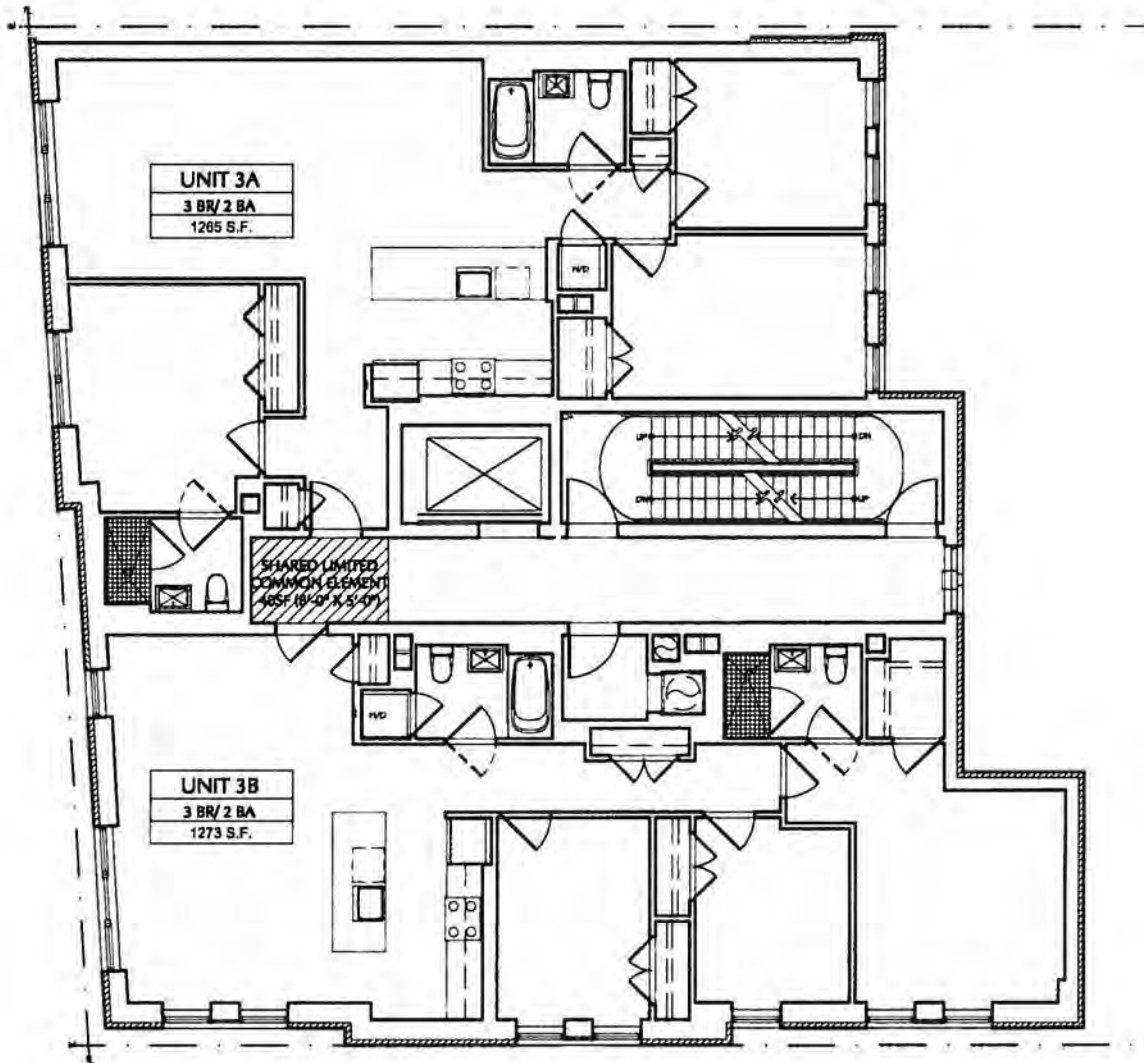
75 COLUMBIA STREET  
BROOKLYN, NY



Date: August 24, 2012



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### THIRD FLOOR

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

75 COLUMBIA CONDOMINIUM

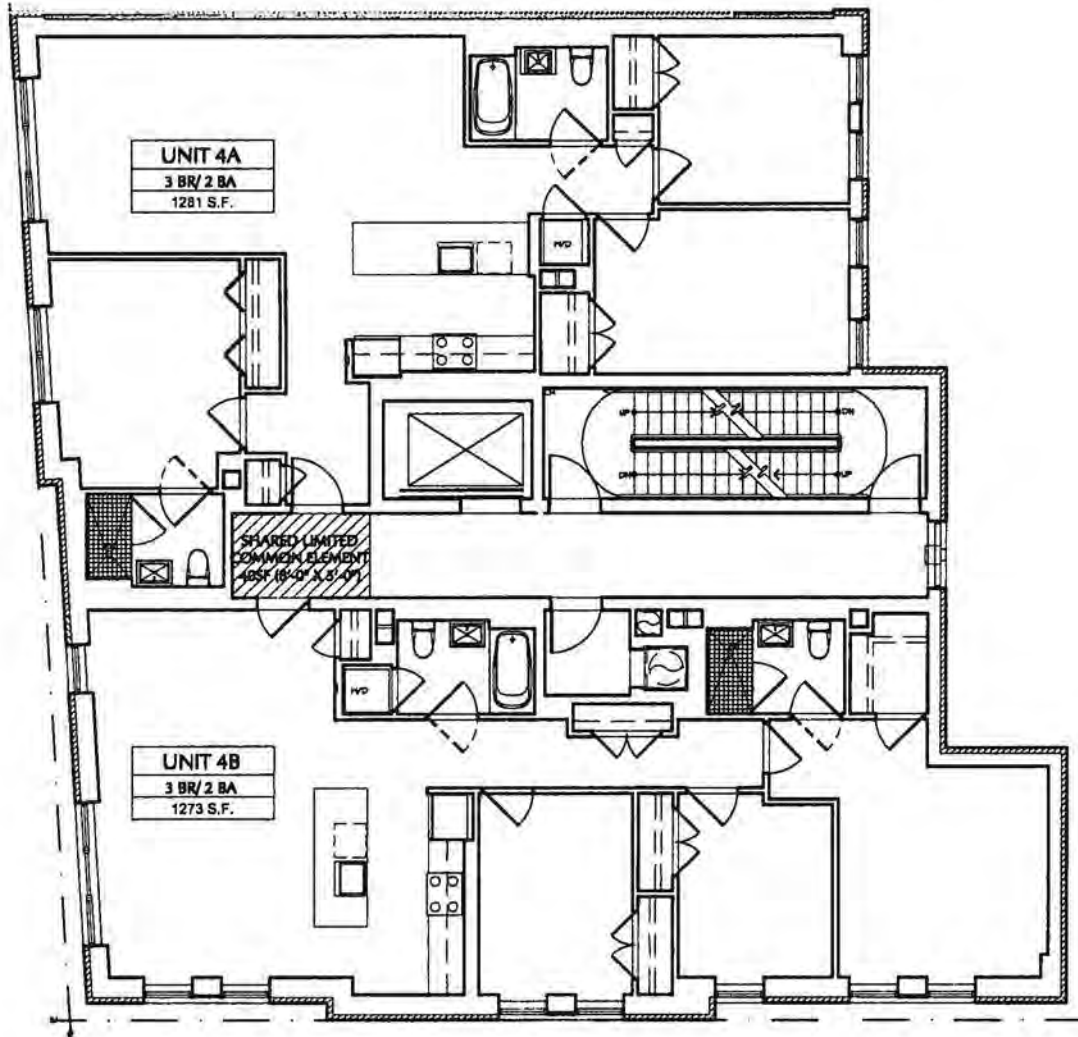
75 COLUMBIA STREET  
BROOKLYN, NY



Date: August 24, 2012



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**FOURTH FLOOR**

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

**75 COLUMBIA CONDOMINIUM**

**75 COLUMBIA STREET  
BROOKLYN, NY**

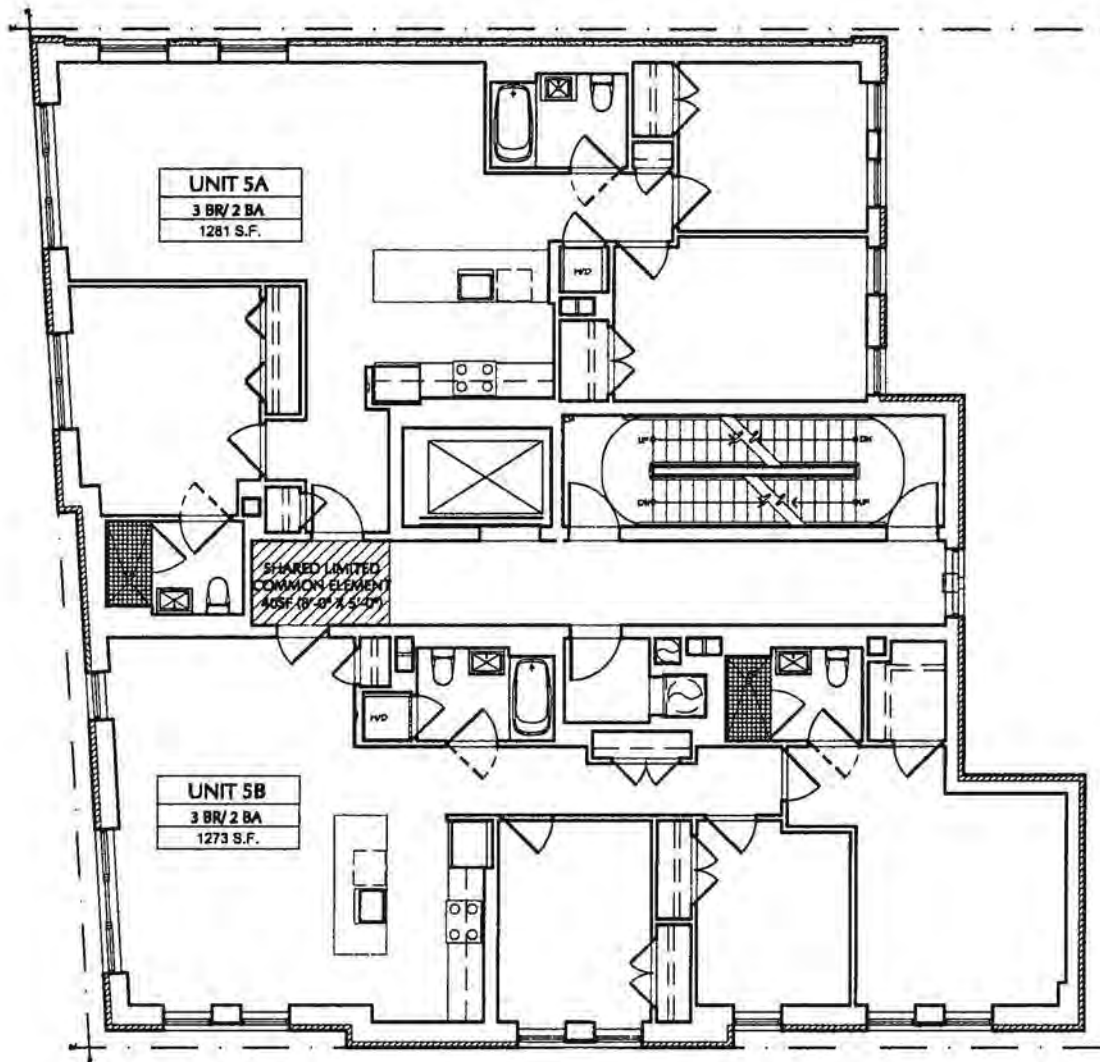


Date: August 24, 2012





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## FIFTH FLOOR

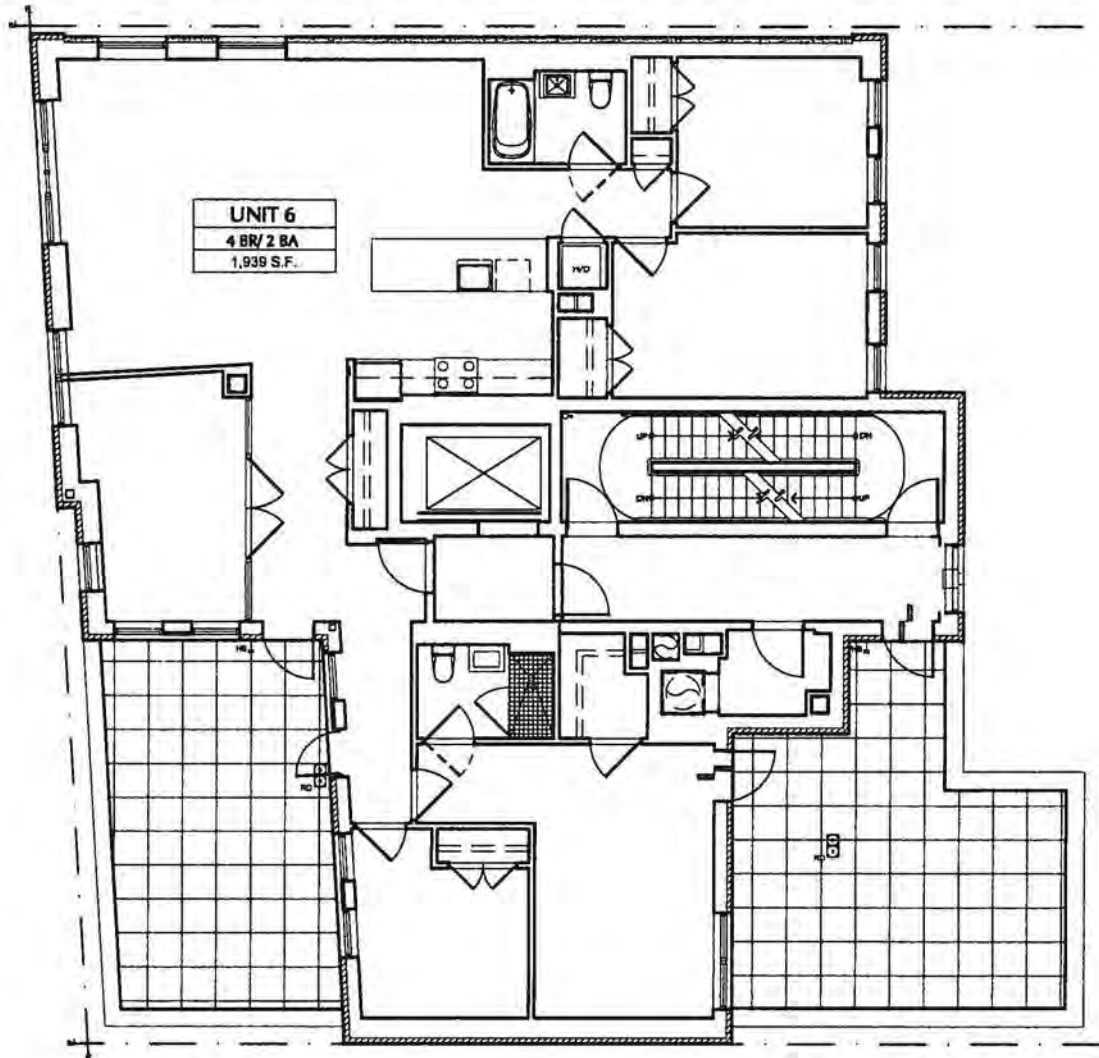
\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

75 COLUMBIA CONDOMINIUM

75 COLUMBIA STREET  
BROOKLYN, NY



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**6TH FLOOR PLAN**

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

**75 COLUMBIA CONDOMINIUM**

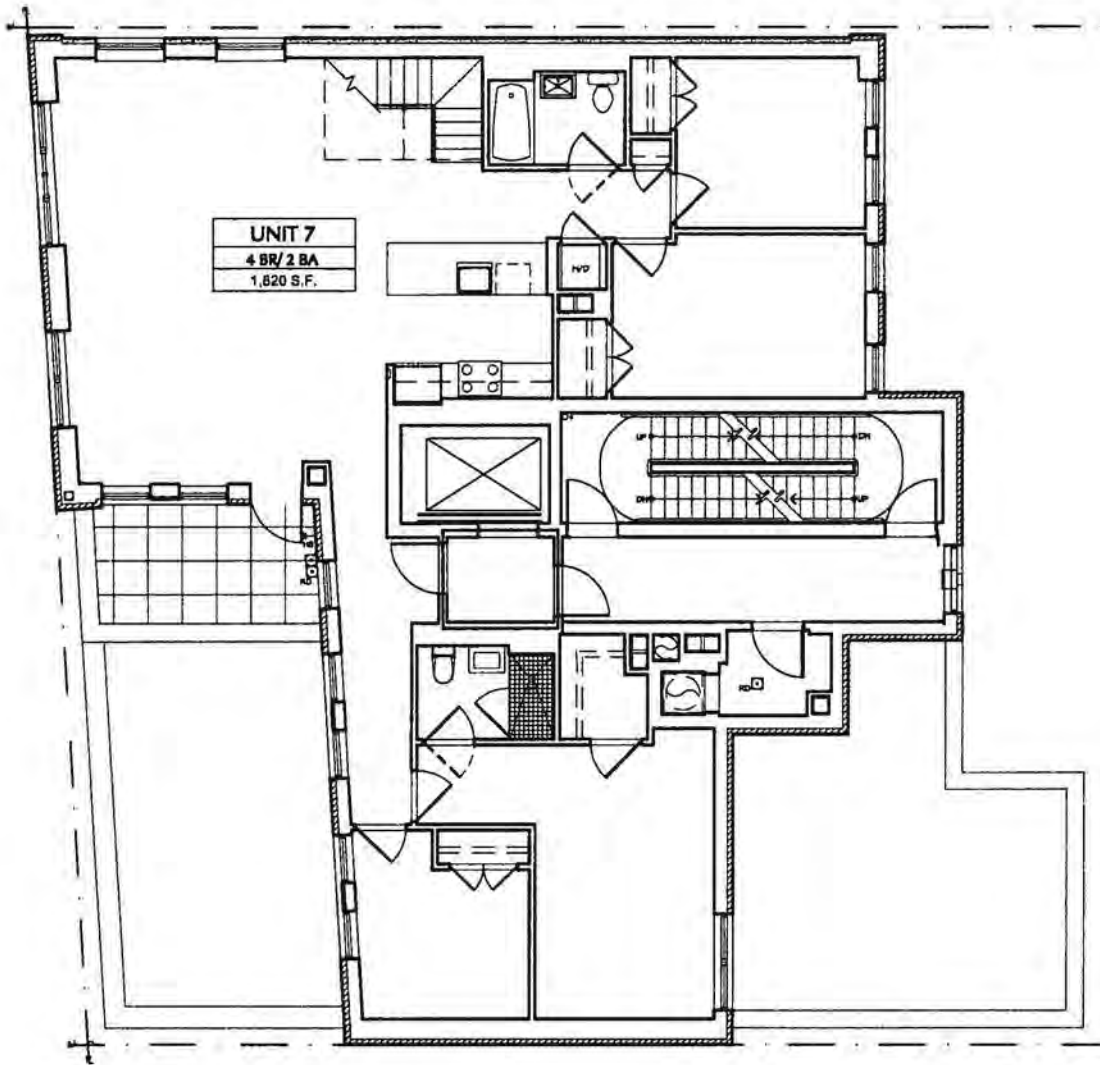
**75 COLUMBIA STREET  
BROOKLYN, NY**



Date: August 24, 2012



PROPOSED REVISION WILL BE IMPLEMENTED IN STRICT COMPLIANCE WITH DOB'S REQUIREMENTS, AND THE SAME WILL BE REFLECTED IN THE FINAL CERTIFICATE OF OCCUPANCY.

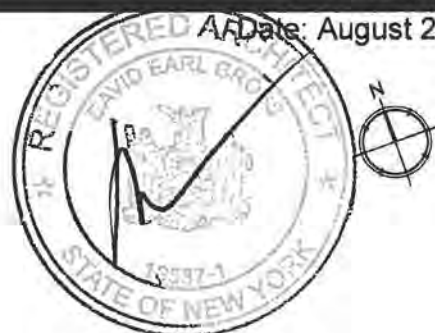


7TH FLOOR PLAN

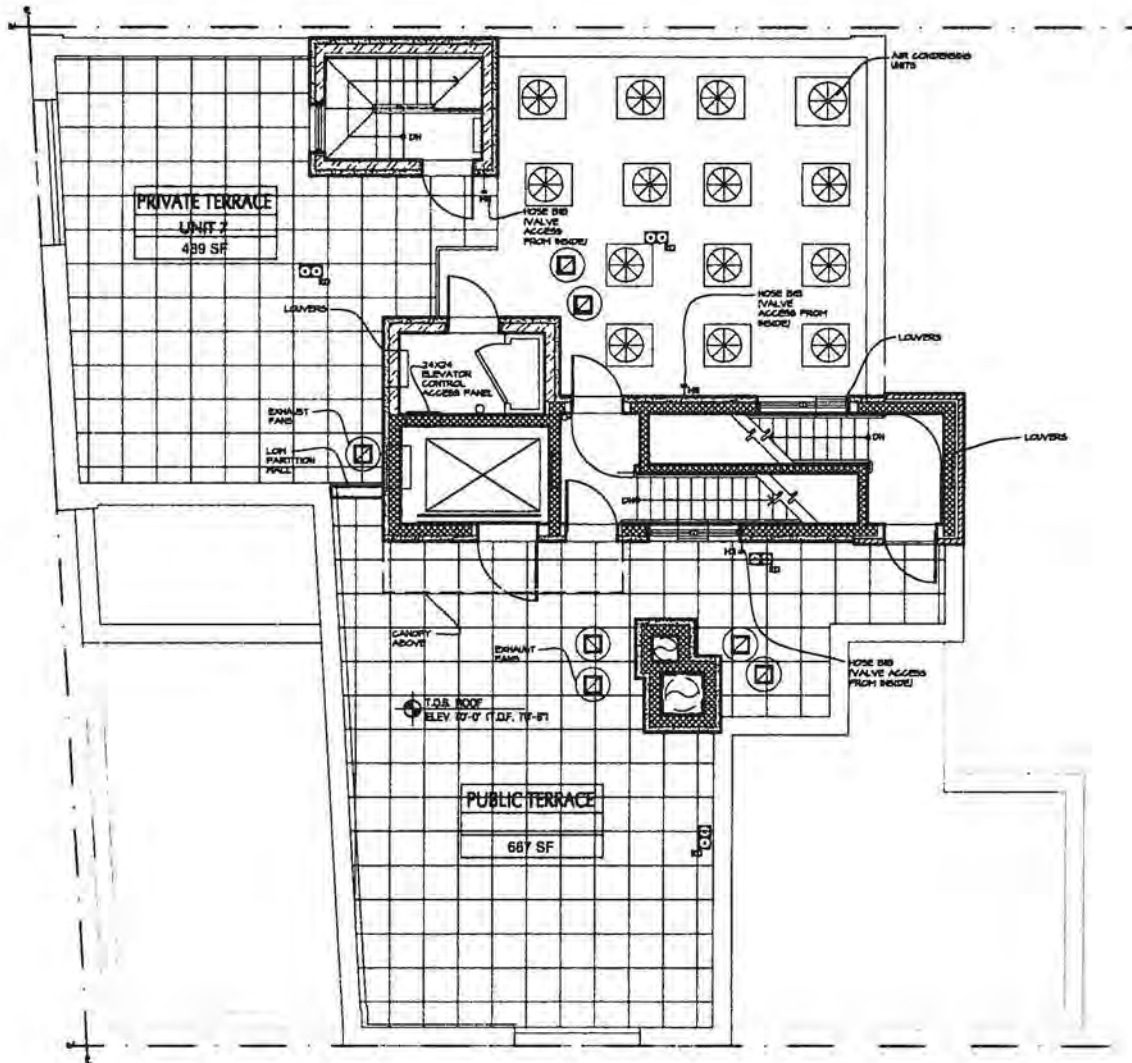
\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

75 COLUMBIA CONDOMINIUM

75 COLUMBIA STREET  
BROOKLYN, NY



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## ROOF

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

75 COLUMBIA CONDOMINIUM

75 COLUMBIA STREET  
BROOKLYN, NY

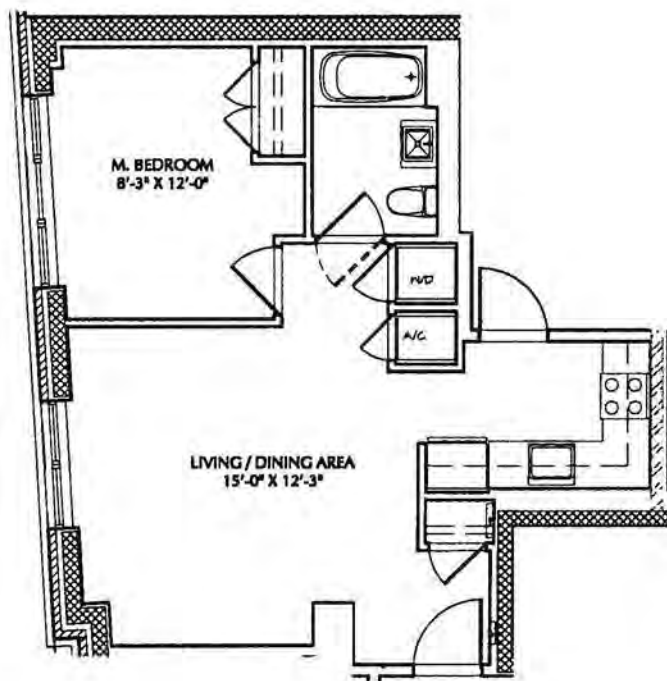
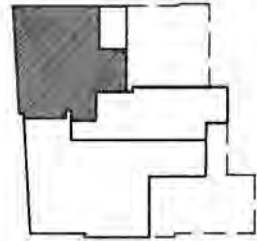


Date: August 24, 2012





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**FIRST FLOOR UNIT PLAN**  
**UNIT 1 - 610 SF**

1BR, 1BA

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

**75 COLUMBIA CONDOMINIUM**

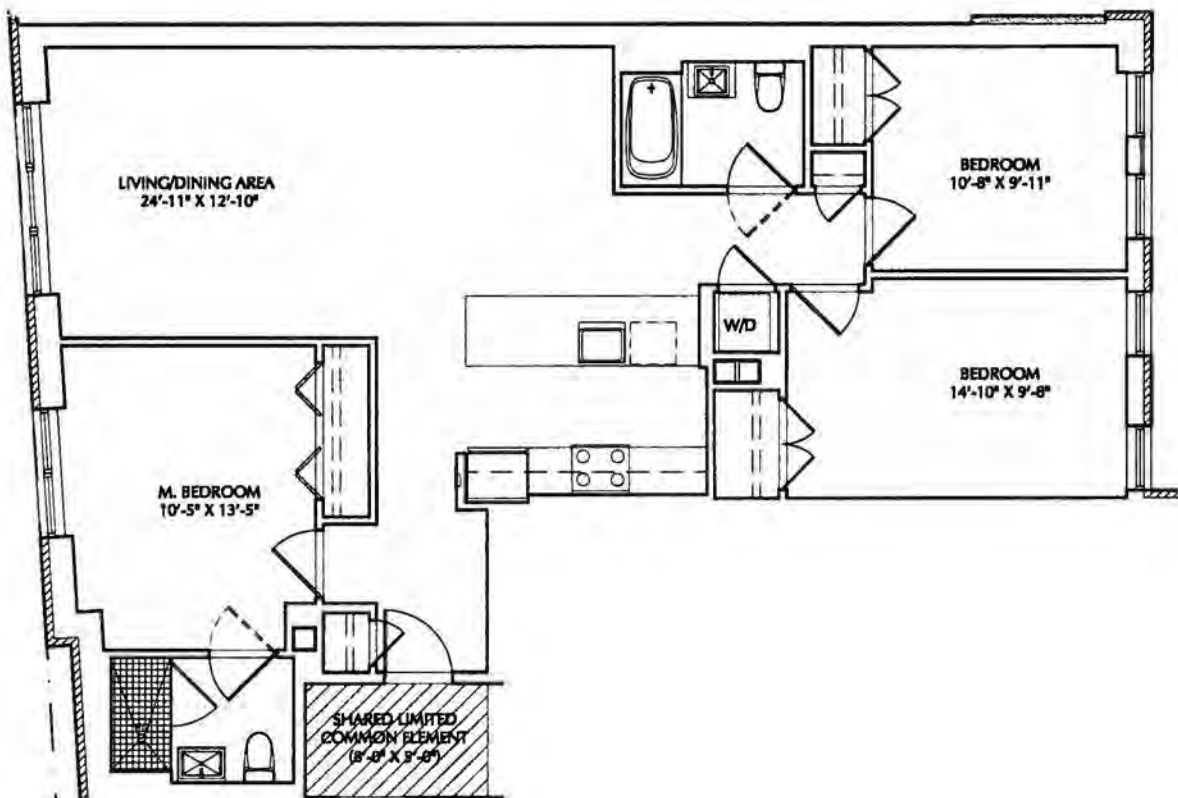
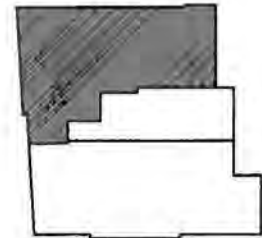
**75 COLUMBIA STREET**  
**BROOKLYN, NY**



Date: August 24, 2012



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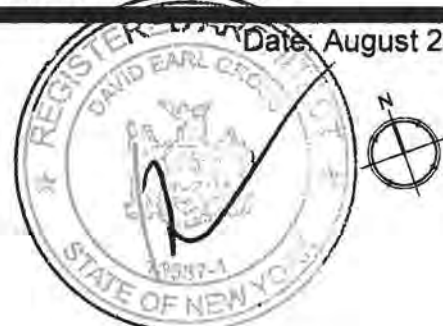
**SECOND FLOOR UNIT PLAN**  
**UNIT 2A - 1265 SF**

3BR, 2BA

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

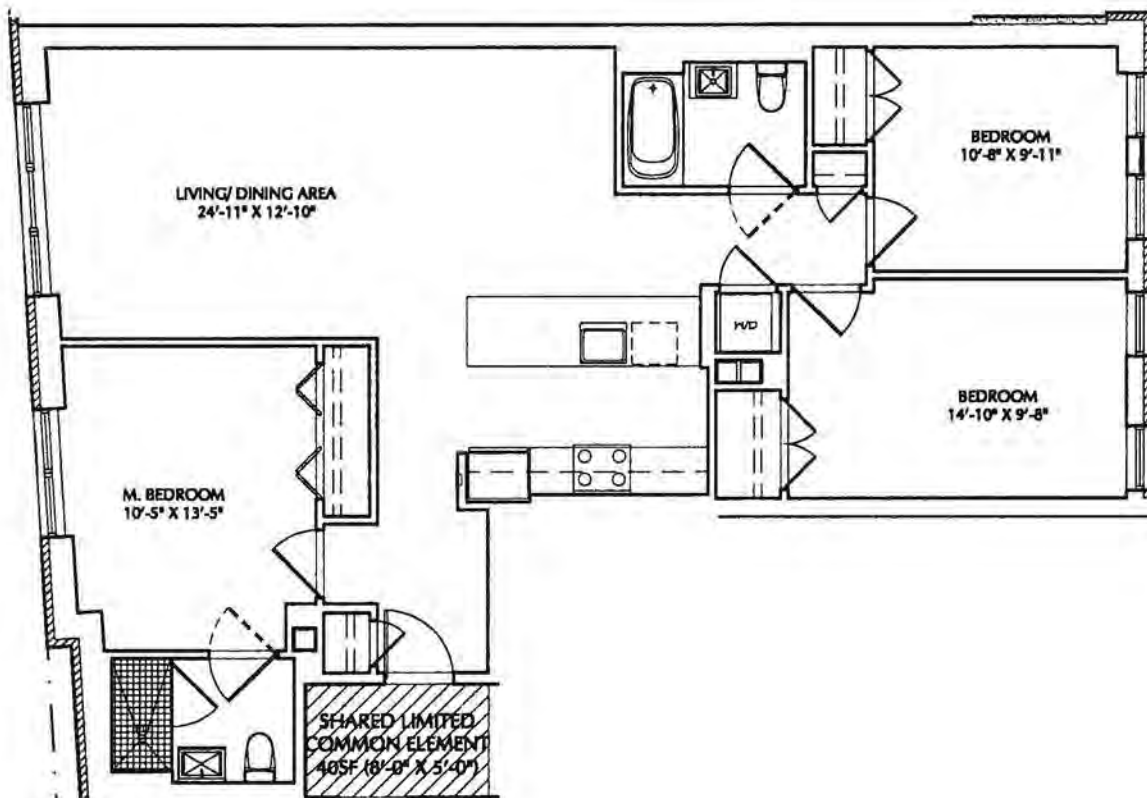
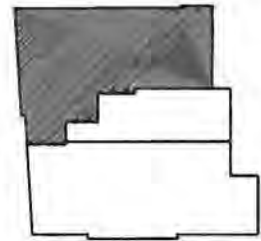
**75 COLUMBIA CONDOMINIUM**

**75 COLUMBIA STREET**  
**BROOKLYN, NY**



Date: August 24, 2012

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THIRD FLOOR UNIT PLAN  
UNIT 3A - 1,265 SF

3BR, 3BA

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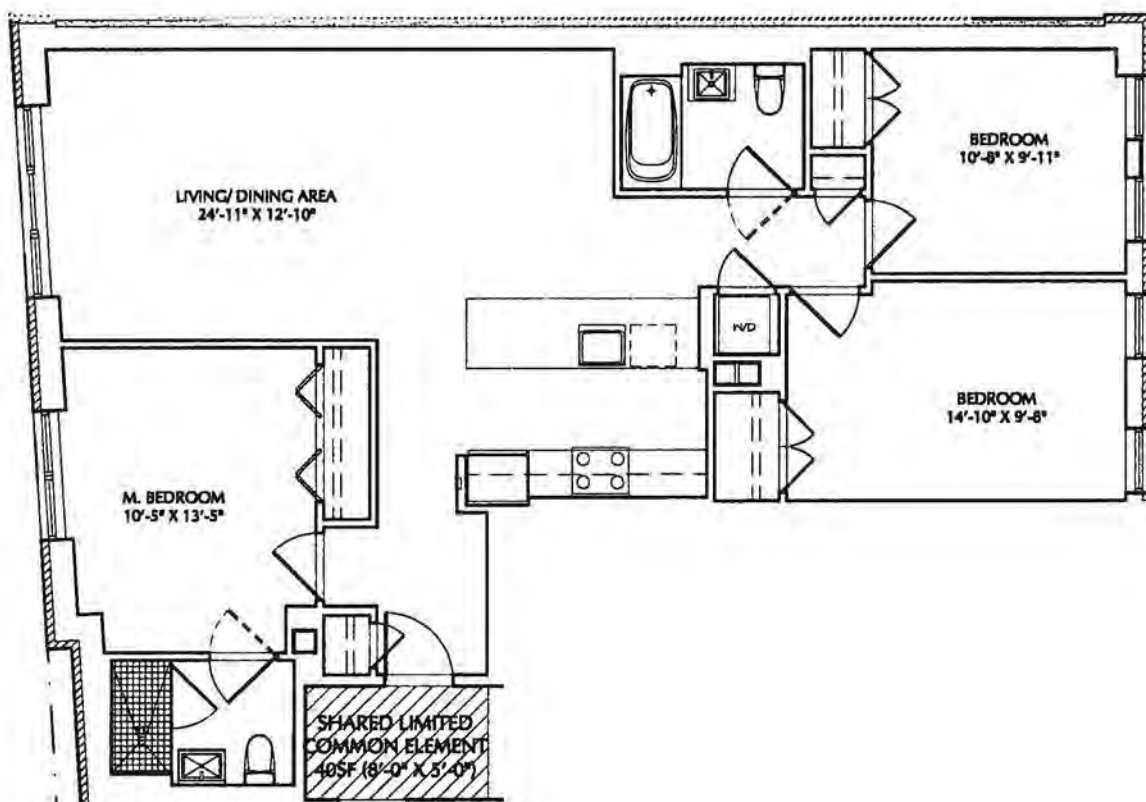
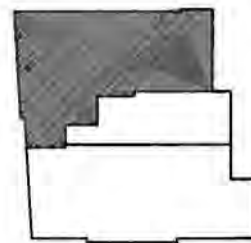
75 COLUMBIA CONDOMINIUM

75 COLUMBIA STREET  
BROOKLYN, NY

Date: August 24, 2012



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**FOURTH FLOOR UNIT PLAN**  
**UNIT 4A - 1,281 SF**

3BR, 3BA

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75 COLUMBIA CONDOMINIUM

75 COLUMBIA STREET  
BROOKLYN, NY

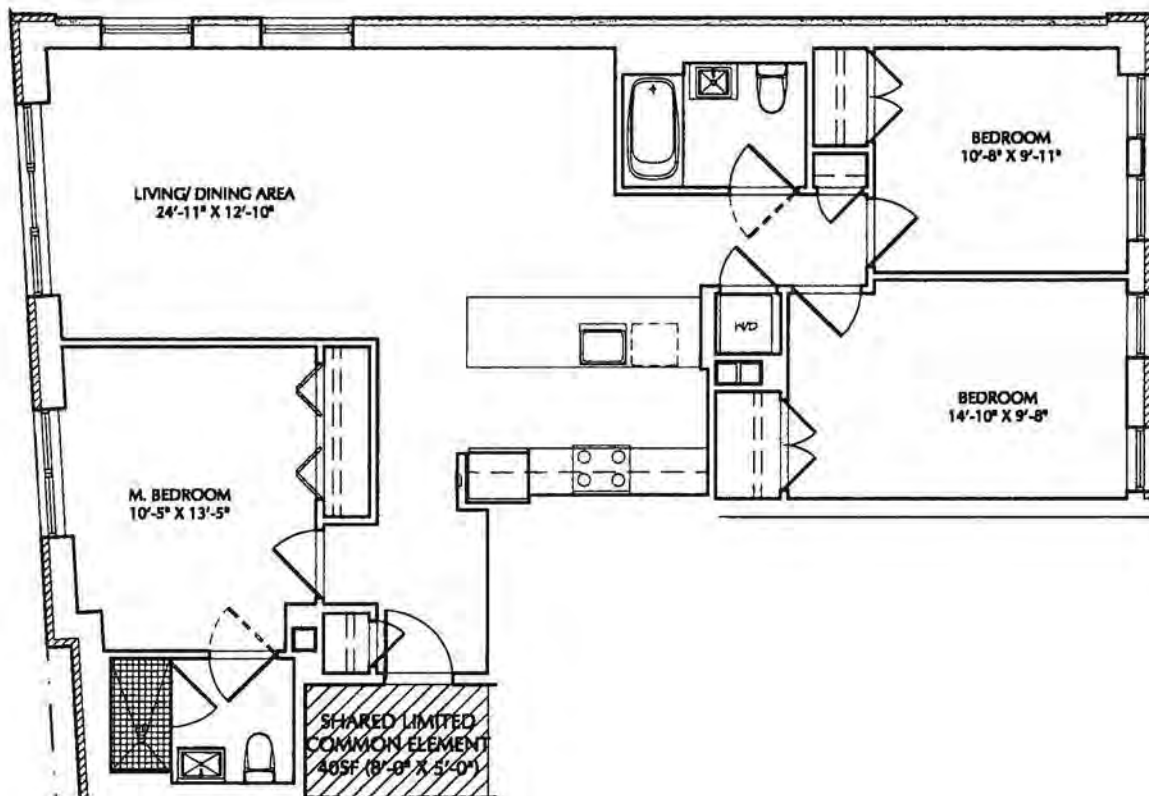
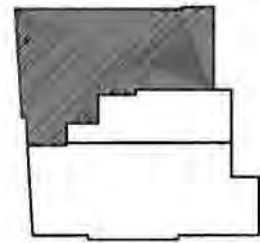


Date: August 24, 2012





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**FIFTH FLOOR UNIT PLAN**  
**UNIT 5A - 1,281 SF**

3BR, 3BA

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

**75 COLUMBIA CONDOMINIUM**

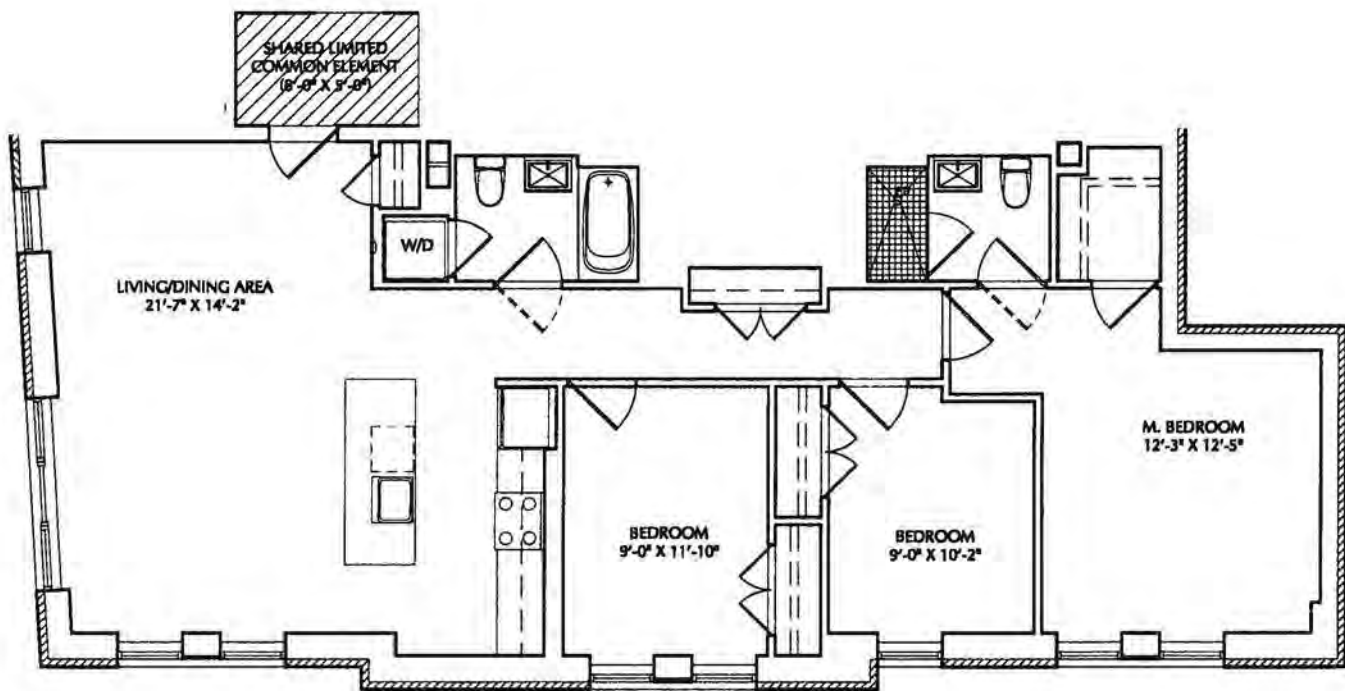
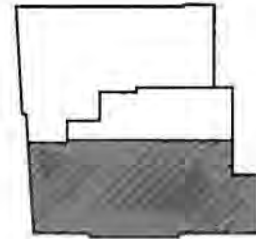
**75 COLUMBIA STREET**  
**BROOKLYN, NY**



Date: August 24, 2012



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**SECOND - FIFTH FLOOR UNIT PLAN**  
**UNIT 2B - 5B 1,273 SF**

3BR, 3BA

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**75 COLUMBIA CONDOMINIUM**

**75 COLUMBIA STREET  
 BROOKLYN, NY**



Date: August 24, 2012



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## 6TH FLOOR UNIT PLAN

UNIT 6 - 1,939 SF (TERRACE WEST:281 SF, EAST: 320 SF)

4BR, 2BA

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

75 COLUMBIA CONDOMINIUM

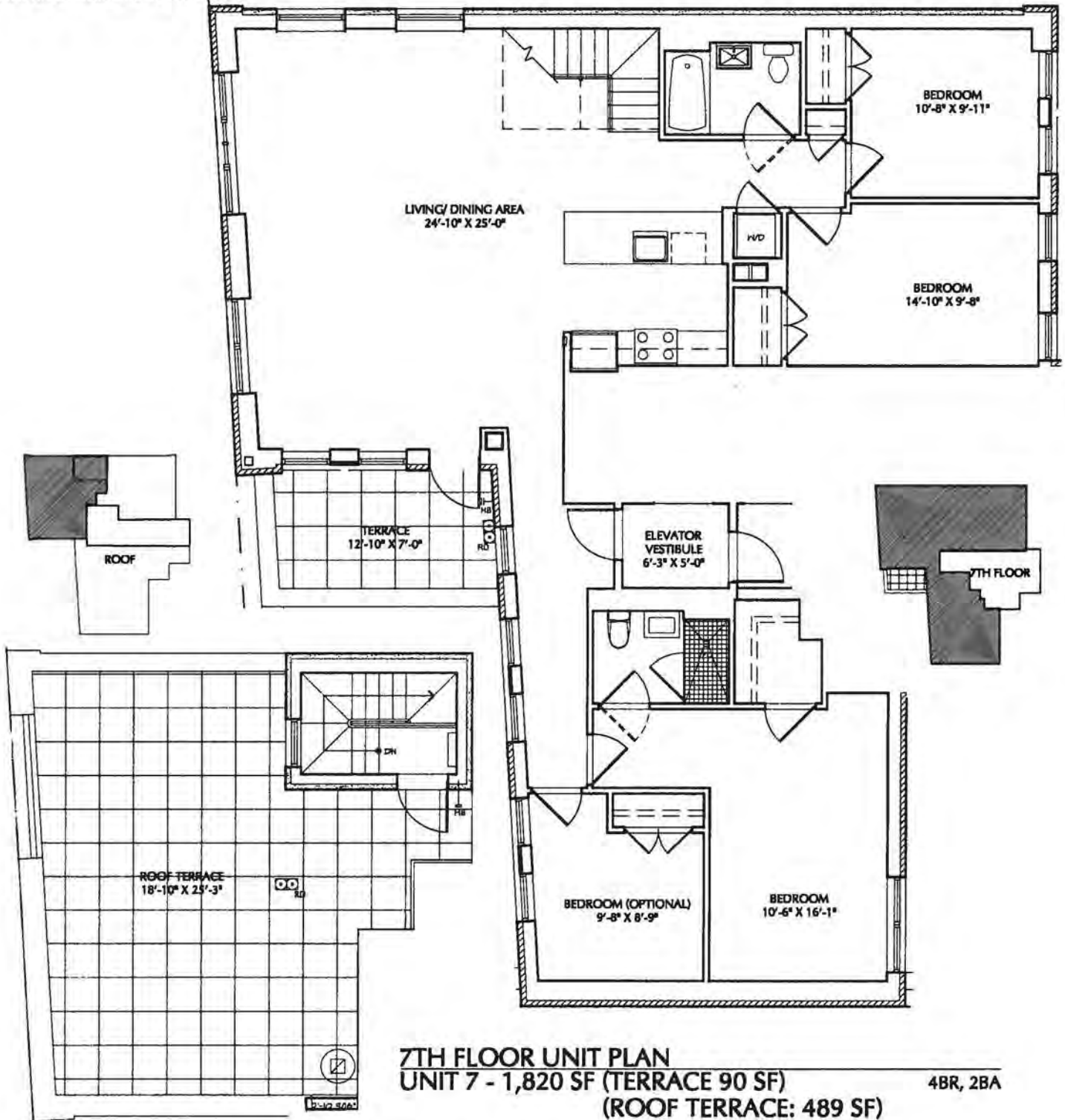
75 COLUMBIA STREET  
BROOKLYN, NY



Date: August 24, 2012



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**7TH FLOOR UNIT PLAN**  
**UNIT 7 - 1,820 SF (TERRACE 90 SF)**  
**(ROOF TERRACE: 489 SF)**

4BR, 2BA

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**75 COLUMBIA CONDOMINIUM**

**75 COLUMBIA STREET**  
**BROOKLYN, NY**

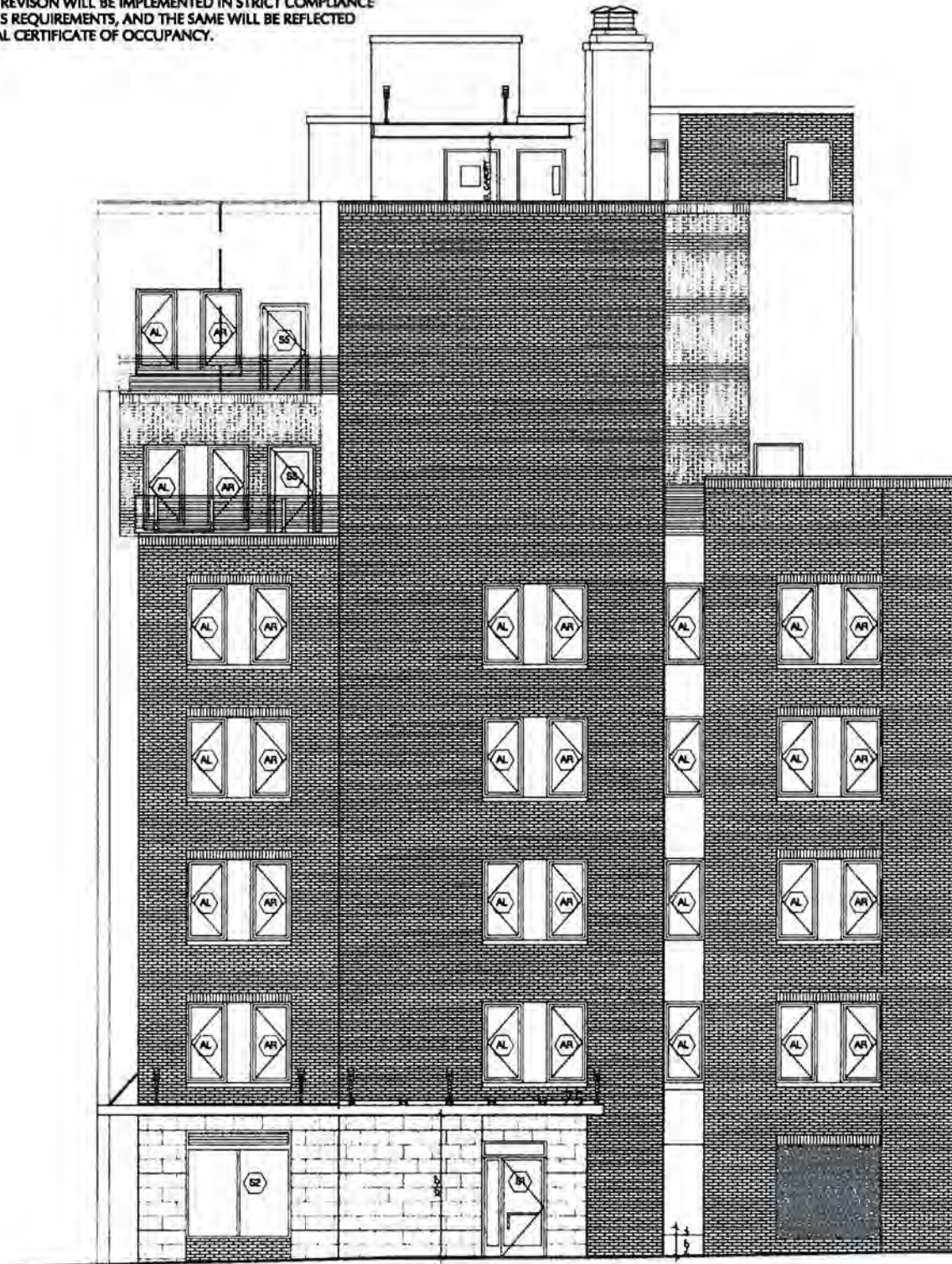


Date: August 24, 2012





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IN THE FINAL CERTIFICATE OF OCCUPANCY.



**SOUTH (WARREN STREET) ELEVATION**

\*ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES.

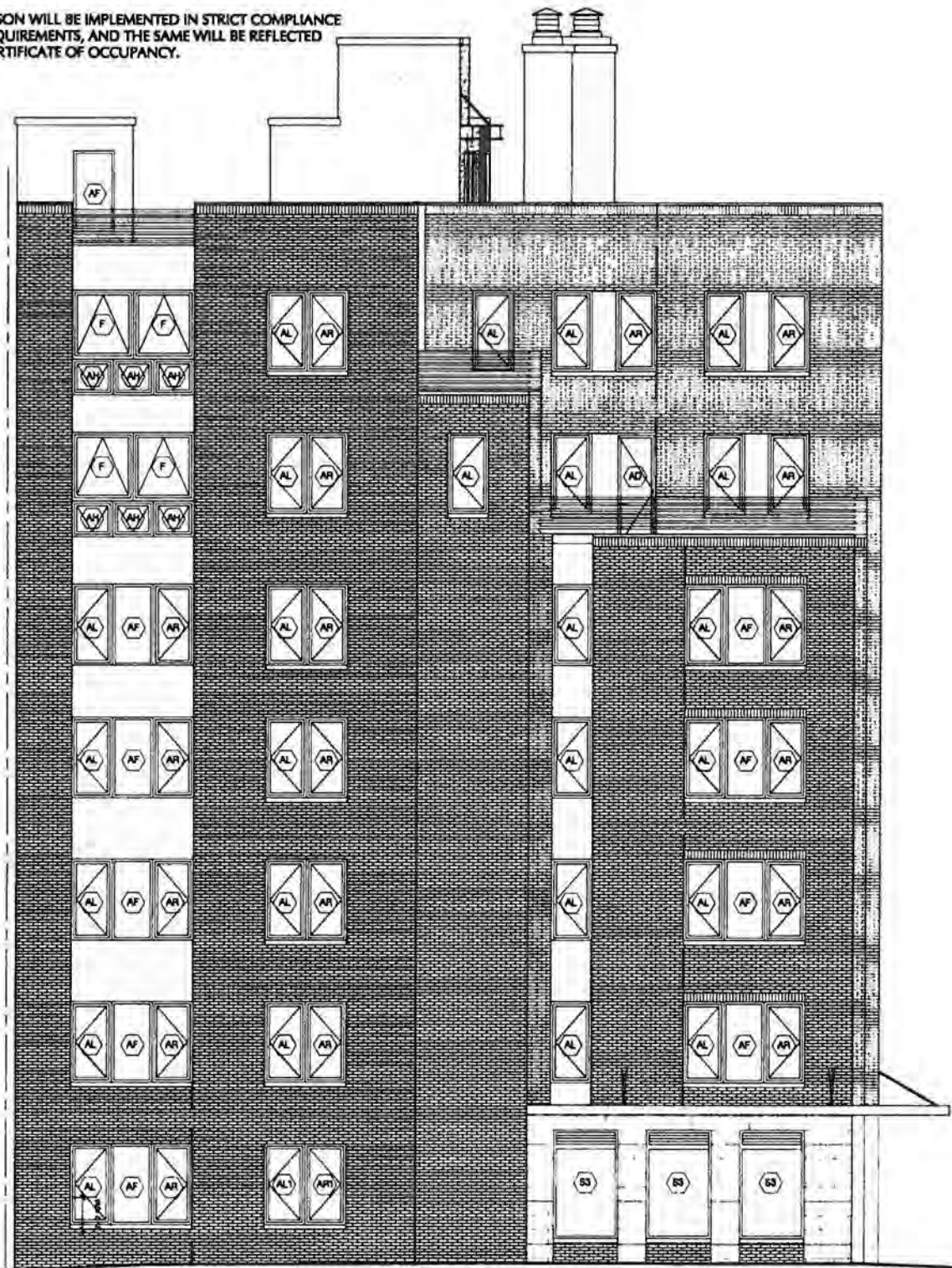
**75 COLUMBIA CONDOMINIUM**

**75 COLUMBIA STREET  
BROOKLYN, NY**

Date: August 24, 2012



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### WEST (COLUMBIA STREET) ELEVATION

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75 COLUMBIA CONDOMINIUM

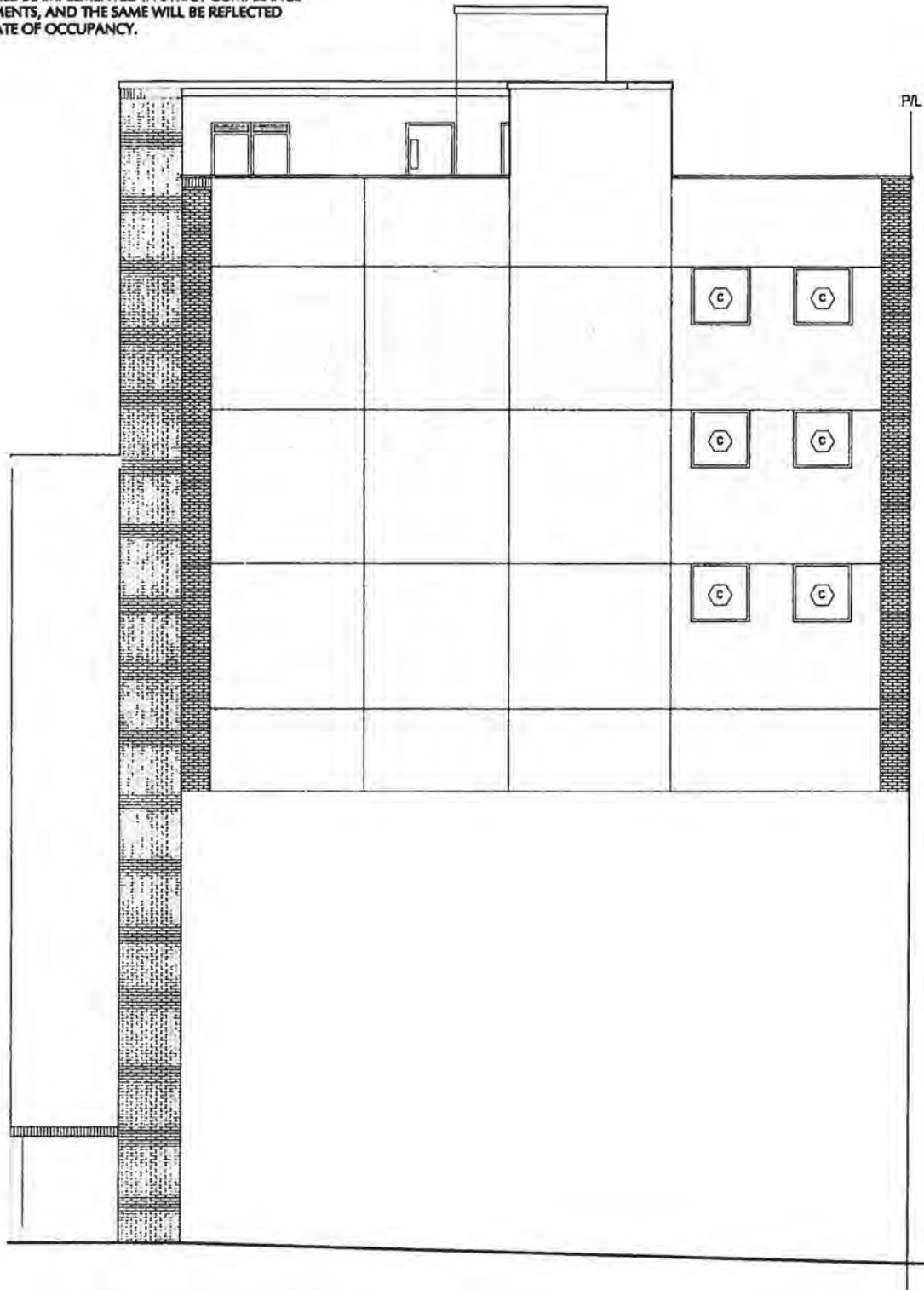
75 COLUMBIA STREET  
BROOKLYN, NY

Date: August 24, 2012





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**NORTH ELEVATION**

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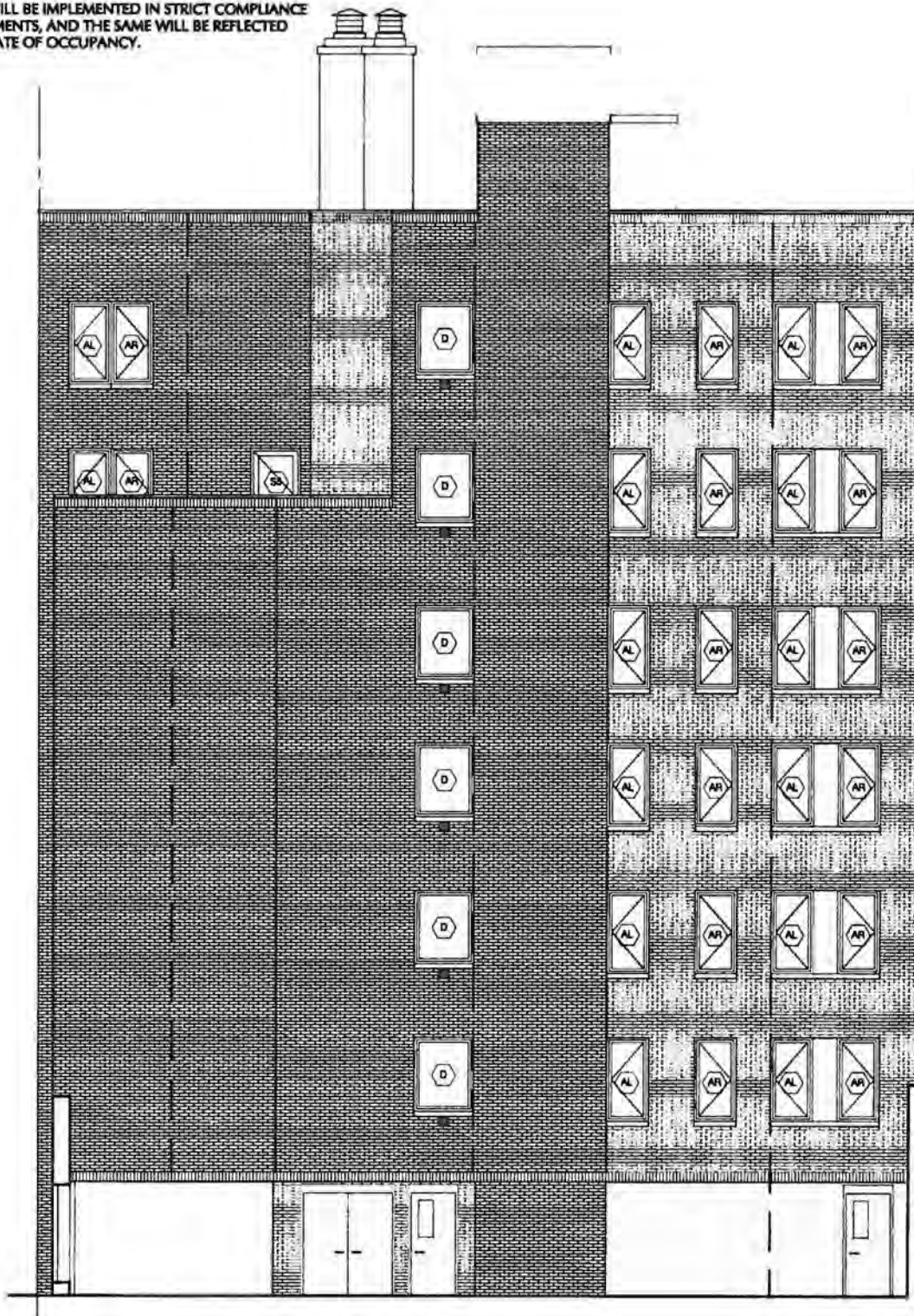
**75 COLUMBIA CONDOMINIUM**

**75 COLUMBIA STREET  
BROOKLYN, NY**



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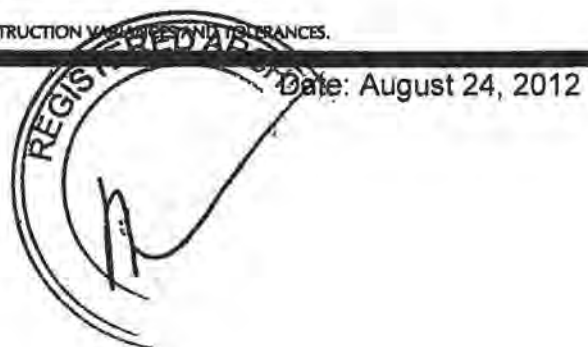


**NORTH ELEVATION**

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**75 COLUMBIA CONDOMINIUM**

**75 COLUMBIA STREET  
BROOKLYN, NY**





**PURCHASE AGREEMENT**

**75 COLUMBIA STREET CONDOMINIUM**

Date of this Agreement: \_\_\_\_\_

Purchaser(s) Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Unit No: \_\_\_\_\_

Common Charges: \_\_\_\_\_

Percentage Interest in Common Property: \_\_\_\_\_

Total Purchase Price..... \_\_\_\_\_

10% Down Payment:..... \_\_\_\_\_

Amount of Mortgage, if applicable..... \_\_\_\_\_  
(see # 10)

Balance Due at Closing..... \_\_\_\_\_

Purchaser(s)' Attorney: \_\_\_\_\_

Address & Telephone No.: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Broker's Name & Address & Telephone No.: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Co-Broker's Name & Address & Telephone No.: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**All capitalized terms herein are as defined in the Offering Plan.**

**WHEREAS**, SDS COLUMBIA LLC, a New York limited liability company, having an office 132 Remsen Street, Brooklyn, New York 11201 (hereinafter called the "Seller"), has prepared a Condominium Plan and desires to offer for sale, pursuant to Article 9-B of the Real Property Law of the State of New York, Condominium Residential Units to be situated on the land owned by it located at 75 Columbia Street, Brooklyn, New York, and I am desirous of purchasing a Condominium Unit in such Condominium;

**NOW, THEREFORE**, in consideration of the mutual promises and obligations set forth in this Purchase Agreement and the Offering Plan, the parties mutually agree as follows:

1. Offering Plan Read. As Purchaser, I have received and read the Offering Statement Plan of Condominium Organization (the Plan) with respect to premises at 75 Columbia Street, Brooklyn, New York.

Said Plan, including all documents set forth in Part II thereof, and any amendments thereto are incorporated herein by reference with the same effect as if set forth at length. I hereby accept the Plan (and all of said amendments thereto, if any) and agree to abide and be bound by the terms and conditions thereof. The terms used herein shall have the same meanings as ascribed thereto in the Plan.

2. Sale of Unit. I hereby agree to purchase and the Seller agrees to sell the Condominium Unit in 75 COLUMBIA STREET CONDOMINIUM designated above as shown on the plot plan which forms a part of the Offering Plan, together with the percentage of undivided interest in the Common Elements appurtenant thereto above stated for the Total Purchase Price set forth above.

3. Delivery of Deed; Adjustments. The Closing of Title shall take place at an office to be designated by Seller pursuant to the notice provisions as set forth in Part I of the Plan. The Seller shall be entitled to a reasonable adjournment in the Closing of Title in the event of delay by reason of weather conditions, strikes or material shortages, or delays in inspections and reports thereon, or other requirements. If I am not ready to close title at the date and time fixed pursuant to the contract, any adjournment granted at my request shall be upon the condition that all adjustments shall be made as of the date originally fixed for the Closing of Title. Nothing herein contained shall be construed to require Seller to grant any adjournment not reasonable in duration.

4. Payment of Unit. The Down Payment has been made on the signing of this Agreement, receipt of which (by check subject to collection) is hereby acknowledged by the Seller. The Balance Due at Closing (including the proceeds of the mortgage loan referred to herein, if any) shall be payable at the closing of title, as herein provided, by my certified check drawn on, or a cashier's check of, a bank or trust company which is a member of the New York Clearing House Association to the order of "FORMAN & ASSOCIATES SPECIAL 75 COLUMBIA ESCROW ACCOUNT", or as

otherwise directed by Sponsor's closing attorney and escrow agent

5. Recording of Condominium Declaration. The Declaration and By-Laws will be recorded by Seller in the Office of the Register of the City of New York, Kings County, prior to the conveyance of the first Condominium Unit as set forth in the Offering Plan. The Seller shall file with the Declaration when it is recorded, or shall amend the Declaration prior to the Closing Date and file at such time, a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed or being filed simultaneously with such amendment fully and fairly depict the layout, location, Condominium Unit designation and approximate dimensions of the Condominium Units as built. The Declaration and By-Laws when recorded by the Seller, will be substantially in the form and substance of the Declaration and By-Laws delivered to me and any changes therein will not substantially adversely affect me.

6. Seller's Failure to Convey. It is specifically understood and agreed that in the event the Seller shall be unable to deliver or cause to be delivered a deed to the premises to me in accordance with this agreement because of the inability of the Seller to complete the filing of the premises as part and parcel of a condominium plan in accordance with the Offering Plan of 75 COLUMBIA STREET CONDOMINIUM and any amendments thereto, then the Seller shall immediately notify me and thereupon this agreement shall terminate and the sole liability between the parties shall be the return by the Seller to me of the my down payment with interest, under this agreement.

7. Construction of Condominium. The Seller has applied for a building permit from the local municipal authorities having jurisdiction over the issuance of permits for construction of the premises. Prior to the closing of title set forth herein, the Seller will declare the property and the Condominium Units erected thereon to be a Condominium pursuant to the provisions of Article 9-B of the Real Property Law of the State of New York.

8. Purchaser Bound by Offering Plan. The Seller has exhibited and delivered to me and I acknowledge receipt of the Offering Plan at least 72 hours prior to the execution of this Purchase Agreement. I have read and agree to be bound by the proposed Declaration, By-Laws and Offering Plan of the said Condominium (and the Schedules, Plans and Exhibits attached thereto) all of which are incorporated by reference and made a part of this agreement with the same force and effect as if set forth in full herein. ANY CONFLICT BETWEEN THE OFFERING PLAN AND THE PURCHASE AGREEMENT IS TO BE RESOLVED IN FAVOR OF THE OFFERING PLAN. I acknowledge that I am purchasing a Condominium Unit in a Condominium to be formed, and that, except as stated in this agreement (and as set forth in the Declaration, By-Laws, Exhibits and Offering Plan), I have not relied on any representations or other statements of any kind or nature made by the Seller or otherwise, including but not limited to any relating to the description, size or dimensions of the Unit or rooms therein, and the estimated common charges or other expenses in connection therewith.

9. Purchase of Unit Without A Mortgage Loan. I may, at my option, pay the Purchase Price "all cash" without obtaining a mortgage. In the event I exercise this option, the provisions of this agreement which refer to the mortgage to be obtained by me shall be deemed deleted.

10. Mortgage Contingency. Notwithstanding anything to the contrary contained in this Purchase Agreement, this financing contingency shall only be effective upon the Purchaser agreeing to pre-qualify with, apply to and accept a mortgage from Home Owners Mortgage Express. If there is a financing contingency in the Purchase Agreement, it shall only be effective upon the Purchaser providing the Sponsor with evidence that Purchaser has been pre-qualified either prior to or within five (5) days after the date in which a fully executed copy of the Purchase Agreement is delivered to Purchaser's attorney ("the Contact Date"). HOME has agreed to pre-qualify Purchasers and provide a letter of pre-qualification within twenty-four (24) hours, excluding weekends and holidays, of Purchaser's request for pre-qualification, at no cost or further obligation to Purchaser. Once a Purchaser has been pre-qualified and accepts a loan from HOME, their Purchase Agreement can be subject to financing, if they so choose. In the event that a Purchaser applies for but does not pre-qualify for a loan with HOME and provide such evidence to the Sponsor within the appropriate time periods, then either party may cancel the Purchase Agreement upon notification to the other party in writing. In the event that Purchaser does not submit such pre-qualification or does nothing within the five (5) day period described above, then the Sponsor may either cancel the Purchase Agreement or treat the Purchase Agreement as an "All Cash" transaction, in which case the financing contingency shall not apply (notwithstanding the fact that Purchaser ultimately does apply to HOME or any other lending institution for a mortgage).

My failure to apply for a Mortgage or to provide information to the Lender promptly upon request or to accept the commitment or extension thereof issued to me by the Lender on the terms set forth herein shall constitute an event of default for which Seller shall have the right to cancel this Agreement and to retain the Down Payment as provided herein as liquidated damages.

The prequalification is solely for the benefit of the Sponsor in ascertaining the Purchaser's credit worthiness and likelihood of obtaining financing. No representation is made that purchaser's who are pre-qualified will actually receive mortgage financing for the purchase of their Unit and shall be bound by the terms of the mortgage contingency provisions herein.

Contract Subject to Purchaser Receiving Mortgage Commitment. This contract is subject to my obtaining a loan commitment from Home Owners Mortgage Express in the amount of not less than \$\_\_\_\_\_ at the prevailing rate of interest with monthly payments computed on not less than a 25/30 year payout, I shall have thirty (30) days from the signing of this contract to obtain said mortgage commitment. I shall accept any conventional commitment offered by the lending institution of my choice, whether that be a "fixed", "roll-over", "variable rate", "adjustable", or any other form of mortgage, however designated. I represent that, to my knowledge, I should be able to



qualify for such a mortgage and that I am creditworthy. In the event that I fail to obtain a commitment within said thirty (30) day period, either party may cancel this Purchase Agreement on five (5) days written notice to the other, by personal delivery or by certified mail, return receipt requested, whereupon this Purchase Agreement shall become null and void and my Down Payment shall be returned by the Seller. I shall apply for a Mortgage and notify Seller within ten (10) days from the date hereof as to the identity of the lending institution to which I have applied and further shall immediately (within five days) notify the Seller when a loan commitment or declination has been obtained or refused and deliver a copy of such commitment or declination to the Seller's attorneys within five (5) days receipt thereof. IN THE EVENT THAT THE SELLER'S ATTORNEY DOES NOT RECEIVE A NOTICE OF DECLINATION OR OF A FAILURE TO OBTAIN A COMMITMENT WITHIN FIVE DAYS AFTER THE EXPIRATION OF SAID 30 DAY TIME PERIOD (OR ANY EXTENSION THEREOF), I SHALL BE EXPECTED TO CLOSE WHETHER OR NOT I HAVE RECEIVED FINANCING, UNLESS THE SELLER CANCELS THE PURCHASE AGREEMENT.

Once a bank commitment is issued in accordance with the terms of this paragraph, I will be required to use due diligence in obtaining and maintaining any and all extensions necessary to maintain such commitment in force and effect or to obtain another commitment. Such extension might be at a higher interest rate and I may be required to pay an additional "origination fee" or other such charges that the lending institution requires. Failure to do so will constitute a default under the Purchase Agreement. If I am unable to obtain an extension or new commitment in spite of such due diligence on or before the Closing Date or within thirty (30) days after expiration of my commitment whichever is longer, I shall notify the Seller within five days of the time period specified by certified mail, return receipt requested, whereupon this Agreement shall become null and void and the Down Payment shall be returned by the Seller.

11. Closing Costs and Adjustments. I further agree to pay at the closing of title those costs applicable to a closing where I either obtain a mortgage or where I do not obtain a mortgage, whichever is applicable. Said costs shall include but not be limited to the actual cost of title examination; cost of mortgage insurance; bank's attorneys' fees for preparation of the documents necessary for the mortgage loan; mortgage origination fee; bank credit and appraisal fee; survey costs, if applicable; mortgage recording taxes; New York State and New York City real property transfer taxes; ACRIS preparation fee private mortgage insurance (if applicable); and any other governmental charges assessed on a loan or the transfer of title. In addition thereto, I will contribute two months common charges to the Condominium as an initial working capital fund contribution. I also agree to apportion with Seller such taxes, insurance premium adjustments, utility charges and common charges as may be determined to be due at the time of closing. In addition, it shall be my sole responsibility to pay Forman & Associates, pc, the Seller's attorney a fee of \$2,000.00 at closing for the preparation of closing documents. If the closing is held at a place other than the office of the Seller's closing attorney or such other place as designated by the Seller's (but within New York City) there will be an additional fee of \$500.00 per Unit which will be the sole responsibility of the Purchaser. Fees for closings outside of New York City will depend upon distance, but in no event shall such fee be less than \$500.00. If the closing is

adjourned other than by the Seller's, there will be an additional fee of \$500.00 per Unit payable to the Seller's closing attorney, which will solely be my responsibility to pay. The above closing fees are cumulative to the extent applicable to an individual closing.

12. Seller Right to Mortgage Tax Credit. I agree that any mortgage tax credit received pursuant to Section 339-ee of the Real Property law will inure to the benefit of the Seller.

13. Escrow of Deposits. The Offering Plan provides that the Seller will hold all monies received directly or through its agents or employees in trust until the closing of title to a Unit. Such funds will be held as trust funds pursuant to Section 352-h and 352-e(2) (b) of the General Business Law, in a special account entitled be "FORMAN & ASSOCIATES SPECIAL 75 COLUMBIA ESCROW ACCOUNT", located in ESQUIRE BANK, 64 Court Street, Brooklyn, New York 11201. The signature of WARREN L. FORMAN, ESQ., 80 Maiden Lane Street, Suite 2204, New York, New York 10038, attorney for Seller including acting as escrow agent for holding purchaser's downpayment shall be required to withdraw such funds. The funds existing in the trust account will be payable to the Seller after the closing of title to the Unit covered by this Purchase Agreement. In the event of my default under this Purchase Agreement, which default continues for thirty (30) days after notice of such default from the Seller to me, the Down Payment (to a maximum of 10% plus the actual cost of any special work ordered) will be released to the Seller from such account as liquidated damages and thereafter neither party shall have any rights or obligations against or to the other.

The parties hereto do hereby certify that they are aware that the Federal Deposit Insurance Corporation ("FDIC") coverages apply only to a cumulative maximum amount of \$250,000.00 for each individual deposit for all of the depositor's accounts at the same or related institution.

The parties further understand that Escrowee assumes no responsibility for, nor will said parties hold Escrowee liable for a loss occurring which arises from the fact that the amount of the above account may cause the aggregate amount of any individual depositor's accounts to exceed \$250,000.00 and that the excess amount is not insured by the Federal Deposit Insurance Corporation.

14. Default and Liquidated Damages. I agree that if I shall fail to pay the balance of the Cash Purchase Price when due, as herein provided, or, if I am otherwise in default hereunder as such term is defined herein, the Seller may elect to cancel this Agreement by written notice to me at my residence or at the address stated above, by certified mail, and at the expiration of 30 days after the date of mailing thereof (unless I shall have theretofore paid the balance of the Cash Purchase Price in full) said notice shall be effective and this Agreement shall be deemed cancelled and all rights of the parties thereunder shall terminate except that the amount of my Down Payment shall be paid over to the Seller as liquidated damages, such liquidated damages not to exceed 10% of the Cash Purchase Price plus the cost of any special work in the Unit ordered by me, together with any interest earned thereon. Any payments made by me in excess of said sum together with any interest earned thereon shall be refunded to me

within 15 days thereof. TIME IS OF ESSENCE TO REMEDY SUCH DEFAULT WITHIN SAID THIRTY (30) DAY PERIOD. The notice of default is hereby deemed a notice to vacate as well if I occupy the unit under the terms of any use and occupancy agreement. In the event of such cancellation, the Seller shall have the right to sell the Unit to another purchaser as though this agreement had never been made and without accountability to me for the proceeds received on any sale to another.

In the event I enter into an interim lease with the Seller, any default under the interim lease by me (including, but not limited to, the payment of use and occupation charges or any other obligations under the lease) shall be deemed a default under the Purchase Agreement; any default under the Purchase Agreement shall also be deemed a default under the interim lease; and any rescission under the Purchase Agreement by me shall be deemed a default under the interim lease.

15. Subordination of Purchase Agreement to Building Loan Mortgage. I agree that all terms and provisions of this agreement are and shall be subject and subordinate to the lien of any building loan mortgage on the Condominium property made or to be made, any advances made or to be made, and any payments or expenses already made or incurred or to be made or incurred to the full extent thereof without the execution of any further legal documents by me. The subordination shall apply whether such advances are voluntary or involuntary and whether made in accordance with the building loan schedule of payments or accelerated thereunder by virtue of the lender's right to make advances before they become due in accordance with the schedule of payments. The Seller shall satisfy all such mortgages or obtain a release of the Unit from the lien of such mortgages at or prior to the closing date, except for my individual mortgage thereon, whether same be by extension, assumption, consolidation or otherwise.

16. Construction of Unit by Seller. The Seller agrees, at its own cost and expense to renovate the aforementioned Unit in accordance with the requirements as to materials and workmanship of the local municipal authorities having jurisdiction and further agrees that when completed, same will be in substantial accordance with the plans as filed with the Building Department. In the event the Unit is substantially completed and provided a temporary or permanent Certificate of Occupancy for the or Unit is issued, I agree to accept a letter agreement from the Seller wherein the Seller shall agree to complete all unfinished items within thirty (30) days from the date of the closing of title, weather permitting.

In the event a permanent Certificate of Occupancy for the Building has not been issued as of the date of Closing for said Residential Unit, the Seller will continue to hold all monies previously deposited and being held in escrow pursuant to Sections 352-e(2)(b) and 352-h of the General Business Law unless Seller's engineer or architect certifies that a lesser amount will be reasonably necessary to complete the work needed to obtain a permanent Certificate of Occupancy. Any sum of money exceeding the amount certified by the Seller's engineer or architect will be released to the Seller. Upon issuance of the permanent Certificate of Occupancy, such escrow deposit will be released to the Seller without the consent of any other party. Alternatively, the Seller



may deposit with an escrow agent an unconditional, irrevocable letter of credit or post a surety bond in the amount certified by Seller's engineer or architect.

17. Personal Property Included in Sale; Excluded Items. All articles of personal property, fixtures and equipment as set forth in the Offering Plan referred to herein are included in this sale, and same will be delivered free and clear of all liens and encumbrances save and except the lien of the mortgage applied for by me herein. Decorative lighting fixtures, paints, carpeting, built-ins, wallpapers, furniture, furnishings and burglar alarm system exhibited in any model Units, excepting those specifically set forth herein or in the Offering Plan, are for display purposes only and are not included in this sale.

18. Sellers Right to Make Changes in Material, etc. The Seller reserves the right to: make changes or substitutions of materials or construction for items as set forth in the Offering Plan or building plan, provided any such changes are of comparable value and quality and are required and/or approved by the lending institution.

19. Closing Deed; Power of Attorney. The closing deed shall be in proper statutory form for recording, as set forth in the Offering Plan as Exhibit D; shall be a Bargain and Sale Deed with covenants against grantor's acts; shall be duly executed and acknowledged by the Seller at the Seller's expense and shall contain such a description of the premises as shall be acceptable and/or approved so as to validly convey under the Condominium Act, the Unit and the undivided interest in the common elements referred to herein. At the closing of title, I agree to execute and deliver to Seller the Power of Attorney in the form as shown in the Offering Plan, Exhibit C, beginning on page C-1.

20. Marketable Title, Subject to. The Seller shall give and I shall accept a good and marketable title (subject to the terms of the Declaration and By-Laws as filed and of the Offering Plan), free and clear of all liens and encumbrances except for the Permitted Encumbrances as described in the Offering Plan, and such title will approve and insure for mortgages and/or fee title insurance. Fee title insurance, if ordered by me, shall be purchased at my own cost and expense.

21. **Title Company. Purchasers are free to select any title company of their choice. However, Philip O'Hara Associates, Inc., 55 Washington Street, Brooklyn, NY (718) 875-7506 has fully prepared the specimen policy for the Offering Plan and is fully familiar with title on the premises. Using them may expedite title clearance and expedite closing dates.** . Title will be subject to the provisions set out in "CLOSING OF TITLE TO UNITS" section of the Offering Plan and the standard printed exceptions contained in the form of title-insurance-policy-promulgated exceptions by the New York Board of Title Underwriters.

22. Acceptance of Deed Full Compliance by Seller; Waiver of Jury Trial. Anything to the contrary herein contained notwithstanding, it is specifically understood and agreed by the parties hereto that the acceptance of the delivery of the deed at the time of the closing of title hereunder shall constitute full compliance by the Seller with



the terms of this agreement and none of the terms hereof, except as otherwise herein expressly provided, shall survive the delivery and acceptance of the deed. All representations contained in the Offering Plan shall survive delivery of the deed. The parties hereto do hereby agree that trial by jury in any action, proceeding or counterclaim arising out of or from this agreement is hereby waived.

23. Delivery of Transferable Warranties. At the closing of title the Seller will deliver the certificates and warranties delivered to them and transferable to me or to the Condominium and it is further agreed that title will not close until either a temporary or Certificate of Occupancy has been issued covering the Unit or a permanent Certificate of Occupancy is obtained for the Building. Seller's liability pursuant to any manufacturers' warranties are limited solely to the extent that such warranties are delivered to Seller, transferable to me or to the Condominium and then only as against such manufacturer.

24. Lack of Labor/Materials; Seller's Right to Cancel. The parties hereto do hereby agree that the Seller may cancel this agreement by forwarding its check in the full amount paid by me, with interest, together with a notice in writing, addressed to me, at the address hereinabove set forth in the event of the occurrence of either of the following: (1) that any governmental bureau, department or subdivision thereto shall impose restrictions on the manufacture, sale, distribution and/or use of material necessary in the construction of residential housing and such restriction shall prevent the Seller from obtaining such materials from its regular suppliers or from using same in the construction and/or completion of the dwellings; or (2) that the Seller is unable to obtain materials from its usual sources due to strike, lockouts, war, military operations and requirements, national emergencies, or the installation of public utilities is restricted or curtailed.

Prior to the acceptance of the Purchase Agreement for 80% of the Units, in the event that insufficient funds are raised through the Offering to effectuate the purchase of the Units and the consummation of the Plan, or if I rescind my Purchase Agreement in accordance with the terms and conditions contained therein, or if the Plan is abandoned, then such monies shall be fully returned to me if I am in good standing under my Purchase Agreement, with interest earned thereon, within fifteen (15) days after the date of abandonment of the Plan as hereinafter provided. If I default under my Purchase Agreement and if I have failed to cure the default within the applicable grace period, or if my Purchase Agreement had previously been cancelled, the Seller shall retain as liquidated damages all payments made thereunder (but in no event to exceed ten (10%) percent of the Total Cash Purchase Price plus the cost incurred of any special work in the Unit ordered by me), together with any interest earned thereon (hereinafter collectively called the "Liquidated Sum"). Any such sums deposited in excess thereof (together with any interest earned on such excess amounts) will be refunded to me within fifteen (15) days thereafter.

The Seller has the option not to close title to the Condominium Unit described herein if less than 80% of all of the Condominium Units have not been contracted for, the Declaration has not been filed at such time, and the Offering Plan

has not been declared effective. In the event Seller exercises such option, it shall forthwith return my down payment with interest.

25. Lien of Deposit; Risk of Loss. All sums paid on account of this agreement and the reasonable expense of the examination of the title to the Unit are hereby made liens hereon, but such liens shall not continue after default by me under this agreement. The risk of loss or damage to the Unit by fire or any other cause until the delivery of the deed or I take actual possession of the Unit pursuant to written agreement is assumed by the Seller.

26. Liens Satisfied at Closing. The existence of unpaid taxes or liens of any kind at the time of Closing shall not constitute an objection to title, provided the Seller shall deposit a sufficient amount with a title company so the company shall be willing to insure against collection of same from the property herein described. The parties agree that the Seller may pay and discharge any liens and encumbrances upon the premises, not provided for in this agreement, out of the monies to be paid by me at the time of Closing.

27. Possession Prior to Closing. It is expressly understood and agreed that I shall in no event take possession of the premises prior to the time of the delivery of the deed and full compliance by me with the terms of this agreement and should I violate this provision, I consent that the Seller shall have the right to remove me from the premises as a squatter and intruder by summary proceedings. Upon my unauthorized possession, I shall be deemed in default hereunder at the option of the Seller, and upon such election, the amount paid hereunder shall belong to the Seller as liquidated damages (to a maximum of 10% of the purchase price plus the actual cost of any special work ordered). It is further understood and agreed that the Seller will not be responsible for damage or loss to any property belonging to me whether same is delivered to the property on or after the closing of title herein.

28. Execution of Required Documents. I agree to deliver to Seller all documents and to perform all acts required by the Seller to carry out the provisions of the Offering Plan, establish the Condominium and conform to the provisions of all applicable laws and regulations. This paragraph shall survive delivery of the deed.

29. Options Ordered by Purchaser. Any special work ordered or changes ordered by me shall be signed by me and must be paid for in full within seven days of the order. If for any reason the Seller fails to install said special work in accordance with the work order, the limit of the Sponsors liability is a refund of the amount of the charge.

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30. Broker. I represent to Sponsor that the Broker(s) listed on page 1 of this Agreement is/or the only broker(s) or sale agent(s) with whom I have dealt in connection with this transaction, and Sponsor agrees to pay the commission earned by such broker pursuant to a separate agreement. I agree that should any claim be made against Sponsor for commissions by any broker, other than the aforementioned broker, on account of any acts of me or my representatives, I will indemnify and hold Sponsor free and harmless from and against any and all liabilities and expenses in connection therewith, including reasonable legal fees. The provisions of this paragraph shall survive the closing of title.

31. Time to Accept Purchase Agreement. If this Agreement shall not be accepted by the Seller within twenty (20) days of the date hereof by the delivery or mailing to me of such endorsed and fully signed copy, this Purchase Agreement shall be deemed to be rejected and cancelled and my deposit shall be promptly refunded to me.

SPONSOR:

SDS COLUMBIA LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PURCHASER(S):

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
SS#: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
SS#: \_\_\_\_\_

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## POWER OF ATTORNEY

The undersigned, \_\_\_\_\_ the Owner of Unit No. \_\_\_\_\_ in the Condominium known as 75 COLUMBIA STREET CONDOMINIUM, consisting of the property submitted to the provisions of Article 9-B of the Real Property Law of the State of New York pursuant to Declaration dated \_\_\_\_\_, and recorded in the Kings County office of the Register of the City of New York on \_\_\_\_\_ as CRFN \_\_\_\_\_ and on the Floor Plans on file in said office as Map No.: \_\_\_\_\_, do hereby nominate, constitute and appoint the persons who may from time to time constitute the Board of Managers of 75 COLUMBIA STREET CONDOMINIUM, jointly, true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, to acquire in their own name, as members of the Board of Managers, or in the name of their designee, corporate or otherwise, on behalf of all Owners of Units in said Property, in accordance with their common interests, any Unit whose Owner desires to abandon or sell the same, the undivided interest in the Common Elements appurtenant thereto, the interest of such Unit Owner in any other Units theretofore acquired by the Board of Managers, or its designee, on behalf of all Unit Owners, or in the proceeds of sale of such Unit Owner in any other Units theretofore acquired by the Board of Managers, or its designee, on behalf of all Unit Owners, or in the proceeds of sale or lease thereof, if any, and the rights and privileges appurtenant thereto, the interest of such Unit Owner in all other assets of the Condominium as defined in the aforementioned Declaration or any Unit, which shall be the subject of a foreclosure or other judicial sale, or to lease any Unit whose Owner desires to rent the same, at such price or on such rental, as the case may be, and on such terms as said attorneys-in-fact may determine, granting to such attorneys-in-fact the power to do all things in the said premises which the undersigned could do if the undersigned were personally present.

The acts of a majority of such persons shall constitute the acts of said attorneys-in-fact.

This power of attorney shall be irrevocable.

*IN WITNESS WHEREOF*, the undersigned, has executed this Power of Attorney  
this      day of      ,      .

\_\_\_\_\_

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

On \_\_\_\_\_, 2012, before me, the undersigned, a notary public in and for the said state, personally appeared \_\_\_\_\_, 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 (s)he executed the same in his capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**POWER OF ATTORNEY**

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**75 COLUMBIA STREET CONDOMINIUM**

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OWNERS:  
UNIT:  
BLOCK: 299  
LOT:

RECORD AND RETURN TO:

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Forman & Associates, pc  
80 Maiden Lane Street, Suite 2204  
New York, New York 10038

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TITLE NO.

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## UNIT DEED

*THIS INDENTURE* made on \_\_\_\_\_, between SDS COLUMBIA LLC, having an office at 132 Remsen Street, Brooklyn, New York 11201, ("Grantor"), and \_\_\_\_\_, residing at \_\_\_\_\_, ("Grantee"),

### *WITNESSETH:*

That the Grantor, in consideration of Ten (\$10.00) Dollars and other valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, and the heirs or successors and assigns of the Grantee, forever:

The Condominium Unit (the "Unit") known as Unit No. \_\_\_\_\_ in the building (the "Building" known as 75 COLUMBIA STREET CONDOMINIUM and by the Street number 75 Columbia Street, Brooklyn, New York., said *Unit* being designated and described as Unit No. \_\_\_\_\_ in the Declaration establishing a plan for condominium ownership of said premises under Article 9-B of the Real Property Law of the State of New York, (the "New York Condominium Act") dated \_\_\_\_/\_\_\_\_/\_\_\_\_ under CRFN# \_\_\_\_\_ and also designated as Tax Lot \_\_\_\_\_ in Block \_\_\_\_\_ of the Borough of \_\_\_\_\_ on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of said Building, certified by \_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_ as Condominium Plan No. \_\_\_\_\_ Map No. \_\_\_\_\_.

TOGETHER with an undivided \_\_\_\_\_% interest in the Common Elements.

The premises within which the Unit is located are more particularly described as follows:

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

BEGINNING at the corner formed by the intersection of the easterly side of Columbia Street with the northerly side of Warren Street;

RUNNING THENCE northerly along the easterly side of Columbia Street, 60 feet; THENCE easterly parallel with Warren Street and part of the distance through a party wall, 93 feet 5-1/4 inches;

THENCE southerly at right angles to Warren Street, 59 feet 10-3/4 inches to the northerly side of Warren Street;

THENCE westerly along the northerly side of Warren Street. 89 feet 11-1/4 inches to the corner, the point or place of BEGINNING.

TOGETHER with the Benefits and Subject to the Burdens and Provisions of the Declaration of Condominium and of the By-Laws of the Condominium recorded in the Office of the Register of the City of New York, County of Kings on \_\_/\_\_/\_\_ under CRFN \_\_\_\_\_, as the same may be amended from time to time by the instruments in the Register's Office aforementioned which shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit.

TOGETHER with the Benefits and Subject to the Burdens and Provisions of the Declaration of Condominium and of the By-Laws of the Condominium recorded in the Office of the Register of the City of New York, County of Kings on \_\_/\_\_/\_\_ under CRFN \_\_\_\_\_, as the same may be amended from time to time by the instruments in the Register's Office aforementioned which shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit.

TOGETHER with any strips or gores adjoining the above described premises on any of the sides thereof;

TOGETHER with an easement for the continuance of all encroachments by the Unit on any adjoining Units or Common Elements now existing as a result of construction of the Building, or which may come into existence hereafter as a result of settling of the Building, or as a result of repair or restoration of the Building, or the Unit, after damage by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the Common Elements made by or with the consent of the Board of Managers, so that any such encroachments may remain so long as the Building shall stand;

TOGETHER with an easement in common with the Owners of other Units to use any fire escapes, pipes, wires, ducts, cables, conduits, public utility lines, and other Common Elements located in any of the other Units or elsewhere on the Property, and serving the Units;

TOGETHER with the appurtenances and appurtenant interests as defined by the By-Laws and all the estate and rights of the Grantor in and to the Unit;

TOGETHER with and SUBJECT to all easements of necessity in favor of the Unit or in favor of other Units or the Common Elements;

SUBJECT to easements in favor of adjoining Units and in favor of the Common Elements for the continuance of all encroachments of such adjoining Units or Common Elements on the Unit, now existing as a result of construction of the Building, or which may come into existence hereafter as a result of settling of the Building, or as a result of repair or restoration of the Building or any adjoining Unit or of the Common Elements, after damage, condemnation or eminent domain proceedings, or by reason of an alteration or repair to the Common Elements made by or with the consent of the Board

of Managers, so that any such encroachments may remain so long as the Building shall stand. Each Unit shall be subject to the aforesaid easements in favor of all other Units.

*SUBJECT* also to an easement in favor of the other Units to use the pipes, wires, ducts, conduits, cables, public utility lines and other Common Elements located in the Unit or elsewhere in the Property and serving such other Units;

*TOGETHER* with and *SUBJECT TO EASEMENTS*, rights of way, restrictions and encumbrances created by the Declaration for 75 COLUMBIA STREET CONDOMINIUM recorded in the Kings County Office of the Register of the City of New York on \_\_\_\_\_ as CRFN \_\_\_\_\_.

*SUBJECT* to the provisions of the Declaration, By-Laws, and Floor Plans of the Condominium recorded simultaneously with and as part of the Declaration, as the same may be amended from time to time by instruments recorded in the Kings County Office of the Register of the City of New York, which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having any interest or estate in the Unit, as though such provisions were recited and stipulated at length herein;

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

The use for which the Unit is intended is that of a residence as permitted by the By-Laws and the Declaration;

*TO HAVE AND TO HOLD* the same unto the Grantee, and the heirs or successors and assigns of the Grantee, forever.

If any provision of the Declaration or the By-Laws is invalid under, or would cause the Declaration or the By-Laws to be insufficient to submit the Property to, the provisions of the Condominium Act, or if any provision that is necessary to cause the Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from the Declaration or the By-Laws, or if the Declaration and By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the applicable provisions of the Condominium Act shall control.

In compliance with Section 13 of the New York Lien Law, this deed is subject to the trust fund provision of Section 13 of the New York Lien Law.

This conveyance is made in the normal and usual course of business.

*IN WITNESS WHEREOF*, the Grantor has duly executed this deed the day and year first above written.

SDS COLUMBIA LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On \_\_\_\_\_, 2012, before me, the undersigned, a notary public in and for the said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC



**UNIT DEED**

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**75 COLUMBIA STREET CONDOMINIUM**

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OWNER:  
UNIT:  
BLOCK: 299  
LOT:

RECORD AND RETURN TO:

---

TITLE NO.



## STORAGE BIN MASTER LICENSE AGREEMENT

AGREEMENT MADE THIS \_\_\_\_\_ day of \_\_\_\_\_, 2012, (this "Agreement") by and between the Board of Managers of **75 COLUMBIA STREET CONDOMINIUM** (the "**Licensor**"), having an office at 75 Columbia Street, Brooklyn, New York and **SDS COLUMBIA LLC**, having an address at 132 Remsen Street, Brooklyn, New York (the "**Licensee**").

### RECITALS

WHEREAS, pursuant to the condominium declaration and by-laws for the condominium known as 75 Columbia Street Condominium (the "**Condominium**") dated \_\_\_\_\_, recorded on \_\_\_\_\_ as \_\_\_\_\_, as same may be amended from time to time (collectively the "**Declaration**") for the property having the Street address 75 Columbia Street, Brooklyn, New York (the "**Property**") the Property was submitted to the NYS Condominium Act; and

WHEREAS, in accordance with the terms of the Declaration, Licensor is responsible for administration of the Residential Area of the Condominium, including, without limitation the "Storage Bins" as such term is more particularly defined and described in the Declaration; and

WHEREAS, Licensee is the Sponsor of the condominium conversion and Declarant of the Declaration, and therefore is the owner, prior to the first closing of condominium units pursuant to the Declaration, of all of the residential units (the "**Residential Unit**" [if more than one Residential Unit collectively, the "**Residential Units**"]) in the Condominium; and

WHEREAS, Licensee desires the right to retain the exclusive use of the space in all of the Storage Bins and the Storage Bins themselves (individually, the "**Bin Space**" and collectively, the "**Bin Spaces**") on the terms and conditions of this Agreement; and

WHEREAS, capitalized terms used in this License Agreement and not defined herein shall have the meanings given to them in the Declaration.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, receipt of which is hereby acknowledge, the parties hereto agree as follows:

1. License Fee. Licensee shall pay to Licensor monthly, on the 1<sup>st</sup> day of each month during the Term of this Agreement, a license fee (the "**License Fee**"). The License Fee shall be deemed an assessment by Licensor and failure to pay same shall entitle Licensor to the same rights and remedies as Licensor then has under the Declaration for non-payment of Common Charges or other assessments. The License Fee shall be in the amounts set forth in Schedule A-1 annexed hereto per month, payment of which shall be apportioned on the first day of the following month and monthly payments shall commence on the first day of the month

thereafter and continuing through the fifth year of the commencement date of the license. Thereafter Licensors may increase the License Fee annually, in its sole discretion.

2. *Use of Bin Space: Access to Bin Space.*

(a) Subject to and in accordance with the terms and conditions of this Agreement, Licensors hereby grants to Licensee, its successors and assigns and Licensee hereby accepts from Licensors, an exclusive license to use the Bin Space during the Term hereof (the "**License**") for storage of personal property and the property of permitted occupants of the Unit (collectively, the "**Permitted Users**").

(b) Licensee shall not store or permit anyone else to store in the Bin Space any (i) animals or food, (ii) inflammable, combustible, explosive or other dangerous items, (iii) items which have an objectionable odor or which may spoil or decay or (iv) valuable items.

(c) Licensee shall not (i) store any property outside of the Bin Space, (ii) allow any other person to use the Bin Space except in accordance with the terms of this Agreement, or (iii) deface or damage the Bin Space, the Building or Licensors' equipment. Notwithstanding anything to the contrary contained in this Agreement, Licensee may install racks, shelving or other facilities within the Bin Space, provided that such installation does not damage the structural integrity of Licensee's Storage Bin or any other Storage Bin. Licensee shall, however, at Licensors' request and at Licensee's sole expense, remove any such installation upon the expiration of the Term or earlier termination of this Agreement.

(d) Licensee shall keep the Bin Space locked with a lock procured by Licensee at Licensee's expense, and shall provide Licensors with a duplicate key. Licensee acknowledges that it is Licensee's responsibility to safeguard the keys and Licensee is fully responsible for whoever has possession of the keys. Licensors shall be entitled to use the duplicate key in its possession to access the Bin Space only in the case of emergency as described below, or to make repairs that Licensors in its reasonable judgment, deems necessary.

(e) Licensee shall have access to the Bin Space 24 hours a day, seven days a week, subject to the right of Licensors, in its reasonable judgment, to restrict late night access for security reasons.

3. *Term.* The term of this License (the "**Term**") shall commence on the date first set forth above, and shall continue until the earlier of (i) the date Licensors no longer owns Residential Units in the Condominium, subject to the provisions of Section 4 of this Agreement, (ii) the date on which Licensee gives Licensors written notice of termination, or (iii) as to an individual Bin Space, the date the Licensee assigns a Sub-license (hereinafter defined) to such individual Bin Space to the Licensors, as provided herein.

4. *Sale or Lease of Residential Unit; Assignment/Sublicense of this Agreement.*

(a) The License granted hereunder shall automatically terminate on the date that Licensee no longer owns Residential Units (or any of the Residential Units, as applicable),



unless, however, Licensee sub-licenses this License to a purchaser or other transferee of a Residential Unit(s) (the "**Transferee**"), and Transferee assumes same, in accordance with the provisions of this Agreement, and Licensee assigns such Sub-license (hereinafter defined) to the Licensor.

(b) The Licensee may sub-license one or more individual Storage Bins to a purchaser or other transferee of a Residential Unit(s) at any time, in the form annexed hereto as Exhibit A (a "**Sub-license**"). Upon such Sub-license, the Licensee may assign such Sub-license to the Licensor, which the Licensor shall to accept, whereupon the Licensor shall step into the position of Licensee and become the direct licensor of the subject Storage Bin(s), and the Licensee shall no longer be liable as Licensee under this Master License Agreement as to the subject Storage Bin(s) nor as Sub-licensor under the Sub-license Agreement.

(c) If Licensee desires to lease the Residential Unit( s), then Licensee may sub-license this License to the tenant to whom the Residential Unit(s) is/are being leased. Upon execution of a sub-license of this Agreement, Licensee shall provide a fully executed original counterpart of same to Licensor, in form and substance acceptable to Licensor, within ten (10) days of execution thereof.

5. *Property in Bin Space Upon Expiration of Term.* In the event this Agreement expires or is terminated, Licensee shall vacate and surrender possession of the Bin Space, broom clean, in the condition as existed on the date of commencement of this Agreement. Licensee's obligations to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Any property not removed from the Bin Space at the expiration or other termination of this Agreement shall be considered abandoned and may, at Licensor's option, be retained as Licensor's property or disposed of at Licensee's sole cost and expense, in either case without any liability by Licensor to Licensee or anyone else.

6. *Indemnity.* Licensee, Licensee's assigns and sublessees shall indemnify and save harmless Licensor and Licensor's agents against and from any and all liability, loss, damage and expense (including, without limitation, attorney fees and expenses) arising from injury to person or property occasioned by Licensee's negligence or failure of Licensee to comply with any provision in this Agreement, or due wholly or in part to any act, default or omission of the Licensee, any Permitted Users or of any other person using the Bin Space, or by Licensor, its agents, servants or contractors when acting as agent for the Licensee. The provisions of this Paragraph 6 shall survive the expiration or other termination of, or the sub-license of, this Agreement.

7. *Risk of Loss.* Neither Licensor nor its agents or employees shall be liable for any damage to or theft or other loss of any property stored in the Bin Space, unless due to the negligence of Licensor. Licensee understands that Licensor intends to leave the storage area in which the Bin Space is located unattended and accordingly, Licensee stores property in the Bin Space at Licensee's own risk, including, without limitation, the possibility that the Bin Space may be damp or have water infiltration. Licensor undertakes only to act as a licensor, and under no circumstances shall Licensor or its agents be deemed to act as Licensee's bailee.

8. As Is. Licensee represents that it has made a thorough inspection of the Bin Space and agrees to take same in its condition "as is" as of the commencement of this Agreement. Licensee shall, throughout the Term of this Agreement, take good care of the Bin Space. Licensee shall repair all damage

9. Services by Licensor. Licensor shall not provide any services to the Bin Space or to Licensee in connection with storage of property in the Bin Space, except lighting on the floor on which the Bin Space is located and elevator service to that floor and periodic cleaning of the storage area in which the Bin Space is located. Licensee shall keep the interior of the Bin Space clean.

10. Changes to Be in Writing. This Agreement may not be modified except by a writing signed by the party to be charged.

11. Licensee's Default. If Licensee shall default in fulfilling any of its covenants or obligations hereunder, in addition to any other rights and remedies available to Licensor under the Declaration or otherwise, Licensor may (i) deny access to the Bin Spaces until Licensee cures such default, or (ii) terminate this Agreement by the giving of written notice to Licensee, whereupon this Agreement shall terminate on the date set forth in such notice.

12. Compliance with Laws. Licensee shall, at all times, use the Bin Spaces and permit the Bin Spaces to be used only in a manner which is in full compliance with all present and future laws, orders, rules and regulations of all state, federal, municipal and local governments, departments, commissions and boards (including the New York Board of Fire Underwriters or any similar body) asserting jurisdiction therefor, or any direction of any public officer pursuant to law, including, without limitation, the police and fire departments of the City of New York, which may require the removal or destruction of items stored in the Bin Spaces. Licensee, its servants, employees, agents, visitors and licensees shall observe faithfully and comply strictly with the Condominium Documents and any and all rules and regulations for the Building as Licensor, the Board of Managers, or either of their agents may from time to time adopt.

13. Access in Emergency. Licensor or its agents shall have the right (but not the obligation), without liability to Licensor, to open the Bin Space in an emergency in order to protect the health and safety of Building residents and their property, and at other reasonable times, to inspect and examine the same and to make such repairs, replacements and improvements as Licensor shall deem necessary or desirable to the Bin Space(s) or any portion of the Building, all without any liability to Licensee whatsoever as a result thereof.

14. No Waiver. The failure of Licensor to seek redress for violation of, or to insist upon the strict performance of any covenant or condition or this Agreement or of any of the rules or regulations adopted by Licensor, shall not be deemed a waiver of such right and shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effort of an original violation.

15. Assignment. Notwithstanding anything to the contrary set forth herein, Licensee may assign this Agreement at any time.

16. Definitions. All capitalized terms used in this Agreement and not defined herein shall have the same meanings ascribed to them in the Declaration.

17. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the heirs, executors, successors and assigns of Licensor and Licensee.

**IN WITNESS WHEREOF** the undersigned have executed this Agreement as of the day and year first above written.

**LICENSOR:**  
BOARD OF MANAGERS  
75 COLUMBIA STREET CONDOMINIUM

**LICENSEE:**  
SDS COLUMBIA LLC

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

## STORAGE BIN SUB-LICENSE AGREEMENT

AGREEMENT MADE THIS \_\_\_\_\_ day of \_\_\_\_\_, 2012, (this "Agreement") by and between SDS COLUMBIA LLC, having an address at 132 Remsen Street, Brooklyn, New York, and \_\_\_\_\_ residing at 75 Columbia Street, Brooklyn, New York (the "Sub-licensee").

### RECITALS

WHEREAS, pursuant to the condominium declaration and by-laws for the condominium known as 75 Columbia Street Condominium (the "**Condominium**") dated \_\_\_\_\_, recorded on \_\_\_\_\_ as \_\_\_\_\_, as same may be amended from time to time (collectively the "**Declaration**") for the property having the Street address 75 Columbia Street, Brooklyn, New York (the "**Property**") the Property was submitted to the NYS Condominium Act; and

WHEREAS, in accordance with the terms of the Declaration, Sub-licensor holds a Master License to the "Storage Bins" as such term is more particularly defined and described in the Declaration; and

WHEREAS, Sub-licensee owns or simultaneously with the execution of this Agreement is acquiring a Residential Unit (the "**Residential Unit**" [more than one Residential Unit (collectively, the "**Residential Units**") in the Condominium; and

WHEREAS, Sub-licensee desires the right to the exclusive use of the space in Storage Bin No. \_\_\_\_ and the Storage Bin itself (collectively, the "**Bin Space**") on the terms and conditions of this Agreement; and

WHEREAS, capitalized terms used in this License Agreement and not defined herein shall have the meanings given to them in the Declaration.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, receipt of which is hereby acknowledge, the parties hereto agree as follows:

1. License Fee. Sub-licensee shall pay to Sub-licensor monthly, on the 1<sup>st</sup> day of each month during the Term of this Agreement, a license fee (the "**License Fee**"). The License Fee shall be in the amounts set forth in Schedule A-1 annexed hereto per month, payment of which shall be apportioned on the first day of the following month and monthly payments shall commence on the first day of the month thereafter and continuing through the fifth year of the commencement date of this license. Thereafter Sub-licensor may increase the License Fee annually, in its sole discretion.



2. Use of Bin Space: Access to Bin Space.

(a) Subject to and in accordance with the terms and conditions of this Agreement, Sub-licensor hereby grants to Sub-licensee, its successors and assigns and Sub-licensee hereby accepts from Sub-licensor, an exclusive license to use the Bin Space during the Term hereof (the "**Sub-license**") for storage of Sub-licensee's personal property and the property of permitted occupants of the Unit (collectively, the "**Permitted Users**").

(b) Sub-licensee shall not store or permit anyone else to store in the Bin Space any (i) animals or food, (ii) inflammable, combustible, explosive or other dangerous items, (iii) items which have an objectionable odor or which may spoil or decay or (iv) valuable items.

(c) Sub-licensee shall not (i) interfere with the use of Storage Bins by any other Unit Owner or resident of the Condominium, (ii) store any property outside of the Bin Space, (iii) allow any other person to use the Bin Space except in accordance with the terms of this Agreement, or (iv) deface or damage the Bin Space, the Building or Sub-licensor's equipment. Notwithstanding anything to the contrary contained in this Agreement, Sub-licensee may install racks, shelving or other facilities within the Bin Space, provided that such installation does not damage the structural integrity of Sub-licensee's Storage Bin or any other Storage Bin. Sub-licensee shall, however, at Sub-licensor's request and at Sub-licensee's sole expense, remove any such installation upon the expiration of the Term or earlier termination of this Agreement.

(d) Sub-licensee shall keep the Bin Space locked with a lock procured by Sub-licensee at Sub-licensee's expense, and shall provide Sub-licensor with a duplicate key. Sub-licensee acknowledges that it is Sub-licensee's responsibility to safeguard the keys and Sub-licensee is fully responsible for whoever has possession of the keys. Licensor shall be entitled to use the duplicate key in its possession to access the Bin Space only in the case of emergency as described below, or to make repairs that Sub-licensor or Licensor in their reasonable judgment, deems necessary.

(e) Sub-licensee shall have access to the Bin Space 24 hours a day, seven days a week, subject to the right of Sub-licensor or Licensor, in their reasonable judgment, to restrict late night access for security reasons.

3. Term. The term of this Sub-License (the "**Term**") shall commence on the date first set forth above, and shall continue until the earlier of (i) the date Sub-licensee no longer owns a Residential Unit in the Condominium, subject to the provisions of Section 4 of this Agreement, (ii) the date on which Sub-licensee gives Sub-licensor written notice of termination, or (iii) the date this Agreement is terminated by Sub-licensor due to Sub-licensee's default or otherwise, as provided herein.

4. Sale or Lease of Residential Unit; Assignment/Sublicense of this Agreement.

(a) The License granted hereunder shall automatically terminate on the date that Sub-licensee no longer owns the Residential Unit (or any of the Residential Units, as applicable),

unless, however, Sub-licensee assigns this License to the approved purchaser or other transferee of the Residential Unit (or any of the Residential Units, as applicable) (the "Transferee"), and Transferee assumes same, in accordance with the provisions of this Agreement.

(b) Specifically, if Sub-licensor has waived its right of first refusal with respect to the sale or other conveyance of the Residential Unit (or Residential Units, as applicable), or if Sub-licensor has exercised its right of first refusal, in either case as set forth in the By-laws of the Condominium, and if the assignment of this License to the purchaser was a condition of the applicable sale or other conveyance of the Residential Unit(s), then Sub-licensee may assign this License to the Transferee as part of the sale or other conveyance. Upon execution of an assignment and assumption of this Agreement, Sub-licensee shall provide a fully executed original counterpart of same to Sub-licensor, in form and substance acceptable to Sub-licensor, within ten (10) days of execution thereof.

(c) If Sub-licensee desires to lease the Residential Unit(s), and if Sub-licensor has waived its right of first refusal (or has exercised such right) in connection with the proposed lease, then Sub-licensee may sub-license this License to the tenant to whom the Residential Unit(s) is/are being leased. Upon execution of a sub-license of this Agreement, Sub-licensee shall provide a fully executed original counterpart of same to Sub-licensor, in form and substance acceptable to Sub-licensor, within ten (10) days of execution thereof.

(d) If Sub-licensee desires to assign this License to another Unit Owner in the Condominium, Sub-licensee shall provide to Sub-licensor written notice of Sub-licensee's desire to do so, specifying the name, phone number and Unit of the Unit Owner, and providing a copy of the proposed assignment and assumption agreement, at least thirty (30) days in advance of the intended assignment. If Sub-licensor does not object to the proposed assignment within thirty (30) days of receipt of Sub-licensor's notice, Sub-licensee may proceed with the specified assignment and shall provide a fully executed original counterpart of the assignment and assumption agreement to Sub-licensor within ten (10) days of execution thereof.

(e) Pursuant to the terms of the Storage Bin Master License Agreement, the Sub-licensor may assign this Sub-license to the Licensor at any time, whereupon the Licensor shall step into the position of Sub-licensor and become the direct licensor of the Storage Bin(s), and the Sub-licensor shall no longer be liable under this Agreement. Upon such assignment, the License Fee shall be deemed an assessment by Licensor and failure to pay same shall entitle Licensor to the same rights and remedies as Licensor then has under the Declaration for non-payment of Common Charges or other assessments.

5. Property in Bin Space Upon Expiration of Term. In the event this Agreement expires or is terminated, Sub-licensee shall vacate and surrender possession of the Bin Space, broom clean, in the condition as existed on the date of commencement of this Agreement. Sub-licensee's obligations to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Any property not removed from the Bin Space at the expiration or other termination of this Agreement shall be considered abandoned and may, at Sub-licensor's option, be retained as Sub-licensor's property or disposed of at Sub-licensee's sole cost and expense, in either case without any liability by Sub-licensor to Sub-licensee or anyone else.

6. Indemnity. Sub-licensee, Sub-licensee's assigns and sublessees shall indemnify and save harmless Licensor, Sub-licensor and their agents against and from any and all liability, loss, damage and expense (including, without limitation, attorney fees and expenses) arising from injury to person or property occasioned by Sub-licensee's negligence or failure of Sub-licensee to comply with any provision in this Agreement, or due wholly or in part to any act, default or omission of the Sub-licensee, any Permitted Users or of any other person using the Bin Space, or by Licensor, Sub-licensor, their agents, servants or contractors when acting as agent for the Sub-licensee. The provisions of this Paragraph 6 shall survive the expiration or other termination of, or the sub-license of, this Agreement.

7. Risk of Loss. Neither Licensor, Sub-licensor nor their agents or employees shall be liable for any damage to or theft or other loss of any property stored in the Bin Space, unless due to the negligence of Sub-licensor. Sub-licensee understands that Licensor and Sub-licensor intend to leave the storage area in which the Bin Space is located unattended and accordingly, Sub-licensee stores property in the Bin Space at Sub-licensee's own risk, including, without limitation, the possibility that the Bin Space may be damp or have water infiltration. Licensor and Sub-licensor undertake only to act as a licensor, and under no circumstances shall Sub-licensor or its agents be deemed to act as Sub-licensee's bailee.

8. As Is. Sub-licensee represents that it has made a thorough inspection of the Bin Space and agrees to take same in its condition "as is" as of the commencement of this Agreement. Sub-licensee shall, throughout the Term of this Agreement, take good care of the Bin Space. Sub-licensee shall repair all damage

9. Services by Sub-licensor. Licensor and Sub-licensor shall not provide any services to the Bin Space or to Sub-licensee in connection with storage of property in the Bin Space, except lighting on the floor on which the Bin Space is located and elevator service to that floor and periodic cleaning of the storage area in which the Bin Space is located. Sub-licensee shall keep the interior of the Bin Space clean.

10. Changes to Be in Writing. This Agreement may not be modified except by a writing signed by the party to be charged.

11. Sub-licensee's Default. If Sub-licensee shall default in fulfilling any of its covenants or obligations hereunder, in addition to any other rights and remedies available to Sub-licensor under the Declaration or otherwise, Sub-licensor may (i) deny access to the Bin Space until Sub-licensee cures such default, or (ii) terminate this Agreement by the giving of written notice to Sub-licensee, whereupon this Agreement shall terminate on the date set forth in such notice.

12. Compliance with Laws. Sub-licensee shall, at all times, use the Bin Space and permit the Bin Space to be used only in a manner which is in full compliance with all present and future laws, orders, rules and regulations of all state, federal, municipal and local governments, departments, commissions and boards (including the New York Board of Fire Underwriters or any similar body) asserting jurisdiction therefor, or any direction of any public officer pursuant



to law, including, without limitation, the police and fire departments of the City of New York, which may require the removal or destruction of items stored in the Bin Space. Sub-licensee, its servants, employees, agents, visitors and licensees shall observe faithfully and comply strictly with the Condominium Documents and any and all rules and regulations for the Building as Sub-licensor, the Board of Managers, or either of their agents may from time to time adopt.

13. Access in Emergency. Licensor and Sub-licensor or their agents shall have the right (but not the obligation), without liability to Licensor or Sub-licensor, to open the Bin Space in an emergency in order to protect the health and safety of Building residents and their property, and at other reasonable times, to inspect and examine the same and to make such repairs, replacements and improvements as Licensor or Sub-licensor shall deem necessary or desirable to the Bin Space or any portion of the Building, all without any liability to Sub-licensee whatsoever as a result thereof.

14. No Waiver. The failure of Licensor or Sub-licensor to seek redress for violation of, or to insist upon the strict performance of any covenant or condition or this Agreement or of any of the rules or regulations adopted by Sub-licensor, shall not be deemed a waiver of such right and shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effort of an original violation.

15. Assignment. Notwithstanding anything to the contrary set forth herein, in the event Sub-licensee desires to assign this Agreement, such assignment shall comply with the then requirements of Licensor or Sub-licensor to effectuate such assignment, including, without limitation, the obligation of the assignee to enter into a new license agreement directly with Licensor or Sub-licensor, as the case may be.

16. Definitions. All capitalized terms used in this Agreement and not defined herein shall have the same meanings ascribed to them in the Declaration.

17. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the heirs, executors, successors and assigns of Sub-licensor and Sub-licensee.

**IN WITNESS WHEREOF** the undersigned have executed this Agreement as of the day and year first above written.

**LICENSOR:**  
**SDS COLUMBIA LLC**

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

Name:

Title:

**LICENSEE:**

\_\_\_\_\_

\_\_\_\_\_



## **DECLARATION**

Establishing a Plan for Condominium Ownership of Premises located at 75 Columbia Street, Brooklyn, New York, County of Kings, City and State of New York Pursuant to Article 9-B of the Real Property Law of the State of New York.

**NAME:** 75 COLUMBIA STREET CONDOMINIUM

**SPONSOR:** SDS COLUMBIA LLC  
132 Remsen Street  
Brooklyn, New York 11201

**DATE OF DECLARATION:** JUNE , 2012

The land affected by the within instrument lies in Block 299, formerly known as Lot \_\_\_\_\_, now known as Tax Lots \_\_\_\_\_ on the Tax Map of the Borough of Brooklyn, County of Kings, City and State of New York.

Record and Return:

FORMAN & ASSOCIATES, pc  
Attorneys for Sponsor  
80 Maiden Street, Suite 2204  
New York, New York 10038  
(212) 791-5500

**Declaration** establishing a Plan for Condominium Ownership of Premises to be known as 75 COLUMBIA STREET CONDOMINIUM, located at 75 Columbia Street, Brooklyn, New York, Borough of Brooklyn, County of Kings, City and State of New York, pursuant to Article 9B of the Real Property Law of the State of New York.

SDS COLUMBIA LLC, a New York limited liability company, whose principal office is situated at 132 Remsen Street, Brooklyn, New York 11201, hereinafter referred to as the "Sponsor", does hereby declare:

1. **SUBMISSION OF PROPERTY:** Sponsor hereby submits the land hereinafter described, together with the Building and improvements thereon erected (the "Property") to the provisions of Article 9-B of the Real Property Law of the State of New York.
2. **AREA AND LOCATION OF LAND:** The land ("Land") consists of all that certain tract, plot, piece and parcel of land situate, lying and being in the County of Kings, City and State of New York, more particularly described on Schedule A annexed hereto and made a part hereof. The Land is owned by the Sponsor in fee simple absolute.
3. **NAME OF CONDOMINIUM:** The Condominium shall be known as 75 COLUMBIA STREET CONDOMINIUM.
4. **DESCRIPTION OF THE BUILDING:** Sponsor has built the Property for which a permanent Certificate of Occupancy is being obtained.

75 Columbia Street, Brooklyn, New York (the "Building") is currently on one lot. The Building consists of cellar plus seven stories. The Buildings overall structure will be that of reinforced concrete columns supporting concrete slabs and is located in a District which permits residential development.

5. **THE UNITS:** Schedule B annexed hereto and made a part hereof sets forth the following data with respect to each Unit necessary for the proper identification thereof: Unit designation; tax lot number; approximate square foot area; location; number of rooms; the portion of the Common Elements, including Limited Common Elements to which the Unit has immediate access and the percentage of interest in the Common Elements. The location of each Unit is more clearly designated on the Floor Plans (as hereinafter defined) and reference should be made thereto for the statement of the location of each Unit.

As shown on the Floor Plans of the Building (the "Floor Plans"), certified by DAVID E. GROSS and intended to be filed in the Kings County Office of the Register of the City of New York, simultaneously with the recording of this Declaration, the approximate interior square foot area of each Unit is measured horizontally on each floor from the outside surface of the exterior wall construction to the midpoint of the interior walls separating one Unit from

another, or to the midpoint of the wall construction separating one Unit from public corridors, stairs, elevators, and other mechanical spaces. Columns and mechanical pipes (whether along the perimeter or within the Unit) are not deducted from the square foot area of the Units. Measured vertically each unit will consist of the volume of the top of the finished floor to the underside of the finished ceiling. Any Common Elements located within or appurtenant to any Unit shall not be considered as part of that Unit.

6. COMMON ELEMENTS: The Common Elements of the Condominium consist of the entire Property, including all parts of the Building and improvements thereon other than the Units. Common Elements are comprised of General Common Elements and Limited Common Elements. They include, without limitation, the following:

A. General Common Elements

- (1) The land on which the Building is physically erected;
- (2) All foundations, columns, girders, beams, supports, bearing walls; those portions of the exterior walls and insulation beyond the exterior face of the Building or, where applicable, those portions of the exterior walls beyond the interior face of the exterior wall; those portions of the walls and partitions dividing the Units from corridors, lobby and stairs located beyond the unexposed face of the dry walls enclosing the Unit; including any framing from which the dry wall ceiling of the Unit below is attached; corridors, halls, stairs and stairway areas located beyond the unexposed face of the dry walls enclosing the Unit; lobby; storage and utility areas located beyond the unexposed face of the dry walls enclosing the Unit and the entrances to and exits from the Building;
- (3) All installations outside the Units for services such as gas, power, light, telephone and water;
- (4) All sewer pipes and drainage pipes;
- (5) The 550 square foot recreational lounge and fitness area on the ground floor, the 687 square foot common area terrace on the roof, boiler room, pump room and meter areas, public hallways and stairways, if any, as shown and delineated on the Floor Plans;
- (6) All other apparatus and installations existing in the Building for common use or necessary or convenient to the existence, maintenance or safety of the Building;
- (7) The structural portions of the roof and portions of the roof other than

those areas shown as limited common elements.

- (8) 9 storage spaces, as set forth on the Floor Plans herein (the "Storage Spaces".) The Storage Spaces shall be the subject of Master License Agreements between the Board of Managers and the Sponsor. The Sponsor shall have the right to sub-license one or more Storage Spaces to a purchaser or other transferee of a Residential Unit(s). Upon the execution of the sub-license agreement by the transferee, the Sponsor may assign such sub-license to the Board of Managers, who shall accept same. The Master License and Sub-licenses shall continue until the earlier of (i) the date Licensor or Sub-Licensor no longer owns a Residential Unit in the Condominium, (ii) the date on which Licensee or Sub-licensee gives Licensor or Sub-licensor written notice of termination, or (iii) the date this Agreement is terminated by Sub-licensor due to Licensee's or Sub-licensee's default. Sub-licensees may, however, assign their Sub-license to an approved purchaser or other transferee of the Residential Unit (or any of the Residential Units, as applicable) provided such assignee assumes same, in accordance with the provisions of the above referenced Agreement.

**B. Limited Common Elements.**

Each Unit Owner (his/her guests, invitees, lessees and residents of his/her Unit) shall have the exclusive use of any balcony, terrace or courtyard to which there is direct access from the interior of the Unit. The following are Limited Common Elements as discussed in the footnotes to Schedule A of the Offering Plan.

1. The terraces shall be deemed Limited Common Elements, and shall be exclusively used and maintained by the Owner(s) of Units 6 and 7 who shall be responsible for their repair and maintenance, except that, anything to the contrary herein notwithstanding, the use of the terraces shall be subject to the conditions and limitations set forth below. The Unit Owners may modify these areas which may require permits from the Department of Buildings and provided no zone variance is required, if allowed by law, provided such work is done in a good and workmanlike manner in accordance with any applicable rules and regulations of the Board of Managers of the Condominium and governmental agencies having jurisdiction thereof. However, certain structures cannot be built as of right and require a zoning variance from the Board of Standards and Appeals. An application for a zoning variance may be opposed by the Board of Managers of the Condominium. The Board of Managers of the Condominium may regulate the following aspects with regard to construction: the time periods during which work is permitted; the manner in which construction debris will be handled, the measures which must be



taken to prevent compromising the security of the building under construction and liability insurance for contractors during construction.

a. The Condominium and its agents shall have the use of this space for the following purposes, subject to the following obligations:

(i) Access to Common Elements for inspection, repair and maintenance purposes to the extent that same affect the repair and maintenance of the Building's structure, which shall be the sole and only obligation of the Condominium with regard to the terraces;

(ii) For ingress and egress from the Building in case of fire or for other emergency;

(iii) For any purpose as required by law, appropriate governmental rule or regulation or the Building's Certificate of Occupancy.

b. The Owner(s) of Units 6 and 7 shall have exclusive use of and shall be solely responsible for the maintenance of their terraces as shown on the floor plans.

2. The roof terrace shall be deemed Limited Common Elements, and shall be exclusively used and maintained by the Owner(s) of Unit 7 who shall be responsible for its repair and maintenance, except that, anything to the contrary herein notwithstanding, the use of the roof terrace shall be subject to the conditions and limitations set forth below. The Unit Owners may modify these areas which may require permits from the Department of Buildings and provided no zone variance is required, if allowed by law, provided such work is done in a good and workmanlike manner in accordance with any applicable rules and regulations of the Board of Managers of the Condominium and governmental agencies having jurisdiction thereof. However, certain structures cannot be built as of right and require a zoning variance from the Board of Standards and Appeals. An application for a zoning variance may be opposed by the Board of Managers of the Condominium. The Board of Managers of the Condominium may regulate the following aspects with regard to construction: the time periods during which work is permitted; the manner in which construction debris will be handled, the measures which must be taken to prevent compromising the security of the building under construction and liability insurance for contractors during construction.

a. The Condominium and its agents shall have the use of this space for the following purposes, subject to the following obligations:

(i) Access to Common Elements for inspection, repair and maintenance purposes to the extent that same

affect the repair and maintenance of the Building's structure, which shall be the sole and only obligation of the Condominium with regard to the terraces;

(ii) For ingress and egress from the Building in case of fire or for other emergency;

(iii) For any purpose as required by law, appropriate governmental rule or regulation or the Building's Certificate of Occupancy.

b. The Owner(s) of Unit 7 shall have exclusive use of and shall be solely responsible for the maintenance of the roof terrace as shown on the floor plans.

3. A portion of the end of the hallways for Units 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B shall be deemed Limited Common Elements, and shall be exclusively used and maintained by the Owner(s) of Units 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B who shall be responsible for its repair and maintenance, except that, anything to the contrary herein notwithstanding, the use of their portion of the end of the hallway shall be subject to the conditions and limitations set forth below. The Unit Owners may modify these areas which may require permits from the Department of Buildings and provided no zone variance is required, if allowed by law, provided such work is done in a good and workmanlike manner in accordance with any applicable rules and regulations of the Board of Managers of the Condominium and governmental agencies having jurisdiction thereof. However, certain structures cannot be built as of right and require a zoning variance from the Board of Standards and Appeals. An application for a zoning variance may be opposed by the Board of Managers of the Condominium. The Board of Managers of the Condominium may regulate the following aspects with regard to construction: the time periods during which work is permitted; the manner in which construction debris will be handled, the measures which must be taken to prevent compromising the security of the building under construction and liability insurance for contractors during construction.

a. The Condominium and its agents shall have the use of this space for the following purposes, subject to the following obligations:

(i) Access to Common Elements for inspection, repair and maintenance purposes to the extent that same affect the repair and maintenance of the Building's structure, which shall be the sole and only obligation of the Condominium with regard to the terraces;

(ii) For ingress and egress from the Building in case of fire or for other emergency;

(iii) For any purpose as required by law,

appropriate governmental rule or regulation or the Building's Certificate of Occupancy.

b. The Owner(s) of Units 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B shall have exclusive use of and shall be solely responsible for the maintenance of their portion of the end of the hallway as shown on the floor plans.

4. Unit #1 shall have an easement to use the pump room which may be accessed directly from Unit #1 and can also be accessed directly from the common areas of the Building.

Purchasers should note that they may be personally liable for injury to their guests, invitee(s) and/or workers in their Limited Common Elements, as well as in their Units.

7. USE OF UNITS:

A. Each of the Residential Units may be used for private residential use, except that a Residential Unit Owner may use his/her Residential Unit for any home occupation use permitted under applicable zoning law and ordinances, building code or other rules and regulations of governmental authorities having jurisdiction. Such Units may also be used as professional offices by a resident thereof provided such professional use does not violate any zoning law and ordinances and provided further that the prior written consent of the Board of Managers to such professional use is obtained. Notwithstanding the foregoing, the Sponsor may, without the permission of the Board of Managers, retain ownership of one or more Units for use as models, sales and/or production offices in connection with the sale or rental of the Units.

B. The Parking Spaces may be used for parking vehicles for approximately nine (9) motor vehicles as permitted under applicable zoning law and ordinances, building code or other rules and regulations of governmental authorities having jurisdiction.

8. DETERMINATION OF PERCENTAGES IN COMMON ELEMENTS: The percentage of Common Interest allocated to each Unit, pursuant to Section 339-i(1)(iv) of the Real Property Law of the State of New York, is based upon the approximate proportion that the floor area of all the Units, but such proportion shall reflect the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements. This sub-section of §339-i(1) has been used due to the differing nature of the residential units from that of the Parking Spaces. Generally, the common charges for the residential units are based upon the approximate proportion that the floor area of the each unit at the date of the Declaration bears to the then aggregate floor area of all

the residential units, but also reflecting the substantially exclusive advantages enjoyed by one or more but not all Units in a part or parts of the Common Elements. The common charges for the Parking Spaces are based primarily on the application of its proportionate share of the floor area as defined by the zoning laws, limited to those budget line items in which it benefits.

9. ENCROACHMENTS: If any portion of the Common Elements now encroach upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if any encroachment shall occur hereafter as a result of (a) settling or shifting of the Building, or (b) alteration or repair to the Common Elements made by or with the consent of the Board of Managers, or (c) as a result of repair or restoration of the Building or a Unit after damage by fire or other casualty, or (d) as a result of condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Building shall stand.

10. EASEMENTS

- A. i. Each Unit Owner shall have an easement in common with the owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his/her Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Board of Managers shall have a right of access to each Unit and any Limited Common Elements appurtenant thereto to inspect the same, to remove violations therefrom and/or to maintain, repair or replace the Common Elements contained therein or elsewhere in the Building.
- ii. Unit #1 shall have an easement to use the pump room which may be accessed directly from Unit #1 and can also be accessed directly from the common areas of the Building.
- B. The Sponsor and its designees, their successors, assigns, invitees, licensees, contractors, employees and tenants, shall have an easement in, on, over and across the Property for: (i) construction, installation and development thereon of recreation facilities, if any; (ii) for the construction and installation, ingress to and egress from, and use of (including the right to connect with) all pipes, conduits, ducts, cables, wires, storm drainage facilities, water, sewer and other utility lines for the benefit of the Condominium; (iii) construction and installation, ingress to and egress from and the right to use (in common with Unit Owners) all storm drainage facilities, water, sewer and other utility lines, pipes, conduits, flues, ducts, wires and cables; and (iv) ingress to and egress from all land areas of the Property and the use of said land areas (in common with Unit Owners) for



any lawful purpose.

- C. The Sponsor, its designees and their successors, assigns, invitees, licensees, contractors, employees and tenants: (i) shall have an easement to erect, maintain, repair and replace from time to time one or more signs on the Property for the purposes of advertising the sale of Units and the leasing of space in any Unit as well as an easement in and access to Units and Common Elements consistent with the purposes of a certain Offering Plan for the Property dated \_\_\_\_\_, 2012, as same may be amended, and Sponsor's rights and obligations thereunder, including, without limitation, the right to develop, renovate, maintain, repair, refurbish, offer, sell and lease Units and Common Elements; and (ii) reserve the right to establish, grant and create easements for any additional underground electric, transformer, amplifier, gas, cable television, telephone, water, storm drainage, sewer or other utility lines and appurtenances in, under and through the Property, including, without limitation, an easement or easements for the benefit of any property adjacent to the Property, to relocate any existing utility easements in any portion of the Property and to dedicate any or all of such facilities to any governmental body, public benefit corporation or utility company if the Sponsor or designee shall deem it necessary or desirable for the proper operation and maintenance of the Property or any portion thereof, or the residents of any property adjacent to the Property, or users of the Recreation Facilities, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Residential Units for dwelling purposes. Any utility company or public benefit corporation furnishing services to the Property, and the employees and agents of any such company or corporation, shall have the right of access to any Unit, to the Common Elements or the Limited Common Elements in furtherance of such easements, provided such right of access is exercised in such a manner as to not unreasonably to interfere with the use of the Units.
- D. The user of any easement granted by subparagraphs B, C and D of this Paragraph 10 shall have the responsibility of repairing any damage resulting therefrom.
11. **POWER OF ATTORNEY TO BOARD OF MANAGERS:** Each Unit Owner shall grant to the persons who shall from time to time constitute the Board of Managers, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Unit whose owner desires to surrender, sell or lease the same, or which may be the subject of a foreclosure or other judicial sale, in the name of the Board of Managers or its designee, corporate or otherwise on behalf of all Unit Owners, and to convey, sell, lease, mortgage (but not to vote the votes appurtenant thereto) or otherwise deal with any such Units so acquired or to sublease any Unit so leased by the Board of Managers.

12. ACQUISITION OF UNITS BY BOARD OF MANAGERS: In the event any Unit Owner shall surrender his/her Unit together with: (i) the undivided interest in the Common Elements, general and limited, appurtenant thereto; (ii) the interest of such Unit Owner in any other Units acquired by the Board of Managers or its designee on behalf of all Unit Owners or the proceeds of the sale or lease thereof, if any; and (iii) the interest of such Unit Owner in any other assets of the Condominium; (hereinafter collectively called the "Appurtenant Interests"), pursuant to the provisions of Section 339-x of the Real Property Law of the State of New York, or in the event the Board of Managers shall purchase from any Unit Owner who has elected to sell the same, a Unit, together with the Appurtenant Interests, pursuant to the By-Laws, or in the event the Board of Managers shall purchase at a foreclosure or other judicial sale, a Unit, together with the Appurtenant Interests, the Unit shall be held by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective Common Interests. The lease covering any Unit leased to the Board of Managers, or its designee, corporate or otherwise, shall be held by the Board of Managers, or its designee on behalf of all Unit Owners in proportion to their respective Common Interests.
13. PERSON TO RECEIVE SERVICE: For the period during which the Sponsor is in control of the Board of Managers, SDS COLUMBIA LLC, the Sponsor, with an office at 132 Remsen Street, Brooklyn, New York 11201, is hereby designated to receive notice of process in any action which may be brought against the Condominium. After the Sponsor relinquishes control of the Board of Managers, notice of process in any action, which may be brought against the Condominium, shall be served on the President of the Condominium at the Office of the Condominium, 75 Columbia Street Condominium, Brooklyn, New York. The Board of Managers hereby designates the Secretary of State as agent of the Board of Managers upon whom process against it may be served. Service of process on the Secretary of State as agent of the Board of Managers shall be made personally delivering to and leaving with him or her or his or her deputy, or with any person authorized by the Secretary of State to receive such service, at the office of the Department of State in the City of Albany, duplicate copies of such process together with the statutory fee, which shall be a taxable disbursement. Service of process on the Board of Managers shall be complete when the Secretary of State is so served. The Secretary of State shall promptly send one of such copies by certified mail, return receipt requested, to the Board of Managers, at the post office address on file in the Department of State, specified for such purpose. Nothing in this section shall affect the right to serve process in any other manner permitted by law. The Board of Managers shall also file with the Secretary of State the name and post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon the Secretary of State and shall update the filing as necessary.
14. UNITS SUBJECT TO DECLARATION, BY-LAWS AND RULES AND

**REGULATIONS:** All present and future Owners, tenants, subtenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into a lease or the entering unto occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

15. **AMENDMENT TO DECLARATION:** This Declaration may be amended, modified, added to or deleted from by the vote of at least 66 2/3% in number and in Common Interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, or in lieu of a meeting, any amendment may be approved, in writing by 66 2/3% in number and in Common Interest of all Unit Owners, provided however:

- (1) No amendment, modification, addition or deletion which shall adversely affect the lien of any mortgage may be made without the written consent of the affected mortgagee or mortgagees;
- (2) No amendment which shall change the percentage of Common Interests allocated to any Unit or Unit(s) may be made without the written consent of such Owner. No amendment which shall change the percentage of Common Interests allocated to any Unit or Unit(s) may be made without the written consent of the mortgagee(s) of such Unit, or Units, if any;
- (3) No amendment, modification, addition or deletion of or to this Declaration will be effective in any respect against the Sponsor, its designee, or any Unsold Unit until the Sponsor or such designee shall consent thereto in writing. The Sponsor hereby reserves to itself and its designee(s) the right to amend this Declaration at any time without the requirement of a vote and without the approval or consent of any Unit Owners or mortgagees for the sole purpose of reflecting the changes in the Floor Plans required by the New York Real Property Law Section 339-p for any portion or portions of the Building and appurtenances which are incomplete at the time the Declaration is recorded and the filing of the floor plans at the same time as said amendment to the Declaration and the Floor Plans, provided a verified statement of a registered architect or licensed professional engineer is also filed which certifies that the plans being filed simultaneously with such amendment, fully and fairly depicting the layout, location, unit designations and approximate dimensions of the particular Unit or Units as built, as provided in said Section 339-p of the New York



Real Property Law will be filed with such amendment.

No such amendment shall be effective until recorded in the Kings County Office of the Register of the City of New York.

16. CHANGES IN UNSOLD UNITS: For any Unit owned by the Sponsor or, if not prohibited by the New York Condominium Act (as the same may be amended), the Sponsor or Successor-Sponsor shall have the right, without the vote or consent of the Board of Managers, other Unit Owners or the holders of Unit mortgages, to (i) make alterations, additions, or improvements in, to and upon the Unit; (ii) change the layout or number of rooms in the Unit; (iii) change in the size and/or number of such Units by subdividing a Unit, combining separate Units (including those resulting from any subdivision or otherwise) into one or more Units, altering the boundary walls between any Unit or otherwise; and (iv) reapportion among such Units affected by such change in size or number, subdivision, combination or alteration, their appurtenant interests in the Common Elements; provided, however, that the Sponsor or its designee(s) shall comply with all rules, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold the Board of Managers and all other Unit Owners harmless from any liability arising therefrom. In accordance with law, the Common Elements appurtenant to each Unit as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all Unit Owners affected. Written consents will be obtained from Unit Owners, if any, who are adversely affected as a result of the above changes. Contract vendees, if any, pursuant to Purchase Agreements with the Sponsor or its designees for a Unit adversely affected as a result of the above changes, will be given the right to rescind their Purchase Agreements and receive a refund of any deposit or Down Payment. The above changes, if made, will be disclosed in an amendment to the Offering Plan for the Property. The provisions of this paragraph 16 may not be added to, amended or deleted without the prior written consent of the Sponsor or its Successor-Sponsor.

Unit Owners in the Condominium hold title to their respective Units subject to the benefits, rights, privileges, easements, burdens, covenants, and restrictions as described herein, in the By-Laws of the Condominium and any agreement of record recorded prior or subsequent to this Declaration.

17. INVALIDITY:

- A. If any provision of this Declaration or of the By-Laws is invalid under, or would cause this Declaration or the By-Laws to be insufficient to submit the Property to, the provisions of the Condominium Act, such provision shall be deemed deleted from this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act, but shall nevertheless be valid and binding upon, and shall inure to the benefit of, the owners of the Property and



their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable law with the same force and effect as if, immediately after the recording of this Declaration or the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land. If any provision that is necessary to cause this Declaration or the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included as a part of this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act.

- B. Subject to the terms of paragraph (a) of this Clause 17, if this Declaration or the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the provisions of this Declaration or the By-Laws shall nevertheless be valid and binding upon, and shall inure to the benefit of, the owners of the Property and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable law to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provisions as a covenant running with the Land.
18. TERMINATION OF CONDOMINIUM: The Condominium may be terminated by casualty loss, condemnation or eminent domain, in accordance with the provisions of the By-Laws, or by withdrawing the Property from the provisions of the New York Condominium Act if authorized by an affirmative vote of Unit Owners who own not less than eighty (80%) percent in number and in Common Interest of the Units. The Sponsor or its designees will not vote its interests appurtenant to any Unsold Units for such withdrawal unless at least eighty (80%) percent in number and in Common Interest of all other Unit Owners have elected for such withdrawal, in which event the Sponsor may choose to vote in favor of or against such withdrawal. In the event said withdrawal is authorized as aforesaid, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all the Unit Owners in proportion to their respective Common Interests, provided, however, that no payment shall be made to a Unit Owner until all lienors have first been paid off out of his/her share of such proceeds.
19. COMMON EXPENSE: Common Expenses of the Condominium mean and include all expenses of operation of the Property and all sums designated Common Expenses by or pursuant to the provisions of Article 9-B of the Real

Property Law of the State of New York, the Declaration or the By-Laws.

20. DEFINITION OF "SUCCESSOR-SPONSOR-DESIGNEE": The term "Successor-Sponsor" as used in this Declaration shall mean any person or entity who acquires the lesser of 20 or more Units or 10% or more of all of the Residential Units from the Sponsor or a person so designated by the Sponsor. A "Successor-Sponsor" shall have the right to have a person or entity succeed its rights and any such successor shall also be deemed a "Successor-Sponsor".
21. WAIVER: No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
22. CAPTIONS: The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision thereof.
23. GENDER: The use of the masculine gender in this Declaration shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.

*IN WITNESS WHEREOF*, the parties have caused this Declaration to be executed by its duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SDS COLUMBIA LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Member

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

On \_\_\_\_\_, 2012, before me, the undersigned, a notary public in and for the said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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NOTARY PUBLIC

**SCHEDULE "A"**

**TO THE DECLARATION OF**

**75 COLUMBIA STREET CONDOMINIUM**

The Condominium Unit (the "Unit") known as Unit No. \_\_\_\_\_ in the building (the "Building" known as 75 Columbia Street Condominium and by the Street number 75 Columbia Street, Brooklyn, New York., said *Unit* being designated and described as Unit No. \_\_\_\_\_ in the Declaration establishing a plan for condominium ownership of said premises under Article 9-B of the Real Property Law of the State of New York, (the "New York Condominium Act") dated \_\_\_\_/\_\_\_\_/\_\_\_\_ under CRFN# \_\_\_\_\_ and also designated as Tax Lot \_\_\_\_\_ in Block \_\_\_\_\_ of the Borough of \_\_\_\_\_ on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of said Building, certified by \_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_ as Condominium Plan No. \_\_\_\_\_ Map No. \_\_\_\_\_.

TOGETHER with an undivided \_\_\_\_\_% interest in the Common Elements.

The premises within which the Unit is located are more particularly described as follows:

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

BEGINNING at the corner formed by the intersection of the easterly side of Columbia Street with the northerly side of Warren Street;

RUNNING THENCE northerly along the easterly side of Columbia Street, 60 feet;

THENCE easterly parallel with Warren Street and part of the distance through a party wall, 93 feet 5-1/4 inches;

THENCE southerly at right angles to Warren Street, 59 feet 10-3/4 inches to the northerly side of Warren Street;

THENCE westerly along the northerly side of Warren Street. 89 feet 11-1/4 inches to the corner, the point or place of BEGINNING.



**SCHEDULE B**  
**TO THE DECLARATION OF**  
**75 COLUMBIA STREET, BROOKLYN, NEW YORK**

| <u>UNIT</u> | PERCENTAGE<br>INTEREST IN<br>COMMON<br>ELEMENTS | <u>TAX LOT<br/>NUMBER</u> | APPROX.<br>SQUARE<br>FOOT<br><u>AREA</u> | <u>LOCATION</u> | <u>NO. OF<br/>ROOMS</u> | LIMITED<br>COMMON<br>ELEMENTS<br>TO WHICH<br>UNIT HAS<br>IMMEDIATE<br><u>ACCESS</u> |
|-------------|-------------------------------------------------|---------------------------|------------------------------------------|-----------------|-------------------------|-------------------------------------------------------------------------------------|
|-------------|-------------------------------------------------|---------------------------|------------------------------------------|-----------------|-------------------------|-------------------------------------------------------------------------------------|

**TO BE FILLED IN UPON RECORDING**

**SCHEDULE B**  
**TO THE DECLARATION OF**  
**75 COLUMBIA STREET, BROOKLYN, NEW YORK**

| <u>UNIT</u> | PERCENTAGE<br>INTEREST IN<br>COMMON<br>ELEMENTS | <u>TAX LOT<br/>NUMBER</u> | APPROX.<br>SQUARE<br>FOOT<br><u>AREA</u> | <u>LOCATION</u> | BEDROOMS /<br>BATHS | LIMITED<br>COMMON<br>ELEMENTS<br>TO WHICH<br>UNIT HAS<br>IMMEDIATE<br><u>ACCESS</u> |
|-------------|-------------------------------------------------|---------------------------|------------------------------------------|-----------------|---------------------|-------------------------------------------------------------------------------------|
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**TO BE FILLED IN UPON RECORDING**

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**BY-LAWS**  
**of**  
**75 COLUMBIA STREET CONDOMINIUM**

**ARTICLE I**

**Purpose of Business**

**Section 1. Unit Ownership:** The Property, located in the Borough of Brooklyn, County of Kings, City and State of New York at 75 Columbia Street, Brooklyn, New York, (hereinafter called the "Property") has been submitted pursuant to the provisions of Article 9-B of the Real Property Law of the State of New York by the Declaration recorded in the Kings County office of the Register of the City of New York, simultaneously herewith (the "Declaration"). The Condominium thereby created shall hereinafter be known as the 75 COLUMBIA STREET CONDOMINIUM.

**Section 2. Applicability Of By-Laws:** The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the Buildings and all other improvements thereon (including the Units, the Common Elements and Limited Common Elements), owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of said Article 9-B of the Real Property Law of the State of New York. The Condominium Units are hereinafter sometimes referred to as "Unit" or "Units". The term "Sponsor" herein includes the owners of at least 10 Units or 20% of the total number of Units in the Condominium, whichever is less, which are not purchased for occupancy by the owner or one or more members of his/her immediate family who are financially responsible entities or individuals, or are persons designated by the Sponsor, which/who will assume the status and all of the obligations of the Sponsor for those units under the Offering Plan, applicable laws or regulations ("Successor-Sponsor"). The obligations of a Sponsor will apply only to those Units owned by such Successor-Sponsor, who shall also be entitled to the benefits thereof. Units held by the Sponsor or Successor-Sponsor are sometimes herein referred to as "Unsold Units" as such term is further defined in Article IV, Section 7.2.

**Section 3. Application:** All present and future owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations attached hereto as Schedule A.

The acceptance of a deed or conveyance or the entering into of a lease for a



Unit or the act of occupancy of a Unit shall constitute an agreement that these By-Laws, the Rules and Regulations and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

Section 4. Office: The office of the Condominium and of the Board of Managers shall be located at the Property.

## ARTICLE II

### Meetings of Unit Owner

Section 1. Annual Meeting: The Annual Meeting of the Unit Owners of the Condominium, for the election of the Board of Managers and for such other business as may properly come before such meeting, shall be held in the Borough of Brooklyn, City of New York, at such time and place, each year as may be designated by the Board. The notice of the meeting shall be in writing and signed by the President or a Vice President or the Secretary or an assistant Secretary. Such notice shall state the time when and the place within the state where it is to be held, and the Secretary shall cause a copy thereof to be delivered personally or mailed to each Unit Owner of record of the Condominium entitled to vote at such meeting not less than ten (10) nor more than forty (40) days before the meeting. If mailed, it shall be directed to each such Unit Owner at his/her address as it appears in the records of the Condominium, unless he/she shall have filed with the Secretary of the Condominium a written request that notices intended for him/her be mailed to some other address, in which case it shall be mailed to the address designated in such request.

Section 2. Special Meetings: Special meetings of Unit Owners, other than those the calling of which is regulated by statute, may be called at any time by the President or Secretary or by a majority of the Board of Managers. It shall also be the duty of the Secretary to call such meetings whenever requested in writing by Unit Owners owning at least twenty-five percent (25%) in number and Common Interest of the Condominium. The Secretary shall cause a notice of such Special Meeting stating the time, place and object thereof and the officer or other person or persons by whom the meeting is called, to be delivered personally or mailed as provided in Section 1 of this Article to each Unit Owner of record of the Condominium entitled to vote at such meeting not less than ten (10) nor more than forty (40) days before such meeting. No business other than that stated in such notice shall be transacted at such Special Meeting unless the holders of all the Units of the Condominium be present thereat in person or by proxy. Except that there shall be a meeting commenced within sixty days after the closing of the First Unit to be sold to elect a Board of Managers.

Section 3. Waiver of Notices: The notice provided for in the two foregoing sections is not indispensable, but any Unit Owners' meeting shall be valid for all purposes if all the Unit Owners of the Condominium are represented thereat in person or by proxy, or if a quorum is present, as provided in the next succeeding section, and

waiver of notice of the time, place and objects of such meeting shall be duly executed in writing either before or after said meeting by such Unit Owners as are not so represented and were not given such notice.

Section 4. Quorum: At each meeting of Unit Owners, except where otherwise provided by law, Unit Owners representing, in person or by proxy, 51% of the percentage of Common Interest to the Units shall constitute a quorum; in case a quorum shall not be present at any meeting, the holders of a majority of the Units represented may adjourn the meeting to some future time and place. No notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting. Only those Unit Owners who, if present at the original meeting, would have been entitled to vote thereat, shall be entitled to vote at any such adjourned meeting.

Section 5. Voting: At each meeting of Unit Owners, each Unit Owner present in person or by proxy shall be entitled to cast the votes appurtenant to his/her Unit at the time of service of notice of such meeting or at such prior date, not more than forty days before such meeting, as may be prescribed by the Board of Managers as the date for determining which Unit Owners of record are entitled to notice of and to vote at such meeting. The proxies shall be in writing duly signed by the Unit Owner but need not be acknowledged or witnessed, and the person named as proxy by any Unit Owner need not himself be a Unit Owner of the Condominium. Voting by Unit Owners shall be viva voce unless any Unit Owner present at the meeting, in person or by proxy, demands a vote by written ballot, in which case the voting shall be by ballot, and each ballot shall state the name of the Unit Owner voting and the number of votes appurtenant to his/her Unit, and in addition, the name of the proxy of such ballot if cast by a proxy. For so long as the Sponsor or a Successor-Sponsor continue to have among them 50% or more of Common Interest of the Condominium, or for a period two years, whichever is sooner (the "Control Period") the Sponsor or Successor-Sponsor shall have the right to designate three of the five Managers (see Article IV, Section 1). However, non-resident Unit Owners may not, either in conjunction with the Sponsor or on their own, control the Board after the Sponsor relinquished control.

Section 6. Title to Units: Title to Units may be taken in the name of an individual or in the names of two (2) or more persons, as tenants in common or as joint tenants or as tenants by the entirety or in the name of a corporation or partnership, or in the name of a fiduciary or trust, estate, unincorporated association, syndicate, joint venture, organization, government or any department or agency thereof, or any other entity. The term "Unit Owner" as used in these By-Laws shall include any person, group of persons, association or entity taking title as set forth in this Section. The above shall not constitute consent or condonation of any activity not permitted under existing certificate of occupancy, zoning requirements or other applicable law or regulation.

Section 7. Number of Votes: Any or all of such Owners (including the Sponsor or Sponsor-designee, if the Sponsor or its designee shall then own one or more Units) shall be entitled to cast one vote for each .000001% of interest in the Common

Elements attributable to the Unit or Units owned by them on all matters put to the vote at all meetings of Unit Owners; except that, when voting for the election of members of the Board of Managers, each Unit Owner shall be entitled to one vote for each .000001% of Common Interest attributable to his/her Unit per member to be elected. If Units are owned by more than one person as joint tenants, tenants by the entirety or as tenants in common or by a partnership, corporation or other entity, the persons owning said Unit shall agree among themselves and cast the votes for their Unit as a single vote. A fiduciary shall be the voting member with respect to any Unit in a fiduciary capacity. Any Unit or Units owned by the Board of Managers or its designee shall not be entitled to vote. A Unit Owner defaulting in payment of Common Charges or assessments shall not be permitted or entitled to vote at any regular or special meeting of Unit Owners.

Section 8. Majority of Unit Owners: As used in these By-Laws the term "majority of Unit Owners" shall mean those Unit Owners having greater than 50% of the percentage of Common Interest appurtenant to all Unit Owners present in person or by proxy and voting at any meeting of the Unit Owners, determined in accordance with the provisions of Section 7 of this Article II. Unless otherwise provided by these By-Laws, decisions require a majority (50%) of the Common Interest of the Condominium.

Section 9. Inspectors of Election: Inspectors of election shall not be required to be appointed at any meeting of Unit Owners unless requested by a Unit Owner present (in person or by proxy) and entitled to vote at such meeting and upon the making of such request inspectors shall be appointed or elected as provided in Section 610 of the Business Corporation Law.

Section 10. Order of Business: So far as consistent with the purpose of the meeting, the order of business of each meeting of Unit Owners shall be as follows:

1. Call to order.
2. Presentation of proofs of due calling of the meeting.
3. Roll call and presentation and examination of proxies.
4. Reading of minutes of previous meeting or meetings, unless waived.
5. Reports of officers and committees.
6. Appointment or election of inspectors of election, if requested.
7. If the Annual Meeting or Special Meeting called for that purpose, the election of Managers.
8. Unfinished business.



9. New business.
10. Adjournment.

### ARTICLE III

#### Officers

Section 1. Designation: The principal officers of the Condominium shall be the President, the Vice-President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Managers. The Board of Managers may appoint an Assistant Treasurer, an Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President, but no other officers, need be members of the Board of Managers.

Section 2. Election of Officers: The officers of the Condominium shall be elected annually by the Board of Managers at the organization meeting of each new Board of Managers and shall hold office at the pleasure of the Board of Managers and until their successors are elected, their resignation or death.

Section 3. Removal of Officers: Upon the affirmative vote of a majority of the members of the Board of Managers, any officer may be removed, either with or without cause, and his/her successor may be elected at any regular meeting of the Board of Managers, or at any special meeting of the Board of Managers called for such purpose.

Section 4. President: The President shall be the chief executive officer of the Condominium. He/she shall preside at all meetings of the Unit Owners and of the Board of Managers. He/she shall have all of the general powers and duties which are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he/she may in his/her discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

Section 5. Vice-President: The Vice-President shall take the place of the President and perform his/her duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Managers shall appoint some other member of the Board of Managers to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him/her by the Board of Managers or by the President.

Section 6. Secretary: The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Managers; he/she shall have charge of such books and papers as the Board of Managers may direct; and he/she shall in general perform all the duties incident to the office of secretary of a stock corporation organized under



the Business Corporation Law of the State of New York.

Section 7. Treasurer: The Treasurer shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. He/she shall be responsible for the deposit of all moneys and other valuable effects in the name of the Board of Managers, or the Managing Agent, in such depositories as may from time to time be designated by the Board of Managers, and he/she shall, in general, perform all the duties incident to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York.

Section 8. Agreements, Contracts, Deeds, Checks, Etc.: All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed by any two (2) officers of the Condominium or by such other person or persons as may be designated by the Board of Managers.

Section 9. Compensation of Officers: No officer shall receive any salary or other compensation from the Condominium for acting as such or for services rendered in an official capacity.

Section 10. Liability of Officers: No officer shall be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for willful misconduct or bad faith. The Unit Owners shall severally indemnify each officer against any liability or claims except those arising out of the bad faith or willful misconduct of an officer. It is intended that each officer shall have no personal liability with respect to any contract made by him/her on behalf of the Condominium. It is and shall be permissible for each officer who is appointed by the original Board of Managers (designees of the Sponsor), to contract with the Sponsor and affiliated corporations without fear of being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by an officer or out of the aforesaid indemnity in favor of each officer shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements bears to the aggregate interest in the Common Elements of all the Unit Owners. Every agreement made by an officer on behalf of the Condominium shall provide that each officer is acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners, except for willful misconduct or bad faith), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements bears to the aggregate interest in the Common Elements of all Unit Owners.

## ARTICLE IV

### Managers

Section 1. Number: The number of Managers of the Condominium shall be not

less than five (5) nor more than seven (7), as may from time to time be herein provided and, in the absence of such provision shall be five (5), except prior to the first election of Managers the number of Managers shall be three (3). Commencing with the first election of Managers by Unit Owners of the Condominium, and until changed by amendment of this By-Law provision, as hereinafter provided, the number of Managers shall be five (5). The number of Managers shall not be decreased to a number less than the number of Managers then in office except at any Annual Meeting of Unit Owners. Notwithstanding the foregoing, during the Control Period, the number of Managers shall remain fixed at five (5). There shall always be an odd number of Managers. At the end of the Control Period, a majority of the Board of Managers must be owner-occupants or members of an owner-occupant's household who are unrelated to the Sponsor and its principals. The Managers shall hold office until their successors have been elected and hold their first meeting. But in any event, the members of the Board of Managers shall serve a term of one year each. Each Manager may be re-elected for additional terms however.

**Section 2. Powers and Duties:** The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the Condominium, as agent of all Unit Owners and may do all such acts and things except as by law or by the Declaration or by these By-Laws may not be delegated to the Board of Managers, which shall include, but shall not be limited to, the following:

- a. Contracting for the necessary services for operation, care, upkeep and maintenance of the Common Elements.
- b. Determination of the Common Charges required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Property.
- c. Collection of the Common Charges and expenses of the Condominium from the Unit Owners.
- d. Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Elements.
- e. Adoption and amendment of rules and regulations covering the details of the operation and use of the Property subject to a right of the Unit Owners to overrule the Board (See Article VI, Section 16).
- f. Opening of bank accounts on behalf of the Condominium and designating the signatories required therefore.
- g. Purchasing or leasing or otherwise acquiring in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners, Units offered for sale or lease or surrendered by their Owners to the Board of Managers.

- h. Purchasing of Units at foreclosure or other judicial sales in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners.
- i. Acquiring in the name of the Board of Managers, or its designee, corporate or otherwise, on behalf of all Unit Owners, rights and interests in real and personal property for use in connection with the ownership and operation of the Property as Condominium, as described in the Declaration and these By-Laws.
- j. Selling, leasing, mortgaging (but not voting the votes appurtenant to), or otherwise dealing with Units acquired by, and subleasing Units leased by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners.
- k. Organizing corporations to act as designees of the Board of Managers in acquiring title to or leasing of Units on behalf of all Unit Owners.
- l. Obtaining and reviewing of insurance for the Property, including the Units, pursuant to the provisions of Article VI, Section 2 hereof.
- m. Making of repairs, additions and improvements to or alterations of the Property and repairs to and restoration of the Property in accordance with the other provisions of these By-Laws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- n. Negotiation and settlement of all claims and actions relating to the Condominium.
- o. Borrowing money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements, provided, however, that (i) the consent of a majority of all Unit Owners shall be required for the borrowing of any sum in excess of \$50,000 and (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the written consent of the Unit Owners. If any sum borrowed by the Board of Managers on behalf of the Condominium pursuant to the authority contained in this paragraph (o) is not repaid by the Board, a Unit Owner who pays to the creditor such proportion thereof as his/her interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against the Unit Owner's Unit.



- p. Levying fines against Unit Owners for violations of the Rules and Regulations governing the operation and use of the Property.
- q. The Board may undertake to commence proceedings to reduce real estate taxes on the Units.
- r. Have the right to accumulate reserve for capital expenditures within limits otherwise stated herein.
- s. To enter into and upon the Units when necessary and act with as little inconvenience to the Unit Owners as possible in connection with the maintenance, care and preservation of the property.
- t. Operate and maintain the storage bins; set and collect monthly license fees from licensees.

**Section 3. Election:** The Managers shall be elected at the Annual Meeting of Unit Owners or at a Special Meeting called for that purpose as provided by law, by a plurality of votes cast at such meeting. Their term of office shall be until their respective successors are elected and qualify. But in any event, the members of the Board shall serve a term of one (1) year.

**Section 4. Quorum:** A majority of the Managers then authorized by these By-Laws shall constitute a quorum.

**Section 5. Vacancies:** Vacancies in the Board of Managers caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by vote of a majority of the remaining members of the Board of Managers at a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum (50%), and each person so elected shall be a member of the Board of Managers until a successor shall be elected at the next annual meeting of the Unit Owners to serve the remaining term. Notwithstanding the foregoing, any vacancy on the Board by a member designated or elected by Sponsor, whether arising from resignation, removal, death or otherwise, shall be filled only by Sponsor.

**Section 6. Meetings:** The Board of Managers shall meet immediately after the Annual Meeting of Unit Owners without notice and also whenever called together by any Manager of the Condominium or upon the written request of any Managers then holding office, upon notice given to each Manager, by delivering personally, mailing or telegraphing the same to him/her at least two (2) days prior to such meeting at the last address furnished by him/her to the Condominium. Regular meetings may be held without notice at such times and places as the Board of Managers may determine but until otherwise determined by the Board of Managers shall be at least monthly. Any



meeting of the Managers at which all the members shall be present, or of which notice shall be duly waived by all absentees, either before or after the holding of such meeting, shall be valid for all purposes provided a quorum be present. Meetings of Managers may be held either at the principal office of the Condominium or elsewhere within the State of New York as provided in the notice calling the meeting, unless the Board of Managers by resolution adopt some further limitation in regard thereto. At all meetings of the Board of Managers, each Manager shall be entitled to one vote. The vote of a majority of the Board of Managers present at the time of a vote of a duly constituted meeting shall be the act of the Board of Managers.

#### Section 7. Resignation and Removal:

Section 7.1. Any Manager may resign at any time by written notice delivered in person or sent by certified registered mail to the President or Secretary of the Condominium. Such resignation shall take effect at the time specified therein, and unless specifically requested acceptance of such resignation shall not be necessary to make it effective.

Section 7.2. Any Manager may be removed from office at any time with or without cause upon the affirmative vote of the Unit Owners owning at least 51% of the Common Interest of the Condominium at a Unit Owners' meeting duly called for that purpose; provided, however, that the Manager(s) elected by the Sponsor ( holding a Unit owned or retained by the Sponsor or its designee, or a Unit for which a prospective Purchaser is in default under the terms of his/her Purchase Agreement past any applicable cure period, or a Unit the Sponsor has not sold, or a Unit that is acquired individually or collectively by one or more members of a group that consists of the Sponsor or a partner of the Sponsor, or by a group that consists of the Sponsor or a partner of the Sponsor and a person or persons joined with the Sponsor or any entity or individual(s) as designated by the Sponsor, hereinafter referred to as "Unsold Units") can be removed only for cause by vote of a majority of the Unit Owners or without cause by the Sponsor.

Section 7.3. Vacancies in the Board of Managers caused by any reason other than the removal of a member thereof by a vote of the Unit Owners, shall be filled by vote of a majority of the remaining members of the Board of Managers at a special meeting of the Board of Managers held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum (50%) , and each person so elected shall be a member of the Board of Managers until a successor shall be elected at the next annual meeting of the Unit Owners to serve the remaining term. Notwithstanding the foregoing, any vacancy on the Board by a member designated or elected (in its capacity as holder of Unsold Units) by Sponsor, whether arising from resignation, removal, death or otherwise, shall be filled only by Sponsor

Section 8. Annual Cash Requirements: The Board of Managers shall, from time to time, determine the cash requirements as defined in the Condominium's By-

Laws and fix the terms and manner of payment of Common Charges. The Board of Managers shall have discretionary power to prescribe the manner of maintaining and operating the Building, to be paid as aforesaid by the Unit Owners. Every such determination by the Board of Managers shall be final and conclusive as to all Unit Owners and any expenditures made by the Condominium's officers or its agent under the Board of Managers or with the approval of the Board of Managers of the Condominium shall, as against the Unit Owners, be deemed necessarily and properly made for such purpose. Sponsor may not exercise veto power over expenses described in Schedule B, or over expenses required:

- (i) to comply with applicable laws or regulations; or
- (ii) to remedy any notices of violation; or
- (iii) to remedy any work order by an insurer.

Sponsor may exercise veto power over expenses described above, for a period ending not more than five (5) years after the closing of the first Unit or whenever the Unsold Units constitute less than twenty-five percent (25%) of the common interest, whichever is sooner.

However, notwithstanding anything contained herein to the contrary, the Sponsor, shall not veto the expenses set forth in Schedule B, or expenditures required to comply with applicable laws or regulations.

The Condominium may take any of the actions enumerated in clauses (i) through (iv) above, if the cost of such actions, when added to all other budgeted expenses of the Condominium (excluding debt service), shall not result in increasing the Common Charges for any year of operation by more than 5% from the previous year's Common Charges.

Section 9. Rules and Regulations: The Board of Managers may from time to time adopt and amend such rules and regulations as it may deem necessary in respect to the Building of the Condominium for the health, safety and convenience of the Unit Owners. Copies thereof and of changes therein shall be furnished to each Unit Owner.

Section 10. Managing Agent and Manager: The Board of Managers may employ for the Condominium a Managing Agent and/or a Manager at a compensation established by the Board of Managers to perform such duties and services as the Board of Managers shall authorize. The Board of Managers may delegate to the Manager or Managing Agent, all of the powers granted to the Board of Managers by these By-Laws other than the powers set forth in subdivisions (b), (e), (f), (g), (h), (i), (j), (k), (n), (o) and (p) of Section 2 of this Article VI.

Section 11. Compensation: No member of the Board of Managers shall receive any compensation from the Condominium for acting as such.

**Section 12. Liability of the Board of Managers:** The members of the Board of Managers shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the members of the Board of Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium within the scope of their authority. It is understood and permissible for the original Board of Managers, who are designated by the Sponsor, to contract with the Sponsor and affiliated corporations without fear of being charged with self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board of Managers or by the Managing Agent or by the Manager on behalf of the Condominium shall provide that the members of the Board of Managers, or the Managing Agent, or the Manager, as the case may be, are acting only as agent for the Unit Owners in the Common Elements. Every agreement made by the Board of Managers or by the Managing Agent or by the Manager on behalf of the Condominium shall provide that the members of the Board of Managers, or the Managing Agent, or the Manager, as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his/her interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

**Section 13. Committees:** The Board of Managers may by resolution create such committees as it shall deem appropriate and such committees shall have such powers and authority as the Board of Managers shall vest therein. The members of any such committee, at least one of whom shall be designated by the Sponsor or a Sponsor-designee, so long as the Sponsor or Sponsor-designee has the right to designate a member of the Board, shall be appointed by the President of the Condominium. Such committee shall not have power to do any act which the Executive Committee may not do under subsections (a) - (d) of Section 8 of Article IV.

## **ARTICLE V**

### **Notices**

**Section 1. Definitions:** Capitalized terms used herein and not otherwise defined herein shall have the meanings attributed to them in the Declaration. Whenever under the provisions of the Declaration or of these By-Laws, notice is required to be given to the Board of Managers, any Manager, Unit Owner or mortgagee, it shall not be



construed to mean personal notice; but such notice may be given in writing, by mail by depositing the same in a post office or letter box, in a postpaid sealed wrapper, addressed to the Board of Managers, such Manager or Unit Owner or mortgagee at such address as appears on the books of the Condominium.

Section 2. Service of Notice Waiver: Whenever any notice is required to be given under the provisions of the Declaration or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## ARTICLE VI

### Operation of the Property

Section 1. Determination of Common Expenses and Fixing of Common Charges: The Board of Managers shall from time to time, at least annually, prepare a budget for the Condominium, determine the amount of the Common Charges payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such Common Charges among the Unit Owners according to their respective percentage of the Common Elements. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers pursuant to the provisions of Section 2 of this Article VI and the fees and disbursements of the Insurance Trustee. The Common Expenses shall also include such amounts as the Board of Managers may deem proper for the operation and maintenance of the Property, including, without limitation, an amount for working capital of the Condominium for a general operating reserve, and for a reserve fund for replacements, to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, of any Unit whose owner has elected to sell or lease such Unit or of any Unit which is to be sold at a foreclosure or other judicial sale, together with such amounts as may be necessary to maintain such Unit(s). The Board of Managers shall also, where necessary, impose an assessment or additional Common Charge in order to meet any unanticipated Common Expense. The Board of Managers shall advise all Unit Owners, promptly, in writing, of the amount of Common Charges payable by each of them, respectively, as determined by the Board of Managers, as aforesaid, and shall furnish copies of each budget on which such charges are based, to all Unit Owners and to their mortgagees, if so required.

The Sponsor or Sponsor-designee shall be responsible for the Common Charges assessed against a Unit owned by it from the date of the First Unit Closing until such Unit is sold to a bona fide purchaser.

Sponsor may not exercise veto power over expenses described in Schedule B, or over expenses required:



- (i) to comply with applicable laws or regulations; or
- (ii) to remedy any notices of violation; or
- (iii) to remedy any work order by an insurer.

Sponsor may exercise veto power over expenses described above, for a period ending not more than five (5) years after the closing of the first Unit or whenever the Unsold Units constitute less than twenty-five percent (25%) of the common interest, whichever is sooner.

However, notwithstanding anything contained herein to the contrary, the Sponsor, shall not veto the expenses set forth in Schedule B, entitled "PROJECTED BUDGET FOR FIRST YEAR OF OPERATION" or expenditures required to comply with applicable laws or regulations.

The Board of Managers may take any of the actions enumerated in clauses (i) through (v) above, if the cost of such actions, when added to all other budgeted expenses of the Condominium (excluding debt service), shall not result in increasing the Common Charges for any year of operation by more than 5% from the previous year's maintenance charges.

**Section 2. Insurance:** The Board of Managers shall be required to obtain and maintain, to the extent obtainable, the following insurance: (1) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the Building containing the Units (including all of the Units and the fixtures initially installed therein by the Sponsor or by prior construction and any other property usual to the servicing and general occupancy, but not including furniture, furnishings, or other personal property supplied or installed by Unit Owners), together with all service machinery and equipment contained therein and covering the interests of the Condominium, the Board of Managers and all Unit Owners and their mortgagees with certificates of insurance, as their interests may appear, in an amount to be determined by the Board of Managers but in no event to be less than the Minimum Insurance Percentage (as hereinafter defined) percent of the full replacement cost of the Building, including above noted items but exclusive of footings and foundations, as approved by a fire insurance company or a qualified insurance broker; each of said policies shall contain a Condominium Property Endorsement and a New York standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee, as herein provided; (2) worker's compensation insurance, if the Condominium has employees; (3) disability benefits insurance if the Condominium has employees; and (4) such other insurance as the Board of Managers may determine. As used herein, the term "Minimum Insurance Percentage" shall mean 100% until such time as Sponsor's existing mortgage loans are repaid in full and thereafter shall mean

80%. All policies of physical damage insurance shall provide that adjustment of loss shall be made by the Board of Managers (with the approval of the Insurance Trustee, if any, if more than \$50,000.00), and that the total proceeds thereof, if \$50,000.00 or less, shall be payable to the Board of Managers and if more than \$50,000.00 shall be payable to the Insurance Trustee, if any. Notwithstanding anything to the contrary contained herein, with respect to any insurance loss of \$50,000 or more, such proceeds must be payable to an Insurance Trustee so long as the Sponsor still holds units which are subject to a mortgage.

All policies of physical damage insurance required under this Section 2 shall be issued by insurance companies licensed in New York State having Best's ratings of A:X or better from A. M. Best & Co. or a comparable rating from Standard & Poors Co. All policies of physical damage insurance shall contain waivers of subrogation and the individual Unit Owners as well as the Condominium shall be primary insureds to the extent their interests shall also appear. Such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to all of the insureds, including all mortgagees of Units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of Units at least ten (10) days prior to expiration of the then current policies.

The Board of Managers shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of Managers may from time to time determine, but not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, covering each member of the Board of Managers, the Managing Agent, the Manager and each Unit Owner. Such public liability coverage shall also cover cross liability claims of one insured against another.

Unit Owners shall not be prohibited from carrying other insurance for their own benefit, provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. Such policies shall be so endorsed as to state that they will in no way conflict with any insurance carried by the Board of Managers.

### Section 3. Repair or Reconstruction After Fire or Other Casualty:

Section 3.1. In the event of damage to or destruction of the Building containing the Units as a result of fire or other casualty, unless seventy-five (75%) or more of the Building containing the Units is destroyed or substantially damaged and Unit Owners whose percentage of Common Interest totals seventy-five (75%) or more in the aggregate of the total Common Interest duly and promptly resolve to not proceed with repair or restoration, the Board of Managers shall arrange for the prompt repair and restoration of the Building containing the Units (including any damaged Units, and any kitchen or bathroom fixtures initially installed therein by the Sponsor, but not including any wall, ceiling or floor decorations or coverings or other furniture, furnishings, fixtures

or equipment installed in the Units by the Unit Owners), and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies in appropriate progress payments for distribution to the contractors engaged in such repairs and restoration. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a Common Expense and the Board of Managers may assess all the Unit Owners for such deficit (a "Restoration Deficit") as part of the Common Charges, and as set forth in Article X, Section 5, the Restoration Deficit may be required to be deposited with the Insurance Trustee. Notwithstanding the foregoing, to the extent the additional costs result from changes requested by an Owner or the acts or omissions by an Owner, such Owner shall be solely responsible for payment of the additional costs. Promptly after any casualty loss in excess of \$50,000 affecting the Building, the Board of Managers shall retain a licensed architect or a licensed professional engineer or engineering or construction consulting firm providing engineering and/or architectural services, who or which is experienced in the design and operation in the City of New York of structures similar to the Building (a "Certifying Professional") to, among other things, prepare an estimate of the cost of restoration (a "Restoration Estimate").

Section 3.2. If seventy-five (75%) or more of the Building containing the Units is destroyed or substantially damaged (as reasonably determined by the Board of Managers after consultation with the insurance carrier and/or a licensed architect) and Unit Owners whose percentage of Common Interest totals seventy-five (75%) percent in the aggregate of the total Common Interest duly and promptly resolve not to proceed with repair or restoration, the Property shall be subject to an action for partition at the suit of any Unit Owner or lienor, as if owned in common, in which event the net proceeds of sale together with the net proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of this Section 3, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds) shall be divided by the Board of Managers or the Insurance Trustee, as the case may be, among all the Unit Owners in proportion to their respective percentage of interest in the Common Elements, after first payment out of the share of each Unit Owner the amount of any unpaid liens on his/her Unit, in the order of the priority of such liens.

Section 3.3. Whenever in this Section the words "prompt repair" are used it shall mean repairs are to begin not more than sixty days from the date the Insurance Trustee notifies the Board of Managers and the Unit Owner or Unit Owners that it holds proceeds of insurance funds sufficient to pay the estimated costs of such work; or not more than ninety days after Insurance Trustee notifies the Board of Managers and Unit Owner or Owners that such funds are insufficient to pay said estimated costs and advising them of the amount of the insufficiency, or in the event there is no Insurance Trustee required hereunder, not more than sixty days from the date of receipt of insurance funds on account of such damage or destruction and wherever the words, "promptly resolve" are used it shall also mean not more than sixty days from the date of receipt of said insurance funds.



### Section 3.4. Insurance Trustee.

Section 3.4.1. Appointment of Insurance Trustee. The Insurance Trustee, if selected, shall be a bank, trust company or savings and loan association with offices in the City and State of New York, designated by the Board of Managers (with the approval of the holders of 3 or more Unit first mortgagees). In the event, at such time, the Sponsor holds Units which are encumbered by a mortgage or mortgages, the Insurance Trustee shall be the Bank of America, N.A. or another bank, trust company or savings and loan association approved by the single mortgagee holding one or more first priority mortgages encumbering such Sponsor owned Units having, in the aggregate, the greatest Common Interest (the "Sponsor's Primary Mortgagee"). The Board of Managers shall pay the fees and disbursements of any Insurance Trustee and such fees and disbursements shall constitute a Common Expense of the Condominium.

Section 3.4.2. If the insurance proceeds available for any repair or restoration are less than the amount of the cost of repair as Estimate (and provided that the Estimate exceeds \$50,000), then within fifteen (15) days of such deficiency becoming known, the Board of Managers shall notify each Unit Owner of its share of the Restoration Deficit. Within thirty (30) days' of such notice regarding a Restoration Deficit, each Owner shall pay its share thereof to the Board of Managers, who shall promptly deposit all such funds received with the Insurance Trustee. If an Owner fails to contribute its deficiency as determined above and such failure continues for a period of ten (10) days after the Owner is given notice of such failure, the Board of Managers shall have the right, but shall not be obligated, to pay the share of the defaulting Owner to the Insurance Trustee. Any payments made by the Board of Managers pursuant to the foregoing shall be deemed a special assessment made by the Board of Managers against the defaulting Owner, and failure of the defaulting Owner to pay such special assessment shall be treated in the same manner as failure to pay Common Charges. Any Insurance Trustee appointed to act hereunder shall, on or before the date any funds are required to be held by Insurance Trustee hereunder, execute a Insurance Trustee agreement with the Board of Managers accepting said appointment and agreeing to act as Insurance Trustee in accordance with the terms hereof. Said Insurance Trustee agreement shall be consistent with the terms hereof and otherwise in a form reasonably approved by the Board of Managers.

Section 3.4.3. Liability of Insurance Trustee. The Insurance Trustee shall not be liable or accountable for any action taken or disbursement made in good faith by the Insurance Trustee, except that arising from its own gross negligence or willful misconduct. The Insurance Trustee's reliance upon advice of independent competent counsel shall be conclusive evidence of good faith, but shall not be the only manner in which good faith may be shown. The Insurance Trustee shall have no affirmative obligation to prosecute a determination of the amount of, or to effect the collection of, any insurance proceeds or condemnation awards unless the Insurance Trustee shall have been given an express written authorization from the Board of Managers. In addition, the Insurance Trustee may rely conclusively on any certificate furnished by a Certifying Professional to the Insurance Trustee which appears on its



face to have been properly furnished in accordance with the provisions hereof and shall not be liable or accountable for any disbursement of funds made by it in reliance upon such certificate or authorization.

Section 3.4.4. Indemnification of Insurance Trustee. In consideration of the services rendered by the Insurance Trustee, the Board of Managers may agree to indemnify and hold harmless the Insurance Trustee from any and all damage, liability or expense of any kind whatsoever (including, but not limited to, reasonable attorneys' fees and expenses) incurred in the course of Insurance Trustee's duties hereunder or in the defense of any claim or claims made against Insurance Trustee by reason of its appointment hereunder, except where due to the gross negligence, bad faith failure to act or willful misconduct of the Insurance Trustee.

Section 3.4.5. Appointment of Successor Insurance Trustee. The Insurance Trustee may resign by serving not less than sixty (60) days' prior notice to the Board of Managers. Within such sixty (60) day period, the Board of Managers, with the reasonable consent of the Sponsor's Primary Mortgagee, or if there is no Sponsor's Primary Mortgagee, any 3 other mortgagees of Units), shall appoint a substitute who qualifies as a Insurance Trustee, and the resigning Insurance Trustee shall transfer all funds, together with copies of all records, held by it as Insurance Trustee to such substitute, at which time its duties as Insurance Trustee shall cease. If an Insurance Trustee is not appointed within the sixty (60) day period, the resigning Insurance Trustee shall continue to hold, receive and invest any funds payable to the Insurance Trustee hereunder but shall have no other duties or obligations as Insurance Trustee other than to invest the funds as herein provided and to transfer all funds and records to the new Insurance Trustee when selected. The Insurance Trustee may, after not less than twenty (20) days prior written notice to the Board of Managers (given no sooner than forty (40) days after the resignation notice referred to above), deposit such funds with either a court of competent jurisdiction or with a bank or trust company in New York, New York who qualifies as an Insurance Trustee.

Section 3.4.6. Investment of Deposited Funds; Interest Earned Thereon.

(a) Unless otherwise specified in the Insurance Trustee Agreement, Insurance Trustee shall invest and reinvest monies held pursuant to the Insurance Trustee Agreement in any of the following: (i) any United States Treasury obligation, (ii) any obligation of a federal agency, (iii) shares of money market mutual funds that invest solely in the investments described in (i) and (ii) above, or (iv) any money market account, certificate of deposit or other deposit account with Insurance Trustee.

(b) Insurance Trustee shall invest in such of the foregoing as Board of Managers shall direct, but absent such direction, Insurance Trustee shall invest as provided in clause (iv) above. Notwithstanding anything to the contrary contained herein, in connection with any investment other than as provided in clause (iv) above, Insurance Trustee shall be paid its customary fees, charges

and commissions in connection with the making and liquidating such investments in the same manner as Insurance Trustee is reimbursed for out-of-pocket expenses in connection with its role as Insurance Trustee hereunder and under the Insurance Trustee Agreement.

(c) Insurance Trustee shall hold all funds paid or delivered to it pursuant to these By-Laws, including any securities or other investments, in trust, to be applied, after deducting Insurance Trustee's costs and expenses, for the purposes specified in the Condominium Documents. Any interest paid or received by Insurance Trustee on monies or securities held in trust, and any gain on the redemption or sale of any securities, shall be added to the monies or securities so held in trust by Insurance Trustee. Monies received by Insurance Trustee pursuant to any provisions hereof shall not be commingled with Insurance Trustee's own funds.

Section 3.47. Disbursement Requests. Each request pursuant to the provisions of these By-laws for disbursement of insurance proceeds, or any condemnation awards deposited with the Insurance Trustee, including any interest or income earned thereon (the "Restoration Funds") for application to the cost of construction, repair, restoration or demolition including the non-construction costs related thereto (the "Restoration Work") shall be accompanied by the certificates required under this Section 3 and otherwise comply with the provisions of this Section 3. Before disbursing any Restoration Funds pursuant to the provisions of this Article, the Insurance Trustee shall obtain from the Board of Managers a current list of all mortgagees.

#### Section 3.4.8. Disbursement of Restoration Funds:

(a) Application for Disbursement. Subject to the provisions below, the Insurance Trustee shall disburse the Restoration Funds in connection with the Restoration Work, in installments as the Restoration Work progresses, to the Board of Managers, in accordance with the provisions of this Section 3. Each Restoration Funds Request shall be sent to each mortgagee. Each party entitled to receive a Restoration Funds Request shall also receive the accompanying documents set forth in Section 15.3. Advances by the Insurance Trustee shall be made not more than once a month, after the Insurance Trustee's receipt of a written request therefor from the Board of Managers, addressed to the Insurance Trustee (each such request being herein called a "Restoration Funds Request"). Each Restoration Funds Request shall be sent to each mortgagee who has requested such copies of the Board of Managers.

(b) Minimum Required Retainage. There shall be retained from each advance of the Restoration Funds made on account of labor and materials an amount equal to the retainage under the applicable contract, but not less than

five percent (5%) of the amount that would otherwise have been payable if there were no retainage under the applicable contract.

Section 3.4.9. Conditions Precedent to Disbursement of Restoration Funds. The following are conditions precedent to each payment of Restoration Funds requested to be made pursuant to a Restoration Funds Request:

(a) Certificate of Certifying Professional. The Restoration Funds Request shall be accompanied by a certificate, dated not more than ten (10) days prior to such request, by the Certifying Professional stating, based upon a site observation of the Building made not more than twenty (20) days prior to the Restoration Funds Request, that:

- i. amount then requested to be paid either has been paid by the Board of Managers, or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the Restoration Work pursuant to signed approved contracts approved, based on the Certifying Professional's estimated value of the work in place, giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such parties with respect thereto, any retainage, and stating, in reasonable detail, the progress of the Restoration Work in connection with the restoration up to the date of the certificate.
- ii. Except in the case of the final request for payment the Board of Managers, the balance of the Restoration Funds held by the Insurance Trustee (including any funds or other security provided by the Owner(s) or the Board of Managers in accordance with the terms hereof) shall be sufficient, upon completion of the Restoration Work, to pay for such work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Restoration Work.
- iii. In the case of the final request for payment by the Board of Managers, the Restoration Work shall have been fully completed (including "punchlist items") in accordance with the provisions of this Agreement.)
- iv. That all permits and approvals required for the Restoration Work to date have been issued.
- v. That any lien waivers required pursuant to clause (c) below have been obtained.



- vi. In connection with a request for the payment of any retainage, a certification that the work required to be performed has been fully completed (including any punch list items) for a period of not less than thirty (30) days.

(b) Certificate of Title Insurance. The Restoration Funds Request shall be accompanied by a report, search or certificate, dated not more than five (5) days prior to such request, of a title insurance company reasonably satisfactory to the Board of Managers showing that there are no vendor's, mechanic's, laborer's or materialman's liens filed against any Unit, except such as will be discharged upon payment of the amount then requested to be disbursed.

(c) Lien Waivers. The Restoration Funds Request shall be accompanied by waivers of all mechanic's and other similar liens with respect to all of the Restoration Work for which a Restoration Funds Request has previously been made and funded.

Section 3.4.10. Restoration Fund Deficiency. If, in connection with any Restoration Work, a determination that a Restoration Deficiency exists has been made, or at any time during the prosecution of the Restoration Work, the Certifying Professional reasonably estimates that the cost to complete the Restoration Work exceeds the Restoration Funds then being held by the Insurance Trustee, then (a) the Owners and/or the Board of Managers responsible for such deficiency as provided in Article VI shall deposit with the Insurance Trustee an amount equal to such deficiency pursuant to the procedure set forth in Article VI and (b) no monies shall be disbursed by the Insurance Trustee for Restoration Work until the provisions of this sentence or the next sentence have been satisfied. Any amounts deposited hereunder shall be applied by the Insurance Trustee (i) to the cost of the Restoration Work after application of any insurance proceeds or condemnation awards, as the case may be, and any interest or income earned thereon, to the cost of any Building Restoration Work or (ii) to the extent that the deficiency deposit was required or is being maintained for the cost of any Restoration Work attributable to any act or omission of, or change requested or required by, the depositing Owner or the Board of Managers, as applicable, to such cost.

Section 4. Payment of Common Charges: All Unit Owners shall be obligated to pay the Common Charges assessed by the Board of Managers pursuant to the provisions of Section 8 of this Article VI at such time or times as the Board of Managers shall determine.

Common charges shall be allocated to the Residential Units on the basis of their percentage of residential Common Interest.

For so long as the Parking Spaces do not utilize the services of the superintendent, gas service, electrical service or water service, and makes its own repairs and is not benefited by any service contracts for the building, it shall not share in the allocation of



these expenses. It shall, however, pay its percentage of the Total Common Interest as applied to that portion of the insurance coverage relating to liability and umbrella coverage, and Legal Fees and Audit Fees and Management fees.

The allocation of these budget line items, based on their percentage of the Total Common Interest cannot be changed without the consent of the owner of the Parking Spaces.

The amounts to be paid by the Parking Spaces shall be deducted from the total budget and the net balance shall be allocated among the Residential Units, in accordance with each Unit's percentage of the residential Common Interest.

Notwithstanding anything to the contrary contained herein, all Unit Owners, including the Parking Spaces shall pay their proportionate share of any Restoration Deficit which may exist at any time following a casualty or condemnation.

No Unit Owner shall be liable for the payment of any part of the Common Charges assessed against his/her Unit subsequent to a sale, transfer or other conveyance by him/her (made in accordance with the provisions of Section 1 of Article VIII of these By-Laws) of such Unit, together with the Appurtenant Interests, as defined in Section 1 of Article VIII hereof. In addition, any Unit Owner may, subject to the terms and conditions specified in these By-Laws, provided that his/her Unit is free and clear of liens and encumbrances, other than permissible encumbrances and the statutory lien for unpaid Common Charges, convey his/her Unit, together with the "Appurtenant Interests" to the Board of Managers, or its designee, corporate or otherwise, on behalf of all other Unit Owners, and in such event be exempt from Common Charges thereafter assessed. A purchaser of a Unit shall be liable for the payment of Common Charges assessed and unpaid against such Unit prior to the acquisition by him/her of such Unit, except that a mortgagee or other purchaser of a Unit at a foreclosure sale of such Unit shall not be liable for and such Unit shall not be subject to a lien for the payment of Common Charges assessed prior to the foreclosure sale.

Section 5. Collection of Common Charges and Assessments: The Board of Managers shall assess Common Charges against the Unit Owners from time to time at least annually and shall take prompt action to collect any Common Charge due from any Unit Owner which remains unpaid for more than 30 days from the due date for payment thereof. The Board of Managers shall also take prompt action to collect any assessment due from any Unit Owner which remains unpaid for more than 30 days from the due date thereof.

Section 6. Default in Payment of Common Charges or Assessments: In the event of default by any Unit Owner in paying to the Board of Managers the Common Charges or any assessment as determined by the Board of Managers, such Unit Owner shall be obligated to pay interest at the highest legal rate on such Common Charges or assessments from the due date thereof, together with all expenses, including attorney's fees, incurred by the Board of Managers in any proceeding brought to collect such

unpaid Common Charges or assessments. The Board of Managers shall have the right and duty to attempt to recover such Common Charges or assessments, together with interest thereon, and the expenses of the proceeding, including attorneys' fees, in an action to recover the same brought against such Unit Owner, or by foreclosure of the lien on such Unit granted by Section 339-aa of the Real Property Law of the State of New York. A Unit Owner defaulting in payment of Common Charges or assessments shall not be permitted to vote at any regular or special meeting of Unit Owners.

Section 7. Foreclosure of Liens for Unpaid Common Charges: In any action brought by the Board of Managers to foreclose a lien on a Unit because of unpaid Common Charges, the Unit Owner shall be required to pay a reasonable rental after judgment of foreclosure for the use of his/her Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Managers, acting on behalf of all Unit Owners, shall have power to purchase such Unit at foreclosure sale and to acquire, hold, lease, mortgage (but not to vote the votes appurtenant to), convey or otherwise deal with same. A suit to recover a money judgment for unpaid Common Charges shall be maintainable without foreclosing or waiving the lien securing the same. The proceeds from the sale of any Unit pursuant to this section shall be used first to pay the unpaid Common Charges and/or assessments of such defaulting Unit Owner, plus reasonable attorney's fees and administrative costs and any other lawful liens on the defaulting Unit. If after the sale of the Unit for the nonpayment of Common Charges and/or assessments, the sale does not recover the full amount due and owing, the Board of Managers has the right to assess all the Unit Owners as a Common Expense for the difference between the amount received by the Condominium from the sale of the Unit and the amount owed to the Condominium.

Section 8. Statement of Common Charges and Assessments: The Board of Managers shall promptly provide any Unit Owner so requesting the same in writing, with a written statement of all unpaid Common Charges due from such Unit Owner.

Section 9. Abatement and Enjoinment of Violations by Unit Owners: The violation of any rule or regulation adopted by the Board of Managers, or the breach of any By-Law contained herein, or the breach of any provision of the Declaration, shall give the Board of Managers the right, in addition to any other right set forth in these By-Laws: (a) upon reasonable notice to the Unit Owner, to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof (provided, however, that no prior notice shall be required in the event the Board of Managers shall determine that action is immediately necessary for the preservation or safety of the Property of the Condominium or for the safety of residents of the Condominium or other persons or required to avoid the suspension of any necessary service to the Condominium); or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

Section 10. Maintenance and Repairs:

a. All maintenance of and repairs to any Unit, ordinary or extraordinary, and to the doors (except exterior side of Unit entrance door), windows (except exterior side of windows), electrical (except General Common Elements), plumbing (except General Common Elements) and heating fixtures and air conditioning units within the Unit or belonging to the Unit Owner shall be at the Unit Owner's expense, excepting as otherwise specifically provided herein.

b. All maintenance, repairs and replacements to the General Common Elements as defined in the Declaration, and the painting and decorating of the exterior side of Unit entrance doors and windows shall be made by the Board of Managers and be charged to all the Unit Owners as a Common Expense, excepting to the extent that the same are necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner. Maintenance, repair and replacements in or to the Limited Common Elements as defined in the Declaration will be performed (a) by the Board of Managers as a Common Expense, or if it involves structural maintenance, repairs or replacements (including, but not limited to, the repair of any leaks that are not caused by the acts or omissions of the Unit Owner, having direct and exclusive access thereto), or (b) by the Unit Owner having direct and exclusive access thereto at his/her sole cost and expense, if involving nonstructural ordinary maintenance, repairs or replacements or as a result of the Unit Owner's acts or omissions.

Section 11. Restrictions on Use of Units: In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, the use of the Property shall be restricted to and shall be in accordance with the following provisions:

a. The Residential Units shall be used for private residences only, except that a Unit Owner may use his/her Residential Unit for any home occupation use permitted under applicable zoning law and ordinances, building code or other rules and regulations of governmental authorities having jurisdiction. Any Residential Unit may also be used as a professional office by a resident thereof provided such professional use does not violate zoning regulations and provided further that the prior consent of the Board of Managers to such professional use is obtained. Notwithstanding the foregoing the Sponsor or Sponsor-designee shall have the right, without charge, (i) to maintain general and sales offices in one or more Units or elsewhere on the Property, to use one or more Units as models and for other promotional purposes and to erect and maintain signs on the Property; (ii) to have its employees, contractors and sales agents present on the Property; (iii) to do all things necessary or appropriate, including the use of the Common Elements, to sell or lease Units and to complete construction of the Building and to comply with its obligations.



b. The parking space Units may be used for parking vehicles for approximately nine (9) motor vehicles as permitted under applicable zoning law and ordinances, building code or other rules and regulations of governmental authorities having jurisdiction.

c. The Common Elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

d. No nuisances shall be allowed on the Property nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful possession or proper use of the Property by its residents.

e. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be eliminated, by and at the sole expense of the Unit Owners, or the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property.

f. No portion of the Unit or other Limited Common Elements appurtenant thereto (other than the entire Unit including the Limited Common Elements appurtenant thereto) may be rented.

g. In order to maintain the architectural aesthetics and appearance of the building intended by the designer, all Unit window treatments of whatever kind must have a white backing so that only the white backing will be visible from the exterior of the building. All Unit Owners will be required to install personal window treatments of their own choice in accordance with this provision.

Section 12. Additions, Alterations or Improvements by Board of Managers:  
Whenever in the judgment of the Board of Managers the Common Elements shall require additions, alterations or improvements (but not maintenance) costing in excess of \$50,000.00, and the making of such additions, alterations or improvements shall have been approved by a majority of the Unit Owners, the Board of Managers shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a Common Charge. Any additions, alterations or improvements costing \$50,000.00 or less may be made by the Board of Managers without approval of the Unit Owners and the cost thereof shall constitute part of the Common Expenses.



Section 13. Additions, Alterations or Improvements by Unit Owners: No Unit Owner shall make any structural addition, alteration or improvement in or to his/her Unit, or which affects the exterior of the Building or the value of other Units, without prior written consent thereto of the Board of Managers. The Board of Managers shall have the obligation to answer in writing any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's Unit, within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Managers to the proposed addition, alteration or improvement. Any application to any department of the City of New York or to any other governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Board of Managers only, without incurring any liability on the part of the Board of Managers or any of them to any contractor, subcontractor or material man on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

In the event the Board of Managers grants its consent, either affirmatively or by its inaction, to any structural addition, alteration or improvement to be made by a Unit Owner, the consent shall provide that any such work shall be at the Unit Owner's sole cost and expense, that work shall be done in accordance with all governmental or quasi-governmental laws, rules, regulations, codes and ordinances, that all work shall be done by reputable contractors with adequate liability, property damage and worker's compensation insurance (the certificate for which shall be delivered to the Board of Managers prior to the commencement of construction), that any additions, alterations or improvements, shall be maintained in their entirety by said Unit Owner who shall also be responsible for any repairs, including structural repairs, to such area in any event, and to the Unit and any Common Elements where such repairs become necessary due to additional stresses caused by the structural alteration, addition or improvement, or due to improper design or construction of the structural alteration, addition or improvement, and such approval shall further provide that the Unit Owner shall reimburse the Board of Managers any out-of-pocket expenses incurred by the Board of Managers in connection with the granting of such approval and in connection with any services provided to such alteration, addition or improvement; such expenses may include, but shall not be limited to, any fees of an attorney and/or fees of an architect consulted in connection with any request by a Unit Owner for approval of such work.

The provisions of this Section 13 which require the consent of the Board of Managers in connection with a structural addition, alteration or improvement shall not apply to Units owned by the Sponsor or its designee. All other provisions of this Section 13 shall apply to all Units.

Non-structural alterations and improvements to Units that do not affect the exterior of the Building or the value of other Units may be made without the prior approval of the Board of Managers.

Section 14. Use of Common Elements and Facilities: A Unit Owner shall not

place or cause to be placed in the lobby, public halls, stairways or other common areas or common facilities, any furniture, packages or objects of any kind. The public halls and stairways shall be used for no purpose other than for normal transit through them. The Sponsor shall have the right to use the Common Elements, without charge, for the purposes set forth in Section 11 of this Article VI.

Section 15. Right of Access: A Unit Owner shall grant a right of access to his/her Unit to the Manager or Managing Agent and/or any other person authorized by the Board of Managers for the purpose of making inspections or for the purpose of correcting any condition originating in his/her Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his/her Unit or elsewhere in the Building in which the Unit is located, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether the Unit Owner is present at the time or not. In the event of the exercise of the right of access provided in this Section 15, any costs for repairs shall be borne in accordance with the provisions of Section 10 of this Article VI. Each Unit Owner will be required to give a copy of his/her keys to his/her Unit to the President of the Board of Managers who shall designate an authorized person or persons to keep the keys and use them as provided in these By-Laws.

Section 16. Rules of Conduct: Rules and regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board of Managers. A majority vote of Unit Owners at a meeting may overrule the Board. Copies of such rules and regulations shall be furnished by the Board of Managers to each Unit Owner prior to the time when the same shall become effective. Initial rules and regulations, which shall be effective until amended by the Board of Managers are annexed hereto and made a part hereof as Schedule A.

Section 17. Water Charges and Sewer Rents: Water shall be supplied to all of the Units and the Common Elements through one or more building meters or pursuant to a frontage charge and the Board of Managers shall pay, as a Common Expense, all charges for water consumed on the Property and in the Units, together with all related sewer rents arising therefrom, promptly after the bills for the same shall have been rendered. In the event of a proposed sale of a Unit by the Owner thereof, the Board of Managers, on request of the selling Unit Owner, shall execute and deliver to the purchaser of such Unit or to the purchaser's title insurance company, a letter agreeing to pay all charges for water and sewer rents affecting the Property as of the date of closing of title to such Unit promptly after such charges shall have been billed.

Section 18. Electricity: Electricity shall be supplied by the public utility company serving the area directly to each Unit through separate meters and each Unit Owner shall be required to pay the bills for electricity consumed or used in his/her Unit. The electricity serving the Common Elements shall be metered by one or more meters, and the Board of Managers shall pay the bills for such consumption as a Common Expense.

## ARTICLE VII

### Mortgages

Section 1. Notice to Board of Managers: A Unit Owner who mortgages his/her Unit shall notify the Board of Managers of the name and address of his/her mortgagee and shall file a conformed copy of the note and mortgage with the Board of Managers; the Board of Managers shall maintain such information in a book entitled "Mortgages of Units".

Section 2. Notice of Unpaid Common Charges: The Board of Managers, when so requested in writing by a mortgagee of a Unit, shall promptly notify any mortgagee of a Unit of such Unit Owner's default, including non-payment of Common Charges, in the obligations of such Unit Owner under the Declaration, By-Laws, Rules and Regulations, as the same are amended from time to time, or in any order of the Board of Managers issued with respect thereto.

Section 3. Notice of Default: The Board of Managers, when giving notice to a Unit Owner of a default in paying Common Charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Unit whose name and address has heretofore been furnished to the Board of Managers.

Section 4. Examination of Books: Each Unit Owner and each mortgagee of a Unit shall be permitted to examine the books of account of the Condominium at reasonable times, on business days.

Section 5. Sponsor's Mortgagee: Board of Managers is deemed to have been given (i) copies of the mortgage(s) encumbering all Units owned by Sponsor as of the date of the first unit closing, along with the notes secured thereby, (ii) the addresses of such mortgagees (which shall be as set forth in the recorded mortgages unless mortgagee delivers or has delivered notice to the Board of Managers of one or more different addresses) and (iii) a request by Sponsor's mortgagees of all notices to which mortgagees are, or may be, entitled to hereunder.

Section 6. Definition of "Mortgagee": As used in these By-Laws, the term "mortgagee" or "holder of a first mortgage" shall include the holder of any construction loan mortgage which shall be a lien on a unit.

## ARTICLE VIII

### Sales, Leases and Mortgages of Units

Section 1. Sales and Leases: No Unit Owner other than the Sponsor may sell or lease his/her Unit or any interest therein except by complying with the following



provisions:

Any Unit Owner who receives a bona fide offer for the sale of his/her Unit together with: (i) the undivided interest of the Common Elements and any Limited Common Elements appurtenant thereto; (ii) the interest of such Unit Owner in any Units theretofore acquired by the Board of Managers, or its designee, on behalf of all Unit Owners, or the proceeds of the sale or lease thereof, if any; (iii) the interest of such Unit Owner in any other assets of the Condominium; as defined in the Declaration, (hereinafter collectively called the "Appurtenant Interests"), or a bona fide offer for a lease of his/her Unit; (hereinafter called an "Outside Offer"), which he/she intends to accept, shall give notice by certified or registered mail to the Board of Managers of such offer and of such intention, the name and address of the proposed purchaser or lessee, the terms of the proposed transaction and such other information as the Board of Managers may reasonably require, and shall offer to sell such Unit, together with the Appurtenant Interests, or to lease such Unit, to the Board of Managers, or its designee, corporate or otherwise, on behalf of the Owners of all other Units, on the same terms and conditions as contained in such Outside Offer. The giving of such notice shall constitute a warranty and representation by the Unit Owner who has received such offer, to the Board of Managers on behalf of the other Unit Owners, that such Unit Owner believes the Outside Offer to be bona fide in all respects. Within thirty (30) days after receipt of such notice, the Board of Managers may elect, by notice given within five (5) days after making such election, and in any event, within said thirty (30) day period, to such Unit Owner, by certified or registered mail, to purchase such Unit, together with the Appurtenant Interests, or to lease such Unit, as the case may be (or to cause the same to be purchased or leased by its designee, corporate or otherwise), on behalf of all other Unit Owners, on the same terms and conditions as contained in the Outside Offer and as stated in the notice from the offering Unit Owner.

In the event the Board of Managers shall elect to purchase such Unit, together with the Appurtenant Interests, or to lease such Unit, or to cause the same to be purchased or leased by its designee, corporate or otherwise, title shall close or a lease shall be executed at the office of the attorneys for the Condominium in accordance with the terms of such offer but in no event less than forty-five days after the giving of notice by the Board of Managers of its election to accept such offer. At the closing, the Unit Owner of such Unit, together with the Appurtenant Interests to be sold, shall convey the same to the Board of Managers, or to its designee, on behalf of all other Unit Owners, by deed in the form required by Section 339-o of the Real Property Law of the State of New York, with all transfer stamps affixed, and shall pay all other taxes arising out of such sale. In the event such Unit is to be leased, the offering Unit Owner shall execute and deliver to the Board of Managers, or to its designee, a lease between the offering Unit Owner, as landlord, and the Board of Managers, or its designee, as tenant, covering such Unit, for the rental and term contained in such Outside Offer.

In the event the Board of Managers or its designee fails to notify the offering Unit Owner of its decision to accept such offer within thirty (30) days after receipt of notice as aforesaid or fails to notify the offering Unit Owner within said period of its decision



not to accept such offer, the offering Unit Owner shall be free to contract to sell such Unit, together with the Appurtenant Interests, or to lease such Unit, as the case may be within thirty (30) days after the expiration of the period in which the Board of Managers or its designee might have accepted such offer, to the Outside Offeror, on the terms and conditions set forth in the notice from the offering Unit Owner to the Board of Managers of such Outside Offer. Any such deed to any Outside Offeror shall provide that acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. Any such lease shall be consistent with these By-Laws and shall provide that it may not be modified, amended, extended or assigned, without the prior consent in writing of the Board of Managers, and that the tenant shall not sublet the demised premises, or any part thereof, without the prior consent in writing of the Board of Managers, and that the Board of Managers shall have power to terminate such lease and/or bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of default by the tenant in the performance of such lease. Except as hereinbefore set forth, the form of any such lease for Residential Units shall be in a form approved by the Board of Managers. In the event the offering Unit Owner shall not, within such thirty (30) day period, contract to sell such Unit to the Outside Offeror on the terms and conditions contained in the Outside Offer, or if the Unit Owner shall so contract to sell or lease his/her Unit within such thirty (30) day period, but such sale or lease shall not be consummated pursuant to the material terms (including, but not limited to, length of lease, purchase price of apartment, rental of a Unit) of such contract, then should such offering Unit Owner thereafter elect to sell such Unit, together with the Appurtenant Interests, or to lease such Unit, as the case may be, to the same or another Outside Offeror on the same or other terms and conditions, the offering Unit Owner shall be required to again comply with all of the terms and provisions of this Section 1 of this Article VIII.

Any purported sale or lease of a Unit in violation of this section shall be voidable at the election of the Board of Managers.

Section 2. Consent of Unit Owners to Purchase or Lease of Units by Board of Managers: The Board of Managers shall not exercise any option hereinabove set forth to purchase or lease any Unit without the prior approval of Unit Owners having 51% of the Common Interest appurtenant to the Units of the Condominium and the unanimous consent of the Sponsor.

Section 3. No Severance of Ownership: No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his/her Unit without including therein the Appurtenant Interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interest

or interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

Section 4. Release by Board of Managers of Right of First Refusal: The right of first refusal contained in Section 1 of this Article VIII may be released or waived by the Board of Managers in which event the Unit, together with the Appurtenant Interests, may be sold, conveyed, or leased, free and clear of the provisions of such section.

Section 5. Certificate of Termination of Right of First Refusal: A certificate, executed and acknowledged by the Secretary of the Condominium, stating that the provisions of Section 1 of this Article VIII have been met by a Unit Owner, or have been duly waived by the Board of Managers and the rights of the Board of Managers thereunder have terminated, shall be conclusive upon the Board of Managers in favor of all persons who rely thereon in good faith. Such certificates shall be furnished to any Unit Owner who has in fact complied with the provisions of Section 1 of this Article VIII or in respect to whom the provisions of such section have been waived, upon request.

Section 6. Financing of Purchase of Units by Board of Managers: Acquisition or lease of Units by the Board of Managers, or its designee, on behalf of all Unit Owners, may be made from the working capital and Common Charges in the possession of the Board of Managers, or, if such funds are insufficient, the Board of Managers may levy an assessment against each Unit Owner, other than the offering Unit Owner, in proportion to his/her ownership in the Common Elements, as a Common Charge, which assessment shall be enforceable in the same manner as provided in Section 6 and 7 of Article VI, or, the Board of Managers, in its discretion, may borrow money to finance the acquisition or lease of such Unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the Appurtenant Interests, so to be acquired by the Board of Managers. Notwithstanding the above, no assessment may be levied under this Section 6 against any mortgagee who has acquired title to a Unit, whether by foreclosure or deed in lieu thereof.

Section 7. Exceptions: The provisions of Section 1 of this Article VIII shall not apply in respect to any sale or conveyance or lease by a Unit Owner of his/her Unit, together with the Appurtenant Interests, to his/her spouse or to any of his/her children or to his/her parent or parents or for his/her brothers or sisters, or any one or more of them, or to any Unit owned by the Sponsor of Sponsor-designee, or to the acquisition or sale of any Unit, together with the Appurtenant Interests, by a mortgagee herein authorized who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. However, the provisions of this section shall apply with respect to any purchaser of a Unit from a mortgagee or resale of other individuals discussed in this Section.

Section 8. Gifts and Devises, etc.: Any Unit Owner shall be free to convey or transfer his/her Unit by gift or to devise his/her Unit by will, or to pass the same by intestacy, without restriction.

Section 9. Such Units as are Acquired by the Board of Managers or its Designee, on Behalf of All Unit Owners as Tenants in Common: In the event that a Unit shall be acquired by the Board of Managers, or its designee, on behalf of all Unit Owners as tenants in common, all such Unit Owners may not partition with respect to such Unit, except as specifically provided in the New York Real Property Law.

Section 10. Payment of Common Charges and Assessments: No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his/her Unit unless and until he/she shall have paid in full to the Board of Managers all unpaid Common Charges and assessments theretofore assessed by the Board of Managers against his/her Unit and until he/she shall have satisfied all unpaid liens against such Unit, except permitted mortgages.

Section 11. Mortgage of Units: No Unit Owner shall mortgage his/her Unit, except by a first and/or second mortgage made to a bank, trust company, insurance company, federal savings and loan association, pension fund or other institutional lender or a purchase money mortgage made to the Sponsor, or to the seller of the Unit. Any such mortgage shall be substantially in the form on file with the Board of Managers, except for such changes or additions as may be required in order to permit the particular institutional lender to make the mortgage loan, or to the extent permitted by the Board of Managers. A mortgage may be made to a reputable private lender, other than a lender as above described, provided the same is approved in writing by either the Sponsor, prior to the Sponsor's relinquishing control of the Board of Managers, or the Board of Managers, subsequent to the release of control by the Sponsor or the Board of Managers as the case may be. However, the Sponsor or Successor-Sponsor may mortgage any of their Units to any person without the prior approval of the Board of Managers or any other person. Prior to or simultaneously with the closing of any mortgage, the Unit Owner must satisfy all arrearages for unpaid Common Charges or assessments and discharge any liens therefore.

Section 12. Proceeds from the Sale of a Unit: If the Condominium acquires a Unit pursuant to Article VIII of the By-Laws and later sells the Unit, the proceeds from the sale shall be first used to pay any debts acquired by the Condominium in connection with the acquisition and sale of the Unit. Any balance after the payment of these charges shall be used by the Board of Managers for the benefit of the Units in any manner that the Board deems necessary and proper including but not limited to keeping the proceeds as a reserve fund for contingencies for such Units and/or distributing all or part of the excess proceeds from the sale among the Unit Owners according to the percentage of Common Elements that the Unit Owners possesses.

## ARTICLE IX

### Condemnation and Termination



Section 1. Condemnation: In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, the award made for such taking shall be payable to the Board of Managers, if such award amounts to \$50,000.00 or less, and to the Insurance Trustee if such award amounts to more than \$50,000.00. If eighty (80%) percent or more of the Unit Owners duly and promptly approve the repair and restoration of such Common Elements, the Board of Managers or the Insurance Trustee, as the case may be, shall arrange for the repair and restoration of such Common Elements, and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that eighty (80%) or more of the Unit Owners do not duly and promptly approve the repair and restoration of such Common Elements, the Board of Managers shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage, as provided in Section 3 of Article VI of these By-Laws. As used in this Section, the words "promptly approve" shall mean not more than sixty (60) days from the date of such taking.

Section 2. Termination: The Condominium may be terminated by casualty loss, condemnation or eminent domain, in accordance with the provisions of the By-Laws, or by withdrawing the Property from the provisions of the New York Condominium Act if authorized by an affirmative vote of Unit Owners who own not less than eighty (80%) percent in number and in Common Interest of the Units. Sponsor or its designees will not vote its interests appurtenant to any Unsold Units for such withdrawal unless at least eighty (80%) percent in number and in Common Interest of all other Unit Owners have elected for such withdrawal, in which event the Sponsor may choose to vote in favor of or against such withdrawal. In the event said withdrawal is authorized as aforesaid, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all the Unit Owners in proportion to their respective Common Interests. However, no payment shall be made to a Unit Owner until all liens to which his/her Unit are subject are paid off.

## ARTICLE X

### Records

Section 1. Invalidity: The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

Section 2. Captions: The captions herein are inserted only as a matter of convenience and or reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

Section 3. Gender: The use of the masculine gender in these By-Laws shall be



deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 4. Waiver: No restriction, condition, obligation, or provision contained in these By-Laws, shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

## ARTICLE XI

### Amendments to the By-Laws

Section 1. Amendment to By-Laws: These By-Laws may be modified or amended by the vote of 66 2/3% in number and in Common Interest of all Unit Owners at a meeting of Unit Owners duly held for such purpose.

Section 2. Rights of Mortgagees. Notwithstanding the foregoing, any amendment to these By-Laws which adversely effects (1) the rights of mortgagees, or (2) reduces the amount of insurance required hereunder shall require the consent of affected mortgagees. During such time as the Sponsor holds Unsold Units subject to a mortgage, any amendment to these By-Laws which modifies the provisions applicable to Insurance Trustee shall also require the consent of the holder of such mortgages liens on Unsold Units held by the Sponsor.

For as long as the Sponsor remains the Owner of one or more Units, these By-Laws, including the Rules and Regulations of the Condominium attached hereto, may not be amended or modified in any way so as to adversely affect Sponsor without Sponsor's prior written consent.

## ARTICLE XII

### Conflicts

Section 1. Conflicts: These By-Laws are set forth to comply with the requirements of Article 9-B of the Real Property Law of the State of New York. In case any of these By-Laws conflict with the provisions of said statute or of the Declaration, the provisions of said statute or of the Declaration, as the case may be, shall control.

## ARTICLE XIII

### Arbitration

Section 1. Procedure: Any matter required or permitted to be determined by

arbitration pursuant to the terms of the Condominium documents shall be submitted for resolution by a single arbitrator in a proceeding held in New York City, New York in accordance with the then existing rules of the American Arbitration Association or any successor organization thereto. In the event that the American Arbitration Association shall not then be in existence and has no successor organization, any such arbitration shall be held in New York City, New York before one arbitrator appointed, upon the application of any party by the Real Estate Board of New York.

Section 2. Variation by Agreement: The parties to any dispute required or permitted to be resolved by arbitration pursuant to the terms of the Condominium documents may, by written agreement, vary any of the terms of Section 1 hereof with respect to the arbitration of such dispute or may agree to resolve their dispute in any manner, including, without limitation, the manner set forth in Section 3031 of the Civil Practice Law and Rules of the State of New York and known as "New York Simplified Procedure for Court Determination of Disputes".

Section 3. Binding Effect: The decision in any arbitration conducted pursuant to the terms of Section 1 and 2 hereof shall be binding upon all of the parties thereto and may be entered in any court of appropriate jurisdiction.

Section 4. Cost and Expenses: (a) The fees, costs and expenses of the arbitrator shall be borne by the losing party in the arbitration or, if the position of neither party to the dispute shall be substantially upheld by the arbitrator, such fees, costs and expenses shall be borne equally by the disputants. Each disputant shall also bear the fees and expenses of his/her counsel and expert witnesses.

All costs and expenses paid or incurred by the Condominium Board in connection with any arbitration held hereunder, including, without limitation, the fees and expenses of counsel and expert witnesses, shall constitute Common Expenses.

## **SCHEDULE A**

### **HOUSE RULES AND REGULATIONS**

#### **75 COLUMBIA STREET CONDOMINIUM**

1. The Residential Units may be used only for private residential use, except that a Residential Unit Owner may use his/her Unit for any home occupation use permitted under applicable zoning law and ordinances, building code or other rules and regulations of governmental authorities having jurisdiction. Such Residential Units may also be used as professional offices by a resident thereof provided such professional use does not violate any zoning law and ordinances and provided further that the prior written consent of the Board of Managers to such professional use is obtained. No Building signage shall be permitted without the approval of the Board of Managers. All building signage to be uniform and consistent with that which was developed under and approved by Design Architect and the Board of Managers.
2. Except as set forth above, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, or otherwise, shall be conducted, maintained or permitted on any part of the Property, nor shall any "For Sale", "For Rent" or "For Lease" signs or other window displays or advertising be maintained or permitted on any part of the Property or in any Unit therein nor shall any Unit be rented for transient, hotel or motel purposes. The right is reserved by the Sponsor, its designee and the Board of Managers, or its agent, to place "For Sale", "For Rent" or "For Lease" or similar signs on any unsold or unoccupied Units, provided signage is uniform and consistent with that which was developed under and approved by the Design Architect. Additionally, the right is reserved by Sponsor and its designee to maintain and staff one or more vacant and Unsold Units in the Building as a sales office and/or model Unit.
3. No exterior of any Residential Unit or the windows or doors thereof or any other portions of the Common Elements shall be painted or decorated by any Owner or in any manner.
4. No furniture, equipment, or other personal articles shall be placed in entrances, stairways, or other Common Elements.
5. No Unit Owner shall make or permit any noise or objectionable odor that will disturb or annoy the occupants of any of the Units in the Building or do or permit anything to be done therein which will interfere with the rights, comfort or convenience of other Unit Owners.
6. Each Unit Owner shall keep his/her Unit in a good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown

therefrom, or from the doors or windows of a Residential Unit, any dirt or other substances.

7. No exterior shades, awnings, window guards, ventilators, fans or air conditioning devices shall be used on or about the Building or Common Elements except such as shall have been approved by the Board of Managers as consistent with the original design of building, which approval may be unreasonably refused.
8. Except as provided above, no sign, notice, lettering, or advertisement shall be inscribed or exposed on or at any window, door, or other part of the Building, except such as shall have been approved in writing by the Board of Managers, nor shall anything be projected out of any window or balcony or terrace of the Building without similar approval. All signage shall be uniform and consistent with that which was developed under and approved by the Design Architect.
9. All garbage and refuse from the Building shall be deposited with care in plastic bags or other suitable receptacles intended for such purpose only at such times and in such manner as the Board of Managers may direct. Unit Owners shall comply with all requirements of law and regulations of the Board of Managers regarding recycling of trash. All Unit Owners shall separate their trash into "recyclable" and "non-recyclable" materials. The Board of Managers may designate from time to time the types of materials which must be separated for recycling; the types of containers or binding to be used by Unit Owners for the disposal of designated recyclable materials; the locations where designated recyclable materials shall be deposited. The Board of Managers may also establish other regulations regarding recycling of trash. Any costs incurred by the Board of Managers in the enforcement against a Unit Owner of recycling requirements imposed by law or by the Board of Managers, including (but not limited to) legal fees and fines or penalties imposed on the Board of Managers by any government agency, shall be payable by the Unit Owner.
10. Water closets and other water apparatus in the Building shall not be used for any purposes other than those for which they were constructed; nor shall any sweepings, rubbish, rags, paper, ashes, or any other article be thrown into the same. Any damage resulting from misuse of any water closet or other apparatus shall be paid for by the Unit Owner causing such damage.
11. No Unit Owner shall engage any employee of the Condominium for any private business of the Unit Owner without prior written consent of the Board of Managers.
12. Birds, dog, cats or other animals shall be allowed in the Building provided they do not disturb other occupants of the Condominium as a result of noise, odor or unruliness. The Unit Owners shall indemnify the Board of Managers and hold it harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having any animal in the Building.



13. No radio or television aerial or satellite dish shall be attached to any area outside that which has been approved by the design architect or hung from the exterior of the Building without written approval of the Board of Managers. The Board of Managers, upon the request of any Unit Owner, shall allow the installation of any hook-up necessary to provide cable television service to the Units.
14. The agents of the Board of Managers, and any contractor or workman authorized by them, may enter any Unit at any reasonable hour of the day for any purpose permitted under the terms of the Declaration, By-Laws, or Building Rules and Regulations.
15. The Board of Managers may retain a passkey to each Residential Unit. No Residential Unit Owner shall alter any lock on any door leading into his/her Residential Unit without the prior consent of the Board of Managers. If such consent is given, the Residential Unit Owner shall provide the Board of Managers with a key for their use.
16. No Unit Owner or any visitor, guest, patient, employee or any client of a Unit Owner shall be allowed in the electrical equipment areas without the express permission of the Board of Managers.
17. All damage to the Building or Common Elements caused by the moving or carrying of any article therein shall be paid by the Unit Owner responsible for the presence of such article.
18. No Unit Owner shall interfere in any manner with any portion of the lighting apparatus which are part of the Common Elements and not part of the Unit Owner's Unit.
19. No Unit Owner shall use or permit to be brought into the Building any inflammable oils or fluids such as gasoline, kerosene, naphtha, benzene or other explosives or articles deemed extra hazardous to life, limb, or property without in each case obtaining the written consent of the Board of Managers.
20. The Unit Owner shall not be allowed to put his/her name on any entry to the Building or entrance to any Unit, except in the proper places approved by the Board of Managers for such purpose. All signage shall be uniform and consistent with that which was developed under and approved by the Design Architect.
21. Any damage to the Building or equipment caused by Unit Owners, their guests, visitors, clients, patients or other employees shall be repaired at the expense of the said Unit Owner.
22. Complaints regarding the management of the Building and grounds or regarding

the actions of other Unit Owners shall be made in writing to the Board of Managers.

23. No Unit shall be used or be occupied in such manner as to obstruct or interfere with the enjoyment of occupants or owners of adjoining Units; nor shall any nuisance or illegal activity be committed or permitted to occur in or about any Unit or upon any part of the Common Elements.
24. The common area roof may be used by one or more Unit Owners for the erection of a sukkah during the holiday of Sukkoth pursuant to Jewish laws and customs.
25. For so long as any resident requires: (1) The elevator shall be maintained as a Sabbath elevator; a Sabbath elevator is automatically programmed to stop on every floor during the period from sunset on Friday nights until one hour after sunset on Saturday nights, and similarly on every Jewish holiday during which time manual operation is proscribed; (2) No electronic keys or similar devices for doors in common areas shall be installed.
26. The Common Elements are intended for the purpose of affording pedestrian movement within the Condominium and of providing access to the Units. No part of the Common Elements shall be obstructed as to interfere with its use for the purposes hereinabove recited; nor shall any part of the Common Elements be used for general storage purposes, except maintenance storage; nor shall anything be done thereon in any manner which shall increase the rate of hazard and liability insurance covering said area and improvements situated thereon.
27. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be eliminated, by and at the sole expense of the Unit Owners, or the Board of Managers, whichever shall have the obligation to maintain or repair such portion of the Property.

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## **ESCROW AGREEMENT**

*AGREEMENT* made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between SDS COLUMBIA LLC, ("SPONSOR"), as Sponsor of the Offering Plan, and FORMAN & ASSOCIATES, pc, ("ESCROW AGENT"), as Escrow Agent.

*WHEREAS*, SDS COLUMBIA LLC is the Sponsor of an Offering Plan to convert to condominium ownership the premises located at 75 Columbia Street, Brooklyn, New York, which premises is also known as 75 Columbia Street Condominium and

*WHEREAS*, FORMAN & ASSOCIATES, pc is authorized to act as escrow agent hereunder in accordance with General Business Law ("GBL") Section 352-e(2-b) and the Attorney General's regulations promulgated thereunder; and

*WHEREAS*, SPONSOR desires that ESCROW AGENT act as escrow agent for deposits and payments by purchasers, pursuant to the terms of this Agreement and

*NOW, THEREFORE*, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereby agree as follows:

### **1. ESTABLISHMENT OF THE ESCROW ACCOUNT**

1.1 SPONSOR and ESCROW AGENT hereby establish an escrow account with ESCROW AGENT for the purpose of holding deposits or payments made by purchasers. The escrow account has been opened with ESQUIRE BANK, 64 Court Street, Brooklyn, New York 11201. The account number is \_\_\_\_\_.

1.2 The name of the account is "FORMAN & ASSOCIATES SPECIAL 75 Columbia ESCROW ACCOUNT".

1.3 ESCROW AGENT is the sole signatory on the account.

1.4 The escrow account shall be an interest-bearing account as disclosed in the Offering Plan.

1.5 The escrow account is not an IOLA established pursuant to Judiciary Law Section 497.

### **2. DEPOSITS INTO THE ESCROW ACCOUNT**

2.1 All funds received from prospective purchasers prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be deposited in the escrow account. All instruments to be deposited into the escrow account shall be made payable to,



or endorsed by the purchaser to the order of "FORMAN & ASSOCIATES SPECIAL 75 COLUMBIA ESCROW ACCOUNT" for the 75 COLUMBIA STREET CONDOMINIUM Offering Plan. Any instrument payable or endorsed other than as required hereby, and which cannot be deposited into such escrow account, shall be returned to the prospective purchaser promptly, but in no event more than five (5) business days following receipt of such instrument by ESCROW AGENT. In the event of such return of funds, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this Agreement.

2.2 Within ten (10) business days after tender of the deposit submitted with the Purchase Agreement, ESCROW AGENT shall notify the purchaser of the deposit of such funds in the bank indicated in the Offering Plan, provide the account number, and disclose the initial interest rate. If the purchaser does not receive notification of such deposit within fifteen (15) business days after tender of the deposit, the purchaser may cancel the purchase and rescind within ninety (90) days after tender of the deposit, or may apply to the Attorney General for relief. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the purchaser.

### 3. RELEASE OF FUNDS

3.1 ESCROW AGENT shall not release the escrowed funds of a defaulting purchaser until after consummation of the Offering Plan as defined in the Attorney General's regulations. Consummation of the Offering Plan shall not relieve SPONSOR of its fiduciary obligation pursuant to GBL Section 352-h.

3.2 ESCROW AGENT shall continue to hold the funds in escrow until otherwise directed in: (a) a writing signed by both SPONSOR and purchaser; (b) a determination of the Attorney General; or (c) a judgment or order of a court of competent jurisdiction or until released pursuant to the regulations of the Attorney General pertaining to release of escrowed funds.

3.3 SPONSOR shall not object to the release of the escrowed funds to: (a) a purchaser who timely rescinds in accordance with a offer of rescission contained in the Offering Plan or an amendment to the Offering Plan; or (b) all purchasers after an amendment abandoning the Offering Plan is accepted for filing by the New York State Department of Law.

3.4 If there is no written agreement between the parties to release the escrowed funds, ESCROW AGENT shall not pay the funds to SPONSOR until ESCROW AGENT has given the purchaser written notice of not fewer than ten (10) business days. Thereafter, the funds may be paid to SPONSOR unless the purchaser has made application to the New York State Department of Law

pursuant to the dispute resolution provisions contained in the Attorney General's regulations and has so notified ESCROW AGENT in accordance with such provisions.

#### 4. RECORD KEEPING

4.1 ESCROW AGENT shall maintain all records concerning the escrow account for seven (7) years after release of the funds.

4.2 Upon the dissolution of a law firm which was ESCROW AGENT, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the New York State Department of Law of such transfer.

4.3 ESCROW AGENT shall make available to the Attorney General, upon his request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

#### 5. GENERAL OBLIGATIONS OF ESCROW AGENT

5.1 ESCROW AGENT shall maintain the accounts called for in this Agreement under the direct supervision and control of ESCROW AGENT.

5.2 A fiduciary relationship shall exist between ESCROW AGENT and purchasers and ESCROW AGENT acknowledges its fiduciary obligations.

#### 6. RESPONSIBILITIES OF SPONSOR

6.1 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall immediately deliver all deposits and payments received by them prior to closing of an individual transaction to ESCROW AGENT.

6.2 SPONSOR agrees that it shall not interfere with ESCROW AGENT's performance of its fiduciary duties and compliance with the Attorney General's regulations.

#### 7. TERMINATION OF AGREEMENT

7.1 This Agreement shall remain in effect unless and until it is cancelled, by either:

- (a) Written notice given by SPONSOR to ESCROW AGENT or cancellation of designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of an amendment with the New York State Department of Law providing for a successor ESCROW AGENT; or

(b) The resignation of ESCROW AGENT upon giving notice to SPONSOR of its desire to so resign, which resignation shall take effect only upon the filing of an amendment with the New York State Department of Law providing for a successor ESCROW AGENT; or

(c) All shares or units offered pursuant to the Offering Plan have been sold and all sales transactions have been consummated.

7.2 Upon termination of the duties of ESCROW AGENT as described in paragraph "7.1" above, ESCROW AGENT shall deliver any and all funds held by it in escrow and any and all contracts or documents maintained by ESCROW AGENT to the new escrow agent.

8. SUCCESSORS AND ASSIGNS

8.1 This Agreement shall be binding upon SPONSOR and ESCROW AGENT and their successors and assigns.

9. GOVERNING LAW

9.1 This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

10. ESCROW AGENT'S COMPENSATION

10.1 SPONSOR agrees that ESCROW AGENT's compensation shall not be paid from escrowed principal nor from any interest accruing thereon and that compensation to ESCROW AGENT, if any, shall not be deducted from escrowed funds by a financial institution under any circumstances.

11. SEVERABILITY

11.1 If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

12. ENTIRE AGREEMENT

12.1 This Agreement, read together with GBL Section 352-e(2-b) and the Attorney General's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement

as of the day and year first written above.

ESCROW AGENT:  
FORMAN & ASSOCIATES, pc

By: \_\_\_\_\_  
Warren L. Forman

SPONSOR:  
SDS COLUMBIA LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**APPLICATION TO THE ATTORNEY GENERAL**  
**FOR A DETERMINATION ON THE**  
**DISPOSITION OF DOWN PAYMENTS**

Send this application to the reviewing attorney assigned to the subject Offering Plan.

Re: 75 Columbia State Condominium  
75 Columbia Street , Brooklyn, New York 11201

File No.: \_\_\_\_\_

Application is made to the Attorney General to consider and determine the disposition of down payments held pursuant to GBL Sections 352-e(2-b) and 352-h. The following information is submitted in support of this application:

1. Name: \_\_\_\_\_  
of Applicant

2. Address: \_\_\_\_\_  
of Applicant

3. Name, Address, and Telephone Number of Applicant's Attorney (if any).

\_\_\_\_\_  
\_\_\_\_\_

4. This is an application for:

- ☐ return of down payment.  
☐ forfeiture of down payment.  
☐ other: \_\_\_\_\_

5. The project is:

- ☐ a conversion of occupied premises.  
☐ newly constructed or rehabilitated.  
☐ vacant ("AS IS").

6. The project is structured as:

- ☐ cooperative.  
☐ condominium.  
☐ homeowners association.  
☐ timeshare.

- [ ] other: \_\_\_\_\_
7. Name and Address of Sponsor: \_\_\_\_\_  
\_\_\_\_\_
8. Name and Address of Escrow Agent: \_\_\_\_\_  
\_\_\_\_\_
9. If down payments are maintained in an escrow account:
- (a) Name of Account: \_\_\_\_\_
  - (b) Name and Address of Bank: \_\_\_\_\_  
\_\_\_\_\_
  - (c) Account Number (if known): \_\_\_\_\_
  - (d) Initial Interest Rate (if known): \_\_\_\_\_
10. If down payments have been secured by bonds:
- (a) Name and Address of Bond Issuer or Surety: \_\_\_\_\_  
\_\_\_\_\_
  - (b) Copy of bond included in this application. (DO NOT SEND ORIGINAL BOND.) If not included, explain:  
\_\_\_\_\_  
\_\_\_\_\_
11. If down payments have been secured by a letter of credit:
- (a) Name and Address of Bank which issued the letter of credit: \_\_\_\_\_  
\_\_\_\_\_
  - (b) Date of expiration of the letter of credit, if known: \_\_\_\_\_  
\_\_\_\_\_

12. Offering Plan Information:

(a) Date of filing of Offering Plan: \_\_\_\_\_

(b) Offering Plan:

☐ has been declared effective. Approximate Date: \_\_\_\_\_  
☐ has not been declared effective.

(c) If effective, the Offering Plan:

☐ has closed or the first unit has closed.  
Approximate Date: \_\_\_\_\_  
☐ has not closed.  
☐ don't know.

(d) Down payments are secured by:

☐ Escrow Account.  
☐ Bonds.  
☐ Letter of Credit.

13. Contract information:

(a) Copy of contract and of all riders or modification letters are attached.  
(DO NOT SEND ORIGINALS.)

(b) Date on which Purchase Agreement or Subscription Agreement was  
signed: \_\_\_\_\_.

(c) Date(s) of down payment(s): \_\_\_\_\_

(d) Total amount of down payment(s): \_\_\_\_\_

(e) Names and addresses of purchasers or subscribers affected by this  
application:

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14. State the basis for your claim. Please be as specific as possible. You may add additional sheets. Attach copies of any relevant documents.

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15. I am contemporaneously sending a copy of this application to the following persons:

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Note: You are required to mail a copy of this application to all other affected parties.

In filing this application, I understand that the Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from unlawful business practices. I also understand that if I have any questions concerning my legal rights or responsibilities, I may contact a private attorney. The above application is true and accurate to the best of my knowledge. False statements made herein are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Telephone Number: (Home) \_\_\_\_\_ (Business) \_\_\_\_\_

Mailing Address: \_\_\_\_\_



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CERTIFICATION OF SPONSOR AND SPONSOR'S  
PRINCIPALS' PURSUANT TO SEC. 20.4(b) OF  
THE REGULATIONS ISSUED PURSUANT TO GENERAL  
BUSINESS LAW, ARTICLE 23-A, AS AMENDED.

Re: 75 Columbia Street, Brooklyn, New York

The undersigned, certifies as follows:

We are the Sponsor and the principals of the Sponsor of the Condominium Offering Plan for the captioned property. We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Department of Law in Part 20 and such other laws and regulations as may be applicable.

We have read the entire Offering Plan. We have investigated the facts set forth in the Offering Plan and the underlying facts. We have exercised due diligence to form a basis for making this certification. We jointly and severally certify that the Offering Plan does, and that all documents submitted hereafter by me which amend or supplement the Offering Plan will:

- (1) set forth the detailed terms of the transaction and be complete, current and accurate;
- (2) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (3) not omit any material fact;
- (4) not contain any untrue statement of a material fact;
- (5) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;
- (6) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (7) not contain any representation or statement which is false, where we: (i) knew the truth; (ii) with reasonable effort could have known the truth; (iii) made no reasonable effort to ascertain the truth, or (iv) did not have knowledge concerning the representation or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

**SDS COLUMBIA LLC**

By: [Signature]  
Name: Linda Greco  
Title: Member

**PRINCIPAL OF SPONSOR:**

[Signature]  
Linda Greco

Sworn to before me this  
2nd day of June, 2012

[Signature]  
NOTARY PUBLIC

Commission Expires January 1, 2015

May 7, 2012, rev. August 24, 2012  
New York State Department of Law  
Real Estate Financing Bureau  
120 Broadway  
New York, New York 10271

**Re: SDS Columbia, LLC.  
75 Columbia Street  
Brooklyn, New York**

Dear Sir or Madam:

The Sponsor of the offering plan to convert the captioned property to condominium ownership retained my firm to prepare a report describing the construction of the property (the "**Report**"). I visually inspected the building at 75 Columbia Street on July 24, 2012. I have also examined the building plans and specifications that were prepared by my office, dated August 25, 2011 as amended on November 21, 2011 and approved by the NYC DOB on December 31, 2011, and prepared the report dated May 7, 2012, revised August 24, 2012. A copy of the Report is intended to be incorporated in the offering plan so that prospective purchasers may rely on the Report.

I am a registered architect in the State in which the property is located.

I understand that we are responsible for compliance with the provisions of Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they may be applicable to this Report.

I have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis of this certification. This certification is made for the benefit of all persons to whom this offer is made.

I hereby certify that the Report:

- (i) sets forth in narrative form the description and/or physical condition of the entire property as it will exist upon completion of construction, provided that construction is completed in accordance with the plans and specifications that I have examined;
- (ii) in my professional opinion, affords potential investors, purchasers and participants an adequate basis upon which to form their judgment concerning the description and/or physical condition of the property as it will exist upon completion of construction, provided that construction is completed in accordance with the plans and specifications that I have examined;
- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, suppressions;



- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances, and;
- (vii) does not contain any promise or representation or statement which is false, where we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth or (d) did not have knowledge concerning the representations or statements made.

I further certify that neither my firm nor I are owned or controlled by and have no beneficial interest in the Sponsor and that my firm's compensation for preparing the Report is not contingent on the conversion of the property to a condominium or on the profitability or price of the offering. This statement is not intended as a guaranty or warranty of the physical condition of the property.

GF55 Partners

BY: David E. Gross AIA.



Sworn to and subscribed before me this 7 day of May, 2012

  
\_\_\_\_\_  
Notary Public

CHRISTOPHER SHANE  
Notary Public, State of New York  
No. 01SH6188228  
Qualified in New York County  
Commission Expires June 2, 2016



04.25.2012

**CERTIFICATION OF EXPERT REGARDING ADEQUACY  
OF SCHEDULE B PURSUANT TO SEC. 20.4(d) OF THE  
REGULATIONS ISSUED PURSUANT TO GENERAL  
BUSINESS LAW, ARTICLE 23-A, AS AMENDED.**

**Re: 75 Columbia Street, Brooklyn, New York**

The undersigned certifies as follows:

The Sponsor of the Condominium Offering Plan for the captioned property retained me to review Schedules B and B-1 containing projections of income and expenses for the first year of condominium operation. I am a licensed real estate broker and have been in the business and has been selling both cooperative and condominium apartments for over 32 years. I managed my first building in 1972 and have managed over 50 apartment buildings since then. I have also managed Commercial Buildings and a Garden Apartment Complex over this period of time.

I understand that I am responsible for complying with Article 23-A of the General Business Law of the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to Schedule B and Schedule B-1,

I have reviewed the Schedules and investigated the facts set forth in the Schedules and the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on my experience in managing residential buildings.

I certify that the projections in Schedule B and Schedule B-1 appear reasonable and adequate under the existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the projected first year of condominium operation.

I certify that the Schedule:

- (i) sets forth in detail the projected income and expenses for the first year of condominium operation;
- (ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of condominium operation;
- (iii) does not omit any material fact;

Page 1 of 2\*

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Tel: 718.935.1800 - Fax: 718.935.1822 - [www.cplexre.com](http://www.cplexre.com)  
New York New Jersey



(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

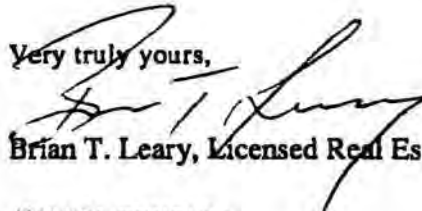
(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where I: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth, or (d) did not have knowledge concerning the representations or statement made.

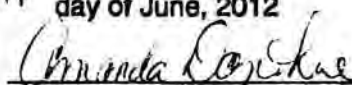
I further certify that I am not owned or controlled by the Sponsor. I understand that a copy of this certification is intended to be incorporated into the Offering Plan. This statement is not intended as a guarantee or warranty of the income and expenses for the first year of condominium operation.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Very truly yours,

  
Brian T. Leary, Licensed Real Estate Broker

Sworn to before me this  
31<sup>st</sup> day of June, 2012

  
NOTARY PUBLIC

AMANDA DONOHUE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01DO6162531  
Qualified in Kings County  
My Commission Expires March 12, 2015

Page 2 of 2•

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