CP/140345

# CONDOMINIUM OFFERING PLAN

**172 MADISON AVENUE CONDOMINIUM**
**172 Madison Avenue**
**New York, New York 10016**

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**Total Amount of Offering for 69 Residential Units, including a Resident Manager's Unit and 32 Storage Bins ..... $283,805,000.00**

**The Resident Manager's Unit will be sold to the Board of Managers of the Condominium on behalf of all the Residential Unit Owners. The Condominium will also contain two (2) Commercial Units. The Commercial Units are not being offered for sale hereunder, but may be offered at a later time by a duly filed amendment to the Offering Plan.**

| SPONSOR | SELLING AGENT |
|---|---|
| Madison 33 Owner LLC<br>461 Park Avenue South, Suite 200<br>New York, New York 10016<br>(212) 869-1900 | Keller Williams NYC<br>425 Park Avenue, 6th Floor<br>New York, New York 10022<br>(212) 838-3700 |

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**Filing Date of this Offering Plan: 3/24 ___, 2015**

**This Offering Plan may not be used after _____ ___, 2016, unless this Offering Plan is extended by amendment.**

**THIS OFFERING PLAN CONTAINS SPECIAL RISKS TO PURCHASERS. SEE PAGE 1.**

**THIS OFFERING PLAN IS SPONSOR'S ENTIRE OFFER TO SELL THESE CONDOMINIUM UNITS. NEW YORK LAW REQUIRES SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS OFFERING PLAN AND TO FILE THIS OFFERING 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 OF LAW 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 CONDOMINIUM BOARD UNDER THE TERMS OF THIS PLAN. (SEE THE SPECIAL RISKS SECTION OF THE PLAN).**

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# PART I

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## CONDOMINIUM OFFERING PLAN

**172 MADISON AVENUE CONDOMINIUM**
**172 MADISON AVENUE**
**NEW YORK, NEW YORK 10016**

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## SPECIAL RISKS

1. Offering Plan Review. 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 of the State of New York strongly urges you to read this offering plan carefully and to consult with an attorney before signing an agreement to purchase a condominium unit.

2. Deposit. Each Purchase Agreement shall provide that at the time a Purchase Agreement is executed, a Purchaser is required to make a deposit in an amount equal to ten (10%) percent of the purchase price (the "Initial Deposit"), with an additional ten (10%) percent of the purchase price due and payable no later than fifteen (15) days after the Presentation Date of the amendment declaring the Plan effective (the "Additional Deposit"), but in any event, no later than the Closing Date. The Initial Deposit and the Additional Deposit are hereinafter collectively referred to as the "Deposit". Any Purchaser, however, who executes a Purchase Agreement after the Presentation Date of the amendment declaring the Plan effective will be required to make a single deposit equal to twenty (20%) percent of the Purchase Price, at the time the Purchase Agreement is executed, in which case such deposit will also be referred to as the "Deposit". Each Purchase Agreement shall provide that if a Purchaser defaults under his Purchase Agreement (a default shall include the failure of Purchaser to pay the Additional Deposit), time being of the essence with regard to the obligations of the Purchaser thereunder, and does not cure such default within 30 days after Sponsor gives written notice to the Purchaser of such default, Sponsor may, at its option, either (i) cancel such Purchase Agreement and retain, as liquidated damages, the Deposit together with interest earned thereon, if any, or (ii) bring an action against such Purchaser for specific performance, in which event Purchaser could be compelled to complete the transaction. (See the Section of the Plan entitled "Procedure to Purchase" for further details).

Purchasers will earn no interest on deposits made on account of furniture, extras, upgrades or custom work that are deposited in Sponsor's Master Escrow Account (except during such periods as as the deposits are placed in the interest bearing portion of the Master Escrow Account, if any). (See the Section of the Plan entitled "Escrow and Trust Fund Requirements" for further details).

3. Condition of Property. Sponsor has no obligation to make any repairs, improvements or decorations in or to the Property, the Building, the Unit or the Facilities, except as may otherwise be set forth in the Plan. (See the Section of the Plan entitled "Rights and Obligations of Sponsor" for further details).

4. FDIC Insurance. If a Purchaser makes a Deposit in excess of $250,000.00 for the purchase of a Unit, or, if the amount of such Purchaser's deposits at the Bank in which the Deposit is held when added to the Deposit exceeds $250,000.00, the amount in excess of $250,000.00 will not be federally insured. Additionally, while the Deposit is in the non-interest bearing portion of the Master Escrow Account, the Deposit may not be federally insured even if the Deposit does not exceed $250,000.00. No representation or guaranty is made by Sponsor that the Federal Deposit Insurance Corporation will insure any depositor's funds, if and when called upon to do so. (See the Section of the Plan entitled "Escrow and Trust Fund Requirements").

5. Mortgage on Property. The Property is currently encumbered by a combined construction and acquisition $141,900,000.00 mortgage loan (hereafter defined as "Construction Loan") held by Deutsche Bank Trust Company America, as agent for German American Capital Corporation and other lenders (hereafter defined as "Construction Lender"). Although it is anticipated that the present Construction Loan will be encumbering the Property at the time of the First Closing, it is possible that said Construction Loan may be refinanced with a different lender prior to the First Closing. Sponsor will arrange for the subordination of any mortgages encumbering the Property at the First Closing to the Declaration, and Sponsor will arrange for the release of Units from the liens of any mortgages

encumbering the Property at the time of the applicable Unit's Closing. So long as Sponsor is the holder, Sponsor has agreed to pledge the note and mortgage on the Resident Manager's Unit (if any) to the Construction Lender. (See Special Risk 47, Footnote 11 to Schedule B, and the Section of Plan entitled "Rights and Obligations of Sponsor").

6. Time of the Essence. Time is of the Essence as to Purchaser's obligations under the Purchase Agreement, including without limitation, for the payment of all Deposits and the balance of the purchase price. If a Purchaser fails for any reason to close title to his Unit within ten (10) days of the originally scheduled date of closing ("Scheduled Closing Date") and Sponsor elects not to cancel the Purchaser's Purchase Agreement as a result of the same, (a) the apportionments to be made at the Closing will be made as of midnight of the day preceding the Scheduled Closing Date, and not as of midnight of the day preceding the actual date of closing ("Actual Closing Date"), and (b) the Purchaser will be required to pay to Sponsor an amount equal to 0.03% of the purchase price of his Unit per day commencing with the Scheduled Closing Date through the Actual Closing Date. (See the Section of the Plan entitled "Procedure to Purchase" for further details).

7. No Financing Contingency. The purchase of a Unit will not be contingent upon Purchaser obtaining a commitment for mortgage financing. Any Purchaser who executes a Purchase Agreement and does not obtain financing may lose the Deposit if unable to pay the balance of the purchase price. Purchasers who need financing to purchase are advised to consult with a bank before executing a purchase agreement to ascertain the likelihood of obtaining financing. No representation is made by the Sponsor as to the availability or cost of such financing. (See the Section of the Plan entitled "Procedure to Purchase").

8. Transfer Taxes. Purchasers will be required to pay at the closing of their Units and Storage Bin Licenses, all New York City Real Property Transfer Taxes, New York State Real Estate Transfer Taxes and New York State Additional Real Estate Transfer Taxes imposed on their purchase. (See the Section of the Plan entitled "Closing Costs and Adjustments" for further details).

9. Initial Control Period (a) Sponsor will control the Condominium Board until the earlier of: (i) the Closing of Title with Purchasers under the Plan to Residential Units having at least 90% of the aggregate Common Interests appertaining to all Residential Units, or (ii) five (5) years after the first Closing of a Residential Unit (hereafter defined as the "Initial Control Period"). Sponsor's concepts concerning the management of the Condominium may vary from those of the Unit Owners who occupy their Units and may be more identifiable with those of other non-resident Unit Owners, if any, who may have purchased their Units for investment purposes rather than for the purpose of residing therein. After the Initial Control Period, Sponsor, as owner of Unsold Units, shall have the right to designate one member of the Condominium Board for so long as Sponsor owns at least one Unsold Residential Unit. (see the Section of the Plan entitled "Control By Sponsor" for further details).

(b) During the period that Sponsor controls the Condominium Board, Sponsor will have control of maintenance, facilities and services to be provided to Unit Owners and will determine the Common Charges to be paid by all Unit Owners. (See the Section of the Plan entitled "Control By Sponsor" for further details).

10. Limitations on Board Authority. So long as Sponsor owns any Residential Unsold Unit, but in no event later than five (5) years after the first Closing of a Residential Unit, the Condominium Board may not take any of the following actions without Sponsor's prior written consent: (a) make or approve of any addition, alteration or improvement to the Common Elements or to any Unit, unless the same are required by Law or (b) assess any Common Charges or Special Assessments for the creation of, addition to, or replacement of, all or part of a working capital, reserve, contingency or surplus fund, or (c) increase or decrease the number, or change the kind of, employees employed by the Condominium at

the time of the first Closing of a Residential Unit, or (d) enter into any service or maintenance contract for work or otherwise provide services in excess of those initially set forth in the First Year's Budget (Schedule B) for the Condominium, except as is required to reflect normal annual increases in operating services, or (e) borrow money on behalf of the Condominium, or (f) exercise a right of first refusal to lease or purchase a Unit; provided, however, that Sponsor's written consent is not necessary to perform any function or take any action described in clauses (a) through (f) above, if, and only if the performance of such function or the carrying out of such action is necessary and no other alternative is available to enable the Condominium Board to comply with Law or to remedy any notice of violation or perform any work order of the Condominium's insurer, nor shall Sponsor exercise veto power over the expenses described in Schedule B or expenses required to enable the Condominium Board to (i) comply with Law, or (ii) remedy any notice of violation, or (iii) remedy any work order of the Condominium's insurer (See the Section of the Plan entitled "Control By Sponsor" for further details).

11. Reserve Fund. Sponsor shall not deposit funds at the First Closing into a reserve fund. The First Year's Budget in Schedule B includes a line item for a Reserve Fund to be used for capital replacements or repairs, to be funded by Unit Owners from Common Charges. Since the Building is newly constructed, it is not expected that any capital item will need to be replaced within the first five years after the First Closing (see the Section of the Plan entitled "Reserve Fund" and Footnote 14 to Schedule B).

12. Reserved.

13. Working Capital Contribution. A Purchaser of a Unit shall be required to make a contribution at the Closing of Title to his Unit to the Working Capital Fund of the Building. Such contribution shall be in an amount equal to three (3) months Common Charges in effect for such Unit. In addition Purchaser shall pay the balance of the Common Charges due for the month of Closing pro-rated on a daily basis from the first day of the calendar month of the Closing of such Unit through the day of that Unit's Closing. (See the Sections of the Plan entitled "Working Capital Fund and Apportionments" and "Closing Costs and Adjustments").

14. No Bond. No bond or other security has been posted by Sponsor to secure its obligations under the Plan. The ability of Sponsor to perform its obligations under the Plan will partly depend upon its financial condition at the time it is called upon to perform. No representation can be made that it will be financially able to perform any or all of such obligations. (See the Section of the Plan entitled "Rights and Obligations of Sponsor" for further details).

15. First Closing. Sponsor anticipates the first Closing of a Residential Unit will take place on or about July 1, 2016. If the first Closing of a Residential Unit does not occur within 12 months after July 1, 2016, Sponsor will offer all Purchasers of Residential Units, as their sole remedy, the right for at least fifteen days, to rescind their Purchase Agreements and receive a refund of the Deposit. However, Units will be completed at different times over a period that may extend significantly beyond that date. If the first Closing of a Residential Unit occurs within 12 months after July 1, 2016, the Sponsor may schedule the closings of title to other Units significantly later than such date. In that case, unless a Purchase Agreement contains an outside closing date, Sponsor is not obligated to schedule a closing within any specified time frame or to ensure that closing of title to a Unit will occur by any date certain. PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER SUCH RISKS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A UNIT. (See Sections entitled "Introduction" and "Rights and Obligations of Sponsor" for further details). Prospective Purchasers are advised that for a period of no more than six (6) months from the First Closing, some of the services and facilities described in the Plan (such as the anticipated staff of Building personnel) may not be available. Any interim level of staffing will at all times be adequate to maintain the Building during this period. (See the Section of the Plan entitled "Description of Property and Improvements" for further details.)

16. Amendment of Condominium Documents Affecting Sponsor. No amendment, modification, addition, or deletion of the Declaration, By-Laws or any Rules and Regulations (other than those required by Law) shall be effective (a) against Sponsor or its designees or the Commercial Unit Owners or any Unsold Unit unless Sponsor and/or the affected Commercial Unit Owner has given its written consent thereto, or (b) to modify the permitted uses of the Commercial Units or to adversely affect the Commercial Unit Owners unless the affected Commercial Unit Owner has given its prior written consent thereto. (See the Section of the Plan entitled "Rights and Obligations of the Condominium Board/Summary of By-Laws" for further details.)

17. Commercial Units. Sponsor is not currently offering the Commercial Units for sale. No representation is made with respect to the ownership by Sponsor of the Commercial Units. The Commercial Units may, except as noted below, be used for any legally permitted purpose and in accordance with the Declaration and By-Laws. The Commercial Units are not currently leased. In no event may all or any portion of either Commercial Unit be used for (i) any sex-related commercial establishment or massage parlor, or establishment where pornographic material is displayed or distributed, or obscene, nude or semi-nude performances are shown live or in a videotaped or other recorded format, except in conjunction with legitimate theatrical or dance performances as permitted by applicable law, or (ii) any drug rehabilitation clinic or treatment center. (See the Section of the Plan entitled "Commercial Units" for further details.)

18. Subdivision of Commercial Units. Each Commercial Unit may be subdivided by the Sponsor or any subsequent Commercial Unit Owner into two or more separate condominium units without prior notice and without amendment to the Plan. (See the Section of the Plan entitled "Commercial Units").

19. Development of Neighboring Properties. Sponsor makes no representation as to whether there are any potential future developments in the neighborhood. Prospective purchasers are advised to consult with their own experts and professionals to analyze the development rights, if any, of adjacent properties to fully understand the scope of any potential future development on adjacent properties or otherwise, in the neighborhood. Sponsor makes no representation as to whether or not future construction in the neighborhood will result in the obstruction of views or light or air from any window, terrace or balcony. In the event any neighboring property (adjacent or otherwise) is developed, and a Purchaser's views, light or air are adversely affected, such a Purchaser will nevertheless be obligated to close and fully perform under its Purchase Agreement without offset or counterclaim. (See the Section of the Plan entitled "Description of Property and Improvements").

20. Indemnification of Board. All Unit Owners shall severally, to the extent of their respective interests in their Units and their appurtenant Common Interests, indemnify each member of the Condominium Board against any liability or claim except those arising out of such member's own bad faith or willful misconduct. (See the Sections of the Plan entitled "Condominium Board" and "Rights and Obligations of the Condominium Board/Summary of By-Laws").

21. First Closing Adjustments. At the First Closing, certain apportionments will be made between the Sponsor and the Condominium, as more fully set forth in the Section of the Plan entitled "Working Capital Fund and Apportionments". If the result of the closing adjustments is a net credit in favor of Sponsor, the payment of any net credit shall be deferred and paid to Sponsor by the Condominium in one installment on the first anniversary of the First Closing, without interest, pursuant to an unsecured, negotiable, promissory note to be executed by the Condominium Board and delivered to Sponsor at the First Closing. Such promissory note may be prepaid by the Condominium in full at any time, or in part from time to time, without penalty.

22. Declaring the Plan Effective. Pursuant to existing law and regulation the Sponsor may declare the Plan effective upon entering into Purchase Agreements for the sale of a minimum of 15% of the Units in the Building but reserves the right to declare the Plan effective at a greater number of Purchase Agreements. 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 Unit. (See the Section of the Plan entitled "Effective Date" for further details).

23. Availability of Financing. Purchasers should note that in the current real estate market, banks and other lenders may impose various restrictions on loans. Such restrictions include requiring that a certain percentage (such as 75% or more) of the units in a building be sold or under contract to be sold before the lender will consider making a loan. Thus it may be possible for a purchaser to experience difficulty obtaining a loan for a Unit if the percentage of Units sold is lower than a lender's particular sales minimum. 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 a Unit if prospective buyers are unable to obtain a loan due to such minimum sales requirements and investor ownership restrictions. (See the Section of the Plan entitled "Procedure to Purchase").

24. Bulk Sale/Sponsor's Right to Rent Units. Sponsor reserves the right to sell the Units in one or more bulk sales. If Sponsor makes a bulk sale, the successor sponsor shall be responsible for all of Sponsor's obligations under the Plan with respect to the Units sold in bulk to such successor sponsor. Sponsor has reserved the right to rent or lease any Unit prior to closing the sale thereof to the Purchaser thereof, and after the Plan is consummated, to any other party, to cease marketing Units for sale at any time, in Sponsor's sole discretion, or to use or offer the Unsold Units for any lawful purpose. Except where otherwise prohibited by Law, certain Units may be occupied under leases. Accordingly, residents of the Condominium may be comprised of both Unit Owners and tenants leasing from Sponsor or other Unit Owners. Accordingly, it is possible that a significant proportion of Unit Owners will not be residents of the Building and that a significant portion of tenants in the Building may not be Unit Owners. As a consequence, a Unit Owner seeking to resell or refinance a Unit may experience difficulty. In addition, residents of the Condominium who are not Unit Owners do not share the same economic interests as Unit Owners in the maintenance and care of the Building's facilities and amenities and owner-occupants and non-resident Unit Owners, including Sponsor, may have inherent conflicts on how the Condominium should be managed because of their different reasons for purchasing (i.e., purchase as a home as opposed to as an investment). The By-Laws include a provision that, except for members designated by Sponsor, all Board members must be Unit Owners or adult Family Members or other certain interested parties, such as members of entities that are Unit Owners or Permitted Mortgagees. **Because Sponsor is not limiting the conditions under which it will rent rather than sell Units, there is no commitment to sell more than the fifteen percent (15%) necessary to declare the Plan effective and owner-occupants may never gain effective control and management of the Condominium.** (See Special Risk 23 and the Sections of the Plan entitled "Introduction", "Rights and Obligations of Sponsor", and "Condominium Board" for further details.)

25. Removal of Board Members: Any member of the Condominium Board may be removed for cause. However:

(a) Any member of the Condominium Board designated by the Owner of a Commercial Unit may only be removed without cause and replaced by the Commercial Unit Owner who designated such member. If any member of the Condominium Board who was designated by a Commercial Unit Owner is removed with or without cause, his successor shall be designated only by the Owner of that Commercial Unit. Any decision of the Condominium Board which affects a Commercial Unit may be

made only with the consent of any member of the Condominium Board designated by the applicable Commercial Unit Owner.

(b) Any member of the Condominium Board designated by Sponsor may only be removed without cause and replaced by the Sponsor. If any member of the Condominium Board who was designated by Sponsor is removed with or without cause, his replacement shall be designated only by Sponsor. Any decision of the Condominium Board which affects the Sponsor may be made only with the consent of the member(s) of the Condominium Board designated by the Sponsor. (See the Sections of the Plan entitled "Condominium Board" and "Commercial Units").

26. Sponsor Repair Obligations. Sponsor will have no obligation to correct or repair any defective condition in the Building (including Units and Common Elements), or in or with respect to its installations, apparatuses, fixtures, finishes, materials and appurtenances except as specifically set forth in the Section of the Plan entitled "Rights and Obligations of Sponsor".

27. Payment for Upgrades. All funds received by Sponsor for furniture, upgrades, extras or custom work shall be placed in the Master Escrow Account, to be released to and used by Sponsor for payment of the cost of the furniture, upgrades, extras or custom work. Purchasers should note that if such funds are placed in the Master Escrow Account, they may be released from the Master Escrow Account by Escrow Agent to Sponsor provided that Sponsor uses the funds to pay for or be reimbursed for the cost of such furniture, upgrades, extras or custom work. As a result, in the event a Purchaser is entitled to rescind the Purchase Agreement in accordance with the Plan, the Purchaser will not receive a refund of any funds used for such furniture, upgrades, extras or custom work. (See the Sections of the Plan entitled "Procedure to Purchase" and "Escrow and Trust Fund Requirements" for further details.)

28. Easements over Common Elements. Sponsor, its designee(s) and each Commercial Unit Owner shall have a permanent easement to erect, use, lease, maintain, repair, replace and operate antennae, satellite dishes and other communications equipment, as permitted by Law, on any part of the roof and/or façade of the Building which are General Common Elements and elsewhere on the General Common Elements and to utilize any risers, conduits, piping, cables, ducts and electrical panels and rooms, telephone/cable panels and rooms in connection therewith. Sponsor and/or the Commercial Units Owners shall be entitled to utilize such easement for Sponsor's and/or either Commercial Unit Owner's own account or the account of any tenants or licensees of Sponsor or Commercial Unit Owner(s). Sponsor's designees shall be entitled to utilize such easement for their account or the account of any tenant, or licensees of such Sponsor designees. However, the easement shall not be used by any Commercial Unit Owner for the operation of a telecommunications company or any other business whose primary purpose is the broadcasting of telephone, radio, communications or other signals. The Sponsor's and/or Commercial Unit Owner's easement shall include the right of Sponsor and/or its designees to enter into agreements with one or more providers of communications equipment and services, such as, without limitation, cellular equipment, cable, internet, satellite dish and similar or dissimilar equipment that would permit such providers the right to: (i) install, maintain, repair and replace their equipment on the roof of the Building, (ii) install, maintain, repair, replace and remove wires, conduits, cables, ducts, connective equipment and such other equipment whether similar or dissimilar, in and through the Common Elements, and (iii) use a portion of the Common Elements for equipment. Sponsor and/or its designees shall be entitled to retain any revenues from any such provider. The Condominium Documents do not provide that the aforementioned easements revert to the Condominium or that any revenues generated therefrom revert to the Condominium. (See the Section of the Plan entitled "Rights and Obligations of the Condominium Board/Summary of By-Laws" for further details.)

29. Window Guards. A Residential Unit Owner must notify the Condominium Board in writing when a child or children under the age of eleven (11) years lives or resides (even temporarily) in the applicable Residential Unit. In such event, each Residential Unit Owner shall have installed at the

Residential Unit Owner's expense, the required Window Guards (or required limiters) in all windows of the Unit and shall not remove them until permitted to by Law, and in any event, without first notifying the Condominium Board of the intended removal of the Window Guards. (See "Rules and Regulations", which are an Addendum to the By-Laws).

30. Allocation of Expenses. The sharing of expenses between the Residential Unit Owners and the Commercial Units Owners is set forth and explained in the footnotes to Schedule B – First Year's Budget and in Article 6 of the By-Laws. The sharing of expenses between the owners of the Skyhouse and Mansion Units, which Units have their own private pools that incur additional expenses for heating/hot-water and pool service contracts, and the owners of all other Residential Units is also set forth and explained in the footnotes to Schedule B – First Year's Budget and in Article 6 of the By-Laws. In certain circumstances the sharing of expenses is not based solely on the Unit's percentage of Common Interest, but more accurately reflects the projected fair usage and consumption by the Units of the budgetary item in question. The special allocations of Common Expenses were calculated in order to minimize the potential of any material adverse financial impact on Purchasers of Units. All Common Charges relative to the General Common Elements have been allocated between the Residential Units and the Commercial Units and among the Residential Unit Owners in accordance with the allocations set forth in the First Year's Budget, and as provided in Section 6.1(E) of the By-Laws. Such Common Charges that are not based upon Percentage of Common Interest are based upon estimated usage of particular services, and/or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. Common Expenses not included in the First Year's Budget and Special Assessments shall be based upon estimated usage of particular services, and/or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. The Condominium Board may not modify the allocations set forth in said Schedule B and Section 6.1(E) of the By-Laws without the consent of the Commercial Units Owners. (See the Section of the Plan entitled "Schedule B" and the By-Laws in Part II of the Plan.)

31. Limitations on Warranties.

(a) Sponsor has limited its warranty obligations as described in the Section of the Plan entitled "Rights and Obligations of Sponsor". The limitations in said Section, sub-section (m) include that Sponsor be given notice of a claim of (i) latent defects in a Residential Unit within six months of the first closing of such Residential Unit, and (ii) patent defects in a Residential Unit within three months of the first Closing of such Residential Unit, (iii) latent defects in Common Elements within six months of the first Closing of a Residential Unit, and (iv) patent defects in Common Elements within three months of the first Closing of a Residential Unit. In addition, Sponsor's obligations will be deemed discharged if (a) Sponsor is not properly and timely notified; (b) Unit Owner fails to allow prompt access to the Unit, or the Condominium Board or Managing Agent does not allow prompt access to a Common Element to Sponsor or Sponsor's contractors; or (c) Sponsor corrects the defect in accordance with industry standards. (See the Section of the Plan entitled "Rights and Obligations of Sponsor" for further details).

(b) Except for those warranties or guarantees provided to Sponsor by contractors, manufacturers or suppliers, which Sponsor will assign to the Condominium Board and/or Unit Owners, as necessary, Sponsor does not make any warranty of any kind, express or implied, and Sponsor hereby disclaims any and all other warranties, including but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the construction of the Units and the Common Elements and with respect to the personal property located within the Units, the Common Elements, and the Unit Owners assume all risk and liability from the use of this Property. (See the Section of the Plan entitled "Rights and Obligations of Sponsor").

(c) Obligations of Sponsor to correct eligible defects in a Unit run for the benefit of Unit Owners who purchase a Unit directly from Sponsor, and no other purchasers. Accordingly, Sponsor's obligations under the Plan do not run to Unit Owners who purchase a Unit on re-sale from Unit Owners.

32. Condominium Insurance. The Condominium Board will be solely responsible for maintaining casualty and liability insurance with respect to the Building, in accordance with the provisions of the By-Laws. Each Unit Owner will be required to maintain, at and from the Closing of Title to his Unit, casualty insurance with respect to "Unit Specific Property", as such term is defined in the By-Laws, as well as liability insurance with respect to occurrences in or about the Unit. All such policies shall contain waivers of subrogation and further provide that the liability of the carriers issuing the insurance maintained by the Condominium Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. A Residential Unit Owner will be required to maintain such insurance with respect to occurrences in any Limited Residential Common Element appurtenant to his Residential Unit. The casualty and liability insurance, each with coverage of no less than $1,000,000, and shall include the Condominium as an additional insured. The Residential Unit Owner shall provide the Managing Agent with a certificate of insurance evidencing such coverage at Closing and shall provide the Managing Agent with an updated certificate of insurance each year at least 30 days prior to the expiration of such coverages. The certificate should also include a requirement of at least 30 days notice of cancellation or material change be given to the Condominium. A Residential Unit Owner shall also require any tenant of its Unit to maintain similar coverages and to provide the Managing Agent a certificate of insurance evidencing such coverage at the time of lease signing and at each anniversary thereafter. The tenant's certificate must include the Residential Unit Owner and the Condominium as additional insureds and the certificate should include a requirement that at least 30 days notice of cancellation or material change be given to the Condominium and the Residential Unit Owner. It will be the responsibility of the Residential Unit Owner to obtain the documents required from its tenant and to submit them to the Managing Agent and/or the Condominium. (See the Sections of the Plan entitled "Rights and Obligations of Unit Owners" and "Rights and Obligations of the Condominium Board/Summary of By-Laws" for further details.)

Any person who takes possession prior to closing assumes the risk of losses not covered by insurance.

33. Window Agreement. A portion of the property is subject to an agreement, dated April 16, 1985, between Jesse Smith Noyes Foundation, Inc., and 1634 Associates (the "Window Agreement") and recorded in the Office of the City Register, New York County at Reel 901, page 1901. The Window Agreement benefits the property located at 15 – 19 East 33rd Street and 16 – 22 East 34th Street (the "Adjacent Premises") upon which there is a twenty-one story building ("Existing Adjacent Building") by prohibiting construction of a Building on a portion of the Property abutting the Existing Adjacent Building which would block or render unlawful, any window now, and then existing in the easterly wall of the Existing Adjacent Building. The Building does not violate the prohibition in the Window Agreement because the Plaza abuts the easterly wall of the Existing Adjacent Building. (See Window Agreement in Part II of this Plan, and the Section of the Plan entitled "Agreements Affecting Building Operations").

34. Public Plaza. Publicly accessible open space at ground level (the "Plaza") is included in the Property for which benefits have been received in the form of additional floor area utilized in the construction of the Building. The Plaza is to be developed and maintained substantially in accordance with the drawings prepared by Karl Fischer Architecture PLLC and SCAPE Landscape Architecture PLLC, ("Plaza drawings"), and attached as Exhibit B to the Notice of Certification, dated July 24, 2014 (the "Notice of Certification"), recorded in the Office of the City Register, New York County, on July 24, 2014, at CRFN 2014000259638. A copy of the Notice of Certification is included in Part II of the Plan. The Notice of Certification restricts the manner in which the Property may be developed, redeveloped,

maintained and operated in the future. The Plaza is to be accessible to the public at all times. No Temporary Certificate of Occupancy or Final Certificate of Occupancy is to be issued for any additional floor area permitted by virtue of the Plaza unless and until the Plaza has been substantially completed in accordance with the Plaza drawings. A compliance report regarding the Plaza must be filed by the Condominium with the Department of City Planning and the affected Community Board in the third calendar year after which the Notice of Certification was issued and at three year intervals thereafter. (See the Sections of the Plan entitled "Rights and Obligations of the Condominium Board/Summary of By-Laws"). It will be the obligation of the Condominium to operate the Plaza, at its sole cost and expense, in accordance with the Notice of Certification, and to address any matters that might arise from the existing requirement that the Plaza be open 24 hours per day, such as noise, use of the Plaza by the public, and any security issues. The initial Plaza Rules of Conduct are provided in Part II of the Plan. (See the Sections of the Plan entitled "Agreements Affecting Building Operations", "Rights and Obligations of the Condominium Board/Summary of By-Laws", and Department of City Planning Notice of Certification in Part II of this Plan.

35. Rights of Access Benefiting the Commercial Units. The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit Owners and the licensees and invitees of the foregoing, have easements and/or rights of access to use the residential lobby, elevators, and staircase under limited circumstances. (See the Sections of the Plan entitled "Rights and Obligations of Unit Owners", "Commercial Units", and "Rights and Obligations of the Condominium Board/Summary of By-Laws" for further details).

36. Reserved.

37. Cellar Space. The cellar and sub-cellar spaces may not be used for any type of prohibited occupancy, including, but not limited to, a bedroom, dining room or any other use considered to be that of a habitable space, as defined by the New York City Building Code. The cellar and sub-cellar levels may not be used as sleeping or living space. Any prohibited occupancy, including, but not limited to, the foregoing, may result in the issuance of a violation and fine against the Building by the New York City Department of Buildings.

38. Reserved.

39. Delay in Collection of Common Charges. During the Initial Control Period, Sponsor shall have the right, in its sole discretion, to delay the obligation of the Unit Owners to pay Common Charges from and after the First Closing, for a period to be determined by the Sponsor provided that the expenses of the Condominium (including, but not limited to, insurance premiums) during such period are paid by, and the reserve fund line item on Schedule B to the Offering Plan is funded by, Sponsor. Upon commencement of the obligation to pay Common Charges, there will not be a special assessment for any item set forth in the First Year's Budget for the Condominium incurred prior to the date the Common Charges become payable. Sponsor shall remain obligated to update the budget for the Condominium, as provided for in the governing regulations. In the event Sponsor elects to delay the collection of Common Charges, it will disclose such fact in the Closing Notice to Purchasers or related correspondence; Sponsor will further disclose such fact in the post-closing amendment to the Plan. Such amendment will also disclose the anticipated period of delay. Sponsor will notify all Unit Owners in writing of the expiration of the delay period at least thirty (30) days prior to the commencement of collection of Common Charges and will disclose such fact in the subsequent amendment to the Plan. (See Section 6.4 of the By-Laws and the Section of the Plan entitled "Rights and Obligations of Sponsor".) However, failure to do so shall not affect Sponsor's right to delay collection of Common Charges, so long as a Purchaser is notified of the delay in writing prior to the Closing of such Purchaser's Unit.

40. Lot Line Windows. Lot line windows are windows located on an exterior wall abutting (or less than 30 feet away from) a property line, where the adjacent property is owned by others. The Building Code of the City of New York does not permit lot line windows to be used to determine light and air requirements for a habitable room. Lot line windows are considered to be amenities that potentially can be lost. If neighboring lots are developed, there might be an obligation to seal these windows at the expense of the owner of the unit having such windows, including Sponsor with respect to Unsold Units. In addition to the expense of sealing these windows, such development might occasion the loss of light and air. Neither Sponsor, Sponsor's Architect, the Condominium Board, nor any other person who took part in preparing this Offering Plan, will have any liability or obligation if the closing-up of any or all lot line windows is required. The approximate cost of sealing up such windows as of the date of the acceptance of this Plan is $1,500 per window.

Lot Line windows are located in the following units: (a) third to 27th floors: Unit B in the living room; (b) 28th to 32nd floors: Unit A in the kitchen; (c) Skyhouse, 32nd floor, 32nd floor Mezzanine stairs, and the Skyhouse 33rd floor stairs. (See "Description of Property and Building Condition" set forth in Part II of the Plan for details).

In the event that any or all of the Lot Line Windows must be sealed, all construction to enclose the windows shall be performed by the Board of Managers of the Condominium. The cost and expense of such construction shall be the sole responsibility of the Unit Owner or Owners affected and the cost shall be charged to the affected Unit Owner as a Special Assessment. (See Section of Plan entitled "By-Laws" for further details).

41. Reserved.

42. Unit Measurements. Floor plans depicting the layouts of Units appear in Part II of the Offering Plan.

Measured horizontally, the Residential Unit sizes are calculated from the exterior face of the exterior walls adjacent to the Unit, to the centerline of the demising wall between Units, corridors, elevator, stairs and other mechanical equipment spaces or any Common Elements not within a Unit (or to the exterior face of the opposite exterior wall). Columns, mechanical pipes, shaftways, chases, chaseways and conduits are included in the measurement of each such Unit. Where the Residential Unit encompasses a full floor, garbage chutes and elevator shafts are also included in the calculation of size.

Measured vertically, each Residential Unit will consist of the volume from the top of the floor slab (located under the finished flooring and sub-floor materials, if any) to the underside of the concrete ceiling above. The size of Common Elements which fall within the boundaries of a Residential Unit are included in the square foot area of the Unit, even though they are not part of the Unit.

Measured horizontally, each Commercial Unit size is calculated from the exterior face of the exterior walls adjacent to the Unit, to the centerline of the demising wall between Units, corridors, elevator, stairs and other mechanical equipment spaces or any Common Elements not within a Unit, or to the exterior face of the opposite exterior wall. Columns, mechanical pipes, shafts, shaftways, chases, chaseways and conduits are not deducted from measurement of a Commercial Unit.

Measured vertically, each Commercial Unit will consist of the volume from the top of the floor slab (located under the finished flooring and sub-floor materials, if any) to the underside of the concrete ceiling above. The size of Common Elements which fall within the boundaries of each Commercial Unit are included in the square foot area of the Unit, but are not part of the Unit. The size of Common Elements which fall within the boundaries of each Commercial Unit are included in the square foot area of the Unit, but are not part of the Unit.

The space so measured, as is customary in New York, is greater than the usable space in a Unit. See the Footnotes to Schedule A in Part I of the Offering Plan and the "Description of Property and Improvements" in Part II for details concerning how the square footages so calculated are greater than the usable floor area of each Unit.

There is a rebuttable presumption that a change to an area whereby that area is diminished by five percent (5%) or less is not material. (See the Section of the Plan entitled "Changes in Prices and Units").

43. Temporary Certificate of Occupancy Used to Close. After the completion of construction, Sponsor will apply for a Certificate of Occupancy for the Building from the Department of Buildings of the City of New York ("DOB"). The Sponsor makes no representation as to the exact time of the delivery of the Certificate of Occupancy. The Sponsor will obtain a Temporary Certificate of Occupancy ("TCO") prior to the First Closing. The Sponsor will endeavor to obtain a Final Certificate of Occupancy ("FCO") within two years of the First Closing. However, if Sponsor permits Unit Owners to undertake renovations before the procurement of an FCO, there could be additional delays in obtaining an FCO. *Purchasers are advised that in New York City, newly constructed and newly renovated buildings are sometimes offered as condominium projects without an FCO covering the entire Building, but with only a TCO, and sometimes with several successive TCO's. Certificates of Occupancy are generally governed by Section 301 of the New York Dwelling Law and local building codes and rules. Both TCO's and FCO's are issued by the DOB. A TCO is intended to indicate that the property conforms substantially to the DOB approved plans and specifications, and to the requirements of all applicable laws, rules, and regulations for the uses and occupancies specified in the TCO. No change of use or occupancy shall be made unless a new certificate of occupancy is issued. All TCO's have an expiration date. A TCO typically expires 90 days after the date of issuance. When a TCO expires and is not renewed, if 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 an 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 an 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 the 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.*

*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*

See the Section of the Plan entitled "Rights and Obligations of Sponsor".

44. Amtrak Tunnel. There is an Amtrak tunnel that runs parallel with 33rd Street adjacent to the property, but it has no expected impact on the Property or Building. All relevant approvals from Amtrack have been obtained. Amtrak's required monitoring services have been installed and became active prior to the start of construction. See the Section in Part II of the Plan entitled "Description of Property and Building Condition".

45. Storage Bin License. A residential storage room, located on the sub-cellar floor, is subdivided into individual storage bins that are divided with metal mesh partitions. There are a limited number of such storage bins, which shall be made available to Residential Unit Owners at Sponsor's discretion. Purchasers of a Residential Unit who are interested in purchasing a license for a Storage Bin

should contact the Selling Agent to determine which, if any, are available, for purchase. The Sponsor will then have discretion as to whether to sell such Purchaser a Storage Bin License. Sponsor's right to sell the Storage Bin Licenses only applies to the initial sale of each Storage Bin License. Once sold, if a Unit Owner were to surrender its Storage Bin License, it would be to the Condominium, not to the Sponsor. (See the Section of the Plan entitled "Introduction", the Storage Bin License in Part II of this Plan, and Article 17 of the By-Laws).

46. Condition of Penthouse Units. Sponsor shall be obligated to deliver Penthouse Units A, B, C, D and the Skyhouse in a "white box" condition only, which shall mean that they will not be equipped with any of the finishes, appliances, bathroom fixtures or kitchen fixtures described in the Plan or Section of the Plan entitled "Description of Property and Building Condition" that pertains to all the other Residential Units. The Penthouse and Skyhouse Units have unfinished floors, sheetrock primed interior walls and are equipped only with temporary electric heating units, and have no air conditioning. The Penthouse and Skyhouse Units also do not have any wiring for a microwave, dishwasher or washer/dryer. Each of Penthouse Units A, B, C, D and the Skyhouse Unit shall contain one operational bathroom fitted with a toilet, tub and sink, and one basic kitchen fitted with a gas or electric range top, mini-refrigerator and sink included in the purchase price. The kitchen of these units will not have any kitchen cabinets or oven. In contrast, included in the purchase price of all other Residential Units are all the fixtures as described in the Plan or Part A of the Description of Property captioned "Residential Unit Finish Materials and Fixtures except for Penthouses". See the Section in Part II of the Plan entitled "Description of Property and Building Condition".

47. Resident Manager's Unit Costs. At or subsequent to the First Closing, Sponsor will sell the Resident Manager's Unit, located on the fourth floor of the Building and designated as Unit 4C, to the Board of Managers of the Condominium on behalf of all of the Residential Unit Owners for a purchase price of $1,150,000. The Condominium will use the Unit as the Resident Manager's residence. All Common Charges, costs of repairs, alterations and improvements attributable to this Unit, shall be borne by all the Residential Unit Owners as a Residential Common Expense. The purchase price will be paid by the Condominium Board of Managers' execution of one or more promissory notes totaling approximately $1,150,000 and secured by one or more mortgages on the Resident Manager's Unit. Either Sponsor will be the lender, or will arrange for one or more institutional or third party lenders to finance 100% of the purchase price for the Resident Manager's Unit. In the event Sponsor is the holder of the note and mortgage on the Resident Manager's Unit, Sponsor will pledge same to the Construction Lender. All costs associated with financing the purchase of the Resident Manager's Unit, including, but not limited to, fee and mortgage title insurance, recording fees, transfer taxes, mortgage recording tax and all attorney's fees, may, at Sponsor's option, if not financed by a third party lender, be advanced by the Sponsor. In such event, all such costs shall be paid to the Sponsor by the Condominium one (1) year from the date on which the Resident Manager's Unit is sold to the Board of Managers, with interest, at the rate of eight (8%) percent per year, pursuant to an unsecured, negotiable, promissory note to be executed by the Board and delivered to the Sponsor on the date of closing of the sale to the Board of Managers. Sponsor may not be able to obtain institutional or third party financing for the Condominium to purchase the Resident Manager's Unit as of the First Closing, and Sponsor may choose not to provide the financing as of the First Closing. Accordingly, as of the First Closing and until such time as the Resident Manager's Unit is actually conveyed to the Board of Managers of the Condominium, the Board of Managers will rent the Resident Manager's Unit at a monthly rent equal to the estimated monthly expense of the Resident Manager's Unit, as detailed in Note 11 to Schedule B, the Projected First Year's Budget.

Sponsor makes no representation that the Condominium Board will be able to refinance or, if refinancing is available, as to the terms or costs of the same. If the Board of Managers is unwilling or unable to refinance, each Residential Unit Owner will be required to pay his or her pro rata share of the

principal payment then due, which pro rata share will be based upon his or her Residential Common Interest. Sponsor shall not refinance the note(s) and mortgage(s) on their maturity date.

If the Condominium Board defaults under the note(s) and mortgage(s), the holder of same may foreclose on the Resident Manager's Unit. In such event, the Building will be without a Resident Manager's apartment. Accordingly, alternative arrangements will be necessary to shelter the Resident Manager in the Building, or within such radius of the Building as is then required by law. (See Note 11 to Schedule B in the Plan Section titled, "Schedule B – First Year's Budget," located in Part I of the Plan, for further discussion of the Resident Manager's Unit.)

48. Mortgage Recording Tax. In the event the mortgage recording tax credit pursuant to Section 339-ee(2) of the Condominium Act is unavailable, Sponsor, at its option, may arrange to have the holder of the loan encumbering the Property, assign to a Purchaser's lender, a portion of the mortgages encumbering the Property, in an amount equal to the mortgage loan obtained by an applicable Purchaser (the "Mortgage Assignment"). If Sponsor chooses to have the holder of the loan encumbering the Property deliver a Mortgage Assignment to Purchaser's lender, Sponsor will pay the costs and fees charged by Sponsor's lender, Purchaser's lender, and Purchaser's lender's attorneys, as well as all applicable recording charges to effect the Mortgage Assignment ("Mortgage Assignment Expenses"). A Purchaser for whom, at Sponsor's option, the Mortgage Assignment is effected, shall, in lieu of paying mortgage recording tax to the State or City of New York, pay Sponsor at Closing, an amount equal to the mortgage recording tax which would otherwise have been due by Purchaser ("Mortgage Recording Tax Reimbursement"). Sponsor also reserves the right to direct Purchaser to pay, from the Mortgage Recording Tax Reimbursement, the Mortgage Assignment Expenses. It is intended that Purchaser shall not be obligated to pay or incur any expense or sum of money that it would not have paid in the event the mortgage recording tax credit was available. (See the Section of the Plan entitled "Closing Costs and Adjustments" and the "Purchase Agreement").

49. Wood Flooring. Purchasers are advised that flooring used in the Residential Units (other than Penthouse Units A, B, C and D and the Skyhouse Units, which will have unfinished floors), will be engineered wood flooring. Sponsor makes no representation as to whether or not such floors can be sanded, and if they can be sanded, the number of times sanding is possible. Sponsor is not responsible for the: (i) wear and tear on the finishing coats of the flooring, (ii) variations in floor level and slight separation between base and floor, (iii) variations in length, width or shades of the flooring, (iv) shrinking or expansion of flooring resulting from humidity levels in the Residential Units, and (v) dents or scratches in flooring. (See the Section of the Plan entitled "Sponsor's Statement of Building Condition".)

50. Rights of Access Benefiting the Condominium Board and the Maintenance of Mansion and Skyhouse Pools and Spa. The Condominium Board, in its sole discretion, and its authorized agents, have a right of access to the second floor mechanical space and the 32nd Mezzanine floor mechanical space that contain equipment for the operation of the Mansion Unit pool and the Skyhouse pool and spa, which spaces are Limited Residential Common Elements, for the purpose of inspecting and maintaining, repairing or replacing such pool and spa equipment, to the extent that the respective Unit Owners fail to do so. The Mansion Unit Owner is responsible for any and all expenses relating to the maintenance or replacement of the equipment for the operation of the Mansion Unit pool. Similarly, the Skyhouse Unit Owner is responsible for any and all expenses relating to the maintenance or replacement of the equipment for the operation of the Skyhouse Unit pool and spa. Both the Mansion Unit Owner and the Skyhouse Unit Owner are required to utilize the same pool maintenance company(ies) engaged by the Condominium for the maintenance of the pools/spa appurtenant to their Units. In the event that, in the sole opinion of the Condominium Board, the Owners of either the Mansion or Skyhouse Units do not maintain their pools, spa or pool or spa equipment adequately or permits them to freeze, the Condominium Board has the right to perform such maintenance work or take such action to prevent

freezing wholly at the expense of the affected Mansion or Skyhouse Unit Owner. (See the Sections of the Plan entitled "Rights and Obligations of Unit Owners" and "Rights and Obligations of the Condominium Board/Summary of By-Laws.)

51. Housing Merchant Implied Warranty. The Housing Merchant Implied Warranty Law (General Business Law Article 36-B) does not apply to residential buildings greater than five (5) stories, therefore Purchasers are not afforded any protections under this Law. However, Sponsor's obligation is to construct the premises in accordance with all applicable Law, codes and filed Plans and Specifications and these shall prevail in case there is any conflict between the disclaimer of the application of the Housing Merchant Implied Warranty and Sponsor's obligation to construct the premises in accordance with all applicable Law and codes, filed Plans and Specifications. (See the Section of the Plan entitled "Rights and Obligations of Sponsor").

52. Projected Completion Dates. Construction is a complicated process requiring the coordination of numerous tasks, contractors and suppliers and the balancing of complex mechanical and architectural systems. No assurance can be given with regard to the accuracy of any projected completion dates set forth herein. During the first years of Condominium operations, construction workers and related personnel will be at the Property from time to time completing construction of the Building, making adjustments and corrections and performing various tasks related to the completion of construction, which may occur at all hours and could compromise the Building's security systems. During this period, various building systems, including but not limited to water supply, air conditioning, heating, cooling, ventilating and elevators, may need to be shut down temporarily. Sponsor and its designees, including tenants performing work in the Commercial Units will have the right to and may utilize elevators and other building systems and may install and retain scaffolding and other equipment on and in the Building to complete construction of the Building. Sponsor may not fully complete the decoration of portions of the Building, including, without limitation, the lobbies or corridors in the Building, the installation of light fixtures, the hanging of wall coverings or laying carpeting, until a particular portion of the Building is complete or a particular floor is fully occupied by Residential Unit Owners. The Condominium Board may refuse to permit a Residential Unit Owner to perform alterations in a Residential Unit until such time as the Building has been completed and a final certificate of occupancy has been obtained therefor. Certain services, such as telecommunications, and other similar services may be provided by outside suppliers and delays in providing these services will not be the responsibility of Sponsor. Such suppliers may not provide these services until occupancy in the Building has reached certain levels. Portions of the Building such as the Storage Bins may be completed after some or all of the Units and the fact that such portions of the Building have not been completed or are not available for use by Residential Unit Owners is not a basis for a Residential Unit owner to refuse to close title to the Residential Unit. In addition, the presence of hoists or construction elevator shafts or similar temporary construction facilities may delay the closing of title to certain Residential Units or lines of Residential Units until such hoists, elevators or temporary facilities are no longer needed and are removed. During the period when Sponsor is completing construction of the Building, moves into the Building may be restricted to certain periods when the elevators and other access to the Building are not being utilized by the construction trades. The first Temporary Certificate of Occupancy might issue for some but not all of the Residential Units and Sponsor may complete construction of certain Residential Units before others. Accordingly, Purchasers should be aware that they may be required to close title to their Residential Units while construction in other Units is continuing, possibly, for extended periods of time, and that noise, dust and other objectionable conditions inherent in a construction site may inconvenience Residential Unit Owners after they have taken occupancy of their Residential Units. (Refer to the Section of the Plan entitled "Rights and Obligations of Sponsor".)

With regard to the foregoing, in executing a Purchase Agreement, Purchaser acknowledges that Sponsor shall not be liable to any Purchaser whatsoever or any third party in the event of non-completion

of any item of construction on any projected date, or any interruption of services in the Building. Furthermore, Sponsor makes no representation or warranty (express or implied) that any noise, odors, fumes or vibrations, if any, emanating from mechanical equipment belonging to the Condominium or the Commercial Units will not disturb occupants of the Units, and Sponsor shall have no liability whatsoever for any such disturbance to any Unit Owner or occupant.

53. Estimated Real Estate Taxes. Sponsor makes no representations or warranties concerning the estimated real estate taxes, and there is no right of rescission arising solely on the ground that the actual taxes may vary significantly from the estimates. (See section of the Plan entitled "Notes to Schedule A, Note 6")

54. Interim Level of Services. While it is anticipated that the services described in the Plan will be available at the time of the first Closing of a Residential Unit, prospective Purchasers should note that some of these services may not be available until a later date (in no event later than six months from the first Closing of a Residential Unit). Any interim level of staffing will be adequate to maintain the Building during this period. (See the part of the Plan on "Services and Facilities" in the Section of the Plan entitled "Description of Property and Improvements").

## INTRODUCTION

Nature of the Transaction

Madison 33 Owner LLC ("Sponsor"), a Delaware limited liability company, hereby presents this offering plan ("Plan") for the establishment of condominium ownership of the land ("Land") together with the building thereon known as and having a street address of 172 Madison Avenue, New York, New York, ("Building") (the Land, Building, and the appurtenances thereto are collectively referred to as the "Property") pursuant to the terms of Article 9-B of the Real Property Law of the State of New York ("Condominium Act"). The Sponsor acquired title to the Property on June 24, 2013. The Condominium will be known as "172 Madison Avenue Condominium" and is being referred to herein as the "Condominium". The Condominium will consist of sixty nine (69) Residential Units ("Residential Units") and two (2) Commercial Units ("Commercial Units"). The Residential Units and Commercial Units are sometimes collectively referred to herein as the "Units". Sponsor owns fee title to the Property.

The Condominium Offering Plan

The purpose of the Plan is to set forth in detail all material facts relating to the offering by Sponsor of the Units in the Condominium. The Plan contains all of the detailed terms of the transaction.

Sponsor may from time to time amend the Plan by filing an amendment with the New York State Department of Law ("Department of Law") and serving such amendment on Purchasers and Unit Owners.

The Plan is presented in two parts which together constitute the entire Plan. Part I sets forth the material terms of the offer and Part II contains the basic documents necessary to create the Condominium and to otherwise effectuate the provisions of the Plan. Also included in Part II is a detailed description of the Property, the Window Agreement, a Notice of Certification issued by the City Planning Commission, a legal opinion as to certain tax matters discussed in the Plan, and certifications of Sponsor and certain experts. Copies of the Plan, including all documents referred to herein and all exhibits submitted to the Department of Law in connection with the filing of the Plan will be available for inspection by prospective Purchasers and their attorneys without charge. The exhibits will be available to prospective Purchasers for copying at a reasonable charge at the sales office. The Plan and the exhibits are also available for inspection and for copying at a reasonable charge at the Department of Law. All of these documents are important and should be carefully read by prospective Purchasers. Prospective Purchasers are also advised to consult with their own attorneys or other advisers before agreeing to purchase. A prospective Purchaser may obtain the Plan upon payment of a $250.00 deposit, which amount will be fully refunded upon either (i) the prompt return of the Plan within 14 days after receipt of the Plan, in good condition, or (ii) the execution by the prospective Purchaser of a Purchase Agreement subsequently accepted by Sponsor.

All capitalized terms used in the Plan shall have the meanings ascribed thereto in the Section entitled "Definitions", unless otherwise defined.

The Property

The Building is located in the Midtown section of Manhattan and is in the C5-2 / R10 equivalent Zoning District. Allowable uses in such a zoning district include residential, community facility, hotel, retail and office and large retail and department stores. The Property is the subject of a Notice of Certification (Plaza), recorded in the Office of the City Register, New York County, on July 24, 2014, at CRFN 2014000259638 (the "Notice of Certification"), authorizing the creation of a public plaza at the property, subject to the conditions and requirements specified in the Notice of Certification (the "Plaza"). A copy of the Notice of Certification, together with a copy of the approved Plaza drawings prepared by

Karl Fischer Architecture PLLC and SCAPE Landscape Architecture PLLC, is included in Part II of the Plan. A sample set of rules of conduct governing behavior in the Plaza, a privately owned public space, is also included in Part II of the Plan.

It is the intention of Sponsor to construct a Building, so that, when completed, it shall consist of sixty nine (69) Residential Units, including a Resident Manager's Unit, thirty two (32) storage bins, and two (2) Commercial Units in a thirty four (34) story building which includes one (1) cellar level and one (1) sub-cellar level. The second floor and 34th floor consist of mechanical space.

Based upon the current construction schedule, Sponsor contemplates that, unless delayed by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery or inability to obtain materials, governmental restrictions, or other events reasonably beyond its control, construction activities at the Building will be sufficiently completed to permit closings of Units to begin on or about July 1, 2016. Prospective Purchasers should note, however, that the Units will be completed at different times over a period that may begin prior to and/or extend significantly beyond such date. Sponsor will have no liability to any Purchaser, nor will a Purchaser be entitled to any credit, offset or reduction in the purchase price for the Unit or otherwise be relieved from any obligations under the Purchase Agreement, if the first Closing of a Residential Unit occurs earlier or later than the projected date, or the time to complete or to close title to any Unit is delayed or postponed by Sponsor. In the event the actual or anticipated commencement date of the first year of condominium operation is to be delayed by six (6) months or more, Sponsor will amend the Plan to include a revised budget with current projections, and, if (i) a Unit Owner's monthly Common Charges in the amended budget exceed those in the latest projected budget set forth in the Plan by 25% or more, or (ii) the first Closing of a Residential Unit does not occur within 12 months after July 1, 2016, the date set forth in Schedule B as the commencement date for the first year of condominium operation, then in either case, Sponsor will offer all Purchasers of Residential Units the right to rescind their Purchase Agreements within no less than 15 days after the Presentation Date of the amendment containing such revised budget, and any Purchasers electing rescission pursuant to such offer will have their Deposits and any interest accrued thereon returned. If the first Closing of a Residential Unit occurs within 12 months after July 1, 2016, the Sponsor may schedule the closings of title to other Units significantly later than such date. In that case, unless a Purchase Agreement contains an outside closing date, Sponsor is not obligated to schedule a closing within any specified time frame or to ensure that closing of title to a Unit will occur by any date certain.

Sponsor reserves the right to change the number of Units from time to time by subdividing and/or combining Units, even after the Condominium is created, unless a binding Purchase Agreement for such Unit has been entered into and the Purchaser does not consent to such change. (See the Section of the Plan entitled "Changes in Prices and Units" for further details.)

A detailed description of the Property is contained in the Section of the Plan entitled "Description of the Property and Improvements" and in the Description of Property and Building Condition set forth in Part II of the Plan.

Offering of Residential Units for Sale

Sponsor hereby offers the Residential Units for sale under the Plan. The price for each of the Residential Units is listed in the Section of the Plan entitled "Schedule A - Purchase Prices And Related Information" ("Schedule A"). THESE PRICES HAVE BEEN SET BY SPONSOR AND ARE NOT SUBJECT TO APPROVAL BY THE DEPARTMENT OF LAW OR ANY OTHER GOVERNMENTAL AGENCY.

Sponsor has reserved the right to rent or lease any Unit prior to closing the sale thereof to the Purchaser thereof or any other party, to cease marketing Units for sale at any time, in Sponsor's sole discretion, or to use or offer the Unsold Units for any lawful purpose. Sponsor (and any transferee in

bulk, or substitute sponsor) has reserved the right (i) to rent or lease any or all of the Unsold Residential Units to any party after consummation of the Plan; (ii) to rent or lease any Unsold Unit prior to closing the sale thereof to the Purchaser thereof pursuant to an Interim Use and Occupancy Agreement; (iii) to cease marketing Units for sale at any time, in Sponsor's sole discretion; (iv) to rent Unsold Units with options to purchase; and (v) to use or offer the Commercial Units and the Unsold Units for any lawful purpose. Therefore, except when otherwise permitted by law, certain Residential Units may be occupied under short-term or long term leases.

Residents of the Condominium may be comprised of both Residential Unit Owners and tenants leasing from Sponsor or from other Residential Unit Owners. Accordingly, it is possible that a significant proportion of Residential Unit Owners will not be residents of the Building and that a significant portion of tenants in the Building may not be Residential Unit Owners. As a consequence of the foregoing, a Residential Unit Owner seeking to resell or refinance a Residential Unit may experience difficulty. In addition, residents of the Condominium who are not Unit Owners do not share the same economic interests as Unit Owners in the maintenance and care of the Building's facilities and amenities and owner-occupants and non-resident Unit Owners, including Sponsor, may have inherent conflicts on how the Condominium should be managed because of their different reasons for purchasing (i.e., purchase as a home as opposed to as an investment). Because Sponsor is not limiting the conditions under which it will rent rather than sell units, there is no commitment to sell more units than the fifteen percent (15%) necessary to declare the Plan effective and owner-occupants may never gain effective control and management of the Condominium.

Prior to or at the time of the First Closing, Sponsor will arrange for the subordination of any mortgages encumbering the Property to the Declaration, and Sponsor will arrange for the release of Units from the liens of any mortgages encumbering the Property at the time of the applicable Unit's Closing.

Sponsor reserves the right to offer the Units in such order of priority as it may determine. In addition, Sponsor has the right to limit the number of Units sold to any Purchaser and to make one or more bulk sales of Units. If Sponsor makes a bulk sale, the successor sponsor shall be responsible for all of Sponsor's obligations under the Offering Plan with respect to the Units sold in bulk to such successor sponsor.

A Residential Unit shall be used only by a single family and in compliance with the Declaration, By-Laws and Law.

Offering of Storage Bin Licenses

The By-Laws at Article 17 provide that Sponsor has a master license to the area containing the Storage Bins. Sponsor reserves the right to offer to one or more Purchasers of Residential Units the opportunity to purchase one or more of the thirty-two (32) licenses to use Storage Bins located in the sub-cellar of the Building for the purchase prices (payable at Closing) set forth in Schedule A. Upon Sponsor's sale of a Storage Bin License, Sponsor's license of such bin shall terminate and the license of the Storage Bin shall be between the Condominium and the purchaser of the Storage Bin License. The Condominium will sign each Storage Bin License at Closing. At least a temporary certificate of occupancy ("TCO") will be in place for the area of the Building in which the Storage Bins are located, prior to the Closing of sale of a Storage Bin License; or, in the alternative, Purchaser may, at the Closing of Purchaser's Unit, be required to deliver to Escrow Agent the purchase price for the Storage Bin License, which purchase price shall be held in escrow by Escrow Agent, and unconditionally and without notice, released from escrow to Sponsor upon the issuance of the TCO for the storage area permitting the use of such space for storage, or as otherwise required by Law. Purchasers interested in purchasing a license for a Storage Bin should contact the Selling Agent to see which Storage Bins, if any, are available for purchase. The Sponsor will then have the discretion of selling such Purchaser a license for a Storage

Bin. The agreement under which a Residential Unit Owner shall be entitled to use a Storage Bin is the "Storage Bin License", a copy of which is included in Part II of the Plan. During the Initial Control Period, the Condominium will not charge any Residential Unit Owner who purchases such rights any additional fee or maintenance fee for the use of the Storage Bin. However, the Condominium Board might impose such fees after the Initial Control Period. Sponsor shall not, in any event, be subject to any fee, additional fee or maintenance fee for the Storage Bins which may be imposed by the Condominium Board after the Initial Control Period. THE PRICES FOR STORAGE BINS HAVE BEEN SET BY SPONSOR AND ARE NOT SUBJECT TO APPROVAL BY THE DEPARTMENT OF LAW OR ANY OTHER GOVERNMENTAL AGENCY.

In the event Sponsor agrees to sell a Storage Bin license to a Purchaser, Sponsor shall have the right to designate at Closing which Storage Bin will be licensed to Purchaser. Storage Bins may only be used for the uses set forth in the Plan and, except for the Sponsor, cannot be licensed independently of the ownership of a Residential Unit. The license agreement for a Storage Bin will permit the Unit Owner to have exclusive use of the Storage Bin, but not "fee" ownership of the Storage Bin. With the exception of Sponsor, Storage Bins cannot be sub-licensed or sub-let. Sponsor may assign, sub-license or sub-let a Storage Bin without the consent of the Condominium or subject to any pre-conditions or consent, including that of the Condominium.

The Storage Bin License allows assignment of such License by a Residential Unit Owner provided that the assignor is current in its obligations to the Condominium, written notification of the assignment is delivered to the Condominium Board in compliance with its requirements, assignee is a Residential Unit Owner and assignee assumes the obligations specified in the Storage Bin License. Sponsor may, at any time, surrender all or part of its master license to the Storage Bins to the Condominium Board, as too, may a Residential Unit Owner surrender its Storage Bin License. Upon such surrender, any such license of the space occupied by the Storage Bin and/or the applicable Storage Bin License will be deemed cancelled, and the Sponsor or Residential Unit Owner surrendering that space or Storage Bin License shall have no obligation to pay any additional fee or maintenance fee, which may be imposed by the Condominium Board for Storage Bin use after the Initial Control Period. The Condominium shall have the right to deny access to a Storage Bin and/or terminate a Storage Bin License in the event that the Unit Owner holding the Storage Bin License is in default, beyond applicable grace periods, of its obligations under the Condominium Documents, including but not limited to the obligation to pay Common Charges, Special Assessments and fees assessed in connection with the Storage Bins. (See Storage Bin License in Part II and Article 17 of the By-Laws).

Features of Condominium Ownership

The ownership of a Unit is similar in many respects to the ownership of a private home. Each Unit Owner owns fee title to his Unit and is entitled to the exclusive possession thereof. Each Unit Owner also owns, in common with the owners of all other Units, an undivided interest in (and right to use) the Common Elements. The Common Elements are comprised of: (i) portions of the Property serving and benefiting all Units, generally, including, for example, the Land upon which the Building stand, exterior walls and foundations and supports of the Building, these Common Elements being more specifically designated as "General Common Elements", (ii) portions of the Building serving and benefiting the Residential Units, exclusively, including for example, the residential lobby, and the residential hallways and corridors, are more specifically designated as "Residential Common Elements", and (iii) portions of the Building serving and benefiting a particular Residential Unit, exclusively, are more specifically designated as "Limited Residential Common Elements".

Each Unit Owner is obligated to comply with the Declaration of Condominium, as well as the rules and regulations of the Condominium, as the same may be amended from time to time by the Condominium Board.

Subject to certain conditions contained in the By-Laws, each Unit Owner may mortgage his Unit with such lender and in such amount as he chooses. However, Sponsor makes no representations about the financeability of any Unit. There are no limitations or restrictions upon the rights of Sponsor to mortgage Unsold Units. Each Unit is separate and will not be subject to the lien of any mortgage placed by other Unit Owners on their respective Units.

The affairs of the Condominium shall be governed by the Condominium Board, who shall be elected by the Unit Owners and Sponsor in accordance with the By-Laws of the Condominium. (See the Sections of the Plan entitled "Control By Sponsor" and "Condominium Board" for further details.)

A Unit Owner may decorate and construct the interior of his Residential Unit in any way he desires, subject to the By-Laws, the Rules and Regulations and Law, and will be solely responsible for the cost of maintenance and interior repairs to his Unit after Closing. Each Unit Owner has exclusive use of any balcony or terrace appurtenant to his Unit, as shown on the Floor Plans included in Part II of the Plan, and is responsible for all normal maintenance, repairs and replacements thereto, including any deck or pool located thereon, if any. Nevertheless, the costs and expenses of any structural or extraordinary repairs or replacements to any balcony or terrace (including any leaks which are not caused by the negligence of the Unit Owner having access to such balcony or terrace) shall be charged to all Residential Unit Owners as a Residential Common Expense, provided however, the cost of any structural or extraordinary repair or replacement necessitated by the negligence of a Unit Owner shall be paid by such Unit Owner. The type, size and quantity of plantings and other installations to be placed on any terrace or balcony shall be subject to review by the Condominium's architect and engineers and to the prior written approval of the Condominium Board.

Each Unit will be taxed as a separate tax lot for real estate tax purposes, and a Unit Owner will not be responsible for the payment of, nor will his Unit be subjected to any lien arising from the non-payment of real estate taxes assessed against other Units. In the opinion of special tax counsel to Sponsor, which opinion is set forth in full in Part I of the Plan, a Residential Unit Owner who itemizes deductions may be eligible, under current law, to deduct from his income for income tax purposes, his real estate taxes and the interest paid on his mortgage, subject to certain exceptions and limitations discussed in the "Attorney's Income Tax Opinion" set forth in Part I of the Plan. (See also the Section of the Plan entitled "Income Tax Deductions to Unit Owners and Tax Status of the Condominium" for further details.)

With certain exceptions, any sale or lease of a Residential Unit will be subject to a right by the Condominium Board to acquire or lease such Residential Unit or to produce a third party to acquire or lease such Residential Unit on the same terms as were offered to the owner of such Unit. Sponsor and its designees may sell or lease any Unsold Residential Units or the Commercial Units without any restriction or limitation. (See the Section of the Plan entitled "Rights and Obligations of Unit Owner - Sales and Leases of Units" for further details.)

The statute concerning condominiums in effect in the State of New York pursuant to which the Condominium will be organized by Sponsor is Article 9-B of the Real Property Law of the State of New York, as amended, commonly known, and hereinafter referred to as the "Condominium Act". The Property will be submitted to the provisions of the Condominium Act by recording the Declaration by Sponsor, in the City Register's Office. From and after the date of recording the Declaration, Sponsor will be the owner of the Units until each is conveyed. The Condominium will comply with all statutes and regulations applicable to condominiums in the State of New York.

The cost of operating the Building will be borne entirely by the Unit Owners in accordance with the allocations set forth in the "Schedule B – Projected Budget for First Year of Condominium Operation". As more particularly set forth in the By-Laws, the Condominium Board will determine the

amount of Common Expenses. On a monthly basis or at such other times as the Condominium Board determines, the Condominium Board will assess Unit Owners for Common Charges to meet Common Expenses in accordance with Sections 339(i) and (m) of the Condominium Act. Common Expenses shall be either General Common Expenses attributable to all Unit Owners or Residential Common Expenses attributable to Residential Unit Owners only. Common Charges will be assessed against Unit Owners in accordance with the Schedule B allocations or as otherwise set forth in the By-Laws, Article 6. Residential Common Charges other than those levied against the Owners of the Mansion and the Skyhouse, will be assessed against Residential Owners in the same proportion that their respective Residential Units bear to the aggregate Common Interests of all Residential Units. The estimated Common Charges for each Unit for the first year of Condominium operation are set forth in the Section of the Plan entitled "Schedule A – Purchase Prices and Related Information".

The undivided percentage interest of each Unit in the Common Elements ("Common Interest" of such Unit) has been determined upon the basis of such Unit's floor space, location, uniqueness, overall dimensions and similar factors of relative value to other space in the Condominium pursuant to the Condominium Act.

The Residential Common Interest of each Residential Unit in the Residential Common Elements is apportioned in the same proportion that the Residential Unit bears to the aggregate Common Interests of all of the Residential Units in the Condominium. Certain budgeted items (See Schedule B, the "Footnotes to Schedule B", and Article 6 of the By-Laws for further details) are allocated between the Residential Units and Commercial Units or the Owners of the Skyhouse and Mansion Units and the remaining Residential Unit Owners based upon estimated usage of particular services, or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. The allocated Common Charges payable by the Commercial Units are sufficient to cover the expenses fairly attributable to those Units. The aggregate Common Interest of all Units equals 100%. The aggregate Residential Common Interests of all Residential Units equals 100%. The percentage of Common Interests are the basis for determining a Unit Owners share of distribution upon termination of the Condominium. Each Unit's Common Interest and Residential Common Interest, as applicable, and estimate of the Common Charges that will be payable by the owner of each Unit during the first year of condominium operation of the Property subsequent to the First Closing are set forth in the Section of the Plan entitled "Schedule A – Purchase Prices and Related Information".

The Condominium Board will be solely responsible for maintaining casualty and liability insurance with respect to the Building, in accordance with the provisions of the By-Laws. Each Unit Owner will be required to maintain, at and from the Closing of Title to his Unit, casualty insurance with respect to "Unit Specific Property", as such term is defined in the By-Laws, as well as liability insurance with respect to occurrences in or about the Unit. All such policies shall contain waivers of subrogation and further provide that the liability of the carriers issuing the insurance maintained by the Condominium Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. A Residential Unit Owner will be required to maintain such insurance with respect to occurrences in any Limited Residential Common Element appurtenant to his Residential Unit. The casualty and liability insurance, each with coverage of no less than $1,000,000, shall include the Condominium as an additional insured. The Residential Unit Owner shall provide the Managing Agent with a certificate of insurance evidencing such coverage at Closing and shall provide the Managing Agent with an updated certificate of insurance each year at least 30 days prior to the expiration of such coverages. The certificate should also include a requirement of at least 30 days notice of cancellation or material change be given to the Condominium. A Residential Unit Owner shall also require any tenant of its Unit to maintain similar coverages and to provide the Managing Agent a certificate of insurance evidencing such coverage at the time of lease signing and at each anniversary thereafter. The tenant's certificate must include the Residential Unit Owner and the Condominium as additional insureds and the certificate should include a requirement that at least 30 days notice of cancellation or material change be

given to the Condominium and the Residential Unit Owner. It will be the responsibility of the Residential Unit Owner to obtain the documents required from its tenant and to submit them to the Managing Agent and/or the Condominium.

Each Purchaser of a Unit will be required to make a contribution to the Working Capital Fund of the Condominium. Such contribution, to be made at the time of Closing of the Unit, shall be in an amount equal to three (3) months Common Charges in effect at the time of closing for each Unit purchased. In addition, Purchaser shall pay the balance of the Common Charges due for the month of Closing pro-rated on a daily basis from the first day of the calendar month of the Closing of such Unit through the day of that Unit's Closing. (See the Section of the Plan entitled "Working Capital Fund" for further details.)

In addition to the payment of Common Charges, each Unit Owner will be responsible for the payment of the real estate taxes which will be separately assessed against such Unit Owner's Unit, interest and amortization payments on the mortgage, if any, which such Unit Owner may, at his option, obtain, and charges for electricity consumed in such Unit Owner's Unit.

Under the New York Real Property Law, a condominium unit may be owned by an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity which is permitted to take title pursuant to New York law. Sponsor hereby reserves the right at any time and from time to time for any reason whatsoever, without the consent of any of the Condominium Board, any Unit Owner or mortgagee, to refuse to approve and execute Purchase Agreements for one or more Units to any person or entity. Since there are no limitations on the number of Unit Owners who may purchase for investment rather than for personal occupancy, there may always be a substantial percentage of Unit Owners who do not reside in their Units. Residential Unit Owners, other than the Sponsor, must, of course, comply with the Condominium Board's regulations regarding renting Units, which regulations are contained in the Condominium's By-Laws set forth in Part II of the Plan. Sponsor shall not discriminate against any person because of his or her race, creed, color, sex, sexual orientation, disability, marital status, age, ancestry, national origin or other ground proscribed by Law. No binding obligation will arise for the sale of a Unit unless and until a Purchase Agreement executed by both Purchaser and Sponsor has been delivered to Purchaser or a Purchaser's attorney and Sponsor has collected the funds constituting Purchaser's required deposit thereunder (see the Section of the Plan entitled "Procedure to Purchase" for further details). Sponsor will not accept an offer of purchase from an individual younger than 18 years of age or an incompetent under Law.

The equipment and fixtures which are contained within a Unit and which are included in the offering price for a particular Unit are detailed in the "Description of Property and Building Condition", set forth in full in Part II of the Plan. As more specifically described in Special Risk 46 and the Section of the Plan entitled "Description of Property and Improvements", Penthouse Units A, B, C and D and the Skyhouse Unit are delivered in a "white box" condition, without most of the equipment and fixtures and finishes detailed in the Section of the Plan entitled "Description of Property and Building Condition" Section.

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

## DEFINITIONS

For convenience of presentation, general definitions of certain of the terms used in the Plan are set forth below, which definitions are subject in most cases to the more particular definitions of such terms set forth in the Declaration, the By-Laws and the Condominium Act. Other capitalized terms not defined herein shall have the meanings ascribed to them throughout Part I and Part II of the Plan.

"Adverse Effect", or "adverse effect", as used in the Condominium Documents, shall mean, with respect to any action or proposed change and with respect to any Unit Owner or Unit Owners, that such action or change could, if realized, (i) increase the Common Charges payable by such Unit Owner or Unit Owners by more than 25% per year, or (ii) materially and permanently interfere with such Unit Owner's access to his Unit, or (iii) decrease the useable square footage of a Unit by 5%.

"Appurtenant Interest" shall mean, with respect to any Unit, the undivided interest of the owner thereof, pursuant to the terms of Section 339-x of the Condominium Act, in and to: (i) the Common Elements; (ii) any other Units owned or leased at the time in question by the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners; (iii) any proceeds of the sale or lease of Units of the nature described in subdivision (ii) above; and (iv) any other assets of the Condominium.

"Building" shall mean the Building located at 172 Madison Avenue, New York, New York, in which the sixty nine (69) Residential Units and two (2) Commercial Units of the Condominium will be located.

"Buildings Department" or "Department of Buildings" shall mean the Department of Buildings of The City of New York or any successor agency.

"By-Laws" shall mean the By-Laws governing the operations of the Condominium, which are set forth as Exhibit D to the Declaration, as the same may be amended from time to time.

"Closing of Title" or "Closing" or "Closing Date" shall mean the date upon which, among other things, a Unit and its appurtenant Common Interest is conveyed to a Purchaser by the delivery by Sponsor to a Purchaser of a deed upon payment by a Purchaser to Sponsor of the purchase price for the Unit.

"Commercial Unit(s)" refers to the two (2) Commercial Units in the Building designated as such in the Declaration together with their respective Common Interests.

"Commercial Unit Owner" shall mean the owner or owners of a Commercial Unit. To the extent a Commercial Unit is further divided, a Commercial Unit Owner shall refer to all owners of Units resulting from the subdivision of the applicable Commercial Unit.

"Common Charges" shall mean the charges allocated and assessed by the Condominium Board to the Unit Owners, pro-rata, in accordance with their respective Common Interests (except as otherwise provided in the Declaration or in the By-Laws or in the First Year's Budget) to meet the Common Expenses.

"Common Elements" shall mean the Property, other than the Units themselves, being comprised of the General Common Elements, Residential Common Elements and the Limited Residential Common Elements.

"Common Expenses" shall mean all costs and expenses to be incurred generally by the Unit Owners pursuant to the Declaration and/or the By-Laws in connection with: (i) the repair, maintenance, replacement, restoration and operation of, and any alteration, addition, or improvement to, the Common Elements; (ii) the establishment and/or maintenance of a general operating reserve, or a reserve fund for working capital, for replacements with respect to the Common Elements, or to make up any deficit in the

Common Charges for any prior year(s); (iii) generally, the conduct of the affairs of the Condominium; and (iv) the amount of real estate taxes for the Property due and owing prior to the date the Units are separately assessed for real estate tax purposes. Common Expenses shall be either General Common Expenses attributable to all Unit Owners or Residential Common Expenses attributable to Residential Unit Owners only.

"Common Interest" shall mean the proportionate undivided interest, expressed as a numerical percentage, in the Common Elements appurtenant to each Unit, as determined in accordance with the Declaration. The total of all Common Interest percentages appurtenant to all Units equals 100%. The Common Interest attributable to each Unit is set forth on Exhibit B annexed to the Declaration.

"Condominium" shall mean 172 Madison Avenue Condominium, which was established pursuant to the terms of the Declaration and which is governed pursuant to the terms of the By-Laws.

"Condominium Act" shall mean the New York Condominium Act, as amended from time to time, and presently found in the New York Real Property Law, Article 9-B.

"Condominium Board" shall mean the board of managers of the Condominium who will manage the affairs of the Condominium.

"Condominium Documents" shall mean the Declaration, the By-Laws and the Rules and Regulations and the Plaza Rules of Conduct.

"Construction Lender" shall mean Deutsche Bank Trust Company Americas as agent for German American Capital Corporation and other lenders signatory to a Building Loan Agreement, dated May 6, 2014, between Madison 33 Owner LLC and the above-named financial institutions and any other lender who may refinance, amend or take the Construction Loan by assignment. For so long as the Construction Loan or any part thereof is unpaid, Construction Lender shall be a Permitted Mortgagee and Mortgage Representative.

"Construction Loan" shall mean the mortgage loan in the amount of $141,900,000.00, currently held by Construction Lender, as same may be refinanced, assigned, or modified.

"Declaration" shall mean the instrument creating the Condominium, as the same may be amended from time to time.

"Deposit" shall mean all deposits, additional deposits, down-payments, advances or payments made by Purchasers prior to the closing of each individual transaction.

"Effective Date" shall mean the date upon which Sponsor has declared the Plan effective pursuant to the provisions of Part 20 of Title 13 NYCRR.

"Facilities" shall mean all personal property and fixtures now or hereafter existing in, on, or under the Land or the Building, including but not limited to, the Plaza, and either existing for the common use of the Units or the Unit Owners or necessary or convenient for the existence, maintenance, or safety of the Property. For purposes of illustrating the broad scope of such term and without intention to limit the generality of the foregoing in any respect, the term "Facilities" shall include all systems, equipment, all pool equipment, apparatus, convectors, radiators, heaters, converters, heat exchangers, mechanisms, devices, machinery, induction units, fan coil units, motors, pumps, controls, tanks, tank assemblies, installations, condensers, compressors, fans, dampers, blowers, thermostats, thermometers, coils, vents, sensors, shut off valves, other valves, gongs, panels, receptacles, outlets, relays, alarms, sprinkler heads, electric distribution facilities, wiring, wireways, switches, switchboards, circuit breakers, transformers, fittings, siamese connections, hoses, plumbing fixtures, lighting fixtures, other fixtures, bulbs, signs, antennae, telephones, intercom equipment, playground equipment, meters, meter assemblies, scaffolding,

piping, lines, ducts, conduits, cables, risers, mains, shafts, pits, flues, locks, hardware, racks, screens, strainers, traps, drains, catch basins, leaders, filters, incinerators, canopies, closets, cabinets, doors, railings, copings, steps, furniture, mirrors, furnishings, appurtenances, urns, baskets, mail chutes, mail boxes, carpeting, tiles, floor coverings, draperies, shades, window coverings, wallpaper, wallcoverings, trees, shrubbery, flowers, plants, horticultural tubs and horticultural boxes.

"Family Members" shall mean the spouse, children (natural and adopted), stepchildren, grandchildren, siblings, nieces, nephews, parents, parents-in-law, and grandparents of a Unit Owner who reside in such Unit Owner's Unit.

"Filing Date" shall mean the date a letter is issued by the Department of Law accepting the Plan or an amendment to the Plan, as the case may be, for filing.

"First Closing" shall mean the Closing of Title with respect to the first Residential or Commercial Unit to be conveyed to a Purchaser pursuant to the terms of the Plan.

"First Year's Budget" shall mean the Section of the Plan entitled "Schedule B - First Year's Budget". First Year's Budget is sometimes referred to herein as "Schedule B".

"Floor Plans" shall mean the floor plans of the Units certified by a professional engineer or licensed architect, filed in the Register's Office simultaneously with the recording of the Declaration, together with any supplemental floor plans thereto.

"Force Majeure" shall mean delays caused by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery or inability to obtain materials, government restrictions or other events beyond Sponsor's reasonable control.

"General Common Elements" shall mean those certain portions of the Property (other than the Units, the Residential Common Elements and the Limited Residential Common Elements), as well as those Facilities therein, either existing for the common use of the Units or the Unit Owners or necessary for, or convenient to, the existence, maintenance, or safety of the Property, as more particularly described in the Declaration.

"General Common Expenses" shall mean all costs and expenses to be incurred generally by the Unit Owners pursuant to the Declaration and/or By-Laws in connection with (i) the repair, maintenance, replacement, restoration and operation of, and any alteration, addition, or improvement to, the General Common Elements; or (ii) the establishment and/or maintenance of a general operating reserve fund for working capital, for replacements with respect to the General Common Elements.

"Initial Control Period" shall mean the period ending on the earlier of: (i) the closing of title with Purchasers under the Plan to Residential Units having at least 90% of the aggregate Common Interest appertaining to all Residential Units, or (ii) five (5) years after the first Closing of a Residential Unit.

"Institutional Lender" shall mean (i) a savings bank, savings and loan association, bank or trust company, insurance company, real estate investment trust, mortgage trust, or a group of lenders which shall include one of the foregoing, or (ii) a federal, state, municipal, teacher's or union employee, welfare, pension or retirement fund or system, or (iii) Sponsor.

"Institutional Mortgage" shall mean any first mortgage covering one or more Units that is a Permitted Mortgage and the initial holder of which is either Sponsor or an Institutional Lender.

"Insurance Trustee" shall mean a bank or a trust company, in either event having both an office in the City of New York and a capital surplus and undivided profits of $500,000,000 or more, from time to

time appointed to serve as such by the Condominium Board. For so long as the Construction Loan is not fully repaid, the Construction Lender shall be an Insurance Trustee.

"Land" shall mean the land located in the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York as Block 863, Lots 17, 18 and 21 and more particularly described in Exhibit A to the Declaration.

"Law" shall mean the laws and ordinances of any or all of the Federal, New York State, New York City, County and Borough governments, the rules, regulations, orders and directives of any or all departments, subdivisions, bureaus, agencies, or offices thereof or of any other governmental, public or quasi-public authorities having jurisdiction over the Property and/or the Condominium and/or the direction of any public officer pursuant to law.

"Limited Residential Common Element(s)" shall mean those portions of the Property (other than the Units, the General Common Elements and the Residential Common Elements) existing for the use and enjoyment of certain Residential Unit Owners or one or more specified Residential Units to the exclusion of all other Unit Owners, as more particularly described in the Declaration. By way of example, a balcony or a private roof terrace appurtenant to a Unit, and pool mechanical equipment rooms, are Limited Residential Common Elements.

"Majority of Residential Unit Owners" shall mean those Residential Unit Owners consisting of more than 50% of the total authorized votes of all Residential Unit Owners who have voting rights (determined in accordance with the terms of Section 4.8 of the By-Laws) and are present, in person or by proxy, and voting at any constituted meeting of Residential Unit Owners at which a quorum is present.

"Majority of Unit Owners" shall mean those Unit Owners consisting of more than 50% of the total authorized votes of all Unit Owners who have voting rights (determined in accordance with the terms of Section 4.8 of the By-Laws) who are present, in person or by proxy, and voting at any duly constituted meeting of the Unit Owners at which a quorum is present.

"Managing Agent" shall mean the managing agent or manager named in the Plan or any successor managing agent at the time in question.

"Mortgage Representatives" shall mean the representatives of the holders of all mortgages encumbering Units, designated by the holders of Institutional Mortgages in accordance with the terms of paragraph (B) of Section 8.6 of the By-Laws.

"Permitted Encumbrances" shall mean those matters encumbering title to a Unit subject to which a Purchaser agrees to take title, as more particularly described on Schedule B annexed to the form of Purchase Agreement and Schedule B annexed to the Unit Owner's Specimen Title Policy set forth in Part II of the Plan.

"Permitted Mortgage" shall mean a first mortgage permitted to be placed upon a Unit pursuant to the provisions of the By-Laws.

"Permitted Mortgagee" shall mean any holder of a Permitted Mortgage at the time in question.

"Person" shall mean any natural person, partnership, corporation, trust, estate, fiduciary, unincorporated association, syndicate, joint venture, organization, government or any department or agency thereof, or any other entity.

"Plan" shall mean that certain condominium offering plan relating to the Property, as accepted for filing by the Department of Law of the State of New York pursuant to Section 352-e of the General Business Law of the State of New York and any amendments thereto.

"Plans and Specifications" shall mean the plans and specifications for the construction of the Building which (to the extent required by Law) have been or will be filed with the Department of Buildings and which may from time to time be amended. Any inconsistency in the Plans and Specifications and the Description of Property and Building Condition contained in Part II of the Plan shall be interpreted in accordance with the Description of Property and Building Condition.

"Plaza Rules of Conduct" shall mean the rules and regulations governing the use of the Plaza, as any of the same may be amended, modified, added to, or deleted from time to time by the Condominium Board pursuant to the terms of the By-Laws, provided that they are not in conflict with the terms of the applicable Law, the Condominium Act, the Declaration, or the By-Laws. The initial Plaza Rules of Conduct are provided in Part II of the Plan.

"Presentation Date" shall mean the date on which the Plan or an amendment thereto, as the case may be, is personally delivered or the fifth day after mailing to prospective Purchasers and Unit Owners following acceptance of the Plan or an amendment thereto for filing with the Department of Law.

"Property" shall mean the Land, the Building (and any structures attached thereto), all the improvements erected or to be erected on the Land, all easements, rights and appurtenances pertaining thereto and all other property, real, personal, or mixed, used or intended to be used in connection therewith, including, but not limited to, the Plaza.

"Purchase Agreement" shall mean the agreement to purchase a Residential Unit the form of which is set forth in Part II of the Plan.

"Purchaser" shall mean a Purchaser of a Residential Unit under a Purchase Agreement.

"Register's Office" shall mean the New York County Office of the Register of The City of New York.

"Residential Common Elements" shall mean those portions of the Common Elements which are available for common use by all Residential Unit Owners.

"Residential Common Expenses" shall mean all costs and expenses to be incurred generally by the Residential Unit Owners pursuant to the Declaration and/or By-Laws in connection with (i) the repair, maintenance, replacement, restoration and operation of, and any alteration, addition, or improvement to, the Residential Common Elements and/or the Limited Residential Common Elements; or (ii) the establishment and/or maintenance of an operating reserve fund for working capital, for replacements with respect to the Residential Common Elements and/or Limited Residential Common Elements.

"Residential Unit" shall mean any space designated as a Residential Unit in the Declaration together with its Common Interest and Residential Common Interest. All such Residential Units, are collectively, referred to as the "Residential Units".

"Residential Unit Owner" shall mean the owner of a Residential Unit.

"Residential Common Interest" shall mean the proportionate undivided interest, expressed as a numerical percentage, of each Residential Unit Owner in the Residential Common Elements. The total of all Residential Common Interest percentages appurtenant to all Residential Units equals 100%. The Residential Common Interests are the basis for determining a Residential Unit Owner's liability for his share of the Residential Common Expenses. The Residential Common Interest attributable to each Residential Unit is set forth on Exhibit B annexed to the Declaration.

"Rules and Regulations" shall mean the rules and regulations of the Condominium, which are annexed as an addendum to the By-Laws, as any of the same may be amended, modified, added to, or

deleted from time to time pursuant to the terms of the By-Laws, provided that they are not in conflict with the terms of the Condominium Act, the Declaration, or the By-Laws.

"Sales Office" shall mean the sales office for the Sponsor or Selling Agent, at a location to be designated by either Sponsor or Selling Agent from time to time.

"Schedule A" shall mean the Section of the Plan entitled "Schedule A - Purchase Prices and Related Information".

"Schedule B" shall mean the Section of the Plan entitled "Schedule B - First Year's Budget". Schedule B is sometimes referred to herein as the "First Year's Budget".

"Selling Agent" shall mean the selling agent named in the Plan or any successor selling agent at the time in question.

"Special Assessments" shall mean the charges allocated and assessed by the Condominium Board to the Unit Owners, pro-rata in accordance with their respective Common Interest (except as otherwise provided in the Declaration or in the By-Laws), in accordance with the By-Laws of the Condominium.

"Sponsor" shall mean Madison 33 Owner LLC and any of its designees, successors and assigns.

"Storage Bins" shall mean the individual storage bins that are part of the Residential Common Elements. The Sponsor will (i) license from the Condominium the use of the Storage Bins, and (ii) sell the right to use the Storage Bins to Purchasers under the Plan.

"Storage Bin License" shall mean the agreement under which a Residential Unit Owner shall be entitled to use a Storage Bin, the form of which is included in Part II of the Plan.

"Unit" shall mean any space designated as a Unit in the Declaration together with its percentage of Common Interest. All such Units, are collectively, referred to as the "Units".

"Unit Owner" shall mean any owner of a Unit. All such owners of Units are, collectively, referred to as "Unit Owners".

"Unit Specific Property" shall, as to any Unit, mean (i) the improvements and betterments (including fixtures, furnishings and equipment) that (x) are located entirely within the interior volume of space defined by the dimensional boundaries of the Unit (or any Limited Common Elements serving only such Unit), measured from the inside surfaces of all exterior or interior separating/demising walls, and (y) in all events, are non-structural or otherwise not part of any Common Elements (other than Limited Common Elements serving only such Unit), and (ii) any personal property located within such Unit (or any Limited Common Elements serving only such Unit) and belonging to the Unit Owner or tenant or other occupant of the Unit.

"Unsold Unit or Unsold Residential Unit" shall mean any Unit (or Residential Unit), as applicable, owned or retained, by way of lease or any other arrangement by which management and/or financial responsibility is retained, by Sponsor at the time in question. All such Unsold Units are, collectively, referred to as the "Unsold Units".

"Zoning Resolution" shall mean the Zoning Resolution of the City of New York effective December 15, 1961, as amended to date, and as same may be hereafter amended.

## DESCRIPTION OF PROPERTY AND IMPROVEMENTS

The following is a general description of the Property, including the Land, Building, Units and Common Elements as well as certain facilities and services to be provided at the Condominium. For a more detailed description of the Property, see the "Description of Property and Building Condition" contained in Part II of the Plan.

Location, Acreage and Zoning

The Condominium is located at 172 Madison Avenue, in the Borough of Manhattan, City of New York, at the northwest corner of the intersection of Madison Avenue and East 33rd Street. The Land covers approximately 10,702 square feet and the new mixed-use Building thereon will consist of one (1) cellar level, one sub-cellar and thirty four (34) levels consisting of a ground (first) floor, and floors two through thirty-four. There is a Mezzanine level on the 32nd floor. The Property is located in a C5-2/R10 equivalent Zoning District, in which residential, hotel, retail and commercial uses are permitted. A public plaza will be created on the western portion of the lot in accordance with the Notice of Certification issued by the New York City Planning Commission on July 24, 2014. A copy of the Notice of Certification of the City Planning Commission setting forth the terms governing the creation and maintenance of the Public Plaza is included in Part II of the Plan. Sponsor makes no representation as to whether there are or will be any potential future developments in the neighborhood. Prospective purchasers are advised to consult with their own experts and professionals to analyze the development rights, if any, of adjacent properties to fully understand the scope of any potential future development on adjacent properties or otherwise in the neighborhood. In the event any neighboring property (adjacent or otherwise) is developed, and a Purchaser's views, light or air are adversely affected, such a Purchaser will nevertheless be obligated to close and fully perform under its Purchase Agreement without offset or counterclaim.

Improvements – General Description of Units

It is the intention of the Sponsor to construct the Building so that, when completed, it shall consist of sixty nine (69) Residential Units and two (2) Commercial Units in a thirty-four story building, which will include a cellar and a sub-cellar. The Commercial Units shall consist of the commercial space on the ground floor and a portion of the cellar. The Property will be improved and the Units constructed in accordance with all applicable Law, codes, filed Plans and Specifications.

Residential Units

There will be sixty nine (69) Residential Units, located on the third through 33rd floors. The sub-cellar consists of accessory residential spaces that will include amenity spaces and residential storage. The cellar consists of residential amenity space, mechanical equipment rooms and storage space for the Commercial Units. The first or ground floor consists of the Residential lobby located between the two Commercial Units. The second floor is for mechanical equipment, including a large generator for the entire building. Parts of the 34th floor also contain mechanical equipment. The Residential Unit on the third floor, which is the Mansion Unit, has its own private pool and covers the entire third floor. The Units on the fourth floor through 27th floor have, variously, one, two or three bedrooms. Major fixtures or equipment, as described in the Section of the Plan entitled "Description of Property and Building Condition", are included in the purchase price of each Residential Unit, other than Penthouse Units A, B, C, D and the Skyhouse Unit. The Units on the 28th through 31st floors and the Skyhouse are penthouse units that are being marketed as "white box" customizable living units with at least one operational bathroom fitted with a toilet, tub and sink and a basic kitchen fitted with a gas or electric range top, a mini refrigerator and a sink. The Skyhouse Unit on the 32nd through 33rd floors has its own private pool, spa and terraces. The kitchens of these customizable Units will not have any kitchen cabinets or oven. Penthouse Units A, B, C and D and the Skyhouse Unit will have unfinished floors, sheetrock primed

interior walls, are equipped only with temporary electric heating units, and have no air conditioning or wiring for a dishwasher, microwave or washer/dryer. Purchasers are advised to consult the Floor Plans and the Description of Property and Building Condition contained in Part II of the Plan for more details regarding the Residential Units. One of the Residential Units will be purchased by the Condominium for the use of the Resident Manager. See Note (11) to Schedule B for details concerning the Resident Manager's Unit.

Construction Data for Units and Common Elements

Sponsor has engaged Karl Fischer Architecture PLLC, as architect of record, Cosentini Associates, as mechanical engineer, and DeSimone Consulting Engineers, as structural engineer. (See the Section of the Plan entitled "Identity of Parties" for further details.) The Plans and Specifications have been prepared by the architect and engineers.

The construction of the Building, including the individual Units and Common Elements, will be completed substantially in accordance with the Plans and Specifications, and all applicable Laws. However, Sponsor reserves the right to amend or modify, in any way, the 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 fixtures described in the "Description of Property and Building Condition," set forth in Part II of the Plan, items of substantially equal or better quality, provided, however: (i) any material change shall be set forth in an amendment to the Plan; (ii) any necessary approval of any governmental authority having jurisdiction is first obtained; and (iii) no such amendments, modifications or substitutions may be made if the same would materially and adversely affect any binding Purchase Agreement unless the same is dictated by construction conditions at the Property, and in such event, Sponsor will, in the amendment disclosing such change and delivered to the Purchaser(s), offer the affected Purchaser(s) the right, for at least 15 days, to rescind their Purchase Agreement(s) and receive a refund of their Deposit, together with all interest earned thereon. In addition, Sponsor reserves the right to amend the Plans and Specifications to conform with the Description of Property and Building Condition set forth in Part II of the Plan.

Based upon the current schedule, Sponsor contemplates that, unless delayed by Force Majeure, construction of the Building will be sufficiently completed to permit closings of Residential Units to begin on or about July 1, 2016. Prospective Purchasers should note, however, that the Units will be completed at differing times over a period that may begin prior to and/or extend significantly beyond such date. Sponsor will have no liability to any Purchaser, nor will a Purchaser be entitled to any credit, offset or reduction in the purchase price for his Unit or otherwise be relieved from any obligations under the Purchase Agreement, in the event that the First Closing occurs earlier or later than the targeted date or the time to complete or to close title to their Unit is accelerated, delayed or postponed by Sponsor. In the event the actual or anticipated commencement date of the first year of condominium operation is to be delayed by six months or more, Sponsor will amend the Plan to include a revised budget with current projections and, if (i) a Unit Owner's monthly Common Charges in the amended budget exceed those in the latest budget set forth in the Plan by 25% or more, or (ii) the first Closing of a Residential Unit does not occur within 12 months after July 1, 2016, the date set forth in Schedule B as the commencement date for the first year of condominium operation, then in either case, Sponsor will offer all Purchasers of Residential Units the right to rescind their Purchase Agreements within no less than 15 days after the Presentation Date of the amendment containing such revised budget. Any Purchasers electing rescission pursuant to such offer will have their Deposits and any interest accrued thereon returned, but not any sums paid to Sponsor for furniture, upgrades, custom work or extras. If the first Closing of a Residential Unit occurs within 12 months after July 1, 2016, the Sponsor may schedule the closings of title to other Units significantly later than such date. In that case, unless a Purchase Agreement contains an outside closing date, Sponsor is not obligated to schedule a closing within any specified time frame or to ensure that closing of title to a Unit will occur by any date certain.

Services and Facilities

The services and facilities described below will be provided to Unit Owners at no additional cost (other than Common Charges), unless otherwise specified below.

a. Elevator Service

Two (2) automatic passenger elevators will be in service 24 hours a day, seven days a week, and will stop at the sub-cellar level, cellar levels and all but the 32nd Mezzanine level and the 34th floor. These elevators are for the use of Residential Unit Owners, and under limited circumstances, for the use of the Commercial Unit Owners and their agents only in order to gain access to the roof to maintain or make repairs to equipment on the roof servicing the Commercial Units or to access the Commercial Storage areas in the cellar, or to provide handicap access to the cellar. A service elevator will stop at the sub-cellar, cellar and first floors only. The Skyhouse Unit also has a private elevator that operates between the 32nd, 32nd Mezzanine, and 33rd floors.

b. Telephone, Cable Television and Internet Service

Conduits will be provided for telephone, cable television and internet service ("Telecommunications System") to equipment in the main telephone/data room in the Cellar. It is the obligation of the Condominium Board to maintain and repair this equipment. Each Unit Owner is responsible for setting up their own telephone, cable TV and data/internet service with their chosen service providers. Cabling from the tele/data room to each floor will be installed. The charges for primary connections and subsequent monthly fees related to the Telecommunications System will be determined by, and payable by, the Unit Owners directly to the providers servicing the Building. Unit owners will be billed directly by service provider(s). The Commercial Unit Owners will be responsible for all tele/data infrastructure and services to and for the Commercial Units.

Wireless fidelity technology ("Wi-Fi") is provided in the cellar, the sub-cellar, the Lobby and the Plaza by the Condominium; Unit Owners will be provided with Wi-Fi passwords.

c. Intercom and Security System

All Residential Unit Owners will be provided with an intercom system which will allow for communication between each Residential Unit, the front and back entrance doors and the Lobby attendant's desk. The residential Lobby, elevators, cellar and sub-cellar residential amenity areas will be equipped with closed circuit video cameras connected to a monitoring screen at the lobby attendant's desk, the Resident Manager's office, and to a video recorder.

d. First Floor, Lobby and Lobby Desk Amenities

The Lobby has several seating areas, art works, a Lobby desk and a separate concierge desk. The Lobby desk is furnished with phones, a key tracking system with a locked drawer, programs for printing key fobs and a computer screen with a BuildingLink system. The Lobby desk also has a fire alarm system and a copier/fax machine. A package room and a refrigerated room for groceries are located in the Lobby area on the first floor. There is additional seating outside in the Plaza area, which also has a drinking fountain, trees and plantings. Security lighting for the Plaza area will be provided at the Condominium's expense from mounted spotlights in compliance with the requirements of the New York City Department of Planning.

e. Concierge Services

On or before the First Closing, the Condominium will execute an agreement for concierge services. See the Section of the Plan entitled "Agreements Affecting Building Operations" for

a description of the type of concierge services to be provided by a third-party company. Events or services provided to residents of the Condominium through the concierge service will incur additional costs to the residents who order them. The cost of the concierge service itself is allocated only to the Owners of Residential Units, not to the Commercial Unit Owners. While Sponsor obtained a proposal from Abigail Michaels Inc., Sponsor reserves the right to enter into a concierge service agreement with a third-party vendor of its choice, and will assign such agreement to the Condominium, and the Condominium will assume same at the First Closing. Sponsor makes no representation that the concierge services agreement will be with Abigail Michaels Inc.

f. Mail

All incoming mail will be delivered to the Residential Unit Owners by the United States Postal Service and deposited by its personnel in mail boxes located in the lobby.

g. Building Staff

The Condominium will have a full-time Resident Manager and a lobby staffed 24 hours a day by eight (8) full-time doormen/porters who will be employed by the Condominium. The Managing Agent will provide all Unit Owners with 24 hour contact information to be used in the event of an emergency.

h. Refuse Disposal

Each Residential Unit has access to the trash chute on each floor which empties into a compactor in the compactor room in the cellar. Refuse will be left outside the Building by Building staff for collection by the New York City Sanitation Department.

i. Laundry

With the exception of the customizable living units on the 28th floor and higher floors, each Residential Unit will contain a clothes washer and dryer. There will not be a separate laundry room located in the Building.

j. Smoke and Carbon Monoxide Detector/Sprinklers

Each Residential Unit has a combined smoke detector and carbon monoxide detector. The Building is fully sprinklered with an automatic wet sprinkler system.

k. Amenities in the Sub-Cellar and Cellar

The amenity space in the sub-cellar includes, for the common use of the Residential Unit Owners, a salt water swimming pool, a spa and a water feature behind the spa. A third party vendor will provide lifeguards for the sub-cellar pool for designated hours seven days a week. In addition, the sub-cellar has a gym or exercise room, a yoga room, two separate steam and locker rooms for men and women with showers, lockers and bathroom facilities, storage for bicycles and a pet grooming room. The cellar consists of residential amenity space, mechanical equipment rooms, the Resident Manager's office, a changing room for building staff and Commercial Units storage. The residential amenity space in the cellar includes a resident's lounge and a children's playroom.

Although Sponsor anticipates that after Closing the usage of the residential amenities in the sub-cellar and cellar will be free to Residential Unit occupants, Sponsor and/or the Condominium Board reserve the right to impose appropriate fees for the use of certain of these amenities, which fees will be disclosed by Sponsor (to the extent imposed during the Initial Control Period) in an amendment to the Plan and will be paid into the operating account of the Condominium and not into Sponsor's account.

Use of the amenities described above will be subject to such rules and regulations as may be promulgated from time to time by the Condominium Board.

l. Amenities for the Mansion Unit

The Residential Unit on the third floor, the Mansion Unit, has a sunken pool for the exclusive use of the Mansion Unit Owners. The terraces and pool on the third floor are for the exclusive use of the Mansion Unit and are deemed Limited Residential Common Elements appurtenant to that Unit. The gas and water usage for the pool in the Mansion Unit are separately metered and charged entirely to that Unit's owner.

m. Amenities for Skyhouse Unit

The Skyhouse Unit has a swimming pool, spa, and terraces on the 33rd floor for the exclusive use of the Skyhouse Unit. In addition, the Skyhouse Unit has a private elevator from the 32nd floor to the 33rd floor. The Skyhouse Unit also has a private generator. The gas, water and electricity for the pool and spa for the Skyhouse Unit are separately metered, as too is the electricity for the Skyhouse's private elevator.

n. Pool Safety

Lifeguards for the common area pool shall be provided by a third-party pool management company, as more fully described in the section of this Plan entitled "Agreements Affecting Building Operations".

While it is anticipated that the services described above will be available at the time of the first Closing of a Residential Unit, prospective Purchasers should note that some of these services may not be available until a later date (in no event later than six months from the first Closing of a Residential Unit). Any interim level of staffing will be adequate to maintain the Building during this period.

## COMMERCIAL UNITS

As more particularly described in the "Declaration of Condominium" and in the "Description of Property and Building Condition" contained in Part II of the Plan, the Building will contain two (2) Commercial Units, which are located on the ground floor and part of the cellar of the Building. The Commercial Units are not being offered for sale pursuant to this Plan. Sponsor, however, reserves the right to sell the Commercial Units at any time pursuant to a duly filed amendment.

All or any part of the Commercial Units may be leased or subleased by the owners of the Commercial Units, or as more fully set forth in the Declaration, and subject to compliance with all Laws, if any, the Commercial Units may be subdivided by their owners.

Residential Unit Owners will have no interest in any rents, net profits or revenues derived from the rental or use of any Unit owned by another or of any space in the Commercial Units.

No representation is made with respect to the continued ownership of all or any portion of the Commercial Units or who the tenants of any portion of the Commercial Units may be at any time or as to the uses to which any portion of the Commercial Unit may be put at any time, except that the Commercial Units may only be used for a lawful purpose.

The following is a summary of certain rights and obligations of the Commercial Unit Owners relating to the use and ownership of the Commercial Units, which are more fully set forth in the Declaration and the By-Laws:

(i) the Commercial Units may be used for any legally permitted purposes, except that in no event may all or any portion of any Commercial Unit be used for (i) any sex-related commercial establishment or massage parlor, or establishment where pornographic material is displayed or distributed, or obscene, nude or semi-nude performances are shown live or in a videotaped or other recorded format, except in conjunction with legitimate theatrical or dance performances as permitted by applicable law, or (ii) any drug rehabilitation clinic or treatment center;

(ii) the Commercial Units may be divided into one or more units or subdivided for leasing purposes. The owners of the Commercial Units shall have the right, without the approval of the Condominium Board, the Selling Agent, the Managing Agent, the Residential Unit Owners, or representatives of holders of mortgages on Residential Units to make alterations, additions, improvements, or repairs in or to the Commercial Units, whether structural or non-structural, interior or exterior, ordinary or extraordinary, and to subdivide the Commercial Units;

(iii) the Commercial Units Owners shall have the right to make all arrangements for the prompt repair and restoration of the Commercial Units to the extent the Commercial Units are damaged or destroyed by fire or other casualty;

(iv) the Declaration, the By-Laws and Rules and Regulations may not be amended or modified so as to adversely affect the Commercial Units Owners and/or the Commercial Units without the prior written consent of the affected Commercial Unit Owner(s);

(v) the Commercial Units Owners shall have an easement, to the extent permitted by Law, to erect, maintain, repair and replace, from time to time, one or more signs on the storefront to their respective Units for the purpose of advertising the sale or lease of all or any portion of a Commercial Unit and the operation of any business of a tenant or occupant of all or any portion of the applicable Commercial Unit. A Commercial Unit Owner shall not have the right to place or install any sign or other advertisement on any part of the Building other than the storefront without the prior written consent of the Condominium Board. However, for so long as Sponsor or Sponsor's designee is the Owner of a Commercial Unit, Sponsor, Sponsor's designee, and their tenants shall have the right to install signage on the façade of the Building abutting the second floor above such Commercial Unit, without the consent of the Condominium Board. There shall be no consent required from the Condominium Board relative to Sponsor placing one or more signs, or the size, design and lighting of any sign placed on the Property by Sponsor.

(vi) notwithstanding any sub-division of the Commercial Units, the Owner(s) of Commercial Units shall collectively have the right to designate two (2) members to the seven (7) member Condominium Board;

(vii) the Condominium Board may remove any of its members for cause. However, each member of the Condominium Board elected or designated by the Owner(s) of either Commercial Unit may be removed without cause only by such Commercial Unit Owner(s). If any member of the Condominium Board who was designated by a Commercial Unit Owner(s) is removed with or without cause, his replacement may be designated only by the applicable Commercial Unit Owner.

(viii) any decisions by the Condominium Board which affect either Commercial Unit may be made only with the consent of the member(s) of the Condominium Board elected or designated by the Commercial Unit Owner(s) of the affected Commercial Unit; and

(ix) Commercial Unit Owner Access:

(a) The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit Owners, and the licensees and invitees of the foregoing, who are physically handicapped, will have a right of access through the residential lobby to use the elevators for the limited purpose of entering and leaving the portion of the cellar level of the Building which comprises a Commercial Unit.

(b) The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Units, and the licensees and invitees of the foregoing, shall have a right of access through the portion of the hallway on the first floor of the Building for the purpose of having secondary means of egress from the Building in case of an emergency.

(c) The Commercial Unit Owner, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit, and the authorized agents of the tenants of the Commercial Units will have a right of access through the residential lobby, to use the elevator to gain access to the cellar for the purpose of installing, maintaining, replacing and effecting repairs to any equipment or machinery servicing the Commercial Units and located in the cellar.

(d) The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit Owners, and the authorized agents of the tenants of the Commercial Unit Owners will have a right of access through the residential lobby, which is a Residential Common Element, to use the westerly elevator (Elevator 1), which is a Residential Common Element, and through the 33rd floor common area hallway, to the staircases leading from the 33rd floor of the Building to the 34th floor mechanical room and/or roof of the Building, for the purpose of installing, maintaining, replacing and effecting repairs to any equipment servicing the Commercial Units located on the roof or in the 34th floor mechanical room. Such rights of access shall be exercised with reasonable care and in the presence of either the Resident Manager/porter or a representative of the Managing Agent.

(e) The Commercial Unit Owners and their tenants shall have an easement for so long as the Condominium shall remain in existence, to use the sidewalks appurtenant to such Commercial Unit, but not the Plaza, for any purposes permitted by Law, including, without limitation, food and beverage service and the placement of outdoor seating and tables. The use of such easement is subject to the reasonable rules and regulations promulgated by the Condominium Board, and compliance with all applicable Law.

(x) The Owner of a Commercial Unit, for its benefit, and the benefit of its tenants, shall have the right, without the approval of the Condominium Board, the Managing Agent, the Residential Unit Owners, or representatives of holders of mortgages on Residential Units to make alterations, additions, improvements, or repairs in or to a Commercial Unit, whether structural or non-structural, interior or exterior, ordinary or extraordinary, however, in no event shall such alterations, additions, improvements or repairs effect the structural integrity or mechanical systems of the Condominium, and consent of the Condominium Board shall be required for the relocation of pipes, flues, equipment and other Facilities;

Unless otherwise stated, any person who exercises a right of access or easement under the provisions of this Offering Plan shall indemnify the party who suffers the burden of the exercise of such right of access or easement ("servient estate"). This indemnification obligation requires the party who exercises such right of access to hold harmless the owner of the servient estate from any actual out-of-pocket expense, cost, loss, damage, claim or liability arising, directly or indirectly, from the exercise of any right of access or easement.

The Common Charges payable by the Commercial Unit Owners are sufficient to cover the expenses fairly attributable to the Commercial Units.

As indicated in Footnote 1 to Schedule B and Article 6.1(E) of the By-Laws, the basis for projecting the share of expenses attributable to the Commercial Units as against the Residential Units for the First Year of Condominium Operation is (i) the percentage of interest in the Common Elements, or (ii) the estimated usage of a particular service, or special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners.

## LOCATION AND AREA INFORMATION

Location

The Condominium is located in mid-town Manhattan in the City and State of New York at 172 Madison Avenue, New York, NY 10016. The Property is situated at the northwest corner of the intersection of Madison Avenue and East 33rd Street.

Surrounding Area, Shopping, Museums, Theatre and Parks

New York City is one of the leading cultural centers of the world, with many of the finest universities, museums, libraries, theaters and cultural institutions, attracting millions of national and international tourists. New York City is the nation's center for communications, publishing, advertising, the stock market and other financial services, visual and performing arts and the fashion industry.

Significant shopping destinations, such as Tiffany's, Henri Bendel, Bergdorf Goodman, Cartier, Saks Fifth Avenue, Chanel, Hermes, Escada, Gucci, Buccellati, Fendi, Rockefeller Center and Trump Tower are all located near the Property. Also nearby are the offices of some of the country's most significant businesses such as Conde Nast and Bank of America. Within walking distance of the Condominium there are, in addition to luxury retailers and corporate offices, luxury hotels, luxury-class cooperative apartment residences, private clubs, philanthropic institutions, museums, art galleries, schools, churches and banks.

Among the nearby museums are the Museum of Modern Art, the Metropolitan Museum of Art, the Museum of Natural History, New York Historical Society, Whitney Museum of American Art, Guggenheim Museum, the Frick Museum and the Museum of American Folk Art. The Morgan Library and Museum is but a few steps away from the Property. Carnegie Hall and Lincoln Center for the Performing Arts (which includes the New York State Theater, the Metropolitan Opera House, Avery Fisher Hall and Vivian Beaumont Theater), which are the focal point of the music life of the City, are also nearby. The Broadway theater district, a cultural and intellectual magnet, is in close proximity.

Central Park, located near the Property, is an 840-acre tract of land which combines beautifully landscaped areas with a large variety of recreational facilities, such as tennis courts, running paths, bicycle routes, ice skating rinks, theatrical performances, musical concerts and a zoo.

Transportation

New York City is served by three major airports: LaGuardia Airport, John F. Kennedy International Airport and Newark International Airport, located approximately 9, 14 and 16 miles from the Condominium, respectively. Passenger railroad service is provided from Pennsylvania Station, located at Seventh Avenue and 33rd Street, and from Grand Central Terminal, located at Lexington Avenue and 42nd Street.

Transportation to and from the Building, and throughout New York City, is readily available by taxi, limousine, private automobile, subway or bus. A number of commercial parking garages are located nearby.

Medical, Educational and Religious Facilities

Major world-famous medical centers, such as Lenox Hill Hospital, New York Hospital-Cornell Medical Center, Memorial Sloan Kettering and New York University Medical Center, are readily accessible. Private and public schools on the elementary, middle school and high school levels are located near to the Property. There are many colleges and universities in the New York City area. Noted schools in the area include the Julliard School, Rockefeller University, a premier scientific research institute, Columbia University, New York University and Fordham University.

There are houses of worship of most major denominations in the vicinity of the Condominium.

Municipal Services

All public services, including schools, police protection, library, street maintenance, social services and fire protection are provided by The City of New York. The nearest police precinct headquarters is located at 357 West 35th Street, less than one mile from the condominium. Fire protection is provided from the firehouse situated at 234 East 29th Street. The main branch of the world famous New York City public library system is located at Fifth Avenue and 42nd Street.

Mailing Address

The mailing address for the Building is 172 Madison Avenue, New York, New York 10016.

Zoning

The property is located in a C5-2 / R10 equivalent zoning district in which both residential and commercial uses are permitted.

General

Sponsor makes no representations concerning the continued existence of any of the named establishments or transportation lines. In addition, Sponsor makes no representation that future construction in the neighborhood surrounding the Building will not result in the obstruction of the views from any windows, balconies or terraces.

## SCHEDULE A – PURCHASE PRICES AND RELATED INFORMATION

SCHEDULE A

172 Madison Avenue Condominium
172 Madison Avenue, New York, New York 10016

Schedule of Offering Prices and Other Related Information
(For the first year of condominium operation projected to be July 1, 2016 to June 30, 2017)

| FLR | UNIT | (1) Number of Bedrooms and Baths | (2A) Approx Unit (Sq.Feet) | (2B) Approx Terrace /Balcony /Cellar /Mechanical (Sq.Feet) | (2C) Approx Total (Sq.Feet) | (3) Offering Price | (4A) Percentage Interest in Residential Common Elements | (4B) Percentage Interest in General Common Elements | (5) Projected Monthly Common Charges | (6A) Projected Monthly Real Estate Taxes | (6B) Projected Annual Real Estate Taxes | (6C) Projected Annual Real Estate Taxes First Year Post Construction 2017/18 | (7) Projected Total Monthly Common Charges and Real Estate Taxes |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 3 | Mansion | 2/2.5 | 2,958 | 3,283 | 6,241 | $ 12,000,000 | 3.3600% | 3.2205% | $7,795.33 | $7,571.43 | $90,857.21 | $109,836.00 | $15,366.76 |
| 4 | 4A | 2/2.5 | 1,479 | | 1,479 | $ 2,850,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 5 | 5A | 2/2.5 | 1,479 | | 1,479 | $ 2,875,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 6 | 6A | 2/2.5 | 1,479 | | 1,479 | $ 2,900,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 7 | 7A | 2/2.5 | 1,479 | | 1,479 | $ 2,925,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 8 | 8A | 2/2.5 | 1,479 | | 1,479 | $ 2,950,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 9 | 9A | 2/2.5 | 1,479 | | 1,479 | $ 2,975,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 10 | 10A | 2/2.5 | 1,479 | | 1,479 | $ 3,000,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 11 | 11A | 2/2.5 | 1,479 | | 1,479 | $ 3,025,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 12 | 12A | 2/2.5 | 1,479 | | 1,479 | $ 3,055,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 14 | 14A | 2/2.5 | 1,479 | | 1,479 | $ 3,080,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 15 | 15A | 2/2.5 | 1,479 | | 1,479 | $ 3,105,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 16 | 16A | 2/2.5 | 1,479 | | 1,479 | $ 3,135,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 17 | 17A | 2/2.5 | 1,479 | | 1,479 | $ 3,160,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 18 | 18A | 2/2.5 | 1,479 | | 1,479 | $ 3,185,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 19 | 19A | 2/2.5 | 1,479 | | 1,479 | $ 3,220,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 20 | 20A | 2/2.5 | 1,479 | | 1,479 | $ 3,245,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 21 | 21A | 2/2.5 | 1,479 | | 1,479 | $ 3,270,000 | 1.3151% | 1.2605% | $2,211.24 | $3,030.56 | $36,366.68 | $43,963.10 | $5,241.80 |
| 22 | 22A | 3/3.5 | 2,146 | 112 | 2,258 | $ 6,200,000 | 1.9331% | 1.8529% | $3,250.31 | $4,454.64 | $53,455.67 | $64,622.30 | $7,704.95 |
| 23 | 23A | 3/3.5 | 2,146 | | 2,146 | $ 6,000,000 | 1.9082% | 1.8290% | $3,208.35 | $4,397.22 | $52,766.69 | $63,789.00 | $7,605.57 |
| 24 | 24A | 3/3.5 | 2,146 | | 2,146 | $ 6,050,000 | 1.9082% | 1.8290% | $3,208.35 | $4,397.22 | $52,766.69 | $63,789.00 | $7,605.57 |
| 25 | 25A | 3/3.5 | 2,146 | | 2,146 | $ 6,125,000 | 1.9082% | 1.8290% | $3,208.35 | $4,397.22 | $52,766.69 | $63,789.00 | $7,605.57 |
| 26 | 26A | 3/3.5 | 2,146 | | 2,146 | $ 6,175,000 | 1.9082% | 1.8290% | $3,208.35 | $4,397.22 | $52,766.69 | $63,789.00 | $7,605.57 |
| 27 | 27A | 3/3.5 | 2,146 | | 2,146 | $ 6,225,000 | 1.9082% | 1.8290% | $3,208.35 | $4,397.22 | $52,766.69 | $63,789.00 | $7,605.57 |
| 4 | 4B | 2/2.5 | 1,488 | | 1,488 | $ 2,650,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 5 | 5B | 2/2.5 | 1,488 | | 1,488 | $ 2,675,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 6 | 6B | 2/2.5 | 1,488 | | 1,488 | $ 2,700,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 7 | 7B | 2/2.5 | 1,488 | | 1,488 | $ 2,725,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 8 | 8B | 2/2.5 | 1,488 | | 1,488 | $ 2,750,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 9 | 9B | 2/2.5 | 1,488 | | 1,488 | $ 2,775,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 10 | 10B | 2/2.5 | 1,488 | | 1,488 | $ 2,800,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 11 | 11B | 2/2.5 | 1,488 | | 1,488 | $ 2,825,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 12 | 12B | 2/2.5 | 1,488 | | 1,488 | $ 2,850,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 14 | 14B | 2/2.5 | 1,488 | | 1,488 | $ 2,875,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 15 | 15B | 2/2.5 | 1,488 | | 1,488 | $ 2,900,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 16 | 16B | 2/2.5 | 1,488 | | 1,488 | $ 2,950,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |



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| FLR | UNIT | (1) Number of Bedrooms and Baths | (2A) Approx Unit (Sq.Feet) | (2B) Approx Terrace /Balcony /Cellar /Mechanical (Sq.Feet) | (2C) Approx Total (Sq.Feet) | (3) Offering Price | (4A) Percentage Interest in Residential Common Elements | (4B) Percentage Interest in General Common Elements | (5) Projected Monthly Common Charges | (6A) Projected Monthly Real Estate Taxes | (6B) Projected Annual Real Estate Taxes | (6C) Projected Annual Real Estate Taxes First Year Post Construction 2017/18 | (7) Projected Total Monthly Common Charges and Real Estate Taxes |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 17 | 17B | 2/2.5 | 1,488 | | 1,488 | $ 2,975,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 18 | 18B | 2/2.5 | 1,488 | | 1,488 | $ 3,000,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 19 | 19B | 2/2.5 | 1,488 | | 1,488 | $ 3,030,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 20 | 20B | 2/2.5 | 1,488 | | 1,488 | $ 3,055,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 21 | 21B | 2/2.5 | 1,488 | | 1,488 | $ 3,080,000 | 1.3231% | 1.2682% | $2,224.72 | $3,049.00 | $36,588.04 | $44,231.00 | $5,273.72 |
| 22 | 22B | 2/2.5 | 1,569 | | 1,569 | $ 3,250,000 | 1.3951% | 1.3372% | $2,345.69 | $3,215.02 | $38,580.28 | $46,639.00 | $5,560.71 |
| 23 | 23B | 2/2.5 | 1,569 | | 1,569 | $ 3,300,000 | 1.3951% | 1.3372% | $2,345.69 | $3,215.02 | $38,580.28 | $46,639.00 | $5,560.71 |
| 24 | 24B | 2/2.5 | 1,569 | | 1,569 | $ 3,350,000 | 1.3951% | 1.3372% | $2,345.69 | $3,215.02 | $38,580.28 | $46,639.00 | $5,560.71 |
| 25 | 25B | 2/2.5 | 1,569 | | 1,569 | $ 3,425,000 | 1.3951% | 1.3372% | $2,345.69 | $3,215.02 | $38,580.28 | $46,639.00 | $5,560.71 |
| 26 | 26B | 2/2.5 | 1,569 | | 1,569 | $ 3,475,000 | 1.3951% | 1.3372% | $2,345.69 | $3,215.02 | $38,580.28 | $46,639.00 | $5,560.71 |
| 27 | 27B | 2/2.5 | 1,569 | | 1,569 | $ 3,525,000 | 1.3951% | 1.3372% | $2,345.69 | $3,215.02 | $38,580.28 | $46,639.00 | $5,560.71 |
| 4 | 4C - RM | 1/1.5 | 891 | | 891 | $ 1,150,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 5 | 5C | 1/1.5 | 891 | | 891 | $ 1,275,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 6 | 6C | 1/1.5 | 891 | | 891 | $ 1,300,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 7 | 7C | 1/1.5 | 891 | | 891 | $ 1,325,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 8 | 8C | 1/1.5 | 891 | | 891 | $ 1,350,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 9 | 9C | 1/1.5 | 891 | | 891 | $ 1,375,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 10 | 10C | 1/1.5 | 891 | | 891 | $ 1,400,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 11 | 11C | 1/1.5 | 891 | | 891 | $ 1,425,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 12 | 12C | 1/1.5 | 891 | | 891 | $ 1,455,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 14 | 14C | 1/1.5 | 891 | | 891 | $ 1,480,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 15 | 15C | 1/1.5 | 891 | | 891 | $ 1,505,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 16 | 16C | 1/1.5 | 891 | | 891 | $ 1,535,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 17 | 17C | 1/1.5 | 891 | | 891 | $ 1,560,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 18 | 18C | 1/1.5 | 891 | | 891 | $ 1,585,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 19 | 19C | 1/1.5 | 891 | | 891 | $ 1,620,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 20 | 20C | 1/1.5 | 891 | | 891 | $ 1,645,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 21 | 21C | 1/1.5 | 891 | | 891 | $ 1,670,000 | 0.7923% | 0.7594% | $1,332.07 | $1,825.76 | $21,909.11 | $26,486.00 | $3,157.83 |
| 28 | PHA | 0/1 | 3,548 | 558 | 4,106 | $ 14,000,000 | 3.2789% | 3.1438% | $5,513.10 | $7,555.99 | $90,671.82 | $109,612.00 | $13,069.09 |
| 29 | PHB | 0/1 | 3,548 | 353 | 3,901 | $ 14,500,000 | 3.2333% | 3.1011% | $5,436.44 | $7,451.30 | $89,415.61 | $108,094.00 | $12,887.74 |
| 30 | PHC | 0/1 | 3,548 | 353 | 3,901 | $ 15,000,000 | 3.2333% | 3.1011% | $5,436.44 | $7,451.30 | $89,415.61 | $108,094.00 | $12,887.74 |
| 31 | PHD | 0/1 | 3,548 | 353 | 3,901 | $ 15,500,000 | 3.2333% | 3.1011% | $5,436.44 | $7,451.30 | $89,415.61 | $108,094.00 | $12,887.74 |
| 32-33 | Skyhouse | 0/1 | 5,623 | 2,932 | 8,555 | $ 30,000,000 | 5.4980% | 5.2706% | $12,991.05 | $12,980.69 | $155,768.23 | $188,307.00 | $25,971.74 |
| Residential Totals | | | 110,649 | 7,944 | 118,593 | $ 283,325,000 | 100.0000% | 95.8570% | $174,031.51 | $230,583.31 | $2,767,000.00 | $3,345,000.00 | $404,614.82 |

| FLR | UNIT | (1) Number of Bedrooms and Baths | (2A) Approx Unit (Sq.Feet) | (2B) Approx Terrace /Balcony /Cellar /Mechanical (Sq.Feet) | (2C) Approx Total (Sq.Feet) | (3) Offering Price | (4A) Percentage Interest in Residential Common Elements | (4B) Percentage Interest in General Common Elements | (5) Projected Monthly Common Charges | (6A) Projected Monthly Real Estate Taxes | (6B) Projected Annual Real Estate Taxes | (6C) Projected Annual Real Estate Taxes First Year Post Construction 2017/18 | (7) Projected Total Monthly Common Charges and Real Estate Taxes |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Storage Bins | | | | Approx Bin (Cu.Feet) | | | | | | | | | |
| SC | STRG 01 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 02 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 03 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 04 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 05 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 06 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 07 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 08 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 09 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 10 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 11 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 12 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 13 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 14 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 15 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 16 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 17 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 18 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 19 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 20 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 21 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 22 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 23 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 24 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 25 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 26 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 27 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 28 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 29 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 30 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 31 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| SC | STRG 32 | | | 60 | | $ 15,000 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Storage Bins Total | | | | 1,920 | 0 | $480,000.00 | 0.0000% | 0.0000% | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Grd | Commercial A | | 2,754 | 843 | 3,597 | n/a | 0.0000% | 2.5218% | 967.71 | 9,812.50 | 117,750.00 | 117,750.00 | 10,780.21 |
| Grd | Commercial B | | 1,607 | 1,196 | 2,803 | n/a | 0.0000% | 1.6212% | 622.12 | 6,270.83 | 75,250.00 | 75,250.00 | 6,892.95 |
| Commercial Total | | | 4,361 | 2,039 | 6,400 | $ - | 0.0000% | 4.1430% | 1,589.83 | 16,083.33 | 193,000.00 | 193,000.00 | 17,673.16 |
| Total | | | 115,010 | 9,983 | 124,993 | $ 283,805,000 | 100.0000% | 100.0000% | $175,621.34 | $246,666.64 | $2,960,000.00 | $3,538,000.00 | $422,287.98 |

RM - Resident Manager's Unit (see Schedule B note 11)
Cu - All Storage Bins are listed in Cubic Feet
SC - Sub Cellar



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## NOTES TO SCHEDULE A

(1) Prospective Purchasers should refer to the Floor Plans included in Part II of the Plan for an approximation of the dimensions and typical layouts of Units. The number of bedrooms and bathrooms for each Residential Unit was determined by Sponsor's architect in accordance with industry practice for new construction condominiums, and does not necessarily conform to the zoning room count or the method utilized by the Real Estate Board of New York. Each Unit should be inspected to determine its actual dimensions, layout and physical condition prior to Closing.

(2A, 2B, 2C) The square foot areas and dimensions of the Units or areas listed in Schedule A or in the Declaration are approximate. They were obtained by using the methods described in the Declaration, which methods are customarily used in New York City to measure condominium apartments. As is customary in measuring residential square footages in the City of New York, estimated dimensions and floor area will substantially exceed the Unit's useable floor area. Any Common Elements located within a Unit shall not be considered a part of such Unit. In addition, the square foot areas allocated to any terraces or balconies are deemed Limited Residential Common Elements and are not included in a Unit's square foot calculation.

The actual dimensions, configuration and fenestration (collectively, "unit layout") of a Unit may vary from its Floor Plan due to: (a) changes required by the Buildings Department or other government authorities having jurisdiction; (b) site or other construction conditions; (c) normal construction allowances and variances; and (d) varied masonry bearing wall thicknesses. There is a rebuttable presumption that a change to an area whereby that area is diminished by five percent (5%) or less is not material. Purchasers will not be excused from their obligations under the Purchase Agreement: (a) in the event of minor inaccuracies in a Unit's size (a diminution of size of less than 5% of the useable floor area of the Unit, exclusive of interior partitions) or (b) if the Unit is sufficiently completed (with boundary walls and interior partitions installed) and available for inspection before a Purchase Agreement is executed, in which case the Unit layout as actually constructed shall supercede and govern any variation, substantial or otherwise, from any and all Floor Plans, drawings and diagrams. In the event the actual useable square footage of the Unit, using the methods described in the Declaration is diminished by more than 5% of the square footage set forth on the Floor Plans, then Purchaser's sole remedy shall be to rescind the Purchase Agreement and receive its Deposit and any interest earned thereon.

The ceiling heights for the Units and/or Common Elements, as may be set forth in the "Description of Property and Building Condition" or the Floor Plans in Part II of the Offering Plan, are approximate. As a result of variations in construction caused by, among other things, soffits, the thickness of slab, beams and installations of mechanical, electrical and plumbing systems, and floor systems, the finished ceiling heights vary from the range reflected in the Plan. Although every Unit has rooms with ceiling heights as detailed in the Plan, there are certain Units with limited areas where the ceiling heights will be less than the heights detailed in the Plan, due to the mechanical, electrical and plumbing installations. These areas include walk-in closets, closets, utility rooms, hallways and soffits. These lower ceiling heights are necessary for the property functioning and use of the Unit and integral to its intended purpose for residential occupancy. The Sponsor does not consider the limited areas affected by these lower ceiling heights to be material.

For a comprehensive explanation of the construction of the Units and Building, see the "Description of Property and Building Condition" in Part II of the Plan.

(3) The purchase prices and other terms of sale (as more fully set forth in the Section of the Plan entitled "Changes in Prices and Units") of Units may be negotiated by Sponsor and, therefore, may be changed. Accordingly, Purchasers may pay different purchase prices for similar Units. The effect of this, as well as the right of Sponsor to change purchase prices, is more particularly discussed in the Section of the Plan entitled "Changes in Prices and Units." In addition to the payment of the Purchase Price, each Purchaser will be responsible for the payment of certain closing costs and expenses at the time of Closing, as explained in the Section of the Plan entitled "Closing Costs and Adjustments." If Purchaser obtains a mortgage loan, Purchaser will be responsible for the payment of additional closing costs and expenses relating to such loan. There will be an apportionment of certain charges relating to the Unit at the time of Closing. THESE PRICES HAVE BEEN SET BY SPONSOR AND ARE NOT SUBJECT TO REVIEW OR APPROVAL BY THE DEPARTMENT OF LAW OR ANY OTHER GOVERNMENT AGENCY.

(4A) The percentage interest of each Residential Unit in the Residential Common Elements ("Residential Common Interest") is apportioned in the same proportion that the Residential Unit bears to the aggregate Common Interests of all of the Residential Units in the Condominium. This Residential Common Interest is used to allocate the responsibility for payment of certain Common Expenses which are solely related to the Residential Units and the Residential Common Elements.

(4B) The percentage interest of each Unit (the Commercial Units and the Residential Units) in the General Common Elements ("General Common Interest") is based upon 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 in accordance with the provisions of subsection 339-i(1)(iv) of the Condominium Act. The General Common Interest is used as one factor for computing the monthly Common Charges to be paid by all Unit Owners.

(5) The estimated monthly Common Charges for each Unit are based on the Schedule B - First Year's Budget prepared by Sponsor's Condominium Budget Expert on the assumption that the first year of Condominium operation will be the year from July 1, 2016 through June 30, 2017. As indicated in Note 4 above, the General Common Interest is used as one factor for computing the monthly Common Charges to be paid by all Unit Owners. The actual first year of Condominium operation may be earlier or later than such year. In addition to these estimated payments, each Unit Owner will be responsible for real estate taxes on his respective Unit, mortgage payments under a loan, if any, obtained to finance the purchase of his Unit, the cost of electricity supplied to his Unit, which will be separately sub-metered and payable directly to the utility company or the sub-metering company, the cost of any insurance that he must obtain for his Unit and Unit Specific Property, and the cost of interior repairs and decorations to his Unit. The Skyhouse and Mansion Units each have separate submeters for gas and water usage in connection with their respective pools, spas and barbeques. In addition, the Mansion and Skyhouse Unit Owners pay, as part of their Common Charges, the cost of the monthly maintenance for their respective pools and spa. See the Section of the Plan entitled "Schedule B-1 – Budget for Individual Energy Costs" concerning estimates of certain electric costs for the Units.

As discussed in the Section of the Plan entitled "Description of Property and Improvements" subsection "Services and Facilities", the full range of services and facilities described in the Plan may not be provided until a later date (but in no event later than six (6) months after the first Closing of a Residential Unit).

(6A, 6B, 6C) Real estate taxes payable with respect to the Residential Units for the first year of Condominium operation commencing July 1, 2016 and ending June 30, 2017 have been estimated by Podell, Schwartz, Schecter & Banfield, LLP ("Podell Schwartz"). As indicated in the real estate tax projection opinion of Podell Schwartz, dated September 22, 2014, and set forth in Part II of the Plan, Podell Schwartz estimates that (i) the assessed value for the Property for the 2016/2017 tax year will be approximately $23,200,000, resulting in annual real estate taxes for the Residential Units of $2,767,000, as projected in Schedule A column 6(A); and (ii) the assessed value for the Property for the 2017/2018 tax year (first year post construction) will be $26,000,000 for the Residential Units, resulting in annual real estate taxes for the Residential Units of $3,345,000, as projected in Schedule A column 6(C).

Podell Schwartz indicates all the Residential Units will be designated as residential tax "class 2" property and the Commercial Units will be classified in commercial tax "class 4".

Assuming, for the 2016/2017 and 2017/2018 tax years, the Tax Class 2 property tax rate is $12.855 for each $100.00 of assessed value, Podell Schwartz estimates the real estate taxes for the Residential Units and Commercial Units for the first year of Condominium operation, (without taking into account any tax abatements that may be available to a Unit Owner), to be $2,985,000 with $2,767,000 of tax allocated to the Residential Units and $218,000 allocated to the Commercial Units.

However, it should be noted that the estimated real property taxes for the first year of condominium operation (i.e., July 1, 2016 through June 30, 2017) do not reflect the completed building. Therefore, Sponsor included on Schedule A the projected real estate taxes for the first post-construction tax year, i.e., July 1, 2017-June 30, 2018. As indicated in Podell Schwartz's September 22, 2014 letter, real estate taxes for the Residential Units for the first post-construction tax year are estimated to be $3,345,000 and real estate taxes for the Commercial Units for the post-construction tax year are estimated to be $193,000.

In arriving at the assessed valuation for each Unit in the Condominium, the Building is first assessed as an entirety. This overall assessment is then apportioned among the respective Units, each of which will be assigned a tax lot designation once the Declaration has been recorded and the Floor Plans are filed with the Office of the City Register. It is expected that the apportionment will be based on the Common Interest percentages set forth in the Condominium Declaration if such percentages are rationally and fairly determined.

At such time as the Units have been separately assessed for real estate tax purposes, each Unit will be taxed as a separate tax lot for real estate tax purposes and a Unit Owner will not be responsible for the payment of, nor will his Unit be subject to any lien arising from the non-payment of real estate taxes assessed against other Units.

Neither Sponsor, Sponsor's counsel, Sponsor's real estate tax consultant or Selling Agent make any representations or warranties that the projected tax rates for the tax years 2016/2017 and 2017/2018 and subsequent years will be those adopted by the New York City Council. As such, the projected real estate taxes set forth herein may vary greatly. In no event will Sponsor, Sponsor's counsel, Sponsor's real estate tax consultant, the Selling Agent or any offeror hereunder be liable to any Purchaser, nor will any Purchaser have the right to rescind his Purchase Agreement, in the event projected tax rates vary.

There can be no assurance that there will not be a further increase in the assessed valuation of the Units comprising the Property and/or an increase in the tax rate above that projected for tax year 2016/2017 or subsequent years.

If on the date of the First Unit Closing each of the Units shall not have been separately assessed as an independent tax lot, then until such time as said independent tax assessment shall be made and in effect, each Unit Owner, including Sponsor, shall be nonetheless responsible for the cost of their proportionate amount of the aggregate real estate tax for the Property as determined by their percentage of Common Interest, multiplied by the aggregate real estate taxes assessed against the entire Property as apportioned to all the Units.

In the event the Units have not been separately assessed for real estate tax purposes prior to the First Closing, Sponsor shall pay the real estate taxes due for the fiscal one-half year in which the First Closing takes place. For any period of time occurring after the fiscal one-half year in which the First Closing occurs, and until the Units are separately assessed and billed, each Unit Owner will pay to the Condominium his pro rata share (in the proportion that his Unit's Common Interest bears to the aggregate Common Interest of all Units) of all real estate taxes and assessments with respect to the Property. The Condominium will pay such taxes either to the New York City Department of Finance or directly to Sponsor if Sponsor has already paid real estate taxes for such period. If any Unit Owner fails to pay his pro rata share as set forth above, the Condominium will have a lien on such Unit for non-payment thereof, as if such charges were Common Charges. At such time as a Unit is separately assessed and separately billed, the Unit Owner will pay such taxes directly to the taxing authority. See Section 5.12 of the By-Laws to the Declaration for details.

At Unit closings, individual purchasers shall adjust real estate taxes with the Sponsor from the midnight preceding the date of the Unit closing through the end of the tax period within which the closing date occurs. If no separate Unit apportionment has yet occurred, such adjustment shall be on the basis of the percentage of Common Interest attributable to such Unit. If a subsequent adjustment need be made when the tax lots are apportioned to correct any discrepancy between the adjustment on the basis of actual apportionment, it shall be made at that time. Should tax lots not be apportioned by the end of the tax period in which a Unit closing occurs, or such later period for which the Condominium has not collected real estate taxes from a Unit Owner, Sponsor shall be entitled to reimbursement from the Unit Owner for taxes if and as they are paid by Sponsor. Such reimbursement shall be per such Unit Owner's percentage of Common Interest.

Applicable deductions for real estate taxes may vary in future years as a result of changes in real estate taxes resulting from (i) changes in assessed valuation, (ii) changes in the tax rate, and (iii) changes in the method of assessing the Property.

(7) This column combines the projected total monthly common charges and projected monthly real estate taxes for the projected first year of Condominium operation. This column does not reflect the increase in real estate taxes projected to occur in the post-completion of construction tax year, i.e., 2017/2018.

Reference should be made to Note (5) of these Notes for certain other "home ownership" costs that may be incurred by Unit Owners.

A Purchaser of a Unit will be required to make a contribution at the Closing of Title to his Unit to the Working Capital Fund of the Building. The contribution shall be in an amount

equal to three (3) month's Common Charges in effect at the time of the Closing of such Unit. (See the Section of the Plan entitled "Working Capital Fund and Apportionments" for further details).

## SCHEDULE B – FIRST YEAR'S BUDGET

# SCHEDULE B

## 172 MADISON CONDOMINIUM

Projected Budget for the First Year of Condominium Operation
July 1, 2016 to June 30, 2017

**ESTIMATED INCOME** (Note 1)

| | |
|---|---|
| Common Charges Residential Units: | $ 2,088,378 |
| Common Charges Commercial Units: | $ 19,078 |
| **TOTAL ESTIMATED INCOME:** | **$ 2,107,456** |

| **ESTIMATED EXPENSES** | | Total Expenses | Residential Units | Commercial Units | Mansion* Additional Expenses | Skyhouse* Additional Expenses |
|---|---|---|---|---|---|---|
| Payroll and Related Expenses* | (Note 2) | 503,535 | 499,564 | 3,971 | - | - |
| Gas Heating/ Hot Water* | (Note 3) | 344,265 | 291,980 | - | 22,464 | 29,821 |
| Electricity/ Air Conditioning* | (Note 4) | 325,376 | 325,131 | 245 | - | - |
| Water and Sewer* | (Note 5) | 104,866 | 104,625 | 90 | 81 | 70 |
| Repairs, Maintenance and Supplies* | (Note 6) | 27,500 | 27,500 | - | - | - |
| Service Contracts* | (Note 7) | 298,632 | 283,174 | 1,375 | 3,200 | 10,883 |
| Insurance | (Note 8) | 122,000 | 116,946 | 5,054 | - | - |
| Management Fee | (Note 9) | 43,000 | 41,219 | 1,781 | - | - |
| Legal and Accounting Fees | (Note 10) | 15,000 | 14,379 | 621 | - | - |
| Resident Manager's Unit * | (Note 11) | 133,582 | 132,198 | 1,384 | - | - |
| Miscellaneous Expenses* | (Note 12) | 12,500 | 12,500 | - | - | - |
| Events Budget* | (Note 13) | 32,200 | 32,200 | - | - | - |
| Capital Reserve | (Note 14) | 110,000 | 105,443 | 4,557 | - | - |
| Contingency* | (Note 15) | 35,000 | 35,000 | - | - | - |
| **TOTAL ESTIMATED EXPENSES** | | **2,107,456** | **2,021,859** | **19,078** | **25,745** | **40,774** |

*The Notes to Schedule B (above) are an integral part of this Schedule and should be read in conjunction herewith.*

** These items of the estimated expenses have been especially allocated between the unit owners on other than a strict percentage of the Common interest. See respective footnotes for further explanation.*

Sponsor represents that in the event that the commencement date of the first year of Condominium operation is delayed more than six (6) months from the budget year projected in the Plan, the Plan will be amended to include a revised projected budget. If such amended projections exceed the projections set forth above by twenty-five percent (25%) or more, each Purchaser shall have the right for fifteen (15) days subsequent to the date of mailing or personal delivery of a copy of such amendment to him to rescind his Purchase Agreement and have his deposit refunded. Sponsor has attempted to make accurate estimates.

The budget is not intended, and should not be taken, as a guaranty by anyone that the annual Common Charges or Common Expenses for the first or any subsequent year of operation of the Property will be as set forth in the budget. In fact, it is likely that the actual income and expenses for the first year of Condominium operation will vary from the amounts shown in the budget.

Purchasers should note that even if the First Closing occurs on or before July 1, 2016 (or such other date projected as the date of commencement of the first year of Condominium operation at the time the Purchase Agreement was entered into) or within the twelve month period thereafter, the Closing of subsequent Units may be substantially delayed beyond such dates if a temporary certificate of occupancy has not been issued for such Units or for the floor on which such Units are located. In such case, provided that Sponsor is diligently pursuing completion of construction and the issuance of a certificate of occupancy and is otherwise in compliance with its obligations under the Plan, Purchaser will not be entitled to a right of rescission or to make claims against the Sponsor for damages or losses as a result of such delays, and will not be excused from paying the full purchase price for the Unit. PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER THE POSSIBILITY OF SUCH DELAYS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A UNIT AND WHETHER TO NEGOTIATE A DATE BY WHICH SPONSOR MUST CLOSE ON THE SALE OF THE UNIT IN QUESTION. (See the Sections of the Plan entitled "Rights and Obligations of Sponsor", "Introduction", and "Description of Property and Improvements" for further details).

## FOOTNOTES FOR SCHEDULE B

**Note (1)** **Estimated Income - Residential and Commercial Common Charges**

The budgeted amounts are projected on the assumption that the first year of Condominium operation will be the twelve month period commencing July 1, 2016 and ending June 30, 2017. The actual first year of Condominium operation may begin earlier or later than that period. The Condominium's projected expenses for the first year of Condominium operation are allocated among the Residential Units, the Skyhouse Unit, the Mansion Unit and the Commercial Units based on 1) estimated usage of a particular service, or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners; or 2) percentage interest in the Common Elements. Common Expenses for the Commercial Units, the Skyhouse Unit, and the Mansion Unit, that may arise after the date the Plan is accepted for filing, shall be allocated by the Condominium Board in a manner fairly attributable to such Units, provided, that such expense items are actually utilized in connection with the operation or occupancy of such Units and their Limited Residential Common Elements, and any such allocation must be based on usage or changes in use or from changed circumstances. The Common Charges projected herein are based upon estimated expenses for the twelve (12) month period commencing July 1, 2016.

The Common Charges will be utilized by the Board to defray the Common Expenses of the Condominium. Generally, the Common Expenses have been allocated among the Units on the basis of percentage interest in Common Elements. Where the allocation of Common Expenses is not based on percentage interest in Common Elements or the expenses were allocated only to certain categories of Units or certain Units, an explanation of such allocation is set forth in these footnotes. The Commercial Unit Owners will be obligated to pay their share of the expenses that are incurred by the Board in furnishing services to the Commercial Units as described herein, as well as operating, maintaining and repairing those Common Elements that are utilized by such Unit Owner. The owners of the Skyhouse Unit and the Mansion Unit will be obligated to pay the expenses incurred in connection with the operation, maintenance and repair of the decks, pools, spa and elevator exclusively serving their respective Units. Except for certain limited services and Common Elements which the Commercial Unit Owners share with the Residential Unit Owners, in general the Residential Units being offered are being constructed, equipped and separately metered to operate as independent from the Commercial Units, with a minimum of shared Common Expenses or common operations. Common Expenses to be borne by the Residential Unit Owners as a whole have been allocated among the Residential Units on the basis of the combined percentage of Common Interest of such Units, for a total of 95.8570%. Common Expenses to be borne by the owner of the Commercial Units where the Residential Unit Owners do not have primary or exclusive use of, control of, or access to the Common Element or service have been allocated on either (i) the basis of the Commercial Unit Owners percentage of interest in Common Elements, i.e. 4.1430%, as follows below or

(ii) based upon special or exclusive use or availability or exclusive control of a particular Common Element or service.

The Skyhouse Unit Owner and the Mansion Unit Owner will pay as Common Expenses 100% of the cost to operate, maintain, repair and replace the decks, pools and/or spas appurtenant to their respective Units, and the Skyhouse Unit Owner will pay as a Common Expense 100% of the cost to operate, maintain, repair and replace the elevator and generator serving only the Skyhouse. These expenses, which on Schedule B are described as "Mansion Additional Expenses" and "Skyhouse Additional Expenses", are included in the Common Charges for the Mansion and Skyhouse Units, respectively, shown on Schedule A. The expenses are "additional" only in that they arise solely from the special features of the Mansion and Skyhouse Units, namely, their private pools and the private elevator, spa and generator serving only the Skyhouse Unit, that the other Units do not have and whose Owners do not subsidize.

**Note (2)** **Payroll and Related Expenses: $503,535**

**Allocation: Resident Manager**
**95.8570% to Residential Units**
**4.1430% to Commercial Units**

**Other Staff—100% to Residential Units**

The Building will have a full time (40 hours per week) Resident Building Manager and eight (8) full time (40 hours per week) doormen/porters who will all be employed by the Condominium. The annual cost for the first year of operations is estimated as follows:

Resident Building Manager

Wages

| | |
|---|---|
| Resident Building Manager (RM) | $70,000 |
| FICA, employer share (RM) | $5,355 |
| Unemployment Insurance (RM) | $6,475 |
| State disability and workers comp (RM) | $4,025 |

Other payroll related costs:

| | |
|---|---|
| Building Manager Section 125 retirement plan allowance | $10,000 |

Sub Total: Resident Building Manager ..... **$95,855**

Other Staff

Wages

| | |
|---|---|
| Doormen/Porter (@$20.00 per hour) | $332,800 |

Other Payroll Related Costs:

| | |
|---|---|
| FICA employer share (doormen/porters) | $24,960 |
| Unemployment Insurance (doormen/porters) | $30,784 |
| State disability and workers comp (doormen/porters) | $19,136 |
| Sub Total: Other Staff Wages and Benefits | **$407,680** |
| **Total** | **$503,535** |

The plan provides for the Resident Building Manager and other staff to be non-union.

Amounts projected are based on the following additional assumptions:

Tax rates currently in effect were applied for FICA and unemployment taxes.

- Disability insurance and workers compensation insurance rates are based on the current policies in place for similar properties.
- The Resident Building Manager's wages ($95,855) will be allocated on a percentage of general Common Interest basis.
- 100% of the doormen/porter costs ($407,680) will be allocated to the Residential Units

No warranty is made with respect to the Building's employees' right to organize or as to the actual wages, salaries and related payroll taxes and similar expenses, which will be applicable and in effect during the first year of Condominium operation. However, the projected expenses for wages and salaries, as increased by 5%, as well as the assumptions described herein, are believed to be reasonable and reflect the experience of Sponsor's budget expert in managing comparable buildings.

The level of staffing described in this Schedule B complies with all applicable housing and labor laws.

Except where specifically set forth otherwise (i.e., tax rates and insurance), the amounts set forth above reflect amounts estimated to be paid in the first year of Condominium operation.

**Note (3)** **Gas for Heating and Hot Water: $344,265**

**Allocation: 100% to Residential Units. Of this sum, Skyhouse and Mansion Unit Owners pay $52,285**

Natural gas will be provided to the Building by Consolidated Edison for residential heating, domestic hot water and cooking. By estimate dated January 6th, 2015, Tetra Tech Engineers, et al., d/b/a Cosentini Associates, P.C. ("Cosentini"), Two

Pennsylvania Plaza, New York, New York 10121, the cost of gas usage for residential heating and domestic hot water to the Residential Units and the Residential Common Elements, swimming pools and spas, and cooking gas to the Residential Units, will approximate $266,102 based on the usage of 182,185 therms using a rate of $1.30 per therm. Adding a 5% per annum adjustment factor along with the applicable 4.5% sales tax, the estimate for the first year of Condominium operation is $291,980. The cost for gas for the equipment servicing the Residential Units will be borne by the Residential Units only. The cost for gas for heating and hot water will be billed 100% to the Residential Unit Owners. The Commercial Units are heated by the Building's boiler plant. A BTU meter will be installed in connection with the heat provided to the Commercial Unit. The Condominium will bill the Commercial Unit Owners for usage based on the BTU meter readings at the rates payable by the Condominium.

The Mansion Unit and the Skyhouse Unit will each have a meter or submeter to measure gas service consumed by the boilers servicing the pools and spas in their Units.

The estimated cost of gas usage to heat the Mansion Unit Pool is $22,464.

The estimated cost of gas usage to heat the Skyhouse Unit Pool and spas and to operate the generator for the Skyhouse Unit is $29, 821

Surcharges and taxes are not included.

It is not possible to predict how closely the budgeted figure will reflect the actual expense for gas to be incurred during the first year of Condominium operation, in part because such expenses will vary with the level of consumption and the applicable utility rates. Many factors affect the cost of gas, (which has in the past been highly volatile and unpredictable). Historically, gas rates have been steadily increasing and the cost of gas is likely to increase, although it is not possible to forecast with certainty the amount or timing of such increases. It is believed that the projected figure should be sufficient to cover any reasonable increase in the cost of gas during the first year of Condominium operation because the amounts included in the Cosentini estimate, which were based upon rates in effect in 2014, were increased in Schedule B by five percent (5%). However, no budget item is warranted.

**Note (4)** **Electricity and Air Conditioning: $325,376**

**Allocation: Common Area less Public Plaza:**
**100% to Residential Units**

**Public Plaza:**
**95.8570% to Residential Units**
**4.1430% to Commercial Unit Owners**

Includes the net common area electricity costs, but does not include the cost of electricity to individual Residential Units whose usage will be sub metered. All Unit Owners will be responsible to pay the electric bills for their Units as shown on the sub

meter bills. Common area electric will include the electricity costs for operating the Building's HVAC, mechanical systems, the Building's elevators and for the common area lighting. By estimate dated January 6th, 2015, Tetra Tech Engineers, et al., d/b/a Cosentini Associates, P.C., Two Pennsylvania Plaza, New York, New York 10121 ("Cosentini") estimates that the current annual cost using a current rate of $.22 per KWH is estimated at $296,538 during the first year of Condominium operations. Adding a 5% per annum adjustment factor along with the applicable 4.5% sales tax, the estimate for the first year of Condominium operation is $325,376. The estimated cost for common area electricity will be borne by the Residential Units only.

The electrical cost to operate the public plaza and the service elevator are estimated in an estimate dated January 6th, 2015, Tetra Tech Engineers, et al., d/b/a Cosentini Associates, P.C., Two Pennsylvania Plaza, New York, New York 10121 ("Cosentini") as $5,393.00 using a cost estimate of $.22 per KWH. Adding a 5% per annum adjustment factor along with the applicable 4.5% sales tax the estimate for the first year of Condominium operation is $5,917.00. The estimated cost for common area electricity for the public plaza and service elevator will be borne by the both Residential and Commercial Units based upon percentage interest of General Common Elements.

The Commercial Units electrical usage will be direct metered and electrical usage will be billed directly to the Commercial Unit Owners. A BTU meter will be installed in connection with the Commercial Unit Owners' use of the Building's chilled water system. The cost of such usage shall be billed to the Commercial Unit Owner at the rates payable by the Condominium. Surcharges and taxes are not included.

It is not possible to predict how closely the budgeted figure will reflect the actual expense for electricity to be incurred during the first year of Condominium operation, in part because such expenses will vary with the level of consumption and the applicable utility rates. Many factors affect the cost of electricity, (which has in the past been highly volatile and unpredictable). Historically, electricity rates have been steadily increasing and the cost of electricity is likely to increase, although it is not possible to forecast with certainty the amount or timing of such increases. It is believed that the projected figure should be sufficient to cover any reasonable increase in the cost of electricity during the first year of Condominium operation because the amounts included in the Cosentini estimate which were based upon rates in effect in 2014 were increased in Schedule B by five percent (5%). However, no budget item is warranted.

**Note (5)** **Water and Sewer: $104,866**

**Allocation: 100% to the Residential Unit Owners. Amount includes $250 estimated submeter amounts for Commercial, Skyhouse and Mansion Units.**

The estimate for water and sewer consumption for the first year of Condominium operations, dated January 6th, 2015 and prepared by Tetra Tech Engineers, et al., d/b/a Cosentini Associates, P.C., Two Pennsylvania Plaza, New York, New York 10121 ("Cosentini"), using the rates set for the year 2014 to 2015 of $3.40 per CCF for water and 159% of this water bill, for sewer charges, is estimated at $99,873 during the first

year of Condominium operations. Adding a 5% per annum adjustment factor, the estimate for the first year of Condominium operation is $104,866. Water consumption for the Residential Units will be measured via a dedicated meter and the cost for water and sewer will be borne by the Residential Units only. The Commercial Units will be supplied hot and cold water by the Condominium for general lavatory use only. If the occupancy of the Commercial Units results in water usage above the level ordinarily used for lavatory purposes, the Owner(s) of the applicable Commercial Unit shall be obligated to install a sub meter at their sole cost and expense to measure consumption of water usage. The Commercial Unit Owner will pay for water usage as measured by the sub meter at the rate paid by the Condominium for water usage. There will be sub meters installed at each of the Skyhouse and Mansion Units to measure consumption of water usage in connection with the operation of the pools and spas installed in said Units.

The water and sewer cost to operate the public plaza are estimated by letter dated January 6th, 2015, Tetra Tech Engineers, et al., d/b/a Cosentini Associates, P.C., Two Pennsylvania Plaza, New York, New York 10121 ("Cosentini") as $2,072.00 using a cost estimate of $3.40 per CCF and 150% of this water bill for sewer charges; adding a 5% per annum adjustment factor, the estimate for the first year of Condominium operation is $2,176.00. The estimated cost for common area water and sewer will be borne by the both Residential and Commercial units based upon percentage of interest in General Common Elements. Adding a 5% per annum adjustment factor, the estimated cost for water and sewer for the pool and spa for the Mansion Unit is $81.00 and for the Skyhouse Unit is $70.00

It is not possible to predict how closely the budgeted figure will reflect the actual expense for water and sewer to be incurred during the first year of Condominium operation, in part because such expenses will vary with the level of consumption and the applicable utility rates. Historically, water and sewer rates have been steadily increasing and the cost of water and sewer is likely to increase, although it is not possible to forecast with certainty the amount of such increases. It is believed that the projected figure should be sufficient to cover any reasonable increase in the cost of water and sewer charges during the first year of Condominium operation because the amounts included in the Cosentini estimate, which were based upon rates in effect in 2014, were increased in Schedule B by five percent (5%). However, no budget item is warranted.

**Note (6)** **<u>Repairs, Maintenance & Supplies</u>: $27,500**

**Allocation: 100%to Residential Units**

The budget figure for repairs, maintenance and supplies is based on the estimated normal maintenance and repair of common areas of the Building, the painting of public halls and Common Elements, and the purchase of normal maintenance items, such as cleaning supplies and materials, lubricants, bulbs, public area fixtures and general and hardware supplies, but excludes those costs for the public plaza area. Unit Owners will be responsible for the cost of the interior repairs in, and decoration and

painting of, their respective Units, including fixtures, HVAC equipment and appliances. The amount budgeted is calculated based on the consultant's previous management experience in managing newly renovated buildings of comparable size, quality and amenities.

No amount is included for items covered by construction warranties or for the cost of any major capital expenditure in the Building. If such expenditure is required, each Unit Owner (including the Commercial Unit Owners if the item in question is a Common Element) will be obligated to pay his pro-rata or beneficial share of such expenditure. It is expected that if minor operating equipment is required to be purchased, the funds for the acquisition will be provided from the Working Capital Fund. The budgeted number does not include repairs, painting, maintenance or supplies for individual Units, which are the responsibility of the individual Unit Owners.

The estimated costs for repairs, maintenance and supplies are allocated 100% to the Residential Units based upon primary usage of such services by the Residential Unit Owners in connection with their Units, the Residential Common Elements and the Limited Residential Common Elements. Any repairs, maintenance or supplies for a Commercial Unit will be paid by the applicable Commercial Unit Owner.

**Note (7)** **Service Contracts**: **$298,632**

**Allocations are set forth below.**

Amounts indicated below are annual estimates. No contracts have been entered into for the services described in this footnote.

The allocations of the following Service Contracts have been allocated solely to the Residential Unit Owners by their percentage of interests in Residential Common Elements.

| | |
|---|---|
| Estimated Maintenance for the two (2) residential elevators: | $16,440 |
| Estimated Window Washing: | $9,500 |
| Estimated Cable TV and Internet Service for Amenity uses: | $6,500 |
| Estimated Water Treatment: | $4,800 |
| Estimated Generator maintenance: | $3,000 |

Pool Management and Equipment Service Contract – the costs for pool management and equipment service is projected by Elite Pool and Fitness Management, Inc, a third-party vendor, pursuant to a proposal dated November 4th, 2014. The proposal includes projected costs for lifeguard services, supplies, and salt water pool maintenance: $81,126

The projected cost for concierge service is provided by Abigail Michaels Concierge, Inc., a third-party vendor, pursuant to a written proposal dated July 8, 2014: $130,000

Sub Total Service Contracts allocated solely to Residential unit Owners: **$251,366**

The cost of the following Service Contracts have been allocated to all Unit Owners by their percentage of interest in General Common Elements.

Estimated Elevator Maintenance for the Service Elevator: $7,183

Estimated Fire Alarm System: $5,500

Estimated Pest Control: $5,500

Estimated Management and Service of the Public Plaza: $15,000

Of the total, 95.8570% which is $31,808 is allocated to the Residential Unit Owners and 4.1430% which is $1,375 is allocated to the Commercial Unit Owners.

Sub Total Service Contracts allocated to Residential and Commercial Unit Owners: **$33,183**

The cost of the following Service Contracts are allocated to specific units as described herein and are not shared with other Unit Owners:

Estimated Elevator Maintenance for the Skyhouse Elevator; this Item is allocated solely to the Owner of the Skyhouse: $7,183

Estimated Generator Maintenance for the Skyhouse Generator; this Item is allocated solely to the Owner of the Skyhouse: $500

Estimated Contract for Gas Sub Meter Readings – This item is for the readings of the Skyhouse and the Mansion for gas meter for the additional gas lines used to service the swimming pools, spa, generator and roof top barbeque lines. The Estimated Contract is allocated 50% to the Mansion and 50% to the Skyhouse at $250, each – Estimated Total: $500

Pool Maintenance Service Contract - Pool maintenance services are provided by Elite Pool and Fitness Management, Inc. a third-party vendor, pursuant to a proposal dated November 4th, 2014 and more fully described in Part I of the Plan, Section of the Plan entitled "Agreements Affecting Building Operations". The Contract provides for bi-weekly maintenance for the Mansion and the Skyhouse pools that shall be allocated 50% to the Mansion Unit Owner and 50% to the Skyhouse Unit Owner: $5,900

Of the total, $10,883 is allocated to the Skyhouse and $3,200 is allocated to the Mansion.

Sub Total Service Contracts allocated to Specific Unit Owners: **$14,083**

Unless noted above, the budgeted amounts where proposals have not been referenced are based on estimates received from contractors or the experience of Sponsor's budget expert, Maxwell-Kates, Inc. in operating similar buildings. While the estimates above include a reasonable allowance for possible increases in cost which may occur prior to and during the first year of Condominium operation, no warranty is made that the actual cost for these or other services will be in accordance with this projection

**Note (8)** **Insurance: $122,000**

**Allocation: 95.8570% to Residential Units**
**4.1430% to Commercial Units**

The budget number is projected on the basis of an estimate of insurance costs provided by Brooklyn Brokerage Corporation, 383 Kingston Ave. Suite 165, Brooklyn, New York 11213 in a letter of October 20, 2014. It is believed that the projected figure should be sufficient to cover any reasonable increase in the cost of insurance during the first year of Condominium operation because the amounts included in the estimate were based upon rates in effect in 2014, which were increased in Schedule B by five percent (5%). The letter of October 20th confirms that the insurance policy set forth below meets the requirements of the Construction Lender. The policy has no co-insurance requirement and covers water damage and the breakdown of machinery and equipment. The policy has an excess liability provision.

**Commercial Property**

| Valuation | RCV / Special Form |
|---|---|
| Co-Insurance | NIL |
| Building | $65,000,000 |
| Business Income | $2,000,000 |
| Equipment Breakdown | Included |
| Ordinance or Law Coverage A | Included |
| Ordinance or Law Coverage B & C | 10% |
| Flood & Quake | $10,000,000 |
| Deductible | $10,000 |
| Flood & Quake Deductible | $50,000 |

| | |
|---|---|
| **Commercial General Liability** | |
| Limits of Liability Insurance | |
| Per Occurrence | $1,000,000 |
| General Aggregate | $2,000,000 |
| Products Completed Operations | $2,000,000 |
| Personal Advertising Injury | $1,000,000 |
| Damages to Premises Rented to You | $100,000 |
| Med-Pay | $5,000 |
| Hired & non-owned Auto | **$1,000,000** |
| Premium Including Taxes & Fees | **$110,000** |
| | |
| **Commercial Excess Liability** | |
| Limits of Liability Insurance | |
| Per Occurrence | $200,000,000 |
| General Aggregate | $200,000,000 |
| Deductible/SIR | $10,000 |
| Premium Including Taxes & Fees | **$7,000** |
| | |
| **Directors and Officers** | |
| Liability Limits | $1,000,000 |
| Premium Including Taxes & Fees | **$3,000** |
| | |
| **Fidelity / Crime** | |
| Liability Limits | $300,000 |
| Premium Including Taxes & Fees | **$2,000** |
| | |
| **TOTAL ANNUAL PREMIUM** | **$122,000** |

In addition, the coverage described herein will provide:

- each Unit Owner is an additional insured as respects common areas
- there will be no cancellation without notice to the Board of Managers
- a waiver of subrogation as respects Unit Owners of the Condominium
- a waiver of invalidity because of the acts of the insured and Unit Owners
- a waiver of pro-rata reduction if Unit Owners obtain additional coverage

Prospective Unit Owners should note that insurance premiums could increase depending on market conditions.

Each Unit Owner will obtain additional insurance coverage, at his or her own expense, against the following risks (which will not be included in the insurance coverage obtained by Sponsor on behalf of the Condominium Board):

Fire or casualty losses to the contents of his or her Unit, Unit Specific Property (as defined in the By-Laws of the Condominium), including, but not limited to any appurtenant Limited Residential Common Elements, replacements, additions, improvements and fixtures therein; and

Liability for personal injury or property damage as a result of occurrences in his or her own Unit and any appurtenant Limited Residential Common Elements.

The insurance figures provided are adequate and acceptable to the insurance carrier in order to provide the Agreed Amount Clause, which meets the co-insurance requirement. In order to safeguard the investment of its Unit Owners in the event of a substantial or total destruction of the Building, the Condominium should periodically review the amount of casualty insurance for the Building to insure that the amount of coverage equals the then estimated replacement cost.

The coverage does not include claims for personal injury and property damage resulting from occurrences in individual Units, nor does it cover furniture or fixtures and personal property of Unit Owners.

The insurance costs will be allocated among the Residential and Commercial Units based on their respective percentage of interest in the General Common Elements.

**Note (9)** **Management Fee: $43,000**

**Allocation: 95.8570% to Residential Units**
**4.1430% to Commercial Units**

The budget amount is based on a proposed agreement with Maxwell-Kates, Inc to be entered into by the Condominium Board at the First Unit Closing. The services of the managing agent shall commence at the First Unit Closing. The fee will be $43,000 in the first year of Condominium operations.

The Managing Agent is unaffiliated with Sponsor.

In addition, the Managing Agent will charge individual Unit Owners for services required in the processing of each application for the sale or lease of a Unit.

The Management Fee will be allocated among the Residential and Commercial Units based on their respective percentage of interest in General Common Elements.

**Note (10)** **Legal and Accounting: $15,000**

**Allocation: Accounting:**
**95.8570% to Residential Units**
**4.1430% to Commercial Units**

**Legal: 100% to Residential Unit Owners**

All Condominium Unit Owners shall be entitled to receive annually from the Condominium, at the Condominium's expense, an annual audited statement prepared by an independent certified public accountant initially projected to be Newman, Newman, & Kaufman, LLP. In a letter from them, dated 9/12/14, it was estimated that the annual cost for the first year of Condominium operation will be approximately $10,000. The cost is allocated upon percentage of interest in General Common Elements.

The balance of this line item is intended to provide for minor miscellaneous legal services that the Condominium Board may need to employ.

For the first year of Condominium operation, the legal and accounting costs will be allocated among the Residential and Commercial Units based on their respective percentage of interest in General Common Elements. If however, legal or accounting services are required which exclusively pertain to the Residential Units, such as non-payment of residential Common Charges, Residential Unit Owner defaults or residential related contracts, those costs will be allocated one hundred percent to the Residential Unit Owners.

**Note (11)** **Resident Manager's Unit Costs: $133,582**

**Allocation: Unit Costs**
**98.9642% to Residential Units**
**1.0358% to Commercial Unit Owners**

**Closing Costs—100% to Residential Unit Owners**

The Condominium will purchase on behalf of the Residential Unit Owners Unit 4C for the use by the Resident Manager at the price of $1,150,000.00. The Sponsor will either provide or obtain a mortgage loan for the entire price for a term of at least five years at an annual interest rate of 8% fixed. If Sponsor provides the mortgage loan, the monthly payment will be interest-only in the amount of $7,666.67 per month or $92,000 per year. For a mortgage loan provided by Sponsor, at the end of the five year period, the full principal balance of $1,150,000.00 will come due. If the mortgage cannot be refinanced, it will require a full assessment to be proportionally borne solely by the Residential Unit Owners. If Sponsor is the holder of the note and mortgage, Sponsor will pledge it to the Construction Lender as additional collateral for the Construction Loan.

In addition to the monthly mortgage payments, the budgeted amount includes: charges of $21,909.11 per year for projected real estate taxes, an estimated annual cost of $2,338 for electrical usage in the apartment and approximately $17,335 annually for Common Charges.

Sponsor may not be able to obtain institutional financing for the Condominium to purchase the Resident Manager's Unit as of the First Closing, and Sponsor may not choose to provide the financing as of the First Closing. If the Resident Manager's Unit is not transferred at the First Closing, the Condominium will pay to the Sponsor for the Resident Manager's Unit an amount equal to the required payments of interest, real estate taxes, Common Charges, electric costs, telephone and other miscellaneous expenses related to the Unit.

The operating expenses attributable to the Resident Manager's Unit, including mortgage interest, Common Charges and real estate taxes, shall be allocated to the Commercial Unit Owners at the rate 25% of their Percentage of Interest in General Common Elements (1.0358%) premised upon the usage of the Resident Manager's services primarily by the Residential Unit Owners in connection with repairs and maintenance of their Residential Units and the Residential Common Elements and the Limited Residential Common Elements. The cost borne by the Commercial Unit Owners shall be $1,384 for the first year of Condominium operations.

All closing costs and other expenses related to the purchase of the Resident Manager's Unit, including but not limited to the transfer taxes, mortgage recording tax, loan origination fee and title insurance will be paid by the Condominium. These sums can be paid from the Working Capital Fund or financed and paid at Closing or by note to the Sponsor, due in one year at 5% interest. No portion of the closing costs and other

expenses relating to the sale of the Resident Manager's Unit shall be allocated to the Commercial Unit Owners.

**Note (12)** **Miscellaneous Expenses**: **$12,500**

**Allocation: 100% to Residential Unit Owners**

This item includes telephone expense, any licenses, permits and filing fees, filing Federal (if taxable income exists) State and City tax returns, annual elevator inspections and permits, costs of printing and postage for notices and information from the Board of Managers, fee to electric sub metering company, office supplies, miscellaneous expenses, and holiday decorations. In addition, this item includes fees to the Managing Agent to prepare the needed filings and follow up with respect to the real estate tax rebate program, fire safety notices and window guard and lead based paint compliance, if applicable. 100% of the cost of this item is allocated to the Residential Unit Owners.

**Note (13)** **Events Budget**: **$32,200.00**

**Allocation: 100% to Residential Unit Owners**

This item includes the costs incurred by the Concierge to Residential Unit Owners events at the Building. Such events may include author-run visits, wine tastings, and instructional classes.

The expenses attributable to the Events Budget shall be allocated 100% to the Residential Units.

**Note (14)** **Capital Reserve**: **$110,000**

**Allocation: 95.8570% to Residential Units**
**4.1430% to Commercial Units**

A Capital Reserve expense is to be established for the purpose of providing for needed capital expense expenditures to be applied at the discretion of the Condominium Board. The anticipated reserves are not proportional to each Unit's Common Interest because the constituent parts of the Building have different amenities, mechanical systems, uses and finishes.

The expenses attributable to the Capital Reserve shall be allocated based upon percentage interest in General Common Elements.

**Note (15)** **Contingency**: **$35,000**

**Allocation: 100% to Residential Unit Owners**

The Contingency line item is intended to provide for any unanticipated expenses relating to the Residential Common Elements and the Limited Residential Common

Elements and is to be used at the discretion of the Board of Managers. The expense is allocated 100% to the Residential Unit Owners in that their use of such funds are limited to Residential Common Elements and Limited Residential Common Elements. The reserve for contingencies has been calculated on the basis of approximately three percent (3%) of the sum of all operating expenses to cover unanticipated cost increases and possible omitted items. In the event that the actual first year of operation of the Condominium begins later than the projected commencement date of July 1, 2016 as shown on this Schedule, the additional operating costs could substantially exceed this amount.

The expenses attributable to the Contingency shall be allocated only to the Residential Units.

## SCHEDULE B-1 – BUDGET FOR INDIVIDUAL ENERGY COSTS

Cosentini
A TETRA TECH COMPANY

Consulting Engineers
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New York, NY 10121
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M. A. Mass, PE
D. C. Mass, PE
M. W. Maybaum, PE
E. Barbieri, PE
R. Leber, PE
E. J. Martinez, PE
S. R. Ceasar, PE
D. DeRobertis, PE

Revised January 14, 2015
October 8, 2014

Mr. Ari Herrmann
Madison 33 Owner, LLC
C/O Tessler Developments, LLC
461 Park Avenue South, 2nd floor
New York, NY 10016

Re: 172 Madison Avenue
New York, NY 10016
CA Project No. 140032

Dear Mr. Herrmann:

The following are electricity consumption costs estimates for the 69 apartments.

A. ESTIMATED ANNUAL COST OF ELECTRICITY FOR APARTMENTS

| Floor Number | Apartment Designation | Apartment Area (SF) | Cooling/Heating (kWh/Year) | Lighting / Receptacle (kWh/Year) | Appliances (kWh/Year) | Washer/Dryer (kWh/Year) | Annual (kWh/Year) | Annual Cost / Year |
|---|---|---|---|---|---|---|---|---|
| 3 | 3 | 2,958 | 36,188 | 12,934 | 31,536 NOTE 2 | 1,104 | 81,762 | $17,988 |
| 4 | 4A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 4 | 4B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 4 | 4C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 5 | 5A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 5 | 5B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 5 | 5C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 6 | 6A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 6 | 6B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 6 | 6C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 7 | 7A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 7 | 7B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 7 | 7C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 8 | 8A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 8 | 8B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 8 | 8C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 9 | 9A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 9 | 9B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 9 | 9C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 10 | 10A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 10 | 10B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 10 | 10C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 11 | 11A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 11 | 11B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 11 | 11C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 12 | 12A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 12 | 12B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 12 | 12C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 14 | 14A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 14 | 14B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 14 | 14C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 15 | 15A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 15 | 15B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 15 | 15C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 16 | 16A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 16 | 16B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 16 | 16C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 17 | 17A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 17 | 17B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 17 | 17C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 18 | 18A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 18 | 18B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 18 | 18C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 19 | 19A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 19 | 19B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 19 | 19C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 20 | 20A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 20 | 20B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |

Cosentini
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| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 20 | 20C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 21 | 21A | 1,479 | 15,287 | 3,239 | 13,588 | 1,104 | 33,218 | $7,308 |
| 21 | 21B | 1,488 | 12,973 | 3,259 | 7,702 | 1,104 | 25,038 | $5,509 |
| 21 | 21C | 891 | 11,195 | 1,951 | 7,702 | 1,104 | 21,952 | $4,830 |
| 22 | 22A | 1,479 | 23,763 | 4,700 | 7,702 | 1,104 | 37,269 | $8,199 |
| 22 | 22B | 1,569 | 14,870 | 3,436 | 7,702 | 1,104 | 27,112 | $5,965 |
| 23 | 23A | 2,146 | 23,763 | 4,700 | 7,702 | 1,104 | 37,269 | $8,199 |
| 23 | 23B | 1,569 | 14,870 | 3,436 | 7,702 | 1,104 | 27,112 | $5,965 |
| 24 | 24A | 2,146 | 23,763 | 4,700 | 7,702 | 1,104 | 37,269 | $8,199 |
| 24 | 24B | 1,569 | 14,870 | 3,436 | 7,702 | 1,104 | 27,112 | $5,965 |
| 25 | 25A | 2,146 | 23,763 | 4,700 | 7,702 | 1,104 | 37,269 | $8,199 |
| 25 | 25B | 1,569 | 14,870 | 3,436 | 7,702 | 1,104 | 27,112 | $5,965 |
| 26 | 26A | 2,146 | 23,763 | 4,700 | 7,702 | 1,104 | 37,269 | $8,199 |
| 26 | 26B | 1,569 | 14,870 | 3,436 | 7,702 | 1,104 | 27,112 | $5,965 |
| 27 | 27A | 2,146 | 23,763 | 4,700 | 7,702 | 1,104 | 37,269 | $8,199 |
| 27 | 27B | 1,569 | 14,870 | 3,436 | 7,702 | 1,104 | 27,112 | $5,965 |
| 28 | PH-A | 3,548 | 48,051 | 7,770 | 7,702 | 1,104 | 64,627 | $14,218 |
| 29 | PH-B | 3,548 | 48,051 | 7,770 | 7,702 | 1,104 | 64,627 | $14,218 |
| 30 | PH-C | 3,548 | 48,051 | 7,770 | 7,702 | 1,104 | 64,627 | $14,218 |
| 31 | PH-D | 3,548 | 48,051 | 7,770 | 7,702 | 1,104 | 64,627 | $14,218 |
| 32, 32 Mezz, 33 | SKYHOUSE | 5,623 | 76,761 | 12,363 | 34,506 NOTE 3 | 1,104 | 124,734 | $27,441 |

Note:

1. The estimated electricity cost for heating each apartment is part of the common charges.
2. The estimated electricity cost for the appliances also include the pool lighting and equipment.
3. The estimated electricity cost for the appliances also include the pool and Jacuzzi lighting and equipment as well as the private elevator.

GENERAL

A. Electricity Rates and Energy Cost Assumptions

Cosentini
A TETRA TECH COMPANY

1. Individual Unit Energy Assumptions

    a. Lighting and receptacle loads are calculated based on average square footage @ 3w/sq. ft.; utilization of 50% of the total connected load for approximately 4 hours per day, 365 days per year.

    b. Appliance loads include range with hood, refrigerator, oven, wine storage, dishwasher, and microwave with total load between 8.79 KW and 12 KW and per apartment. The appliance loads are calculated based on 60% demand factor, 4 hours per day, 365 days per year. Washer and dryer are calculated based on average 10 hour usage monthly.

    c. Air conditioning and heating load includes heat pump units and electric fin tube radiation with total load between 8.25 KW and 46.30 KW per apartment. The air conditioning loads are calculated based on demand factor for 1,000 hours a year and heating load for 2,500 hours (heat pump) and 350 hours (electric fin tube radiation) per year.

2. Utility Company Electricity Rates

    a. The estimated electrical cost is based on a current average flat residential utility rate available from the Con Edison Co., at current rates of approximately 22 cents per KWH. Taxes and surcharges are not included.

You have advised us of your intention to reproduce this letter in connection with the Offering Plan for the Property, and we hereby consent to such use.

Sincerely,

COSENTINI ASSOCIATES

Douglas C. Mass, P.E., LEED AP
President

X:\WP\FILES\140032.14 (172 madison ave.)\AG Reports and Estimated Utilites\Individual Electrical Cost 172 Madison ave VE 1-6-15 pb Rev 2.docx

## COMPLIANCE WITH REAL PROPERTY LAW SECTION 339-i AND OPINION OF COUNSEL

# MAXWELL - KATES, INC.

PART 20: LETTER TO ATTORNEY GENERAL
RE: REAL PROPERTY LAW SECTION 339-i(1)(iv) COMPLIANCE

October 24, 2014

New York State Department of Law
120 Broadway, 23rd Floor
New York, New York 10271

Attention: Real Estate Financing Bureau

Re: Condominium Offering Plan
172 Madison Avenue, New York, New York ("Property")

Dear Sir/Madam:

Madison 33 Owner LLC ("Sponsor") of the Condominium Offering Plan ("Offering Plan") for the Property retained Maxwell-Kates, Inc. ("Firm") to review the percentage of Common Interest in the Common Elements allocated to each Unit in the Property set forth in Schedule A of the Offering Plan.

The Firm is licensed as a real estate brokerage firm in the State of New York. The principals of the Firm have been engaged in the real estate and brokerage business for over thirty five (35) years and have been actively associated with sale and management of condominium and cooperative buildings.

The Firm has been advised by Sponsor that the Common Interest of each Unit has been determined in accordance with Real Property Law Section 339-i(1)(iv) based upon 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 in accordance with subsection (iv).

In the Firm's opinion, within the framework of Real Property Law Section 339-i(1)(iv), this method of determining Common Interest is reasonable and equitable.

The Firm certifies that it is not owned or controlled by Sponsor and that it has no financial interest in the offering other than its fee for services rendered in connection with the preparation of this letter (and acting as Managing Agent under the Offering Plan). The Firm understands that a copy of this letter is intended to be incorporated into the Offering Plan.

All capitalized terms not defined in this letter shall have the meaning ascribed to them in the Offering Plan.

Very truly yours,

Maxwell-Kates, Inc.

By: Robert Friedman
Name:
Title: President

9 East 38th Street, 6th Floor, New York, NY 10016
Tel: 212.684.8282 Fax: 212.684.8077 www.maxwellkatesinc.com

GERSTEIN STRAUSS & RINALDI LLP
ATTORNEYS AT LAW
57 WEST 38th STREET, 9th FLOOR, NEW YORK, NEW YORK 10018
TELEPHONE (212) 398-7900 • FACSIMILE (212) 575-2387

March 10, 2015

Madison 33 Owner LLC
461 Park Avenue South, Suite 200
New York, New York 10016

Re: 172 Madison Avenue Condominium ("Condominium")

Gentlemen:

You have requested our opinion regarding the allocation of Common Interests to the Units at the Condominium as required by NYCRR Section 20.3(y)(5). Except where otherwise indicated, the terms used in this opinion shall have the same meaning as set forth in the Offering Plan ("Plan") for the Condominium.

In connection with rendering this opinion we have reviewed the allocation of Common Interests as shown on Schedule A of the Plan and the Declaration establishing the Condominium. We have also considered the relevant sections of the New York State Condominium Act and such other materials as we deemed relevant. Our opinion is based upon the factual determinations made by Maxwell-Kates, Inc. as set forth in its opinion contained in the Plan as required by NYCRR Section 20.3(i). We have made no independent investigation of the truth or accuracy of the factual determinations of Maxwell-Kates, Inc.

Based upon our review of the foregoing, we have determined that Common Interests were allocated pursuant to the method set forth in Real Property Law ("RPL") Section 339-i(1)(iv) i.e., based upon 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.

Accordingly, based on the foregoing it is our opinion that RPL Section 339-i has been complied with in assigning Common Interests to the Units. This opinion, while based upon existing rules of law applied to the facts and documents referred to above, is not a guarantee to Purchasers. In no event will the Sponsor, Gerstein Strauss & Rinaldi LLP, the Selling Agent, the Managing Agent or the Condominium Board be liable if there are changes in the facts on which we have relied in issuing this opinion or if there are changes in RPL Section 339 or other applicable law.

The opinion expressed herein is based solely on New York law.

Very truly yours,

GERSTEIN STRAUSS & RINALDI LLP

Gerstein Strauss & Rinaldi

## CHANGES IN PRICES AND UNITS

Purchase prices for the Units offered hereby are negotiable and Sponsor reserves the right, at any time and from time to time before and after the recording of the Declaration, without giving prior notice (except as otherwise provided herein) and without the consent of the Condominium Board, any Unit Owner or mortgagee, to change the price, including, without limitation, the manner of payment thereof and other terms of sale of any Unit, except that no such change with respect to any Unit for which a Purchase Agreement is then in effect may be made without the consent of the Purchaser. No such change will be made other than pursuant to a duly filed amendment to the Plan filed in advance of any such change, except that Sponsor reserves the right to decrease purchase prices of individually negotiated transactions or modify other terms of sale without filing an amendment to the Plan at any time during the offering period so long as the decrease in the purchase price or modification of such other terms of sale does not constitute an across the board change affecting one or more lines of Units or is to be advertised. If any change in purchase price is made, a Purchaser of a Unit affected thereby may pay more or less than other Purchasers under the Plan for similar Units, but this will not affect any prior or subsequent sale of Units which are not the subject of such change.

Sponsor reserves the right to negotiate with each Purchaser the terms and conditions of the Purchase Agreement. Among other negotiable terms are: purchase price; the amount of the Deposit; the availability of financing contingencies; the payment of Purchaser's financing fees and other closing costs; the availability of Common Charge rebates, purchase price rebates and subsidies payable as a credit against the purchase price or on a periodic basis; extensions of time periods within which to perform obligations under the Purchase Agreement; outside closing dates; the availability of use and occupancy agreements and the amount of interim rent thereunder and the application of interim rent toward the purchase price. Sponsor reserves the right, from time to time, to add and/or delete negotiable terms from the list set forth above, for all or some of the Purchasers, by a duly filed amendment to the Plan. No Purchaser will benefit from any terms and conditions negotiated with any other Purchaser, and a Purchaser's failure to so benefit will not give rise to any right of rescission under a Purchase Agreement.

The location in the Building, size and, layout of the Units are shown on the Floor Plans set forth in Part II of the Plan. In order to meet the possible varying demand for number and type of Units, or to meet particular requirements of prospective Purchasers, or for any other reason, Sponsor reserves the right (except to the extent prohibited by Law) at any time and from time to time, before and after the recording of the Declaration, without giving prior notice and without the consent of the Condominium Board, any Unit Owner or mortgagee, to (a) change the size, layout and square footage of, or number of rooms in, any Unsold Unit, (b) change the size and/or number of Unsold Units by dividing one or more such Units into two or more separate Unsold Units, combining separate Unsold Units (including those resulting from such subdivision or otherwise) into one or more Unsold Units, altering any boundary walls between one or more Unsold Units, or otherwise, including incorporating Common Elements (such as a portion of a hallway) which exclusively benefit an Unsold Unit into such Unsold Unit, and (c) if appropriate, reapportion among the Unsold Units affected by any such change, their aggregate Common Interests. In the event of any change pursuant to either (b) or (c) above, such change shall be disclosed in a duly filed amendment to the Plan. No such change, including any change in the Common Interest or in the amount or quality of Common Elements directly affecting or servicing a Unit, will be made with respect to such Unsold Unit for which a Purchase Agreement is then in effect and which decreases the useable square foot area (excluding interior partitions) by more than 5%, or materially changes the layout of such Unsold Unit, unless the Purchaser consents to such changes. There is a rebuttable presumption that an area that is diminished by five (5%) percent or less is not material. Provided Purchaser's consent is not required, a Purchaser will not be excused from purchasing his Unit and will not have any claim against Sponsor as a result of any such change and no such change will affect a Purchaser's obligations under the Purchase Agreement or the Plan. If Purchaser's consent is required as a result of such change and Purchaser refuses

to consent, then in such event, Sponsor's sole obligation shall be to refund to Purchaser the Deposit made under the Purchase Agreement and any interest earned thereon.

Sponsor will have no liability to any Purchaser, nor will any Purchaser be entitled to a credit, offset or reduction in the purchase price for this Unit or otherwise be relieved from any obligations under the Purchase Agreement, by virtue of a minor inaccuracy or error in the Floor Plans.

Once the Declaration is recorded, no change may be made in the number of Units or number of rooms within a Unit, nor may the size of any Unit be changed by subdivision or combination or alteration of boundary walls as aforesaid or otherwise, nor may the Common Interest and Residential Common Interest of any Unit be changed, unless, in each such event, the Declaration and Floor Plans and the Plan are amended with the consent of each Unit Owner whose Unit is directly affected by such change. In the case of a material and adverse change in the size or quality of the Common Elements, no such change shall be made without the consent of every Unit Owner. Sponsor will have the right to amend or to cause the Condominium Board to amend the Declaration to reflect any such material and adverse change and to file such amendment and any necessary plans and specifications in connection therewith.

The construction of the Building, including the individual Units and Common Elements, will be completed substantially in accordance with the Plans and Specifications, and all applicable Laws. However, Sponsor reserves the right to amend or modify, in any way, the 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 fixtures described in the "Description of Property," set forth in Part II of the Plan, items of substantially equal or better quality, provided, however: (i) any material change shall be set forth in an amendment to the Plan; (ii) any necessary approval of any governmental authority having jurisdiction is first obtained; and (iii) no such amendments, modifications or substitutions may be made if the same would materially and adversely affect any binding Purchase Agreement unless the same is dictated by construction conditions at the Property, and in such event, Sponsor will, in the amendment disclosing such change and delivered to the Purchaser(s), offer the affected Purchaser(s) the right, for at least 15 days, to rescind their Purchase Agreement(s) and receive a refund of their Deposit, together with all interest earned thereon. In addition, Sponsor reserves the right to amend the Plans and Specifications to conform with the Description of Property set forth in Part II of the Plan.

## INTERIM USE AND OCCUPANCY AGREEMENTS

Once a Purchase Agreement is signed for a vacant Unit, and for so long as such Purchase Agreement is in effect, such Unit at Sponsor's sole option may only be rented to the Purchaser thereof. Such agreement (an "Interim Use and Occupancy Agreement") will be for such use and occupancy fee, but not to exceed the maximum of such fee legally collectible, and upon such other terms as may be mutually agreed upon. The term of such Interim Use and Occupancy Agreement, if any, shall be for a period which will expire on: (i) the Closing Date on which Purchaser purchases the Unit pursuant to the Purchase Agreement; (ii) the date Purchaser seeks to rescind or terminate or rescinds or terminates the Purchase Agreement; (iii) the Cancellation Date, which is the date Sponsor terminates the Interim Use and Occupancy Agreement be reason of Purchaser's default; (iv) the date Sponsor abandons the Offering Plan, or otherwise terminates this offer of Units under the Offering Plan; or (v) such other date as is agreed to by Sponsor and the occupant. In the event this Plan is abandoned, the Purchaser may, at any time at his or her sole option, cancel the Interim Use and Occupancy Agreement, if any, and remove from the Building upon thirty (30) days prior written notice to the Sponsor. In the event of an abandonment, the Purchaser who has entered into an Interim Use and Occupancy Agreement shall continue to be subject to whatever rental laws he or she was subject to prior to such abandonment, if any. Should Purchaser rescind his or her Purchase Agreement pursuant to any permitted rescission, the Interim Use and Occupancy Agreement shall terminate thirty (30) days thereafter and Purchaser shall be obligated to vacate the Unit no later than that time. (See sample Interim Use and Occupancy Agreement in Part II of this Offering Plan).

An Interim Use and Occupancy Agreement will provide that an uncured default by the Purchaser under the Purchase Agreement will constitute a default under the Interim Use and Occupancy Agreement, entitling the landlord (i.e., Sponsor), at its sole option, to terminate the Interim Use and Occupancy Agreement. The Purchase Agreement shall also contain a similar cross-default provision entitling Sponsor to cancel the Purchase Agreement in the event that the Purchaser fails to cure a default under the Interim Use and Occupancy Agreement within any applicable grace period. However, before the Sponsor may utilize a default under the Interim Use and Occupancy Agreement to declare a default under the Purchase Agreement, the Sponsor must (i) obtain an order of eviction or other judgment or order from a court or agency of competent jurisdiction against the interim occupant or (ii) the interim occupant must have vacated the Unit. The interim occupant must vacate the Unit within five (5) days after any default under the Purchase Agreement which remains uncured after five (5) days. No portion of the rental paid under an Interim Use and Occupancy Agreement will be credited toward the Unit's purchase price.

Sponsor's right and its designee's right to rent or lease any Unsold Unit will not be subject to any right of first refusal in favor of the Condominium Board to lease such Unit from Sponsor or its designee on the same terms offered to the prospective tenant or occupant.

A copy of the form of Interim Use and Occupancy Agreement is contained in Part II of the Plan.

## PROCEDURE TO PURCHASE

A prospective Purchaser desiring to purchase a Residential Unit will be required to execute a Purchase Agreement, which will be in the form set forth in Part II of the Plan. The relevant escrow and trust fund provisions (see the following Section of the Plan) are included in a rider to the Purchase Agreement, which must also be executed by the Escrow Agent. The purchase agreement to be used for the purchase of the Commercial Units will be a form of agreement typically used for such a type of commercial transaction. At the Closing of Title, the Purchaser will also be required to sign a power of attorney to the Condominium Board prepared by Sponsor and in the form set forth in Part II of the Plan. See Unit Owner Power of Attorney in Part II.

A prospective Purchaser may obtain the Plan upon payment of a $250 deposit, which amount will be fully refunded upon either (i) the prompt return of the Plan in good condition, or (ii) the execution by the prospective Purchaser of a Purchase Agreement subsequently accepted by Sponsor. Prospective Purchasers shall be afforded no less than three (3) business days to review the Plan and all amendments thereto prior to executing a Purchase Agreement. If a Purchaser has not been afforded at least three (3) business days prior to executing a Purchase Agreement, such Purchaser shall have seven (7) days after delivering an executed Purchase Agreement together with the Deposit to rescind the Purchase Agreement and have the Deposit refunded promptly. If Purchaser elects to rescind the Purchase Agreement within such seven (7) day period, Purchaser must either personally deliver a written notice of rescission to the Sponsor or Selling Agent within the seven (7) day period or mail the notice of rescission to the Sponsor or Selling Agent and have the mailing postmarked within the seven (7) day period.

The Purchase Agreement sets forth in detail the terms of sale with respect to each Residential Unit and should be read carefully by each prospective Purchaser. Prospective Purchasers should be aware that if any conflict exists between the Plan and the Purchase Agreement, the provisions of the Plan shall in all events control, except with respect to express modifications to the terms of the Plan included in the Purchase Agreements and agreed to between Sponsor and Purchaser, in which case such modifications will govern.

Although a Purchaser may obtain financing from a lending institution or any other source, Purchaser's obligation to purchase a Unit pursuant to the Purchase Agreement shall not be contingent on Purchaser obtaining financing for such purchase. Accordingly, the terms and provisions of the Purchase Agreement and Purchaser's obligations under the Purchase Agreement are not contingent upon Purchaser securing financing of the Purchase Price (or any portion thereof). Purchaser's failure to obtain such financing will not relieve Purchaser of Purchaser's obligations under the Purchase Agreement. If Purchaser chooses to finance Purchaser's purchase of the Unit through a lending institution or any other source and obtains a commitment for financing, neither a subsequent change in the terms of such commitment, the expiration or other termination of such commitment, nor any change in Purchaser's financial status or condition shall release or relieve Purchaser of Purchaser's obligations pursuant to the Purchase Agreement, as the terms and conditions of the Purchase Agreement and Purchaser's obligations under the Purchase Agreement are not contingent upon Purchaser receiving a commitment for financing of the Purchase Price (or any portion thereof) or maintaining any such commitment for such financing. Neither Sponsor nor Selling Agent makes any representations as to the terms or availability of any mortgage financing.

Purchasers should note that in the current real estate market, banks and other lenders may impose various restrictions on loans. Such restrictions include requiring that a certain percentage (such as 75% or more) of the units in a building be sold or under contract to be sold before the lender will consider making a loan. Thus it may be possible for a purchaser to experience difficulty obtaining a loan for a Unit if the percentage of Units sold is lower than a lender's particular sales minimum. 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 a Unit if prospective buyers are unable to obtain a loan due to such minimum sales requirements or investor ownership restrictions.

Purchase Agreements will not be binding on Sponsor until approved and executed by it, and delivered by Sponsor to the prospective Purchaser. Sponsor will have 15 days after delivery by Purchaser of an executed Purchase Agreement and the Deposit required thereby, within which to accept or reject such Purchase Agreement. Sponsor reserves the right to request thorough identification and financial information (including credit reports) concerning any prospective Purchaser, subject to any limitations and requirements imposed by Law.

If a Purchase Agreement is not accepted by Sponsor within the aforesaid 15 day period, the Purchase Agreement shall be deemed to have been rejected and cancelled and the Deposit shall be returned to Purchaser within 15 days thereafter. Sponsor hereby reserves the right at any time and from time to time for any reason whatsoever, to refuse to approve and execute (a) a Purchase Agreement for any Unit, except as prohibited by Law, and (b) a Purchase Agreement(s) for more than one Unit to any one person or entity.

The Purchase Agreement shall not contain, and shall in no event be modified to contain, a provision waiving the Purchaser's rights or abrogating Sponsor's obligations under the Plan or under Article 23-A of the General Business Law of the State of New York.

At the time of execution of a Purchase Agreement, a Purchaser will be required to make an initial deposit in an amount equal to ten (10%) percent of the purchase price (the "Initial Deposit"), with an additional ten percent (10%) of the purchase price due and payable no later than fifteen (15) days after the Presentation Date of the amendment declaring the Plan effective (the "Additional Deposit"), but in any event, no later than the Closing Date. The Initial Deposit and the Additional Deposit are hereinafter collectively referred to as the "Deposit". Any Purchaser, however, who executes a Purchase Agreement after the Presentation Date of the amendment declaring the Plan effective will be required to make a single deposit equal to twenty (20%) percent of the Purchase Price, at the time the Purchase Agreement is executed, in which case such deposit will also be referred to as the "Deposit". Each Deposit shall be by an official bank check or unendorsed certified check or check drawn on or issued by a United States Bank or trust company which is a member of the Federal Reserve System. The Deposit must be made payable to the direct order of "GERSTEIN STRAUSS & RINALDI LLP, ESCROW AGENT". All checks delivered in payment of the Deposit shall be accepted by Sponsor subject to collection, and if any such check is returned for insufficient funds or any other reason, Sponsor shall have the right, among other things, to deem such Purchase Agreement to be cancelled and of no further force or effect.

Any Deposit made pursuant to a Purchase Agreement is subject to the requirements of Section 71-a(3) of the State of New York Lien Law and 352-e(2)(b) and 352-h of the General Business Law of the State of New York. Pursuant to these Laws, Sponsor will cause all Deposits received by it directly or by its agents or employees (including any additional deposit made for furniture, upgrades, extra or custom work, which funds are not used to pay for such furniture, upgrades, extra or custom work) to be deposited and held in accordance with the procedures set forth in the following Section of the Plan entitled "Escrow and Trust Fund Requirements". Purchasers should note that if funds for furniture, upgrades, or extra or custom work are placed in the Master Escrow Account, they may be released from the Master Escrow Account by Escrow Agent to Sponsor provided that Sponsor uses the funds for the payment of such furniture, upgrades, or extra or custom work.

Each prospective purchaser should note that Sponsor is only obligated to provide the equipment, fixtures, and furnishings described in the "Description of Property and Building Condition" set forth in Part II of this Plan. If a person desiring to purchase a Residential Unit requests that Sponsor perform

upgrades or extra or custom work on such Residential Unit, or to provide extra furnishings, including, but not limited to, any deviation from the materials or specifications described in the "Description of Property and Building Condition", and Sponsor agrees to perform upgrades or extra or custom work. and/or to provide extra furnishings, then a description of the upgrades, extra or custom work, or extra furnishings shall be inserted as an addition to the Purchase Agreement; and Sponsor may require such person to pay for said upgrades, extra or custom work, or extra furnishings. However, Sponsor shall be under no obligation whatsoever to agree to perform any upgrades or extra or custom work, or to provide extra furnishings for a Purchaser, nor shall Sponsor have any obligation to allow a Purchaser or its agents to provide any upgrades, extras or custom work, or to install extra furnishings prior to Closing. Any and all upgrades or extra or custom work that a Purchaser desires to be installed with regard to a Residential Unit shall be done only upon Sponsor's written consent thereto, and Sponsor's approval of all contractors and suppliers in connection therewith, which consent and approval are within the sole discretion of Sponsor. In no event shall the presence of any furniture, furnishings, equipment or decorations in any model apartment or Common Element or in any advertisements with respect thereto, imply or represent that any Residential Unit will contain such furniture, furnishings, equipment or decorations upon delivery of the Residential Unit to Purchaser unless Purchaser agrees to pay Sponsor an amount determined by Sponsor in addition to the purchase price for such Residential Unit.

The balance of the purchase price shall be payable simultaneously with the delivery of the deed to the Unit by wire transfer, official bank check or unendorsed certified check drawn on or issued by a New York bank or trust company which is a member of The New York Clearinghouse Association and shall be payable to the direct order of Sponsor, or otherwise if Sponsor should so notify Purchaser. The deed will be substantially in the form set forth in Part II of the Plan. Interest, if any, on Purchaser's Deposit will be credited or paid to Purchaser at Closing.

TIME IS OF THE ESSENCE AS TO PURCHASER'S OBLIGATIONS PURSUANT TO THE PURCHASE AGREEMENT, INCLUDING, WITHOUT LIMITATION, FOR THE PAYMENT OF ALL DEPOSITS AND THE BALANCE OF THE PURCHASE PRICE. FUNDS DRAWN ON FOREIGN BANKS WILL NOT BE ACCEPTED IN PAYMENT OF THE PURCHASE PRICE.

After the Plan is declared effective, Purchaser will receive at least 30 days' prior notice of the Closing Date ("Scheduled Closing Date"). If Purchaser fails to close title to its Unit on the Scheduled Closing Date or otherwise fails to perform any other obligations under its Purchase Agreement, and if Purchaser does not cure such default within 30 days after Sponsor gives written notice to Purchaser of the default, with time being of the essence, Sponsor may, at its option, either (a) cancel the Purchase Agreement and retain the Deposit together with any interest earned thereon, as liquidated damages, in which event all rights, obligations and liabilities of Sponsor and Purchaser shall wholly cease and terminate or (b) bring an action against Purchaser for specific performance. In addition, Sponsor shall also be entitled to retain any amount paid by Purchaser to Sponsor for special work requested by Purchaser.

Prior to the closing of title to a Unit, the Purchase Agreement prohibits a Purchaser from listing the Unit for resale or rental with any broker or from advertising or otherwise offering, promoting or publicizing the availability of the Unit for sale or lease, without Sponsor's prior written consent. Any listing of the Unit for sale and/or advertising by Purchaser in violation of the terms of the Plan will be deemed a material default under the Purchase Agreement, and Sponsor may, at its option, cancel the Purchase Agreement and retain, as liquidated damages, the entire Deposit made by the Purchaser, together with interest earned thereon.

Any Purchaser that is a foreign government, a resident representative of a foreign government or other person or entity otherwise entitled to the immunities from suit enjoyed by a foreign government (i.e., diplomatic or sovereign immunity) shall expressly and voluntarily waive such immunity and consent

to any suit, action or proceeding arising out of or relating to the Purchase Agreement being brought in any State or Federal suit, action or proceeding in the State of New York based on, arising out of, or connected with the Purchase Agreement. Any such Purchaser shall designate and authorize a lawful agent to receive process for and on behalf of Purchaser in any State or Federal suit, action or proceeding in the State of New York based on, arising out of, or connected with the Purchase Agreement.

If a Purchaser fails for any reason to close title to his Unit within ten (10) days of the Scheduled Closing Date, (a) the closing apportionments described in the Section of the Plan entitled "Closing Costs and Adjustments" will be made as of midnight of the day preceding the originally scheduled Closing Date, regardless of when the actual Closing occurs, and (b) Purchaser will be required to pay to Sponsor, as a reimbursement of Sponsor's higher carrying costs for the Unit by virtue of the delay, and in addition to the other payments to be made to Sponsor under the Purchase Agreement and the Plan, an amount equal to 0.03% of the purchase price of his Unit for each day starting from (and including) the originally Scheduled Closing Date to (and including) the day before the actual Closing Date. If Sponsor adjourns the closing, through no fault of Purchaser, the provisions of this paragraph shall apply to the adjourned Closing Date.

If a Purchaser has entered into Purchase Agreements to purchase more than one Unit, a default by Purchaser in the payment or performance of any obligations under any of such Purchase Agreements, beyond any applicable grace periods, shall be deemed a default under the other Purchase Agreement(s). In the event of such a default, Sponsor may, at its option, cancel each such Purchase Agreement(s) and retain, as liquidated damages, the entire Deposit made by Purchaser under each Purchase Agreement, together with any interest earned thereon, if any, under each of such Purchase Agreement(s) or bring an action against Purchaser for specific performance.

Except as noted below, Sponsor and Purchaser shall keep all of the terms and conditions of the Purchase Agreement confidential. Sponsor and Purchaser agree that any information which is required to be disclosed to the parties' respective lawyers, architects/engineers, accountants, individuals who "need to know" or governmental agencies shall not be deemed to be a breach by Sponsor or Purchaser of the parties' undertaking of confidentiality. Any failure by Purchaser to keep the terms and conditions of the Purchase Agreement confidential shall be a default by Purchaser, entitling Sponsor to the remedies set forth in Paragraph 14 of the Purchase Agreement.

If the Plan is withdrawn or abandoned, the Deposit previously paid to and actually collected by Sponsor together with any interest earned thereon, or funds for upgrades, extra or custom work or furniture shall be returned to Purchaser in accordance with the provisions herein set forth, provided that Sponsor has not incurred any costs in connection with, or performed or purchased same. In such event, Sponsor shall refund the excess of such funds over the costs incurred.

Based upon its current construction schedule, Sponsor contemplates that the construction of the Building will be sufficiently completed to permit closings of Units to begin on or about July 1, 2016. If the first Closing of a Residential Unit does not occur within 12 months after July 1, 2016 Sponsor will offer Purchasers of Residential Units the right, for 15 days, to rescind their Purchase Agreements and receive a refund of their Deposits, together with any interest earned thereon.

From and after the Closing of each Unit, Purchaser will become obligated for the payment of Common Charges, real estate taxes and assessments (including water charges and sewer rents, if separately assessed) and all other expenses with respect to his Unit, whether or not he has taken possession of his Unit, and whether or not all work required to be performed by anyone in or to his Unit has been completed.

The risk of loss to any Unit by fire or other casualty until the Closing for such Unit is assumed by Sponsor (unless and until a Purchaser takes possession of such Unit, at which time such risk for losses not

covered by insurance shall be assumed by Purchaser), but without any obligation or liability by Sponsor to repair or restore any Unit. In no event shall the Sponsor be obligated to insure Unit Specific Property. (See Section entitled "Closing of Title to Units and Terms of Sale" for more details).

## ESCROW AND TRUST FUND REQUIREMENTS

All deposits, downpayments, advances and payments, including those made for furniture, upgrades, extra or custom work, made by Purchasers prior to the closing of an Unsold Unit will be held in escrow in conformity with the disclosure contained in this section of the Plan, provided however that deposits for furniture, upgrades, extra or custom work, may be released to Sponsor prior to the Closing of such Unit in order to pay for the cost of such upgrade, extra or custom work.

### The Escrow Agent

The law firm of Gerstein Strauss & Rinaldi LLP, with an address at 57 West 38th Street, New York, New York 10018, telephone number (212) 398-7900, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated the following attorneys, acting singly, to serve as signatories: Victor R. Gerstein, Esq., Gary J. Strauss, Esq., and Lisa J. Rinaldi, Esq. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

### The Escrow Account

Escrow Agent has established a master escrow account entitled "Gerstein Strauss & Rinaldi LLP, Escrow Account" ("Master Escrow Account") at Signature Bank with a branch office at 261 Madison Avenue, New York, New York 10016 ("Escrow Bank"). The Deposit will be placed in the Master Escrow Account and the Escrow Agent shall sign the Escrowed Funds Rider within five (5) business days after tender of the Deposit and Purchase Agreement by Purchaser to Sponsor or Selling Agent. Any subsequent deposit tendered by Purchaser after the Deposit will be placed in the Master Escrow Account within ten (10) business days after tender by Purchaser to Sponsor or Selling Agent.

All Deposits will be placed initially in the non-interest bearing portion of the Master Escrow Account. Each Purchaser is required to deliver a completed and signed Form W-9 (Request for Taxpayer Identification Number), a Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)), or a Form W-8BEN-E (Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)) in the forms similar to those set forth in Part II to the Plan, to Sponsor or Selling Agent at the time Purchaser tenders the Deposit and the Purchase Agreement. If a Deposit is accompanied by a completed and signed Form W-9, Form W-8BEN, or Form W-8BEN-E, the Deposit will thereafter be promptly transferred to an individual interest bearing sub-escrow account in the name of Purchaser. If a Purchaser does not deliver the Form W-9, Form W-8BEN, or Form W-8BEN-E, the Deposit will remain in the non-interest bearing portion of the Master Escrow Account. At such time as the Deposit is released, the Deposit will be transferred from the individual sub-escrow account to the non-interest bearing portion of the Master Escrow Account so that checks may be drawn thereon.

The initial interest rate, if any, will be disclosed to each Purchaser, as appropriate, in a letter from Escrow Agent to each Purchaser sent within ten (10) business days after the Deposit has been placed in the Master Escrow Account. If Purchaser does not receive notice that the Deposit has been placed in the Master Escrow Account within 15 business days after tender of the Deposit, Purchaser may cancel the Purchase Agreement and rescind so long as the right to rescind is exercised within 90 days after tender of the Deposit and Purchase Agreement to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, New York 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's

regulations concerning Deposits and requisite notice was timely mailed to the Purchaser. Any deposits made for furniture, upgrades and extras, or custom work, shall be deposited into the Master Escrow Account and released by Escrow Agent to Sponsor, provided that Sponsor uses the funds to pay for or be reimbursed for the cost of such furniture, upgrades, custom work or extras. As a result, in the event a Purchaser is entitled to rescind the Purchase Agreement in accordance with the Plan, the Purchaser will not receive a refund of any funds used for such furniture, upgrades, custom work or extras. If the Plan is not consummated and as a result the Property is not subjected to Condominium ownership, any funds deposited in escrow for furniture, upgrades, custom work or extras will be returned to such Purchaser, provided Sponsor has not incurred any costs in connection with, or performed the furniture, upgrades, custom work or extras. Escrow Agent will not be required to send the letter to each Purchaser referred to above in connection with any subsequent deposit tendered by Purchaser after the Deposit to Sponsor or Selling Agent and deposited into the Master Escrow Account prior to the Closing.

The Escrow Bank is covered by federal bank deposit insurance to a maximum of $250,000 per individual Deposit. The following are SPECIAL RISKS of this offer: (i) if a Purchaser makes a Deposit in excess of $250,000 such Deposit will not be federally insured in excess of $250,000; (ii) while the Deposit is in the non-interest bearing portion of the Master Escrow Account, the Deposit may not be fully federally insured even if the Deposit does not exceed $250,000; and (iii) if the amount of Purchaser's other deposits at the Escrow Bank, if any, when added to the Deposit, exceeds $250,000, the amount in excess of $250,000 will not be federally insured. No representation or guaranty is made by Sponsor that the Federal Deposit Insurance Corporation will insure any depositor's funds, if and when called upon to do so.

The Deposit may be tendered by Purchaser to Sponsor or Selling Agent by either personal delivery, delivery by messenger or courier service or mailed by certified mail, return receipt requested, overnight courier or express mail service. The Deposit shall be deemed tendered by Purchaser on the date it is actually received by Sponsor or Selling Agent.

Acceptance of the Deposit by Sponsor or Selling Agent and the Deposit thereof by Escrow Agent into escrow shall not be deemed a binding agreement by Sponsor to sell to Purchaser unless and until Purchaser executes a Purchase Agreement and Sponsor or Selling Agent executes a duplicate thereof and delivers the Purchase Agreement to Purchaser in accordance with the terms of the Plan.

If a Purchaser tenders a Deposit without an executed Purchase Agreement, Sponsor shall have the right to reject the Deposit and return it to Purchaser: (i) within five (5) business days after tender, if the Deposit has not been deposited into escrow; and (ii) within ten (10) business days at any time, if the Deposit has been deposited into escrow and the Purchase Agreement has not yet been delivered by Purchaser.

The checking account portion of the Master Escrow Account will not be interest-bearing. The sub-escrow account portion of the Master Escrow Account will be interest-bearing. Deposits will not earn interest until such time as Purchaser has delivered to Escrow Agent a fully completed W-9, W-8BEN, or W-8BEN-E form. All interest will be credited to Purchaser at such time as: (i) there is a closing under the Purchase Agreement; or (ii) Purchaser is entitled to a return of the Deposit. All interest will be credited to Sponsor if Purchaser defaults. The interest rate to be earned will be the prevailing rate for these accounts, that is paid by the Escrow Bank. Interest will begin to accrue within: (i) three (3) business days, if the Deposit is cash or cash equivalent; or (ii) five (5) business days, if the Deposit is other than cash or cash equivalent, of the transfer of the Deposit from the checking account portion of the Master Escrow Account into the sub-escrow account portion of the Master Escrow Account.

All instruments shall be made payable directly to the order of "Gerstein Strauss & Rinaldi LLP, as Escrow Agent." Endorsed instruments will not be accepted.

If a check delivered by a Purchaser fails for collection, the Purchase Agreement will be deemed void ab initio (as if the Purchase Agreement had never been executed) at the option of Sponsor, who reserves the right to exercise this option in its discretion by written notice to Purchaser given within ten (10) business days of Sponsor receiving notice from Escrow Agent of such failure of collection.

The Purchase Agreement is included in Part II of the Plan. The relevant escrow trust fund provisions are included in the Escrowed Funds Rider, attached as Schedule A to the Purchase Agreement. The Escrowed Funds Rider will be executed by Sponsor, Purchaser and Escrow Agent.

**Release of Funds**

All Deposits, except for advances made for furniture, upgrades, extras, or custom work received in connection with the Purchase Agreement, are and shall continue to be the Purchaser's money, and may not be commingled with any other money or pledged or hypothecated by Sponsor, as per GBL § 352-h.

Under no circumstances shall Sponsor seek or accept release of the Deposit of a defaulting Purchaser until after consummation of the Plan, as evidenced by the acceptance of an effectiveness amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL §§ 352-e(2-b) and 352-h.

The Escrow Agent shall release the Deposit if so directed:

(a) pursuant to the terms and conditions set forth in the Purchase Agreement upon closing of title to the Unit; or

(b) in a subsequent writing signed by both Sponsor and Purchaser; or

(c) by a final, non-appealable order or judgment of a court.

If the Escrow Agent is not directed to release the Deposit pursuant to paragraphs (a) through (c) above, and the Escrow Agent receives a request by either party to release the Deposit, then the Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If the Escrow Agent has not received notice of objection to the release of the Deposit prior to the expiration of the thirty (30) day period, the Deposit shall be released and the Escrow Agent shall provide further written notice to both parties informing them of said release. If the Escrow Agent receives a written notice from either party objecting to the release of the Deposit within said thirty (30) day period, the Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraphs (a) through (c) above. Notwithstanding the foregoing, the Escrow Agent shall have the right at any time to deposit the Deposit contained in the Escrow Account with the clerk of the county where the Unit is located and shall give written notice to both parties of such deposit.

The Sponsor shall not object to the release of the Deposit to:

(a) a Purchaser who timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan; or

(b) all Purchasers after an Amendment abandoning the Plan is accepted for filing by the Department of Law.

The Department of Law may perform random reviews and audits of any records involving the Escrow Account to determine compliance with all applicable statutes and regulations.

**Waiver Void**

Any provision of any Purchase Agreement or separate agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the Escrow Agent holding any Deposit in trust is absolutely void. The provisions of the Attorney General's regulations and GBL §§ 352-e(2-b) and 352-h. concerning escrow trust funds shall prevail over any conflicting or inconsistent provisions in the Purchase Agreement, Plan, or any amendment thereto.

**Miscellaneous Provisions**

Escrow Agent shall be permitted to act as counsel to Sponsor in any dispute as to the disbursement of the Deposit or any other dispute between Sponsor and a Purchaser whether or not Escrow Agent is in possession of the Deposit and continues to act as Escrow Agent.

Escrow Agent is acting merely as a stakeholder. Upon payment of the Deposit pursuant to the Plan, Escrow Agent shall be fully released from all liability and obligation with respect to the Deposit. Escrow Agent shall accept a Deposit made by check, subject to collection.

Sponsor has agreed to indemnify Escrow Agent from all costs, claims, expenses and damages incurred in connection with or arising out of the escrow agreement or the performance or non-performance of Escrow Agent's duties under the escrow agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of the escrow agreement or involving gross negligence of Escrow Agent.

Sponsor has agreed to compensate Escrow Agent for services rendered in connection with Escrow Agent's duties under the escrow agreement. Escrow Agent's fees and disbursements will neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

In the alternative to placing the Deposit in Escrow, Sponsor may apply to the Department of Law to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds. If Sponsor's application to use alternative security is approved by the Department of Law, Sponsor shall file an amendment to the Plan, which amendment will (i) include the terms of such alternative security, (ii) annex a form for the written consent of each affected Purchaser to withdraw the funds from escrow and (iii) provide for the continuation of escrow of funds of any Purchaser who does not execute and deliver such written consent to Sponsor.

Escrow Agent shall make available to the Attorney General, upon request, all books and records of Escrow Agent relating to the escrow funds.

Escrow Agent will maintain all records concerning the Master Escrow Account for seven (7) years after the release of funds.

## ASSIGNMENT OF PURCHASE AGREEMENTS

Purchaser does not have the right to assign the Purchase Agreement without the prior written consent of Sponsor, which consent may be unreasonably withheld or delayed. Any purported assignment by Purchaser in violation of this Section will be voidable at the option of Sponsor. Sponsor's refusal to consent to an assignment will not entitle Purchaser to cancel the Purchase Agreement or give rise to any claim for damages against Sponsor. Under no circumstances will Sponsor consent to an assignment of a Purchase Agreement in which Purchaser will receive consideration. Any purported assignment by Purchaser in violation of this Section shall be a default by Purchaser, entitling Sponsor to the remedies set forth in the Section entitled "Procedure to Purchase", and shall be voidable at the option of Sponsor.

Notwithstanding anything to the contrary contained above, if Purchaser has signed the Purchase Agreement in an individual name (and not in the name of an entity), and provided that Purchaser has obtained consent from its Lender, if any, then Purchaser shall have a one-time right to assign Purchaser's rights under the Purchase Agreement, in whole, but not in part, to an entity "controlled" (as such term is defined below) by Purchaser (the entity to which the rights are assignable may be a trust, limited liability company or a corporation) or to member(s) of Purchaser's immediate family, provided that (i) Purchaser designates such assignee at least five (5) business days prior to the Closing Date; (ii) the Closing will not be delayed as a result of such assignment, (iii) the assignee of the Purchase Agreement assumes in writing, by an instrument prepared by Sponsor's counsel, the obligations of Purchaser under the Purchase Agreement, and (iv) the assignment is made without consideration. As used in this paragraph, the term "control" shall mean the control, either directly or indirectly, of at least 51% percent of the voting shares or equity interests of such assignee, together with the authority to direct and manage the affairs of such assignee, which shall include Purchaser being the managing general partner of such partnership or the principal manager or managing member of such limited liability company. Any obligations of Purchaser may be performed by such assignee, and Sponsor agrees to accept such performance as if it were the performance of Purchaser. No such assignment shall modify Purchaser's obligations under the Purchase Agreement, including without limitation, Purchaser's indemnity obligations contained in the Purchase Agreement, reduce or limit any liability or obligation of Purchaser who shall remain primarily liable notwithstanding any liability assumed by assignee. Unless Purchaser complies with the provisions of this paragraph, any purported assignment by Purchaser shall be null and void and of no effect as against Sponsor.

No Advertising

Prior to the Closing of Title to a Unit, a Purchaser shall not list such Unit for resale or rental with any broker or advertise or otherwise offer, promote or publicize the availability of the Unit for sale or lease, without Sponsor's prior written consent. Any listing of the Unit or form of advertising, promotion or publicizing of the Unit by Purchaser prior to the Closing of Title of such Unit shall be a default by Purchaser, entitling Sponsor to the remedies set forth in the Section entitled "Procedure to Purchase".

## EFFECTIVE DATE

The offering by Sponsor under the Plan is contingent upon the Plan being declared effective and the First Closing shall not occur until the Plan has been declared effective. The Plan may be declared effective, at Sponsor's option, at any time when bona fide Purchasers, including investors, have executed Purchase Agreements with respect to no less than 15% of all Residential Units, i.e., 11 Units. The Plan must be declared effective at such time as Purchase Agreements have been executed and are in effect with respect to 80% of all Units being offered, i.e., 55 Units. The Plan will be declared effective by either (i) a duly filed amendment with a copy of such amendment thereafter being delivered to all Purchasers, or (ii) personal service of notice on every Purchaser or by commencement of service by mail in the manner required by the Regulations stating that the Plan is declared effective, and then submitting an amendment to the Department of Law within five (5) days confirming that the Plan was declared effective on a specified date. Sponsor will submit to the Department of Law, if requested to do so, copies of all Purchase Agreements (and any amendments or modifications thereto) within five (5) business days after such request is made. The First Closing shall not occur until the Plan is declared effective and the amendment disclosing that the Plan was declared effective is accepted for filing by the Department of Law. The Plan may be declared effective based on Purchase Agreements for Residential Units and Commercial Units, and the First Closing can be of a Commercial or Residential Unit. If the first Closing of a Residential Unit does not occur within twelve (12) months after July 1, 2016, Sponsor will offer Purchasers of Residential Units the right, for 15 days, to rescind their Purchase Agreements and receive a refund of their Deposits, together with any interest earned thereon.

The Plan will not be declared effective based on Purchase Agreements: (i) signed by Purchasers who have been granted a right of rescission that has not yet expired or been waived; or (ii) signed by Purchasers who have not been afforded at least three (3) business days to review the Plan and all filed amendments prior to executing a Purchase Agreement or at least seven (7) days to rescind after executing and delivering a Purchase Agreement, together with the required Deposit; or (iii) signed by any Purchaser who is Sponsor, the Selling Agent, the Managing Agent or a principal of either, or is related by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner of Sponsor, the Selling Agent, the Managing Agent or a principal of either, except that such a Purchaser (other than Sponsor or a principal of Sponsor) may be counted only if Sponsor has submitted proof satisfactory to the Department of Law establishing that the Purchaser is bona fide.

The Plan may be withdrawn or abandoned by Sponsor for any reason whatsoever at any time prior to its being declared effective, in which event Purchasers will be notified by Sponsor in writing, by registered or certified mail.

Once the Plan has been declared effective, it may not thereafter be abandoned or withdrawn, except that, prior to the First Closing, the Plan may, at the option of Sponsor, be abandoned in the event of: (1) the existence of one or more title defects (including violations of record or work orders of a mortgagee or insurance carrier) affecting any one or more Units or the Property that cannot be removed, cured or complied with prior to the date set for the First Closing without litigation or for less than one-half of one percent (0.50%) of the total offering amount in the aggregate, and which are not waived by the Purchasers thereof; (2) a substantial damage to or destruction of any of the Building (or any portion thereof) by fire or other casualty that cannot be repaired prior to the date set for the First Closing for less than one-half of one percent (0.50%) of the total offering amount in the aggregate; or (3) a taking of a material portion of the Property in condemnation proceedings or by eminent domain. The dollar amount to be used as the basis for abandonment of the Plan under (1) or (2) above is $1,419,025.00 or more, which is at least one-half of one percent (0.50%) of the total offering amount. Excluded from the dollar amounts set forth in (1) and (2) above are attorneys' fees and title defects or determinations of any authority or regulatory association which exist on the Filing Date of the Plan and are either known to Sponsor or are a matter of public record.

If the Plan is withdrawn or abandoned, all Deposits, together with any interest earned thereon, including funds for furniture, upgrades, extra or custom work, will be returned to Purchasers within five (5) business days after an amendment abandoning, or withdrawing from, the Plan has been accepted for filing, provided that Sponsor has not incurred any costs in connection with or performed same. In such event, Sponsor shall refund the excess of such funds over the costs incurred. Upon the return of the Deposits, together with any interest earned thereon, the Purchase Agreement will be null and void and Sponsor will have no further obligation or liability to Purchaser under the Plan or the Purchase Agreement. Sponsor shall promptly submit an amendment to the Department of Law confirming such abandonment or withdrawal and shall file a notice of abandonment on form RS-3 or such other form as the Department of Law may require and explain the reason for the abandonment and disposition of all Deposits received, and any interest earned thereon.

## CLOSING OF TITLE TO UNITS AND TERMS OF SALE

The Closing of Title to each Unit shall be held at the offices of Sponsor's attorneys, Gerstein Strauss & Rinaldi LLP, 57 West 38th Street, New York, New York or at such other place as Sponsor may designate. The Closing to each Unit shall take place only after or concurrently with the following events:

(a) the Plan has been declared effective in accordance with its terms and the amendment to the Plan disclosing same has been accepted for filing by the Department of Law;

(b) a temporary or final certificate of occupancy for the Residential Unit is in effect;

(c) the recording or filing of the Declaration, By-Laws, Floor Plans and engineer's and tax authority certifications required by Section 339-p of the New York Condominium Act or other applicable Law and such other documents as may be required by Law;

(d) the release of the Unit and its Common Interest from the lien of all mortgages, if any, encumbering the Unit;

(e) for Purchase Agreements executed before the First Closing, the delivery to Purchaser of written notice of the time and place of the Closing to his Unit at least 30 days prior to the Scheduled Closing Date specified therein, including a reasonable opportunity, upon written request of Purchaser, for Purchaser to examine his Unit and the Property, during normal business hours and in the company of Sponsor's agent, prior to Closing;

(f) the delivery to Purchaser of a bargain and sale deed with covenant against grantor's acts, in proper form for recording and containing the provisions set forth in subdivision 5 of Section 13 of the Lien Law upon delivery to Sponsor of the balance of the purchase price and such other checks and documents required pursuant to the Plan and the Purchase Agreement.

(g) the execution and delivery by Purchaser of the Unit Owner's Power of Attorney, the form of which is set forth in Part II of the Plan;

(h) if Purchaser has requested title insurance, the issuance to Purchaser (at Purchaser's sole expense) of a policy of title insurance in at least the amount of the purchase price of the Unit, insuring that (i) Purchaser has fee title to his Unit free and clear of all liens and encumbrances except for (1) Permitted Encumbrances and standard printed exceptions, (2) liens and encumbrances (other than Permitted Encumbrances) to which his Unit's title is subject, which have been expressly accepted by Purchaser (see Schedule B to the Purchase Agreement and Schedule B to the Unit Owner's Specimen Title Policy), and (3) any mortgage and related security documents that Purchaser executes in connection with the financing of the purchase price of his Unit and (ii) the Condominium has been validly created pursuant to the Condominium Act; and

Before the closing of the sale of a Storage Bin License, at least a temporary certificate of occupancy will be in place for the areas of the Building in which the Storage Bins are located.

Once the First Unit Closing has occurred, the requirement of providing a Purchaser with thirty (30) days written notice of Purchaser's Closing Date, as set forth in paragraph (e) above, will not be applicable for any Unit for which a temporary or final certificate of occupancy is in effect at the time a

Purchase Agreement for such Unit is fully executed, as the Purchase Agreement for such Unit will indicate an actual Closing date for such Unit.

The Property is currently encumbered by a $141,900,000.00 mortgage held by Deutsche Bank Trust Company America, as agent for German American Capital Corporation and other lenders and UCC-1 Financing Statements in connection therewith. Prior to the Closing of Title for each Unit, Sponsor will cause such Unit and its Common Interest, benefits, rights and easements as described in the Declaration and By-Laws to be released from the lien of any mortgages or security agreements and UCC-1s encumbering the Unit, other than any mortgage or security agreement UCC-1 obtained by the Purchaser. There are no ground leases that will affect the Property after Closing.

Title exceptions of record that will affect the Property after Closing and which are included in Permitted Encumbrances are as follows:

1. Setback, building and nuisance covenants and restrictions in Liber 536 Page 351 and repeated in Liber 664 Page 561, Liber 693 Page 204, Liber 1448 Page 469 and Liber 1459 Page 336.

2. Easement in Reel 1122 Page 146.

3. Certification in CRFN 2009000017394.

4. For Information Only: Zoning Lot Certification in CRFN 2007000310706.

5. For Information Only: Zoning Lot Description in CRFN 2007000311056.

6. Window Agreement in Reel 901 Page 1901 (Affects Lot 17 Only).

7. Steam Agreement in Reel 1844 Page 1219 (Affects Lot 17 Only).

8. Ingress and Egress Easement in Liber 5301 Page 198 (Affects Lots 17 and 21).

9. For Information Only: Zoning Lot Description in CRN 2014000158726 and in CRFN 2014000201478.

10. Notice of Certification in CRFN 2014000259638.

11. Survey of all three lots described in Schedule A made by True North Surveyors P.C. dated 6/21/2013 and last revised 10/25/2013 show premises to be vacant land. That survey also shows minor variations between buildings on adjacent parcels and record lines and variations between top parapet on building on premises to the West and Westerly line.

Other Permitted Encumbrances are:

1. Building restrictions and zoning and other regulations, resolutions, ordinances, certifications and any amendments thereto now or hereafter adopted.

2. Any state of facts which an accurate survey or personal inspection of the Property would show, provided that any encroachments by the Unit upon adjoining Condominium Units or upon the Common Elements, may remain undisturbed as long as they may stand and such state of facts would not prevent the use of the Unit for dwelling purposes.

3. The terms, burdens, covenants, restrictions, conditions, easements and rules and regulations, all as set forth in the Declaration, the By-Laws (and the Rules and Regulations made thereunder), the Power of Attorney from the Purchaser to the Condominium Board, and the Floor Plans as all of the same may be amended from time to time.

4. Consents by the Sponsor or any former owner of the Land for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.

5. Any easement or right of use in favor of any utility company for construction, use, maintenance or repair of utility lines, wires, terminal boxes, mains, pipes, cables, conduits, poles and other equipment and facilities on, under and across the Property.

6. Variation in measurements between tax map lines and record description.

7. Revocability of licenses for vault space, if any, under the sidewalks and streets.

8. Any easement or right of use required by Sponsor or its designee to obtain a temporary, final or amended Certificate of Occupancy for the Building or any part of same.

9. Encroachments of stoops, areas, cellar steps or doors, trim, copings, retaining walls, bay windows, balconies, sidewalk elevators, fences, fire escapes, cornices, foundations, footings and similar projections, if any, on, over, or under the Property or the streets or sidewalks abutting the Property, and the rights of governmental authorities to require the removal of any such projections and variations.

10. Service, maintenance, employment, concessionaire and license agreements, if any, of other Units or portions of the Common Elements.

11. The lien of any unpaid Common Charges, real estate tax, water charge or sewer rent, or vault charge, provided the same are adjusted at the closing of title.

12. The lien of any unpaid assessment payable in installments (other than assessments levied by the Condominium Board), except that the Sponsor shall pay all such assessments due prior to the Closing Date (with the then current installment to be apportioned as of the Closing Date) and the Purchaser shall pay all assessments due from and after the Closing Date.

13. Any 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 Building, 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.

14. Any encumbrance as to which the Title Company (or such New York Board of Title Underwriters member title insurance company which insures the Purchaser's title to the Unit), would be willing, in a fee policy issued by it to the Purchaser, to insure the Purchaser that such encumbrance (a) will not be collected out of the Unit if it is a lien or (b) will not be enforced against the Unit if it is not a lien.

15. Any other encumbrance, covenant, easement, agreement, or restriction against the Property other than a mortgage or other lien for the payment of money, which does not prevent the use of the Unit for dwelling purposes.

16. Any lease covering the Unit(s) made from the Sponsor to the Purchaser.

17. Any violation against the Property (other than the Unit) which is the obligation of the Condominium Board, or another Unit Owner to correct.

18. Standard printed exceptions contained in the form of fee title insurance policy then issued by the Title Company.

19. Any certificate of occupancy for the Building, so long as the same permits, or does not prohibit, use of the Unit for its stated purposes.

See Schedule B to the Unit Owner's Specimen Title Policy and Schedule B ("Permitted Encumbrances") to the Purchase Agreement in Part II of this Plan.

All personal property, including but not limited to the appliances, equipment or fixtures installed in the Unit shall be included in the conveyance of the Unit, unless specifically excepted in the Plan and all appliances, equipment or fixtures installed in the Common Elements on the date of the Declaration shall be assigned to the Condominium Board at the First Closing.

Sponsor is obligated to deliver insurable title as described in the Purchase Agreement, subject however to Sponsor's right to abandon the Plan, as set forth in the "Effective Date" Section of the Plan, in the event of: (1) the existence of one or more title defects affecting any one or more Units or the Property that cannot be removed, cured or complied with prior to the date set for the First Closing without litigation or for less than one-half of one percent (0.50%) of the total offering amount in the aggregate, and which are not waived by the Purchasers thereof; (2) a substantial damage to or destruction of any of the Building (or any portion thereof) by fire or other casualty that cannot be repaired prior to the date set for the First Closing for less than one-half of one percent (0.50%) of the total offering amount in the aggregate; or (3) a taking of a material portion of the Property in condemnation proceedings or by eminent domain. The dollar amount to be used as the basis for abandonment of the Plan under (1) or (2) above is $1,419,025.00, which is at least 0.5% of the total offering amount set forth on the cover page of the Plan. Excluded from the dollar amounts set forth in (1) and (2) above are attorneys' fees and title effects or determinations of any authority or regulatory association which exist on the Filing Date of the Plan and are either known to Sponsor or are a matter of public record. (See the Section of this Plan entitled "Effective Date"). In the event of the existence of any such lien or encumbrance other than Permitted Encumbrances which does not result in the abandonment of this Plan, the sole remedy of Purchasers under the Plan will be to rescind their respective Purchase Agreements within 15 days after receipt of notice of an amendment disclosing such lien or encumbrance. A Purchaser electing to proceed with the purchase of his Unit in such circumstances will not be entitled to any credit against, or abatement of, the purchase price set forth in his Purchase Agreement and will have no claim or right of action against Sponsor by reason thereof. Sponsor has no obligation to institute any action or proceeding or to expend any sum of money to make title marketable, or to eliminate any encumbrances or title defects, except to incur expenses up to the aggregate amount of $1,419,025.00, which is at least 0.5% of the total offering amount, in respect of any one or more Units, or the Property.

Once the Plan has been declared effective and Sponsor does not abandon the Plan, if Sponsor fails or refuses to correct any such title defect, then, provided Purchaser is not then in default, the Purchaser's sole right will be to either (i) take title subject to the title defect (without abatement in or credit against the purchase price or claim or right of action against Sponsor for damages or otherwise) or (ii) cancel the Purchase Agreement. If Purchaser elects to terminate the Purchase Agreement, Sponsor shall cause the Deposit together with any interest earned thereon, to be returned to Purchaser, within 30 days after receipt of Purchaser's termination notice. Upon making such refund, Sponsor and Purchaser shall be relieved of all further obligations and liabilities under the Purchase Agreement and the Plan. The foregoing option must be exercised by Purchaser in writing sent to Sponsor within 15 days after the giving of Sponsor's notice of refusal to remedy the title defect. IF THE PURCHASER FAILS TO NOTIFY SPONSOR OF HIS ELECTION WITHIN 15 DAYS AFTER SPONSOR NOTIFIED PURCHASER OF SPONSOR'S REFUSAL TO REMEDY THE TITLE DEFECT, IT WILL BE CONCLUSIVELY DEEMED THAT PURCHASER ELECTED TO ACQUIRE TITLE SUBJECT TO THE TITLE DEFECT.

The existence of mortgages, liens and encumbrances other than Permitted Encumbrances shall not be objections to title, provided bonds or 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 are made for the cost of recording or filing such instruments. Sponsor will bear the responsibility and cost of recording or filing such instruments. Furthermore, any lien, encumbrance or condition to which title is not to be subject shall not be an objection to title if Continental Abstract ("Title Company"), or another title company licensed to do business in New York, is or would be willing, in a fee policy issued by such Company to the Purchaser, to insure Purchaser that it will not be collected out of the Unit if it is a lien, or will not be enforced against the Unit if it is not a lien, at no additional cost or additional premium to Purchaser.

The acceptance of a deed by a Purchaser shall be deemed an acknowledgment that Sponsor has performed and discharged every agreement and obligation on the part of Sponsor to be performed under the Plan except those (if any) 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 in General Business Law Section 352-e to survive delivery of the deed.

The Sponsor represents that, until it no longer controls the Board of Managers, the Property will be maintained, repaired, cared for and operated in substantially the same condition and manner as it was on the date of the First Closing, subject to strikes, lockouts, labor difficulties, acts of God, fire or other casualty, storm, riots, insurrection, inability to obtain materials, equipment or labor, governmental restrictions or any other acts over which the Sponsor is reasonably unable to exercise control. If the Sponsor is prevented from so maintaining the Property for any of these reasons other than fire or other casualty, the Sponsor will make any repairs subsequent to the First Unit Closing that it was obligated to make as of the First Closing.

The risk of loss to any Unit by fire or other casualty until the Closing for such Unit is assumed by Sponsor (unless and until a Purchaser takes possession of such Unit, pursuant to an Interim Use and Occupancy Agreement or otherwise, at which time such risk shall be assumed by Purchaser), but without any obligation or liability by Sponsor to repair or restore any Unit. In the event of damage or destruction of a Unit due to fire or other casualty prior to the Closing, but subsequent to the signing of a Purchase Agreement, provided Sponsor elects (which election shall be in its sole discretion) to repair or restore the Unit, the Purchase Agreement shall continue in full force and effect, and, thereafter, Purchaser shall not have the right to reject title or receive a credit against, or abatement in, the purchase price for the Unit. In such event, Sponsor shall be entitled to a reasonable period of time within which to complete the repair or restoration, and any proceeds received from insurance or in satisfaction of any claim or action in connection with such loss shall, subject to the rights of the Condominium Board and other Unit Owners, belong entirely to Sponsor. In the event of damage or destruction to any Unit by fire or other casualty prior to the Closing, but subsequent to the signing of a Purchase Agreement, if Sponsor notifies Purchaser that it does not elect (which election shall be in its sole discretion) to repair or restore the Unit or if the Unit Owners do not resolve to make such repair or restoration pursuant to the By-Laws (see the Section entitled "Rights and Obligations of the Condominium Board"), the Purchase Agreement shall be deemed cancelled and of no further force or effect and Sponsor shall return the Deposit, together with any interest earned thereon, to Purchaser, whereupon Sponsor and Purchaser shall be released and discharged from all obligations and liability under the Purchase Agreement and the Plan; provided, however, if Purchaser is then in default under the Purchase Agreement (beyond any applicable grace period), Sponsor shall retain the entire twenty (20%) percent Deposit as and for liquidated damages.

Sponsor is obligated to provide only the equipment, fixtures and furnishings set forth in the "Description of Property and Building Condition" set forth in Part II of the Plan. If a person desiring to purchase a Residential Unit requests that Sponsor perform upgrades or extra or custom work on such

Residential Unit or to provide extra furnishings, including, but not limited to, any deviation from the materials or specifications described in the "Description of Property and Building Condition" set forth in Part II of the Plan, and Sponsor agrees to perform such work and/or provide such furnishing, then Sponsor may require such person to deposit an amount greater than the Deposit required under the Purchase Agreement. All funds received by Sponsor for the furniture, upgrades, extras or custom work will be placed in the non-interest bearing portion of the Master Escrow Account. Such funds may be released by Escrow Agent to Sponsor provided that Sponsor uses the funds to pay for or to be reimbursed for furniture, upgrades, extras or custom work. If such funds are released to Sponsor and the Purchaser is entitled to rescind the Purchase Agreement in accordance with the Plan, neither Sponsor nor the Escrow Agent shall return such funds to Purchaser.

SPONSOR SHALL IN NO WAY BE OBLIGATED TO PERFORM ANY UPGRADES OR EXTRA OR CUSTOM WORK TO A UNIT, OR TO PROVIDE FURNITURE OR FURNISHINGS, OTHER THAN AS REQUIRED BY THE TERMS OF THE PLAN AND THE DESCRIPTION OF PROPERTY AND BUILDING CONDITION SET FORTH IN PART II OF THE PLAN.

Each Purchaser of a Unit shall be given a reasonable opportunity to examine his Unit prior to the Closing and is urged to make a careful inspection thereof. At the Closing, each Purchaser shall be required to sign and deliver to Sponsor an Inspection Statement in substantially the form set forth in Part II of the Plan wherein the Purchaser acknowledges the condition in which he has inspected his Unit. Under no circumstances shall any item included on an Inspection Statement constitute grounds for a Purchaser to postpone or otherwise delay the date scheduled for the Closing to his Unit or obligate Sponsor to escrow funds to secure the completion of such items.

## CLOSING COSTS AND ADJUSTMENTS

Closing Costs

As more particularly set forth in the Purchase Agreement, in addition to the Purchaser's legal fees, the Purchaser will pay the following estimated closing costs and expenses at the time of the Closing of Title of his Unit. Recording charges, fees, title costs and taxes are based on rates in effect on the date of the Plan and are subject to change without notice.

(a) A contribution to the Working Capital Fund of the Condominium in an amount equal to three (3) month's Common Charges then applicable to each Unit being purchased. In addition, Purchaser shall pay the balance of the amount of the Common Charges due for the month of Closing of such Unit, pro-rated on a daily basis from the first day of the calendar month of Closing through the day of that Unit's Closing.

(b) If Purchaser elects to obtain fee title insurance, Purchaser will pay the premium therefore, which will vary depending upon the amount requested. If ordered from Continental Abstract Corporation (516) 248 -1180 ("Title Company"), the premium will be calculated at a discounted rate of 70% of the standard fee policy rates in accordance with the following discounted rate schedule:

**FEE BULK RATE SCHEDULE**
**(70% Rate)**

| AMOUNT OF INSURANCE | PREMIUM |
|---|---|
| First $35,000 or less | $281.00 |
| From $35,001 to $50,000 | $4.67 per Thousand |
| From $50,001 to $100,000 | $3.80 per Thousand |
| From $100,001 to $500,000 | $3.05 per Thousand |
| From $500,001 to $1,000,000 | $2.79 per Thousand |
| From $1,000,001 to $5,000,000 | $2.56 per Thousand |
| From $5,000,001 to $10,000,000 | $2.28 per Thousand |
| From $10,000,001 to $15,000,000 | $2.15 per Thousand |
| From $15,000,001 and up | $1.93 per Thousand |

1.1.1 Note - The minimum Premium for a fee policy is $402.

(c) If Purchaser elects to simultaneously obtain both fee title insurance and mortgage title insurance from Title Company, the premium for the fee title insurance will be calculated as described in paragraph (b) above. The premium for the mortgage title insurance that does not exceed the fee policy will be calculated at a discounted rate of 21% of the standard mortgage policy rates in accordance with the following discounted rate schedule:

**SIMULTANEOUS MORTGAGE BULK RATE SCHEDULE**
**(21% Rate)**

| AMOUNT OF INSURANCE | PREMIUM |
|---|---|
| First $35,000 | $72.00 |
| From $35,001 to $50,000 | $1.17 per Thousand |
| From $50,001 to $100,000 | $ .95 per Thousand |
| From $100,001 to $500,000 | $ .77 per Thousand |
| From $500,001 to $1,000,000 | $ .70 per Thousand |
| From $1,000,001 to $5,000,000 | $ .64 per Thousand |
| From $5,000,001 to $10,000,000 | $ .57 per Thousand |
| From $10,000,001 to $15,000,000 | $ .54 per Thousand |
| From $15,000,001 and up | $ .49 per Thousand |

A form of Unit Owner's Specimen Title Policy, if title insurance is ordered from Title Company is set forth in Part II of the Plan.

(d) A fee for recording the deed and Unit Owner's power of attorney, being $42.00 for each instrument plus $5.00 per page together with a fee of approximately $125.00 for filing the New York City Real Property Transfer Tax return ("City Tax Return").

(e) New York State Real Estate Transfer Tax ("State Transfer Tax") currently equal to $2 per $500 of purchase price plus, if applicable, a Special Additional Tax of 1% where the purchase price equals $1 million or more ("Mansion Tax") and the New York City Real Property Transfer Tax ("RPT Tax") currently equal to 1% of the purchase price where the purchase price is $500,000 or less and 1.425% of the purchase price where the purchase price is more than $500,000.

Purchaser is under no obligation to obtain title insurance from Title Company. Purchaser may obtain title insurance from a title company of Purchaser's choice, without incurring any additional cost from Sponsor.

The New York City Department of Finance has taken the position that where the Purchaser of property assumes the obligation for the State Transfer Tax and the RPT Tax, the amount of the tax which would otherwise be payable if the seller were to pay such taxes, will be treated as additional consideration for the transaction subject to tax. Consequently, the amount of the RPT Tax is computed as follows:

| | Purchase Price $500,000 or less | Purchase Price Greater than $500,000 |
|---|---|---|
| Tentative City Tax: | | |
| Consideration | $400,000 | $ 600,000 |
| Tax Rate | x 1% | x 1.425% |
| Tentative tax | $ 4,000 | $ 8,550 |
| Tentative State Tax: | | |
| Net Consideration | $ 400,000 | $ 600,000 |
| Rounded to nearest $500 | $ 400,000 | $ 600,000 |
| Tentative tax ($2 per $500) | $ 1,600 | $ 2,400 |
| City Tax: | | |
| Consideration | $ 400,000 | $ 600,000 |
| Tentative taxes | + 5,600 | +10,950 |
| Taxable Consideration | $ 405,600 | $ 610,950 |
| Tax Rate | x 1% | x 1.425% |
| City Tax | $ 4,056 | $ 8,706 |
| State Tax: | | |
| Net Consideration | $ 400,000 | $ 600,000 |
| Tentative taxes | + 5,600 | + 10,950 |
| Taxable Consideration | $ 405,600 | $ 610,950 |
| Rounded to nearest $500 | | |
| Tax Rate ($2 per $500) | $ 406,000 | $ 611,000 |
| State Tax | $ 1,624 | $ 2,444 |

Thus, the effective RPT tax rate is approximately 1.014% of the purchase price where the purchase price is $500,000 or less and 1.451% where the purchase price is greater than $500,000. A similar position has been taken by the New York State Department of Taxation and Finance and as a result the effective tax rate for the State Transfer Tax is $4.06 per thousand dollars of the purchase price for the Unit where the consideration is $500,000 or less and $4.074 per thousand dollars of the purchase price of the Unit where the consideration is greater $500,000. Payment by the Purchaser of the Mansion Tax is not considered additional consideration to Sponsor for purposes of the calculation of the State Transfer Tax. However, the amount of the State Transfer Tax and the RPT Tax paid by Purchaser will be added to the Purchase Price to determine whether the Mansion Tax is due. The New York State Department of Taxation and Finance and the New York City Department of Finance may take the position that the portion of the purchase price for a Storage Bin License is additional consideration in connection with the purchase of the Residential Unit for the purpose of calculation of the State Transfer Tax, the RPT and the Mansion Tax.

Sponsor has been advised by the Title Company that the information set forth below reflects the current position of the New York City Department of Finance with respect to real property transfer taxes that are due and payable in connection with the transfer by a seller of one or more units to the same or related Purchasers, whether pursuant to one or more purchase agreements:

Purchase of a single Residential Unit.

- The NYC transfer tax rate on the Residential Unit is 1% if the consideration is $500,000 or less, or 1.425% if the consideration is greater than $500,000

Purchase of multiple Residential Units.

- The NYC transfer tax rate on each Residential Unit is 1.425% if the consideration is $500,000 or less, or 2.625% if the consideration is greater than $500,000

Purchase of a Commercial Unit

- The NYC transfer tax rate for a Commercial Unit is 1.425% if the consideration is $500,000 or less, or 2.625% if the consideration is greater than $500,000.

The Department of Finance takes the position that: (i) the lower tax rate (either 1% if the consideration is $500,000 or less, or 1.425% if the consideration is greater than $500,000) applies only in the case of a transfer of "an individual residential condominium unit"; and (ii) the higher tax rate (either 1.425% if the consideration is $500,000 or less, or 2.625% if the consideration is greater than $500,000) applies if a Purchaser acquires more than one individual residential condominium unit (i.e., two (2) Residential Units) or if the Unit is not a Residential Unit.

(f) If Purchaser obtains a mortgage loan, Purchaser will be responsible for the payment of all mortgage recording taxes, mortgage recording fees ($42.00 for a mortgage plus $5.00 per page of a mortgage), origination, appraisal and closing costs and other expenses in connection therewith (including legal fees) in amounts determined by governmental authorities and such lender. Currently, the mortgage recording tax for mortgages on a single residential condominium unit under $500,000 is 2.05% of the face amount of the mortgage and 2.175% of the face amount of the mortgage if the mortgage is $500,000 or more. Of the total tax due, the mortgagee pays an amount equal to 0.25% of the face amount of the mortgage for Residential Units. In addition, there is a $30 exemption for residential property. The rate for a Commercial Unit is 2.80% if the mortgage is $500,000 or more, and 2.05% if the mortgage is under $500,000. No representation or warranty is made with respect to the amounts of such closing costs and expenses or the availability or cost of mortgage loans from any sources.

In addition to the above-specified costs and expenses, a mortgage on a Unit may provide that the Unit Owner deposit monthly with the lender one twelfth (1/12th) of the estimated annual real estate taxes and tax assessments which are assessed or will be assessed against the Unit, together with one twelfth (1/12th) of the annual fire and casualty insurance policy premiums for the Unit, or other amounts, and, at Closing, Purchaser may be required to deposit with the lender a multiple of the aggregate of such one month's real estate taxes, tax assessments and insurance premiums, or other amounts, in order that sufficient funds will be available for the lender to pay the same when due.

(g) Fees payable to Sponsor's attorney, Gerstein Strauss & Rinaldi LLP, in accordance with the following schedule, all of which fees will be cumulative to the extent applicable to any individual closing:

(1) $2,200.00 for the preparation of closing documents, calculation of adjustments, attendance at Closing at the offices of Gerstein Strauss & Rinaldi LLP, or such

other place as Sponsor may designate and supervision of execution of closing documents, with an additional $300 fee to any Purchaser who obtains a loan in connection with the purchase of a Unit;

(2) If Purchaser requires that the Closing occur other than at the office of Gerstein Strauss & Rinaldi LLP, or such other place as Sponsor may designate, and Sponsor consents to such change, an additional attendance fee of $500.00 for each Closing held within Manhattan and $1,000.00 for each Closing held in any borough outside Manhattan.

(3) If through no fault of Sponsor, Purchaser fails to close on the date scheduled for Closing, then Purchaser shall pay to Gerstein Strauss & Rinaldi LLP, an additional fee of $500 for each rescheduled Closing to help defray the cost of preparing and coordinating the Closing and recalculating the Closing apportionments.

Purchaser may pay more than one fee pursuant to (g) above with respect to a Unit. In addition to an attendance fee in connection with a completed Unit transfer, Gerstein Strauss & Rinaldi LLP, shall also be entitled to an attendance fee in the amount set forth above if they attend a scheduled Closing but the Closing is adjourned due to Purchaser's failure to comply with Purchaser's closing obligations.

(h) If Purchaser has dealt with any broker other than the Selling Agent or any other co-broker engaged in writing by Sponsor (and named in Purchase Agreement) in connection with his purchase, then Purchaser will be required to pay any commission due to such broker.

(i) If Purchaser obtains a mortgage loan, the Purchaser will pay Sponsor a sum equal to the partial mortgage recording tax credit to which Purchaser may be entitled pursuant to Section 339-ee(2) of the Condominium Act, which sum will be paid as a reimbursement for the mortgage recording tax previously paid by Sponsor in connection with any existing mortgage(s).

In the event the mortgage recording tax credit pursuant to Section 339-ee(2) of the Condominium Act is unavailable, Sponsor, at its option, may arrange, in lieu of the mortgage recording tax credit, to have its mortgage lender, the holder of the loan encumbering the Property, assign to a Purchaser's lender, a portion of Sponsor's lender's mortgages, in an amount equal to the mortgage loan obtained by an applicable Purchaser (the "Mortgage Assignment"). If Sponsor chooses to have its lender deliver a Mortgage Assignment to Purchaser's lender, Sponsor will pay the costs and fees charged by its lender, Purchaser's lender, and Purchaser's lender's attorneys, as well as all applicable recording charges to effect the contemplated assignment ("Mortgage Assignment Expenses") in the event Sponsor is desirous of effecting the Mortgage Assignment to a Purchaser's lender. A Purchaser for whom, at Sponsor's option, the Mortgage Assignment is effected, shall, in lieu of paying mortgage recording tax to the State or City of New York, pay Sponsor, at Closing, an amount equal to the mortgage recording tax which would otherwise have been due by Purchaser ("Mortgage Recording Tax Reimbursement"). Sponsor also reserves the right to direct Purchaser to pay, from the Mortgage Recording Tax Reimbursement, the Mortgage Assignment Expenses. It is intended that Purchaser shall not be obligated to pay or incur any expense or sum of money that it would not have paid in the event the mortgage recording tax credit was available.

All legal costs, fees and expenses of Gerstein Strauss & Rinaldi LLP, other than those specifically set forth above, will be the sole responsibility of Sponsor.

Illustration of Closing Costs

A numerical example for the typical closing costs and expenses for a Unit with a purchase price of $3,245,000.00 (and having two bedrooms and no mortgage financing) are set forth below. All tax rates, title insurance premiums and recording rates are subject to change.

**Sample Closing Costs**
(By way of illustration only):

1. Working Capital Contribution.....$7,197.00
   (three (3) months common charges)
2. Title Insurance for Fee .....$8,907.00
3. Recording and pick-up costs for deed
   and power of attorney (approximately).....$440.00
4. RPT .....$47,085.00
5. State Transfer Tax.....$13,220.00
6. Mansion Tax .....$33,053.00
7. Legal fee of Sponsor's attorney
   (for Closing, at the office of Sponsor's attorney) .....$2,200.00
8. Equalization and Assessment Filing Fee.....$125.00

TOTAL ESTIMATED CLOSING COSTS.....**$112,227.00**

Purchasers should note that adjustments for various closing items including Common Charges and real estate taxes will be made at Closing.

The foregoing projections assume that title insurance is purchased from Title Company and that Purchaser closes without delays or the imposition of penalties. If Purchaser obtains a mortgage loan Purchaser can expect to incur additional fees for mortgage title insurance (with benefit of simultaneous rates), mortgage recording taxes and fees and other closing fees set forth in Section (f) above. Purchasers are advised to consult with prospective lenders for a detailed projection of related financing costs.

In the event a construction or acquisition loan obtained by Sponsor satisfies certain parameters and Sponsor pays a mortgage recording tax thereon, it is specifically understood that any mortgage tax credit shall inure to the benefit of Sponsor. Accordingly, at Closing, each Purchaser may pay all or a portion of the mortgage recording tax directly to Sponsor to the extent of any mortgage tax credit allowed.

Closing Adjustments

At Closing, adjustments will be made as of midnight of the day preceding the Closing Date between Sponsor and each Purchaser with respect to (a) real estate taxes and assessments, if any (including water charges and sewer rents) on the basis of the period for which assessed. The adjustment for real estate taxes shall include any real estate taxes and water and sewer charges due and owing for the fiscal 1/2 year in which the closing occurs, (b) Common Charges and assessments for the month in which title closes and (c) accrued rent and any other charges pursuant to an interim lease or use and occupancy agreement, if any, covering Purchaser's Unit. In the event the Units have not been separately assessed for real estate tax purposes prior to the First Closing, Sponsor shall pay the real estate taxes due for the fiscal one-half year in which the First Closing takes place. For any period of time occurring after the fiscal one-

half year in which the First Closing occurs, and until the Units are separately assessed and billed, each Unit Owner will pay to the Condominium his pro rata share (in the proportion that his Unit's Common Interest bears to the aggregate Common Interest of all Units) of all real estate taxes and assessments with respect to the Property. The Condominium will pay such taxes either to the New York City Department of Finance or directly to Sponsor if Sponsor has already paid real estate taxes for such period. If any Unit Owner fails to pay his pro rata share as set forth above, the Condominium will have a lien on such Unit for non-payment thereof, as if such charges were Common Charges. (See the Section of the Plan entitled "Rights and Obligations of Unit Owners--Common Charges: Collection and Lien for Non-Payment" for further details.) At such time as a Unit is separately assessed and separately billed, the Unit Owner will pay such taxes directly to the taxing authority.

If a Purchaser fails for any reason to close title to his Unit within ten (10) days of the Scheduled Closing Date, (a) the closing apportionments described above will be made as of midnight of the day preceding the Scheduled Closing Date, regardless of when the Actual Closing Date occurs, and (b) Purchaser will be required to pay to Sponsor, as a reimbursement of Sponsor's higher carrying costs for the Unit by virtue of the delay, and in addition to the other payments to be made to Sponsor under the Purchase Agreement and the Plan, an amount equal to 0.03% of the purchase price of his Unit for each day starting from (and including) the Scheduled Closing Date to (and including) the day before the Actual Closing Date. If, through no fault of Purchaser, Sponsor postpones the Scheduled Closing Date, these provisions shall apply to the rescheduled Closing Date if Purchaser fails for any reason to close title to his Unit on the rescheduled Closing Date.

Except as specifically set out in the Plan, Sponsor must pay all costs and expenses incurred in connection with the promulgation and consummation of the Plan and the sale of Units by Sponsor, including, but not limited to, all selling expenses and commissions payable to Selling Agent for the sale of Units pursuant to the Plan, advertising, printing and architects' fees, the fees of Sponsor's attorneys, engineering and appraisal costs and governmental filing fees, whether incurred prior or subsequent to the effective date of the Plan, in connection with the obligations of Sponsor (see the Section of the Plan entitled "Rights and Obligations of Sponsor" for further details.)

## RIGHTS AND OBLIGATIONS OF SPONSOR

Sponsor's Obligations with Respect to the Building

Sponsor shall have the following obligations and all Purchasers upon execution of their respective Purchase Agreements will be deemed to have accepted, approved and agreed to abide and be bound by the following:

(a) Sponsor reserves the right to make any changes in the proposed Condominium Documents and modifications to the Plans and Specifications or changes in the size or number of Units or the amount or quality of Common Elements as may be necessary in Sponsor's sole discretion to conform to Law or to expedite the sale of the Unsold Units; provided, however, that unless an affected Unit Owner consents in writing, any such amendments, additions, or changes shall not materially and adversely affect a Unit Owner or Purchaser, increase any obligations of Unit Owners or Purchasers to any adverse and material degree and any substitution of equipment or materials will not be of lesser quality or design.

(b) Sponsor has reserved the right to rent or lease any Unit prior to closing the sale thereof to the Purchaser thereof, and, after consummation of the Plan, to any other party, to cease marketing Units for sale at any time, in Sponsor's sole discretion, or to use or offer the Unsold Units for any lawful purpose. Except where otherwise prohibited by Law, certain Units may be occupied under short term leases. Accordingly, residents of the Condominium may be comprised of both Unit Owners and tenants leasing from Sponsor or other Unit Owners. Accordingly, it is possible that a significant proportion of Unit Owners will not be residents of the Building and that a significant portion of tenants in the Building may not be Unit Owners. As a consequence, a Unit Owner seeking to resell or refinance a Unit may experience difficulty. In addition, residents of the Condominium who are not Unit Owners do not share the same economic interests as Unit Owners in the maintenance and care of the Building's facilities and amenities and owner-occupants and non-resident Unit Owners, including Sponsor, may have inherent conflicts on how the Condominium should be managed because of their different reasons for purchasing (i.e., purchase as a home as opposed to as an investment). Because Sponsor is not limiting the conditions under which it will rent rather than sell Units, there is no commitment to sell more than the fifteen percent (15%) necessary to declare the Plan effective and owner-occupants may never gain effective control and management of the Condominium.

(c) The offering by Sponsor under the Plan is contingent upon the Plan being declared effective and the First Closing shall not occur until the Plan has been declared effective. The Plan may be withdrawn or abandoned by Sponsor for any reason whatsoever at any time prior to its being declared effective.

(d) Sponsor will perform such work and supply such materials, or will cause the same to be performed and supplied, as is necessary in order to complete the construction of the Building with a quality of construction comparable to the currently prevailing local standards and substantially in accordance with the Plans and Specifications filed with the Buildings Department and in accordance with other appropriate governmental authorities and all applicable Law.

(e) Based upon its current construction schedule, Sponsor contemplates that, unless delayed by Force Majeure, the construction activities at the Building will be sufficiently completed to permit Closings of Residential Units to begin on or about July 1, 2016. Prospective Purchasers should note, however, that the Units will be completed at differing times over a period that may likely extend significantly beyond such date. Purchasers will not be excused from paying their full purchase prices (without credit or set-off), and will have no claim against Sponsor for damages or losses in the event that the first Closing of a Residential Unit occurs earlier or later than the targeted date or the time to complete or to close title to their Units is delayed or postponed by Sponsor.

Notwithstanding the foregoing, if the first Closing of a Residential Unit does not occur within 12 months after July 1, 2016. Sponsor will offer all Purchasers of Residential Units, as their sole remedy, the right for at least fifteen days, to rescind their Purchase Agreements and receive a refund of the Deposit. In the event the actual or anticipated commencement date of the first year of condominium operation is to be delayed by six (6) months or more, beyond July 1, 2016, Sponsor will amend the Plan to include a revised budget with current projections. If the Unit Owner's Common Charges in the amended budget exceed those in the latest budget included in the Plan by 25% or more, Sponsor will, in the amendment disclosing such budget, offer all Purchasers the right, for at least 15 days, to rescind their Purchase Agreements and receive a refund of their Deposits, together with any interest earned thereon (provided, however, that after the Plan has been declared effective and the amendment disclosing the same has been accepted by the Department of Law, a Purchaser who is in default under his Purchase Agreement, beyond the expiration of any applicable grace period, will not have the right to rescind).

If the first Closing of a Residential Unit occurs within 12 months after July 1, 2016, the Sponsor may schedule the closings of title to other Units significantly later than such date. In that case, unless a Purchase Agreement contains an outside closing date, Sponsor is not obligated to schedule a closing within any specified time frame or to ensure that closing of title to a Unit will occur by any date certain. PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER SUCH RISKS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A UNIT.

(f) Sponsor is obligated to bear all costs and expenses incurred in connection with completing the construction of the Building substantially in accordance with the Plans and Specifications, as same may be amended. During the course of construction, Sponsor retains the right, without prior notice to Purchasers or amendment to the Plan, to (i) change the Plans and Specifications and (ii) substitute equipment, appliances, fixtures or materials, and modify (including, but not limited to natural stone surfaces), layout or design, or change construction procedures provided, however that:

(i) Any materials (including, but not limited to natural stone surfaces), appliances, equipment and fixtures which Sponsor may substitute shall be of substantially equal or better quality or design;

(ii) Any construction procedures will not materially and adversely affect a Unit or the Building;

(iii) Sponsor shall not materially change the size or location of the Units or Common Elements or adversely affect the value of any Unit to which title has closed or for which a Purchase Agreement is in effect, except as more specifically provided in the Section of the Plan entitled "Changes in Prices and Units";

(iv) any material change shall be set forth in an amendment to the Plan;

(v) any necessary approval of any governmental authority having jurisdiction is first obtained; and

(vi) no such amendments, modifications or substitutions may be made if the same would materially and adversely affect any binding Purchase Agreement unless the same is dictated by construction conditions at the Property, and in such event, Sponsor will, in the amendment disclosing such change and delivered to the Purchaser(s), offer the affected Purchaser(s) the right, for at least 15 days, to rescind their Purchase Agreement(s) and receive a refund of their Deposit, together with all interest earned thereon. In addition, Sponsor reserves the right to amend

the Plans and Specifications to conform with the Description of Property set forth in Part II of the Plan.

(g) Upon the recording of the Declaration, Sponsor will deliver, assign, or otherwise grant to the Condominium Board, on behalf of all Unit Owners, the right to proceed under any assignable warranties and other undertakings received by Sponsor from contractors, suppliers, or others in connection with the construction and equipping of the Building, except that warranties and undertakings received by Sponsor which relate to appliances, equipment or fixtures located in any Unit shall be assigned to the Purchaser of such Unit on the date of closing of title thereto, including the warranties and undertakings received by Sponsor which relate to appliances, equipment, or fixtures located in the Units and the Common Elements. In that warranties may start on the date the appliances, equipment or fixtures are delivered to the Building, Sponsor makes no representation as to which, if any, of the warranties and other undertakings will continue to remain in force upon the Closing of any particular Unit.

(h) 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 an 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 an 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 REGARDING THE TCO AND FCO.

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. Unit Owners shall not be permitted to perform work in their Units that will delay the issuance of a Final Certificate of Occupancy. Sponsor shall cause, and the Condominium Board shall cooperate with Sponsor in connection therewith, and pursue all remedies under the Condominium Documents, against any Unit Owner or Unit Owners who perform work in individual Units in contravention of this prohibition. Sponsor shall not be responsible for delays in obtaining the Final Certificate of Occupancy due to work undertaken in individual Units by Unit Owners or as a result of the Units not being used in accordance with applicable Law. 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.

It is Sponsor's obligation to ultimately obtain a Final Certificate of Occupancy for the Building. If, as of the first Closing of a Residential Unit, only a Temporary Certificate of Occupancy has been issued for the Unit, Sponsor will use all reasonable diligence to cause the Buildings Department to continuously renew the Temporary Certificate of Occupancy until a Final Certificate of Occupancy for all of the Units in the Building has been issued. Sponsor will, at its sole cost and expense, do and perform all work, and will supply for the Building all materials that shall be necessary in order to cause the Temporary Certificate of Occupancy to be continuously renewed and to obtain a Final Certificate of Occupancy. Prospective Purchasers are advised that a Final Certificate of Occupancy is required for permanent use of the Building, and that a Temporary Certificate of Occupancy may be renewed only for a total of two (2) years from the date of first issuance.

(i) If Sponsor fails to obtain a Final Certificate of Occupancy for the Building prior to the First Closing, Sponsor will be obligated to: (i) direct the Escrow Agent to hold and maintain those monies received pursuant to all Purchase Agreements (see the Section of the Plan entitled "Escrow and Trust Fund Requirements") which would otherwise be payable to Sponsor 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), provided, however, that if Sponsor's Architect, at any time prior to or after the First Closing, 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 Final Certificate of Occupancy, then the amount exceeding the sum so certified by the Sponsor's Architect shall, from time to time, be released from the special escrow account to Sponsor; or (ii) Sponsor shall deposit with Escrow Agent cash or an unconditional, irrevocable letter of credit or post a surety bond in an amount Sponsor's Architect, from time to time, certifies is reasonably necessary to complete the work needed to obtain the Final Certificate of Occupancy.

(j) Construction is a complicated process requiring the coordination of numerous tasks, contractors and suppliers and the balancing of complex mechanical and architectural systems. No assurance can be given with regard to the accuracy of any projected completion dates set forth herein. During the first years of Condominium operations, construction workers and related personnel will be at the Property from time to time completing construction of the Building, making adjustments and corrections and performing various tasks related to the completion of construction, which may occur at all hours and could compromise the Building's security systems. During this period, various building systems, including but not limited to water supply, air conditioning, heating, cooling, ventilating and elevators, may need to be shut down temporarily. Various other adjustments to windows and elevators and other systems may require substantial time after the Closing to be completed. Sponsor and its designees, including tenants performing work in the Commercial Units will have the right to and may utilize elevators and other building systems and may install and retain scaffolding and other equipment on and in the Building to complete construction of the Building. Sponsor may not fully complete the decoration of portions of the Building, including, without limitation, the lobbies or corridors in the Building, the installation of light fixtures, the hanging of wall coverings or laying carpeting, until a particular portion of the Building is complete or a particular floor is fully occupied by Residential Unit Owners. The Condominium Board may refuse to permit a Residential Unit Owner to perform alterations in a Residential Unit until such time as the Building has been completed and a final certificate of occupancy has been obtained therefor. Certain services, such as telecommunications, and other similar services may be provided by outside suppliers and delays in providing these services will not be the responsibility of Sponsor. Such suppliers may not provide these services until occupancy in the Building has reached certain levels. Portions of the Building such as the Storage Bins may be completed after some or all of the Units and the fact that such portions of the Building have not been completed or are not available for use by Residential Unit Owners is not a basis for a Residential Unit owner to refuse to close title to the Residential Unit. In addition, the presence of hoists or construction elevator shafts or similar temporary construction facilities may delay the closing of title to certain Residential Units or lines of Residential Units until such hoists, elevators or temporary facilities are no longer needed and are

removed. During the period when Sponsor is completing construction of the Building, moves into the Building may be restricted to certain periods when the elevators and other access to the Building are not being utilized by the construction trades. The first Temporary Certificate of Occupancy might issue for some but not all of the Residential Units and Sponsor may complete construction of certain Residential Units before others.

A Purchaser who closes title to his or her Unit during the completion of construction of Common Elements or other Units acknowledges that construction noise, vibration, dust, debris and odors and temporary interruption of services may affect Purchaser's enjoyment of the Unit during such period. With regard to the foregoing, in executing a Purchase Agreement, Purchaser acknowledges that Sponsor shall not be liable to Purchaser whatsoever or any third party in the event of non-completion of any item of construction on any projected date, or any interruption of services in the Building. Furthermore, Sponsor makes no representation or warranty (express or implied) that any noise, odors, fumes or vibrations, if any, emanating from mechanical equipment belonging to the Condominium or the Commercial Units will not disturb occupants of the Units, and Sponsor shall have no liability whatsoever for any such disturbance to any Unit Owner or occupant.

(k) Sponsor has no obligation to repair or improve the Unsold Units, the Common Elements or the Facilities used in connection with the operation of the Building except as otherwise expressly provided in the Plan. Sponsor agrees to complete construction of the Building in accordance with Law and to cause all mechanics' liens with respect to the construction of the Building to be promptly discharged or bonded (all subject to Sponsor's rights to abandon the Plan).

(l) Each Unit and the fixtures and personal property contained therein, are being sold and delivered "AS IS", as described in the Plan, at the time of transfer of title to such Unit unless Sponsor and the Purchaser of such Unit otherwise agree in writing. The Purchaser of a Unit shall inspect such Unit prior to the Closing Date and shall execute at such time an Inspection Statement acknowledging the Purchaser's acceptance of the Unit in good condition and in accordance with the terms of the Plan. However, if a Purchaser finds that Sponsor's improvements as described in the Plan or in the Purchase Agreement for such Unit or other writing duly executed and delivered by Sponsor, have not been fully completed, although such improvements have been substantially completed, then Sponsor or its designated representative and the Purchaser will at the time of such execution agree upon and set forth in the Inspection Statement a list of the incomplete work to be completed in the Unit by Sponsor following the Closing for such Unit. Sponsor's obligation thereunder shall survive delivery of the deed to the Purchaser. The failure of Sponsor to complete such work shall not be a ground for the Purchaser to delay the Closing. Sponsor and its contractors, subcontractors, agents and employees, will have a right of access to enter the Unit after Closing in order to complete the work on the Inspection Statement.

(m) Article 36-B of the New York General Business Law ("Housing Merchant Implied Warranty Law") does not apply to this offering. Sponsor will correct, repair, or replace any and all defects relating to construction of the Building, or in the installation or operation of any appliances, fixtures, or equipment in a Residential Unit or the Common Elements or will cause the same to be corrected, repaired, or replaced, but only if:

(1) such defects are due to substantially improper workmanship or construction practices or the use of materials that are substantially and materially at variance with the Plans and Specifications (as same may be amended) for the same; and

(2) Sponsor is notified of the same in accordance with the following, which notice shall be by certified mail, return receipt requested:

(i) with respect to any latent defect (that is, a defect that is not visually ascertainable) in the construction of a Unit, within six (6) months of the first Closing of such Unit;

(ii) with respect to any latent defect in the construction of a Common Element, within six (6) months of the first Closing of a Residential Unit;

(iii) with respect to any patent defect in the construction of a Unit, within three (3) months of the first closing of such Unit, provided such patent defect is not caused by the use or misuse of the Unit Owner; and

(iv) with respect to any patent defect in a Common Element, within three (3) months of the first Closing of a Residential Unit, provided that such patent defect is not caused by a Unit Owner or any of its contractors, agents or invitees or by the management of the Building.

The method of correcting any defect will be selected by Sponsor in its sole discretion. The quality of construction as to any such correction will be comparable to local standards customary in the particular trade or trades involved and will be in accordance with the Plans and Specifications.

Sponsor will be conclusively considered to have discharged any obligation that it may have with respect to any defects, whether patent or latent, if:

a. Sponsor is not notified of the existence of such defect, in the manner and within the appropriate time period specified above; or

b. The Condominium Board and/or the Managing Agent and/or the Unit Owner fails to allow prompt access to the Unit or Common Element in question by Sponsor or Sponsor's contractors; or

c. Sponsor has corrected, or caused the correction of, the defect in accordance with the practice of the industry, as determined by Sponsor's general contractor, architect, or engineer, in their sole judgment.

(n) Sponsor will not be obligated to correct, and will not be liable to the Condominium Board or any Unit Owner as a result of any defects in construction, or in the installation or operation of any mechanical equipment, appliances, other equipment, finishes, materials or fixtures, as same may relate to the Common Elements:

(i) with respect to which assignable warranties or other undertakings (however denoted) from manufacturers, contractors, materialmen, or others which are assigned to the Condominium Board;

(ii) resulting from normal wear and tear, natural deterioration, normal settling, deflection, expansion or shifting of the Building or Building materials; or

(iii) that are not of a material nature, including, without limitation, the following:

a. death of trees or landscape improvements, cracks in roof ballast, or concrete cracks that do not impair the structural soundness of the Building, including cracks or discoloration in concrete used in walls and paving, leaching or color variation in colored mortar, tiles, and brick, dimensional variations in brick joints, mortar droppings on bricks, ponding, and/or controlled drainage on roof and terrace surfaces, terrace

tiles, pavers or boards not laid flat, stained tiles, and cracks in pressure treated wood used, or pavers or boards intended for use, outside the Building, normal settlement and deflection or any consequential damage resulting therefrom, including, without limitation, cracks in any concrete roof pavers;

b. protruding dry wall fastenings, nail pops, ridging on gypsum board, slight variations in gypsum board, taping, ridging or cracking of sheetrock walls, minor painting imperfections, walls not square, lumber shrinkage or expansion, painting defects, electrical plates not straight, slight separation between base and floor, variations in floor and ceiling levels, carpet or floor discoloring or stretching, variations in width, length, thickness, finish, or color range of wood floors, ceiling imperfections, and stains, runs, lumps, shags, or imperfections in weave in fabric panels;

c. door or window sticking due to weather, door warpage, adjustment of bi-fold or sliding doors, and air, sound or water infiltration from windows in excess of industry standards;

d. variations in tone or color or finishes or stain of natural stone variations in other natural stone surfaces, slight scratches in plastic laminate, vitreous china, glass, metal, natural stone, wood, stainless steel, or porcelain surfaces, discoloration to hardware and plumbing finishes;

e. variations in wood floor stains and finishes caused by normal foot traffic during construction and sales periods, variations in width, length or tone of wood floor strips and normal shrinkage or expansion and warping of wood flooring due to changes in moisture content of wood;

f. noise, vibrations or odors from normal plumbing, heating, air-conditioning, heat pumps, ventilating, elevator operation, roof, mechanical equipment and floor noises and creaking;

g. repair of chips, scratches, mars, breaks, dents, cracks, and other defects in any windows and window sashes, louvers, insulation attached to the curtain wall, electrical fixtures and globes, painted surfaces, sinks, tubs, basins, water closets, kitchen cabinets, backsplashes, and countertops, vanity tops and cabinets, tile or natural stone floors and walls, saddles, appliances, woodwork, millwork, doors, mirrors, hardware, and flooring;

h. normal wear, including chips, to passenger elevator cabs, cab doors, elevator door frames, and cab panels; and

i. ponding and/or controlled drainage on the roof surface, odor, insect or rodent infestation.

THE ITEMS AND CONDITIONS DESCRIBED ABOVE IN (n)(ii) AND (n)(iii)(a) THROUGH (i) ARE NOT DEFECTS AND MAY BE FOUND IN ANY NEWLY CONSTRUCTED BUILDING. PURCHASERS WHO PURCHASE A UNIT IN THE BUILDING OR IN ANY OTHER BUILDING MAY EXPERIENCE SOME OR ALL OF THESE ITEMS AND CONDITIONS IN THE

COMMON ELEMENTS. SPONSOR HAS NO OBLIGATION TO CORRECT OR REPAIR ANY OF SUCH ITEMS AND CONDITIONS IN THE COMMON ELEMENTS AND SHALL NOT BE LIABLE TO ANY PURCHASER OR TO THE CONDOMINIUM BOARD THEREFOR. IF THE CONDOMINIUM BOARD DESIRES TO CORRECT OR REPAIR ANY SUCH ITEMS OR CONDITIONS, TO THE EXTENT THEY CAN BE CORRECTED OR REPAIRED, THE CONDOMINIUM BOARD WILL HAVE TO PROCEED AT ITS SOLE COST AND EXPENSE AND/OR PURSUANT TO ANY WARRANTIES OR UNDERTAKINGS ASSIGNED TO IT BY SPONSOR.

NOTHING CONTAINED IN THIS SECTION WILL BE CONSTRUED SO AS TO RENDER SPONSOR LIABLE FOR CONSEQUENTIAL DAMAGES (WHETHER BASED ON NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE), IT BEING INTENDED THAT SPONSOR'S SOLE OBLIGATION UNDER THIS SECTION WILL BE TO REPAIR OR REPLACE ANY DEFECTIVE ITEM OF CONSTRUCTION UPON, AND SUBJECT TO, THE TERMS AND CONDITIONS SET FORTH ABOVE. ADDITIONALLY, EXCEPT AS EXPRESSLY SET FORTH HEREIN, SPONSOR WILL HAVE NO OBLIGATION TO CORRECT OR REPAIR ANY OTHER DEFECTIVE OR OTHER CONDITIONS WITH REGARD TO THE COMMON ELEMENTS OF THE BUILDING OR IN, OR WITH RESPECT TO, ITS INSTALLATIONS, APPARATUSES, FIXTURES, FINISHES, MATERIALS, AND APPURTENANCES. ASIDE FROM ANY SPONSOR WARRANTIES AND UNDERTAKINGS WITH RESPECT TO THE CONSTRUCTION AND REHABILITATION OF THE COMMON ELEMENTS OF THE BUILDING CONTAINED IN THIS SECTION, NO OTHER WARRANTIES OR UNDERTAKINGS SHALL BE IMPLIED WITH REGARD TO THE COMMON ELEMENTS OF THE BUILDING.

(o) Except for those warranties or guarantees provided to Sponsor by contractors, manufacturers or suppliers, which Sponsor will assign to the Condominium Board, as necessary, Sponsor does not make any warranty of any kind, express or implied, and Sponsor hereby disclaims any and all other warranties, including but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the construction of the Common Elements and with respect to the personal property located within the Common Elements, and the Unit Owners assume all risk and liability from the use of this property.

(p) Prior to the Closing of Title for each Unit, Sponsor will cause such Unit and its Common Interest, benefits, rights and easements as described in the Declaration and By-Laws to be released from the lien of any mortgages or security agreements encumbering the Unit (other than any mortgage or security agreements obtained by the Purchaser).

(q) Sponsor will bear all costs and expenses incurred by it in connection with the preparation of the Plan and all selling expenses and compensation payable to sales or other personnel of Sponsor.

(r) Sponsor will pay or cause to be paid all contractors, subcontractors and materialmen and all others involved in the construction and equipping of the Building in accordance with the New York Lien Law, for work performed and fixtures, material and equipment supplied or installed during construction thereof and will cause any and all mechanics' liens arising out of such construction and equipping, if any, to be discharged by bonding, or otherwise, promptly after the filing of any such liens, unless a title company will otherwise omit same as an exception to title, or issue a policy insuring over such lien.

(s) No Closing of a Unit will occur prior to the issuance of a Temporary Certificate of Occupancy for the Unit.

(t) Sponsor shall have the obligation to defend any suit or proceeding arising out of Sponsor's acts or omissions and to indemnify the Condominium Board or Unit Owner(s) in any such action or proceeding.

(u) Sponsor will deliver to the Condominium Board copies of all the mechanical, structural, electrical and plumbing drawings or plans for the Building, showing, to a reasonable degree of accuracy, the "as built" conditions and, upon the issuance of the final Certificate of Occupancy for the Building, a set of "as built" drawings for the Building.

(v) In accordance with Section 339-p of the Condominium Act, a registered architect or licensed professional engineer shall certify within reasonable tolerances that the Floor Plans are an accurate copy of portions of the plans of the Building as filed with and approved by the municipal or other governmental authority having jurisdiction over the issuance of permits for the construction of the Building and, in addition, such architect or professional engineer shall make periodic inspections at various stages of construction to determine that the Building is built in accordance with such plans.

(w) Subject to Sponsor's right during the Initial Control Period to delay the obligation of Unit Owners to pay Common Charges set forth at the end of this Section, Sponsor will pay all Common Charges, special assessments and real estate taxes allocated to any Unsold Units in accordance with the provisions of the By-Laws. Sponsor expects to have the financial resources to meet the aforesaid obligations with respect to Unsold Units and to fund same from income from projected sales, the rental or leasing of Unsold Units and Sponsor's other financial resources. No bond or other security will be posted by Sponsor with respect to this obligation.

(x) Sponsor will initially procure on behalf of the Condominium Board the insurance relating to the Condominium which is required to be maintained by the Condominium Board in accordance with the provisions of the By-Laws the cost of which insurance has been reflected in the First Year's Budget (See the Section of the Plan entitled "Rights and Obligations of the Condominium Board/Summary of By-Laws" for further details).

(y) Pursuant to the provisions of Section 352-e of the New York General Business Law, copies of the Plan and all exhibits or documents referred to herein shall be available for inspection, by prospective Purchasers and by any person who shall have purchased a Unit offered by the Plan or shall have participated in the offering of such Unit, at Sponsor's office and shall remain available for such inspection for a period of six (6) years from the date of the recording of the Declaration. In addition, a set of Floor Plans showing the layout, location and approximate dimensions of each Unit and its unit number designation and tax lot number, certified by the appropriate governmental authority of The City of New York as conforming to the official tax lot number for each such Unit, will be filed in the City Register's office when the Declaration is recorded, and an additional set will be furnished to the Condominium Board.

(z) In the event of the dissolution or liquidation of Sponsor, the principals of Sponsor will provide financially responsible entities or individuals who will assume the status and all obligations of Sponsor for Unsold Units under the Plan and Law.

(aa) The acceptance of a deed by a Purchaser shall be deemed an acknowledgment that Sponsor has performed and discharged every agreement and obligation on the part of Sponsor to be performed under the Plan except those (if any) 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 in General Business Law Section 352-e to survive delivery of the deed.

(bb) Sponsor will arrange for the subordination of any mortgages encumbering the Property at the First Closing to the Declaration, and Sponsor will arrange for the release of applicable Units from the liens of any mortgages encumbering the Property at the time of the applicable Unit's Closing. So long as Sponsor is the holder, Sponsor has agreed to pledge the note and mortgage on the Resident Manager's Unit (if any) to the Construction Lender.

(cc) Until all of the Units of the Condominium have been sold by Sponsor, the name of the Condominium may not be changed except by Sponsor in Sponsor's sole and absolute discretion.

(dd) Sponsor shall not be responsible for architectural and engineering fees incurred by a Unit Owner in connection with the Unit Owner's purchase of a Unit, and Sponsor shall not be responsible for architectural fees and engineering fees incurred by the Condominium in assessing or inspecting the Building.

(ee) Sponsor has obtained a Construction Loan from Construction Lender. Construction Lender is a permitted mortgagee, mortgage representative and insurance trustee for so long as such loan is outstanding. The mortgage held by the Construction Lender is a permitted mortgage.

Obligations of Sponsor hereunder with respect to the common areas of the Building shall be enforceable by the Condominium Board on behalf of all Unit Owners. Obligations of Sponsor with regard to the common areas shall be enforceable by individual Unit Owners if either (i) the Condominium Board fails to take reasonable action to enforce such obligations within 120 days following the giving of notice of such claim by any Unit Owner to the Condominium Board or (ii) the applicable statute of limitations with respect to any claim by a Unit Owner which would otherwise be enforceable by the Condominium Board will expire during the aforesaid 120-day period.

Obligations of Sponsor to correct eligible defects in a Unit, as described above, run for the benefit of Unit Owners who purchase a Unit directly from Sponsor, and no other purchasers. Accordingly, Sponsor's obligations under the Plan do not run to Unit Owners who purchase a Unit on re-sale from Unit Owners.

Except as set forth above or as required by Law, Sponsor has not furnished any bond or other security for the performance of the obligations of Sponsor under the Plan. The ability of Sponsor to perform its obligations hereunder will partly depend upon its financial condition at the time it is called upon to perform. No representation can be made that it will be financially able to perform any or all of such obligations. Unless expressly provided to the contrary herein, the obligations of Sponsor under the Plan shall survive the delivery of the respective deeds to the Units to Purchasers.

In the event Sponsor is unable to perform its material obligations under the Plan, all sales will cease, Sponsor will promptly submit an amendment to the Plan setting forth its inability to perform such material obligations under the Plan, and will offer all Purchasers who have not closed title to their Units the right to rescind their Purchase Agreements for a period of not less than 15 days after the Presentation Date of the amendment. Any Purchaser electing rescission pursuant to the offer will have their Deposit and any interest accrued thereon returned.

The foregoing sets forth the entire obligations of Sponsor hereunder and no others shall be implied, except that nothing contained herein shall be deemed to limit the rights of purchasers under their respective Purchase Agreements. Sponsor makes no representations or warranties other than as set forth in the Plan.

The terms of the Plan will govern in the event of a conflict between the Plan and any other document or advertisement used in connection with the Plan.

Use of Unsold Units

Sponsor reserves the right, without prior notice or amendment to the Plan, to use any Unsold Units as sales, rental offices and model apartments and in any other manner in compliance with Law. In the event Sponsor thereafter elects to sell any such Unsold Unit, Sponsor may require the Purchaser thereof to purchase all or any of the furnishings, equipment or decorations therein and pay, in addition to the purchase price for such Unit, such amounts as Sponsor may determine. In no event shall the presence of any furniture, furnishings, equipment or decorations in any model apartment imply or represent that any Unit will contain such furniture, furnishings, equipment or decorations upon delivery of the Unsold Unit to the Purchaser of such Unit unless such Purchaser agrees to pay Sponsor an amount as determined by Sponsor in addition to the purchase price for such Unsold Unit.

Sponsor's Rights of Access

(a) General:

As a condition of sales of Units pursuant to this Plan, Sponsor reserves to itself, its successors, assigns, designees, invitees, contractors, agents, employees and tenants any and all easements and rights of access, in and to Units, Common Elements and Limited Residential Common Elements consistent with the purposes of the Plan and Sponsor's rights and obligations thereunder. Sponsor and its contractors, subcontractors, agents and employees will have a right of access to each Unit and to all of the Common Elements for the purpose of fulfilling Sponsor's obligations under the Plan and performing certain alterations and repairs in or about the Units or the Common Elements. Sponsor will use reasonable efforts in order to exercise such access in such a manner as will not unreasonably interfere with the use of any Unit for its permitted purposes. If reasonable care under the circumstances is exercised to safeguard the Unit Owner's property, such entry shall not render Sponsor or its authorized agents liable for any damage to the Unit or to the personal property or fixtures contained therein.

(b) Examples of Specific Easements and Rights of Access Reserved by Sponsor:

Without in any way limiting the generality of rights reserved in Paragraph "a" above, such rights reserved to Sponsor and its designee(s) specifically include the following:

1. The right to maintain any vacant and Unsold Unit(s) as general and sales and leasing office(s) and/or model Residential Unit(s) and to maintain personnel at the Property, to post signs, and to conduct other activities connected with promotion, sales or leasing, such as inspection by and display of vacant or leased Units, as well as all Common Elements and Limited Residential Common Elements, to prospective purchasers or lessees;

2. Right of access in and to Units, Common Elements and Limited Residential Common Elements for purposes of construction, repair, refurbishment, corrections, alterations, finishing, servicing (including but not limited to garbage collection) and similar work;

3. Right to show vacant or leased Units;

4. Utility and other easements for the benefit of Unit Owners, Common Elements and Limited Residential Common Elements.

(c) Sponsor reserves a right of access in and to the Common Elements, once Sponsor has conveyed all of its Units, for promotional purposes relating to other ventures of Sponsor or principals or affiliates of Sponsor.

Sponsor, Sponsor-designees and any partner of any entity affiliated directly or indirectly with Sponsor shall exercise all rights of access so as to limit, to the extent practicable, unnecessary interference with use of the Property by Unit Owners. Sponsor, Sponsor-designees and any partner of any entity affiliated directly or indirectly with Sponsor agrees to repair damage directly attributable to and caused by Sponsor, Sponsor-designees and any partner of any entity affiliated directly or indirectly with Sponsor or its agents as a result of exercising such rights of access.

Delay in the Commencement of Common Charge Collections.

The Sponsor, during the Initial Control Period, shall have the right, in its sole discretion, to delay the obligation of the Unit Owners to pay Common Charges from and after the First Closing, for a period to be determined by the Sponsor provided that the expenses of the Condominium (including, but not limited to, insurance premiums) during such period are paid by, and the reserve fund line item on Schedule B to the Offering Plan is funded by, Sponsor. Upon commencement of the obligation to pay Common Charges, there will not be a special assessment for the payment of any expense set forth in the First Year's Budget incurred prior to the date Common Charges become payable. During any period within which the obligation to pay Common Charges is delayed, Sponsor shall remain obligated to update the budget for the Condominium, as provided for in the governing regulations. In the event Sponsor elects to delay the collection of Common Charges, it will disclose such fact in the Closing Notice to Purchasers; however, failure to do so shall not affect Sponsor's right to delay collection of Common Charges, so long as a Purchaser is notified of the delay in writing prior to the Closing of its Unit. Sponsor will further disclose such fact in the post-closing amendment to the Plan, and shall also disclose in the post-closing amendment the anticipated period of delay. However, failure to do so shall not affect Sponsor's right to delay the collection of Common Charges so long as a Purchaser is notified of the delay in writing prior to the Closing of its Unit. Such amendment will also disclose the anticipated period of delay. Sponsor will notify all Unit Owners in writing of the expiration of the delay period at least thirty (30) days prior to the commencement of collection of Common Charges and will disclose such fact in the subsequent amendment to the Plan.

## CONTROL BY SPONSOR

The initial Condominium Board shall consist of three (3) persons designated by Sponsor. Sponsor presently contemplates that the initial members of the Condominium Board shall be Yitzchak Tessler, Ari Herrmann and Leo Takedo, who shall serve as President, Vice President and Secretary/Treasurer of the Condominium Board, respectively. Each of these individuals is a principal of, or is affiliated with, or is employed by Sponsor or its principals. Sponsor reserves the right to designate different individuals to serve on the initial Condominium Board, in lieu of the above mentioned individuals. The initial Condominium Board shall conduct all affairs of the Condominium until the first annual meeting of Unit Owners to be held within approximately 30 days after the earlier to occur of: (a) the first anniversary of the first Closing of a Residential Unit under this Plan, or (b) the date Sponsor has closed title to Residential Units with Purchasers with respect to at least 90% of the aggregate Residential Common Interest appertaining to all Residential Units.

Commencing with the first annual meeting of Unit Owners, but subject to the provisions of the following two (2) paragraphs, the Condominium Board shall consist of seven (7) persons. Five (5) persons shall be elected or designated by the Residential Unit Owners (including Sponsor) ("Residential Members") and two (2) persons shall be designated by the Commercial Units Owners ("Commercial Members"). Each of the two (2) Commercial Unit Owners has the right to designate one (1) Commercial Member. The number or composition of Condominium Board members may not be changed except in accordance with the procedures described in the By-Laws.

At meetings of the Unit Owners, Sponsor will have the right to vote all of the Common Interests attributable to the Residential Units and Commercial Units owned by Sponsor as it sees fit. However, at elections of members to the Condominium Board held during the Initial Control Period, (that is, the period ending on the earlier of (a) the closing of title with Purchasers under the Plan to Residential Units having at least 90% of the aggregate Common Interest appertaining to all Residential Units, or (b) five (5) years after the first Closing of a Residential Unit, Sponsor will have the right to designate four (4) of the five (5) Residential Members of the Condominium Board and all Residential Unit Owners (including Sponsor) shall have the right to vote for the remaining Residential Member of the Condominium Board.

So long as Sponsor shall continue to own at least one (1) Unsold Residential Unit, Sponsor shall have the right to designate one (1) Residential Member to the Condominium Board, and shall have the right to vote its Common Interests attributable to the Unsold Residential Units for the remaining Residential Members of the Condominium Board.

Within thirty (30) days after the end of the Initial Control Period, (that is, the period ending on the earlier of (a) the closing of title with Purchasers under the Plan to Residential Units having at least 90% of the aggregate Common Interest appertaining to all Residential Units, or (b) five (5) years after the first Closing of a Residential Unit, four (4) of the five (5) Residential Members of the Condominium Board designated by Sponsor shall resign and their replacements shall be filled at an election held at a meeting called for such purpose, at which election the resignations shall take effect.

The number of members of the Condominium Board may not be increased or decreased without the consent of Sponsor for so long as Sponsor continues to own at least one (1) Unsold Residential Unit.

Until Sponsor no longer elects a majority of the members of the Condominium Board, Sponsor will through its control of the Condominium Board have control of the maintenance and operation of, and the services to be provided by, the Condominium and will determine the Common Charges to be paid by all Unit Owners.

Until Sponsor has conveyed title to all the Units, but in no event later than five (5) years after the first Closing of a Residential Unit, whichever shall first occur, the Condominium Board may not take any

of the following actions without Sponsor's prior written consent (notwithstanding the number of votes Sponsor controls): (a) make any addition, alteration or improvement to the Common Elements or to any Unit unless the same are required by Law, or (b) assess any Common Charges or Special Assessments for the creation of, addition to, or replacement of, all or part of a reserve, contingency or surplus fund, except as set forth in the First Year's Budget, or (c) increase or decrease the number, or change the kind of, employees employed at the Condominium as described in the First Year's Budget, or (d) enter into any service or maintenance contract for work or otherwise contract for work or services not covered in the First Year's Budget, except as is required to reflect normal annual increases in operating services, or (e) borrow money on behalf of the Condominium, or (f) exercise a right of first refusal to lease or purchase a Unit; provided, however, that Sponsor's written consent is not necessary to perform any function or take any action described in items (a) through (f) above, if, and only if, the performance of such function or the carrying out of such action is necessary and no other alternative is available to enable the Condominium Board to comply with Law or to remedy any notice of violation or perform any work order of the Condominium's insurer. Sponsor shall not exercise veto power over the expenses described in Schedule B or expenses required to enable the Condominium Board to comply with Law, or to remedy any notice of violation or perform any work order of the Condominium's insurer.

If there is a vote by the Condominium Board on the issue of whether to sue the Sponsor, the Board Members who were designated by Sponsor shall recuse themselves from voting on this issue.

Sponsor's Right to Perform Alterations

Sponsor (and its successors, assigns and designees) shall have the right to alter any Unit, Common Element or Limited Residential Common Element subject to filed amended plans and/or specifications, and consistent with the terms of this Plan.

## CONDOMINIUM BOARD

The affairs of the Condominium shall be governed by the Condominium Board. The term of office of the members of the Condominium Board shall be for one year or until their successors are elected. Members of the Condominium Board and officers of that Board shall serve without compensation. Any member of the Condominium Board may resign at any time by written notice hand delivered or sent by certified mail, return receipt requested, to the President or Secretary of the Condominium Board. Notwithstanding the term of such member's office, such resignation shall take effect at the time specified therein.

All officers, and members of Condominium Board and employees of the Condominium will be insured at all times from and after the First Closing under directors and officers liability insurance obtained by the Condominium. The amount and cost of the insurance has been provided for in the First Year's Budget. As provided in the By-Laws, no member of the Condominium Board or officer of the Condominium shall have any personal liability to the Condominium or to any Unit Owner, except that a member of the Condominium Board shall be liable for such members' own bad faith or willful misconduct. All Unit Owners shall severally, to the extent of their respective interests in their Units and appurtenant Common Interests, indemnify each member of the Condominium Board against any liability or claim except those arising out of such members' own bad faith or willful misconduct. See Section 2.20 of the By-Laws of the Condominium for further details pertaining to the indemnification of the members of the Condominium Board.

The President of the Board may call a special meeting of the Condominium Board whenever he deems the same to be necessary or desirable. The President shall call a special meeting upon the written request of three (3) or more members of the Condominium Board.

Composition of the Condominium Board

Until the first annual meeting of the Unit Owners, the Condominium Board shall consist of three (3) individuals, all of whom shall be designated by Sponsor. It is anticipated that the first three members of the Board of Managers and officers will be Yitzchak Tessler, Ari Herrmann and Leo Takedo, with Yitzchak Tessler as President. Each of the individuals is a principal of, or is affiliated with, or employed by Sponsor or its principals. From and after the first annual meeting of the Unit Owners, and for so long as Sponsor continues to own at least one (1) Unsold Residential Unit, the Condominium Board shall consist of seven (7) individuals, five (5) of which shall be elected and/or designated by the Residential Unit Owners (including Sponsor), and two (2) of which shall be designated by the Commercial Unit Owners (with each of the two (2) Commercial Unit Owners having the right to designate one (1) Commercial Member), subject to Sponsor's rights during the Initial Control Period. See the section above entitled "Control by Sponsor" for an explanation of the composition of the Board of Managers. It is possible that a significant proportion of Residential Unit Owners will not be residents of the Building and that a significant portion of tenants in the Building may not be Residential Unit Owners. Because there is no commitment on the part of Sponsor to sell more than fifteen percent (15%) of the Residential Units, as needed to declare the Plan effective, owner-occupants may never gain effective control and management of the Condominium, and may have difficulty in financing or reselling their Units. Owner-occupants and non-resident owners (including the Sponsor) may have inherent conflicts on how the Condominium should be managed because of their different reasons for purchasing, *i.e.* purchase as a home as opposed to an investment.

Except for Board members designated by Sponsor or the Commercial Unit Owners, all members of the Condominium Board shall be (i) individual Residential Unit Owners or adult Family Members; or (ii) Permitted Mortgagees; or (iii) officers, directors, shareholders, partners, principals, members, employees or beneficiaries of corporation, partnerships, fiduciaries, limited liability companies or other

entities that are Residential Unit Owners or Permitted Mortgagees. No Unit Owner may serve on the Condominium Board if the Condominium Board has a perfected lien against such Unit Owner's Unit.

When voting for the Condominium Board, each Residential Unit Owner shall have one (1) vote for each .0001% of Common Interest attributable to his Residential Unit per member of the Board. Cumulative voting is not permitted. For all other voting, each Residential Unit owner shall be entitled to cast one (1) vote for each one (1) percent (or fraction thereof) of Common Interest attributable to his Residential Unit.

Removal of Board Members

The Condominium Board may remove any of its members for cause. An elected Residential Member of the Condominium Board may be removed with or without cause by an affirmative vote of a Majority of Residential Unit Owners, including Sponsor, who are present at a meeting containing a quorum of Unit Owners, provided, however, that (i) any Residential Member designated by Sponsor may only be removed without cause, and replaced by Sponsor; and (ii) a Commercial Member of the Condominium Board may only be removed without cause by the applicable Commercial Unit Owner, who alone shall have the right to designate the replacement. No member of the Condominium Board shall continue to serve on the Condominium Board if, during his term of office, such member shall cease to be a Unit Owner or an interested party as described in the By-Laws; provided, however, that this provision respecting Unit ownership and Condominium Board membership shall not apply to members of the Condominium Board designated or elected by Sponsor or a Commercial Unit Owner.

Upon the affirmative vote of a majority of the members of the Condominium Board, any officer may be removed with or without cause. A successor officer may be elected at any regular Condominium Board meeting or at any special Condominium Board meeting called for such purpose.

Percentage of Common Interest Needed to Amend the By-Laws and Declaration of the Condominium.

With certain exceptions set forth in Article 12 of the By-Laws and Article 18 of the Declaration of Condominium, the percentage of Common Interest needed to amend the Condominium By-Laws and to change the Declaration of Condominium after it has been filed is not less than 66-2/3 percent in number and in Common Interest of all Unit Owners having voting rights taken in accordance with the provisions of the By-Laws.

## RIGHTS AND OBLIGATIONS OF UNIT OWNERS

Sales and Leases of Units

Each Residential Unit Owner may sell or lease his Residential Unit for terms of one (1) year or more provided he ("Offering Unit Owner") first gives the Condominium Board, on behalf of all Residential Unit Owners, notice of his intention to sell or lease such Residential Unit and an opportunity to purchase or lease such Residential Unit at the same price or rental and on the same terms as were offered in good faith by a prospective Purchaser or lessee, as more specifically provided in the By-Laws. The Condominium Board may not discriminate against any person on the basis of race, creed, color, national origin, sex, age, disability, marital status or other grounds prohibited by Law. If the Condominium Board does not elect to purchase or lease the Residential Unit within 30 business days after receipt of notice, the Offering Unit Owner will have an additional 60 days to enter into a written agreement with the prospective Purchaser or lessee, as the case may be, embodying the terms set forth in such notice. In the event such written agreement is not fully executed within such 60 day period or such sale or lease is not consummated within an additional 60 days following the expiration of such 60 day period, the Offering Unit Owner will be required to again first offer the same to the Condominium Board (but not more than once in any twelve (12) month period). The Condominium Board shall be entitled to waive, or to permit an extension of, either or both of such 60 day periods. The Condominium Board may not exercise its option to purchase or lease any Residential Unit without prior approval of a majority in interest of Residential Unit Owners. Any such deed given by an Offering Unit Owner 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 materially modified, amended, or extended without the prior consent in writing of the Condominium Board, that the tenant shall not assign the lease or sublet the Residential Unit or any part thereof without the prior consent in writing of the Condominium Board, and that the Condominium Board, if permitted by Law, 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 form of any such lease shall be a printed, reasonably applicable form of residential lease which is generally accepted in New York City such as an appropriate Real Estate Board of New York, Inc. or Blumberg form, except for such changes therein as provided in the By-Laws.

Sponsor has been advised that as of the date of acceptance of this Plan, the Right of First Refusal contained in Section 7.2 of the By-Laws shall not have an adverse impact on the ability of a Residential Unit Owner to obtain financing from either Freddie Mac or Fannie Mae lenders as of the date of acceptance of this Plan.

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

A Residential Unit Owner may (i) lease, sell or convey the Residential Unit to a spouse, adult child or grandchild, parent, grandparent or adult sibling, (ii) convey his Residential Unit by gift, (iii) devise his Residential Unit by will, or have it pass by intestacy, without complying with the foregoing restrictions; provided, however, that each succeeding Residential Unit Owner shall be bound by, and his Residential Unit shall be subject to, the preceding restrictions. In addition, any Residential Unit Owner may lease, sell or convey the Unit to a related or controlled individual or entity, as more particularly set forth in the By-Laws.

The Commercial Unit Owners are free to sell or lease their respective Commercial Units without first notifying or obtaining the approval of the Condominium Board.

The restrictions upon the sale and lease of Units shall not apply to Sponsor with respect to any Unsold Units, or to Units acquired by a mortgagee in foreclosure or by deed in lieu of foreclosure, and they shall be free to sell or lease without first offering to sell or lease to the Condominium Board.

A Unit Owner may only sell or lease his entire Unit. In addition, each conveyance of a Unit by a Unit Owner shall include, as part of the property to be conveyed, such Unit Owner's undivided interest in (a) the Common Elements; (b) the Residential Common Elements and the Limited Residential Common Elements (in case of a Residential Unit only); (c) any Unit or Units acquired by the Condominium Board on behalf of all Unit Owners, or any proceeds of the sale or lease thereof; and (d) any other assets of the Condominium. 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 affected Unit Owners.

A Unit may not be sold or leased unless all unpaid Common Charges and liens against such Unit (other than Permitted Mortgages) are paid and/or satisfied at or prior to the sale or lease of the Unit. In addition, the Condominium Board may establish reasonable fees for the processing of sale and lease notices, which shall be payable by the Offering Unit Owner.

Notwithstanding anything contained herein to the contrary, prior to the Closing of Title to a Unit, the Purchase Agreement prohibits a Purchaser from listing such Unit for resale or rental with any broker or from advertising or otherwise offering, promoting or publicizing the availability of the Unit for sale or lease, without Sponsor's prior written consent.

Units Acquired by Condominium Board

All Residential Units acquired or leased by the Condominium Board or its designee shall be held by the Condominium Board, or its designee, on behalf of all Residential Unit Owners and the rent or purchase price, closing costs and adjustments payable in connection therewith shall be assessed against all Residential Unit Owners. No Units held by the Condominium Board shall carry any voting rights.

The purchase of any Residential Unit by the Condominium Board on behalf of the Residential Unit Owners, may be made from the funds deposited in the capital and/or expense accounts of the Condominium Board that belong solely to the Residential Unit Owners and not commingled with any general funds in which the Commercial Units Owners have an interest. If the funds in such account are insufficient to effectuate any such purchase, the Condominium Board may levy an assessment against each Residential Unit Owner in proportion to his Residential Common Interest, as a Common Charge or special assessment and/or the Condominium Board may, in its discretion, finance the acquisition of such Unit; provided, however, that financing may only be obtained when permitted by the By-Laws and that no such financing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Unit to be purchased together with its Common Interests.

Use of Units

A Residential Unit shall be used as a residence and for any lawful home occupation. Not more than one family may occupy a Unit at one time and no transient tenant may be accommodated in any Residential Unit. A Residential Unit may not be used as a hotel room, hotel suite, or on a transient or short-term stay or for any hotel type use, short-term vacation use, or any short-term use for which a Residential Unit Owner or any person on his behalf receives any payment or fee. Notwithstanding the foregoing, Sponsor may rent out an Unsold Residential Unit for short-term use.

A Residential Unit owned or leased by an individual, corporation, limited liability company, partnership, fiduciary or any other entity (including, but not limited to, embassies and consulates of foreign governments) may only be occupied by such individual, an officer, director, stockholder or

employee of such corporation, a partner or employee of such partnership, the fiduciary, a member of the limited liability company, or beneficiary of such fiduciary, a principal or employee or such other entity, respectively, or by members of the immediate family or guests of any of the foregoing. A Residential Unit may be used for any other lawful purpose, provided such use is permitted by, and complies with Law, does not violate the then existing Certificate of Occupancy covering the Building, and the Condominium Board, in its sole discretion, grants permission for such use.

Notwithstanding the preceding paragraph, Sponsor may, without the permission of the Condominium Board: (a) use or grant permission for the use of any Unsold Residential Unit as a professional office or for any other purpose, provided such use is permitted by and complies with Law and such use does not violate the then existing Certificate of Occupancy covering the Building; (b) retain ownership of one or more Unsold Residential Units for use as models and sales and/or promotion and/or leasing offices in connection with the sale or rental of other Unsold Units; and (c) lease any Unsold Residential Units to third parties for either long or short-term stays.

The Commercial Units may be used for any legally permitted purposes, except that in no event may all or any portion of any Commercial Unit be used for (i) any sex-related commercial establishment or massage parlor, or establishment where pornographic material is displayed or distributed, or obscene, nude or semi-nude performances are shown live or in a videotaped or other recorded format, except in conjunction with legitimate theatrical or dance performances as permitted by applicable law, or (ii) any drug rehabilitation clinic or treatment center.

The Common Elements shall be used only 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.

No nuisance, immoral, improper, offensive or unlawful use shall be allowed in the Building. All Laws shall be complied with at the sole expense of the respective Unit Owners or the Condominium Board, whoever or whichever shall have the obligation to maintain or repair such portion of the Property.

Except as otherwise provided in the Declaration and/or By-Laws, no awnings, air conditioning equipment or ventilators shall be installed or modified in the Building without prior written approval of the Condominium Board.

No radio, television, telecommunications or cable aerial or other similar device shall be erected on any terrace of balcony, roof or exterior walls of the Building or on the Property, without obtaining in each instance the prior written consent of the Condominium Board. Notwithstanding the foregoing, Sponsor, its designee(s) and the Commercial Units Owners shall each have a permanent easement to erect, use, lease, maintain, repair, replace and operate antennae, satellite dishes and other communications equipment, as permitted by Law, on any part of the roof of the Building which are General Common Elements and elsewhere on the General Common Elements and to utilize any risers, conduits, piping, cables, ducts and electrical panels and rooms, telephone/cable panels and rooms in connection therewith. Sponsor and/or the Commercial Units Owners shall be entitled to utilize such easement for Sponsor's and/or each Commercial Unit Owner's own account or the account of any tenants or licensees of Sponsor or Commercial Unit Owner. Sponsor's designees shall be entitled to utilize such easement for their account or the account of any tenant, or licensees of such Sponsor designees. However, the easement shall not be used by a Commercial Unit Owner for the operation of a telecommunications company or any other business whose primary purpose is the broadcasting and/or receiving of telephone, radio, communications or other signals. The Sponsor's easement shall include the right of Sponsor and/or its designees to enter into agreements with one or more providers of communications equipment and services, such as, without limitation, cellular equipment, cable, internet, satellite dish and similar or dissimilar equipment that would permit such providers the right to: (i) install, maintain, repair and replace their equipment on the roof of the Building, (ii) install, maintain, repair, replace and remove

wires, conduits, cables, ducts, connective equipment and such other equipment whether similar or dissimilar, in and through the Common Elements, and (iii) use a portion of the Common Elements for equipment. Sponsor and/or its designees shall be entitled to retain any revenues from any such provider. The Condominium Documents do not provide that the aforementioned easements revert to the Condominium. None of the revenues generated therefrom shall revert to the Condominium.

No pets other than dogs, caged birds, cats and fish (which do not cause a nuisance, health hazard or unsanitary condition) may be kept in a Residential Unit without the consent of the Condominium Board. In no event shall any Unit Owner maintain more than two (2) pets in a Unit without the consent of the Condominium Board. Each Unit Owner who keeps any type of pet in his Unit will be required to: (a) indemnify and hold harmless the Condominium, all Unit Owners and the Managing Agent from all claims and expenses resulting from acts of such pet; and (b) abide by any and all Rules and Regulations of the Condominium Board adopted with respect thereto. In no event may pets be kept on a terrace or balcony.

Each Unit Owner shall keep his Unit in a good state of preservation and cleanliness and each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit in accordance with the provisions of the By-Laws and Law. The Rules and Regulations concerning the use of Units may be amended from time to time by the Condominium Board provided that copies thereof are furnished to each Unit Owner prior to the time that they become effective (except that no amendment thereof affecting the Unsold Units may be made unless agreed to by Sponsor).

Unit Owners shall not be permitted to make alterations or improvements to Units which could delay the issuance of a Final Certificate of Occupancy for the Building.

Mortgage of Units by Unit Owners

Each Residential Unit Owner may mortgage his Unit, provided that the conditions with respect thereto set forth in the By-Laws are first complied with. As more fully set forth in the By-Laws, these conditions include the requirements that (a) the mortgage be substantially in the form used by any Institutional Lender except for such changes or additions as may be required to permit a lender to make the loan, (b) the Condominium Board is notified in writing of the making of such mortgage and receives a conformed copy of the note and mortgage and (c) the owner making such mortgage first satisfies all unpaid liens against his Unit, other than Permitted Mortgages. Sponsor shall have the right to mortgage any Unsold Unit and each Commercial Unit Owner shall have the right to mortgage its Commercial Unit without any restriction or limitation.

As more particularly set forth in the Section entitled "Rights and Obligations of the Condominium Board/Summary of By-Laws", in certain instances the consent of a majority of Permitted Mortgagees is necessary in order to amend the Declaration, By-Laws or Rules and Regulations. The By-Laws provide that no more than three (3) Residential Mortgage Representatives shall be designated by the holders of mortgages (a) which satisfy the conditions set forth in the By-Laws (as described above) and (b) which holders of such mortgages are (i) Sponsor, (ii) a bank, trust company, insurance company, real estate investment or mortgage trust or (iii) a governmental or union employee, welfare, pension or retirement fund or system. The By-Laws provide that the holders of mortgages shall be subject to determinations of the Mortgage Representatives.

Common Charges: Determination and Assessment

Common Expenses and Special Assessments, which are payable by Unit Owners and are included in their Common Charges, are based upon the allocations set forth in the First Year's Budget and as provided in Section 6.1(E) of the By Laws. Those Common Charges which are not based upon Percentage of Common Interest are based upon estimated usage of particular services, and/or based upon special or

exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. The allocations set forth in the First Year's' Budget and Section 6.1(E) of the By Laws cannot be changed without the consent of the Commercial Units Owners. Common Expenses not included in the First Year's Budget and Special Assessments shall be based upon estimated usage of particular services, and/or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. Common Expenses include, among other things, (a) all costs and expenses (including the payment of wages) in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the Common Elements, (b) water charges and sewer rents in connection with the Building; (c) real estate taxes and assessments levied with respect to the Property (until the same are separately assessed to individual Units); and (d) amounts for certain other items as the Condominium Board may deem proper, such as amounts for reserves or in connection with the purchase or lease by the Condominium Board of any Unit. (See Article 6 of the By-Laws for further details pertaining to the Condominium Board's right to accumulate reserves for capital expenditures). The Condominium Board must obtain the consent of 66 2/3% of the aggregate Common Interest or Residential Common Interest of all Unit Owners in connection with capital expenditures or assessments exceeding $500,000 per fiscal year.

The Common Interests of the Units have been allocated based upon floor space, subject to 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 in accordance with Section 339-i(1)(iv) of the Real Property Law of the State of New York.

At least annually, the Condominium Board will prepare a budget for Common Expenses and allocate, as aforesaid, and assess among all Unit Owners, Common Charges to meet Common Expenses.

The Condominium Board will furnish copies of each budget on which Common Charges are based to all Unit Owners and advise such Unit Owners of the amount of Common Charges payable by them. Unless otherwise determined by the Condominium Board, Common Charges will be payable monthly in advance on the first day of each month.

Set forth in Part II of the Plan is a copy of §339-kk of the Real Property Law of the State of New York, which provides, among other things, for the ability of the Condominium to serve a notice to any tenant occupying a Residential Unit to pay its rent directly to the Condominium if the Unit Owner has failed to pay Common Charges, assessments or late fees for such Unit within 60 days after the expiration of any grace period.

Common Charges: Collection and Lien for Non-Payment

Under the provisions of Section 339-z of the Real Property Law of the State of New York and the By-Laws, the Condominium Board, on behalf of all Unit Owners, will have a lien on each Unit for unpaid Common Charges, together with interest thereon, assessed against such Unit in proportion to the respective Common Interests of the Units. All such liens, however, to the extent permitted by Law, will be subordinate to the lien of any first Permitted Mortgage of record and to liens for real estate taxes on the particular Unit. Any lien for unpaid Common Charges against a Unit will be effective from and after filing of a verified notice thereof in the Register's Office until all sums secured thereby with interest accrued thereon shall have been fully paid, or until six (6) years from the date of filing (unless foreclosure of such lien is started within such six (6) year period), whichever shall occur sooner. The By-Laws provide that such liens may be foreclosed by a suit brought in the name of the Condominium Board (acting on behalf of all Unit Owners) in like manner as the foreclosure of a mortgage on real property or an action may be brought by the Condominium Board to recover unpaid Common Charges without foreclosing such lien. In addition, the Condominium Board may assess Residential Unit Owners a late

charge of $150 per month for Common Charges which remain unpaid for more than ten (10) days after the date when due, and interest at the rate of 1.5% per month of such unpaid amounts (less any "late charges" theretofore collected), plus all expenses of collection, including but not limited to reasonable attorneys' fees. Sponsor obligates itself to cause any members of the Condominium Board related to or affiliated with Sponsor to vote in favor of filing a lien as provided for in Section 339-aa of the Real Property Law against any Unsold Units owned by Sponsor with respect to which payments of Common Charges have not been made within 30 days after the date when due, while Sponsor controls the Condominium Board.

No Unit Owner may exempt himself from liability for his Common Charges by waiving use of any of the Common Elements or by abandonment of his Unit. No Unit Owner, however, will be liable for the payment of any part of the Common Charges assessed against his Unit subsequent to a permissible sale, transfer or other conveyance by him of such Unit. In addition, as more specifically set forth in the By-Laws, a Unit Owner may, by conveying his Unit without consideration to the Condominium Board and complying with certain conditions in connection therewith, exempt himself from Common Charges thereafter accruing. Such conditions include the payment of all Common Charges and assessments then due and payable with respect to his Unit and such Unit being free and clear of all liens and encumbrances other than Permitted Mortgages. However, in no event shall Sponsor be permitted to convey any Unsold Unit to the Condominium Board and thereby exempt itself from Common Charges attributable to such Unit thereafter accruing, unless: (i) the aggregate Common Interests appertaining to the Unsold Units constitutes 25% or less of the total Common Interests then appertaining to all Units; (ii) at least five (5) years have elapsed from the date of the First Closing; and (ii) at the time of conveyance, Sponsor shall pay the Condominium Board a sum equal to the product of the then current monthly Common Charges for the Unsold Units being conveyed multiplied by 24. With respect to the Commercial Units, at least five (5) years shall have elapsed from the date of the First Closing and, at the time of conveyance, Sponsor shall pay to the Condominium Board an amount equal to the product of the then current monthly Common Charges for the Commercial Unit being conveyed multiplied by 24.

On a resale of a Unit, the Purchaser thereof will be liable for the payment of Common Charges accrued and unpaid against such Unit prior to his acquisition. 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 from the Condominium Board, setting forth the amount of the unpaid Common Charges accrued against the Unit and neither such seller nor such 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. In the event of a foreclosure by the Condominium Board of its lien on any Unit for unpaid Common Charges, if the net proceeds of the foreclosure sale shall be insufficient for the payment of such unpaid charges or if a Unit is acquired by a mortgagee or Purchaser in foreclosure, the Unit Owner will remain liable for the unpaid balance. Neither (a) a Permitted Mortgagee acquiring title to a Unit at foreclosure sale nor (b) a Purchaser at a foreclosure sale shall be liable, and the Unit shall not be subject to a lien, for the payment of the Common Charges assessed prior to the acquisition of title to such Unit by such Permitted Mortgagee or Purchaser. However, such Permitted Mortgagee or Purchaser at a foreclosure sale shall be liable for payment of all Common Charges after the acquisition of title to such Unit. The Condominium Board will have the right to assess such unpaid balance as a Common Charge among all Unit Owners.

Repairs to and Maintenance of Units and Common Elements

Generally, all painting, decorating, maintenance, repairs and replacements, whether structural or non-structural, ordinary or extraordinary, (a) in or to any Unit (other than to the Common Elements), including the heating and cooling systems, the plumbing, appliances in the Units and the entrance doors thereto, will be made by the owner of such Unit at such Unit Owner's sole cost and expense, (b) in or to the General Common Elements will be made by the Condominium Board and the cost and expense

thereof will be charged to all Unit Owners as a General Common Expense (c) in or to the Residential Common Elements will be made by the Condominium Board and the cost and expense thereof will be charged to all Residential Unit Owners as a Residential Common Expense; and (d) in or to the Limited Residential Common Elements will be made by the Condominium Board and the cost and expense thereof will be charged to all Residential Unit Owners as a Residential Common Expense, if involving structural or extraordinary maintenance, repair or replacement, or by the Residential Unit Owner having direct and exclusive access thereto at such Residential Unit Owners cost and expense, if involving painting, decorating, and non-structural ordinary maintenance, repairs and replacement. A Residential Unit Owner is also responsible, at its sole cost and expense, for the operation, maintenance, repair and replacement of any deck, pavers, or support pedestal located in or on any Limited Residential Common Element to which the Residential Unit has exclusive use.

Notwithstanding the above, all maintenance, repairs and replacements, whether structural or extraordinary, of any pool, water feature, or spa on a Residential Limited Common Element shall be made by the Residential Unit Owner having exclusive access to same, at his own cost and expense. All normal maintenance, repairs and replacements of any balcony or terrace, including but not limited to deck, pavers and support pedestals, shall be made by the Residential Unit Owner having exclusive access to same, at his own cost and expense, but any structural or extraordinary repairs or replacements to such terrace or balcony (exclusive of repair, maintenance or replacement of any deck, pavers and support pedestals), including any leaks which are not caused by the negligence of the Residential Unit Owner having access to the same, will be made by the Condominium Board and the cost and expense thereof will be charged to all Residential Unit Owners as a Residential Common Expense. Any Unit Owner having access to a terrace as a Limited Residential Common Element shall keep it free of snow, ice and accumulation of water. The owners of the Mansion and Skyhouse Units shall not allow the water in their respective pools, spa or water feature to freeze. In order to promote a consistent appearance of the Building from the outside, no Unit Owner shall be allowed to enclose or erect a greenhouse and/or alter a terrace or balcony appurtenant to a Unit in such a way that will alter the exterior or conformity of the Building or terrace, without the prior written consent of the Condominium Board. Additionally, the type, size and quantity of plantings and other installations to be placed on terraces or balconies shall be subject to the review of the Condominium's architect and engineer and to the prior written approval of the Condominium Board.

The exterior and interior glass surfaces of all windows located in any Residential Unit shall not be colored or painted. The interior glass surfaces are to be washed and cleaned by the Unit Owner at such Unit Owner's sole cost and expense. Any replacement of glass windows in any Unit because of breakage or otherwise shall be made by the Unit Owner thereof at the sole cost and expense of the Unit Owner (unless such breakage is caused by the Condominium Board or the negligence of any other Unit Owner, in which event such replacement of glass windows will be at the sole cost and expense of the Condominium Board or such other Unit Owner).

If any repairs or replacements to the Common Elements, whether structural or non-structural, ordinary or extraordinary, are necessitated by the negligence, misuse or abuse of a Unit Owner or such Unit Owner's agents, workers, guests, etc., such maintenance, repairs or replacements will be made by the Condominium Board, and any portion of the cost thereof which is not covered by the insurance maintained by the Condominium Board shall be paid by such Unit Owner.

The By-Laws provide that each Unit and all portions of the Common Elements shall be kept in first-class condition (and with respect to any roof or other part of the Property exposed to the elements, free of snow, ice and accumulation of water) by the Unit Owner or the Condominium Board, whichever is responsible for the maintenance thereof. In the event any Unit Owner fails to keep his Unit in such condition, the Condominium Board may, at the expense of such Unit Owner, enter such Unit and perform such acts as are necessary to cure such default. (See the sub-section entitled "Rights of Access" for further details.)

The By-Laws further require that those public or other areas of the Building exposed to public view that are required to be maintained by each Unit Owner or the Condominium Board, be kept in good appearance in conformity with the dignity and character of the Building by such Unit Owner or the Condominium Board.

Alterations, Additions and Improvements to Units and Common Elements

No Residential Unit Owner may make any structural alteration, addition, improvement or repair in or to his Residential Unit or its appurtenant Limited Residential Common Elements, without the prior written approval of the Condominium Board but, as more fully set forth in the By-Laws, this provision does not apply to an Unsold Unit. Except as otherwise permitted in the By-Laws, no Unit Owner may make any alteration, addition, improvement or repair in or to the Common Elements without the prior written approval of the Condominium Board.

Sponsor shall have the right, without the approval of the Condominium Board, the Selling Agent, the Managing Agent, other Unit Owners, or representatives of holders of Mortgages on Units to: (a) make alterations additions, improvements, or repairs in or to any Unsold Unit, whether structural or non-structural, interior or exterior, ordinary or extraordinary, and (b) subdivide, combine and change the boundary walls of Unsold Units (See the Section of the Plan entitled "Changes in Prices and Units" for further details.)

Each Commercial Unit Owner shall have the right, subject to the easements set forth in Article 11 of the Declaration , without the approval of the Condominium Board, the Selling Agent, the Managing Agent, other Unit Owner's, or representatives of holders of mortgages on Residential Units to make alterations, additions, improvements, or repairs in or to its respective Commercial Unit whether structural or non-structural, interior or exterior, ordinary or extraordinary, and to subdivide such Commercial Unit.

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 Residential Unit, or its appurtenant Limited Residential Common Elements the Condominium Board shall have the right to reasonably approve the Unit Owner's contractors and suppliers and may, at its option, require the Unit Owner to execute an agreement in form and substance satisfactory to the Condominium Board 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. Any Unit Owner making or permitting an alteration, addition, improvement or repair in its Unit, or its appurtenant Limited Residential Common Elements is required by the By-Laws to (i) obtain the consent of the Condominium Board if relating to structural alterations, additions, improvements and/or repairs, (ii) obtain such insurance as the Condominium Board may require, (iii) indemnify the Condominium Board and the Managing Agent against any liability arising from the work, (iv) reimburse the Condominium Board for any architectural, engineering and legal fees incurred in connection with such work, and (v) execute an agreement prepared by the Condominium Board setting forth the terms and conditions under which such alterations may be made.

Any contractor performing work shall not employ any personnel or means that may cause labor disturbances or stoppage in the work of Building employees or other contractors or subcontractors employed in the Building.

No application or other document 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, if necessary, by the Condominium Board. After the issuance of the final certificate of occupancy, the Condominium Board will not unreasonably refuse to approve and execute, if necessary, any application or other document required to be filed in connection with structural alterations, additions, improvements or repairs approved by the Condominium, provided that the Condominium Board and the Unit Owners shall not be subject to any expense or liability by reason of such approval and execution or, by reason of such

addition, alteration or improvement, including, without limitation, liability to any contractor, subcontractor, materialman, architect or engineer, 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 any alteration to such Unit shall be in accordance with, and only as permitted by, the Condominium Act and Law. Any costs and expenses incurred by the Condominium in connection with the review, approval and sign-off of a Unit Owner's alteration request shall be reimbursed by the Unit Owner requesting same and the Condominium Board will not be required to provide any approval until the Unit Owner has provided an alteration deposit, if any is required by the Condominium Board.

Generally, all alterations or improvements in or to the Common Elements will be made by the Condominium Board and the cost and expense thereof will be charged to all Unit Owners as Common Expenses.

Insurance

The Condominium Board will be solely responsible for maintaining casualty and liability insurance with respect to the Building, in accordance with the provisions of the By-Laws. Each Unit Owner will be required to maintain, at and from the Closing of Title to his Unit, casualty insurance with respect to "Unit Specific Property", as such term is defined in the By-Laws, as well as liability insurance with respect to occurrences in or about the Unit. All such policies shall contain waivers of subrogation and further provide that the liability of the carriers issuing the insurance maintained by the Condominium Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner. A Residential Unit Owner will be required to maintain such insurance with respect to occurrences in any Limited Residential Common Element appurtenant to his Residential Unit. The casualty and liability insurance, each with coverage of no less than $1,000,000, shall include the Condominium as an additional insured. The Residential Unit Owner shall provide the Managing Agent with a certificate of insurance evidencing such coverage at Closing and shall provide the Managing Agent with an updated certificate of insurance each year at least 30 days prior to the expiration of such coverages. The certificate should also include a requirement of at least 30 days notice of cancellation or material change be given to the Condominium. A Residential Unit Owner shall also require any tenant of its Unit to maintain similar coverages and to provide the Managing Agent a certificate of insurance evidencing such coverage at the time of lease signing and at each anniversary thereafter. The tenant's certificate must include the Residential Unit Owner and the Condominium as additional insureds and the certificate should include a requirement that at least 30 days notice of cancellation or material change be given to the Condominium and the Residential Unit Owner. It will be the responsibility of the Residential Unit Owner to obtain the documents required from its tenant and to submit them to the Managing Agent and/or the Condominium.

Rights of Access

As more fully set forth in the Declaration and By-Laws, the Condominium Board and any managing agent, manager, Resident Manager and other persons authorized by the foregoing, will have a right of access to any Unit or Limited Residential Common Element for the purposes of making inspections of the Common Elements, performing installations, alterations or repairs or replacements to the mechanical or electrical services, including but not limited to all pools and spas, or other Common Elements in the Unit or elsewhere in the Building, to remove violations, cure defaults by a Unit Owner, correct any condition originating in any Unit and/or Limited Residential Common Element and threatening another Unit or any Common Element, and to inspect with an insurance adjuster, any Unit and/or Limited Residential Common Element relative to an insurance claim, and for any other purposes provided in the Plan, Declaration or as may be required by Law, 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 and the occupants of any Unit. The aforementioned right of access includes a right of access through each Residential Unit and any appurtenant Limited

Residential Common Elements on a quarterly basis for the purpose of inspecting and maintaining the Residential Units heating, ventilation, and air-conditioning equipment. 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, any entry described herein shall not render the Condominium Board or its authorized agents liable for damage incurred in connection with the exercise of such right of entry. In addition, Sponsor and its contractors, subcontractors, agents and employees will have a right of access to each Unit and to all of the Common Elements for purposes of performing certain alterations and repairs in or about Unsold Units and in fulfilling Sponsor's obligations under the Plan, provided that access to any Unit may not be exercised in such a manner as will unreasonably interfere with the use of such Unit for its permitted purposes.

Rights of Access Benefiting the Commercial Units

As more fully set forth in Article 11 of the Declaration, and as described in the Section of the Plan entitled "Commercial Units," each Commercial Unit Owner has certain easements to use or access certain common areas of the Building.

By-Laws and Rules and Regulations

Each Unit Owner must strictly comply with the provisions of the Condominium Documents. Pursuant to Section 339(j) of the Condominium Act, failure to comply is grounds for an action for damages or injunctive relief, or both, but such forms of relief shall not be exclusive of other remedies provided by law. The By-Laws, together with the Rules and Regulations, will be recorded with the Declaration in the Register's Office.

Examination of Books and Records

Each Unit Owner and each mortgagee of a Unit shall be permitted upon prior request, 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.

Self-Help

In the event that any Unit Owner fails to maintain or repair his Unit or any Limited Common Elements appurtenant to such Unit, if any, or in the event of any breach of the Condominium Documents, then, as set forth in Article 9 of the By-Laws, the Condominium Board shall have certain rights to perform such maintenance or repairs, or to cure such breach, at such Unit Owner's expense.

Skyhouse and Mansion Unit Pool Maintenance Obligations/Access

The Condominium Board, in its sole discretion, and its authorized agents, have a right of access to the second floor mechanical space and the 32nd Mezzanine floor mechanical space that contain equipment for the operation of the Mansion Unit pool and the Skyhouse pool and spa, which spaces are Limited Residential Common Elements, for the purpose of inspecting and maintaining, repairing or replacing such pool equipment and spa, to the extent that the respective Unit Owners fail to do so. The Mansion Unit Owner is responsible for any and all expenses relating to the maintenance or replacement of the equipment for the operation of the Mansion Unit pool. Similarly, the Skyhouse Unit Owner is responsible for any and all expenses relating to the maintenance or replacement of the equipment for the operation of the Skyhouse Unit pool and spa. Both the Mansion Unit Owner and the Skyhouse Unit Owner are required to utilize the same pool maintenance company(ies) engaged by the Condominium for the maintenance of the pools/spa appurtenant to their Units. In the event that, in the sole opinion of the Condominium Board, the Owners of either the Mansion or Skyhouse Units do not maintain their pools, spa or pool or spa equipment adequately or permit them to freeze, the Condominium Board has the right

to perform such maintenance work or take such action to prevent freezing wholly at the expense of the affected Mansion or Skyhouse Unit Owner.

It is incumbent upon the Owners of the Skyhouse and Mansion Units to ensure that the pools/spa located in their Limited Residential Common Elements do not freeze.

## RIGHTS AND OBLIGATIONS OF THE CONDOMINIUM BOARD/ SUMMARY OF BY-LAWS

Condominium Board

The affairs of the Condominium shall be governed by the Condominium Board, which shall initially be comprised of three (3) persons designated by Sponsor. The first annual meeting of Unit Owners shall be held within approximately 30 days after the earlier to occur of: (i) the first (1st) anniversary of the First Closing or (ii) the date Sponsor has closed title to Residential Units with respect to at least 90% of the aggregate Residential Common Interest appertaining to all Residential Units. At such meeting, the incumbent Condominium Board shall resign and, subject to the rights of Sponsor and the Commercial Units Owners to designate members of the Condominium Board, the Unit Owners shall elect the Residential Members of the new Condominium Board, which Board shall consist of seven (7) members. (See the Section of the Plan entitled "Control by Sponsor" for further details.) Thereafter, at each annual meeting, members of the Condominium Board shall be elected and shall serve until the next annual meeting thereof and until a successor has been elected and qualified.

Except for the members of Condominium Board designated by Sponsor and each Commercial Unit Owner, all members of the Condominium Board must be either Residential Unit Owners or certain interested parties as described in the By-Laws. No Residential Member of the Condominium Board shall continue to serve on the Condominium Board if, during his term of office, such member shall cease to be a Unit Owner or an interested party or shall have a lien filed against the respective Unit by the Condominium Board. All Board members shall serve without compensation.

Powers and Duties of and Determinations by the Condominium Board

The Condominium Board shall have the powers and duties necessary for or incidental to the administration of the affairs of the Condominium. Generally, all determinations with respect to the administration of the affairs of the Condominium shall be made by the Condominium Board.

As more fully set forth in the By-Laws, all determinations required to be made by the Condominium Board shall be by majority of the votes cast at any meeting at which a quorum is present.

Notwithstanding anything to the contrary contained herein, so long as Sponsor shall continue to own any Unit, but not later than five (5) years from the First Closing, the Condominium Board may not without Sponsor's prior written consent: (a) make or approve of any addition, alteration, or improvement to the Common Elements or to any Unit unless the same are required by Law; or (b) assess any Common Charges or Special Assessments for the creation or replacement of, or addition to, all or part of a working capital, reserve, contingency, or surplus fund; or (c) increase or decrease the number or change the kind of employees employed by the Condominium at the time of the First Closing from that described in the First Year's Budget; or (d) enter into any service or maintenance contract for work or otherwise provide services in excess of those set forth in the First Year's Budget, except as is required to reflect normal annual increases in operating services; or (e) borrow money on behalf of the Condominium; or (f) exercise a right of first refusal to lease or purchase a Unit; provided, however, that Sponsor's written consent is not necessary to perform any function or take any action described in clauses (a) through (f) above, if, and only if, the performance of such function or the carrying out of such action is necessary (and no alternatives are available) to enable the Condominium Board to: (i) comply with Law; or (ii) remedy any notice of violation; or (iii) remedy any work order of the Condominium's insurer, nor shall Sponsor exercise veto power over the expenses described in Schedule B or expenses required to enable the Condominium Board to comply with Law, namely any notice of violation, or remedy any work order of the Condominium's insurer.

Meetings and Votes of Unit Owners

Successive annual meetings of Unit Owners shall be held within approximately 30 days of each anniversary of the first annual meeting. At such meetings, the Unit Owners shall elect the seven (7) member Condominium Board (subject to any rights of Sponsor and the Commercial Unit Owners to designate Condominium Board Members) and there shall also be transacted such other business as may properly come before such meetings. In addition, special meetings may be held from time to time pursuant to the By-Laws. The Secretary of the Condominium Board shall mail a notice of each annual or special meeting to all Unit Owners of record. The notice, which will be given at least five (5) days prior to any such meeting, shall state the purpose of the meeting as well as the time and place where it is to be held. Except as otherwise provided in the By-Laws or Declaration, at all meetings of Unit Owners, the presence in person or by proxy of Unit Owners entitled to vote and owning more than 40% of the Common Interests attributable to all Units shall constitute a quorum and a majority of the votes cast at any such meeting at which a quorum is present shall be binding upon all Unit Owners.

When voting for the Condominium Board, each Residential Unit Owner shall have one (1) vote for each .0001% of Common Interest attributable to his Residential Unit per Residential Member of the Board. Cumulative voting is not permitted. For all other voting, each Unit Owner (including the Sponsor or its designee for so long as Sponsor shall own Unsold Units) shall be entitled to cast one (1) vote at all meetings of Unit Owners for each one (1%) percent or fraction of a percentage of Common Interest attributable to such Unit Owner's Unit(s).

Officers

The principal officers of the Condominium shall be a President, Vice President, Secretary and Treasurer. The Condominium Board may appoint additional officers. None of the officers of the Condominium need be Unit Owners or have any interest therein or be Condominium Board members until the first organizational meeting of the Condominium Board following the first annual meeting. Thereafter, the President, Vice President and Treasurer must be members of the Condominium Board. Except where a Residential Member is designated by Sponsor, any officer that is a Residential Member shall be a Residential Unit Owner, or an adult Family Member of a Residential Unit Owner, or an officer, director, partner, manager, member or shareholder of a Residential Unit Owner. Except as otherwise provided by the Condominium Board, no officer shall receive any compensation for acting as such.

Repair or Reconstruction after Fire or Other Casualty

In the event that the Building or any part thereof is damaged or destroyed by fire or other casualty, the Condominium Board will, except as set forth below, arrange for the prompt repair and restoration thereof (including each Unit, but excluding fixtures, furniture, furnishings or other personal property not constituting a part of such Unit).

If the Building is damaged or destroyed by fire or other casualty and the insurance proceeds are insufficient to cover, or exceed, the cost of repairs and restoration, the deficit or surplus, as the case may be, will be shared entirely by all Unit Owners in proportion to their respective Common Interests. Notwithstanding anything in this paragraph to the contrary, no payment of surplus insurance proceeds shall be made to a Unit Owner until there has first been paid out of his share of such funds such amounts as may be necessary to reduce unpaid liens on his Unit, other than mortgages which are not Permitted Mortgages, in the order of priority of such liens. The provisions of this paragraph are subject to the next paragraph.

If 75% or more of the Building is destroyed or substantially damaged by fire or other casualty and if 75% or more in Common Interest of all Unit Owners do not promptly resolve to proceed with the repair or restoration thereof, the Building will not be repaired and the Property shall be subject to an action for

partition instituted by any Unit Owner or lienor, as if owned in common, in which case the net proceeds of sale, together with the net proceeds of insurance policies, shall be divided among all Unit Owners in proportion to their respective Common Interests, provided, however, that no payment shall be made to a Unit Owner until there has first been paid out of his share of such funds such amounts as may be necessary to discharge all unpaid liens on his Unit (other than mortgages which are not Permitted Mortgages) in the order of the priority of such liens.

Notwithstanding anything contained herein to the contrary, the proceeds of all policies of physical damage insurance maintained by the Condominium Board shall be payable to the Condominium Board in the event of a loss amounting to $1,000,000 or less. In the event that such proceeds are in excess of $1,000,000, such proceeds shall be payable to a New York City bank or trust company designated by the Condominium Board as insurance trustee pursuant to the provisions of the By-Laws. The insurance trustee shall hold all such proceeds in accordance with Section 254-(4) of the New York Real Property Law.

Insurance

The Condominium Board is required to obtain and maintain, in accordance with the provisions of the By-Laws, to the extent obtainable and to the extent determined by the Condominium Board to be appropriate and practicable, the following insurance: (a) fire insurance with all risk extended coverage, vandalism and malicious mischief endorsements, insuring the entire Building together with all service machinery contained therein (other than space defined by the dimensions of the Units and any appliances, fixtures, improvements or any furniture, furnishings, decorations, belongings or other personal property contained in the Units and covering the interests of the Condominium, the Condominium Board and all of the Unit Owners and all Permitted Mortgagees, as their respective interests may appear, under either an agreed amount replacement cost policy or under a policy including at least an 80% co-insurance provision so that the insured shall not be a co-insurer (for purposes of determining full replacement value of the Building the cost shall be exclusive of foundation and footings and without deduction for depreciation); (b) rent insurance in an amount equal to Common Charges for one year; (c) worker's compensation and New York State disability benefits insurance; (d) boiler and machinery insurance; (e) plate glass insurance; (f) water damage insurance; (g) elevator liability and collision insurance; (h) fidelity insurance covering all the Condominium Board and all officers, directors and employees of the Condominium; (i) directors' and officers' liability coverage; (j) commercial umbrella coverage; and (k) such other insurance as the Condominium Board may determine. See Schedule B for details of Insurance Coverage for the projected first year of the Condominium's operation.

The fire insurance policies shall contain a New York standard mortgagee clause in favor of each Permitted Mortgagee which shall provide that the loss, if any, thereunder shall be payable to such Permitted Mortgagee as its interest may appear, subject, however, to the loss payment provisions described in the By-Laws.

The amount of fire insurance and all risk extended coverage to be maintained until the first Condominium Board meeting following the first annual meeting of the Unit Owners shall be in at least the sum set forth in the First Year's Budget.

All policies of physical damage insurance shall contain, to the extent obtainable, waivers of subrogation and waivers of any defense based on (i) co-insurance, (ii) other insurance, (iii) invalidity arising from any acts of the insured or (iv) pro-rata reduction of liability, and shall provide that such policies may not be cancelled or substantially modified without at least 30 days' prior written notice to all of the insureds, including all Unit Owners and Permitted Mortgagees. Duplicate originals or certificates of insurance of all policies of physical damage insurance and of all renewals thereof, together with proof

of payment of premiums, shall be delivered to all Unit Owners and Permitted Mortgagees at least ten (10) days prior to the expiration of the then current policies.

The Condominium Board shall also be required to obtain and maintain, to the extent obtainable, comprehensive general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Property, in such limits as the Condominium Board may from time to time determine, covering (1) the Condominium Board, the Managing Agent or agents thereof, each Condominium Board member and each officer and employee of the Condominium, and (2) each Unit Owner, except that such policy will not cover liability of a Unit Owner arising from occurrences within his own Unit or within the Common Elements, if any, exclusive to his Unit. The Condominium Board shall review such limits no less than once each year. Until the first meeting of the Condominium Board following the first annual meeting of Unit Owners, such liability insurance shall be in at least the sum set forth in Schedule B with respect to bodily injury and property damage, combined single limit. The insurance discussed above shall also include cross-liability claims of one insured against another.

Any insurance maintained by the Condominium Board may provide for such deductible amounts as the Condominium Board determines. The premiums for all insurance referred to above shall be a Common Expense.

Liability of the Condominium Board and Unit Owners

Every contract made by the Condominium Board or by any Managing Agent or manager thereof shall state that (a) it is made only as agent for all Unit Owners and the members of the Condominium Board Managing Agent or manager shall have no personal liability thereon (except in their capacities as Unit Owners) and (b) the liability of any Unit Owner with respect to such contract shall be limited to such proportionate share of the total liability as the Common Interest of such Unit Owner bears to the aggregate Common Interests of all Unit Owners. To the extent permitted by Law, the members of the Condominium Board shall have no liability to Unit Owners except that a member of the Condominium Board shall be liable for his own bad faith or willful misconduct. All Unit Owners shall severally, to the extent of their respective interests in their Units and their appurtenant Common Interests, indemnify each member of the Condominium Board against any liability or claim except those arising out of such member's own bad faith or willful misconduct. The Condominium Board may contract or effect any transaction with any member of the Condominium Board, any Unit Owner, Sponsor, or any affiliate of any of them without incurring any liability for self-dealing except in cases of bad faith or willful misconduct.

Reports to Unit Owners

An annual report of the receipts and expenditures of the Condominium, certified by an independent certified public accountant, shall be submitted by the Condominium Board to all Unit Owners approximately four (4) months after the end of each fiscal year.

Report to Department of City Planning and Community Board

A compliance report regarding the Plaza must be filed with the Department of City Planning and the applicable Community Board in the third calendar year after the issuance of the Notice of Certification, dated July 24, 2014, and at three yearly intervals thereafter. Zoning regulations for public plazas cover such topics as plaza hours of access, plaza standards of accessibility for persons with disabilities, plaza seating, planting and tree requirements, lighting requirements, drinking fountains and public space signage systems. Such regulations require, inter alia, the provision by the private owner of a minimum of one drinking fountain and an entry plaque containing a complying public space symbol with lettering of regulated size that states "Open to the Public". (See Department of City Planning Notice of Certification in Part II of this Plan). Reasonable time, place and manner restrictions embodied in posted

rules of conduct have been found to be permitted under the First Amendment. See Waller v. City of N.Y., 34 Misc. 3d 371, 933 NY.S.2d 541 (N.Y. Sup.Ct. 2011), in which Justice Michael D. Stallman of the Supreme Court of the State of New York, New York County, upheld such restrictions against Constitutional challenge. It is anticipated that the Condominium shall adopt rules of conduct similar to those set forth in Part II of this Plan.

Amendments to Condominium Documents

Generally, subject to certain exceptions concerning, among other things, Sponsor, and Unsold Units, and provided that required consents of the Mortgage Representatives, if any, are obtained, any provision of the Declaration, By-Laws or Rules and Regulations affecting the Common Elements or all Unit Owners may be amended, modified, added to or deleted by affirmative vote of at least 66 2/3% in number and in Common Interest of all Unit Owners entitled to vote; provided, however, that the Common Interest appurtenant to each Unit may not be altered without the written consent of all Unit Owners directly affected thereby.

No amendment, modification, addition or deletion of the Declaration, By-Laws or Rules and Regulations (other than those required by law) shall be effective (a) against Sponsor or any Unsold Unit unless Sponsor has given its written consent thereto, or (b) against the holder of any mortgage, pledge or other lien or security interest covering any Unsold Unit unless such holder has given its prior written consent thereto. In addition, the Declaration, By-Laws and the Rules and Regulations may not be amended or modified so as to adversely affect a Commercial Unit Owner and/or a Commercial Unit without the prior written consent of the affected Commercial Unit Owner.

Termination of Condominium

The Condominium shall continue and the Property shall not be subject to an action for partition (unless terminated by casualty loss, condemnation or eminent domain as provided in the By-Laws) until such time as the Property shall be withdrawn from the provisions of the Condominium Act as a result of the vote to do so of 80% in number and in Common Interest of all Residential Unit Owners and all Commercial Unit Owners. Such vote shall not be effective, however, unless written consents are obtained from the Mortgage Representatives, if any.

In the event of withdrawal, the Property shall be subject to an action for partition by any Unit Owner or any lienor as if owned in common, in which event the net proceeds of the sale shall be divided among all Unit Owners in proportion to their respective Common Interests after first applying the share of the net proceeds of such sale otherwise payable to any Unit Owner to the payment of any liens on his Unit (other than mortgages which are not Permitted Mortgages), in the order of priority of such liens.

Mechanics' Liens

Under the provisions of the Condominium Act, no lien of any nature may arise or be created against the Common Elements except with the unanimous consent of all Unit Owners affected thereby. Liens may arise or be created against only the several Units and their respective Common Interests. Labor performed on, or materials supplied to, a Unit may not be the basis for a mechanics' lien against the Unit of a Unit Owner not expressly consenting to or requesting such work, except in the case of emergency repairs. No labor performed on, or materials furnished to, the Common Elements shall be the basis for a lien thereon but all Common Charges received by the Condominium Board shall constitute trust funds for the purpose of paying the cost of labor performed or materials furnished at the request or with the consent of the Condominium Board or the Managing Agent for the Common Elements.

Easements

In order to facilitate the operation and maintenance of the Building and the sale or leasing of Units therein, each of the Units will be subject to certain easements including easements in favor of Sponsor, other Unit Owners, the Condominium Board and tenants of the Commercial Units. These easements, which are more particularly set forth in the Declaration, include an easement of support and necessity in favor of all other Units and their appurtenant Limited Residential Common Elements and the Common Elements, and an easement in favor of each Unit Owner to use, operate, maintain, repair, alter, rebuild, restore and replace provided that such easements shall be exercised in such a manner as will not unreasonably interfere with the use of the Units for their permitted purposes. See the Section of the Plan entitled "Commercial Units" for a description of the easements benefitting the Commercial Unit Owners.

Sponsor, its designee(s) and each Commercial Unit Owner shall have a permanent easement to erect, use, lease, maintain, repair, replace and operate antennae, satellite dishes and other communications equipment, as permitted by Law, on any part of the roof of the Building which are General Common Elements and elsewhere on the General Common Elements and to utilize any risers, conduits, piping, cables, ducts and electrical panels and rooms, telephone/cable panels and rooms in connection therewith. Sponsor and/or the Commercial Unit Owners shall be entitled to utilize such easement for Sponsor's and/or such Commercial Unit Owner's own account or the account of any tenants or licensees of Sponsor or Commercial Unit Owner. Sponsor's designees shall be entitled to utilize such easement for their account or the account of any tenant, or licensees of such Sponsor designees. However, the easement shall not be used by any Commercial Unit Owner for the operation of a telecommunications company or any other business whose primary purpose is the broadcasting of telephone, radio, communications, or other signals. The Sponsor's easement shall include the right of Sponsor and/or its designees to enter into agreements with one or more providers of communications equipment and services, such as, without limitation, cellular equipment, cable, internet, satellite dish and similar or dissimilar equipment that would permit such providers the right to: (i) install, maintain, repair and replace their equipment on the roof of the Building, (ii) install, maintain, repair, replace and remove wires, conduits, cables, ducts, connective equipment and such other equipment whether similar or dissimilar, in and through the Common Elements, and (iii) use a portion of the Common Elements for equipment. Sponsor and/or its designees shall be entitled to retain any revenues from any such provider. The Condominium Documents do not provide that the aforementioned easements revert to the Condominium or that any revenues generated therefrom revert to the Condominium. In addition, both Commercial Unit Owners shall each have an easement to erect, maintain, repair and replace any sign permitted by law on the storefront to their respective Units, for the purposes of advertising the sale of such Unit, the leasing of space in such Unit and the operation of any business of a tenant or occupant of such Unit. The size, location, design and lighting of any such sign placed by a Commercial Unit Owner on a portion of the Building which is not part of the storefront of the applicable Commercial Unit, if that Commercial Unit Owner is other than Sponsor or Sponsor's designee, shall be subject to the consent of the Condominium Board. However, for so long as Sponsor or Sponsor's designee is the Owner of a Commercial Unit, Sponsor, Sponsor's designee and their tenants shall have the right to install signage on the façade of the Building abutting the second floor above such Commercial Unit without the consent of the Condominium Board. There shall be no consent required from the Condominium Board relative to Sponsor placing one or more signs, or the size, design and lighting of any sign placed by Sponsor on the Property.

Unless otherwise stated, any person who exercises a right of access or easement under the provisions of this Offering Plan shall indemnify the party who suffers the burden of the exercise of such right of access or easement ("servient estate"). This indemnification obligation requires the party who exercises such right of access to hold harmless the owner of the servient estate from any actual out-of-pocket expense, cost, loss, damage, claim or liability arising, directly or indirectly, from the exercise of any right of access or easement.

The Declaration and By-Laws

A copy of the Declaration and a copy of the By-Laws are set forth in Part II of the Plan.

## REAL ESTATE TAXES

The City of New York Department of Finance assesses the value of real property in the Borough of Manhattan for the purpose of computing real estate taxes. See Note 6 to Schedule A and the letter of Podell, Schwartz, Schecter & Banfield LLP, Sponsor's counsel with regard to the estimation of real estate taxes, contained in Part II of the Plan, for a discussion of projections for the assessed valuation of a Unit, tax rates and the amount of taxes payable.

Real Estate Taxes

The tax projections found in Schedule A are merely estimates and cannot be construed as an assurance of the actual amount of real estate taxes that will be assessed.

Each Unit will be taxed as a separate tax lot for real estate tax purposes, and no Unit Owner will be responsible for payment of, nor will the Unit be subjected to, any lien arising from the nonpayment of real estate taxes on other Units. Generally, Units may not be separately assessed until the tax year following the tax year in which the Declaration of Condominium is recorded. Until the Units are separately assessed and billed, each Unit Owner shall pay such Unit Owner's pro rata share (in the proportion that such Unit Owner's Unit's Common Interest bears to the aggregate Common Interest of all Units) of all real estate taxes with respect to the entire Property.

The By-Laws provide that the Condominium Board is entitled to execute and deliver documents necessary in connection with proceedings to obtain reduced real estate tax assessments with respect Residential Unit Owners, for the benefit and on behalf of (i) all Residential Unit Owners, or (ii) for individual Residential Unit Owners, provided that each such Residential Unit Owner indemnifies the Condominium Board from and against all claims, costs and expenses (including, without limitation, reasonable attorneys' fees) resulting from such proceedings.

Procedure to Review Real Estate Tax Assessments

The Condominium Board, on behalf of and as agent for all Residential Unit Owners, will be authorized to commence, pursue and settle certiorari proceedings to obtain reduced real estate tax assessments with respect to Residential Units. All Residential Unit Owners will share the costs in connection therewith and the benefits derived therefrom based on their respective Residential Common Interests. In the event any Unit Owner individually seeks to have the assessed valuation of his Unit reduced by bringing a separate certiorari proceeding, the Condominium Board, if necessary for such proceeding, will execute any documents or other papers required for, and otherwise cooperate with such Unit Owner in pursuing, such reduction, provided that such Unit Owner indemnifies the Condominium Board from all claims, costs and expenses (including, without limitation, reasonable attorneys' fees) resulting from such proceedings.

There are tax certiorari proceedings pending in connection with the Property for the 2014/15 real estate tax year.

## INCOME TAX DEDUCTIONS TO UNIT OWNERS AND TAX STATUS OF CONDOMINIUM

The following discussion of certain income tax consequences of the ownership of a Unit as a personal residence was prepared by Sponsor based, in part, upon the income tax opinion of Olshan Frome Wolosky LLP, a copy of which immediately follows this discussion.

OLSHAN FROME WOLOSKY LLP IS COUNSEL TO SPONSOR FOR THE PURPOSES OF PROVIDING THE ATTORNEY'S INCOME TAX OPINION, AND NOT TO THE UNIT OWNERS. EACH PURCHASER SHOULD CONSULT HIS OWN TAX COUNSEL AS TO THE TAX CONSEQUENCES OF UNIT OWNERSHIP UNDER THE PLAN.

Income Tax Deductions to Unit Owners

Each Unit Owner will own his Unit and its Common Interest in fee simple and each Unit will be a separate tax lot for purposes of New York City real estate taxes and assessments. Since each Unit Owner will own his Unit in fee simple, the owner may mortgage such Unit and become individually liable for the payment of the principal and any finance charges or interest on such mortgage indebtedness.

A Residential Unit Owner who uses his Unit as a personal residence will, under present Law, for Federal, New York State and New York City income tax purposes, be entitled to a deduction for mortgage interest and real estate taxes in the year paid in the case of cash basis taxpayers or accrued in the case of other taxpayers, subject to certain exceptions and limitations which are more particularly discussed in the Attorney's Income Tax Opinion. Purchasers who are individuals should note that mortgage interest is deductible generally only with respect to (1) secured debt used to acquire a principal or second residence (or which constitutes a refinancing of such debt) (up to a total indebtedness of $1 million, $500,000 for married tax payers filing separately) plus (2) other debt (not in excess of $100,000) secured by a principal or second residence. Interest on home mortgage debt in excess of these limitations would not be deductible. In addition, Residential Unit Owners should note that special limitations may apply to the deductibility of points and prepaid interest, if any, on their mortgage loans and to the overall allowance of itemized deductions.

Tax Status of the Condominium

As discussed in the Attorney's Income Tax Opinion, the Condominium will not meet the requirements for qualification as a "homeowners association", under Internal Revenue Code Section 528.

As a result, the Condominium will be eligible to elect tax exempt status under Code Section 528 and will not be taxable as a corporation or partnership for Federal and New York State income tax purposes.

No warranties are given that the Internal Revenue Service, the New York State Department of Taxation and Finance or the Finance Administration of the City of New York will allow the aforementioned deductions for mortgage interest and real estate taxes. There is also no assurance that the tax laws or the regulations or rulings issued thereunder, or any judicial interpretation thereof upon which Olshan Frome Wolosky LLP, as Counsel to Sponsor, bases its opinion, will not change. In addition, none of the aforesaid give any warranties with respect to the tax consequences of the Plan or the tax consequences of ownership of any Units offered under the Plan, and no one has been authorized to give any warranties.

## ATTORNEY'S INCOME TAX OPINION

O L S H A N

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November 5, 2014

Madison 33 Owner LLC
461 Park Avenue South, Suite 200
New York, New York 10016

Re: 172 Madison Avenue Condominium

Gentlemen:

In connection with the offering of condominium units under a plan entitled Condominium Offering Plan for 172 Madison Avenue Condominium (the "Plan"), you have requested our opinion as special tax counsel to the Plan concerning certain tax matters. Specifically, you have requested our opinion as to the deductibility for federal and New York State income tax purposes of payments of mortgage interest and real estate taxes by individual Residential Unit Owners. You have also asked for our opinion as to the tax status of the condominium association.

All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Plan.

We understand that under the Plan each Unit Owner will hold title to his Unit and an undivided interest in the Common Elements of the Property in fee simple. Under New York State law, each Unit and its interest in the Common Elements will be taxed as a separate parcel for real estate tax purposes. Each Unit Owner may place a separate mortgage on his Residential Unit and, by doing so, incur direct liability for the interest payable on such mortgage.

In our opinion under present law, subject to the limitations discussed in the following paragraph and subject to limitations imposed on the deduction of itemized deductions, interest on a mortgage secured by a Residential Unit paid or accrued by the owner of such Residential Unit who is liable for the interest payment on such mortgage and who uses the Residential Unit exclusively as his personal residence will be deductible for federal income tax purposes in the appropriate year according to his method of accounting, provided that he itemizes his deductions. In rendering this opinion we assume that such interest is not prepaid, that the mortgage proceeds were used by the Residential Unit Owner to purchase the Residential Unit, that the Residential Unit is the owner's principal residence and that the Residential Unit Owner is an individual.

Except as provided below, residential interest is deductible if paid or accrued during the taxable year on indebtedness which is secured by either the taxpayer's principal residence, as defined for purposes of exclusion of gain on sale under Internal Revenue Code ("Code") Section 121, or on certain designated second homes. However, a ceiling is placed on the amount of indebtedness which may be taken into account for purposes of this deduction. In general, with respect to indebtedness incurred in purchasing a Residential Unit, this ceiling is $1,000,000, or $500,000 in the case of a married individual filing a separate return. In addition, an individual

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may deduct interest on an additional $100,000 of indebtedness in excess of the $1,000,000 limit mentioned above (or $50,000 of indebtedness in excess of the $500,000 limit in the case of a married individual filing a separate return) as interest on home equity indebtedness. However, special limitations may apply to the deductibility of points and prepaid interest if any.

It is also our opinion under present law that real estate taxes assessed against a Unit Owner's Residential Unit which are paid or accrued by such owner will be deductible for federal income tax purposes in the appropriate year according to his method of accounting, provided that he itemizes his deductions.

We note that in some cases the amount of mortgage interest deductible by an individual Residential Unit Owner subject to the alternative minimum tax may be less than the amount deductible by a Residential Unit Owner subject to the regular income tax and that no deduction is allowed for real estate taxes paid by a taxpayer subject to the alternative minimum tax.

The mortgage interest and real estate taxes described above will also be allowable as deductions for New York State income tax purposes to a resident individual. We express no opinion with respect to these items under the New York State personal income tax on nonresidents. We also express no opinion as to the taxation of Residential Unit Owners who are not individuals.

We have reviewed various documents included as exhibits in the Plan relating to the organization of the Condominium Board of 172 Madison Avenue Condominium (the "Association"), including the Declaration of Condominium and By-Laws of the Condominium (which are the instruments which will create the Association).

Our opinion has been requested as to whether the Association will be eligible to qualify as a tax-exempt organization for federal income tax purposes. In order for the Association to qualify as an exempt organization for federal income tax purposes under Code Section 528, it must meet the following six conditions:

(1) The Association must be organized and operated to provide for the acquisition, construction, management, maintenance, and care of the Association's property.

(2) Sixty percent (60%) or more of the Association's gross income for the taxable year must consist solely of amounts received as membership dues, fees or assessments from owners of residential units.

(3) Ninety percent (90%) or more of the expenditures of the Association for the taxable year must be expenditures for the acquisition, construction, management, maintenance, and care of the Association's property.

(4) No part of the net earnings of the Association may inure to the benefit of any private shareholder or individual, other than by acquiring, constructing, or providing management, maintenance, and care of the Association's property and other than by a rebate of excess membership dues, fees, or assessments.

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(5) The Association must qualify as a "condominium management association," which is an organization meeting the requirements of condition (1), above, with respect to a condominium project substantially all the units of which are used by individuals for residences.

(6) The Association must properly elect to have Code Section 528 apply for the taxable year.

"Substantially all the units" of a condominium management association will be considered as used by individuals for residences if at least eighty-five percent (85%) of the total square footage of all Units within the project is used by individuals for residential purposes. Units that are used for purposes auxiliary to residential use are considered as used for residential purposes. These auxiliary purposes include laundry areas, storage rooms, and areas used by maintenance personnel. A special limitation is established for transient use. No building or Unit will be considered as used for residential purposes if, for more than one half the days in the Association's taxable year, such Unit or building is occupied by a person or series of persons each of whom occupies the Unit or building for less than thirty days.

You have advised us that more than 85% of the total square footage of the Premises will be used by individuals for residential purposes and that no person may rent his Unit for a period of less than thirty (30) days. Accordingly, the "substantially all" test should initially be met.

Our review of the documents referred to above indicates that the Association meets all the organizational tests described above for qualification for exemption. Assuming the Plan is consummated in accordance with its provisions and that the Association, in its actual operation, meets the other tests set forth above, it is our opinion that the Association will be eligible to elect tax-exempt status under Code Section 528. If such exempt status is properly elected, it is our opinion that the Association will not be subject to federal income tax for the taxable years in which such election is in effect, except as noted in the following paragraph.

An effective election will exempt from federal income taxation all amounts received by the Association as exempt function income. This consists of amounts received as membership dues, fees, or assessments from owners of Units. However, the Association will be subject to tax on income which is not exempt function income to the extent such income exceeds expenses properly allocable to such income. Examples of income which is not exempt function income are interest earned on reserve funds, amounts received from persons who are not members of the Association, amounts received for work done on privately owned property which is not Association property, and amounts received from members for special use of the Association's facilities, the use of which is not available to all members as a result of having paid the dues, fees, or assessments required to be paid by all members.

If the Association fails to qualify as a "homeowners association", or if it does but chooses not to make the necessary election, the present state of the law is uncertain as to the tax treatment of any income of the Condominium in excess of appropriate deductions and credits. Tax authorities may take the position that the Condominium is a separate taxable entity and that some or all of its income (including the nonmembership, and possibly membership, income described above less expenses related to such income) is subject to Federal corporate income tax, New

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York State Corporation Franchise Tax and New York City Corporate Franchise or Unincorporated Business Tax. Alternatively, it is possible that some or all of such income might be reportable directly by the Unit Owners. The tax treatment of the Condominium may be affected by certain United States Treasury Department regulations relating to entity classification.[1]

This opinion deals only with the specific tax matters discussed above, which do not necessarily comprise all tax matters which may be significant to purchasers of Units. We express no views as to any federal, New York State or New York City tax consequences other than as explicitly discussed in this opinion or as to the tax status or tax consequences of the Plan under the laws of any foreign jurisdiction. Accordingly, it is recommended that each prospective purchaser of a Unit consult with his own tax advisor concerning the federal, New York State, and New York City tax consequences of the purchase and ownership of a Unit.

This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel bases this opinion will not change. In no event will the Sponsor, counsel to Sponsor, special tax counsel to the Sponsor, the Association, or any other person be liable if, by reason of future changes in fact or applicable law, regulations, decisional law, or Internal Revenue Service rulings, the tax consequences described previously should change.

ALL UNIT OWNERS, POTENTIAL RESIDENTIAL UNIT OWNERS AND THE CONDOMINIUM ARE HEREBY INFORMED THAT (I) ANY TAX ADVICE CONTAINED IN THIS OPINION IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, (II) THE ADVICE IS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED IN THE PLAN, AND (III) EACH RESIDENTIAL UNIT OWNER, EACH POTENTIAL RESIDENTIAL UNIT OWNER, AND THE CONDOMINIUM SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

Sincerely yours,

Olshan Frome Wolosky LLP

OLSHAN FROME WOLOSKY LLP

[1] To remove doubt in the area, the Association may be able to elect to be treated as a corporation for federal income tax purposes if it files Form 8832 with the IRS within 75 days of its formation.

## WORKING CAPITAL FUND AND APPORTIONMENTS

The Purchaser of a Residential Unit shall be required to make a contribution at the Closing of his Unit to the working capital fund of the Building ("Working Capital Fund"). Such contribution shall be in an amount equal to three (3) month's Common Charges then in effect for such Residential Unit plus the balance for the Closing month, pro-rated on a daily basis.

At the First Closing, Sponsor will apportion with the Condominium the following items as of midnight of the day preceding the First Closing:

(1) employees' wages, vacation and severance pay, pension and welfare benefits and accruals and all other payments or obligations relative to the employees of the Building;

(2) deposits with utility companies, if any, and fees for assignable permits and licenses, if any;

(3) charges for electricity and other utilities for the Common Elements;

(4) cost of fuel on hand (plus sales tax), if any;

(5) charges and receipts in connection with service, maintenance and concession contracts;

(6) water charges and sewer rents on the basis of the fiscal or calendar year for which assessed (unless separately assessed to individual Units);

(7) cost of Building supplies on hand at Sponsor's cost (including sales tax);

(8) premiums for transferable insurance policies, if any;

(9) management fees; and

(10) other customary closing adjustments.

If any of the foregoing items to be apportioned cannot be adjusted at the First Closing because they are not fully ascertainable, they shall be apportioned and adjusted to the extent reasonably possible at the First Closing, and final adjustment will be made as soon thereafter as the undetermined amounts are ascertained. Except as herein otherwise expressly provided, the customs in respect to title closings adopted by the Real Estate Board of New York, Inc., as amended, shall apply to apportionments and other matters herein mentioned.

If the result of the closing adjustments is a net credit in favor of the Condominium, Sponsor will contribute the amount of such net credit to the Working Capital Fund. If the result of the closing adjustments is a net credit in favor of Sponsor, the payment of any net credit shall be deferred and paid to Sponsor by the Condominium in one installment on the first anniversary of the First Closing, without interest, pursuant to an unsecured, negotiable, promissory note to be executed by the Condominium Board and delivered to Sponsor at the First Closing. Such promissory note may be prepaid by the Condominium in full at any time, or in part from time to time, without penalty.

The Working Capital Fund will be held and used for working capital, a reserve for repairs or for such other appropriate purposes as will be determined by the Condominium Board and may be augmented by allocations from the monthly Common Charges collected from each Unit. While the Sponsor controls the Condominium Board (see the Section of the Plan entitled "Control By Sponsor" for further details), the Working Capital Fund will not be used to reduce Common Charges.

The Condominium Board will be able to utilize the funds in the Working Capital Fund at any time and, accordingly, no representation or warranty can be made and no assurance can be given as to the exact amount of funds available at any specific time. However, in no event shall any portion of the Working Capital Fund be used to pay any Common Charges attributable to Unsold Units. In addition, within three (3) months following the end of the Initial Control Period, Sponsor shall deliver to the Condominium Board a statement from an officer of Sponsor, certifying in reasonable detail as to any changes in the amount of the Working Capital Fund which have occurred since the First Closing.

No representation or warranty is made that the Working Capital Fund will be, or is intended to be, adequate to cover current or future expenses, including repairs, replacements or major improvements, for the first or any subsequent year of Condominium operation. If additional funds are required over and above the Working Capital Fund to cover expenses of the Building operation, it may be necessary to increase Common Charges or make special assessments. Neither the Department of Law nor any other government agency has passed upon the adequacy of the Working Capital Fund.

## RESERVE FUND

Sponsor shall not deposit funds at the First Closing into a reserve fund. The First Year's Budget in Schedule B has a line item for a Reserve Fund to be used for capital replacements or repairs, to be funded by Unit Owners from Common Charges. Since the Building is newly constructed, it is not expected that any capital item will need to be replaced within the five year period following the First Closing.

## AGREEMENTS AFFECTING BUILDING OPERATIONS

Management Agreement

At or prior to the First Closing, Sponsor will assign, and the Condominium Board will assume, the Management Agreement, dated the 29th day of May, 2014, for the Building between Sponsor and Maxwell-Kates, Inc. ("Managing Agent"), having a business address at 9 East 38th Street, New York, New York 10016 ("Management Agreement"). The Managing Agent is not affiliated with Sponsor.

The Management Agreement shall commence on the first day of the month that is 60 days prior to the First Closing ("Commencement Date"), projected to be July 1, 2016, and shall continue until the end of the 14th month thereafter, unless terminated earlier in accordance with the provisions of the Management Agreement ('Initial Term"). The Managing Agent fee shall be the sum of $43,000.00 per annum ($3,583.33 per month) for the first 14 months of the Management Agreement, payable in equal monthly installments in advance on the first day of each month. The Condominium Board will be obligated to reimburse the Managing Agent for any reasonable out of pocket expenses incurred by the Managing Agent. In addition, for services rendered to Unit Owners (other than Sponsor) in connection with processing applications to sell, lease or otherwise transfer Units and obtaining necessary waivers of the right of first refusal by the Condominium Board, the Managing Agent shall receive a fee from each Unit Owner.

As provided in the Management Agreement, on completion of the Initial Term of that agreement, the Management Agreement shall continue in effect for additional terms of one year with an annual fee increase of four (4%) percent on each anniversary date of the Management Agreement, unless terminated at least 15 days prior to such anniversary date.

The duties and services to be rendered by the Managing Agent, described in detail in the Management Agreement, include, among others:

(1) billing and collecting Common Charges payable by Unit Owners;

(2) causing the Common Elements to be maintained, repaired and altered in the manner deemed advisable by the Condominium Board;

(3) contracting for necessary services and repairs and purchasing all supplies necessary to properly maintain and operate the Building and its Common Elements. The prior approval of the Condominium Board is necessary for any contract or purchase which exceeds $5,000.00. Ordinary repairs or alterations involving an expenditure of over $5,000.00 for any one repair or alteration item shall be made only with the prior approval of the Condominium Board, but emergency repairs, that is, those deemed by the Managing Agent to be immediately necessary for the preservation or safety of the Building or for the safety of Unit Owners or other persons, or required to avoid the suspension of any necessary service in the Building, may be made by the Managing Agent irrespective of the cost thereof, without the prior approval of the Condominium Board, provided, however, that in all cases, the Managing Agent only authorizes so much of the work required to be done so as to abate the emergency and obtain the Condominium Board's approval for permanent repairs.

(4) checking all bills received in connection with the maintenance and operation of the Common Elements and causing all such bills and other expenses to be paid upon the Condominium's approval of same.

(5) implement the Condominium Board's decisions regarding supervising, hiring and discharging employees necessary for the proper maintenance and operation of the Building;

(6) rendering monthly statements of receipts and disbursements to the Condominium Board or other designated entity or individuals;

(7) maintaining payroll records and filing withholding tax statements for employees;

(8) maintaining accurate sets of books for the Condominium Board;

(9) assist the Condominium Board and its accountants in the preparation and submission of an operating budget of the anticipated income and expenses for the ensuing year;

(10) attending meetings of the Condominium Board, and preparing agendas and sending notices relating to such meetings; and

(11) advise as to proper insurance coverage for the Building, its employees and Unit Owners;

(12) processing applications of Residential Unit Owners for permission to alter the Units and for the sale and refinancing of Residential Units; and

(13) generally, doing all things deemed reasonably necessary or desirable by the Condominium Board for the proper management of the Building.

Upon the request of the Condominium, the Managing Agent, at the expense of the Condominium, will obtain a fidelity bond, satisfactory to the Condominium, under a crime insurance policy in favor of the Condominium for any loss resulting from fraudulent or dishonest acts committed by the Managing Agent, its directors, officers or employees. The Managing Agent shall maintain at its sole cost and expense, insurance coverage as described in the Management Agreement, including an umbrella liability insurance policy of not less than $5,000,000.00. The Condominium shall be named as an additional party on each such insurance policy.

At any time, the Condominium or Managing Agent may terminate the Management Agreement with or without cause effective at the end of any calendar month upon not less than sixty (60) days prior written notice to the other party.

The fee for the Managing Agent will be allocated among the Residential and Commercial Unit Owners based on their respective Percentage of Common Interests.

Pool Management Contract

Year round indoor pool management and maintenance services are to be provided for the sub-cellar common area pool, spa and water feature ("Pool Facility") by a third-party vendor ("Pool Management"), pursuant to a contract to be entered into prior to the First Closing ("Pool Management Contract"). Pool Management will supervise and maintain the Pool Facility in accordance with the terms of a Pool Management Contract, including hiring lifeguards and other staff as needed and organizing programs and events.

The cost of the Pool Management Contract is based upon a proposal provided by Elite Pool and Fitness Management Inc., and the cost is allocated among the Residential Unit Owners based on their Percentage of Residential Common Interest. Sponsor reserves the right to enter into a Pool Management Contract with a third-party vendor of its choice, and will assign such agreement to the Condominium at the First Closing. The Mansion and Skyhouse Units will pay for the maintenance of their pools and spa separately. The Skyhouse and Mansion Unit Owners are required to use the same pool maintenance company as used by the Condominium. No part of the Pool Management fee will be allocated to the

Commercial Units Owners. Sponsor makes no representation that the Pool Management Contract will be with Elite Pool and Fitness Management Inc.

Concierge Service

A concierge service will be provided to the Residential Unit Owners and residents of the Condominium by a third-party concierge service company, pursuant to a written contract to be entered into prior to the First Closing with Sponsor ("Concierge Agreement"). At the First Closing, Sponsor will assign, and the Condominium Board of Managers will assume the Concierge Agreement.

The Concierge Agreement shall become effective prior to the First Closing ("Commencement Date") and, unless terminated under the provisions of that Agreement, shall continue in full force and effect for at least one year ("Initial Term").

Pursuant to the Concierge Agreement, the concierge service company will arrange events such as wine tastings, author visits and instructional classes open to all residents. In addition, the concierge service company will provide residents of the Condominium with access to vendors who offer a range of goods and work, including, but not limited to, restaurant reservations, theater and sporting event tickets, cleaning, housekeeping and valet arrangements, car service bookings, chauffeur, private charter arrangements, party and event planning, and computer technician service and instruction, which goods and work are to be paid for by the purchasers of same.

The cost of the Concierge Agreement fee is allocated among the Residential Unit Owners, based on their Percentage of Residential Common Interest: no part of that fee shall be allocated to Commercial Unit Owners. Sponsor makes no representation that the Concierge Agreement will be with Abigail Michaels Inc.

Public Plaza

Publicly accessible open space at ground level (the "Plaza") is included in the Property for which benefits have been received by Sponsor in the form of additional floor area utilized in the construction of the Building. The Plaza is to be developed and maintained substantially in accordance with the drawings prepared by Karl Fischer Architecture PLLC and SCAPE Landscape Architecture PLLC ("Plaza drawings"), and attached as Exhibit B to the Notice of Certification, dated July 24, 2014 (the "Notice of Certification"), recorded in the Office of the City Register, New York County, on July 24, 2014, at CRFN 2014000259638. A copy of the Notice of Certification is included in Part II of the Plan. The Notice of Certification restricts the manner in which the Property may be developed, redeveloped, maintained and operated in the future.The Plaza is to be accessible to the public at all times. No Temporary Certificate of Occupancy or Final Certificate of Occupancy is to be issued for any additional floor area permitted by virtue of the Plaza unless and until the Plaza has been substantially completed in accordance with the Plaza drawings. A compliance report regarding the Plaza must be filed with the Department of City Planning and the affected Community Board in the third calendar year after which the certification was issued and at three year intervals thereafter. (See "Rights and Obligations of the Condominium Board/Summary of By-Laws"). It will be the obligation of the Condominium to operate the Plaza, at its sole cost and expense, in accordance with the Notice of Certification and to address any matters that might arise from the existing requirement that the Plaza be open 24 hours per day, such as noise, security issues and the use of the Plaza by the general public. (See Plaza Rules of Conduct in Part II of this Plan).

Window Agreement

A portion of the property is subject to an agreement, dated April 16, 1985, between Jesse Smith Noyes Foundation, Inc., and 1634 Associates (the "Window Agreement") and recorded in the Office of the City Register, New York County at Reel 901, page 1901. The Window Agreement benefits the

property located at 15 – 19 East 33rd Street and 16 – 22 East 34th Street (the "Adjacent Premises") upon which there is a twenty-one story building ("Existing Adjacent Building") by prohibiting construction of a Building on a portion of the Property abutting the Existing Adjacent Building which would block or render unlawful, any window now, and then existing in the easterly wall of the Existing Adjacent Building. The Building does not violate the prohibition in the Window Agreement because the Plaza abuts the easterly wall of the Existing Adjacent Building. (See Window Agreement in Part II of this Plan).

## IDENTITY OF PARTIES

Sponsor

Sponsor is Madison 33 Owner LLC, a Delaware limited liability company with offices at 461 Park Avenue South, New York, New York 10016. The individual principal who will be actively involved in this offering is Yitzchak Tessler. Mr. Tessler, a real estate developer, was a principal of the sponsor entity in connection with the offering of the 323 Park Avenue South Condominium (first closing: September 9, 2013); 150 Nassau Condominium at 150 Nassau Street, New York, New York 10038 (first closing: March 14, 2003); 260 Park Avenue South Condominium at 260 Park Avenue South, New York, New York 10010 (first closing: February 3, 2006); Windsor Park Condominium at 100 West 58th Street, New York, New York 10019 (first closing; January 27, 2006); and 240 Park Avenue South Condominium at 240 Park Avenue South, New York, New York 10003 (first closing: March 11, 2008). Neither Sponsor nor the Principal of Sponsor have had any prior felony convictions, or bankruptcies. Sponsor and the Principal of Sponsor have no unsatisfied judgments or injunctions.

Attorneys for Sponsor

Sponsor has retained the law firm of Gerstein Strauss & Rinaldi LLP, having an office at 57 West 38th Street, New York, New York 10018, to represent it in connection with the Plan. Lisa J. Rinaldi, Esq. participated in and supervised the preparation of the Plan. Gerstein Strauss & Rinaldi LLP will serve as Escrow Agent and will represent the Sponsor in connection with matters relating to Closings of Units.

Sponsor has retained the law firm of Olshan Grundman Frome Rosenzweig & Wolosky LLP, having an office at 65 East 55th Street, New York, New York 10022, to provide the Attorney's Income Tax Opinion set forth in Part I of the Plan. The Sponsor has retained Podell, Schwartz, Schechter & Banfield, LLP, having an office at 605 Third Avenue, New York, New York 10158, to provide an estimate of real estate taxes.

Selling Agent

The Selling Agent for the project is Keller Williams NYC, having an office at 425 Park Avenue, 6th Floor, New York, New York 10022. Keller Williams NYC is a licensed real estate brokerage in the State of New York. Keller Williams NYC is the New York City master franchise of Keller Williams Realty International, one of the largest real estate franchise operations in North America with more than 100,000 agents. Locally, Keller Williams NYC has grown to more than 400 agents since its launch in 2011.

Managing Agent

The Managing Agent for the Condominium will be Maxwell-Kates Inc., having an office at 9 East 38th Street, 6th Floor, New York, NY 10016. The Managing Agent is a leading real estate management firm that has been in business for over 25 years in the New York and New Jersey area, with experience as a managing agent for many rental, co-operative and condominium properties in New York, including 24 Central Park South, 900 Fifth Avenue and 55 East 86th Street.

Construction Professionals

Karl Fischer Architecture PLLC ("Fischer"), having an address at 530 Broadway, 9th Floor, New York, New York 10012, is the architect of record for the Building. Fischer prepared the Floor Plans of Units set forth in Part II of the Plan and the Floor Plans which will be filed with the New York City Real Property Assessment Department required in order to create the Condominium. Fischer has also rendered its Report and Certification, both of which are set forth in Part II of the Plan.

Fischer is an internationally recognized architectural firm specializing in all facets of residential design and construction, including newly built condominiums and conversions of existing high-rise structures to luxury condominiums. Fischer is also known in other architectural fields, such as hotels, commercial office buildings and institutional buildings, such as schools. In New York City, the firm recently completed the "Slate Condominiums" located at 165 West 18th Street and the "Chelsea Club" at 444 West 19th Street, both of which are high-end twelve story residential developments. Fischer's portfolio also includes numerous new residential developments in Greenpoint, Brooklyn and residential conversions in Manhattan. Notable projects include converting a former Pennsylvania Railroad power station in Long Island City, Queens into the Powerhouse (2005-07) for residential use with a four story addition; the conversion of a former Gretsch Musical Instruments factory into 130 luxury condominium units in Williamsburg, Brooklyn; Park Plaza (2002), a new six building development at 523 Kent Avenue in Williamsburg, Brooklyn with 182 apartment units; Schaffer Landing (2005), a new 350 unit, 530,000-square foot residential development on the East River in Williamsburg, Brooklyn, comprising one 25-story tower and one 15-story tower; 100 Parkside Avenue, a new 270-unit mixed condominium/rental building in Prospect Park South, Brooklyn on the site of the former Caledonian Hospital

The structural engineer for the Building is DeSimone Consulting Engineers, P.C., with offices at 18 West 18th Street, New York, NY 10011. The mechanical engineer for the Building is Consentini Associates, PC, with offices at 2 Pennsylvania Plaza, New York, New York 10121.

Condominium Budget Expert

Sponsor has engaged Maxwell-Kates, Inc., 9 East 38th Street, 6th Floor, New York, New York 10016 ("Budget Expert") to be the Condominium's budget expert. Maxwell-Kates is a full-service real estate management firm specializing in cooperative and condominium property management since 1986. The Budget Expert estimated all amounts of income and expenses in "Schedule B - First Year's Budget" in consultation with Sponsor. The Budget Expert has rendered a Certification as to the adequacy of the First Year's Budget and a Certification as to the adequacy of common charges payable by the Commercial Units Owners, each of which may be found in Part II of the Plan.

Title Company

Continental Abstract Corporation ("Continental Abstract"), having an office at One Old Country Road, Suite 467, Carle Place, New York 11514, telephone (516) 248-1180, has reviewed the Plan and the Condominium Documents and has committed to insure that a valid condominium will be created pursuant to the Condominium Act. The Title Company is prepared to issue fee and/or mortgage title insurance policies to those Purchasers who request them. A form of Unit Owner's Specimen Title Policy, if title insurance is ordered through Continental Abstract, is set forth in Part II of the Plan.

Related Parties

Efraim Tessler, a real estate broker for the Building, is a son of a principal of Sponsor, and an independent contractor with Keller Williams NYC. With that exception, Sponsor and its principals have no affiliation with the Attorneys, the Managing Agent, the Selling Agent, the Budget Expert, the Construction Professionals, nor any person or firm who will provide services to the Condominium subsequent to the First Closing. Neither the Selling Agent, the Managing Agent, the Budget Expert, the Construction Professionals nor the Attorneys have any financial interest in the Property, the Units, the Condominium, or this offering, except for their fees for services rendered.

## REPORTS TO UNIT OWNERS

It is the obligation of the Condominium Board to give all Unit Owners annually:

1. A financial statement of the Condominium prepared by a certified public accountant or public accountant, within approximately 120 days after the end of each fiscal year of the Condominium. Such statement must be certified while Sponsor is in control of the Condominium Board;

2. Not less than ten (10) days nor more than 30 days prior notice of the date fixed for the annual Unit Owners' meeting; and

3. A copy of the proposed annual budget of the Condominium at least 30 days prior to the date set for adoption thereof by the Condominium Board. While Sponsor is in control of the Board, such budget shall be certified in compliance with Section 20.4 of the Regulations of the Department of Law.

## DOCUMENTS ON FILE

Pursuant to the provisions of Section 352-e of the New York General Business Law, copies of the Plan and all exhibits or documents referred to herein shall be available for inspection by prospective Purchasers, and by any person who shall have purchased a Unit offered by the Plan or shall have participated in the offering of such Unit, at Sponsor's office and shall remain available for such inspection for a period of six (6) years. In addition, a set of Floor Plans showing the layout, locations and approximate dimensions of each Unit and its unit number designation and tax lot number, certified by the appropriate governmental authority of The City of New York as conforming to the official tax lot number for each such Unit, will be filed in the Register's Office following the recording of the Declaration, and an additional set will be furnished to the Condominium Board.

The Declaration and the By-Laws will be recorded in advance of, or concurrently with, the First Closing. The recording of all deeds conveying individual Units will also be in the Register's Office.

## GENERAL

The Plan does not knowingly omit any material fact or knowingly contain any untrue statement of any material fact. Sponsor believes that the Plan contains a fair summary of the material provisions of the documents referred to in the Plan, including those documents contained in Part II of the Plan. Copies are contained in Part II of the Plan of the form of Declaration, form of By-Laws, form of Purchase Agreement, form of Unit Deed, form of Power of Attorney and other documents. Statements made in Part I of the Plan as to the provisions of such documents or any other document referred to herein, copies of which are on file with Sponsor, are not necessarily complete. Each such statement is qualified in all respects by the contents of such documents and, in the case of any such document executed by or with the written consent of a Purchaser pursuant to the Plan, any rider or separate agreement changing or adding provisions to such document.

There are no lawsuits or other legal proceedings now pending, or any judgments outstanding, which could materially and adversely affect this offering, the Purchasers of Units, the Property, the Condominium or the operation thereof, which are not covered by insurance.

No party other than the Purchasers shall have any right or benefit herein or herefrom, including without limitation, the right to insist upon or enforce against Sponsor the performance of all or any of the Sponsor's obligations hereunder and no such third party shall be deemed to have received any benefit as a result of any of the provisions of the Plan.

Sponsor reserves the right, from time to time prior to the First Closing, without obtaining the consent of Purchasers or others, to substantially revise the terms and conditions upon which the Units are to be sold, including changes affecting the rights, obligations and liabilities of Sponsor, the Purchasers and/or prospective Purchasers under the Plan. However, Sponsor may not unilaterally cancel a Purchase Agreement which is in effect, except as therein provided, as in the case of an uncured default, nor unilaterally change the purchase price or payment terms contained in such Purchase Agreement. All substantive or material revisions will be contained in a duly filed amendment to the Plan. If there is a substantial amendment to the Plan that materially and adversely affects Purchasers, except as otherwise provided herein, Purchasers will have a right of rescission which may only be exercised within 15 days from the Presentation Date of such amendment. Sponsor shall promptly return any Deposit, together with any interest earned thereon to Purchasers who rescind, except that Sponsor shall retain the Deposit of any Purchaser who is in default under the Purchase Agreement beyond any applicable grace period.

In accordance with the provisions of the Laws of the State of New York, neither Sponsor nor any selling agent engaged by Sponsor will discriminate against any person in the sale of Units offered by the Plan or in the leasing of any such Units because of such person's sex, sexual orientation, race, creed, color, national origin, marital status, age, disability or any other ground proscribed by Law.

Unless the context otherwise requires, words used in the singular in Part I of the Plan include the plural and vice versa, and a reference herein to any one gender, masculine, feminine or neuter, includes the other two.

No person has been authorized to make any statement or representation or furnish any information not expressly contained herein. Any information, data, or representations not contained herein or in the documents and exhibits referred to herein must not be relied upon. The Plan may not be changed or modified orally.

The Property has not been the subject of a prior public offering. All Residential Units are currently vacant. There have not been any agreements, written or oral, entered into by Sponsor for the sale or transfer of any of the Units offered pursuant to the Plan, nor has Sponsor accepted any deposits or other funds in relation to the Units offered as of the date of this Plan.

The offering hereunder is exempt from the registration requirements of the Interstate Land Sales Full Disclosure Act (15 U.S.C.A. §1701 et seq.) since fewer than 99 lots are being offered. This disclosure has not been verified or the content thereof approved by the Office of the Attorney General of the State of New York.

## SPONSOR'S STATEMENT OF BUILDING CONDITION

Sponsor adopts the "Description of Property and Building Condition" set forth in Part II of the Plan and represents that it has no knowledge of any material defects or need for major repairs to the Building except as set forth in the "Description of Property and Building Condition" or as contemplated to be made as described therein. As more fully described above, and subject to the matters described therein and in the Plan, Sponsor anticipates that construction activities at the Building will be sufficiently completed to allow the First Closing to occur as projected in Schedule B.

Wood Flooring. Purchasers are advised that flooring used in the Residential Units other than the Penthouse and Skyhouse Units, which have unfinished floors, will be engineered wood flooring. Sponsor makes no representation as to whether or not such floors can be sanded, and if they can be sanded, the number of times sanding is possible. Sponsor is not responsible for the: (i) wear and tear on the finishing coats of the flooring, (ii) variations in floor level and slight separation between base and floor, (iii) variations in length, width or shades of the flooring, (iv) shrinking or expansion of flooring resulting from humidity levels in the Residential Units, and (v) dents or scratches in flooring.

**PART II**

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**CONDOMINIUM OFFERING PLAN**

**172 MADISON AVENUE CONDOMINIUM**

**172 MADISON AVENUE**
**NEW YORK, NEW YORK 10016**

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## DESCRIPTION OF PROPERTY AND BUILDING CONDITION

# Attorney General's Report

# MADISON 33

## 172 Madison Avenue, New York NY 10016

Karl Fischer, Architect

Seal (R.A.)

January 12, 2015

**General:**

1. The property described herein will contain a new 34 story Building, which will consist of residential and commercial use as per NYC Zoning. The Building is located at 172 Madison Avenue, New York, NY 10016.

2. Parking is not required as per the Zoning Resolutions of NYC

3. The property is not located within a Flood Zone.

**a) Location and Use of Property:**

1. Address: 172 Madison Avenue, New York NY 10016

2. Block No: 863, Lot Number: 17

3. Zoning District: C5-2 / R10 equivalent

   Quality Housing regulations: Quality Housing regulations do not apply.

   Building is built "As of Right" and follows land use and zoning regulations.

   Landmark Status: N/A

   This is not a self-certified project.

4. Permitted Uses:

   i. Permitted uses are as defined by the New York City Zoning Resolution.
   ii. Use Group 1 and 2 Residential
   iii. Use Group 3 and 4 Community Facility
   iv. Use Group-5, 6, 9, 10 and 11 Commercial

**b) Status of Construction:**

1. Construction Schedule:

The Building will consist of 69 residential units and two (2) commercial units and is currently in the initial stages of construction pursuant to DOB application #121900158 , dated July 1, 2014. The projected date of substantial completion will be on or about July 1, 2016, unless delayed by weather, strikes, lockouts, acts of God, shortages of, or inability to obtain materials, equipment or labor, governmental restrictions or preemption, audits and stop work orders by the authority having jurisdiction, damage by fire or the elements or any other cause over which the Sponsor has no control. The sponsor is expected to have substantial completion by the date as previously

mentioned, July 1, 2016. This means that all of the 69 residential units will be legally habitable and in move in condition, with temporary certificates of occupancy issued for those units. Finish work may be required in areas of the Building, both interior and exterior, and it is anticipated that the finish work will be substantially complete on or by Dec 31, 2016. Furthermore, substantial completion time frame does not include the completion of the commercial units, which may be substantially complete after on or by December 31, 2016.

2. Class of Construction:

The Building will be classified as Class IB (Non-Combustible) and will conform to all applicable regulations of the Building code of the City of New York ("Building Code").
Class 1B construction requires major structural elements to be 2 hour fire resistance rating for floors and beams,1 hour for roofs. Egress Stairs shall have a 2 hour fire rating. Exterior wall separations are determined based on distance of separation as indicated below;

| | |
|---|---|
| 3'-0" of less | 2 hours |
| 3-0" to 15'-0" | 2 hours |
| 15'-0" to 30'-0" | 1.5 hours |
| 30'-0" or more | 0 hours |

The building will conform to all applicable regulations of the 2008 Building Code of the City of New York ("Building Code") and Local Law 58 (Handicapped Access Law).

- The building permit filed under the standard review program, under application #121900158 was approved on September 4th 2014 and the first construction permit was issued on September 9th 2014.

3. Certificate of Occupancy:

After completion of construction, the Sponsor will apply for a Certificate of Occupancy for the Building from the Department of Buildings of the City of New York. The Sponsor makes no representation as to the exact time of the delivery of the Certificate of Occupancy. The Sponsor will obtain a Temporary Certificate of Occupancy prior to the first residential unit closing. The Sponsor will use its best efforts to continually renew the temporary certificate of occupancy until the final certificate of occupancy for the Building is issued. While the Sponsor is not aware of any present conditions at the building that could interfere with the issuance of the final certificate of occupancy, open permits for work performed by unit owners including the owner of the commercial units could result in delays. If any issues arise in connection with the issuance of the temporary or final certificate of occupancy, they will be resolved in accordance with applicable laws, codes, rules and regulations.

c) **Site:**

1. Site Area: The total site area is approximately 10,702 square feet, based on survey dated 6/21/2013

2. Building: The floor levels in the sections refers to construction floor numbers

   i. There will be one new mixed use Building on the property with a public plaza situated on the western edge of the property. The building will consist of 34 stories with a mezzanine level on the 32nd floor. Essentially the building will consist of 34 construction floors above grade. There will be 69 Residential units. In addition there will be 2 Commercial units on the 1st floor. There is a Sub-cellar and Cellar. The Sub-cellar shall consist of accessory Residential spaces that will include amenity spaces and Residential storage.There will be mechanical spaces at the Sub-cellar level as well. The Cellar shall consist of Residential amenity spaces, mechanical equipment rooms and Commercial storage which is part of the Commercial first floor unit. On the 1st floor there will be two Commercial units and the Residential lobby. The 2nd floor will be a mechanical floor. The remaining floors from the 3rd to the 33rd floor will consist of Residential units. The 34th floor will be another mechanical floor consisting of mechanical rooms and one elevator machine room. The roof level will house the cooling tower, make-up air unit and window cleaning swing stage equipment. Two elevators will serve all residential floors except the 32nd floor and roof levels. There will be a private limited use limited access (LULA) elevator solely for the Skyhouse units on the 31st, 32nd and 33rd floors. Accessory parking is not required.

3. Streets: The Building will have frontage on both Madison Avenue and 33rd Street.

   i. Paving: The streets adjacent to the property are owned and maintained by the City of New York.

   ii. Curbing: All curbs shall be new, steel faced, concrete and shall conform to the requirements of NYCDOT and municipal codes.

   iii. Catch Basins: There are no catch basins on the property.

   iv. Street Lighting: The street lighting at adjacent streets is owned and maintained by the City of New York.

   v. The Building conforms to local fire district and NYC Department of Buildings codes.

4. Sidewalks:

i. Paving: The existing sidewalk paving along 33rd Street and Madison Avenue are concrete. Existing concrete paving will be replaced.
The sidewalks at the project shall be in conformance with local NYC DOT requirements, district and municipal codes and they shall comply with Local Law and ADA requirements. This will also apply to any pedestrian ramps on the sidewalk. There are no curb cuts or aprons for the project.

a) The Condominium Board will be responsible for the maintenance of the sidewalk in accordance with the requirements of the Authority Having Jurisdiction (AHJ).

b) There is no NYC subway tunnel adjacent to the property or within a 200 foot distance. Approvals from the NYC Transit Authority are not required. However there is an Amtrak tunnel that runs below 33rd Street parallel and adjacent to the property. It has no impact on the property or Building. All relevant approvals by that agency have been acquired

ii. Curbing: See item (c).(3).(ii) above.

iii. Catch-Basins: See item (C).(3).(iii) above.

iv. Street Lighting: See item (C).(3).(iv) above.

**d) <u>Utilities:</u>**

1. Water - A 6" domestic water service connection shall be provided from a 12" municipal water main located under East 33rd Street. The incoming water service will be equipped with a NYC, DEP approved, meter and backflow prevention device. A 2" water supply to Cooling Tower will be equipped with sub-meter and backflow Preventer. These units shall all be the obligation of the Board of Managers of the Condominium ("Board of Managers"). to maintain and repair. Commercial tenant's domestic water supply will be provided with two 2" NYC, DEP approved water meter which shall be the obligation of the Commercial Unit Owner. All costs of water usage, other than the cost of water usage by the commercial units, shall be payable by the residential unit owners as a residential common expense. The Condominium would pay for water usage by commercial units unless they consume more than just lavatory usage. The cost of water usage by the commercial units shall be billed by the City of New York to, and paid by the commercial units owners or their tenants.
   i. Water supply to the private pools on the 3rd and 33rd floors will be sub-metered.

2. Fire Protection - a 6" fire protection service connection shall be provided from a 12" municipal water main located under East 33rd Street. The incoming fire protection water service will be equipped with an approved NYCDEP 6" DCDA with ¾" by-pass meter

which shall be the obligation of the Board of Managers to repair and maintain. The cost of water usage for the fire protection service will be payable by all unit owners as a general common expense.

3. Sewer: All sanitary, soil and wastes from the Building will be discharged to the New York City sewer system. Storm water from roofs, areaways and other open areas opened to the elements will be discharged to the combined New York City sewer. Storm water piping system will be independent from sanitary piping system throughout the Building. Storm water will be detained in the cellar tank, in full compliance with the NYCDEP requirements. No meters are required. Billing by the city is based on water usage. The water usage by cooling tower and the makeup air unit, to be deducted from the sewer charges. The obligation to repair and maintain the meter shall be the obligation of the Board of Managers. Refer to the site description section (J)(2) for additional information regarding the sewer discharge and connections to city sewers.

4. Natural Gas: Two Gas services will be brought into the Building at the cellar level, from the Con Edison gas main located under Madison Avenue- one 6" service for the Building needs and one 1.25" service for the Emergency Generator. Gas service for the Building is metered with three dedicated meters, one for each of the following applications:

   i. Space heating boilers and heating units will be on one "firm" Con Edison meter which shall be the obligation of the Board of Managers to repair and maintain. The cost of gas billed on this meter will be a residential common expense

   ii. All domestic water heaters, residential kitchen gas cook-tops, fire places gas grills and private pool heating will be on one "firm" Con Edison meter which shall be the obligation of the Board of Managers to repair and maintain. Space heating boilers and heating units will be on one "firm" Con Edison meter which shall be the obligation of the Board of Managers to repair and maintain. The cost of gas billed on this meter will be a residential common expense

   iii. Emergency generator will be on a dedicated "firm" Con Edison meter

   iv. Gas supply to the Mansion unit and Skyhouse units for the heating of their Swimming pools, Spa, Private Generator and Gas Barbeques if any shall be sub-metered.

   v. Two (2) 2" capped and valved outlet for future Con Edison meter for the commercial spaces will be installed. The Commercial Unit Owners will be responsible for contracting with a gas service provider to install a meter and supply gas to the commercial units and to maintain any associated equipment.The cost of gas usage by the commercial units will be billed directly to the owners of the commercial units.

5. Electricity Service
   Electricity Service for the Building is at the utilization voltage of 120/208 volts, 3 phase, 4 wire, 'Wye' type configuration. New service shall be 4,000 amps at 3 phase capacity, 4 wire plus ground.
   i. One 1,600 Amps for distribution to the Residential units
   ii. Three 1,600 amps, one 100 amps, one 1,200 amps and one 600 amps are provided for house loads.
   iii. One 1,200 amps for all the commercial units.
   iv. All main distribution equipment shall be located in the cellar electric service room which shall be the obligation of the Board of Managers to repair and maintain.
   v. "House loads" will be Con Edison direct metered.
   vi. Residential units electrical usage will be sub metered which shall be the obligation of the Board of Managers to maintain and repair. The cost of electricity measured on the "house load" meters will be billed separately to the residential unit owners. Each residential unit owner will pay the condominium for their electrical usage; the Condominium shall in turn pay Con Edison for the Residential Electrical usage.
   vii. Separate Con Edison meters will be provided for the commercial units which shall be the obligation of the Commercial Unit Owners to maintain and repair. The commercial unit owners (or their tenants) will pay Con Edison directly for the electricity consumed within the commercial units.

6. Telecommunications: Provisions for underground telephone, cable TV and data/internet service will be provided to equipment in the main telephone/data room in the cellar which shall be the obligation of the Board of Managers to maintain and repair. Each Unit Owner is responsible to set up their own telephone, cable TV and data/internet service with the provider(s) as selected by each unit owner. Cabling from the tele/data room to each floor will be installed. Unit owners will be billed directly by service provider(s). The Commercial Unit Owner's will be responsible for all tele/data infrastructure and services to and for the Commercial Units.

**e) <u>Sub-soil Conditions:</u>**

1. The "General soil conditions underlying the site consist of a thick fill layer covering decomposed rock and bedrock. The fill layer includes recent fill placed following demolition of the existing buildings. Outside of the Building footprint, underneath sidewalks, a layer of natural sand was encountered below the fill. The groundwater table was measured about 15 feet below ground surface (about Elev. +30). The groundwater encountered is likely perched.

2. The site is not in a Flood Zone. It is situated well above the Manhattan Datum for 100-year and 500-year flood levels according to Flood Insurance Rate Map (FIRM) 3604970201G . The possibility of flooding is extremely low.

There is no apparent danger of damage to the Building from soil erosion or mud slides.

**f) <u>Landscape & Enclosure:</u>**

1. Ground Plane:

   - The entirety of the plaza ground plane is paved with precast concrete pavers or pervious stone cobbles. No lawn or at grade planting is being provided. All pavements comply with the requirements of New York City Department of City Planning for Privately Owned Public Spaces.

2. Plantings:

   - A largely native plant palette is employed throughout the plaza in a series of raised planters or curbs. Bamboo planting is proposed as a visual screen at the north end of the plaza. All plantings comply with the requirements of New York City Department of City Planning for Privately Owned Public Spaces.

3. Trees:

   - Street trees will be provided as required by the NYC zoning Resolution under the Special urban design guidelines for the streetscapes and will also adhere to the guidelines for the Department of Parks and Recreation and the NYC Department of Transportation. The trees that will be planted will either be Gingco Biloba or Sawtooth Oak. Note that the Department Parks and Recreation will determine the exact size, location and species of trees. Additional tree plantings are provided in the plaza area and will comply with the requirements of New York City Department of City Planning for Privately Owned Public Spaces.

4. Fencing:

   - An 8'-0" minimum height decorative metal screen wall defines the western and northern limits of the plaza and complies with the requirements of New York City Department of City Planning for Privately Owned Public Spaces.

5. Gates:

   - One gate is being provided in the decorative metal screen wall to access a storage area outside of the limits of the Public Plaza.

6. Public Plaza:

The Public Plaza is composed of pavement described below and plantings with site furnishings.
Site furnishings include 125 linear feet of wood and metal benches, two litter receptacles, one bicycle rack (two bikes), and a drinking fountain. All furnishings comply with the requirements of New York City Department of City Planning for Privately Owned Public Spaces.

The plaza is open to 33rd Street on the southern edge to allow unrestricted public access to the space. The plaza is delineated on the western and northern edges by the 8'-0" minimum height decorative metal screen wall and is bounded by the proposed Building on the eastern edge.

The plaza is drained at the surface elevation with trench drains that intercept runoff prior to crossing the property line into the R.O.W. Subgrade drainage is also provided for the entire plaza and in the planted areas.

7. Retaining Wall: N/A

8. Terraces:

There will be no common area terraces in the Building. The following residential units will have terraces:

- The Mansion unit, Unit 22A, 28th floor Unit and the Skyhouse unit will have terraces.
- Penthouse Units on the 29th, 30th, 31st, and Skyhouse shall have balconies.

All terraces and balconies will be limited residential common elements.

**g) <u>Building Size:</u>**

1. Total Height:

The height of the main roof of the Building will be approximately 465.34' above the average base plane elevation of 45.81'. The base plane is defined by the New York City Zoning Regulation.

The maximum height of the Building will be approx. 486.34' from average base plane elevation to the top of the elevator bulkhead roof.

The floors of the building are designated Sub-cellar, Cellar, First through 12th and 14th through Roof Over Elevator Machine Room (All floors references in the Plan and in this Report are in accordance with Marketing floor designations). For the purposes of

marketing, floor thirteen has been excluded. Construction necessitates a sequential numbering of floors. Therefore, two different methods of numbering of floors exist and are shown below:

| CONSTRUCTION FLOOR NUMBER | MARKETING FLOOR NUMBER |
|---|---|
| Sub-Cellar – health Club & Storage | Sub-Cellar – Health Club & Storage |
| Cellar – Mechanical & Lounge | Cellar – Mechanical & Lounge |
| 1st | 1st |
| 2nd - Mechanical | 2nd - Mechanical |
| 3rd | 3rd - Mansion |
| 4th | 4th |
| 5th | 5th |
| 6th | 6th |
| 7th | 7th |
| 8th | 8th |
| 9th | 9th |
| 10th | 10th |
| 11th | 11th |
| 12th | 12th |
| 13th | 14th |
| 14th | 15th |
| 15th | 16th |
| 16th | 17th |
| 17th | 18th |
| 18th | 19th |
| 19th | 20th |
| 20th | 21st |
| 21st | 22nd |
| 22nd | 23rd |
| 23rd | 24th |
| 24th | 25th |
| 25th | 26th |
| 26th | 27th |
| 27th | 28th / PH-A |
| 28th | 29th / PH-B |
| 29th | 30th / PH-C |
| 30th | 31st / PH-D |
| 31st | 32nd -Skyhouse |
| 32nd | Skyhouse Mezzanine |
| 33rd -Roof | 33rd -Skyhouse Roof - |

| | |
|---|---|
| 34th - Mech. and Elevator Machine Room | 34th - Mech. and Elevator Machine Room |
| Upper Roof - Cooling Tower & Window Rig | Upper Roof - Cooling Tower & Window Rig |

2. Crawl Spaces: N/A

3. Sub-cellar and cellar: There are two floors below grade.

| | | |
|---|---|---|
| 1. | Sub-Cellar to Cellar | 11'-6" |
| 2. | Cellar to 1st Floor : | 11'-6" |

4. There are 34 floors above grade. The scissor stair and elevators will serve all floors above and below grade except for the Skyhouse Mezzanine and 34th floor. A single stair from the 33rd floor will be used to gain access and egress to the 34th floor and the Skyhouse mezzanine will be accessed via a communicating stair within the Skyhouse unit. The following floor to floor dimensions are approximate and are measured from the top of concrete slab to the top of concrete slab of the floor above:

| | | |
|---|---|---|
| 3. | 1st Floor to 2nd Floor: | 23'-0" |
| 4. | 2nd Floor to 3rd Floor: | 18'-0" |
| 5. | 3rd Floor to 4th Floor | 18'-0" |
| 6. | 4th Floor to 27th Floor: | 11'-6" |
| 7. | 28th to 32nd Floor | 18'-0" |
| 8. | 32nd Floor to 32nd Fl Mezzanine | 11'-6" |
| 9. | Mezzanine Floor to 33rd Floor | 11'-6" |
| 10. | 33rd floor to 34th Floor. | 18'-0" |
| 11. | 34th Floor To Upper Roof | 12'-8" |

5. Equipment Rooms:

There will be an elevator overrun enclosure at the 1st floor and 33rd floor. The elevator equipment rooms will be located on the sub-cellar, and 34th floor respectively.

6. Parapets:

- Height from the top of roof finish to the top of the parapet copings or railings will be a minimum of 3'-6".

**h) <u>Structural Systems</u>**

General:

- The structural systems of the Building consist of poured in place concrete, in the form of columns, slabs and shear walls. The foundation system of the Building will consist of spread footing on bedrock. The lateral system of the structure will utilize shear walls and the slabs will be of flat plate construction. The Sub-Cellar slab will be a pressure slab. All facades of the Building will be subjected to Local Law 11/98.

1. Exterior of Building:

i. Walls: The exterior wall construction will consist of thermally insulated "Schuco" Curtain Wall System or approved equal and composite stone on the Eastern, Southern, and Western facades. On the Northern façade the exterior walls will consist of concrete walls and thermally insulated "Schuco" Curtain Wall System approved or equal. All wall assemblies will be insulated as required by the NYC Energy Code, with a minimum R value of 11.

ii. Windows: The windows system shall consist of double glazed thermally insulated "Schuco" Curtain Wall System approved or equal. Windows will be fixed or hopper type. The system will have a 5 year warranty and the Glass will have a 10 year warranty.

Glass windows will provide the OITC rating per code requirements. Windows that are operable will be out-swinging hopper type. They will be equipped with limit stops to prevent the window from opening more than 4". Windows are in compliance with NYCDOB Subchapter 12, Article 3, Standard of Natural Light and Article 6, Standards for Natural Ventilation. Screens will not be provided

Lot Line Windows: All lot line windows will be protected with sprinkler heads according to the NYC Building code. Lot line windows cannot be used to determine the light and air requirements for a habitable room. The Lot line windows are located in the following units:

1. 4th to 27th floors: Unit B in the living room
2. 28th to 32nd floors: Unit A in the kitchen
3. 32nd floor mezzanine: Stairs

iii. Landmark Status: N/A

iv. Sound Insulation:

- Floors: Floors installed on the new concrete slab, on the residential floors, will be a ¼" sound attenuation mat under a ¾ inch engineered hardwood finish flooring described below.
- Walls: All walls between units and corridors will have a STC rating of 51. Demising walls between units will have the same STC rating.

2. Parapets and Copings:

i. The parapet walls where extent such as, on the 28th floor will consist of poured in place concrete or concrete masonry units (CMU) and will extend above roof level up to a minimum height of 3'-6".

ii. The parapet coping where applicable will consist of stone or pre-painted aluminum with corrosion resistant anchors, all as detailed on plans.

iii. Structurally all parapets shall comply with applicable local law and code requirements.

iv. Flashing: Exposed exterior flashing for the Building shall be aluminum.

v. Caulking: The caulking material is of a type and quality approved for its application and will be used in conjunction with a closed cell backer rod where applicable.

3. Chimneys, Caps and Flues:

i. Boiler Flue: The condensing boilers and domestic hot water heaters will have a AL29-4C stainless steel flue which will terminate above the upper roof of the mechanical room bulkhead as required NYC Building Codes.

ii. Refuse Chute: The refuse chute shall be vented through the elevator bulkhead roof, as per NYC DOB's standards and Rules of the City of New York (RCNY). There will be one refuse chute for the Building. The chute will terminate in a refuse storage/compactor room on the Cellar Floor. See Refuse Disposal for description of compactor.

4. Balconies and Terraces:

i. Deck Finish: The finish system at all balconies and terraces shall be Hanover paving system or equal or on the case of the 3rd floor, Hanover paving system or equal and/or Ipe Wood Decking or equal. All balconies and terraces shall contain a single drain. Perimeter edge drip grooves will be provided where applicable.

ii. Balustrade: N/A

iii. Railings: The railings at the balconies and terraces shall be aluminum or equal and tempered safety glass. The railings and fasteners will be corrosion resistant. The railings at the Skyhouse Swimming pools will be aluminum or equal and Acrylic panels or equal.

iv. Copings: All parapets shall have pre-finished aluminum or stone copings as per plans and details.

v. Soffits: The soffit at balconies will be metal panel and all fasteners associated with its installation will be corrosion resistant.

vi. Doors to Balconies and Terraces:

The balcony and terrace doors will be part of the "Schuco" Curtain Wall System or equal and shall consist of insulated thermal and tempered glass and framed in aluminum.

vii. Balconies must remain open as-built. If an owner wants to install an enclosure and the condominium by-laws would allow it, the enclosure must be built via the proper approvals and in strict compliance with the requirements of DOB and Local Authority Having Jurisdiction.

5. Exterior Entrances:

i. Exterior Doors and Frames:

The main entrance to the building will be "Schuco system " or equal aluminum frame with clear tempered glass storefront system. The hardware will be manufactured by Hoppe or equal.

Other entrance doors from the plaza, terrace and balcony will consist of "Schuco" aluminum frame doors or equal with tempered glass storefront or Curtain Wall systems.

Egress doors at grade, from the egress stair on the 1st floor, shall be "Schuco" aluminum framed doors or equal with opaque or frosted tempered glass storefront system.

ii. Vestibule Doors:Vestibule doors will consist of "Schuco" aluminum frame doors or equal with tempered glass storefront or Curtain Wall Systems.

iii. Exterior Stairs: N/A

iv. Railings: N/A

v. Mail Boxes: Mailboxes are located in the Lobby at the 1st Floor and will be front-loading. The finish will be aluminum and shall be a type approved for use by the United States Postal Service (U.S.P.S) . The mailboxes will be by Florence Manufacturing Inc. or equal.

vi. Lighting: Exterior light at all main entrances shall be provided and shall meet the minimum required foot candles as per NYC Multiple Dwelling Law and Building Codes. Lighting will also be provided in the lobby and public corridors. Common areas illumination shall be provided and charged to Condominium Association. See the lighting section of this report for the exterior lighting schedule.

vii. Canopy: The canopy will be fabricated out of metal panels or equal and all fasteners will be corrosion resistant. The canopy will also comply with the applicable requirements NYC Building Codes and Local laws. All exterior entrances are protected from the weather by the building above and shall be built free of tripping hazards and will be ADA compliant.

6. Service Entrances:

There is one service entrance located at the south elevation of the 1st floor. The door and frame will be "Schuco System" or equal aluminum framed doors with opaque or frosted tempered glass storefront system construction.

7. Roof and Roof Structures:

i. Roof Type at Main Roof (Cooling Tower) as manufactured by Siplast, Inc. or equal.

a) Roof material: The new roofing system will be an Insulated Roof Membrane Assembly over a concrete roof deck and will consist of a 2-ply, torched-down modified bitumen membrane over insulation and a vapor barrier. The new roofing system will be sloped to drains (as recommended by the roofing manufacturer).

b) Roof insulation: The insulation will be below the roof membrane and its thickness and type will be appropriate to meet the minimum R-20 Value required as determined by the NYCECC for this zone.

c) Surface Finish: The roofing will be finished with a top ply of white acrylic granules to meet the NYC Code mandated light reflectancy values. Walkpads will be provided as walkways for maintenance personnel.

d) Warranty: The roofing system shall have a 20 year "No Dollar Limit" manufacturer's warranty.

e) Flashing Material: There will be aluminium counter flashing or equal and resinous base flashing or equal as required by the roofing manufacturer. All flashing will be compatible with the roofing manufacturer's recommendations. All exterior metals, including fasteners shall be corrosion resistant.

Roof Type at terraces at floors 1st (public plaza), 3rd, 22nd, and 28th through 33rd as manufactured by ALT Global, Inc.or equal

f) Roof Material: The new roofing system will be an Inverted Roof Membrane Assembly over a concrete roof deck and will consist of a fully reinforced, cold fluid-applied, PMMA resinous membrane with primer on top of the concrete deck covered by drainage board, insulation, filter fabric and either stone ballast, concrete pavers or Ipe decking. The new deck under the roofing system will be sloped to drains (as recommended by the roofing manufacturer);

g) Roof insulation: The insulation will be above the roof membrane and its thickness and type will be appropriate to meet the minimum R-20 Value required as determined by the NYCECC for this zone.

h) Surface Finish: The roofing will be finished with either concrete pavers, Ipe Decking, or stone ballast.

i) Warranty: The roofing system shall have a 20 year "No Dollar Limit" manufacturer's warranty.

j) Flashing Material: There will be aluminium counter flashing and resinous base flashing as required by the roofing manufacturer. All flashing will be compatible with the roofing manufacturer's recommendations. All exterior metals, including fasteners shall be corrosion resistant.

ii. Roof Drains:

a) Roof drains are provided on all roofs. They are cast iron drains designed based upon products manufactured by Jay R. Smith, or approved equal.

b) Leaders are cast iron. There is a gutter between Building and adjacent property between the third and fourth floors.

iii. Skylights: N/A

iv. Bulkhead:

Elevator and Stair Bulkhead: The bulkhead combines both the stair and elevator bulkheads. The exterior wall construction at the bulkhead consist of Metal Panel anchored to either CMU or concrete backup walls.

v. Metal Work at Roof Levels

a) Exterior, metal stairs: N/A

b) Vertical Ladders: There will be one ladder made of corrosion resistant material located on the interior of 34th floor to gain access to the upper roof via a roof hatch.

c) Railings: N/A

d) Hatches to Roof: A hatch will be provided at the 34th floor to gain access to roof. It will be constructed to meet the necessary water tightness for the application. All fasteners shall be corrosion resistant.

e) Dunnage: Dunnage exposed metal on the roof shall be either galvanized or equal or primed with two finish coats of paint applied.

vi. Roof Top Facilities:

The Condominium Board of Managers shall have unlimited access to all areas of the roof for the purposes of making inspections or repairs.

8. Fire Escapes: N/A

9. Yards and Courts: See Landscape section of this report:

10. Interior Stairs:

<u>Interior Public Stairs:</u>

i. Number of Stairs: There is one stair core in the Building containing a scissor type fire stair, which will extend from the sub-cellar floor to the 33rd floor. From the 33rd floor to the 34th there will be a single egress stair. The Fire stairs will provide egress from the Sub cellar floor, and upper floors.

ii. Enclosure: The stairs will be enclosed with a min. 2-hour fire rated construction of concrete or masonry equivalent such as sheetrock or equivilant and not excluding shaft wall construction. All stair walls will be painted on the inside.

iii. Stair Construction: Broom finished poured in place concrete .

iv. Stringers: N/A.

v. Treads: Concrete.

vi. Risers: Concrete.

vii. Hand Rails: There shall be a steel pipe handrail in each stair in accordance with the NYC Building Code.

viii. Balustrade: N/A.

Interior Private Stairs:

Interior private stairs in Skyhouse unit shall have wood treads and risers with wood handrails and are not fire rated.

11. Interior Doors and Frames:

i. Unit Entrances: The Residential units shall be accessed from the common corridors off of the passenger elevators and shall be UL 1 ½ hour rated FPSC solid core doors with steel frames to meet the New York City Building Code requirement. The apartment interior doors shall be wood doors with wood frames.

ii. Corridor Doors and Frames: All doors to be UL 1 ½ hour rated FPSC steel doors with hollow metal frames to meet New York City Building Code requirements.

iii. Stair Doors and Frames: All doors and frames shall be hollow-metal doors FPSC UL 1 ½ hour rated and will meet the New York City Building Code requirements.

iv. Roof Doors and Frames: These doors and frames at the egress stairs shall be hollow-metal and will comply with the New York City Building Code requirements. Doors will be fire rated as required. The roof doors at the Skyhouse unit shall be made of aluminum and glass.

12. Elevators:

Residential passenger elevators:

i. Number: There are Two (2) Residential passenger elevators servicing the Building.

ii. Manufacturer: They are manufactured by Hollister Whitney or equal with Machines by Imperial Machines or equal and controllers by MCE, or equal. Both elevators will have a capacity of 3,000 pounds or 15 persons.

iii. Type of operation: Duplex Selective Collective

iv. Automatic (type of controls): Microprocessor VVVF-AC

v. Floors served: The elevators will serve all floors from the sub cellar floor to the 33rd floor and will exclude the 32nd floor mezzanine and the 34th floors.

vi. Type: The elevators are overhead AC gearless type elevators.

vii. Doors: The elevators doors are single speed center opening doors.

viii. The elevator machine room will be located on the 34th floor.

ix. AC motor by imperial or Hollister Whitney or equal

x. AC solid-state frequency drive: Magnetek or approved equal

xi. The elevator machine room is equipped with a heat pump unit.

Private Elevator:

i. Number: There is One (1) Private elevator.

ii. Manufacturer: Savaria Concord Lifts Inc. or equal

iii. Type of operation: Limited Use Limited Access private residence elevator.

iv. Automatic (type of controls): Microprocessor

v. Floors served: An elevator solely for use by the Skyhouse will serve the 31st floor, 32nd floor mezzanine and roof top unit area and terrace level at the 33rd floor.

vi. Type: single speed overhead MRL

vii. Doors: sliding gate

viii. Machine room location: N/A

ix. AC motor: Imperial or approved equal

x. AC motor-generator set: N/A

xi. The elevator capacity shall be 1,000 pounds maximum.

Service Elevator:

i. Number: There is One (1) Service elevator.

ii. Manufacturer: Liestritz or equal.

iii. Type of Operation: Simplex Selective Collective

iv. Automatic (type of controls): Microprocessor

v. Floors served: There is one service elevator that will have stops on the sub cellar, cellar and 1st floors.

vi. Type: The service elevator will be a twin post holeless hydraulic.

vii. Doors: Elevator doors are single speed, center opening, automatic.

viii. The machine room is located in the sub-cellar.

ix. AC motor: Imperial or approved equal

x. AC motor-generator set: N/A

xi. The elevator will have a capacity limited to 2,000 pound maximum.

13. Elevator Cab:

i. Residential elevator cabs are manufactured by Hollister Whitney or equal and shall be in conformance with applicable code provisions.

ii. Floor material "Absolute Black" Stone Tile on setting bed.

iii. The walls for elevator cab are covered with bronze or "Cambridge architectural mesh, "Stipple" type B"

iv. The ceiling of elevator cabs is bronze

v. The lighting of the cab's are recessed "No. 8 Lighting" Inset Series "4".

vi. Alarm, safety system:

a) Emergency telephone intercom will be provided in each cab.

b) Elevator cabs will be provided with recall feature as part of the total elevator control system design. One of the Residential elevators will be linked to the emergency generator, see the Electrical portions of this report for more details.

14. Other:

i. Window Cleaning System: There will be a window cleaning unit manufactured by Global BMU or equal. The window cleaning unit will be a stationary turret mouted unit with a telescopic boom that will have a 13'-1" long platform located on the upper roof of the building and will be used for other facade maintenance on the building. There will also be vertical stabilization buttons placed at regular intervals on the façade to assist in stabilizing the platform when in use . The system will conform to all specification as required by NYSDOL AS101,OSHA 1910.66 and ASME A120 (2008)

**i) <u>Auxiliary Facilities:</u>**

1. Laundry Room: N/A

2. Refuse Disposal:

i. Incinerators: None

ii. Compactor and Trash Chutes: One (1) is provided for the Building. The compactors will be model Econo Krusher by Royal-Pak Systems, or equal.

iii. Refuse Storage Location: The refuse will be stored on the cellar floor. Recycling of designated materials will be per local law requirements. Recyclables (if required) will be stored in the refuse rooms. Bags and recyclables from the residential refuse rooms shall be transported to compactor room and then to the street level by the Building superintendent, and then removed by the New York City Department of Sanitation.

iv. There is one refuse room in front of the trash chute on each floor.

3. Recreation Rooms:

The following "recreation" areas and or "Amenity" Areas will be provided:

i. Health Club facility with gym equipment provided by Gym Source which shall include (2) Treadmills, (2) Ellipticals, (2) Uprights, (2) Benches, (1) Weight rack, (1) trainer Unit (1) Weight Unit located in the Sub Cellar Level.
ii. A Yoga room. In the Sub Cellar Level.
iii. A Concrete, 66' by 14' swimming pool, with a salt water system. In the Sub Cellar Level.
iv. A Stainless Steel 5'-7" by 7' 4" Pet Spa. In the Sub Cellar Level.
v. A male and a female locker room with steam room, showers, lockers and bathroom facilities. In the Sub Cellar Level.
vi. A "Pet bath" with a PetEdge walk in tub Model PL 280, or equal or better. In the Sub Cellar Level.
vii. A Lounge in the Cellar Level Area
viii. A childrens playroom in the Cellar Level Area

ix. All amenity and recreation spaces will be mechanically heated and cooled

4. Storage:

i. Bicycle Storage – There is a 585 SF bicycle storage area located in the Sub Cellar level with brackets installed
ii. There is a residential storage room located on the Sub-Cellar floor

iii. There will be 16 individual metal mesh storage lockers installed in the storage room. Each unit consists of an upper and lower level, so combined there is a total of 32 storage lockers and they are manufactured by WireCrafter or equal. See schedule below.

| RESIDENTIAL STORAGE | | |
|---|---|---|
| STORAGE NO. | SIZE (WxDxH) | Cubic SQ. FT. |
| 1 | 4'x4'x3.75' | 60 |
| 2 | 4'x4'x3.75' | 60 |
| 3 | 4'x4'x3.75' | 60 |
| 4 | 4'x4'x3.75' | 60 |

| | | |
|---|---|---|
| 5 | 4'x4'x3.75' | 60 |
| 6 | 4'x4'x3.75' | 60 |
| 7 | 4'x4'x3.75' | 60 |
| 8 | 4'x4'x3.75' | 60 |
| 9 | 4'x4'x3.75' | 60 |
| 10 | 4'x4'x3.75' | 60 |
| 11 | 4'x4'x3.75' | 60 |
| 12 | 4'x4'x3.75' | 60 |
| 13 | 4'x4'x3.75' | 60 |
| 14 | 4'x4'x3.75' | 60 |
| 15 | 4'x4'x3.75' | 60 |
| 16 | 4'x4'x3.75' | 60 |
| 17 | 4'x4'x3.75' | 60 |
| 18 | 4'x4'x3.75' | 60 |
| 19 | 4'x4'x3.75' | 60 |
| 20 | 4'x4'x3.75' | 60 |
| 21 | 4'x4'x3.75' | 60 |
| 22 | 4'x4'x3.75' | 60 |
| 23 | 4'x4'x3.75' | 60 |
| 24 | 4'x4'x3.75' | 60 |
| 25 | 4'x4'x3.75' | 60 |
| 26 | 4'x4'x3.75' | 60 |
| 27 | 4'x4'x3.75' | 60 |
| 28 | 4'x4'x3.75' | 60 |
| 29 | 4'x4'x3.75' | 60 |
| 30 | 4'x4'x3.75' | 60 |
| 31 | 4'x4'x3.75' | 60 |
| 32 | 4'x4'x3.75' | 60 |
| | | |

5. Mechanical Rooms:

i. The water and gas service rooms, the electrical room, tele-communications rooms and fire pump rooms and the mechanical room for hot water heaters are distributed throughout the Building on the sub cellar, cellar, 2nd floor and 34th floors.

**j) <u>Plumbing and Drainage</u>:**

(1) Domestic Water Supply

(i) A 6" water service provided by NYC DEP from East 33rd Street will be equipped with water meter and backflow prevention devices.
(ii) Hot water distribution systems routing will generally follow cold water distribution. Commercial tenants will be responsible for providing their own hot water. Hot water circulation will be provided to maintain water temperature as required by plumbing standards.
(iii) Domestic water distribution piping shall be type "L" copper with soldered joints. Domestic water will be delivered to all plumbing fixtures, interior and exterior hose bibs, mechanical equipment, pools make-up, automatic irrigation, window washing rig.
(iv) All hot and cold piping will be insulated with fiberglass insulation. For cold water pipe insulation, the jackets shall be the vapor barrier type.
(v) There will be one domestic water pressure booster system, containing triplex pumps, with a system capacity of 300 GPM @ 223 PSI (Each Pump: 100 GPM) manufactured by Peerless; Model TVH32-4 Triplex Water Pressure Booster System with three (3) 25 HP vertical multi-stage pumps with an 80 gallon Tank and duplex control panel: (NEMA l) 208 Volt, 3 ph with VFD Drives.

(2) New Fire Protection System

(i) Standpipes: At both of the stairwells there will be a standpipe or combined riser. Standpipes will be 6" size, Schedule 40 steel piping.
A dedicated 6" fire service shall be provided from East 33rd Street and will serve as primary water source for the low zone. The fire service shall connect to a low zone fire/jockey pump and to a central combined sprinkler/standpipe riser located in the stair well.
(ii) At both of the stair landings on each occupied floor there will be a standpipe hose valve connected to the standpipe or combined riser at the same stair.
(iii) Each of the occupied floors shall include a sprinkler distribution system as per NYC Building Code. The type of sprinkler heads shall be either upright, sidewall and concealed depending on the ceiling condition for the spaces. Sprinklers in the residential occupancies and adjacent corridors to be residential type.
(iv) Two Fire Department siamese connections will be provided at building facades facing public streets and will serve as secondary water sources for the low zone.
(v) An Automatic Fire Pump serving low zone is located in the sub-cellar.
Fire Pump Model: Peerless Model: 5PVF11, 500 GPM at 130 PSI head, 60 HP. Jockey pump: Grundfos Model: CR 3-12, at 10 gpm and 135 PSI head and 2 hp.

(vi) An Automatic Fire Pump serving high zone is located in 34th floor fire pump room.

Fire Pump Model: Peerless Model: 5PVF7, 500 GPM at 71 PSI head, 30 HP. Jockey pump: Grundfos Model: CR 3-7, at 10 gpm and 75 PSI head and 1.5 HP±.

(3) Water Storage Tank(s) and enclosures:

(i) One two-compartment fire water storage tank will be provided on the roof to serve as primary source for upper zone and secondary source for low zone.

(ii) The tank will be concrete

(iii) The tank will be accessible via ladder and hatch on top of the tank

(iv) Total tank capacity is 15,000 gallons, all fire reserve, no domestic water reserve

(4) Water Pressure:

(i) Adequate water pressure will be maintained by a triplex booster pump assembly to deliver domestic water to the plumbing fixtures throughout the Building. Water pressure at the plumbing fixtures will be maitnaned between 30 and 85 PSI

(5) New Sanitary System

(i) Fully vented cast iron sanitary system will be provided to drain plumbing fixtures and equipment rooms throughout the Building. All fixtures will have traps and vents.

(ii) Sanitary wastes from the above ground Building will be discharged to the city sewer by gravity to East 33rd Street Combined Sewer.

(iii) Sanitary waste below ground will be pumped to the city sewer via duplex sewage ejector Flygt NP3102

(6) Permits required:

(i) DEP Sewer Connection Approval- obtained 09/19/14

(7) New Storm Water System

(i) There will be no storm water catch basins on the property. Storm water from the plaza shall discharge by gravity into a detention system in the cellar

(ii) Storm water from building roofs will be discharged into a house drain piping discharging to the storm detention tank and, after the tank to the street sewer.

(iii) Storm water system (cast iron) will be independent from sanitary system throughout the Building,

(iv) There will be one sump pump in each elevator pit, two pumps total. The pumps manufactured by Stancor, model# SE-100 22FT.@ 50 GPM 115 V, 1 ph, ½ hp.

**k) .Heating:**

Space Heating and domestic hot water:

1. Domestic hot water to the Residential Units will be generated by gas fired storage type water heaters PVI Model Conquest 40L130AGCL and 60L130AGCML. Domestic hot water for retail tenants will be provided by tenant own water heaters.
   Space heating for all residential units except the Penthouses and the Skyhouse is provided by heat pump unit and in limited areas, perimeter electric draft barrier. Electric draft barrier shall be manufactured by Brasch or equal. The system will maintain 70 degree F interior temperature at 15 degree F outdoor temperature with a 10 MPH wind as per NYS energy code.
   Space heating for the back of the house and amenities space is provided by heat pump units and supply fans with electric heating coil. The heat pump units and fans shall be manufactured by Aaon/Climatemaster and Greenheck or equal respectively. The system will maintain 70 degree F (+/-) interior temperature at 15 degree F outdoor temperature with a 10 MPH wind as per NYS energy code. The Penthouses and Skyhouse's heating will be temporary electric heating, permamnet heating will be provided by purchaser.

   Note: The space temperature in the equipment rooms shall be maintained at min. 60 degree F (+/-). The residential corridor heating and cooling air supply is provided by a roof top air-cooled packaged HVAC unit with a gas heat.

2. There are two (2) gas fired hot water boilers located on the 2nd floor mechanical room will be the heat source to the secondary condenser water system during the heating season.

3. The two (2) boilers are manufactured by Lochinvar, model FBN-5000.

4. The boiler burner will be intergral to the boiler.

5. The controls will be by Lochinvar.

6. Schedule 40 piping shall be utilized for piping distribution system.

7. Natural Gas used to fire the furnaces will be supplied by Con Edison.

8. Not applicable.

9. Not applicable.

**l) Gas Supply:**

(i) A new gas service will be supplied by Con Edison for space heating, hot water, cooking and pool heating. Separate service will be provided for the Common area generator. The Common area generator is located in the 2nd floor generator room.

(ii) One (1) gas meter shall be provided for the gas service serving the boilers and heating units. A separate meter shall be provided for the gas serving gas ranges, pools heating, fireplaces and water heaters. Another meter will be provided for the generator. The Skyhouse and Mansion will have submeters for the pools, spa, generator and grill.

(iii)Black steel Schedule 40 pipe with threaded malleable iron fittings for low pressure piping 3-inch and smaller; welded joints for low pressure piping over 4-inch as required by NYC Building Codes.

**m) Air Conditioning:**

1. Type of System

i. The heat pump system will include the cooling towers by evapco model UT-29-024 or equal , heat exchangers and pumps manufactured by Bell and Gossett or equal. The cooling tower and related equipment are installed on vibration isolating springs to prevent vibration and noise from reverberating into apartments below. Indoor space temperature shall be 78 degree F (+/-) when the outdoor temperature is 89 degree F.

ii. Heat pump systems are designed to meet all requirements of NY State Energy Code.

2. Central System

i. The (4) four heat pump units manufactured by Climatemaster with cooling capacity of 105.0 (model TC096), 131.0 (model TC120), 131.0 (model TC120), and 76.8 (model TC072) MBH shall provide outside air for the apartments

ii. A dedicated heat pump unit shall serve the Lobby on the first floor.

iii. A dedicated heat pump unit shall serve each amenity space in the cellar and sub-cellar.

iv. A dedicated dehumidification and heating unit shall serve the pool and pool area in the sub-cellar.

v. Commercial Unit: A BTU meter will be installed in the event that the commercial tenant wishes to use the Building Condenser Water System.

3. Cooling Towers, Condensers:
The two cell cooling towers manufactured by Evapco model UT-29-024 are located on the main roof. A dedicated heating ventilation and air conditioning unit with air-cooled condenser (HVAC) serving the residential corridor is also on the main roof.

4. Individual units covered by the offer:
Each of the residential units with the exclusion of the Penthouse and Skyhouse units, include heat pump units with duct distribution. These heat pump units manufactured by Climatemaster or equal are capable of providing cooling. The heat pump cooling capacity is ranging from 5.5 MBH (3.7 amp., 11.2 EER) to 22.4 MBH (14.3 amp., 11.4 EER). The Penthouses and Skyhouse Units cooling systems if any shall be purchased and installed by Purchaser.

**n) Ventilation:**

1. Various Exhaust and Ventilation Systems.

Note: All bathrooms and toilets exhaust shall have minimum capacity of 50 cfm.

i) Bathrooms are mechanically ventilated in accordance with New York City Building Code. Kitchens are mechanically vented with a minimum capacity of 25 cfm as per NYC Building Codes and NYC Multiple Dwelling Laws.

ii) Clothes dryers shall be electric-self-venting type.

iii) Refuse Room and Compactor Exhaust – The refuse room in the cellar is mechanically vented with an on/off switch. The room is also provided with heat pump unit for cooling.

iv) The back of the house corridors in the cellar and sub-cellar are served by a supply fan with electric heating coil located on each floor. The residential public corridors are served by a rooftop air-cooled package unit with gas heating coil located on the roof.

v) Mechanical rooms shall be ventilated as required.

vi) There will be an exhaust shaft constructed for use in the future, if either one of the commercial units becomes a restaurant.

o) **Electrical System:**

(1) General:

i) The installation of electrical systems shall include all labor, equipment, materials, and appurtenances as required providing them with all functions and features as listed hereinafter.

ii) Materials, equipment and systems installed shall meet all pertinent requirements of all national and local codes, regulations and ordinances having jurisdiction, National Fire Protection Association, Occupational Safety and Health Act (OSHA).

(2) Electric Service for the Building is at the utilization voltage of 120/208 volts, 3 phase, 4 wire, 'Wye' type configuration. The new service switchboard shall be rated for 4,000 amps, 3 phase, 4 wire plus ground. The switchboard will consist of the following switch and fuse ratings for the loads listed below:

(i) one 1,600A for distribution to residential units
(ii) three 1,600A, one 100A, one 1,200A and one 600A for house loads
(iii)one 1,200A for all of the commercial units.

(3) Include the provisions necessary to permit all electricity consumed at the project to be utility company metered through various metering installations for separate portions of the project as follows:

(iv) Electricity consumed by all the residential units and house loads shall be metered by Con Edison Master meter. Electricity consumed by each residential unit shall be individually metered by electronic submetering system.

(v) Commercial Units shall be individually metered by Con Edison meter.

(vi) Provide all required subsidiary panelboards (power, distribution, lighting and appliance).

Supply power with the following characteristics:

- 208 volts, three phase to all motors ½ horsepower and larger.
- 120 volts, single phase to all fluorescent (and other discharge type lamp) lighting fixtures.
- 120 volts, single phase to all general convenience receptacle outlets.

- 120 volts single phase, 208 volts single phase or 208 volts three phase to specific use "solid connection" or receptacle outlets, as determined from the requirements of the appliance assigned to the outlets.

(vii) Provide devices in each main switchboard as follows:

- Main units: 3-pole, bolted pressure type switches with current imiting fuses or (800 amperes and above).
- Feeder units: 3-pole circuit breaker contact, "Q.M.Q.B." type switches with current limiting fuses (600 amperes and below).

(viii) Provide devices in panelboards as follows: -

- 120/208 volt: Lugs only in mains, 3 pole distribution Q.M.Q.B." type switches with panels current limiting fuses in branches.
- 120/208 volt: Lugs only in mains, 3 pole "Q.M.Q.B." type power panels switches with time delay fuses in branches.
- 208/120 volts: Lugs only in mains, single pole lighting and multipole standard molded case appliance panels circuit breakers in branches
- Apartment Panelettes: Compact molded case circuit beakers

(ix) Provide wiring methods as follows:

- Provide electric metallic tubing with pulled in thermoplastic wires and cables as the wiring method throughout, except I.M.C. where subject to the mechanical damage, and armored cables as noted below.
- Provide concealment of circuitry in suspended ceilings.
- Provide copper conductors in wire throughout.
- Electricity will be supplied to lighting and appliance loads, special equipment and miscellaneous loads by means of conduit and cable feeders.

- All wires shall be copper stranded conductors #12 A.W.G. (minimum).

- In the residential portion of the project provide armored cable (BX) for lighting and appliance branch circuitry run in the voids of dry wall partitions or in removable hung ceilings.

- Provide 20w/square foot of electrical capacity for retail tenant lighting, appliance and A/C loads. Empty conduits for power, telephone and fire alarm will be provided to each of the commercial units from main the switchboard room, main telephone room and main fire alarm panel in residential lobby.

- Provide 50w/square foot of electrical capacity for commercial units restaurant lighting, appliance and A/C loads. Empty conduits for power, telephone and fire alarm will be provided to each commercial unit from the main switchboard room, main telephone room and main fire alarm panel in residential lobby.

x. Electrical switchboard shall be located in the cellar main switchgear room which shall be the obligation of the Board of Managers to repair and maintain. "House loads" will be Con Edison direct metered. Residential units electrical usage will be sub metered. Which shall be the obligation of the Board of Managers to maintain and repair. Separate Con Edison meters will be provided for the commercial units which shall be the obligation of the Commercial Unit Owners to maintain and repair. The cost of electricity measured on the "house load" meters will be billed to the residential unit owners as a residential common expense. Each residential unit owner will pay the condominium for their electrical usage, the Condominium shall in turn pay Con Edison for the Residential Electrical usage. The commercial unit owners (or their tenants) will be pay Con Edison directly for the electricity consumed within the commercial units.

The electric power distribution system shall include all the elements necessary to conduct electricity in an approved, safe manner to all lighting fixtures, air conditioning equipment, sanitary equipment, kitchen equipment, elevators, appliance outlets, signal and communication equipment.

(4) Unit service:

| | |
|---|---|
| Mansion Unit, 4BR: | 200AF, 200AT circuit breaker |
| A Units 4, 2 BR: | 100AF, 80AT circuit breaker |
| A Units 5-21, 2 BR: | 100AF, 80AT circuit breaker |

| | |
|---|---|
| A Units 22, 3 BR: | 225AF, 125AT circuit breaker |
| A Units 23-27, 3 BR: | 100AF, 100AT circuit breaker |
| B Units 4, 2 BR: | 100AF, 70AT circuit breaker |
| B Units 5-27, 2 BR: | 100AF, 70AT circuit breaker |
| C Units 4, 1 BR: | 100AF, 70AT circuit breaker |
| C Units 5-21, 1 BR: | 100AF, 70AT circuit breaker |
| Penthouse Units, 3 BR: | 225AF, 150AT circuit breaker |
| Skyhouse, 3 BR: | 400AF, 300AT circuit breaker |

Electrical system has adequate capacity to handle modern usage and appliances such as air conditioners, dishwashers and dryers;

(5) Adequacy:

(i) Service –

| | |
|---|---|
| Mansion Unit, 4BR: | 200 AMP, 60 circuits |
| A Units 4, 2 BR: | 80 AMP, 42 circuits |
| A Units 5-21, 2 BR: | 80 AMP, 42 circuits |
| A Units 22, 3 BR: | 125 AMP, 48 circuits |
| A Units 23-27, 3 BR: | 100 AMP, 48 circuits |
| B Units 4, 2 BR: | 70 AMP, 42 circuits |
| B Units 5-27, 2 BR: | 70 AMP, 42 circuits |
| C Units 4, 1 BR: | 70 AMP, 36 circuits |
| C Units 5-21, 1 BR: | 70 AMP, 36 circuits |
| Penthouse Units, 3 BR: | 150 AMP, 60 circuits |
| Skyhouse, 3 BR: | 300 AMP, 84 circuits |

The electrical system has capacity to handle modern appliances – specifically air conditioners, dishwashers and electric dryers;

(ii) Lighting and Fixtures.

1. Back of House Lighting and Lighting Control System (equivalent or better):

Back of House Lighting Fixture Schedule

| MODEL | LOCATION |
|---|---|
| DAYBRITE 1F232-PP-1/2-EB-120 COLUMBIA KL-4-232-EB8-120-NY-20GA<br>METALUX DIF-232-120-EB81-20GA-REP<br>CROWNLITE 100-232-73<br>LUMAX TS-232-48-ET-1-9-BA | All back of house areas, MEP and commercial spaces |
| WALL-MOUNT: CANLET 02-I-W-F-OG-11; RIG-A-LITE CVPH-15I-12-HR-GW; HUBBELL VWX151 | Gas meter Room, Elevator Pits |
| LAMAR LIGHTING<br>VO-EB-2-32-T-C8-U-PA | Stair |

2. Lighting control system shall include the following:

- As directed by others -- Lobbies, Corridors and Public Areas.
- Switches at doors controlling all ceiling and wall mounted lights in all apartments.
- Switches at bedroom doors to control one half of at least one general convenience duplex receptacle in all bedrooms permitting the application of a door switched table or floor lamp and an unswitched item, such as a radio at the receptacle location. Residential only.
- Switches at living room entrance to control one half of at least one general convenience duplex receptacle permitting the application of a door switched table or floor lamp and an unswitched item, such as a radio at the receptacle location. Residential only.
- Local switching or occupancy sensors will be provided for the control of all lighting in all common areas.
- All lighting controls shall comply with New York State Energy Code

3. Emergency Lighting Provisions

- Emergency lighting will be provided in all public corridors, fire stairs and egress paths. .

- Emergency lighting shall be connected to the emergency generator and through self contained type, ceiling or wall mounted emergency lights where necessary.

- Exit signs will be provide throughout as required by code for egress path indication. Exit sign will be illuminated type with integral battery backup.

(iii) Convenience outlets, appliance outlets

1. Receptacle Outlets:

- In addition to the receptacle outlets, required as part of the electric power distribution system, for specific items of power consuming equipment, a full complement of general convenience receptacles for cleaning appliances shall be located throughout the project except for Penthouse and Skyhouse units.

- General convenience receptacles on code prescribed spacing will be provided in each apartment unit.

- Appliance circuitry receptacles (two outlets maximum per circuit) in all kitchens, dining areas of the apartment units other than for the Penthouse and Skyhouse units.

- An appliance circuit for refrigerator if appliance is included in the unit.

- An individual appliance circuit for a microwave oven if appliance is included in the unit.

- An individual appliance circuit for each heat pump unit, in each apartment if appliance is included in the unit.

- Utility receptacle outlets for cleaning purposes and the like in public halls spaced no more than 50 feet apart.

- Individual appliance outlet for each electric clothes dryer and each washing machine if appliances are included in the unit.

- A separate GFI Receptacle for Apartment Bathroom.

2. Residential Unit General Electrical Power Provisions except for Skyhouse and Penthouse units.

- All 15A and 20A circuits supplying lighting, junction boxes and/or receptacles except those that are serving bathrooms and kitchen shall be protected with Arc-Fault Interrupter (AFCI) type circuit breakers.
- At least one cable outlet and telephone outlet.
- Combination smoke/carbon monoxide detectors (stand alone 120V)
- Switches at bedroom doors to control one half of at least one general convenience duplex receptacle

3. Residential Unit General Electrical Power Provisions in Kitchens except for Skyhouse and Penthouse units.

- At least two dedicated 1 pole 20 amp separate circuit for the, dishwasher and refrigerator.
- General receptacles mounted at the counter. A least two receptacles to a circuit.
- Ground fault interrupter type device (GFCI) as required.

4. Residential Unit General Electrical Power Provisions in Living/Dining Room except for Skyhouse and Penthouse units.

- Dining room – 1 pole, 20 amp separate circuit for an appliance.
- Each living / dining room shall have at least one tel/cable outlet.
- Switches at living room entrance to control one half of at least one general convenience duplex receptacle

5. Residential Unit General Electrical Power Provisions in Bathrooms

- All receptacles to be GFCI type devices fed from a separate circuit.
- Each sink shall have its own GFCI type receptacle.

6. Residential Unit General Electrical Power Provisions in Washer/Dryer closet except for Skyhouse and Penthouse units

- Dryer – dedicated 2 pole 30 amp circuit.

- Washer – dedicated 1 pole 20 amp circuit.

7. Residential Unit General Electrical Power Provisions in Corridor/Hallway except for Skyhouse and Penthouse units

- Provide local annunciating combination smoke/carbon monoxide detector, ceiling mounted in the corridor outside of each sleeping area. Detectors shall be 120 volt type with battery backup.

8. Residential Unit General Electrical Power Provisions in Utility Closet except for Skyhouse and Penthouse units

- Duplex receptacle to provide 120V power for network interfaces.

9. Residential Unit General Electrical Power Provisions on Outside Roof Terraces

- All receptacles to be GFCI type and weather proof type.

10. Lightning Protection System

- No lightning protection system will be provided for the Building.

11. Obstruction Signal Lighting System

- No obstruction lighting (aircraft warning lighting) system to be provided unless this requirement is identified by code consultant as being required.

(6) Emergency Power Generator - The emergency electric power system shall include the following:

(v) One (1) 300 KW (562.50 KVA) 120/208 volts, 3 phase, 4 wire natural gas fired driven base Building emergency generator set; generator room sound attenuation shall be as per acoustical consultant recommendation.

(vi) One (1) 80 KW (100 KVA) 120/208 volts, 3 phase, 4 wire natural gas fired driven emergency generator set for the Skyhouse unit; in sound attenuated, weatherproof enclosure. Sound attenuation shall be as per acoustical consultant recommendation.

(vii) Emergency power distribution feeders, panels and circuits arranged to supply electricity to fixtures illuminating egress passages and stairs, exit signs, fire pumps, elevator, fire alarm systems, critical communication systems, smoke relief fans, and various items of mechanical equipment

whose failure to operate may cause damage. In addition two outlets will be provided in the lobby space.

(viii) Automatic transfer switches arranged to maintain the emergency power distribution system energized from the normal utility company source or the generating set.

**p) Intercommunication and Door Signal Systems:**

1. Each residential unit shall shall be equipped with door bell/chime system. The push button will be mounted by front door.

2. Intercom/Lobby Door Control Provisions

i. Intercom functions and Lobby door release functions to be separate from the Building telephone switch system.

ii. Lobby doors shall be equipped with electrically operated door locks at Building entrance doors. Intercom station and keypad shall be provided for communicating to each apartment and door release.

**q) Public Area Lighting:**

1. Plaza:

Security lighting is provided by (10) Building mounted spot lights that provide a minimum of 2 foot candles over all paved surfaces and a minimum of 0.5 foot candles over all other surfaces which complies with the requirements of New York City Department of Planning for Privately Owned Public Spaces.

2. Public Spaces:

Accent lighting is provided to highlight certain design features. These features include backlighting of the perforated decorative metal screen wall, up-lighting for the bamboo and tree plantings and recessed linear lighting under the planter walls.

**r) Garages and Parking areas:** N/A

**s) Swimming Pools:**

Sub-Cellar Swimming Pool:

1. Pool will be constructed with a steel reinforced concrete shell with a combination of tile and plaster finishes located in the Sub-Cellar.

2. Pool size is about 14'x66' with a depth that varies from 3.5' to 5'. Pool will have a bather load of 37 patrons.
3. Pool is enclosed within a structural slab and concrete structure with various finishes (room finishes specified by other).
4. Pool filtration system to consist of an electric 1 hp pump, cartridge filter, bromine/ozone sanitizer and various gauges and valves. Equipment will be factory plumbed, wired and mounted to a stainless steel skid.
5. Pool will be heated utilizing building plant hot water sent to heat exchangers mounted to pool equipment skid.

Sub-Cellar Spa:

1. Spa will be constructed of 304 stainless steel and have a full tile interior finish and be located in the Sub-Cellar.
2. Spa size is about 17.25'x8.3' with a 3.5' depth. Spa will have a bather load of 14 patrons.
3. Spa is enclosed within a structural slab and concrete structure with various finishes (room finishes specified by other).
4. Spa filtration system to consist of an electric 1 hp pump, cartridge filter, bromine/ozone sanitizer and various gauges and valves. Equipment will be factory plumbed, wired and mounted to a stainless steel skid. Spa jet system to consist of an electric 3 hp pump and air induction jets.
5. Spa will be heated utilizing building plant hot water sent to heat exchangers mounted to pool equipment skid.

Sub-Cellar Water Feature:

1. Water feature will be constructed of 304 stainless steel and have a combination of exposed stainless steel and stone cladding interior finish and be located in the Sub-Cellar.
2. Water feature size is 2'x8.6' with a height of approximately 20'.
3. Water feature is adjacent to the spa and is enclosed within a structural slab and concrete structure with various finishes (room finishes specified by other).
4. Water feature filtration system to consist of an electric variable speed pump, cartridge filter, bromine/ozone sanitizer and various gauges and valves. Equipment will be factory plumbed, wired and mounted to the pool stainless steel skid.
5. Water feature will not be heated.

3rd Floor Pool:

1. Pool will be constructed of 304 stainless steel and have a exposed stainless steel interior finish and be located on the 3rd floor outdoor terrace of a private residence.
2. Pool size is about 8'x50' with a 4' depth. This is a residential pool and does not have a bather load regulation.

3. Pool is enclosed within a structural slab and concrete structure with various outdoor finishes (terrace finishes specified by other).
4. Pool filtration system to consist of an electric 1 hp pump, cartridge filter, chlorine/ozone sanitizer and various gauges and valves. Equipment will be factory plumbed, wired and mounted to a stainless steel skid.
5. Pool will be heated utilizing building plant hot water sent to heat exchangers mounted to pool equipment skid.
6. Pool will be supported by a continuous steel reinforced structural slab (details by other).

33rd Floor (PH) Pool:

1. Pool will be constructed of 304 stainless steel and have exposed stainless steel interior finish and be located on the 33rd floor outdoor terrace of a private residence.
2. Pool size is about 8'x32' with a 4' depth. This is a residential pool and does not have a bather load regulation.
3. Pool is enclosed within a structural slab and concrete structure with various outdoor finishes (terrace finishes specified by other).
4. Pool filtration system to consist of an electric 1 hp pump, cartridge filter, chlorine/ozone sanitizer and various gauges and valves. Equipment will be factory plumbed, wired and mounted to a stainless steel skid.
5. Pool will be heated by a designated gas boiler supplying hot water to equipment mounted heat exchangers.
6. Pool will be supported by a continuous steel reinforced structural slab (details by other).

33rd Floor (PH) Spa:

1. Spa will be constructed of 304 stainless steel and have an exposed stainless steel interior finish with one acrylic wall component and be located on the 33rd floor outdoor terrace of a private residence.
2. Spa size is about 10'x7' with a 3.5' depth. This is a residential spa and does not have a bather load regulation.
3. Spa is enclosed within a structural slab and concrete structure with various outdoor finishes (terrace finishes specified by other).
4. Spa filtration system to consist of an electric 1 hp pump, cartridge filter, chlorine/ozone sanitizer and various gauges and valves. Equipment will be factory plumbed, wired and mounted to a stainless steel skid. Spa jet system to consist of an electric 3 hp pump and air induction jets.
5. Spa will be heated by a designated gas boiler supplying hot water to equipment mounted heat exchangers.
6. Spa will be supported by a continuous steel reinforced structural slab (details by other).

**t) Tennis courts and playgrounds:** N/A

**u) Permits and Certificates:**

1. The following inspections will be conducted concurrently with construction with final sign-off at the issuance of the Temporary Certificate of Occupancy.

    - NYC Department of Buildings

        12. Elevator
        13. Mechanical and Plumbing
        14. Boiler
        15. Department of Air Resources
        16. Compactor
        17. Electrical
        18. Fire Department

**v) Violations**

1. Any Building Code Violations will be corrected prior to the issuance of the Final Certificate of Occupancy.

2. No asbestos will be used in the construction of the Building.

**w) Unit Information**

1. Method used to calculate Gross Floor area:

Please refer to AG drawings for unit description. Measured horizontally, the Residential Unit and the Commercial Unit sizes are calculated from the exterior face of the exterior walls adjacent to the Unit, to the centerline of the demising wall between Units, corridors, elevator, stairs and other mechanical equipment spaces or any Common Elements not within a Unit, or to the exterior face of the opposite exterior wall. Columns, mechanical pipes, shafts, shaftways, chases, chaseways and conduits are not deducted from measurement of each Unit. Where the Residential Unit encompasses a full floor, garbage chutes and elevator shafts are also included in the calculation of sizeEach Residential Unit and the Commercial Unit will consist of the volume of space measured vertically from the top of the floor slab (located under the finished flooring and sub-flooring materials) to the underside of the concrete ceiling above. The measurements of Common Elements which fall within the boundaries of a Unit are included in the square foot area of the Unit, but are not part of the Unit.

Please refer to AG drawings for unit description.

| CONSTRUCTION FLOOR | MARKETING FLOOR | UNIT DESIGNATION | UNIT TYPE | UNIT AREA (SF) | TERRACE AREA (SF) |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| 3rd | 3rd | Mansion | 4BR / 4-1/2 Bath | 2,958 | 2,948* |
| 4th | 4th | 4A | 2BR / 2-1/2 Bath | 1,479 | |
| 5th | 5th | 5A | 2BR / 2-1/2 Bath | 1,479 | |
| 6th | 6th | 6A | 2BR / 2-1/2 Bath | 1,479 | |
| 7th | 7th | 7A | 2BR / 2-1/2 Bath | 1,479 | |
| 8th | 8th | 8A | 2BR / 2-1/2 Bath | 1,479 | |
| 9th | 9th | 9A | 2BR / 2-1/2 Bath | 1,479 | |
| 10th | 10th | 10A | 2BR / 2-1/2 Bath | 1,479 | |
| 11th | 11th | 11A | 2BR / 2-1/2 Bath | 1,479 | |
| 12th | 12th | 12A | 2BR / 2-1/2 Bath | 1,479 | |
| 13th | 14th | 14A | 2BR / 2-1/2 Bath | 1,479 | |
| 14th | 15th | 15A | 2BR / 2-1/2 Bath | 1,479 | |
| 15th | 16th | 16A | 2BR / 2-1/2 Bath | 1,479 | |
| 16th | 17th | 17A | 2BR / 2-1/2 Bath | 1,479 | |
| 17th | 18th | 18A | 2BR / 2-1/2 Bath | 1,479 | |
| 18th | 19th | 19A | 2BR / 2-1/2 Bath | 1,479 | |
| 19th | 20th | 20A | 2BR / 2-1/2 Bath | 1,479 | |
| 20th | 21st | 21A | 2BR / 2-1/2 Bath | 1,479 | |
| 21st | 22nd | 22A | 2BR / 2-1/2 Bath | 1,479 | |
| 22nd | 23rd | 23A | 3BR / 3-1/2 Bath | 2,146 | 112 |
| 23rd | 24th | 24A | 3BR / 3-1/2 Bath | 2,146 | |
| 24th | 25th | 25A | 3BR / 3-1/2 Bath | 2,146 | |
| 25th | 26th | 26A | 3BR / 3-1/2 Bath | 2,146 | |
| 26th | 27th | 27A | 3BR / 3-1/2 Bath | 2,146 | |
| 4th | 4th | 4B | 2BR / 2-1/2 Bath | 1,488 | |
| 5th | 5th | 5B | 2BR / 2-1/2 Bath | 1,488 | |
| 6th | 6th | 6B | 2BR / 2-1/2 Bath | 1,488 | |
| 7th | 7th | 7B | 2BR / 2-1/2 Bath | 1,488 | |
| 8th | 8th | 8B | 2BR / 2-1/2 Bath | 1,488 | |
| 9th | 9th | 9B | 2BR / 2-1/2 Bath | 1,488 | |
| 10th | 10th | 10B | 2BR / 2-1/2 Bath | 1,488 | |
| 11th | 11th | 11B | 2BR / 2-1/2 Bath | 1,488 | |
| 12th | 12th | 12B | 2BR / 2-1/2 Bath | 1,488 | |
| 13th | 14th | 14B | 2BR / 2-1/2 Bath | 1,488 | |
| 14th | 15th | 15B | 2BR / 2-1/2 Bath | 1,488 | |
| 15th | 16th | 16B | 2BR / 2-1/2 Bath | 1,488 | |
| 16th | 17th | 17B | 2BR / 2-1/2 Bath | 1,488 | |
| 17th | 18th | 18B | 2BR / 2-1/2 Bath | 1,488 | |
| 18th | 19th | 19B | 2BR / 2-1/2 Bath | 1,488 | |
| 19th | 20th | 20B | 2BR / 2-1/2 Bath | 1,488 | |
| 20th | 21st | 21B | 2BR / 2-1/2 Bath | 1,488 | |

* Exclusive of 335 sq. ft. of pool equipment room.

| | | | | | |
|---|---|---|---|---|---|
| 21st | 22nd | 22B | 2BR / 2-1/2 Bath | 1,569 | |
| 22nd | 23rd | 23B | 3BR / 2-1/2 Bath | 1,569 | |
| 23rd | 24th | 24B | 3BR / 2-1/2 Bath | 1,569 | |
| 24th | 25th | 25B | 3BR / 2-1/2 Bath | 1,569 | |
| 25th | 26th | 26B | 3BR / 2-1/2 Bath | 1,569 | |
| 26th | 27th | 27B | 3BR / 2-1/2 Bath | 1,569 | |
| 4th | 4th | 4C | 1BR / 1-1/2 Bath | 891 | |
| 5th | 5th | 5C | 1BR / 1-1/2 Bath | 891 | |
| 6th | 6th | 6C | 1BR / 1-1/2 Bath | 891 | |
| 7th | 7th | 7C | 1BR / 1-1/2 Bath | 891 | |
| 8th | 8th | 8C | 1BR / 1-1/2 Bath | 891 | |
| 9th | 9th | 9C | 1BR / 1-1/2 Bath | 891 | |
| 10th | 10th | 10C | 1BR / 1-1/2 Bath | 891 | |
| 11th | 11th | 11C | 1BR / 1-1/2 Bath | 891 | |
| 12th | 12th | 12C | 1BR / 1-1/2 Bath | 891 | |
| 13th | 14th | 14C | 1BR / 1-1/2 Bath | 891 | |
| 14th | 15th | 15C | 1BR / 1-1/2 Bath | 891 | |
| 15th | 16th | 16C | 1BR / 1-1/2 Bath | 891 | |
| 16th | 17th | 17C | 1BR / 1-1/2 Bath | 891 | |
| 17th | 18th | 18C | 1BR / 1-1/2 Bath | 891 | |
| 18th | 19th | 19C | 1BR / 1-1/2 Bath | 891 | |
| 19th | 20th | 20C | 1BR / 1-1/2 Bath | 891 | |
| 20th | 21st | 21C | 1BR / 1-1/2 Bath | 891 | |
| 27th | 28th/ PH-A | PH-A | 1 Bath | 3,548 | 558 |
| 28th | 29th/ PH-B | PH-B | 1 Bath | 3,548 | 353 |
| 29th | 30th / PH-C | PH-C | 1 Bath | 3,548 | 353 |
| 30th | 31st / PH-D | PH-D | 1 Bath | 3,548 | 353 |
| 31-33 | Skyhouse | Skyhouse | 1 Bath | 5,623 | 2,759 ** |

** Exclusive of 173 sq. ft. of mechanical space on the mezzanine floor.

2. Finishes /Appliances:
   iii. The residential apartments and facilities will be finished as specified below;
   iv. Interior of Residential Units, General Requirements (equal or better):
   v. Walls and ceilings will be primed and two (2) coats of finish paint will be applied.
   vi. All materials, finishes and appliances are subject to substitution with equivalent or better materials, finishes and appliances.

**RESIDENTIAL UNIT FINISH MATERIALS AND FIXTURES EXCEPT FOR SKYHOUSE AND PENTHOUSES:**

**Living Rooms, Dining Rooms, Kitchens, Entry Foyers and Bedrooms:**

Ceilings: Painted gypsum board.

Walls: Painted gypsum board.

Kitchen cabinets (dark scheme): Stained oak and high gloss lacquer.

Kitchen cabinets (light scheme): High gloss lacquer.
Kitchen countertops (dark scheme): Stone slab.
Kitchen countertops (light scheme): Luce de Luna stone slab.
Accent backsplash (dark scheme): Savoy Ibushi Mosaics.
Accent backsplash (light scheme): Savoy Chalk Mosaics.
Sidesplash (dark scheme): Stone slab.
Sidesplash (light scheme): Luce de Luna stone slab.
Floors: Engineered plank with white oak hard wood veneer, stained.
Wall base, Door casings: painted wood.
Doors: Stained wood veneer.
Unit entrance doors: Stained wood veneer.

**Kitchen and Laundry Fixtures:**

Refrigerator/Freezer: Miele, model KF1811Vi (left hinge) KF1801Vi (right hinge), 30" with bottom mount freezer and custom overlay panels to match kitchen cabinets.
Dishwasher: Miele, model G4286-SCVi, 24" with custom overlay panels to match kitchen cabinets.
Cooktop: Miele, model KM-3464-G, 30" gas cooktop, stainless steel finish.
Oven: Miele, model H-6580-BP, 30" wall oven, stainless steel finish.
Vent Hood: Broan Elite, model RMPE7004, 30" hood and Broan inline blower model HLB3.
Sink: Blanco America, model 518478, under-mount stainless steel sink.
Faucet: KWC, model 10.191.003.000, deck-mounted faucet, chrome finish.
Microwave: Miele, model M-8260-1, 24" built-in stainless steel microwave.
Wine Storage: Subzero model 315W/O, 15" undercounter wine storage. Millwork to match kitchen cabinets with exposed glass door.
Washing Machine: Bosch, model WAP24202UC stackable washer.
Dryer: Bosch, model WTB6202UC stackable dryer.

**Master Bathrooms:**

Ceilings: Painted gypsum board.
Typical walls: Bianco Neve stone tile.
Accent wall: Rachele Pearl mosaic tile.
Countertop: Taurus Black stone.
Vanity: Plain sawn ash veneer, dark stain.
Floors: Basketweave stone mosaic tile.
Saddle, Tub deck, Fascia: Taurus Black stone.
Shower curb: Thassos stone.
Door casings: Painted wood.
Doors: Stained wood veneer.

**Master Bathroom Fixtures:**

Toilet: TOTO, model MS644114CEFG high-efficiency toilet, soft close seat model SS114.

Sink: Kohler, model K-2297-0, white with drain in polished chrome finish.
Faucet: Dornbracht, model 33500710-00 single lever lavatory mixer, polished chrome finish.
Tub: Zuma, model CD6634.
Tub Control: Dornbracht, model 36425670-000010, chrome finish.
Tub Filler: Dornbracht, model 13801710-00, wall-mounted spout, chrome finish.
Shower Control: Dornbracht, model 36426670-000010, chrome finish.
Shower Head: Dornbracht, model 28755980-000010, chrome finish.
Hand Shower: Dornbracht, model 26403710-00, wall-mounted hand shower set, chrome finish.
Shower Drain: California Faucets, model 9172-A, polished chrome finish.

**Powder Rooms:**

Ceilings: Painted gypsum board.
Typical walls: Painted gypsum board.
Accent wall: 6" x 24" Chiseled limestone tile.
Countertop: Black Forest stone.
Vanity: Plain sawn ash wood veneer, dark stain.
Floors: 12" x 24" Globe Bone porcelain tile.
Wall base, Door casings: Painted wood.
Doors: Stained wood veneer.

**Powder Room Fixtures:**

Toilet: TOTO, model MS644114CEFG, soft close seat model SS114.
Sink: Kohler, model K-2883-0, white with drain in polished chrome finish.
Faucet: Dornbracht, model 33505710-00, polished chrome finish.

**Secondary Bathrooms:**

Ceilings: Painted gypsum board.
Typical walls: 12" x 24" Metro Glossy White ceramic tile.
Accent wall: 2" x 8" Savoy Graphite ceramic tile.
Countertop, Ledge, Backsplash: Dupont Corian, deep nocturne.
Vanity: plain sawn ash wood veneer, dark stain.
Floors: 12" x 24" Wallace Creek stone tile.
Saddle, Curb: Wallace Creek stone slab.
Door casings: Painted wood.
Doors: Stained wood veneer.

**Secondary Bathroom Fixtures:**

Toilet: Duravit, toilet bowl model 214109, cistern model 092010, toilet seat and cover elongated with automatic closure model 006339, white with chrome finish top flush.
Sink: Kohler, model K-2330-0, under-mount sink, white with polished chrome drain.
Faucet: Dornbracht, model 33521670-000010, polished chrome finish.

Rain Showerhead: Kohler, model K-13688-CP with ceiling-mount shower arm, model K-7394-CP, polished chrome finish.
Shower Control: Kohler, model K-T949-4-CP, polished chrome finish.
Shower Drain: California Faucets, model 9172A, polished chrome finish.
Tub: Zuma, model C6634, White, waste and overflow in polished chrome finish with tile flange kit.
Tub Filler: Kohler, model K-952-CP, wall-mounted spout, polished chrome finish.
Tub/Shower Control: Kohler, model K-T1004-4-CP shower handle, polished chrome finish.
Wall-Mounted Shower Head: Kohler, model K-967-CP, polished chrome finish.

## PENTHOUSE & SKYHOUSE FINISHES AND APPLIANCES

Each Penthouse and the Skyhouse will not be equipped with fixtures as described above. Instead they will be delivered without partition walls, with only one basic bathroom and kitchen and will be finished as described below.

**Penthouse and Skyhouse Living Rooms, Dining Rooms, Kitchens, Entry Foyers and Bedrooms:**
Ceilings: Unfinished concrete.
Walls: Painted gypsum board.
Kitchen cabinets :
Kitchen countertops:.
Floors: Unfinished concrete
Wall base: None
Door casings: painted wood.
Doors: Painted wood.
Unit entrance doors: Stained wood veneer

**Penthouse and Skyhouse Kitchen Fixtures:**
Refrigerator/Cooktop/ Sink/ Faucet:
Model CK36-2 - 36" Complete Compact Kitchen with Refrigerator

**Penthouse and Skyhouse Bathroom Finishes**
Ceilings: Unfinished Concrete.
Typical walls: Painted Sheetrock
Sink/ Faucet/ Countertop/ Vanity: Home Depot Fraser 31in Vanity w/ Granite Countertop
Floors: Tile.
Saddle:
Door casings: Painted wood.
Doors: Painted wood.

**Penthouse and Skyhouse Master Bathroom Fixtures:**
Toilet: Duravit 2125010000 Starck 3

Sink/ Faucet/ Countertop/ Vanity: Home Depot Fraser 31in Vanity w/ Granite Countertop
Tub: American Standard 2647.112.011 5 ft. Right Drain Bathtub in Arctic White
Tub Faucet: Home Trends Chrome Double Handles Waterfall Faucet

**x) Finish Schedule of Spaces Other Than Units:**

**FIRST FLOOR FINISH MATERIALS AND FIXTURES:**

**First Floor Lobby Vestibule, Carts:**
Ceiling (vestibule): Rift cut white oak veneer and solids, dark stain.
Ceiling (carts): Absolute Black stone slab.
Walls: Absolute Black stone slab.
Floor: Absolute Black stone slab, with inset walk-off carpet mat.
Saddles, Wall base: Absolute Black stone slab.
Doors, Sidelites: tempered glass with bronze kickplate and trim.

**First Floor Lobby Concierge, Seating 1:**
Ceilings: Painted gypsum board.
Walls: Painted gypsum board.
Floor, Saddles, Wall base: Absolute Black stone slab.
Floor (concierge): Absolute Black stone slab.
Accent wall (concierge): Absolute black stone slab.
Accent wall (seating 1): High gloss lacquer wall paneling.
Screens (seating 1): Rift cut white oak, dark stain with ceruse.
Desk: Bianco Lassa stone slab.
Desk Cabinetry: Formica plastic laminate, graystone color.

**First Floor Elevator Lobby:**
Ceilings: Painted gypsum board.
Walls: Bronze metal, medium-dark patina.
Niche walls: Modern Valley Root Beer ceramic field tile.
Floor, Saddles, Wall base: Absolute Black stone slab.
Door cladding, Elevator door cladding: Bronze, medium-dark patina.

**First Floor Lobby Mail Room:**
Ceilings: Painted gypsum board.
Walls: Painted gypsum board.
Floor, Wall base: Absolute Black stone slab.
Accent wall: Rift cut white oak veneer and solids, dark stain with ceruse.
Shelf, Countertop: Absolute black stone slab.
Cabinetry: Rift cut white oak veneer and solids, dark stain with ceruse.
Mailbox suites: AF Florence 4C horizontal suite #4CAT8-19 Front-load, in "silver speck" flat finish.

**First Floor Lobby Seating Area 2:**
Ceilings: Painted gypsum board.
Walls: Painted gypsum board.
Accent wall paneling: Rift cut white oak veneer and solids, dark stain with ceruse.
Floor, Wall base: Absolute Black stone slab.

**First Floor Lobby Storage 1 and 2, Refrigerated Storage:**
Ceilings: Painted gypsum board.
Walls: Painted gypsum board.
Floors: Absolute Black stone tile.
Saddles: Absolute black stone slab.
Wall base: Painted applied wood base.
Cabinetry: Maple, clear lacquer finish.
Door (Storage 1): Rift-cut oak veneer, dark stain.
Door (Storage 2, Refrigerated Storage): Painted wood.

**First Floor Refrigerated Storage Fixtures:**
Refrigerator: Traulsen model RHT132EUT-FHS reach-in refrigerator, stainless steel finish.

**CELLAR FINISH MATERIALS AND FIXTURES:**

**Cellar Elevator Lobby:**
Ceilings: Painted gypsum board.
Walls: Wallcovering.
Floors: Broadloom carpet, color in pure indigo.
Doors: Painted hollow metal.

**Cellar Resident Lounge:**
Ceilings: Painted gypsum board and stained rift-cut oak veneer paneling.
Walls: Stained rift-cut oak veneer paneling and wallcovering.
Wall base: Emperador Dark marble.
Cabinet: Rift-cut oak veneer, stained.
Countertop: Emperador Dark marble.
Backsplash: LeGemme glass mosaic tile.
Floors: Carpet.
Door: Tempered glass with antique nickel frame, kickplate and trim.

**Cellar Resident Lounge Fixtures:**
Refrigerator: U-line, model U-CLRC02175B refrigerator with ice maker, with millwork door to match cabinet.
Beverage Center: U-line, model U-2175BEVCOL-60 with millwork door to match cabinet.
Dishwasher: Bosch, model SPV5ES53UC, with millwork door to match cabinet.
Sink: Kohler, model K-3840-2, stainless steel finish.
Faucet: Dornbracht, model 32805680-00, polished chrome finish.

**Cellar Children's Playroom:**
Ceilings: Painted gypsum board.
Walls: Painted gypsum board.
Wall base: Painted applied wood base.
Floors: Carpet tiles, colors in silver birch, orange squash, larch, and freshwater.
Cabinetry: Finland color plywood, and semi-gloss lacquer back panels.
Door: Tempered glass with antique nickel frame, kickplate and trim.

**Cellar Powder Room and Powder Room Vestibule:**
Ceilings: Painted gypsum board.
Walls: Wallcovering.
Accent Wall (Powder Room): Savoy Bronze Metallic field tile, with Foundry Art White Bronze liner.
Floor (Powder Room): 12"x24" St. Laurent marble tile.
Floor (Powder Room vestibule): Carpet.
Saddle: St. Laurent marble.
Countertop: St. Laurent marble.
Vanity: Plain sawn ash veneer, dark stain.
Door: Stained wood veneer.

**Cellar Powder Room Fixtures:**
Toilet: TOTO, model MS644114CEFG-01 high efficiency toilet, white with trip lever in chrome finish.
Sink: Kohler, model K-2330-0, white with drain in polished chrome finish.
Faucet: Kallista, model P24500-LV-AD.
Hand Dryer: TOTO, model HDR110#SS, stainless steel finish.

**SUB-CELLAR FINISH MATERIALS AND FIXTURES:**

**Sub-Cellar Elevator Lobby:**
Ceilings: Painted gypsum board.
Walls: Wallcovering.
Accent Wall: Custom digital wallcovering mural.
Floors: 32"x32" Floortech Floor 9.0 porcelain tile.
Wall base: Painted wood.

**Sub-Cellar Pool, Seating Area:**
Ceiling (pool): Water resistant Densshield wallboard, painted with aluminum ribs.
Ceiling (jacuzzi): Bianco Alabastro mosaic tile.
Walls: Zebra Gray limestone tile, 4" high x varying lengths, split-faced.
Glazed Walls: Tempered glass with anodized aluminum frame.
Walls, Ceiling (seating area): Grigio Piombo mosaic tile.

Screen (seating area): Solid teak, clear oil finish.
Columns: Zebra Gray limestone slab.
Floors: 32"x32" Floortech Floor 9.0 porcelain tile.
Doors: Tempered glass with anodized aluminum frame with satin stainless steel kickplate and trim.
Pool, Jacuzzi coping: Absolute Black stone slab.
Pool waterline tile, Jacuzzi tile: Bianco Alabastro mosaic tile.
Pool, Jacuzzi waterline depth markers and accent tile: Nero Ebano mosaic tile.
Pool interior: Pearl Matrix

**Sub-Cellar Gym:**
Ceilings: Painted gypsum board.
Walls: Wallcovering.
Accent walls: Tempered glass mirror.
Glazed Walls: Tempered glass with anodized aluminum frame.
Floors: Rubber tiles.
Wall base: Painted wood.
Wall base (accent walls): Steel, clear lacquer finish.
Door: Tempered glass with anodized aluminum frame with satin stainless steel kickplate and trim.

**Sub-Cellar Yoga Room:**
Ceilings: Painted gypsum board.
Walls: Vinyl wallcovering.
Accent walls: Tempered glass mirror.
Glazed Walls: Tempered glass with anodized aluminum frame.
Floors: White oak wood flooring.
Columns: Solid teak tongue in groove, clear oil finish.
Wall base: Painted wood.
Wall base (accent walls): Stained oak base.
Door: Tempered glass with anodized aluminum frame with satin stainless steel kickplate and trim.

**Sub-Cellar Locker Rooms:**
Ceilings: Painted gypsum board.
Floors: 12"x24" Floortech Floor 9.0 porcelain tile.
Walls: 2"x8" Ce-Si Talco Ceramic tile.
Accent Walls: 8"x32" Floortech Floor 9.0 porcelain tile.
Countertops: Dupont Corian, glacier white.
Towel Storage Cabinetry: Rift-cut teak veneer.
Locker Cabinetry: Plastic laminate, slate gray color.
Door (to hallway): Solid core with teak veneer.

**Sub-Cellar Locker Room Fixtures:**
Toilet: TOTO, model CT708EV, white finish.
Urinal: TOTO urinal, model UT105UVG, white finish.

Sink: Dupont Corian, model 815, glacier white finish.
Faucet: KWC deck-mounted faucet, model 12.191.032.00, chrome finish.
Hand Dryer: TOTO, model HDR110#SS, stainless steel finish.
Rain Showerhead: Kohler model K-13688, with ceiling arm K-7392, polished chrome finish.
Shower Control: Speakman model SM-1000-P, polished chrome finish.
Hand Held Shower (ADA shower): Speakman model VS-3010, polished chrome finish.
Hand Held Shower Control (ADA shower): Speakman model SM-1400-P, polished chrome finish.

**Sub-Cellar Steam Rooms**
Ceilings: 2"x2" Ce-Si Bianco ceramic tile.
Floors: 12"x24" Floortech Floor 9.0 porcelain tile.
Walls: 2"x8" Ce-Si Bianco ceramic tile.
Accent Walls: 8"x32" Floortech Floor 9.0 porcelain tile.
Seating: 2"x2" Ce-Si Bianco ceramic tile.
Doors: Tempered glass with brushed anodized aluminum frame.

Back of house (BOH) Finish Schedule

| BOH Finish Schedule | | | | | |
|---|---|---|---|---|---|
| **Location** | **Floor** | **Base** | **Wall** | **Ceiling** | |
| Mechanical/Storage rooms | Resinous | Vinyl | Paint | Paint* | |
| Compactor room | Resinous | Vinyl | Paint | Paint* | |
| Bicycle Storage room | Resinous | Vinyl | Paint | Paint* | |
| Super's Office | Resinous | Vinyl | Paint | Paint* | |
| Changing rooms | Resinous | Vinyl | Paint | Paint* | |
| Corridors | Resinous | Vinyl | Paint | Paint* | |
| Toilet room | Tile | Tile | Paint | Paint* | |
| Stairs | Paint | - | Paint | Paint* | |
| | | | | | |

*Only where ceiling is provided

**y) Safety and Warning Devices:**

(i) Each condominium has a hard wired combination carbon monoxide/smoke detector with local alarm and local annunciating. The detector will be ceiling mounted within the sleeping area and in the corridor outside of sleeping areas within 15 foot of any sleeping room. Detectors shall be 120 volt type with battery backup.

(ii) All systems described are as required by NYC Building code.

(iii) A central smoke detection water flow alarm panel will be provided, with the control panel located in the main lobby for the Building.

(iv) System shall be analog addressable type system as manufactured by Notifier or equivalent.

(v) Area smoke detection shall be provided for each mechanical equipment room, elevator equipment room, electrical service room, each electrical meter bank room, top of each elevator shaft.

(vi) System will be provided with duct smoke detectors and a/c unit shutdown for all air systems above 2000 CFM.

(vii) System will provide for duct mounted smoke detectors and operation of all fire/smoke dampers.

(viii) System will provide for elevator recall connections to each elevator, upon activation of sprinkler alarm.

(ix) System to be provided with central office connection, remote alarm in super's office, and system printer for reporting and status.

a. System shall be wired with FDNY approved Teflon wiring installed in EMT type conduit throughout. Riser junction boxes/auxiliary panels to be located in fire stair. Retail tenants shall each supply an individual code compliant system. Retail space tenants to provide "trouble" and "alarm" output to main fire control station.

b. Local control wiring for mechanical system motors shall be provided by the mechanical trade.

c. Telephone, CATV and Data Cabling Provisions

**z) Additional Info: refer to attached drawings.**

**aa) N/A**

**bb) N/A**

**cc) Asbestos**: No asbestos containing material is present in insulating or fireproofing material anywhere in the Building.

**dd) Lead-Based Paint:** No lead-based paint will be used anywhere in the construction of the Building.

General Notes:

- All applicable documents shall be transferred to the condominium management upon transfer of control- operation and maintenance (O&M) manuals for mechanical equipment. This shall include Equipment warranties, roof warranty, major equipment start up sheets, control system as-built; reports for HVAC systems, in-door air quality report and final As-Built drawings as maintained during construction, i.e., structural, mechanical, electrical, plumbing, shop drawings.

- All controlled inspections will be conducted by a license professional Inspection Service company

Seal

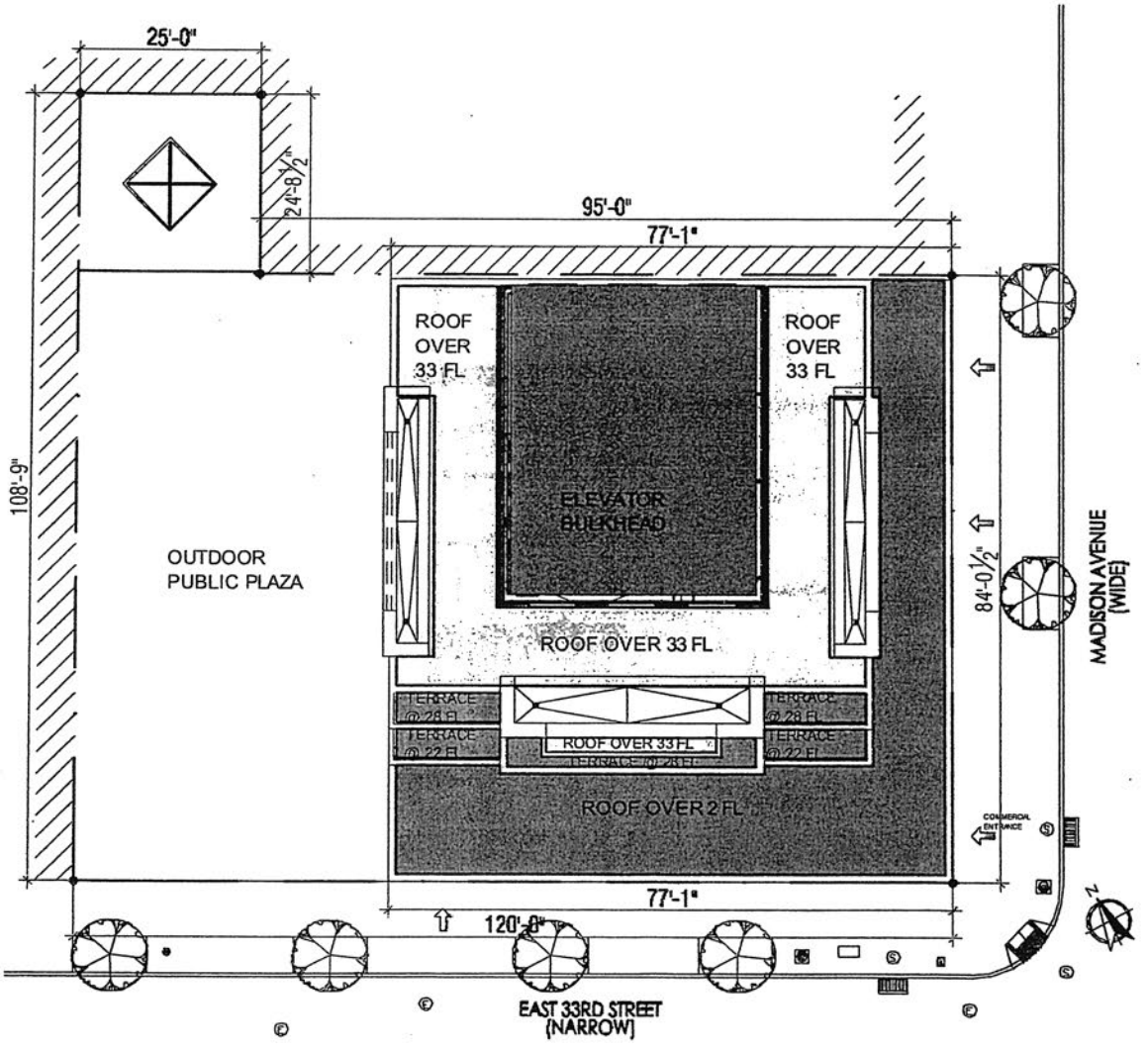
Signature of Architect

January 12, 2015

## FLOOR PLANS AND SITE PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## SITE PLAN

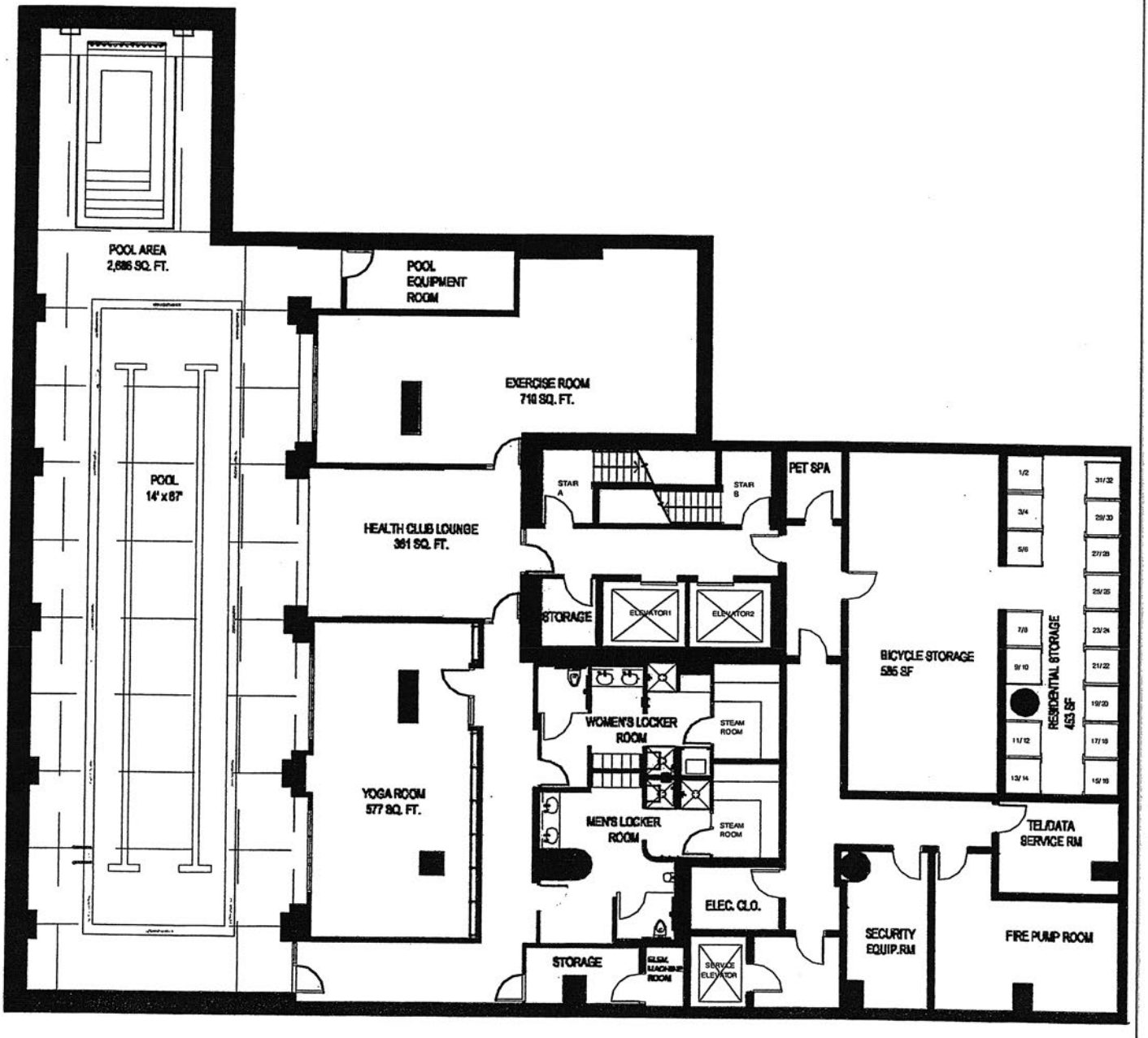



0 12.5' 25' 50'

SCALE: 1" = 25'-0"

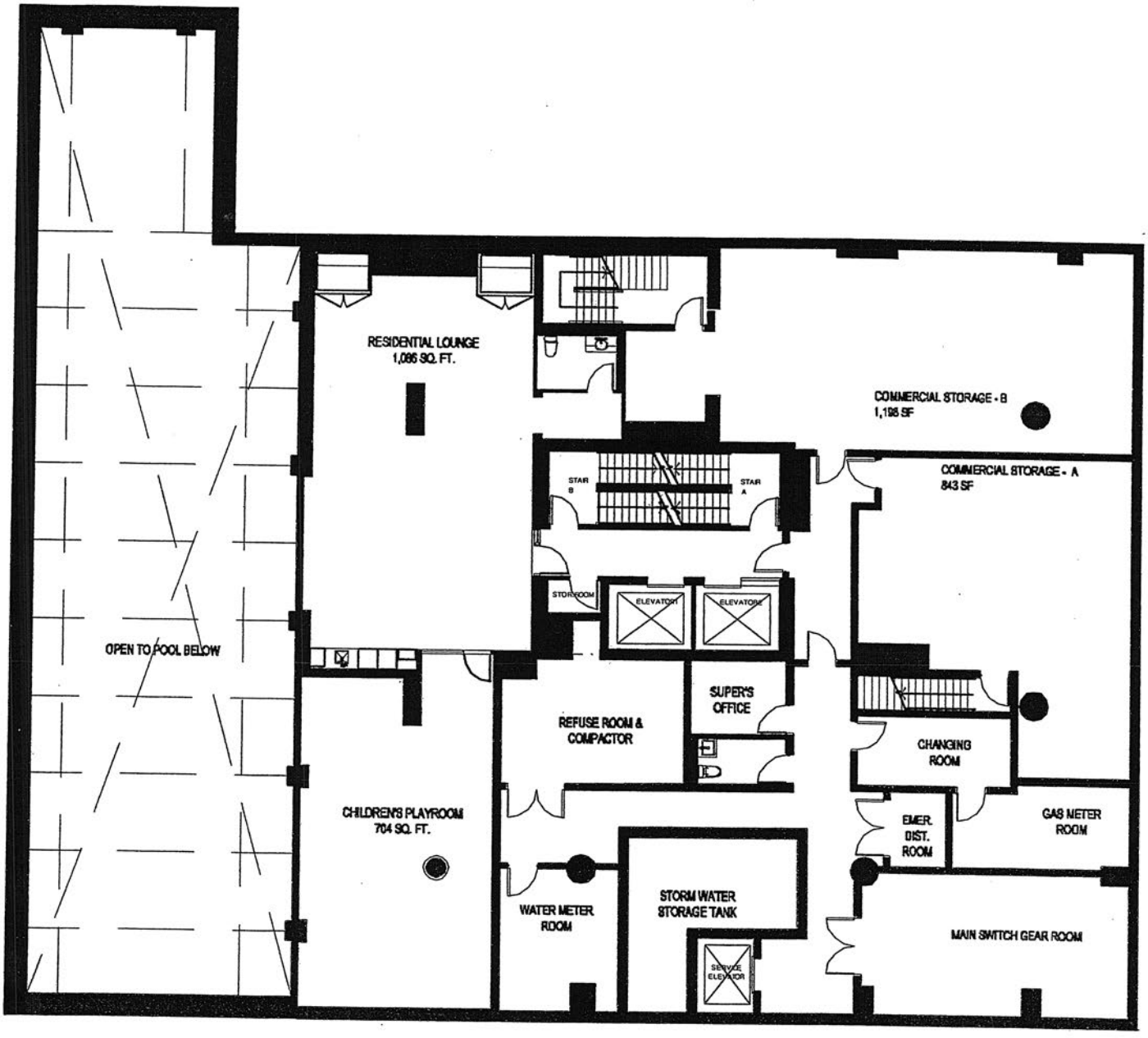
# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## Sub Cellar Plan



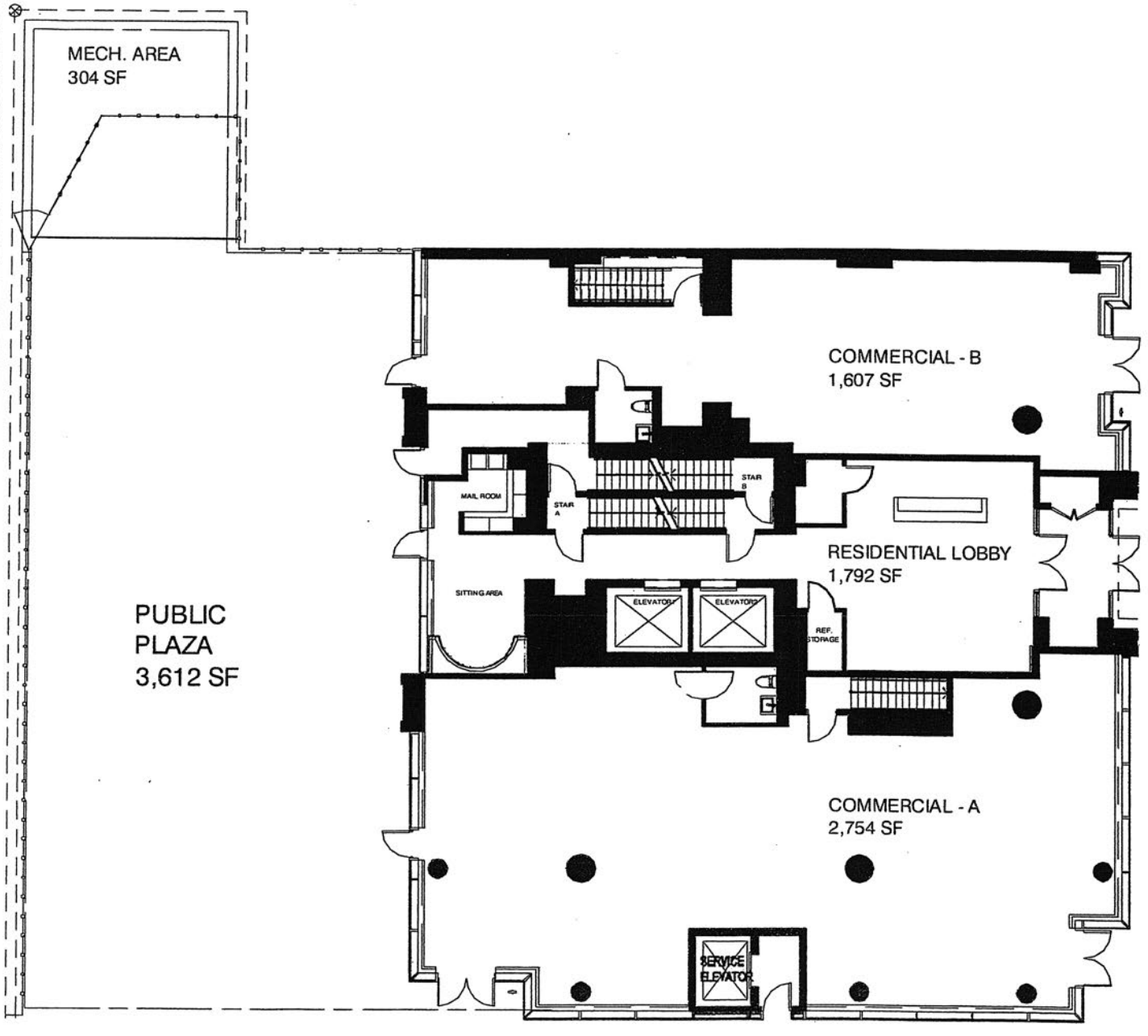
# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## Cellar Plan



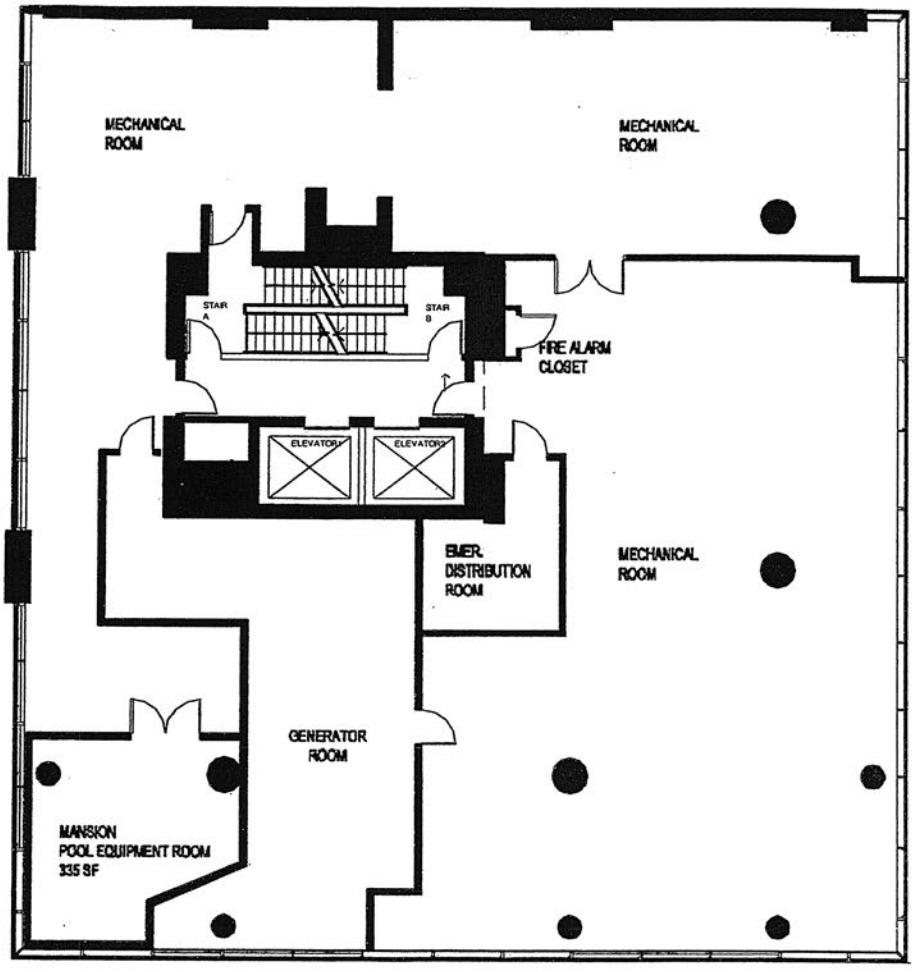
# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## 1st Floor Plan



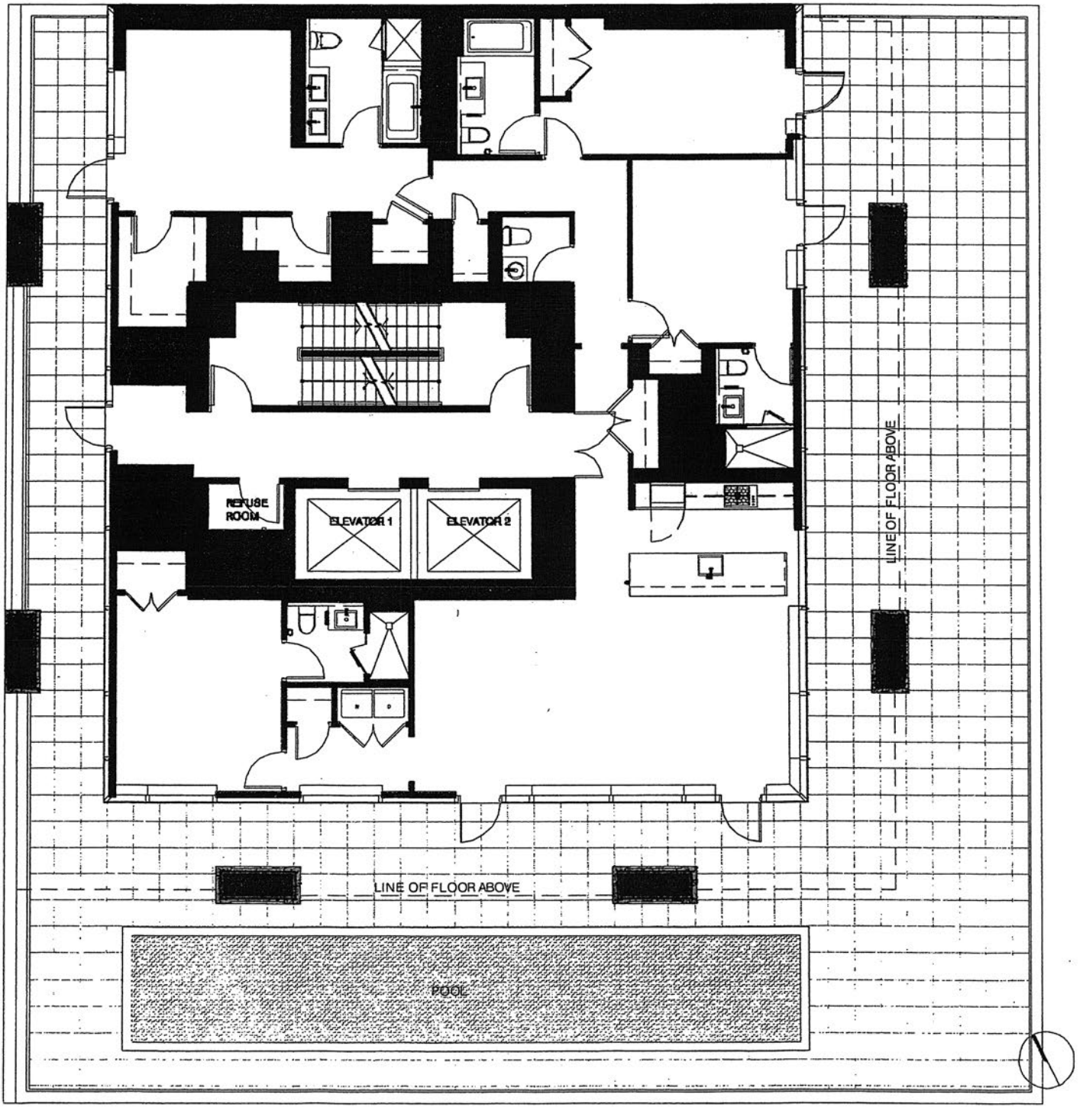
# 172 MADISON AVENUE
## NEW YORK, NEW YORK

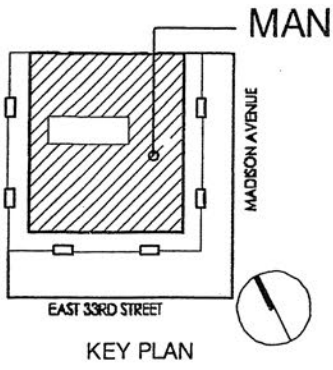
## 2nd Floor Plan



# 172 MADISON AVENUE
NEW YORK, NEW YORK

## MANSION: 3rd Floor Plan






KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

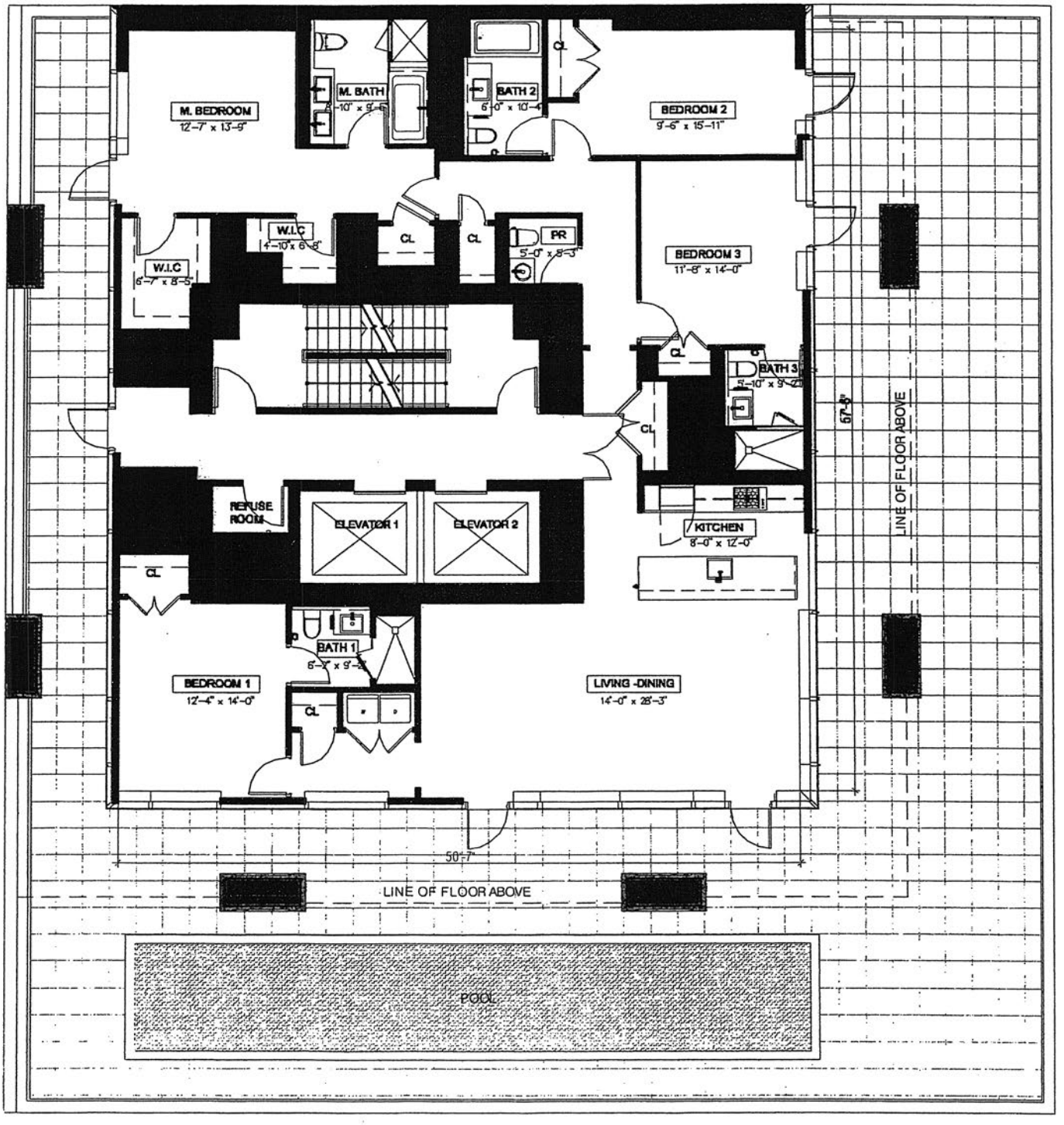
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft

# MANSION
## 4 BEDROOM
## 4 1/2 BATHROOM

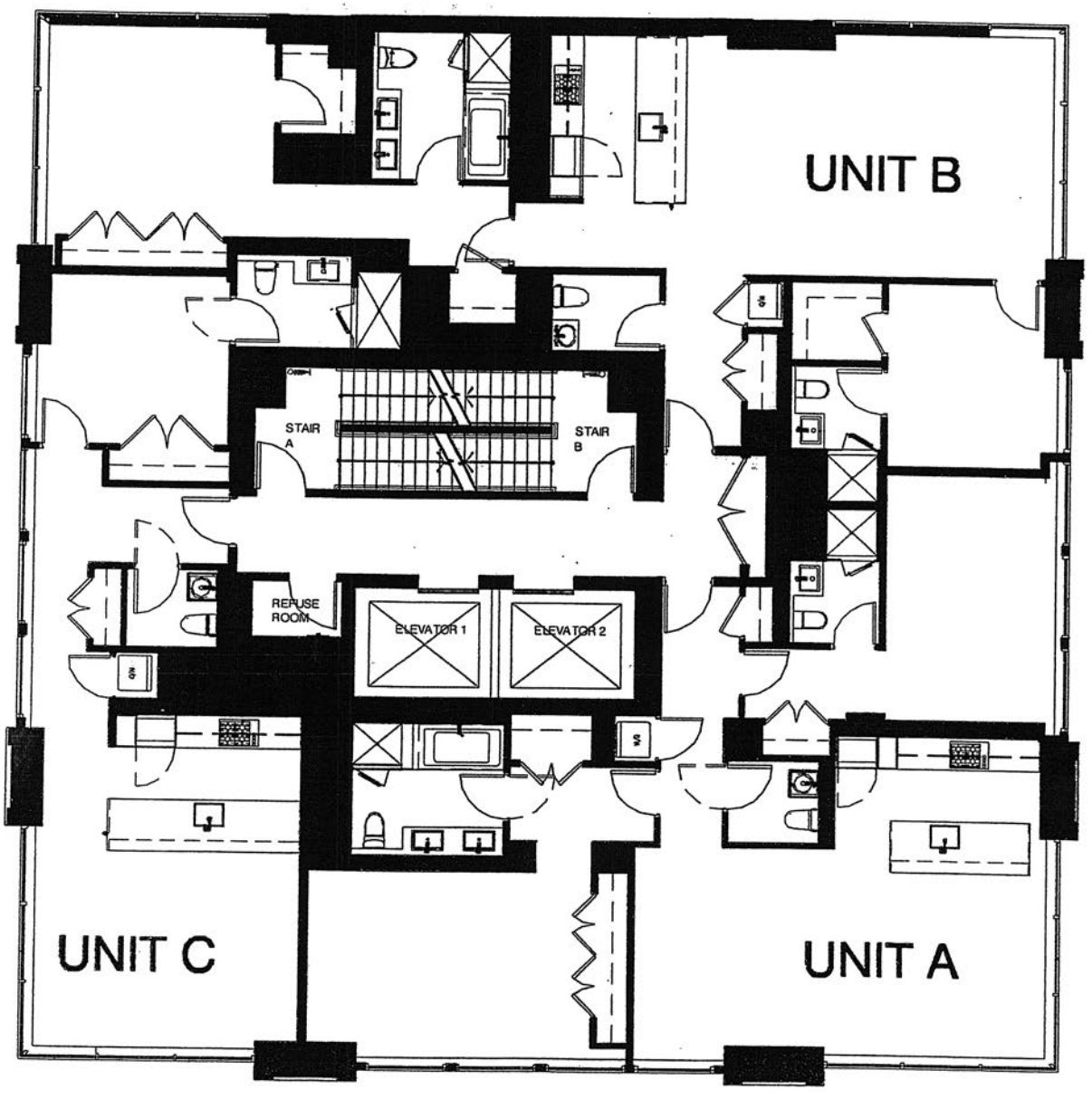
| FLOOR NUMBER | UNIT AREA |
|---|---|
| 3A | 2,958 SF |

+ TERRACE 2,948 SQ.FT.
+ 2ND FL POOL EQUIP. ROOM 335 SQ.FT.



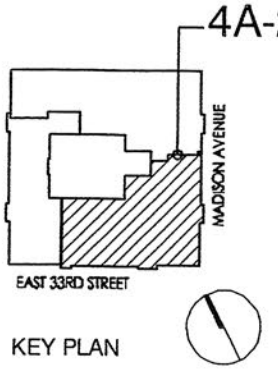
# 172 MADISON AVENUE
NEW YORK, NEW YORK

## Typical Floors: 4th-21st *




*There is no 13th floor

# 172 MADISON AVENUE
## NEW YORK, NEW YORK




KEY PLAN

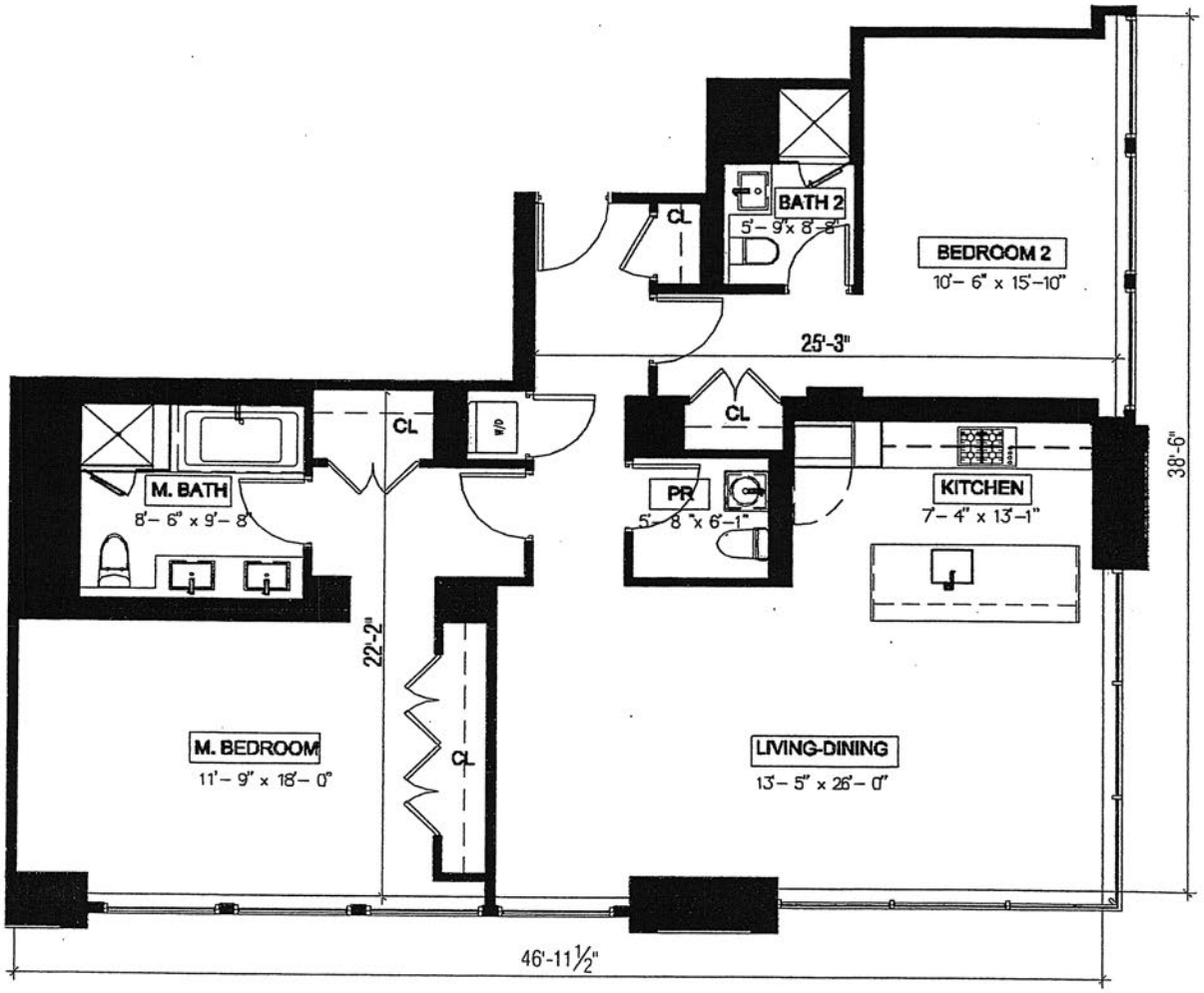
All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

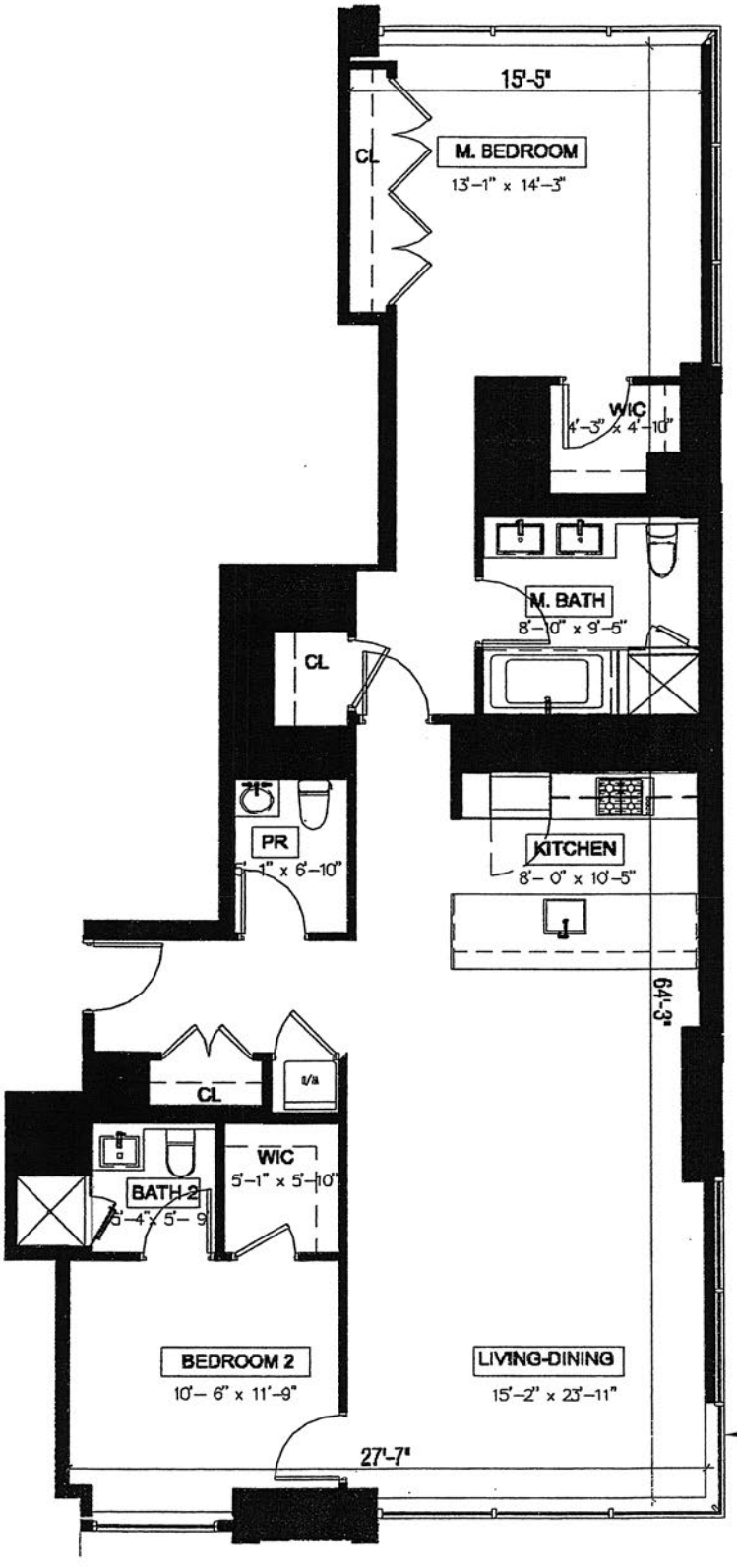
0 5 10 ft

## 4A -21A
## 2 BEDROOM
## 2 1/2 BATHROOM

| FLOOR NUMBER | UNIT AREA |
|---|---|
| 04 | 1,479 SF |



# 172 MADISON AVENUE
## NEW YORK, NEW YORK



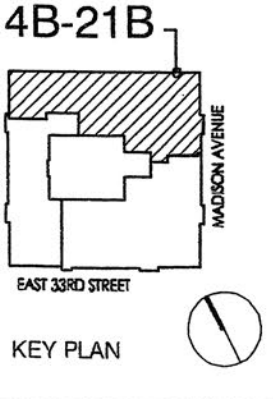

# 4B-21B
## 2 BEDROOM
## 2 1/2 BATHROOM

| FLOOR NUMBER | UNIT AREA |
|---|---|
| 04 | 1,488 SF |

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

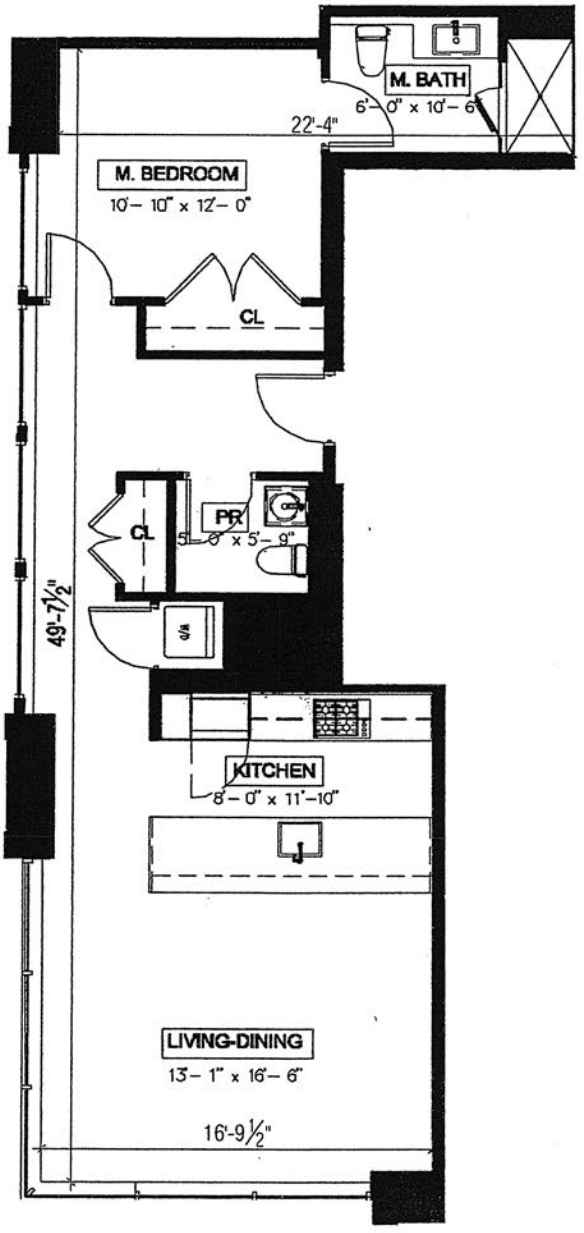
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft




KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK



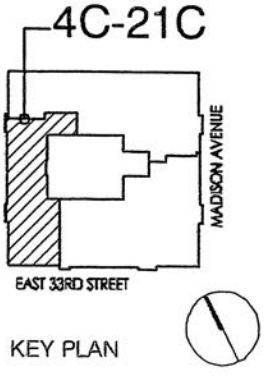

# 4C-21C
## 1 BEDROOM
## 1 1/2 BATHROOM

| FLOOR NUMBER | UNIT AREA |
|---|---|
| 04 | 891 SF |

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

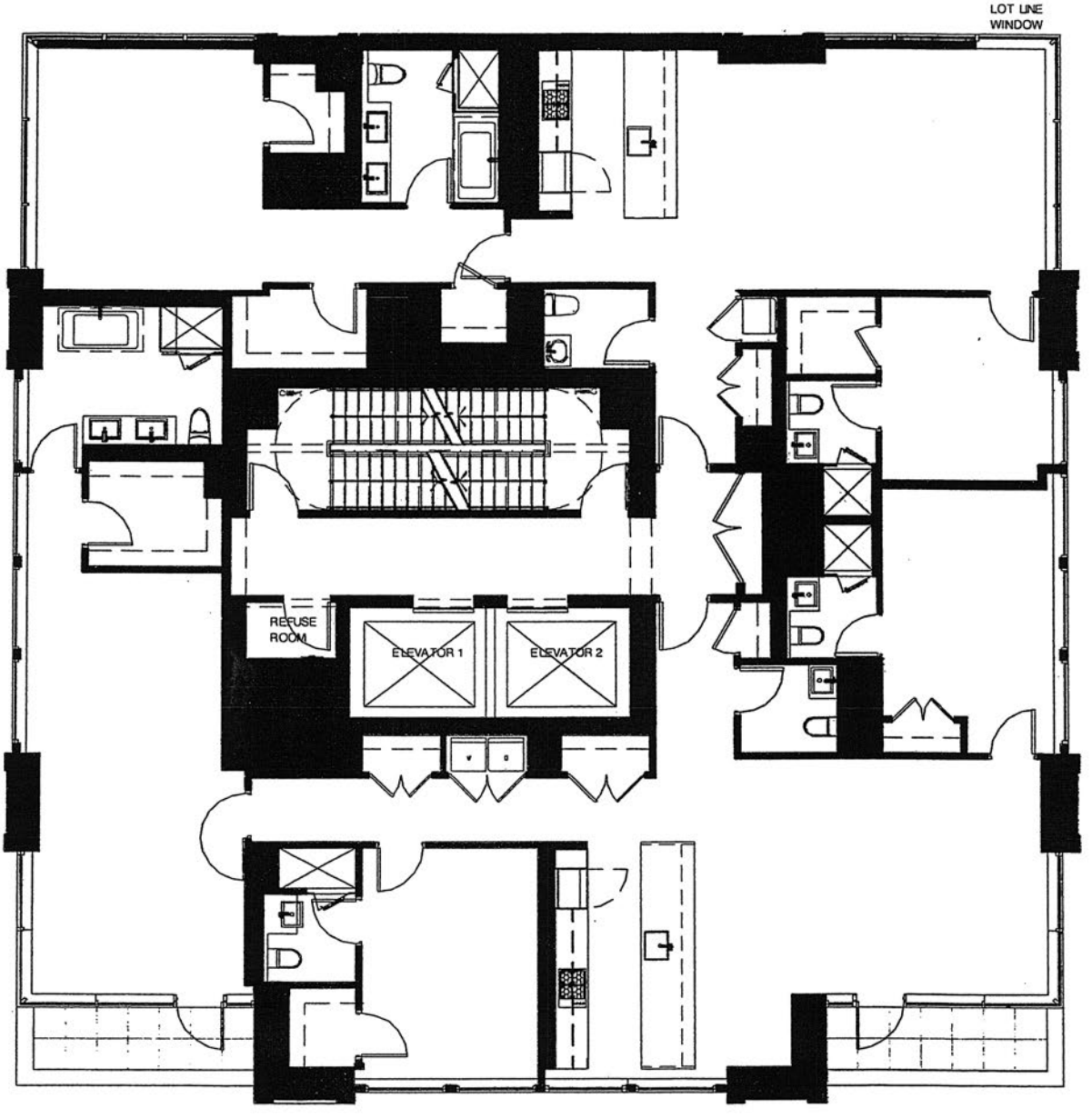
0 5 10 ft



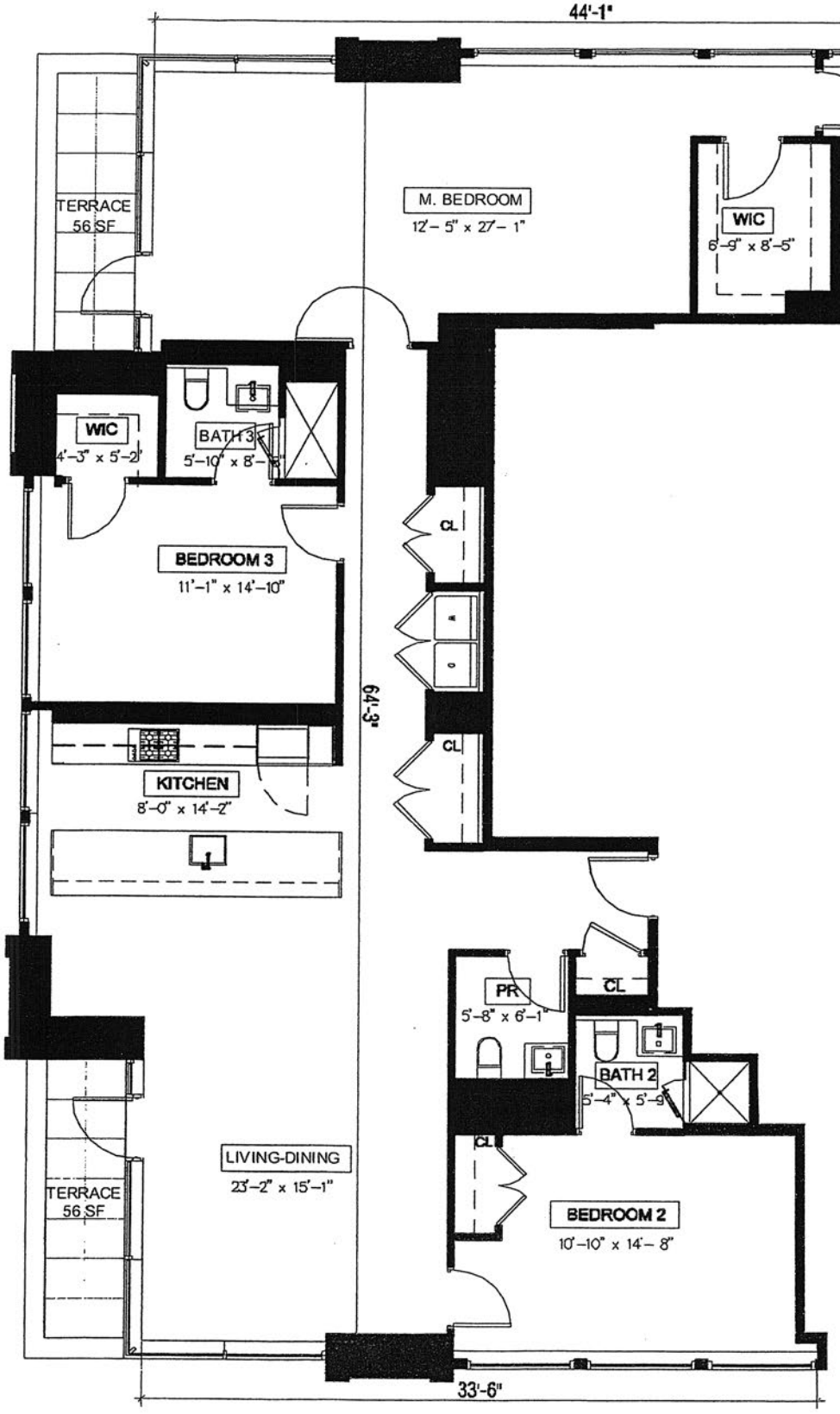

KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## 22nd Floor Plan



# 172 MADISON AVENUE
## NEW YORK, NEW YORK




# 22A
## 3 BEDROOM
## 3 1/2 BATHROOM

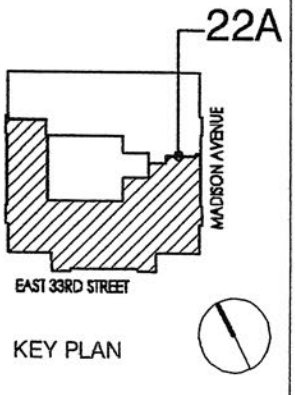
| FLOOR NUMBER | UNIT AREA |
|---|---|
| 22 | 2,146 SF |

+ 2 TERRACES 56 SQ.FT. EACH

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

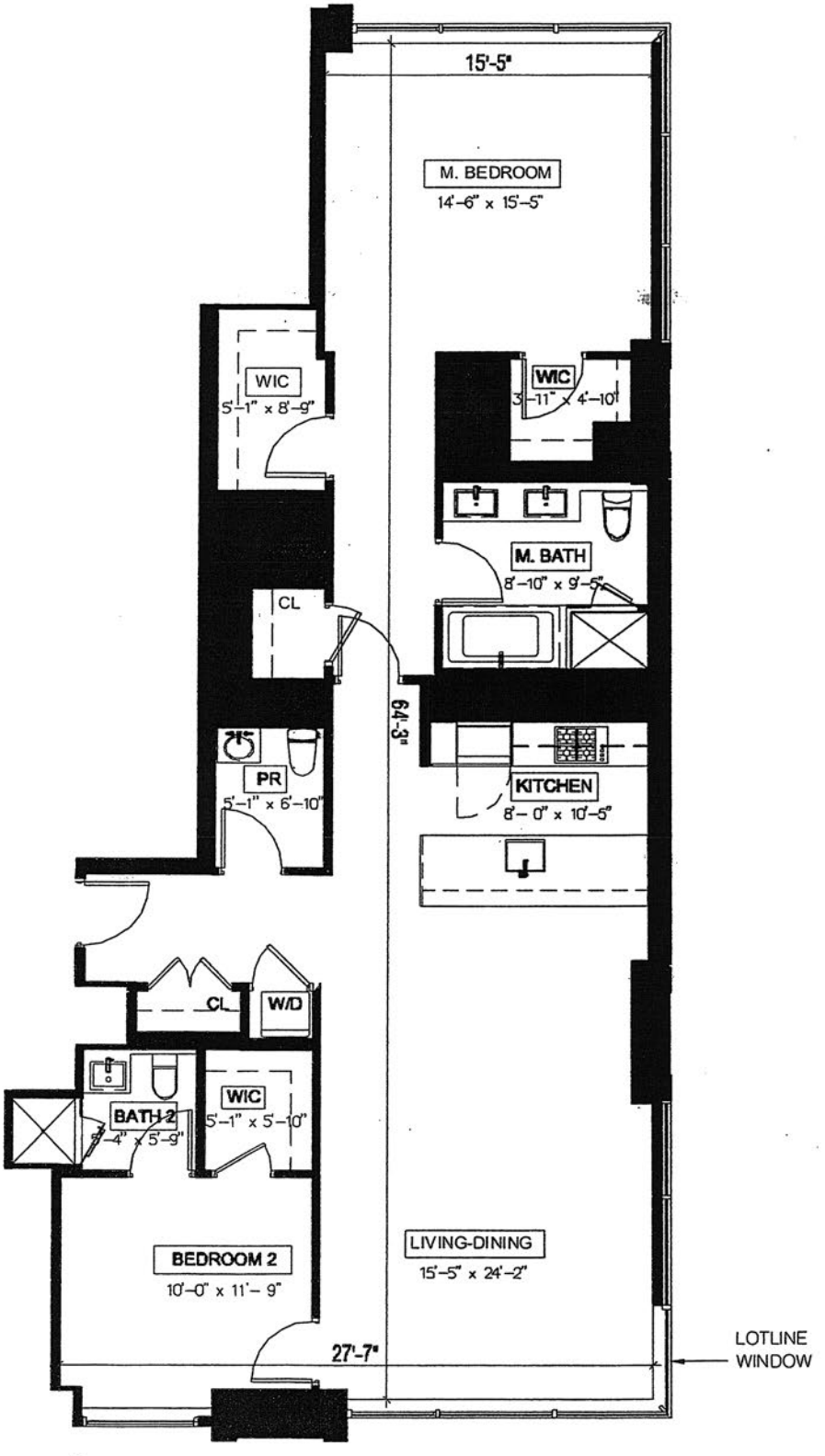
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft




KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK




# 22B
## 2 BEDROOM
## 2 1/2 BATHROOM

| FLOOR NUMBER | UNIT AREA |
|---|---|
| 22 | 1,569 SF |

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

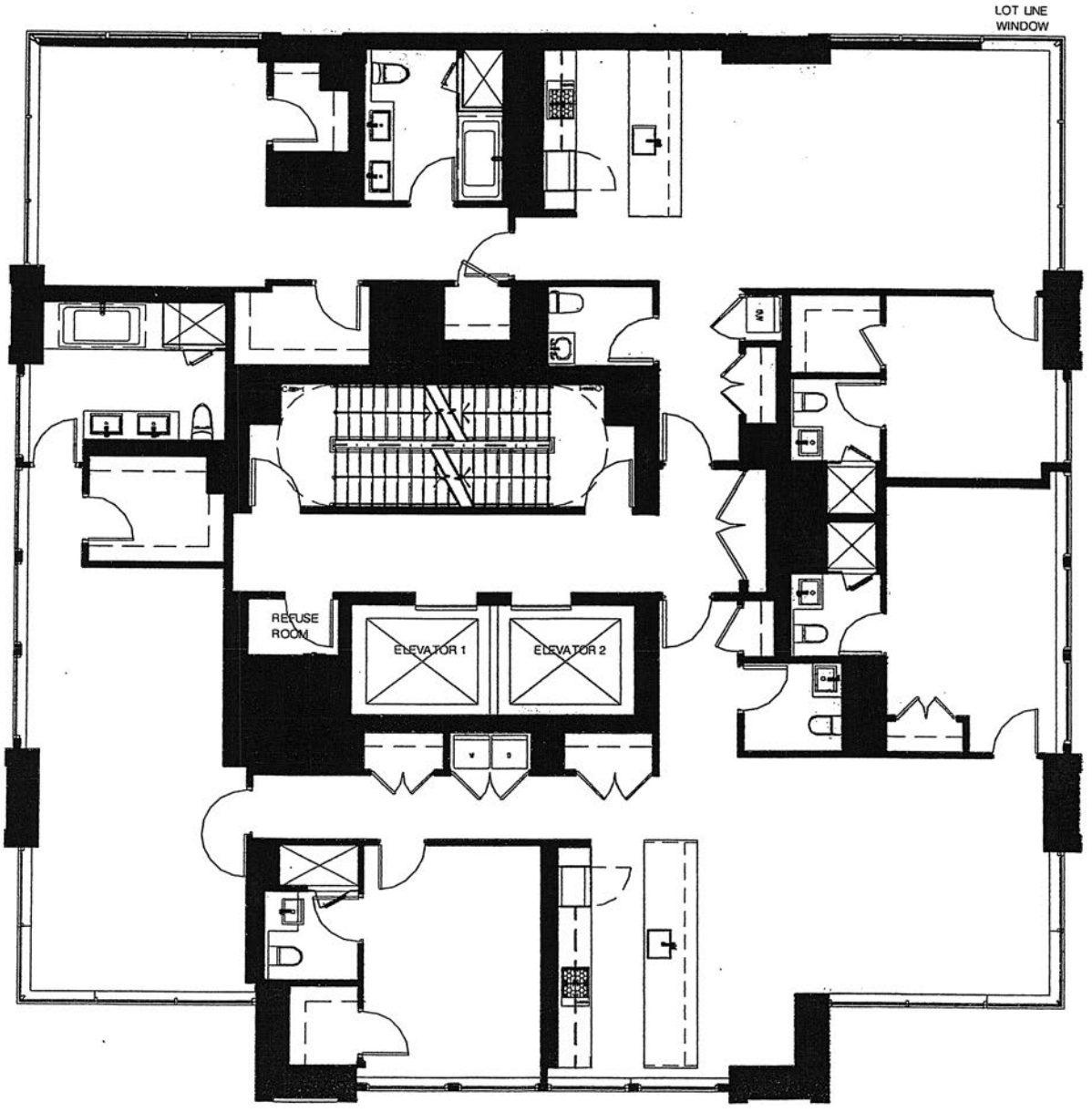
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft

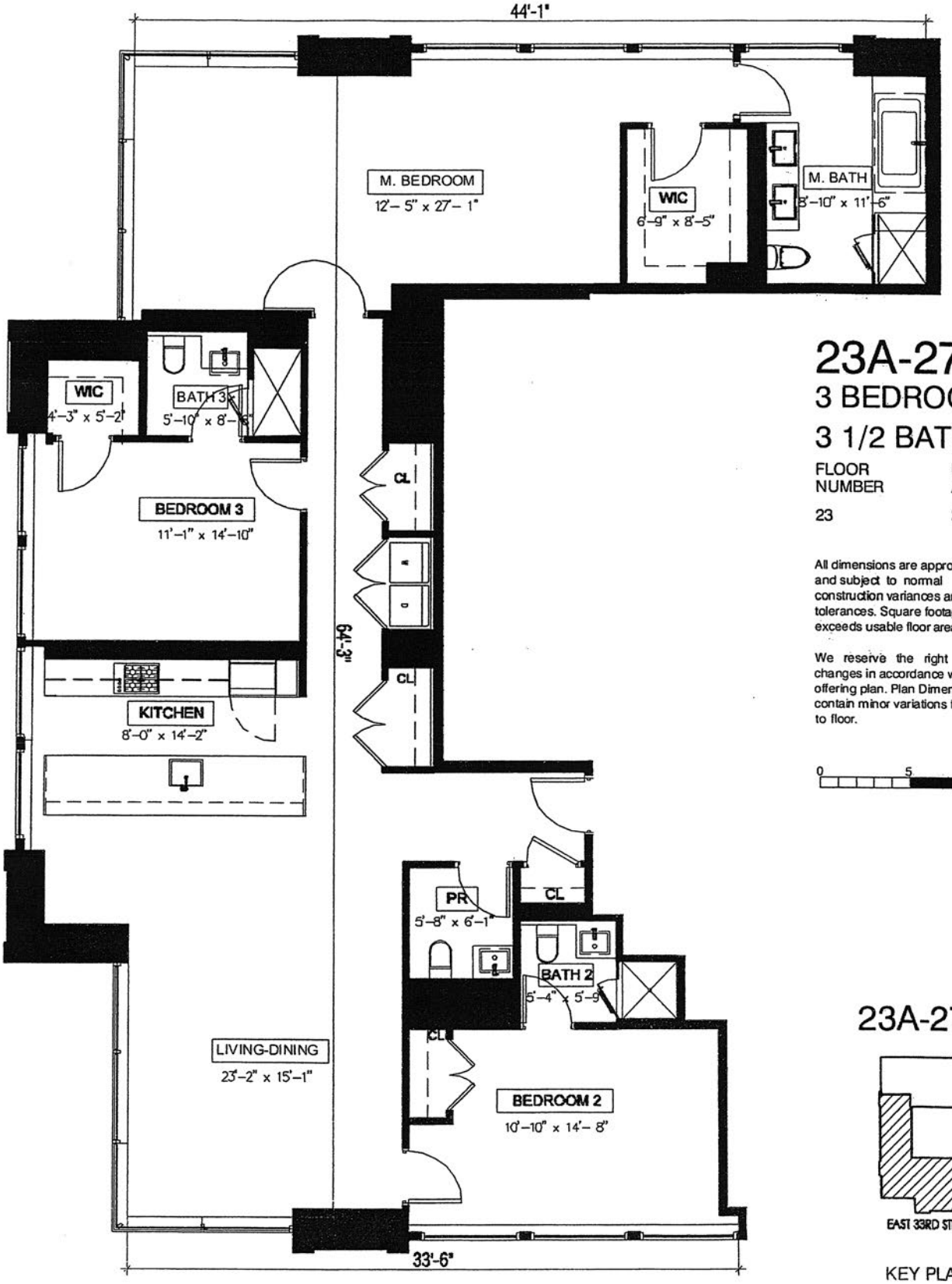
KEY PLAN

# 172 MADISON AVENUE
NEW YORK, NEW YORK

## Typical Floor Plans: 23rd - 27th



# 172 MADISON AVENUE
## NEW YORK, NEW YORK



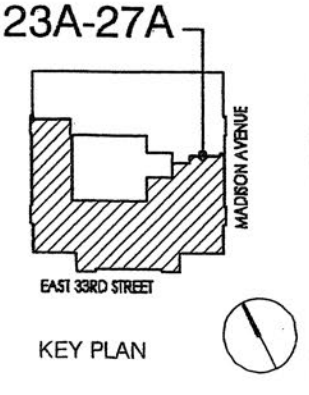

# 23A-27A
## 3 BEDROOM
## 3 1/2 BATHROOM

| FLOOR NUMBER | UNIT AREA |
|---|---|
| 23 | 2,146 SF |

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

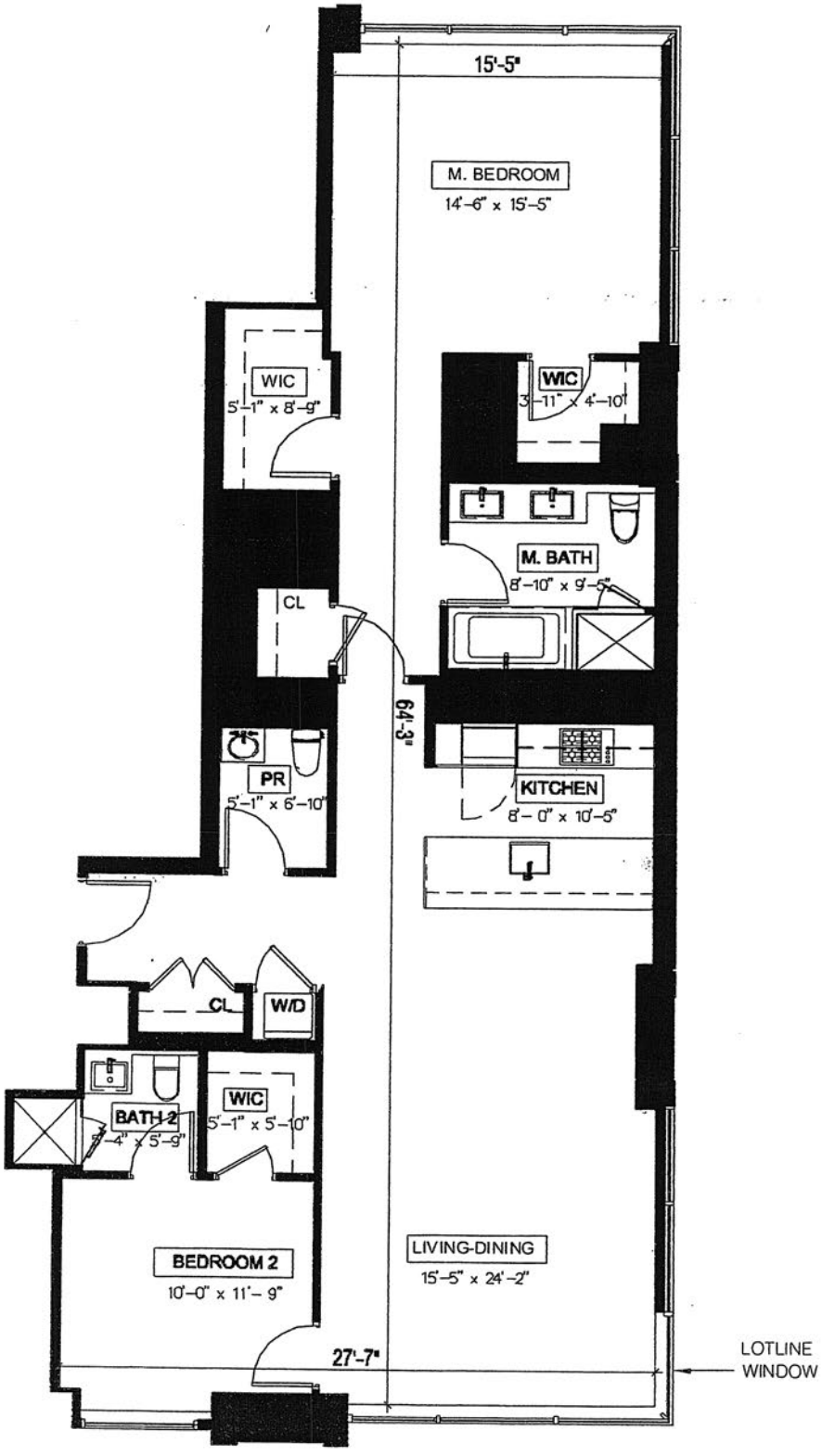
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft




KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK




# 23B-27B
## 2 BEDROOM
## 2 1/2 BATHROOM

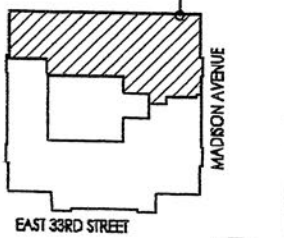
| FLOOR NUMBER | UNIT AREA |
|---|---|
| 23 | 1,569 SF |

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft

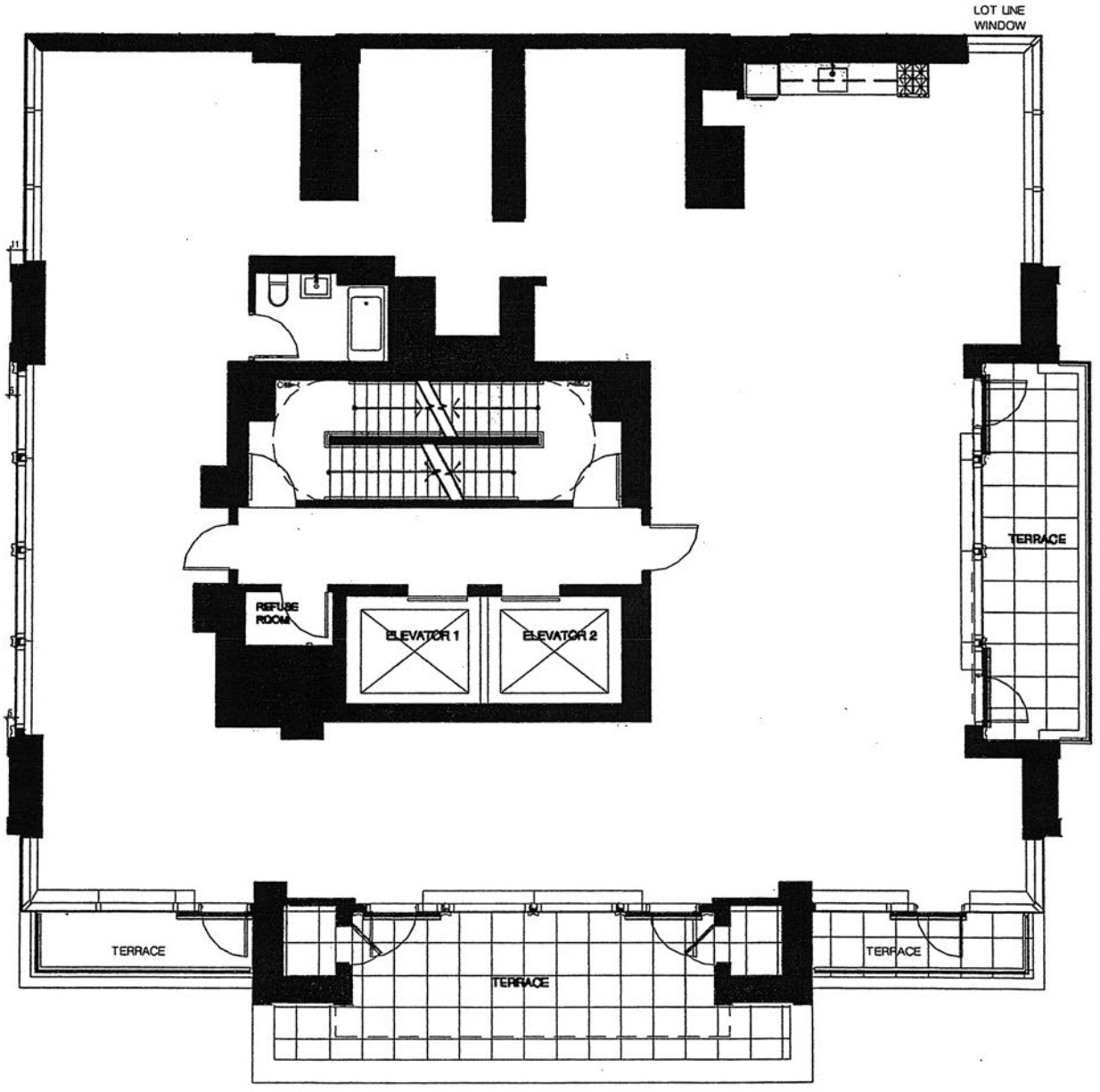
23B-27B

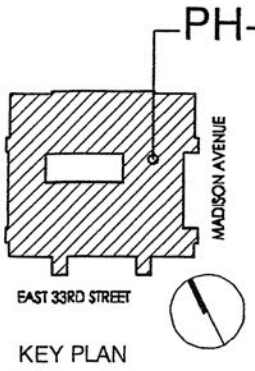



KEY PLAN

# 172 MADISON AVENUE
NEW YORK, NEW YORK

## PH-A: 28th Floor Plan






KEY PLAN

# 172 MADISON AVENUE

## NEW YORK, NEW YORK

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

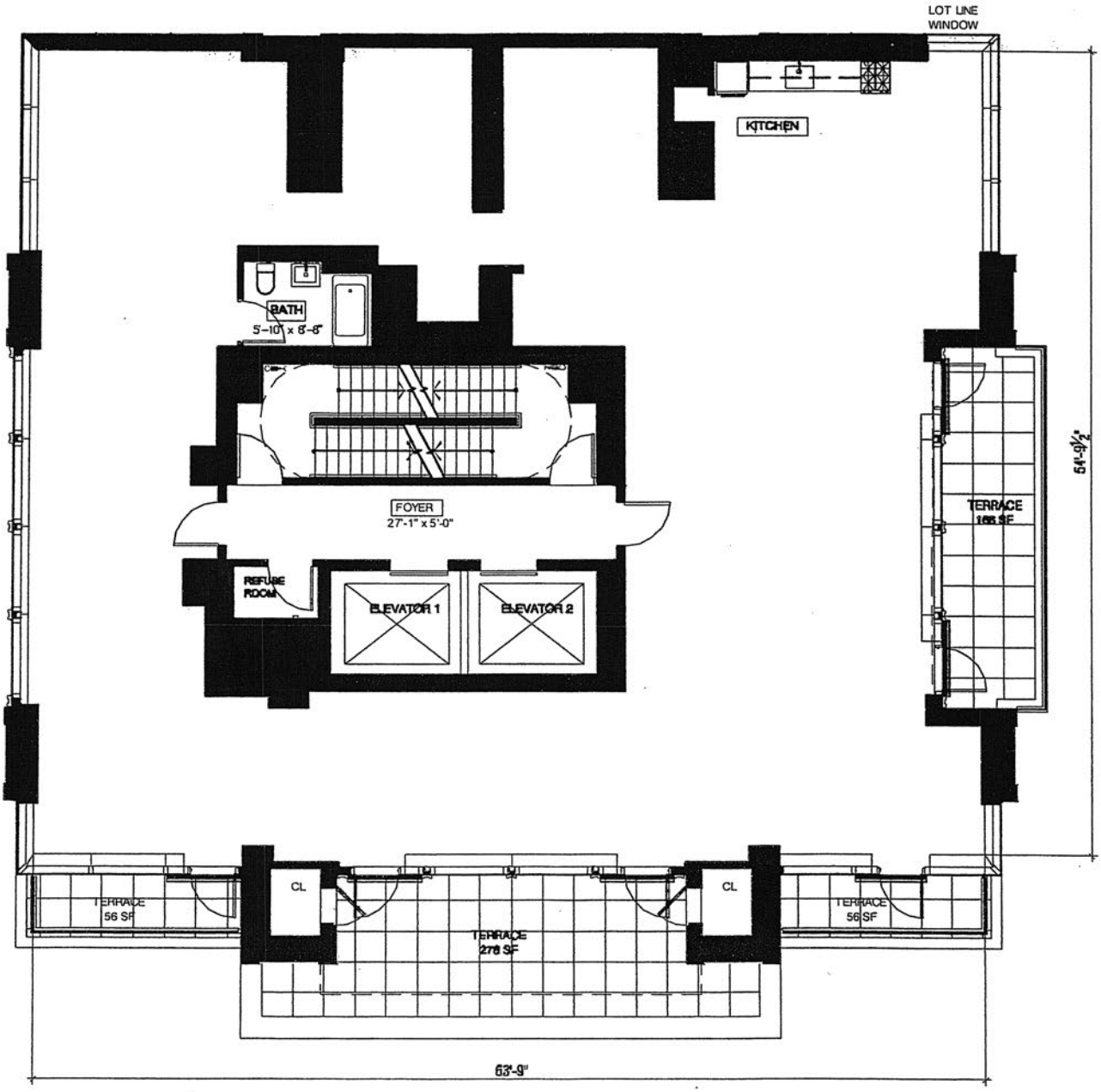
0 5 10 ft

# PH-A

## 1 BATHROOM

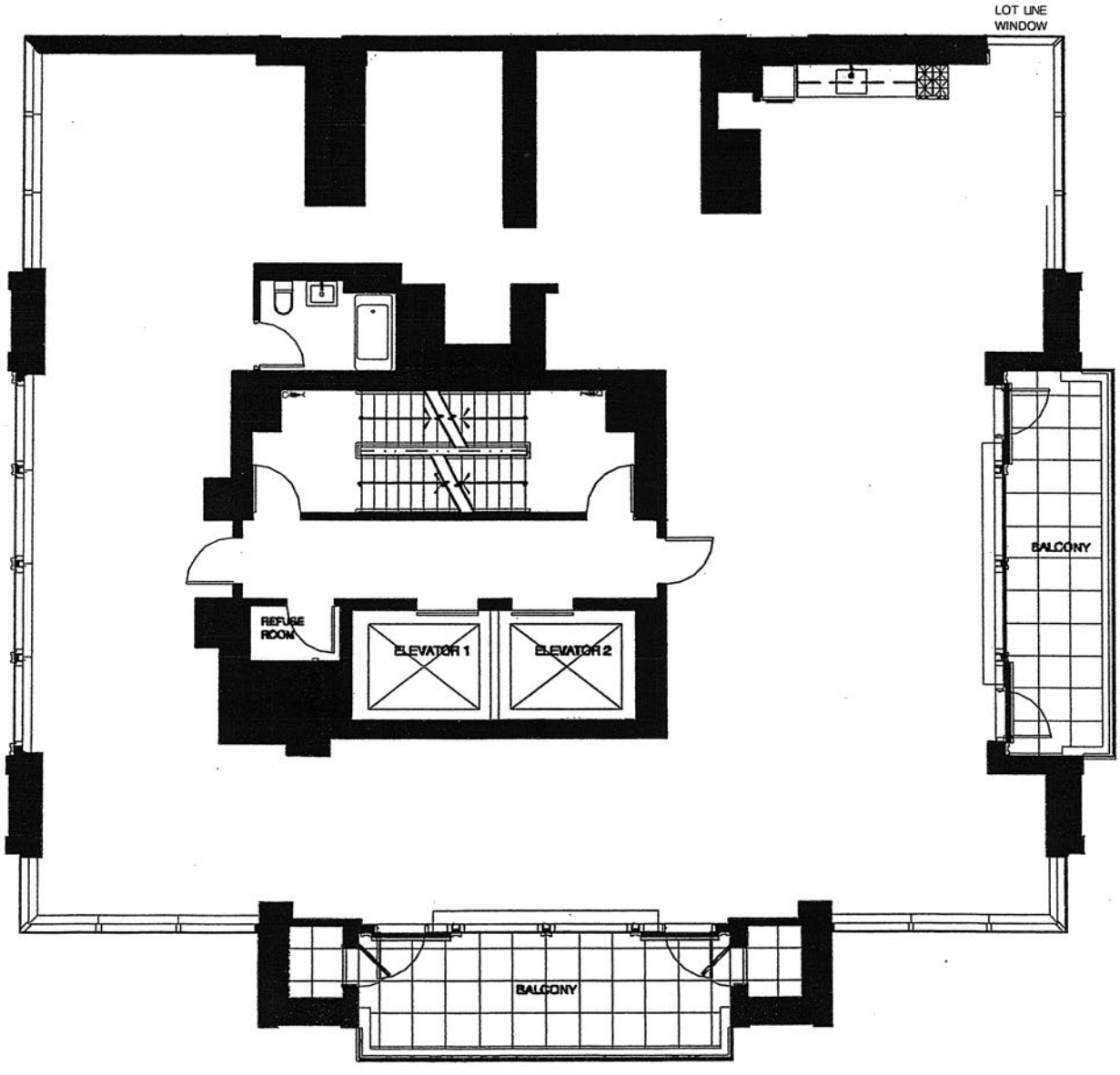
| FLOOR NUMBER | UNIT AREA |
|---|---|
| 28 | 3,548 SF |

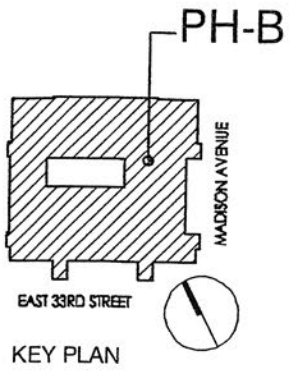
+ TERRACE 558 SQ.FT.



# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## PH-B: 29th Floor Plan






KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK

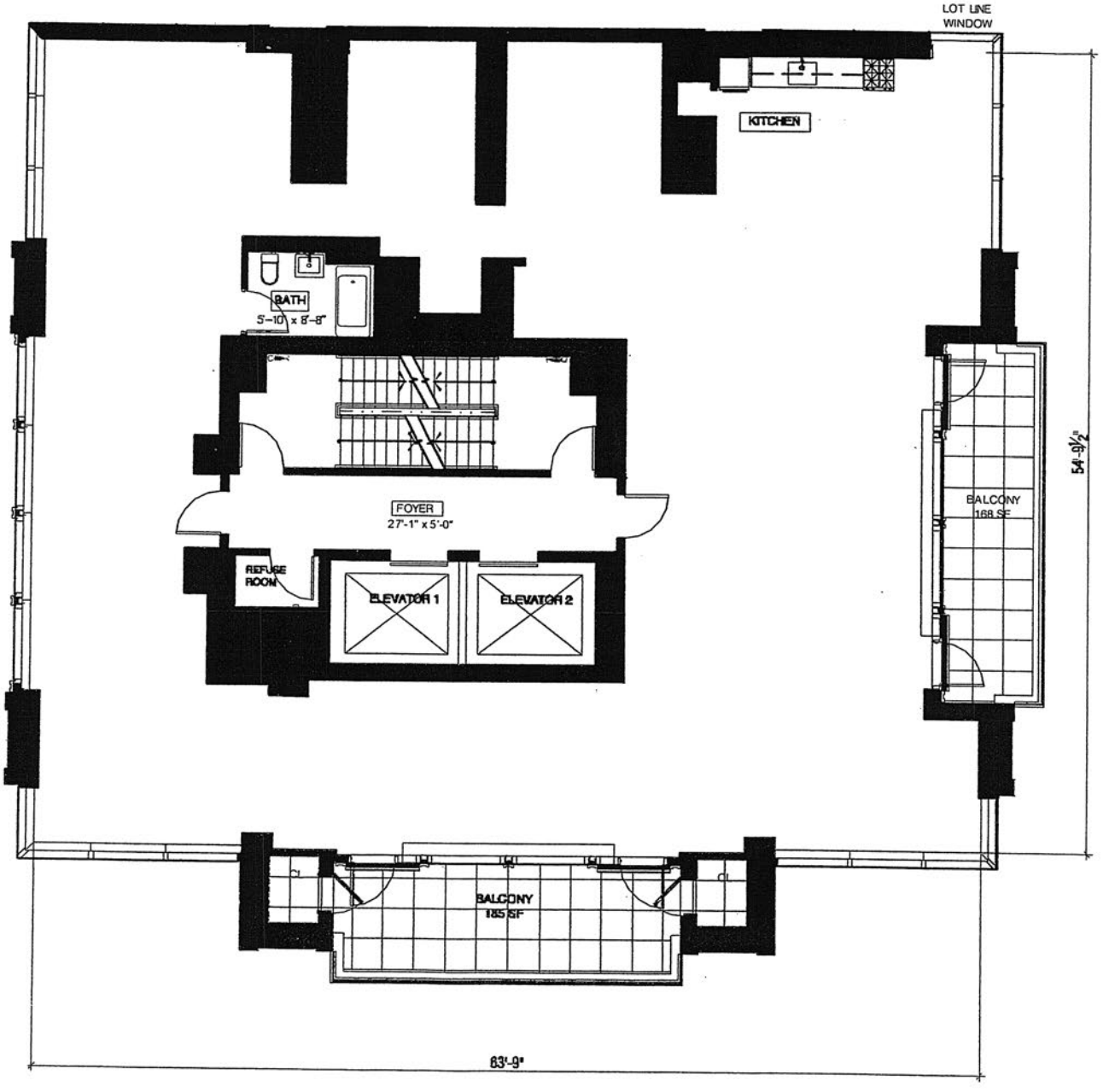
All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft

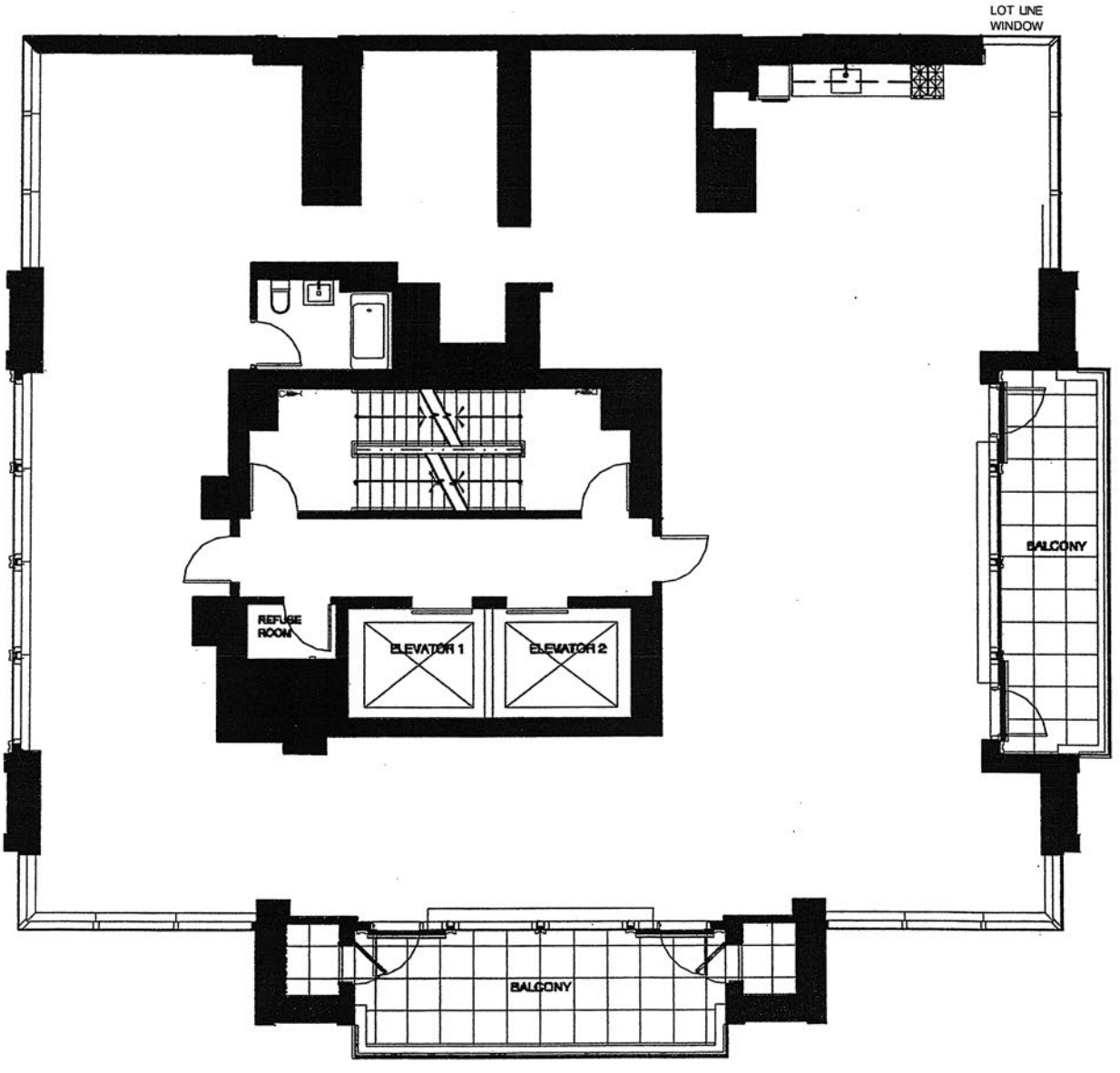
# PH-B
## 1 BATHROOM

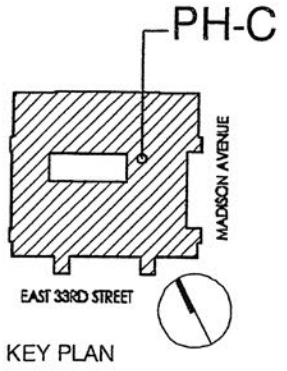
| FLOOR NUMBER | UNIT AREA |
|---|---|
| 29 | 3,548 SF |
| + BALCONY | 353 SF |



# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## PH-C: 30th Floor Plan






KEY PLAN

# 172 MADISON AVENUE

## NEW YORK, NEW YORK

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

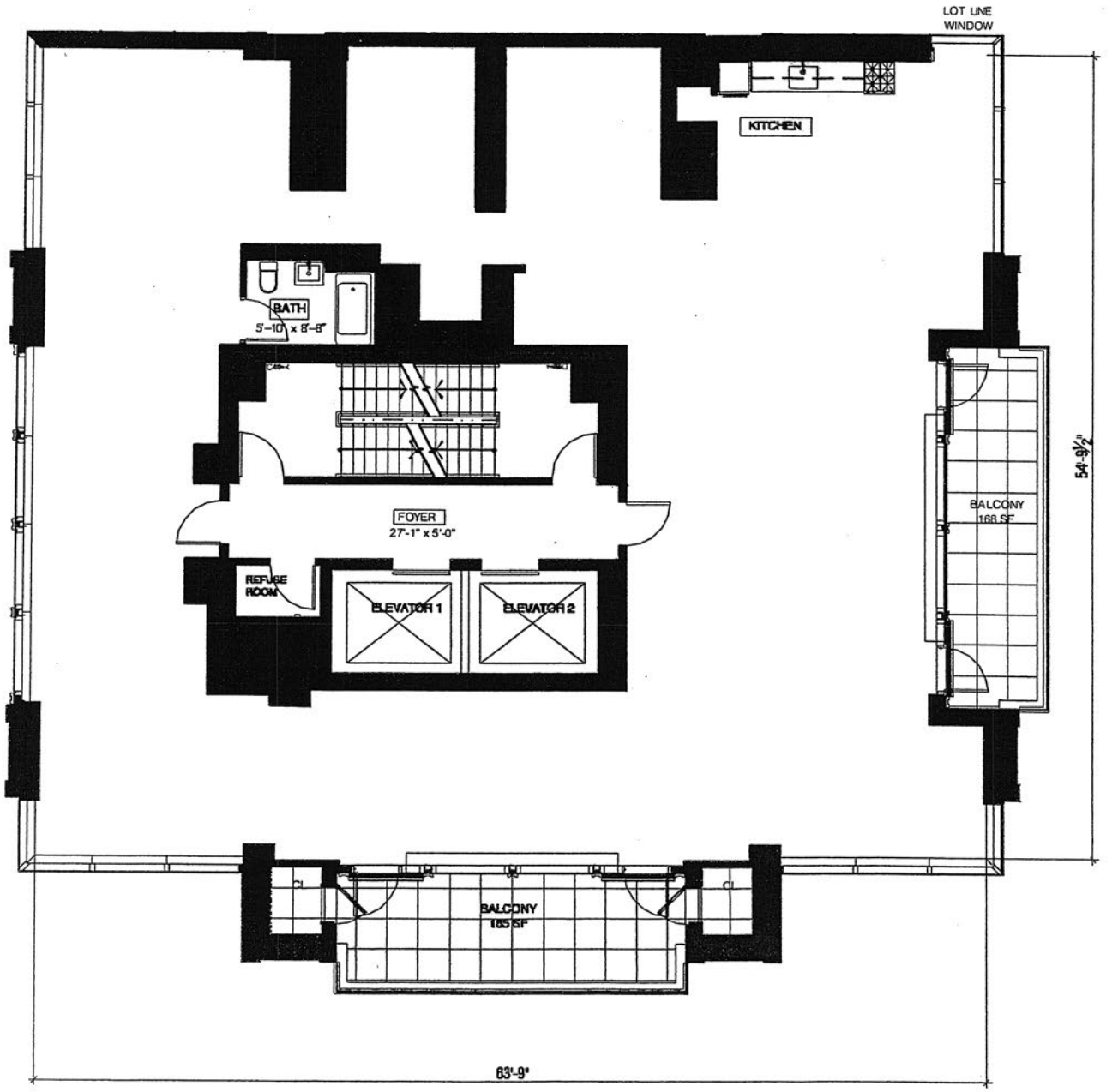
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft

# PH-C

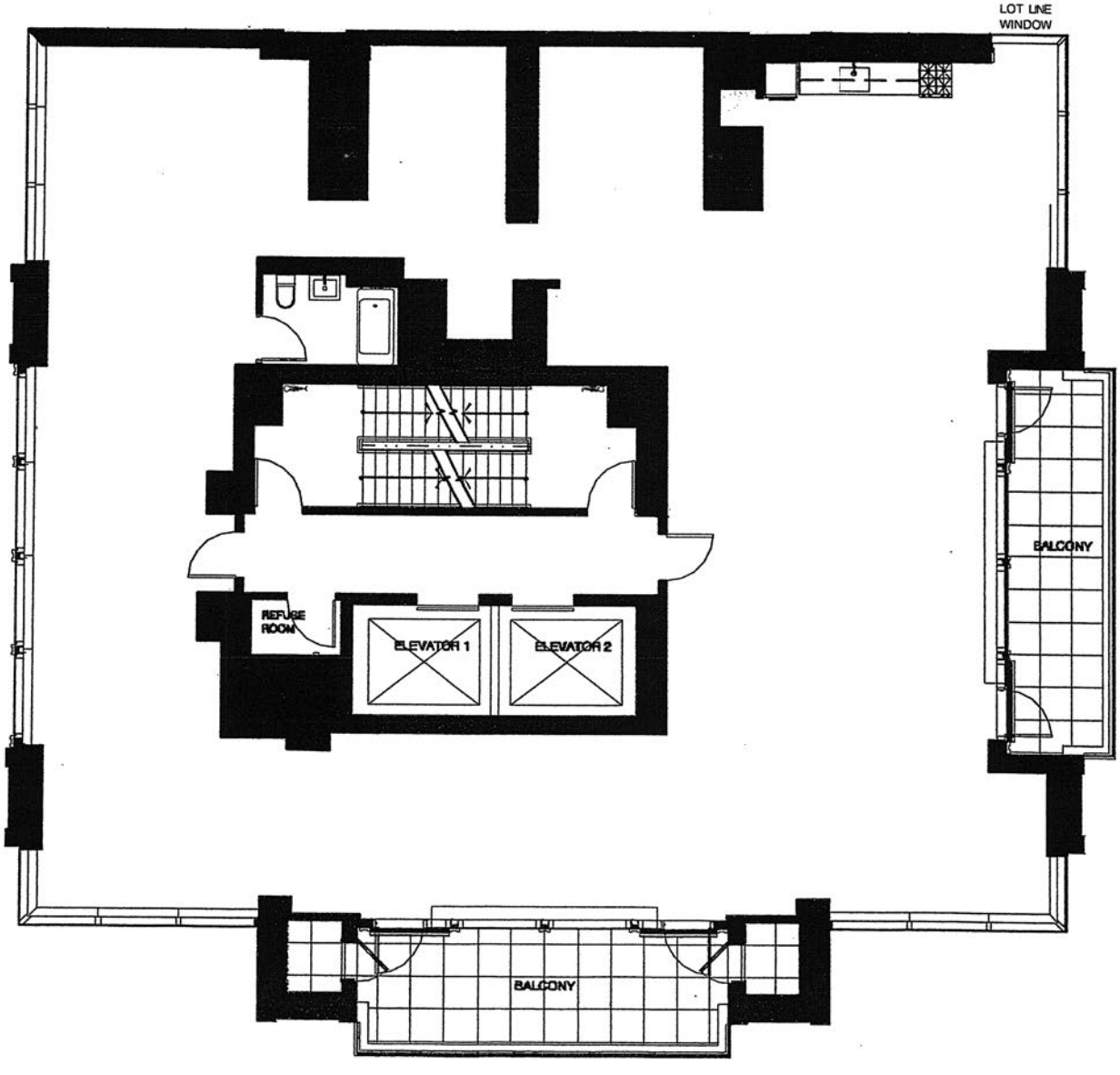
## 1 BATHROOM

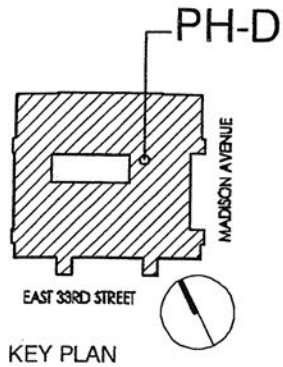
| FLOOR NUMBER | UNIT AREA |
|---|---|
| 30 | 3,548 SF |
| + BALCONY | 353 SF |



# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## PH-D : 31st Floor Plan






KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK

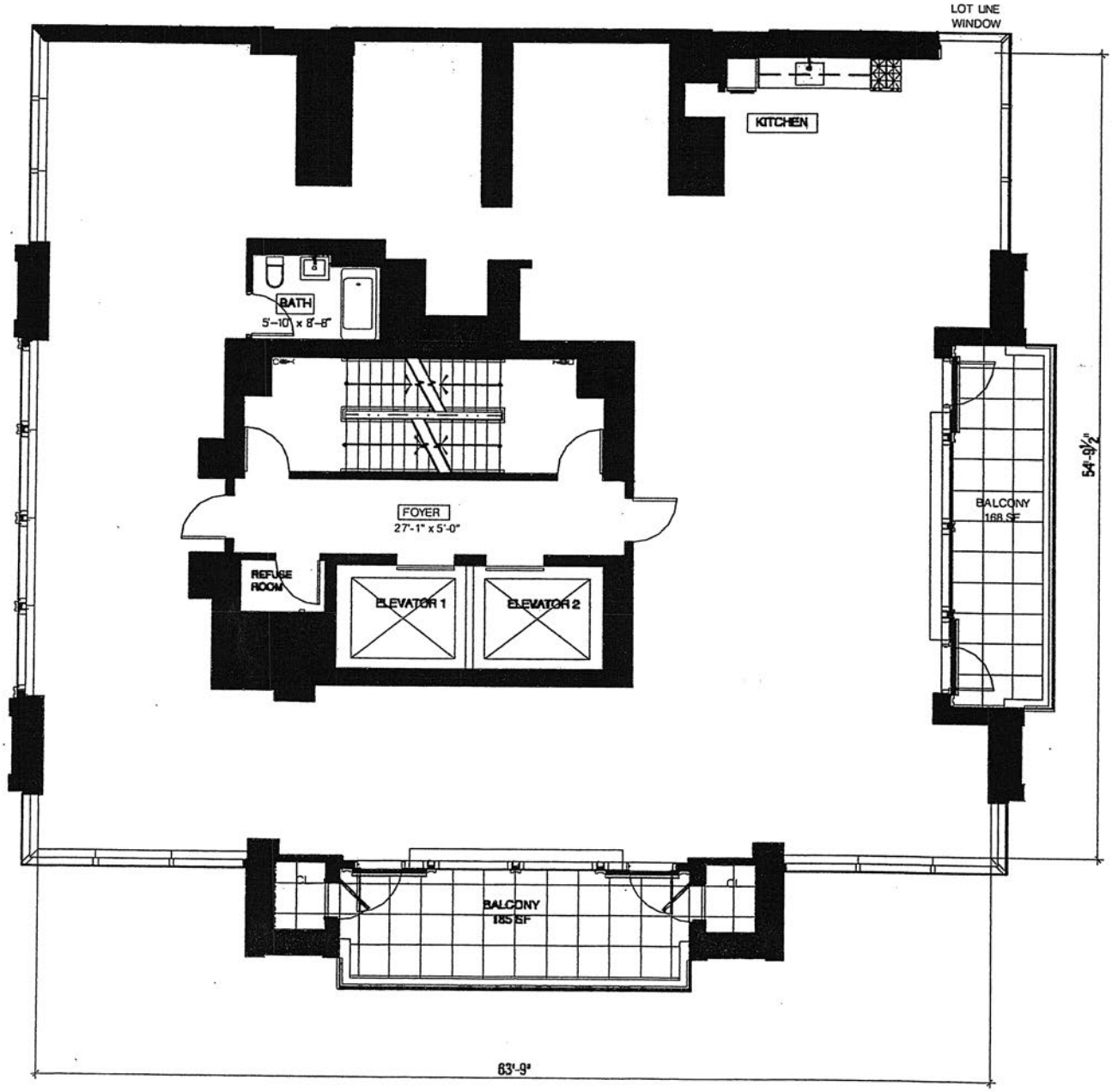
All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft

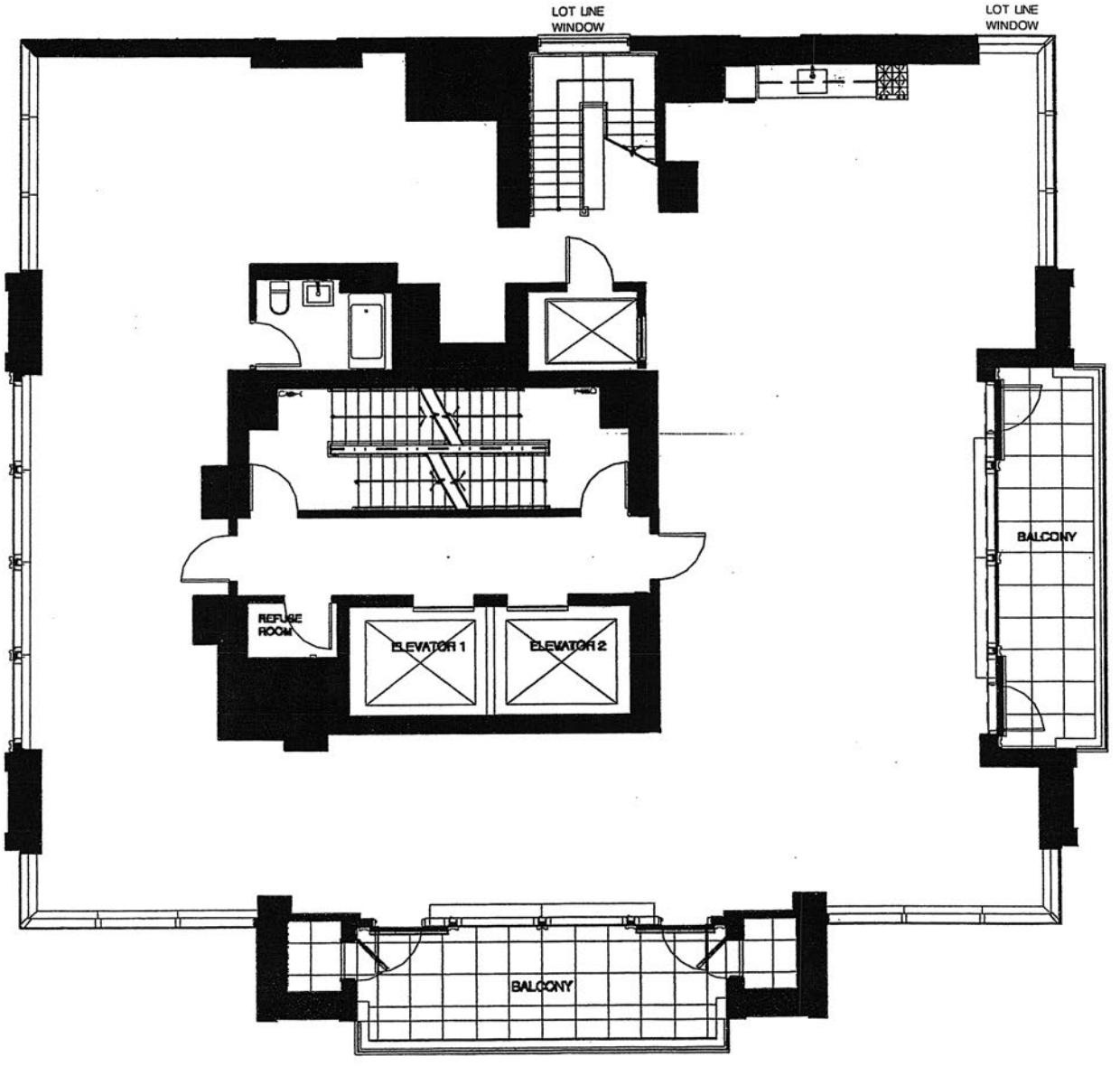
# PH-D
## 1 BATHROOM

| FLOOR NUMBER | UNIT AREA |
|---|---|
| 31 | 3,548 SF |
| + BALCONY | 353 SQ.FT. |



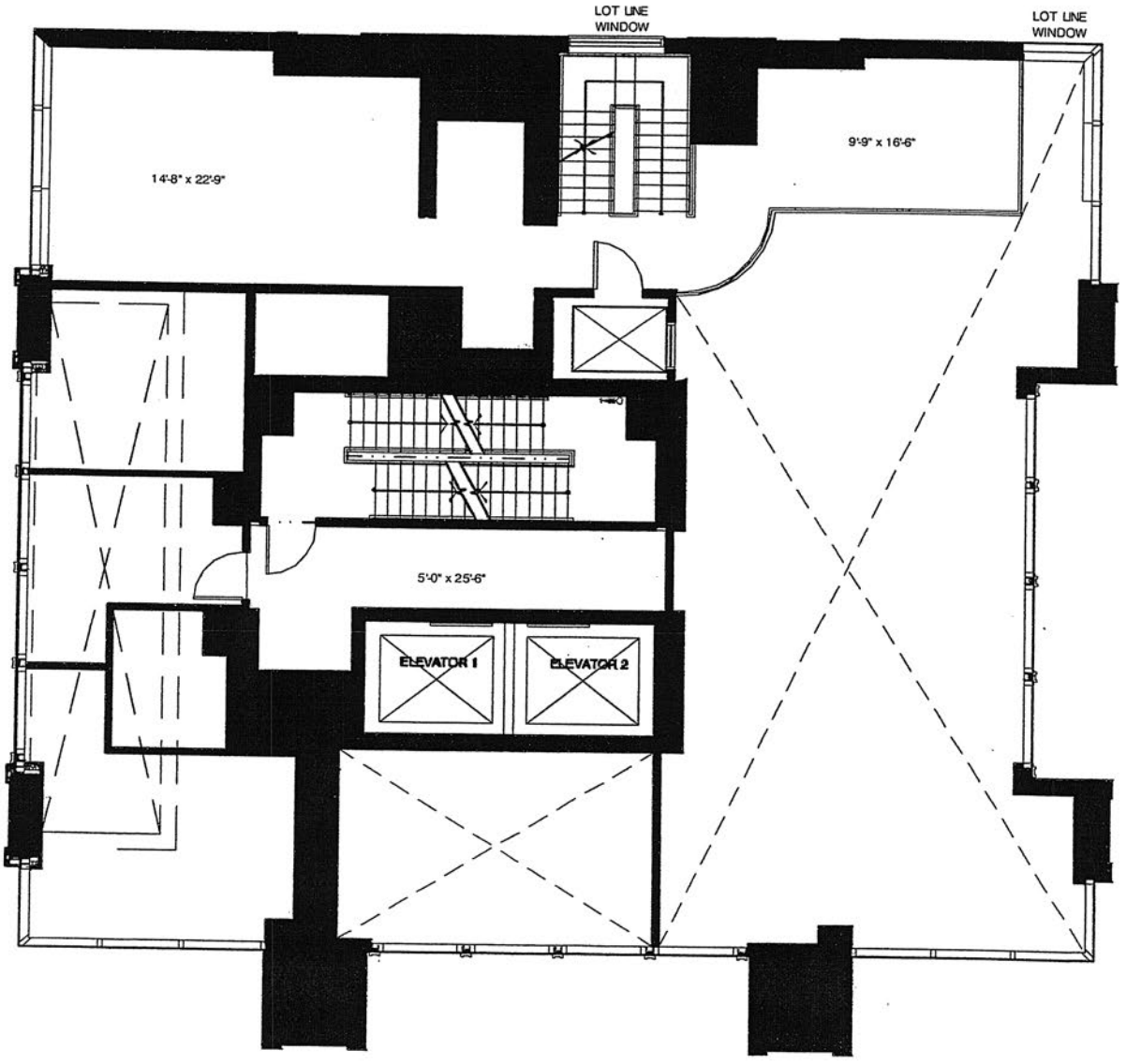
# 172 MADISON AVENUE
## NEW YORK, NEW YORK

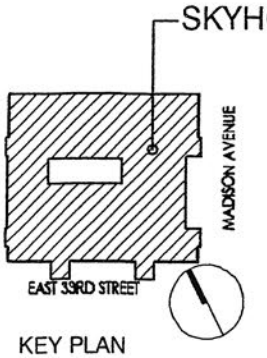
## SKYHOUSE: 32nd Floor Plan



# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## SKYHOUSE MEZZ.: Mezzanine Level






KEY PLAN

# 172 MADISON AVENUE
## NEW YORK, NEW YORK

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

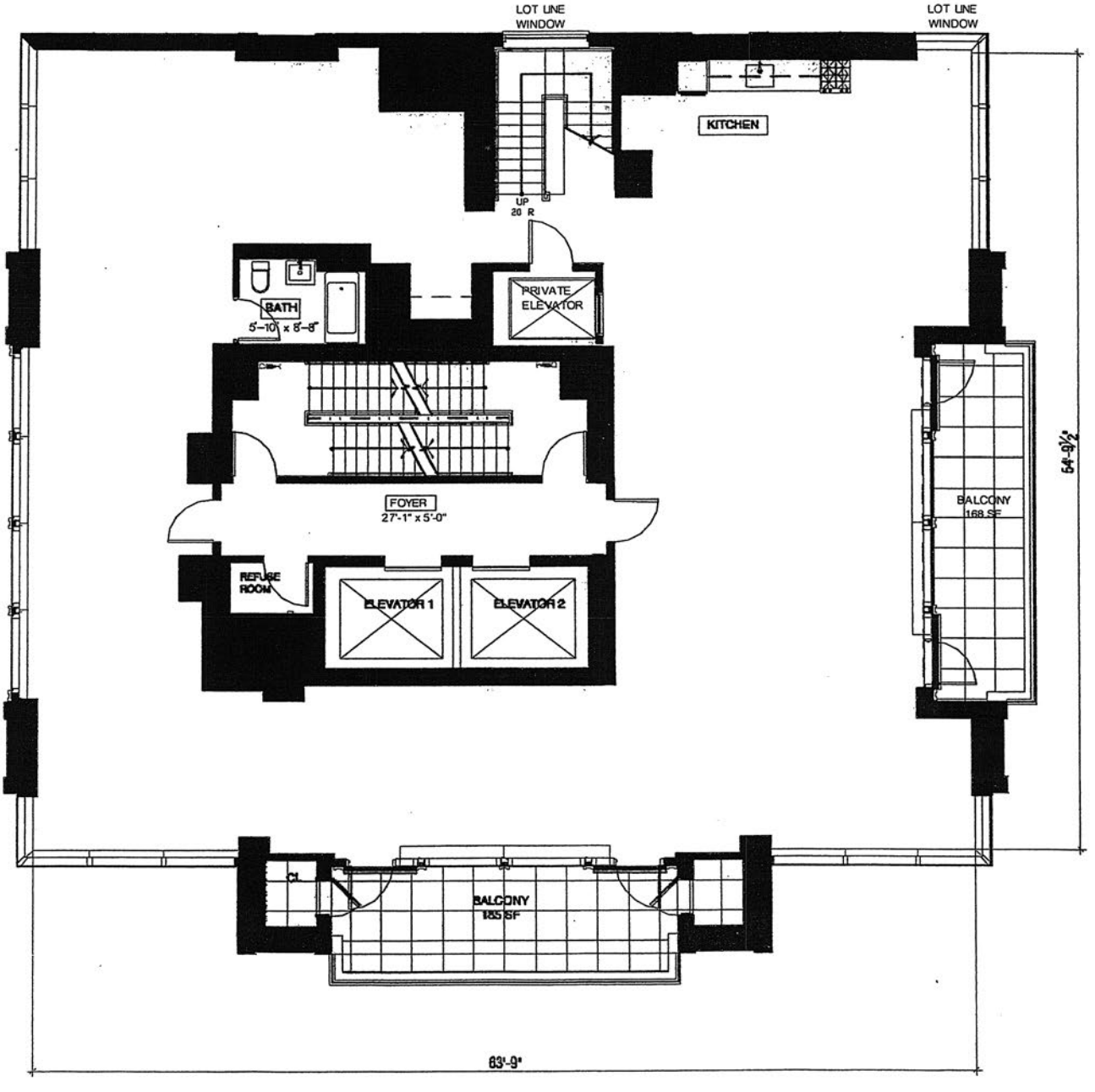
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

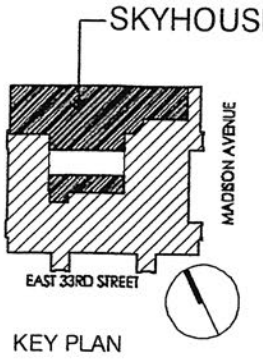
0 5 10 ft

## SKYHOUSE
### 1 BATHROOM

| FLOOR NUMBER | UNIT AREA |
|---|---|
| 32 | 3,548 SF |

+ BALCONY 353 SQ.FT.






KEY PLAN

# 172 MADISON AVENUE

## NEW YORK, NEW YORK

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

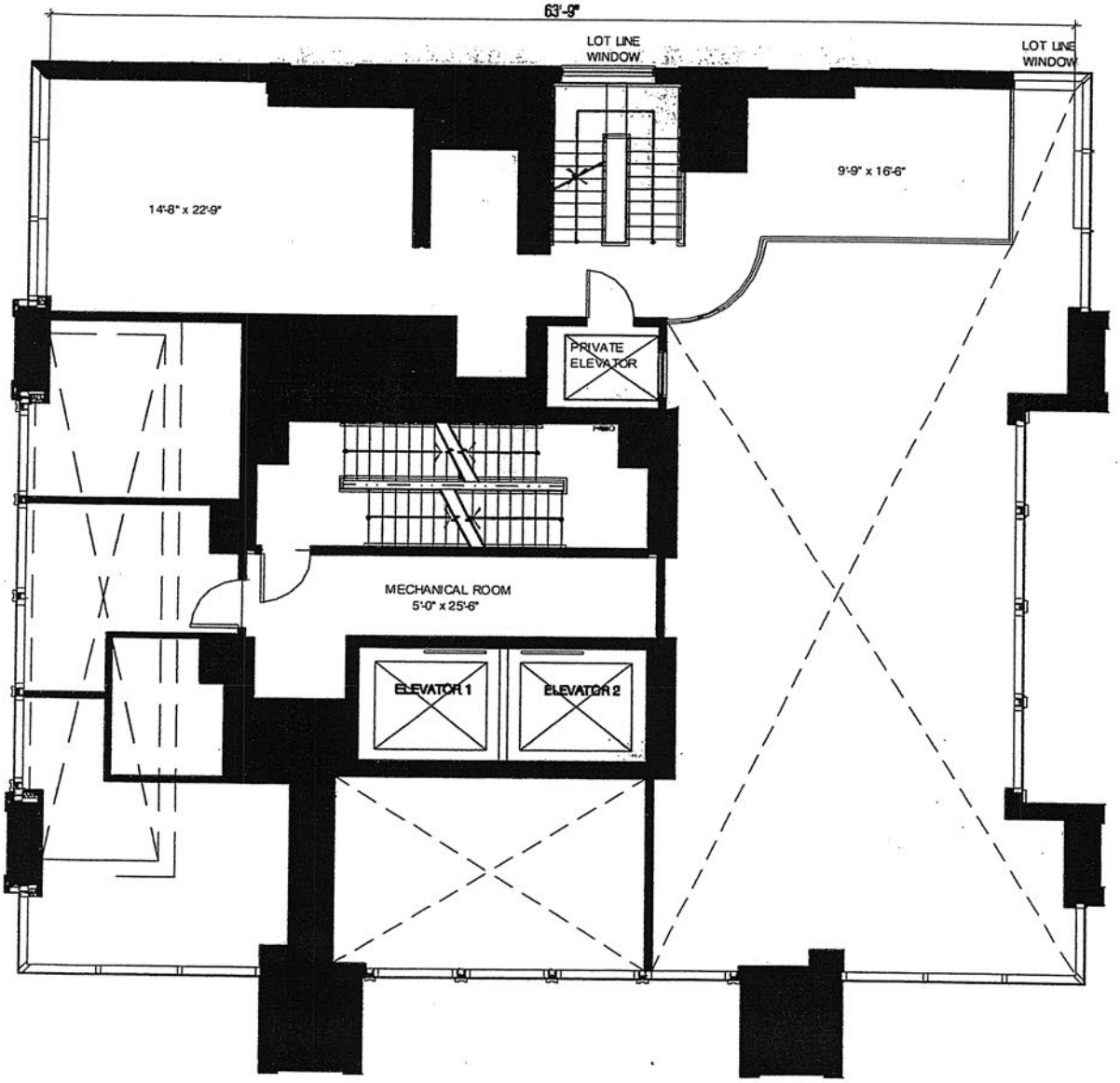
We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

0 5 10 ft

# SKYHOUSE MEZZ.

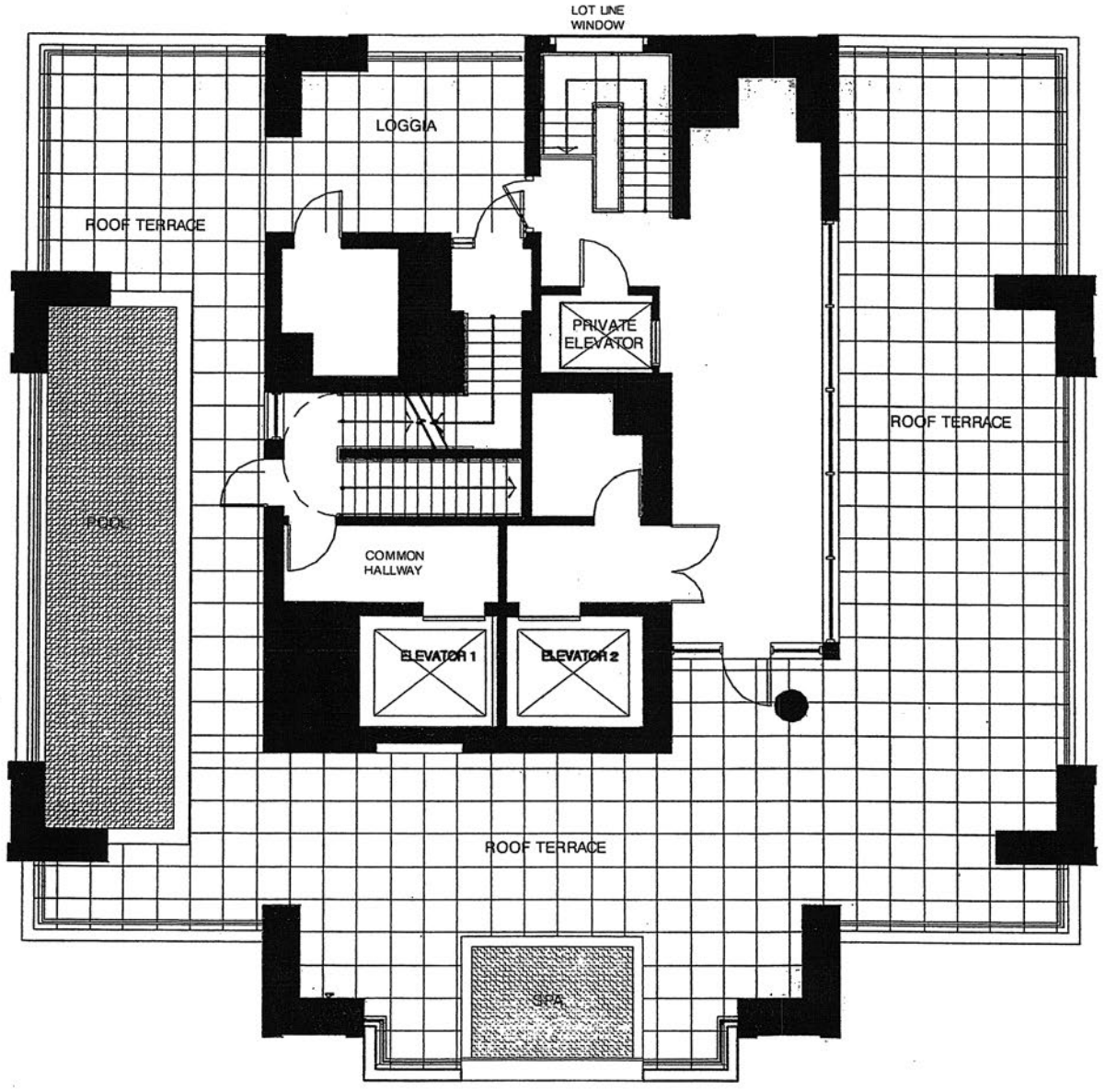
## 1 BATHROOM

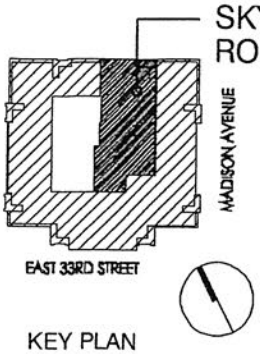
| FLOOR NUMBER | UNIT AREA |
|---|---|
| MEZZ | 1,058 SF |
| MECH | 173 SF |



# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## SKYHOUSE ROOF: 33rd Floor Plan






KEY PLAN

# 172 MADISON AVENUE

## NEW YORK, NEW YORK

All dimensions are approximate and subject to normal construction variances and tolerances. Square footage exceeds usable floor area.

We reserve the right to make changes in accordance with the offering plan. Plan Dimensions may contain minor variations from floor to floor.

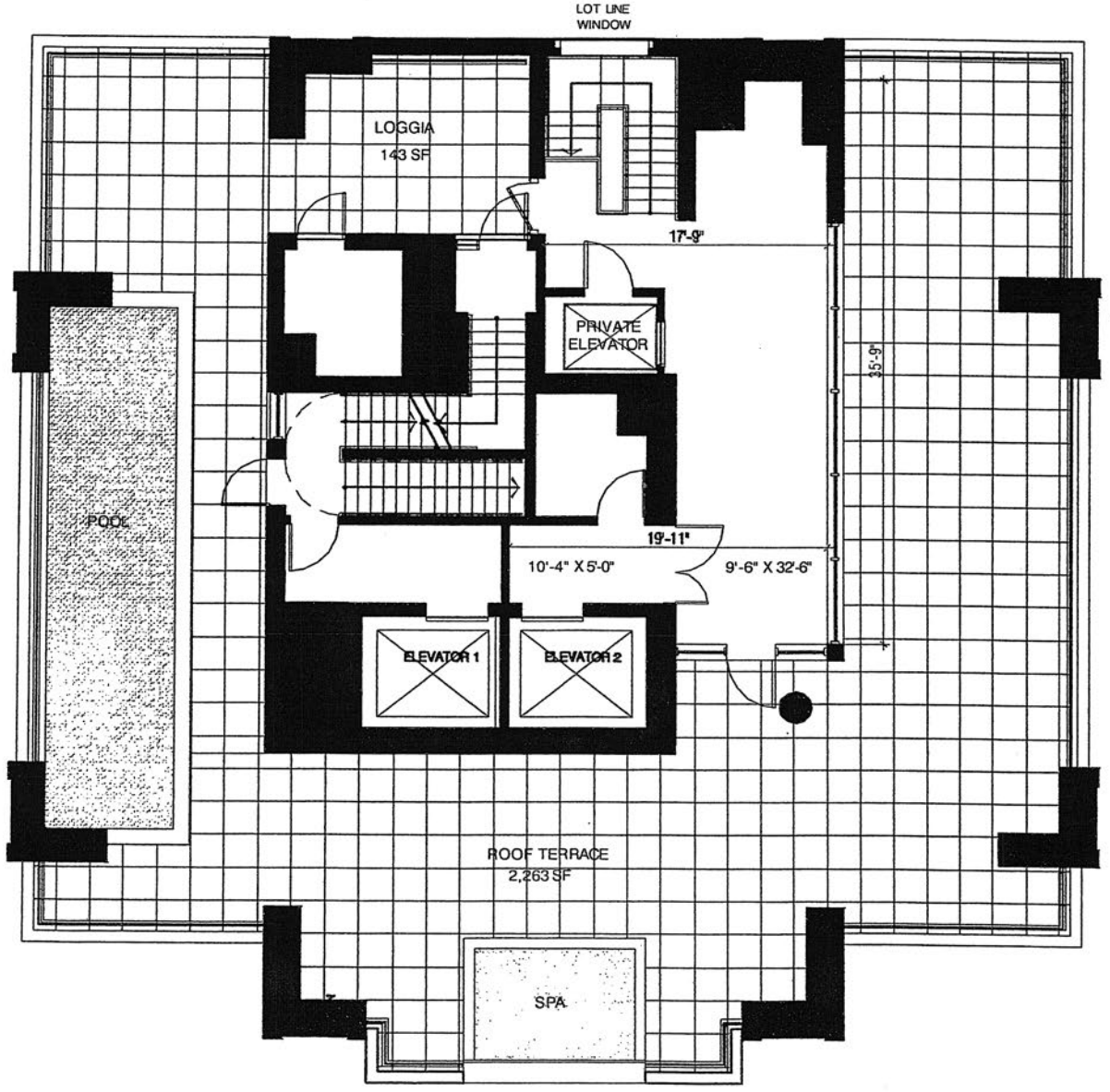
0 5 10 ft

# SKYHOUSE ROOF

## 1 BATHROOM

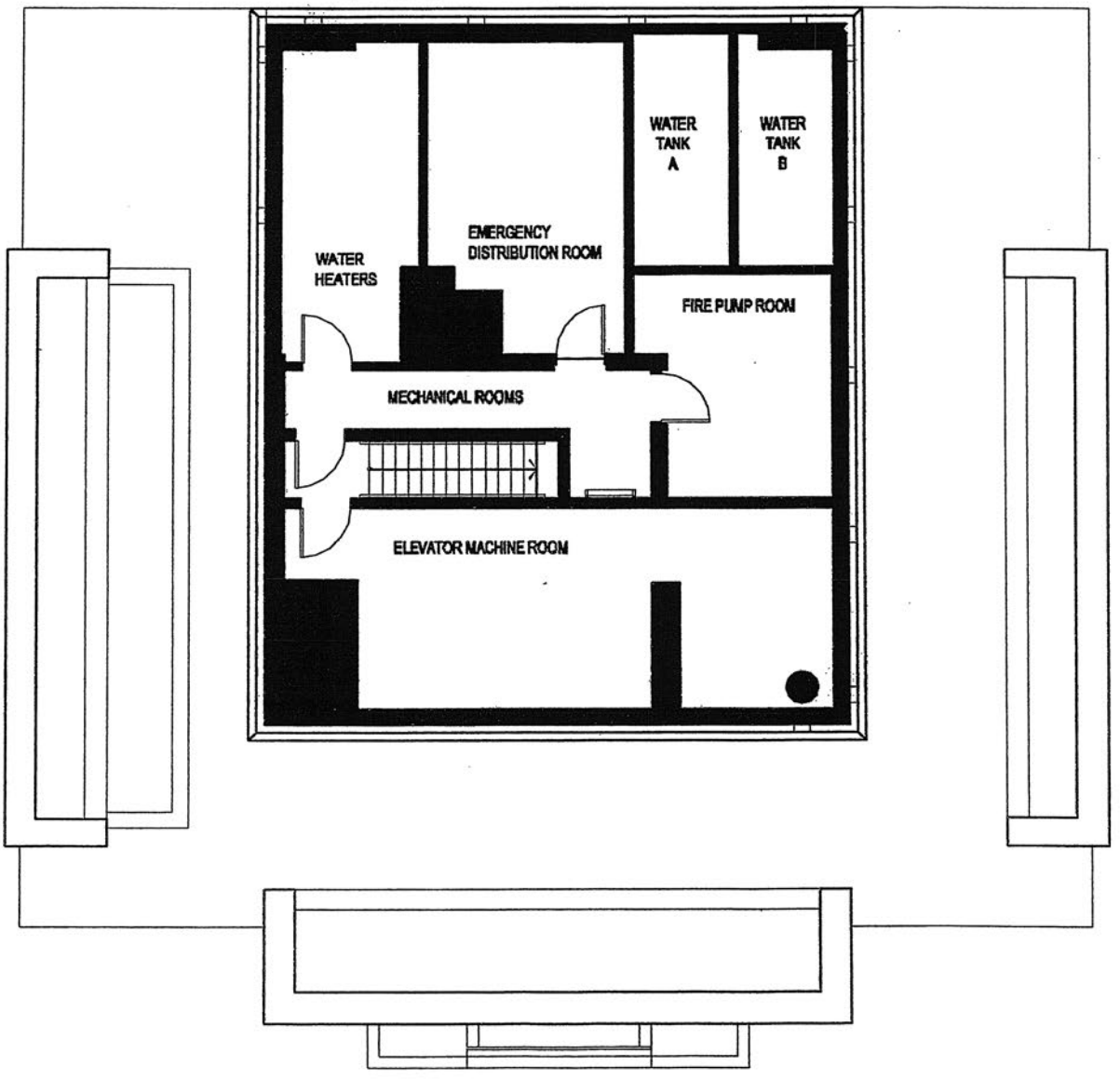
| FLOOR NUMBER | UNIT AREA |
|---|---|
| 33 | 844 SF |

+ TERRACE 2,263 SQ.FT.
+ LOGGIA 143 SQ.FT.



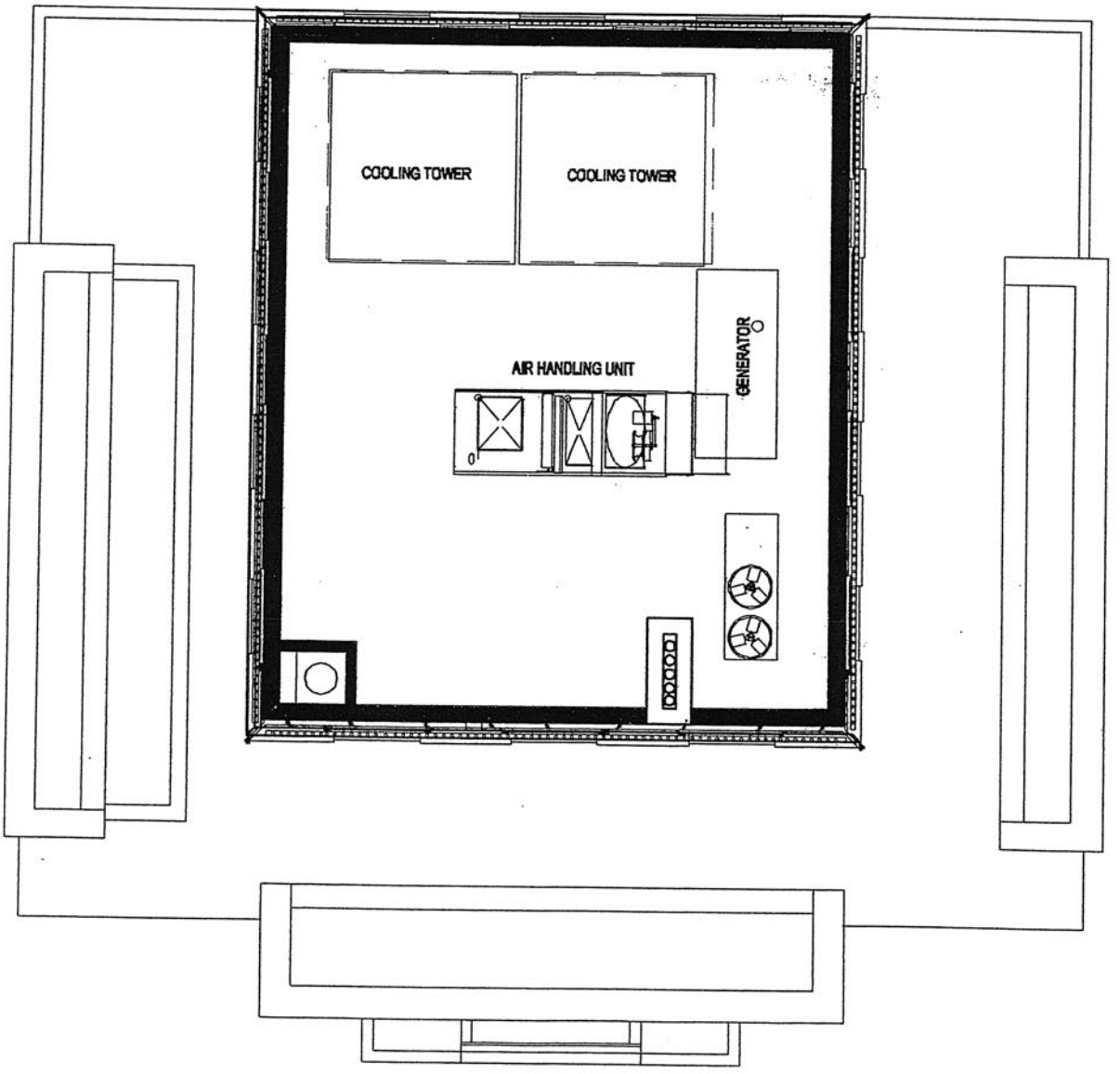
# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## 34th Floor Plan



# 172 MADISON AVENUE
## NEW YORK, NEW YORK

## ROOF OVER 34th Floor



# PURCHASE AGREEMENT

# PURCHASE AGREEMENT

---

**MADISON 33 OWNER LLC**

**Sponsor**

**With**

**Purchaser**

---

**For Unit Number _____**
**172 Madison Avenue Condominium**
**172 Madison Avenue**
**New York, New York 10016**

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250

**UNIT NUMBER _____**

**172 MADISON AVENUE CONDOMINIUM**
**172 MADISON AVENUE**
**NEW YORK, NEW YORK 10016**

**(TO BE EXECUTED IN QUINTUPLICATE)**

AGREEMENT, made as of _____, _____, between Sponsor (defined below) and Purchaser (defined below).

W I T N E S S E T H :

1. THE PLAN.

Purchaser acknowledges having received and read a copy of the Offering Plan for 172 Madison Avenue Condominium dated _____ _____, 201__ and all amendments thereto, if any, filed with the Department of Law of the State of New York (hereinafter, collectively, referred to as the "Plan") at least 3 business days prior to Purchaser's signing this Agreement. If Purchaser has not received and read the Plan and all amendments thereto at least 3 business days prior to Purchaser's signing this Agreement, Purchaser shall have the right to rescind this Agreement, by sending written notice of such rescission to Sponsor by certified or registered mail, return receipt requested, or by personal delivery, in either case within 7 days from the date Purchaser delivers an executed Purchase Agreement together with the required Deposit to the Selling Agent. **The Plan is incorporated herein by reference and made a part hereof with the same force and effect as if set forth at length. In the event of any inconsistency between the provisions of this Agreement and the Plan, the provisions of the Plan will govern and be binding, except as to inconsistencies arising from changes to the Purchase Agreement negotiated between Sponsor and Purchaser. Purchaser hereby adopts, accepts and approves the Plan (including, without limitation, the Declaration, By-Laws and Rules and Regulations contained therein) and agrees to abide and be bound by the terms and conditions thereof, as well as all amendments to the Plan duly filed by Sponsor.**

2. DEFINITIONS.

Terms used herein which are also used in the Plan shall have the same meanings as they do in the Plan, unless the context requires otherwise.

2.1 "Sponsor" means Madison 33 Owner LLC, having an office at 461 Park Avenue South, Suite 200, New York, New York 10016. Sponsor's taxpayer identification number is 46-3255923.

2.2 "Purchaser" means _____ having an address at _____, _____, _____ _____. Purchaser's social security number is _____.

2.3 "Attorney for Sponsor" means Gerstein Strauss & Rinaldi LLP, having an address at 57 West 38th Street, New York, New York 10018, Attention: Lisa J. Rinaldi, Esq. Telephone Number: (212) 398-7900. Facsimile Number: (212) 575-2387. E-mail: LRinaldi@gsrlaw.com.

2.4 "Attorney for Purchaser" means _____, having an address at _____, _____, _____, _____ Attention: _____, Esq. Telephone Number: (____) _____. Facsimile Number: (____) _____. E-mail: _____

2.5 "Selling Agent" means Keller Williams NYC.

2.6 "Co-Broker" means _____.

2.7 "Escrow Agent" means Attorney for Sponsor.

3. THE UNIT.

Upon and subject to the terms and conditions set forth herein, Sponsor agrees to sell and convey, and Purchaser agrees to purchase, the Unit(s), having the Unit Number(s) in the Declaration, together with (its) (their) undivided % of interest in the Common Elements appurtenant to such Unit(s) set forth below:

| UNIT TYPE | UNIT NO. | % OF COMMON INTEREST | PURCHASE PRICE |
|---|---|---|---|
| Residential Unit | _____ | _____ | $_____ |
| Storage Bin | _____ | | |

4. PURCHASE PRICE.

4.1 The total purchase price for the Residential Unit and for the License for Storage Bin # ___ is $_____ ("Purchase Price").

The Purchase Price is payable as follows:

(a) $_____ (the "Initial Deposit"), (ten percent (10%) of the Purchase Price) due upon Purchaser's signing and submitting this Agreement, by check (subject to collection), receipt of which is hereby acknowledged. If this Purchase Agreement is executed after the Plan has been declared effective, the amount of the Deposit will be twenty percent (20%), and there shall not be an Additional Deposit due;

(b) $_____ (the "Additional Deposit"), (ten percent (10%) of the Purchase Price) by check payable to the order of Escrow Agent, due within fifteen days after Purchaser has been presented with a copy of the amendment declaring the Plan effective,. The Initial Deposit and the Additional Deposit are hereinafter collectively referred to as the "Deposit".

(c) $_____, constituting the balance of the Purchase Price, by good certified check of Purchaser or official bank check, payable on the delivery of the deed as hereinafter provided.

4.2 All checks shall represent United States currency, be drawn on or issued by a United States bank or trust company which is a member of the New York Clearing House Association and shall be unendorsed. The Deposit shall be made payable to the direct order of "Gerstein Strauss & Rinaldi LLP as Escrow Agent." The balance of the Purchase Price shall be made payable to the direct order of "Madison 33 Owner LLC" (or such other party as Sponsor directs to Purchaser, in writing at least one (1) day prior to the date of Closing of Title). If any check is returned for insufficient funds or any other reason, such return shall be deemed to be a default by Purchaser under this Agreement and shall entitle Sponsor to exercise any of the remedies set forth in Article 14 hereof. Upon the cancellation of this Agreement, Purchaser and Sponsor will be released and discharged of all further liability and obligations hereunder and under the Plan, and the Unit may be sold to another as though this Agreement had never been made, and without any obligation to account to Purchaser for any of the proceeds of such sale.

5. DEPOSIT TO BE HELD IN TRUST.

All Deposits made pursuant to this Agreement are subject to the requirements of Sections 352-e(2)(b) and 352-h of the New York General Business Law and the Attorney General's regulations promulgated pursuant thereto. All monies received from Purchaser towards the Deposit shall be delivered to Gerstein Strauss & Rinaldi LLP, as escrow agent ("Escrow Agent") and shall be held in accordance with the Escrowed Funds Rider annexed hereto as Schedule A and the section of the Plan entitled "Escrow and Trust Fund Requirements". By signing this Agreement, Purchaser will not object and will be deemed to have agreed, without the need for a further written agreement, to the release of the Deposit to Sponsor in the event Sponsor and Purchaser close title under this Agreement. In the event Sponsor is unable to convey title to the Unit to Purchaser by reason other than Purchaser's default, the Deposit shall be returned to Purchaser, within 30 business days of Sponsor's notification to Purchaser that it cannot convey title.

All funds received by Sponsor for upgrades, extras or custom work shall be placed in the Master Escrow Account, to be released to and used by Sponsor for payment of the cost of the upgrades, extras or custom work. Purchasers should note that if such funds are placed in the Master Escrow Account, they may be released from the Master Escrow Account by Escrow Agent to Sponsor provided that Sponsor uses the funds for such upgrades or extras. As a result, in the event a Purchaser is entitled to rescind the Purchase Agreement in accordance with the Plan, the Purchaser will not receive a refund of any funds used for such upgrades, extras or custom work.

6. CLOSING DATE AND PLACE.

6.1 The Closing of Title shall be held at Gerstein Strauss & Rinaldi LLP, 57 West 38th Street, New York, New York (or such other place in the City and State of New York as Sponsor may designate to Purchaser) and on such date and hour as Sponsor may designate to Purchaser on not less than **30 days'** prior written notice ("Initial Closing Notice"). After sending the Initial Closing Notice, Sponsor may, from time to time, adjourn the date and hour for Closing on not less than **1 business days** notice to Purchaser, which notice shall fix a new date, hour and place for the Closing of Title. Only the Initial Closing Notice will require 30 days notice. If Sponsor consents to close at any other location as an accommodation to Purchaser, Purchaser shall pay to Sponsor's attorneys at closing an extra fee as set forth in the Plan.

6.2 The term "Closing Date" "Closing" "Closing of Title" or words of similar import, whenever used herein, shall mean the date designated by Sponsor on which the deed to the Unit is delivered to Purchaser, or any adjourned date fixed by Sponsor pursuant to subsection 6.1 hereof.

6.3 From and after the first Closing of a Residential Unit, and provided that a temporary certificate of occupancy has been issued for the Unit, the following language will apply in lieu of 6.1 above:

> "The Closing of Title shall be held at Gerstein Strauss & Rinaldi LLP, located at 57 West 38th Street, 9th Floor, New York, New York (or such other place in the City and State of New York as Sponsor may designate to Purchaser) at __:__ (am) (pm) on the _____ day of _____, ___201__ ("Scheduled Closing Date"). Sponsor may, from time to time, adjourn the date and hour for Closing on not less than **3 business days** notice to Purchaser, which notice shall fix a new date, hour and place for the Closing of Title. If Sponsor consents to close at any other location as an accommodation to Purchaser, Purchaser shall pay to Sponsor's attorney at Closing an extra fee as set forth in the Plan. If the temporary certificate of occupancy for the Unit expires before the Scheduled Closing Date occurs, Sponsor will adjourn the Closing Date to a date after the temporary certificate of occupancy for the Unit has been renewed. "

7. DELIVERY OF THE DEED AND UNIT POWER OF ATTORNEY.

7.1 At the Closing of Title, Sponsor shall deliver to Purchaser a bargain and sale deed with covenant against grantor's acts conveying fee simple title to the Unit to Purchaser, subject only to the liens, encumbrances, and title conditions set forth on Schedule B annexed hereto and made a part hereof. The deed shall be prepared by Sponsor substantially in the form set forth in Part II of the Plan and shall be executed and acknowledged by Sponsor in form for recording. Purchaser shall pay all New York State and New York City real property transfer taxes, and Sponsor and Purchaser shall duly execute New York City and New York State Transfer Tax returns and any other forms then required by law, all of which shall be prepared by Sponsor. Notwithstanding anything set forth to the contrary, Purchaser shall remain liable for and pay the New York State Mansion Tax, if applicable.

7.2 At the Closing of Title and simultaneously with the delivery of the deed conveying the Unit to Purchaser, Purchaser shall execute and acknowledge a power of attorney to the Condominium Board prepared by Sponsor substantially in the form set forth in Part II of the Plan.

7.3 At the Closing of Title, Purchaser shall execute whatever other documents are reasonably necessary or customary in connection with the conveyance of a Condominium Unit, including but not limited to title affidavits, real property transfer tax forms, etc.

7.4 The executed deed and power of attorney to the Condominium Board shall be delivered to the representative of the title company insuring Purchaser's title (or, if no such representative is present, then to Sponsor's attorney) for recording in the City Register's Office, which recording shall be at Purchaser's expense. After being recorded, (i) the deed shall be returned to Purchaser or Purchaser's attorney and (ii) the power of attorney shall be sent to the Condominium Board.

7.5 Purchaser's payment of the balance of the Purchase Price and acceptance of a deed to the Unit shall constitute Purchaser's recognition that Sponsor has satisfactorily performed those obligations stated in the Plan and this Agreement to be performed by Sponsor prior to Closing. However, nothing herein contained shall excuse Sponsor from performing those obligations (if any) expressly stated herein or in the Plan to be performed subsequent to the Closing, and nothing herein shall be in derogation of the rights of Purchasers under Article 23-A of the General Business Law, the Plan, and Part 20 of the Regulations issued by the Department of Law.

8. STATUS OF TITLE.

8.1 At the Closing of Title, Sponsor shall convey to Purchaser good and insurable title in fee simple to the Unit, free and clear of all liens and encumbrances other than those expressly agreed to by Purchaser or set forth in Schedule B annexed hereto and made a part hereof. Any lien and encumbrance or condition to which title is not to be subject shall not be an objection to title if (a) the instrument required to remove it of record is delivered at or prior to the Closing of Title to the proper party or to Purchaser's title insurance company, together with the attendant recording or filing fee, if any, or (b) Continental Abstract ("Title Company"), or another title company licensed to do business in New York, is or would be willing, in a fee policy issued by such company to the Purchaser, to insure Purchaser that it will not be collected out of the Unit if it is a lien, or will not be enforced against the Unit if it is not a lien at no additional cost or additional premium, to Purchaser.

8.2 Sponsor shall be entitled to adjourn the Closing at any time to remove or correct any defect in title which is not set forth in Schedule B. If Sponsor does adjourn the Closing, Sponsor shall give Purchaser at least 5 business days' prior written notice to Purchaser's attorney of the rescheduled Closing Date.

8.3 If, subsequent to the Closing of Title, Purchaser claims that Sponsor did not convey good and insurable title in fee simple to the Unit in accordance with the Plan, Purchaser must first seek

recovery against Purchaser's title insurance company before proceeding against Sponsor. Sponsor and Purchaser agree that Sponsor's liability will be limited to any loss or damage not covered by Purchaser's title insurance. If Purchaser did not obtain title insurance at the Closing, for purposes of this subparagraph, the amount and coverage which Purchaser could have obtained from Title Company shall be deducted from the loss or damage collectable against Sponsor. Nothing contained in this subparagraph shall be construed to waive any of Purchaser's rights or abrogate any of Sponsor's obligations under the Plan or Article 23-A of the General Business Law.

9. CLOSING ADJUSTMENTS.

9.1 The following adjustments shall be made as of midnight of the day preceding the Closing Date with respect to the Unit:

(a) real estate taxes and assessments, if any (including water charges and sewer rents, if separately assessed), on the basis of the period for which assessed;

(b) Common Charges and assessments for the month in which title closes; and

(c) if Purchaser is allowed to occupy the Unit prior to Closing, accrued rent and any other charges pursuant to an interim lease or use and occupancy agreement, if any, covering the Unit.

(d) if the Unit has not been separately assessed, Purchaser shall pay to either Sponsor or the Condominium an amount equal to Purchaser's proportionate share (based upon the percentage of Common Elements owned by such Unit Owner) of the amount of real estate taxes that may be owed for each fiscal tax year (or part thereof) occurring after the fiscal tax period in which the Closing occurs until the Units are separately assessed. These funds will be held in escrow by either the Condominium or the Sponsor and used to either reimburse Sponsor for taxes Sponsor has paid or to pay the next installments of real estate taxes.

9.2 If a Unit has been separately assessed but the Closing of Title occurs before the tax rate is fixed, adjustment of taxes shall be based upon the latest tax rate applied to the most recent applicable assessed valuation. Installments for tax assessments due after the delivery of the deed, if any, shall be paid by Purchaser and shall not be considered a defect in title. If a Unit has not been separately assessed as of the Closing Date for the then current tax period, the adjustment under subsection 9.1(a) hereof shall be based upon the assessment for the Property for the tax periods for which Sponsor reasonably anticipates that the separate assessment shall not occur and the percentage interest in the Common Elements appurtenant to the Unit.

9.3 Purchaser hereby agrees that, if Sponsor obtains a refund for real estate taxes paid (or a credit for such taxes to be paid) on Purchaser's Unit, Purchaser and Sponsor will apportion the refund (as well as the costs and/or fees for obtaining the refund or credit) based on the percentage of time for which the refund or credit is obtained during which each party hereto owned the Unit in question. The provisions of this subsection shall survive the Closing of Title.

9.4 Provided Sponsor is ready, willing and able to close title in accordance with this Agreement, if Purchaser fails for any reason to close title to his Unit within 10 days of the Scheduled Closing Date (a) the Closing apportionments described in Section 9.1 of this Agreement will be made as of midnight of the day preceding the Scheduled Closing Date, regardless of when the actual Closing of Title occurs, and (b) Purchaser will be required to pay to Sponsor, as a reimbursement of Sponsor's carrying costs for the Unit by virtue of the delay, and in addition to the other payments to be made to Sponsor under this Agreement and the Plan, an amount equal to 0.03% of the Purchase Price for each day starting from (and including) the originally scheduled Closing Date to (and including) the day before the actual Closing Date. If, through no fault of Purchaser, Sponsor postpones the originally scheduled

Closing Date, these provisions shall apply to the rescheduled Closing Date if Purchaser fails for any reason to close title to his Unit within 10 days of the rescheduled Closing Date.

9.5 Adjustments and apportionments shall be calculated on the basis of the actual number of days in the period for which payments were made or are due, as the case may be. The "Customs in Respect of Title Closings" recommended by The Real Estate Board of New York, Inc., as amended to date, shall apply to the adjustments and other matters therein mentioned except as otherwise provided herein or in the Plan.

9.6 Any errors or omissions calculating apportionments at Closing shall be corrected and, any payment shall be made to the proper party promptly after discovery. This provision shall survive the Closing of Title for a period of 1 year from the Closing Date.

10. MORTGAGE RECORDING TAX CREDIT.

In the event a mortgage recording tax credit becomes available pursuant to Section 339-ee(2) of the New York Condominium Act, it is specifically understood that such credit shall enure to the benefit of Sponsor. Accordingly, at Closing, if Purchaser elects mortgage financing, Purchaser will be responsible to pay the full amount (but not in excess thereof) of the mortgage recording tax chargeable on the entire amount being financed. However, at the Closing of Title, Purchaser shall pay to Sponsor the amount of any mortgage tax credit allowed.

11. CLOSING COSTS.

In addition to those costs and adjustments described in Articles 9 and 10 herein, Purchaser shall be required to pay the other Closing costs which are Purchaser's responsibility as more particularly described in the Section of the Plan entitled "Closing Costs and Adjustments." All such Closing Costs shall be paid by Purchaser, at Closing, by Purchaser's unendorsed personal certified check or by official bank check, in either event drawn upon a bank that is a member of the New York Clearing House Association.

12. TRANSFER TAX RETURNS.

At the Closing, Purchaser and Sponsor shall duly complete and sign before a notary public the real property transfer tax return required to be filed with the City of New York ("RPT Form") and the Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate ("Combined Tax Form") and the RP-5217 NYC form, and such other forms as may then be required by law. The RPT and Combined Tax Form shall be delivered at the Closing of Title to the representative of Purchaser's title insurance company (or, if none, to Sponsor's attorney) for filing with the proper governmental officer.

13. AGREEMENT SUBJECT TO MORTGAGE.

No lien or encumbrance shall arise against the Property or the Unit as a result of this Agreement or any monies deposited hereunder, except as hereinafter set forth. In furtherance and not in limitation of the provisions of the preceding sentence, Purchaser agrees that the provisions of this Agreement are and shall be subject and subordinate to the lien of any mortgage heretofore or hereafter made, including, but not limited to, any construction or building loan mortgage, and any advances heretofore or hereafter made thereon and any payments or expenses made or incurred or which hereafter may be made or incurred, pursuant to the terms thereof, or incidental thereto, or to protect the security thereof, to the full extent thereof, without the execution of any further legal documents by Purchaser. This subordination shall apply in all cases, regardless of the timing of, or cause for, the making of advances of money or the incurring of expenses. Sponsor shall, at its option, either satisfy such mortgages or obtain a release of the Unit and its undivided interest in the Common Elements from the lien of such mortgages on or prior to the Closing Date. The existence of any mortgage or mortgages encumbering the Property, or portions thereof, other than the Unit and its undivided interest in the Common Elements, shall not constitute an

objection to title or excuse Purchaser from completing payment of the Purchase Price or performing all of Purchaser's other obligations hereunder or be the basis of any claim against, or liability of, Sponsor, provided that any such mortgage(s) is subordinated to the Declaration.

14. DEFAULT BY PURCHASER.

14.1 The following shall constitute "Events of Default" hereunder:

(i) Purchaser's failure to timely pay the Additional Deposit required under Article 4 above, the balance of the Purchase Price set forth in Article 4.1(b) hereof, or any Closing apportionment or Closing cost required to be paid by Purchaser in Article 9, 10 or 11 hereof on the Closing Date designated by Sponsor pursuant to Article 6 hereof, or the dishonor of any check given by Purchaser to Sponsor;

(ii) The failure to pay, perform or observe any of Purchaser's other obligations hereunder; or

(iii) If Purchaser is permitted to become the tenant or other occupant of the Unit, Purchaser's failure to pay rent or to perform some other lease or occupancy obligation within the period after notice, if any, set forth in the lease or occupancy or other agreement;

(iv) Purchaser's assignment of any of Purchaser's property for the benefit of creditors, or Purchaser's filing a voluntary petition in bankruptcy; or

(v) If a non-bankruptcy trustee or receiver is appointed over Purchaser or Purchaser's property, or an involuntary petition in bankruptcy is filed against Purchaser; or

(vi) If a judgment or tax lien is filed against Purchaser and Purchaser does not pay or bond the judgment or tax lien.

14.2 **TIME IS OF THE ESSENCE** with respect to Purchaser's obligations to pay the balance of the Purchase Price and to pay, perform or observe Purchaser's other obligations under this Agreement. Upon the occurrence of an Event of Default, Sponsor, in its sole discretion, may elect by notice to Purchaser to (i) cancel this Agreement, or (ii) seek specific performance. If Sponsor elects to cancel, Purchaser shall have 30 days from the giving of the notice of cancellation to cure the specified default. If the default is not cured within such 30 days, then this Agreement shall be deemed cancelled, and Sponsor shall have the right to retain, as and for liquidated damages, the entire Deposit and any interest earned thereon. Upon the cancellation of this Agreement, Purchaser and Sponsor will be released and discharged of all further liability and obligations hereunder and under the Plan, and the Unit may be sold to another as though this Agreement had never been made, and without any obligation to account to Purchaser for any of the proceeds of such sale. If Sponsor elects to seek specific performance, then Purchaser shall have 30 days from the giving of notice of Sponsor's election to close on his or her Unit in accordance with this Agreement, without prejudice to Sponsor's right to recover from Purchaser all damages, losses, costs, expenses and all other lawful sums to which Sponsor is entitled (including, but not limited to, reasonable legal fees and costs of collection).

15. AGREEMENT SUBJECT TO PLAN BEING EFFECTIVE.

The performance by Sponsor of its obligations under this Agreement is contingent upon the Plan having been declared effective in accordance with the terms and provisions of the Plan (as the same may be amended from time to time). The Plan may be withdrawn or abandoned by Sponsor only under certain conditions and at certain times, as set forth in the Plan. If the Plan is abandoned or if, after being declared effective, the Plan is not consummated for any reason and Purchaser is not in default under this Agreement beyond any applicable grace period, this Agreement shall be deemed cancelled and the

Deposit, together with interest earned thereon, shall be returned to Purchaser. Upon such return, neither party shall have any further rights, obligations or liability to or against the other and the parties shall be released and discharged from all obligations and liability under this Agreement and the Plan.

16. SPONSOR'S INABILITY TO CONVEY THE UNIT.

If Sponsor is unable to deliver title to the Unit to Purchaser in accordance with the provisions of this Agreement and the Plan by reason of a defect in title, substantial damage or destruction of the building by fire or other casualty, or the taking of any material portion of the Property by condemnation or eminent domain, Sponsor shall not be obligated to bring any action or proceeding or otherwise incur any cost or expense of any nature whatsoever in excess of its obligations set forth in the Plan in order to cure such inability. If Sponsor is not so obligated under the Plan and notifies Purchaser of its election or inability to cure such title defect, Purchaser's sole remedy shall be to either (a) take title to the Unit subject to such title defect (without any abatement in, or credit against, the Purchase Price, or any claim or right of action against Sponsor for damages or otherwise) or (b) terminate this Agreement. If Purchaser so elects to terminate this Agreement, Sponsor shall, within 30 days after receipt of notice of termination from Purchaser, return to Purchaser all sums deposited by Purchaser hereunder (other than deposits made on account of upgrades, extras and custom work), together with interest earned thereon, if any (other than deposits made on account of upgrades, extras or custom work). Upon making such payment, this Agreement shall be terminated and neither party hereto shall have any further rights, obligations or liability to or against the other under this Agreement or the Plan. The foregoing remedy must be exercised by notice of Purchaser in writing to Sponsor within 15 days after the giving of Sponsor's notice of election not to cure such inability, failing which it shall be conclusively deemed that Purchaser elected the remedy described in clause (a) above (i.e., to acquire title subject to such inability).

17. FIXTURES, APPLIANCES AND PERSONAL PROPERTY.

Only those fixtures, appliances and items of personal property which are described in the Plan as being included in the Unit (or permitted substitutions or alternates) are included in this sale. No portion of the Purchase Price shall be attributable to such items.

18. CONSTRUCTION.

18.1 The construction of the Unit, including the materials, equipment and fixtures to be installed therein, shall be substantially in accordance with the Plan and the Plans and Specifications (as defined in the Plan), subject to the right of Sponsor to amend the Plan and the Plans and Specifications in order to substitute materials, equipment or fixtures of equal or better quality, provided that the approval of any governmental authorities having jurisdiction is first obtained (if required). The issuance of a temporary certificate of occupancy for a Unit shall be deemed presumptive evidence that the Unit has been fully completed in accordance with the Plan and the Plans and Specifications. The issuance of a final certificate of occupancy for the Building shall be deemed presumptive evidence that the Building has been fully completed in accordance with the Plan and the Plans and Specifications. However, nothing herein contained shall excuse Sponsor from its obligation to correct any defects in construction in accordance with the conditions set forth in the Section of the Plan entitled "Rights and Obligations of Sponsor."

18.2 The construction of the Building and the Unit and the correction of any defects in construction to the extent required under the Plan are the sole responsibility of Sponsor. Purchaser acknowledges and agrees that Sponsor will not be liable for, and will have no obligation to correct, certain variations from the Plan and Plans and Specifications as indicated in the Section of the Plan entitled "Rights and Obligations of Sponsor" and will only be responsible to correct any construction defects to the extent, and on the terms and conditions, set forth in such Section.

18.3 The Closing of Title shall occur only after, or concurrently with, compliance with the prerequisites set forth under "Closing of Title to Units" in Part I of the Plan. As a result, if all other prerequisites not involving the construction of the Unit are met, Purchaser shall be obligated to close and complete payment of the full Purchase Price (without provision for escrow) once a temporary or final certificate of occupancy is issued for the Unit (notwithstanding any construction items noted on Purchaser's Inspection Statement (as hereinafter defined) remaining for Sponsor to complete and/or correct in accordance with its obligation under the Plan, and notwithstanding the incomplete construction and/or decoration of any other portions of the Building.

18.4 The actual date for the first Closing of a Residential Unit is not guaranteed or warranted, and may be earlier or later depending on the progress of construction and compliance with the other prerequisites recited in the Section of the Plan entitled "Closing of Title to Units". Purchaser acknowledges that construction may be delayed by late delivery of material or equipment, labor difficulties, unavailability of building trades, casualty, inclement weather and other events beyond Sponsor's reasonable control. Purchaser further acknowledges that the units in the Building will be completed at varying times over a period that could extend well beyond the first Closing of a Residential Unit . The order in which these units will be completed is in the discretion of Sponsor. Purchaser acknowledges that except as otherwise provided in the Plan, Purchaser shall not be excused from paying the full Purchase Price, without credit or set-off, and shall have no claim against Sponsor for damages or losses, in the event that the first Closing of a Residential Unit occurs substantially later than the projected date or the time to complete or to close title to the Unit is delayed or is postponed by Sponsor.

19. INSPECTION OF THE UNIT.

19.1 At least one week (but not more than one month) prior to the Closing Date, Purchaser shall be notified that the Unit is ready for inspection. Upon receipt of the notice, Purchaser shall promptly arrange an appointment with a representative of Sponsor to inspect the Unit within the week prior to the Closing Date. Purchaser or his or her duly authorized agent shall attend such inspection and shall complete, date and sign the Inspection Statement (in the form set forth as Schedule C to this Agreement) and deliver same to the Sponsor's representative at the conclusion of the inspection. **Failure of Purchaser either to arrange such appointment or to inspect the Unit within the week prior to the Closing Date or to so sign and deliver the completed Inspection Statement shall not excuse Purchaser from paying the balance of the purchase price when due and shall constitute Purchaser's full acceptance of the Unit in its condition as of the Closing Date.** However, nothing herein shall relieve Sponsor of its obligations as set forth in the Section of the Plan entitled "Rights and Obligations of Sponsor".

19.2 Any work set forth on the Inspection Statement may be completed by Sponsor in a reasonable period of time following the Closing and shall not be grounds for delaying the Closing. Purchaser will be required to provide Sponsor with access to the Unit subsequent to the Closing in order to complete punchlist work. Failure to provide the required access shall constitute Purchaser's full acceptance of the Unit in its condition as of the Closing Date. Sponsor has no obligation under the Plan to deposit any monies in escrow at Closing as a result of any punchlist items.

20. DAMAGE TO THE UNIT.

If between the date of this Agreement and the Closing of Title the Unit is damaged by fire or other casualty, the following shall apply:

20.1 The risk of loss to the Unit by fire or other casualty until the earlier of Closing of Title or possession of the Unit by Purchaser is assumed by Sponsor; provided that Sponsor shall have no obligation or liability to repair or restore the Unit. If Purchaser takes possession of the Unit prior to Closing, Purchaser assumes the risk of losses not covered by insurance. In any event, neither the

Condominium or Sponsor has any obligation to insure, and shall not insure Unit Specific Property as defined in the By-Laws. If Sponsor elects to repair or restore the Unit, which election shall be made within 60 days of such damage, this Agreement shall continue in full force and effect, Purchaser shall not have the right to reject title or receive a credit against, or abatement in, the Purchase Price and Sponsor shall be entitled to a reasonable period of time within which to complete the repair or restoration, not to exceed 180 days from Sponsor's election to repair the Unit. Any proceeds received from insurance or in satisfaction of any claim or action in connection with such loss shall, subject to the rights of the Condominium Board and other Unit Owners if the Declaration has theretofore been recorded, belong entirely to Sponsor and, if such proceeds are paid to Purchaser, Purchaser shall promptly upon receipt thereof turn them over to Sponsor. The provisions of the preceding sentence shall survive the Closing of Title.

20.2 In the event Sponsor notifies Purchaser that it does not elect to repair or restore the Unit, or, if the Declaration has been recorded prior thereto, the Unit Owners do not resolve to make such repairs or restoration pursuant to the By-Laws, this Agreement shall be deemed cancelled and of no further force and effect and Sponsor shall return to Purchaser all sums deposited by Purchaser hereunder, together with interest earned thereon (other than deposits for upgrades, extras and custom work), if any, and neither party hereto shall have any further rights, obligations or liability to or against the other hereunder or under the Plan, except that if Purchaser is then in default hereunder (beyond any applicable grace period), Sponsor shall retain all such sums deposited by Purchaser hereunder, together with any interest earned thereon, as and for liquidated damages.

21. NO REPRESENTATIONS.

Purchaser acknowledges that Purchaser has not relied upon any architect's plans, sales plans, selling brochures, advertisements, representations, warranties, statements or estimates of any nature whatsoever, whether written or oral, made by Sponsor, Selling Agent or otherwise, including, but not limited to, any relating to the description or physical condition of the Property, the Building or the Unit, or the size or the dimensions of the Unit or the rooms therein contained or any other physical characteristics thereof, the services to be provided to Unit Owners, the estimated Common Charges allocable to the Unit, the estimated real estate taxes on the Unit, the right to any income tax deduction for any real estate taxes or mortgage interest paid by Purchaser, the right to any income tax credit with respect to the purchase of the Unit, or any other data, except as herein or in the Plan specifically represented. Purchaser has relied solely on his own judgment and investigation in deciding to enter into this Agreement and purchase the Unit. No person has been authorized to make any representations on behalf of Sponsor except as herein or in the Plan specifically set forth. No oral representations or statements shall be considered a part of this Agreement. Sponsor makes no representation or warranty as to the work, materials, appliances, equipment or fixtures in the Unit, the Common Elements or any other part of the Property other than as set forth herein or in the Plan. Except as otherwise set forth in the Plan, Purchaser agrees (a) to purchase the Unit, without offset or any claim against, or liability of, Sponsor, whether or not any layout or dimension of the Unit or any part thereof, or of the Common Elements, as shown on the Floor Plans is accurate or correct, and (b) that Purchaser shall not be relieved of any Purchaser's obligations hereunder by reason of any immaterial or insubstantial inaccuracy or error. The provisions of this Article 21 shall survive the Closing of Title.

22. PROHIBITION AGAINST ADVERTISING.

Prior to the Closing of Title, Purchaser agrees not to list the Unit for resale or rental with any broker or to advertise or otherwise offer, promote or publicize the availability of the Unit for sale or lease, without Sponsor's prior written consent. Any listing of the Unit or form of advertising, promotion or publicizing of the Unit by Purchaser prior to Closing of Title shall be a default by Purchaser, entitling Sponsor to the remedies set forth in Article 14 hereof.

23. BROKER.

Purchaser represents to Sponsor that Purchaser has not dealt with any broker in connection with this transaction other than the Selling Agent and the Co-Broker. Purchaser shall pay the commission of any broker with whom Purchaser may have dealt, other than the Selling Agent and the Co-Broker. Purchaser agrees that, should any claim be made against Sponsor for commissions by any broker, other than the Selling Agent and Co-Broker, on account of any acts of Purchaser or Purchaser's representatives, Purchaser 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 Article shall survive the Closing of Title.

24. AGREEMENT MAY NOT BE ASSIGNED.

24.1 Purchaser does not have the right to assign this Agreement without the prior written consent of Sponsor, which consent may be unreasonably withheld or delayed. An assignment would include the transfer of a beneficial interest in an entity that is Purchaser. Any purported assignment by Purchaser in violation of this Agreement will be voidable at the option of Sponsor. Sponsor's refusal to consent to an assignment will not entitle Purchaser to cancel this Agreement or give rise to any claim for damages against Sponsor. Under no circumstances will Sponsor consent to an assignment of the Purchase Agreement in which the Purchaser will receive consideration. Any purported assignment by Purchaser in violation of this Agreement shall be a default by Purchaser, entitling Sponsor to the remedies set forth in Article 14 hereof, and shall be voidable at the option of Sponsor.

24.2 Notwithstanding anything to the contrary contained in Paragraph 24, if Purchaser has signed this Agreement in an individual name (and not in the name of an entity), Purchaser shall have a one-time right to assign Purchaser's rights under this Agreement, in whole, but not in part, to an entity "controlled" (as such term is defined below) by Purchaser, (the entity to which the rights are assignable may be a trust, limited liability company or a corporation) or to member(s) of Purchaser's immediate family, provided that (i) Purchaser designates such assignee at least 5 business days prior to the Closing Date; (ii) the Closing will not be delayed as a result of such assignment, (iii) the assignee of this Agreement assumes in writing, by an instrument approved by Sponsor's counsel, the obligations of Purchaser under this Agreement, and (iv) the assignment is made without consideration. As used in this subparagraph, the term "control" shall mean the control, either directly or indirectly, of at least 51% of the voting shares or equity interests of such assignee, together with the authority to direct and manage the affairs of such assignee, which shall include Purchaser, being the managing general partner of such partnership or the principal manager or managing member of such limited liability company. Purchaser shall deliver to Sponsor evidence reasonably satisfactory to Sponsor of who controls the entity. Any obligations of Purchaser may be performed by such assignee, and Sponsor agrees to accept such performance as if it were the performance of the Purchaser. No such assignment shall modify Purchaser's obligations hereunder, including without limitation, the named Purchaser's indemnity obligations contained in this Agreement, reduce or limit any liability or obligation of the named Purchaser who shall remain primarily liable notwithstanding any liability assumed by assignee. Unless Purchaser complies with the provisions of this subparagraph, any purported assignment by Purchaser shall be null and void and of no effect as against Sponsor.

25. BINDING EFFECT.

The submission of this Agreement to Purchaser does not create a binding obligation on the part of Sponsor. This Agreement shall not be binding on Sponsor until a fully executed counterpart hereof has been delivered to Purchaser. If this Agreement is not accepted within 15 days from the date hereof by the delivery to Purchaser of a fully executed counterpart, this Agreement shall be deemed to have been rejected and cancelled and the Deposit paid on the execution hereof shall be promptly returned to Purchaser. Upon such refund being made, neither party shall have any further rights, obligations liability

to or against the other hereunder or under the Plan. Prior to Sponsor's countersigning and returning this Purchase Agreement to Purchaser, and at any time thereafter, Purchaser agrees upon request to provide Sponsor with written information about Purchaser's employment, financial and rental/ownership history. Such information obtained prior to countersignature may be used to determine Purchaser's qualification to purchase and own the Unit, but does not constitute a reservation or binding obligation on either the applicant or Sponsor. Sponsor has the right, without incurring any liability, to reject this Agreement without cause or explanation to Purchaser. This Agreement may not be rejected due to Purchaser's sex, race, creed, color, national origin, ancestry, disability, marital status, or other ground proscribed by law.

26. NOTICES.

26.1 Any notice, election, demand, request, letter, consent or other communication hereunder or under the Plan (other than amendments to the Plan, which shall be served in accordance with the Plan, or documents for which the method of delivery is otherwise set forth in the Plan) shall be in writing and either delivered in person or sent, postage prepaid, by registered or certified mail or by Federal Express or other reputable overnight courier, with receipt confirmed to Purchaser at the address given at the beginning of this Agreement with a copy to the Attorney for Purchaser, in the same manner as notice is given to Purchaser, and to Sponsor, at the address given at the beginning of this Agreement, with a copy to the Attorney for Sponsor in the same manner as notice is given to Sponsor. Either party may hereafter designate to the other in writing a change in the address to which notices are to be sent. Except as otherwise expressly provided herein, a notice shall be deemed given when personal delivery or delivery by overnight courier is effected, or in the case of mailing, the 3rd day after the date of mailing, except that the date of actual receipt shall be deemed to be the date of the giving of any notice of change of address. Any notice either of the parties hereto receives from the other party's attorneys shall be deemed to be notice from such party itself.

26.2 Sponsor hereby designates and empowers Sponsor's counsel Gerstein Strauss & Rinaldi LLP, as Sponsor's agents to give any notice to Purchaser under this Agreement (including, without limitation, a notice of default) in Sponsor's name, which notice so given shall have the same force and effect as if given by Sponsor itself.

27. JOINT PURCHASERS.

The term "Purchaser" shall be read as "Purchasers" if more than one person are Purchasers, in which case their obligations shall be joint and several.

28. LIABILITY OF SPONSOR.

Sponsor shall be excused from performing any obligation or undertaking provided for in this Agreement for so long as such performance is prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, sabotage, inability to procure or general shortage of energy, labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, or any other cause (whether similar or dissimilar to the foregoing) not within the reasonable control of Sponsor. Sponsor's time to perform such obligations or undertaking shall be tolled for the length of the period during which such performance was excused.

29. FURTHER ASSURANCES.

Either party shall execute, acknowledge and deliver to the other party such instruments, and take such other actions, in addition to the instruments and actions specifically provided for herein, as such other party may reasonably request in order to effectuate the provisions of this Agreement or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

30. AGREEMENT NOT CONTINGENT UPON FINANCING.

The terms and provisions of this Agreement and Purchaser's obligations hereunder shall not be contingent upon Purchaser securing financing of the Purchase Price (or any portion thereof), and Purchaser understands and agrees that Purchaser's failure to obtain such financing will not relieve Purchaser of Purchaser's obligations hereunder. Purchaser further understands and agrees that if Purchaser chooses to finance Purchaser's purchase of the Unit through a lending institution or any other source and obtains a commitment therefrom, neither a subsequent change in the terms of such commitment, the expiration or other termination of such commitment, nor any change in Purchaser's financial status or condition shall release or relieve Purchaser of Purchaser's obligations pursuant to this Agreement, as the terms and conditions of this Agreement and Purchaser's obligations under this Agreement are not contingent upon Purchaser receiving a commitment for financing of the Purchase Price (or any portion thereof) or maintaining any such commitment for such financing. Neither Sponsor nor Selling Agent makes any representations as to the terms or availability of any mortgage financing.

31. SEVERABILITY.

If any provision of this Agreement or the Plan is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Agreement or the Plan and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Agreement or the Plan, except as otherwise herein or therein provided, shall be valid and enforced to the fullest extent permitted by law.

32. STRICT COMPLIANCE.

Any failure by either party to insist upon the strict performance by the other of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other party of any and all of the provisions of this Agreement to be performed by such party.

33. GOVERNING LAW.

The provisions of this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed wholly in the State of New York, without regard to principles of conflicts of law.

34. WAIVER OF JURY.

Except as prohibited by law, the parties shall, and they hereby do, expressly waive trial by jury in any litigation arising out of, or connected with, or relating to, this Agreement or the relationship created hereby or in the Plan. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial is waived.

35. ENTIRE AGREEMENT.

This Agreement, together with the Plan, supersedes any and all understandings and agreements between the parties and constitutes the entire agreement between them with respect to the subject matter hereof.

36. CERTAIN REFERENCES.

A reference in this Agreement 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 terms "herein," "hereof" or "hereunder" or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used, unless the context otherwise

requires. Unless otherwise stated, all references herein to Articles, Sections, subsections or other provisions are references to Articles, Sections, subsections or other provisions of this Agreement.

37. CAPTIONS.

The captions in this Agreement are for convenience of reference only and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

38. SUCCESSORS AND ASSIGNS.

The provisions of this Agreement shall bind and enure to the benefit of Purchaser and his heirs, legal representatives, successors and permitted assigns and shall bind and enure to the benefit of Sponsor and its successors and assigns.

39. CONFIDENTIALITY.

Sponsor and Purchaser hereby acknowledge and agree to keep all of the terms and conditions of the Purchase Agreement confidential. Sponsor and Purchaser agree that any information which is required to be disclosed to the parties' respective lawyers, architects/engineers, accountants, individuals who "need to know" or governmental agencies shall not be deemed to be a breach by Sponsor or Purchaser of the parties' undertaking of confidentiality contained in this Agreement. Any failure by Purchaser to keep the terms and conditions of this Agreement confidential shall be a default by Purchaser, entitling Sponsor to the remedies set forth in Paragraph 14 of this Agreement.

40. NO ORAL CHANGES.

This Agreement cannot be changed or terminated orally. Any changes or additional provisions must be set forth in a rider attached hereto or in a separate written agreement signed by the parties hereto or by an amendment to the Plan.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**SPONSOR:**

MADISON 33 OWNER LLC

By:_____
Name:
Title:

**COLOR SCHEME FOR KITCHEN:**

☐ Light Color Scheme for Kitchen

☐ Dark Color Scheme for Kitchen

**PURCHASER(S):**

_____

_____

## SCHEDULE A

## ESCROWED FUNDS RIDER

This Rider is made as of _____ _____, 201__ between Madison 33 Owner LLC ("Sponsor") and _____ ("Purchaser") and Gerstein Strauss and Rinaldi LLP ("Escrow Agent").

Re: Unit No. _____ at
172 Madison Avenue Condominium
172 Madison Avenue
New York, New York 10016

This Rider modifies and supplements the terms of that certain Purchase Agreement for Unit _____ at 172 Madison Avenue Condominium between Sponsor and Purchaser and any riders annexed thereto, dated _____ _____, 201__ (collectively, the "Purchase Agreement").

1. The law firm of Gerstein Strauss & Rinaldi LLP, with an address at 57 West 38th Street, 9th Floor, New York, New York 10018, telephone number (212) 398-7900, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Escrow Agent has designated the following attorneys to serve as signatories: Victor R. Gerstein, Esq., Gary J. Strauss, Esq., and Lisa J. Rinaldi, Esq. All designated signatories are admitted to practice law in the State of New York. Neither the Escrow Agent nor any authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

2. Escrow Agent and all authorized signatories hereby submit to the jurisdiction of the State of New York and its Courts for any cause of action arising out of the Purchase Agreement or otherwise concerning the maintenance of release of the Deposit from escrow.

3. Escrow Agent has established a master escrow account entitled "Gerstein Strauss & Rinaldi LLP, Escrow Account" ("Master Escrow Account") at Signature Bank with an office at 261 Madison Avenue, New York, New York 10016 ("Escrow Bank"). The Deposit will be placed in the Master Escrow Account and the Escrow Agent shall sign the Escrowed Funds Rider within 5 business days after tender of the Deposit and Purchase Agreement by Purchaser to Sponsor or Selling Agent. Any subsequent deposit tendered by Purchaser after the initial Deposit will be placed in the Master Escrow Account within 10 business days after tender by Purchaser to Sponsor or Selling Agent.

4. The Deposit will be placed initially in the non-interest bearing portion of the Master Escrow Account. Purchaser is required to deliver a completed and signed Form W-9 (Request for Taxpayer Identification Number), a Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)), or a Form W-8BEN-E (Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)) in the forms similar to those set forth in Part II to the Plan, to Sponsor or Selling Agent at the time Purchaser tenders the Deposit and the Purchase Agreement. If a Deposit is accompanied by a completed and signed Form W-9, Form W-8BEN, or Form W-8BEN-E, the Deposit will thereafter be promptly transferred to an individual interest bearing sub-escrow account in the name of Purchaser. If Purchaser does not deliver the Form W-9, Form W-8BEN, or Form W-8BEN-E, the Deposit will remain in the non-interest bearing portion of the Master Escrow Account. At such time as the Deposit is released, the Deposit will be transferred from the individual sub-escrow account to the non-interest bearing portion of the Master Escrow Account so that checks may be drawn thereon.

5. The initial interest rate, if any, will be disclosed to Purchaser, as appropriate, in a letter from Escrow Agent to Purchaser sent within 10 business days after the Deposit has been placed in the Master Escrow Account. If Purchaser does not receive notice that the Deposit has been placed in the Master

Escrow Account within 15 business days after tender of the Deposit, Purchaser may cancel the Purchase Agreement and rescind so long as the right to rescind is exercised within 90 days after tender of the Deposit and Purchase Agreement to Escrow Agent. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23rd Floor, New York, New York 10271. Rescission shall not be afforded where proof satisfactory to the Attorney General is submitted establishing that the Deposit was timely placed in the Escrow Account in accordance with the New York State Department of Law's regulations concerning Deposits and requisite notice was timely mailed to the Purchaser. Any deposits made for upgrades and extras, and custom work, shall be deposited into the Master Escrow Account, and released to Sponsor in accordance with the terms of a written agreement between Purchaser and Sponsor, provided that Sponsor uses the funds to pay for or be reimbursed for such upgrades, custom work or extras. As a result, in the event Purchaser is entitled to rescind the Purchase Agreement in accordance with the Plan, Purchaser will not receive a refund of any funds used for such upgrades or extras. If the Plan is not consummated and as a result the Property is not subjected to Condominium ownership, any funds received by Sponsor from Purchaser for upgrades, custom work or extras will be returned to Purchaser, provided Sponsor has not used any such funds for the upgrades or extras. Escrow Agent will not be required to send the letter to Purchaser referred to above in connection with any subsequent deposits tendered by Purchaser after the initial Deposit to Sponsor or Selling Agent and deposited into the Master Escrow Account prior to the Closing.

6. All Deposits, except for advances made for upgrades, extras, or custom work received in connection with the Purchase Agreement, are and shall continue to be Purchaser's money, and may not be commingled with any other money or pledged or hypothecated by Sponsor, as per GBL § 352-h.

7. Under no circumstances shall Sponsor seek or accept release of the Deposit of Purchaser, in the event of Purchaser's default, until after consummation of the Plan, as evidenced by the acceptance of an effectiveness amendment by the New York State Department of Law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to GBL §§ 352-3(2-b) and 352-h.

8. Escrow Agent shall release the Deposit if so directed:

(a) pursuant to terms and conditions set forth in the Purchase Agreement upon closing of title to the Unit; or

(b) in a subsequent writing signed by both Sponsor and Purchaser; or

(c) by a final, non-appealable order or judgment of a court.

If Escrow Agent is not directed to release the Deposit pursuant to paragraphs (a) through (c) above, and Escrow Agent receives a request by either party to release the Deposit, then Escrow Agent must give both the Purchaser and Sponsor prior written notice of not fewer than thirty (30) days before releasing the Deposit. If Escrow Agent has not received notice of objection to the release of the Deposit prior to the expiration of the thirty (30) day period, the Deposit shall be released and Escrow Agent shall provide further written notice to both parties informing them of said release. If Escrow Agent receives a written notice from either party objecting to the release of the Deposit within said thirty (30) day period, Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraphs (a) through (c) above. Notwithstanding the foregoing, Escrow Agent shall have the right at any time to deposit the Deposit contained in Escrow Account with the clerk of the county where the Unit is located and shall give written notice to both parties of such deposit.

The Sponsor shall not object to the release of the Deposit to:

(a) Purchaser, if Purchaser timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan; or

(b) Purchaser, after an Amendment abandoning the Plan is accepted for filing by the Department of Law.

The Department of Law may perform random reviews and audits of any records involving the Escrow Account to determine compliance with all applicable statutes and regulations.

9. Any provision of any Purchase Agreement or separate agreement, whether oral or in writing, by which Purchaser purports to waive or indemnify any obligation of the Escrow Agent holding any Deposit in trust is absolutely void. The provisions of the Attorney General's regulations and GBL §§ 352-e(2-b) and 352-h concerning escrow trust funds shall prevail over any conflicting or inconsistent provisions in the Purchase Agreement, Plan or any amendment thereto.

10. Escrow Agent shall maintain the Escrow Account under its direct supervision and control.

11. A fiduciary relationship shall exist between Escrow Agent and Purchaser, and Escrow Agent acknowledges its fiduciary and statutory obligations pursuant to GBL §§ 352(e)(2-b) and 352-h.

12. Escrow Agent may rely upon any paper or document which may be submitted to it in connection with its duties under this Purchase Agreement and which is believed by Escrow Agent to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution or validity thereof.

13. Sponsor agrees that Sponsor and its agents, including any selling agents, shall deliver the Deposit received by them prior to closing of the Unit to a designated attorney who is a member of or employed by Escrow Agent, within two (2) business days of tender of the Deposit by Purchaser.

14. Sponsor agrees that it shall not interfere with Escrow Agent's performance of its fiduciary duties and statutory obligations as set forth in GBL §§ 352-(e)(2-b) and 352-h and the New York State Department of Law's regulations.

15. Sponsor shall obtain or cause the Selling Agent under the Plan to obtain a completed and signed Form W-9, W-8BEN, or W-8BEN-E, as applicable, from Purchaser and deliver such form to Escrow Agent together with the Deposit and this Purchase Agreement.

16. Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

17. Sponsor agrees to defend, indemnify and hold Escrow Agent harmless from and against all costs, claims, expenses and damages incurred in connection with or arising out of Escrow Agent's responsibilities arising in connection with this Purchase Agreement or the performance or non-performance of Escrow Agent's duties under this Purchase Agreement, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith or in willful disregard of the obligations set forth in this Purchase Agreement or involving gross negligence of Escrow Agent. This indemnity includes, without limitation, disbursements and attorneys' fees either paid to retain attorneys or representing the hourly billing rates with respect to legal services rendered by Escrow Agent to itself.

18. Escrow Agent shall be permitted to act as counsel to Sponsor in any dispute as to the disbursement of the Deposit or any other dispute between Sponsor and Purchaser whether or not Escrow Agent is in possession of the Deposit and continues to act as Escrow Agent.

19. Escrow Agent is acting merely as a stakeholder. Upon payment of the Deposit pursuant to the Plan, as amended, and this Escrow Funds Rider, Escrow Agent shall be fully released from all liability and obligation with respect to the Deposit. Escrow Agent shall accept a Deposit made by check, subject to collection.

20. Sponsor has agreed to compensate Escrow Agent for services rendered in connection with Escrow Agent's duties under this Escrow Funds Rider. Escrow Agent's fees and disbursements will

neither be paid by Sponsor from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

21. **IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THIS RIDER AND THOSE CONTAINED IN THE PURCHASE AGREEMENT TO WHICH THIS RIDER IS ANNEXED, OR ANY OTHER RIDER TO THE PURCHASE AGREEMENT, THE PROVISIONS OF THIS RIDER SHALL GOVERN AND BE BINDING.**

**PURCHASER(S):**

_____
Name:

_____
Name:

**SPONSOR:**
MADISON 33 OWNER LLC

By:_____
Name:
Title:

**ESCROW AGENT:**
GERSTEIN STRAUSS & RINALDI LLP

By:_____
Name:
Title: Partner

# SCHEDULE B

## PERMITTED ENCUMBRANCES

1. Building restrictions and zoning and other regulations, resolutions, ordinances, certifications and any amendments thereto now or hereafter adopted.

2. Any state of facts which an accurate survey or personal inspection of the Property would show, provided that any encroachments by the Unit upon adjoining Condominium Units or upon the Common Elements, may remain undisturbed as long as they may stand and such state of facts would not prevent the use of the Unit for dwelling purposes.

3. The terms, burdens, covenants, restrictions, conditions, easements and rules and regulations, all as set forth in the Declaration, the By-Laws (and the Rules and Regulations made thereunder), the Power of Attorney from the Purchaser to the Condominium Board, and the Floor Plans as all of the same may be amended from time to time.

4. Consents by the Sponsor or any former owner of the Land for the erection of any structure or structures on, under or above any street or streets on which the Property may abut.

5. Any easement or right of use in favor of any utility company for construction, use, maintenance or repair of utility lines, wires, terminal boxes, mains, pipes, cables, conduits, poles and other equipment and facilities on, under and across the Property.

6. Variation in measurements between tax map lines and record description.

7. Revocability of licenses for vault space, if any, under the sidewalks and streets.

8. Any easement or right of use required by Sponsor or its designee to obtain a temporary, permanent or amended Certificate of Occupancy for the Building or any part of same.

9. Encroachments of stoops, areas, cellar steps or doors, trim, copings, retaining walls, bay windows, balconies, sidewalk elevators, fences, fire escapes, cornices, foundations, footings and similar projections, if any, on, over, or under the Property or the streets or sidewalks abutting the Property, and the rights of governmental authorities to require the removal of any such projections and variations.

10. Leases and service, maintenance, employment, concessionaire and license agreements, if any, of other Units or portions of the Common Elements.

11. The lien of any unpaid Common Charges, real estate tax, water charge or sewer rent, or vault charge, provided the same are adjusted at the closing of title.

12. The lien of any unpaid assessment payable in installments (other than assessments levied by the Condominium Board), except that the Sponsor shall pay all such assessments due prior to the Closing Date (with the then current installment to be apportioned as of the Closing Date) and the Purchaser shall pay all assessments due from and after the Closing Date.

13. Any 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 Building, 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.

14. Any encumbrance as to which the Title Company (or such New York Board of Title Underwriters member title insurance company which insures the Purchaser's title to the Unit), would be willing, in a fee policy issued by it to the Purchaser, to insure the Purchaser that such encumbrance (a) will not be collected out of the Unit if it is a lien or (b) will not be enforced against the Unit if it is not a lien.

15. Any other encumbrance, covenant, easement, agreement, or restriction against the Property other than a mortgage or other lien for the payment of money, which does not prevent the use of the Unit for dwelling purposes.

16. Any lease covering the Unit(s) made from the Sponsor to the Purchaser.

17. Any violation against the Property (other than the Unit) which is the obligation of the Condominium Board, or another Unit Owner to correct.

18. Standard printed exceptions contained in the form of fee title insurance policy then issued by the Title Company.

19. Any certificate of occupancy for the Building, so long as the same permits, or does not prohibit, use of the Unit for its stated purposes.

20. Setback, building and nuisance covenants and restrictions in Liber 536 Page 351 and repeated in Liber 664 Page 561, Liber 693 Page 204, Liber 1448 Page 469 and Liber 1459 Page 336.

21. Easement in Reel 1122 Page 146.

22. Certification in CRFN 2009000017394.

23. For Information Only: Zoning Lot Certification in CRFN 2007000310706.

24. For Information Only: Zoning Lot Description in CRFN 2007000311056.

25. Window Agreement in Reel 901 Page 1901 (Affects Lot 17 Only).

26. Steam Agreement in Reel 1844 Page 1219 (Affects Lot 17 Only).

27. Ingress and Egress Easement in Liber 5301 Page 198 (Affects Lots 17 and 21).

28. For Information Only: Zoning Lot Description in CRN 2014000158726 and in CRFN 2014000201478.

29. Notice of Certification in CRFN 2014000259638.

30. Survey of all three lots described in Schedule A made by True North Surveyors P.C. dated 6/21/2013 and last revised 10/25/2013 show premises to be vacant land. That survey also shows minor variations between buildings on adjacent parcels and record lines and variations between top parapet on building on premises to the West and Westerly line.

**SCHEDULE C**
**172 MADISON AVENUE CONDOMINIUM**
**INSPECTION STATEMENT**

Residential Unit No. _____ Date: _____ ____, 201__

Madison 33 Owner, LLC
461 Park Avenue South, 2nd Floor
New York, New York 10016

Re: 172 Madison Avenue Condominium

1. On the date hereof, the undersigned has inspected the Unit(s) set forth below which the undersigned is purchasing and have found the Unit(s) to be in good condition, except as otherwise noted below.

2. The undersigned acknowledges that to prevent pilferage, certain items such as medicine cabinet doors, shower heads, toilet seats, kitchen cabinets, vanity knobs, and mechanical chimes will be installed just prior to the date the undersigned moves into the building. The undersigned agrees to sign-off each item requiring adjustment, or repairs, if any, as they are completed.

3. The undersigned acknowledges that Sponsor and its representatives may at certain times subsequent to the date hereof provide an e-mail or letter advising the undersigned of the completion of some or all items indicated on this Inspection Statement. The undersigned further acknowledges that unless a written response from the undersigned is received by Sponsor within seven (7) days of the date of such e-mail or letter, the undersigned shall be deemed to have accepted the noted items as having been completed to the undersigned's satisfaction.

_____ _____
Sponsor's Representative Purchaser's Signature

**All items will be completed to a level equivalent to the building standard.**

**SCHEDULE C**
**172 MADISON AVENUE CONDOMINIUM**
**INSPECTION STATEMENT CONTINUED**

Unit # _____

Date _____

Purchaser's initials _____

Sponsor's representative initials _____

**All items will be completed to a level equivalent to the building standard.**

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# UNIT DEED

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**UNIT DEED**

THIS INDENTURE, made the ____ day of _____, ____, between Madison 33 Owner LLC, having an address at 461 Park Avenue South, Suite 200, New York, NY 10016 ("Grantor") and _____ having an address at _____. _____("Grantee").

W I T N E S S E T H :

That the Grantor, in consideration of Ten and 00/100 ($10.00) Dollars and other good and valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee, forever:

The Condominium Unit ("Unit") known as Unit No. __ in the building ("Building") known as 172 Madison Avenue Condominium ("Condominium") and by the street number 172 Madison Avenue, County of New York, City and State of New York, said Unit being designated and described by the above Unit No. in a certain declaration dated _____, 201__, made by Grantor pursuant to Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") establishing a plan for condominium ownership of the Building and the land ("Land") upon which the Building is situate (which Land is more particularly described in Exhibit A annexed hereto and by this reference made a part hereof), which declaration was recorded in the New York County Office of the Register of The City of New York ("Register's Office") on _____, 201__, in CRFN: _____ ("Declaration"). The Unit is also designated as Tax Lot _____ in Block 863 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans of the Building, certified by Karl Fischer Architecture PLLC on _____, 201__, and filed with the Real Property Assessment Department of The City of New York on _____, 201__, as Condominium No. ____ and also filed in the Register's Office on _____, 2015, as Map No. ____;

TOGETHER with an undivided ____% interest in the Common Elements (as such term is defined in the Declaration);

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to the Unit;

TOGETHER with, and subject to, the rights, obligations, easements, restrictions and other provisions set forth in the Declaration and the By-Laws of the Condominium (the "By Laws"), as the same may be amended from time to time, all of which constitute covenants running with the Land and shall bind any person having at any time any interest or estate in the Unit, as though recited and stipulated at length herein.

SUBJECT also to such other liens, agreements, covenants, easements, restrictions, consents and other matters of record as pertain to the Unit, to the Land and/or to the Building (which Land and Building are collectively referred to as the "Property").

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 which 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 the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the applicable provisions of the Declaration shall control.

Except as otherwise specifically permitted by the Condominium Board or provided in the Declaration or the By-Laws, the Unit is intended for such use as is in accordance with applicable Law.

Grantor covenants that the Grantor has not done or suffered anything whereby the Unit has been encumbered in any way whatever, except as set forth in the Declaration and the By-Laws (and any Rules and Regulations adopted under the By-Laws).

Grantor, in compliance with Section 13 of the Lien Law of the State of New York, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the same for any other purposes.

Grantee accepts and ratifies the provisions of the Declaration and the By-Laws (and any Rules and Regulations adopted under the By-Laws) and agrees to comply with all the terms and provisions thereof.

This conveyance is made in the regular course of business actually conducted by the Grantor.

The term "Grantee" shall be read as "Grantees" whenever the sense of this indenture so requires.

All capitalized terms used herein which are not separately defined herein shall have the meanings given to those terms in the Declaration or the By-Laws of the Condominium.

IN WITNESS WHEREOF, the Grantor and the Grantee have duly executed this Indenture as of the day and year first above written.

**GRANTOR:**

MADISON 33 OWNER LLC

By:_____
Name:
Title:

**GRANTEE:**

_____

(ACKNOWLEDGEMENT)

**EXHIBIT A**

**TO UNIT DEED**

**DESCRIPTION OF THE LAND**

172 MADISON AVENUE
NEW YORK, NEW YORK

**TAX LOT 17:**

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

BEGINNING at a point on the Northerly line of 33rd Street, distant 95 feet Westerly from the corner formed by the intersection of the Westerly line of Madison Avenue with the Northerly line of 33rd Street;

RUNNING THENCE Westerly along the Northerly line of 33rd Street, 25 feet;

THENCE Northerly and parallel with Madison Avenue, 108 feet 8-3/4 inches;

THENCE Easterly and parallel with 33rd Street, 25 feet;

THENCE Southerly and parallel with Madison Avenue, 108 feet 8-3/4 inches to the point or place of BEGINNING.

**TAX LOT 18:**

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

BEGINNING at the corner formed by the intersection of the Northerly side of East 33rd Street with the Westerly side of Madison Avenue;

RUNNING THENCE Northerly along the Westerly side of Madison Avenue, 49 feet 4 ½ inches;

THENCE Westerly and parallel with East 33rd Street 95 feet;

THENCE Southerly and parallel with Madison Avenue, 49 feet 4 ½ inches to the Northerly side of East 33rd Street;

THENCE Easterly along the Northerly side of East 33rd Street, 95 feet to the point or place of BEGINNING.

**TAX LOT 21:**

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the Westerly side of Madison Avenue, distant 49 feet 4 ½ inches Northerly from the corner formed by the intersection of the Westerly side of Madison Avenue with the Northerly side of 33rd Street;

RUNNING THENCE Northerly along the Westerly side of Madison Avenue 34 feet 8 inches;

THENCE Westerly parallel with 33rd Street 95 feet;

THENCE Southerly parallel with Madison Avenue, 34 feet 8 inches; and

THENCE Easterly and parallel with 33rd Street, 95 feet to the point or place of BEGINNING.

# STORAGE BIN LICENSE

# STORAGE BIN LICENSE

AGREEMENT made this _____ day of _____, 201__ (this "Agreement") by and between 172 MADISON AVENUE CONDOMINIUM, having an office at _____ _____(the "Condominium"); MADISON 33 OWNER LLC, having an office at 461 Park Avenue South, Suite 200, New York, New York 10016 ("Sponsor"); and _____ having an address at 172 Madison Avenue, Unit _____, New York, New York ("Unit Owner").

WHEREAS, 172 MADISON AVENUE CONDOMINIUM ("Condominium") is governed by a certain Declaration of Condominium dated _____ _____, 201___, recorded in New York County at CRFN_____, as the same has been or may be amended from time to time (the "Declaration"), the by-laws of the Condominium, as the same has been or may be amended from time to time (the "By-Laws") and the rules and regulations of the Condominium, as the same has been or may be amended from time to time (the "Rules and Regulations") (the "Declaration", the "By-Laws" and the "Rules and Regulations" are collectively, referred to as the "Condominium Documents"); and

WHEREAS, Madison 33 Owner LLC is the Sponsor of the Condominium Offering Plan for 172 Madison Avenue Condominium, dated _____ _____, 2015, as amended (the "Offering Plan"); and

WHEREAS, in a portion of the sub-cellar level of the Condominium there is a Residential Common Element designated as Residential Storage for storage bins; and

WHEREAS, pursuant to the By-Laws, Sponsor has a master license for the Storage Bins; and

WHEREAS, in the Residential Storage area, Sponsor installed Storage Bins for use by permitted Residential Unit Owners, and has offered for sale, pursuant to the terms of the Offering Plan, the exclusive right to use the Storage Bins (each a "Storage Bin License"); and

WHEREAS, Unit Owner owns, or simultaneously herewith is acquiring, a Residential Unit in the Condominium, pursuant to a Purchase Agreement dated as of _____ _____, 201__ between Sponsor and Unit Owner (the "Purchase Agreement"); and

WHEREAS, Unit Owner desires to purchase from Sponsor a Storage Bin License, commencing on the date hereof and continuing for so long as Unit Owner owns a Residential Unit in the Condominium;

NOW THEREFORE, in consideration of the sum of $15,000.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Sponsor hereby sells to Unit Owner, its successors and assigns, this Storage Bin License for the exclusive use of the Storage Bin and Unit Owner hereby accepts such Storage Bin License from the Sponsor for a term commencing on the date hereof, and ending on the date

this Agreement is terminated pursuant to the terms hereof. From and after the date of this Agreement, Sponsor shall have no rights in or to, or obligations relating to, such Storage Bin and such Storage Bin License.

2. The Storage Bin may be used only for storage purposes provided that no material which poses a health or safety threat or that otherwise creates a nuisance may be stored therein. The use, maintenance and operation of the Storage Bin are governed by the By-Laws and Rules and Regulations of the Condominium. The Condominium shall have the right to assess fees against the Unit Owner to reimburse the Condominium for the cost to operate, maintain, repair and replace the Storage Bin.

3. Condominium hereby acknowledges the rights of Unit Owner, its successors and assigns, to the exclusive use of the Storage Bin pursuant to the terms hereof.

4. Unit Owner shall not (i) store any property outside of its designated Storage Bin, nor (ii) allow any other person to use the Storage Bin, except in accordance with the terms hereof.

5. This License may be assigned by Unit Owner at any time provided (i) the assignee is a Residential Unit Owner at the Condominium, (ii) the assignee assumes the obligations hereunder in a form prepared by the Condominium Board, (iii) notification of the assignment is delivered in writing to the Condominium Board in compliance with its requirements, and (iv) no outstanding monies are owed to the Condominium (including Common Charges, Special Assessments, fees assessed in connection with the Storage Bins and legal fees for the Condominium's attorneys in connection with the preparation of the Assignment and Assumption). The Storage Bin License shall automatically terminate at such time as the Unit Owner no longer owns a Residential Unit in the Condominium, unless such License is assigned to and assumed by another Residential Unit Owner.

6. Unit Owner represents that it has made a thorough inspection of the Storage Bin and agrees to take same in its condition "as is" as of the date of this Agreement. Unit Owner shall, throughout the term of this Agreement, take good care of and maintain the Storage Bin. All repairs and replacement of the Storage Bin shall be performed by the Condominium and the cost and expense thereof shall be borne by Unit Owner, pursuant to the Condominium Documents.

7. Neither Sponsor nor the Condominium nor their respective agents or employees shall be liable for any theft or damage to any property stored in the Storage Bin.

8. The terms of this Agreement are subject to the terms of the Condominium Documents. Nothing contained herein shall be construed as limiting the rights and obligations of the parties under the Condominium Documents. Any conflict between the provisions of this Agreement and the Condominium Documents shall be resolved in favor of the Condominium Documents.

9. If Unit Owner defaults in its obligations hereunder or under the Condominium Documents, including but not limited to the obligation to pay Common Charges, Special Assessments and fees assessed in connection with the Storage Bins, Condominium may, in

addition to the rights and remedies set forth in the Condominium Documents, (i) deny access to and use of the Storage Bin until Unit Owner cures such default or (ii) terminate this License Agreement upon thirty (30) days written notice of default to Unit Owner. In the event Unit Owner fails to cure such default within such thirty (30) day period, and Unit Owner fails to empty and surrender the Storage Bin within five (5) days of such termination, the Condominium shall have the right, at Unit Owner's sole expense and cost, to remove and discard or store elsewhere, Unit Owner's belongings from the Storage Bin, without liability to the Condominium or Sponsor for any damage to, or loss of, Unit Owner's belongings.

10. Condominium or its agents shall have the right (but not the obligation) to open the Storage Bin in an emergency at any time, and, at other reasonable times upon prior notice to Unit Owner, to inspect and examine the Storage Bin and to make such repairs, replacements and improvements as the Condominium shall deem necessary.

11. This Agreement shall constitute a Storage Bin License only and shall not be construed under any circumstances to be a sale of the Storage Bin or conveyance of title thereto. In no event shall a landlord/tenant relationship exist between the Condominium or Sponsor and the Unit Owner with respect to this Agreement.

12. Unit Owner shall indemnify and hold the Sponsor, the Condominium Board of Managers, the Condominium, and their officers, agents and employees, harmless from and against any and all liabilities, claims, penalties and judgments, together with any related costs and expenses, including reasonable legal fees, asserted against or sustained by any of them in connection with any act, omission, or negligence of Unit Owner or Unit Owner's family, servants, employees, agents, guests and invitees in connection with the Storage Bin License.

13. Unit Owner shall be obligated to reimburse the Condominium for any legal fees and disbursements incurred by the Condominium in defending the rights of the Condominium under this Agreement or, in the event Unit Owner defaults under this Agreement beyond any applicable grace period, enforcing Unit Owner's obligations hereunder.

14. Neither this Agreement nor any provision hereof may be waived, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, amendment, discharge or termination is sought and then only to the extent set forth in such instrument.

15. It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely express their agreement and that this Agreement supersedes any and all such understandings and agreements with respect to the subject matter hereof.

16. If any provision of this Agreement is invalid or unenforceable as against any party or under certain circumstances, the remainder of this Agreement and the applicability of such provision to other parties or circumstances shall not be affected thereby. Each provision of this Agreement, except as otherwise herein or therein provided, shall be valid and enforced to the fullest extent permitted by Law.

17. Any party to this Agreement shall execute, acknowledge and deliver to the other parties such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein, as such other party/parties may reasonably request in order to effectuate the provisions of this Agreement or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

18. Any failure by the Condominium or Sponsor to insist upon strict performance by Unit Owner of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, irrespective of the number of violations or breaches which may occur, and the Condominium, notwithstanding any such failure, shall have the right thereafter to insist upon strict performance by Unit Owner of any and all of the provisions of this Agreement to be performed by Unit Owner.

19. This Agreement may be executed in any number of counterparts, via facsimile or pdf e-mail or original signature, each of which shall be deemed to be an original, and with the same effect as if all of the parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

**CONDOMINIUM:**
172 MADISON AVENUE CONDOMINIUM,
by its Board of Managers

By: _____
Name:
Title:

**SPONSOR:**
MADISON 33 OWNER LLC

By: _____
Name:
Title:

**UNIT OWNER:**

_____
[Print Name]:

# INTERIM USE AND OCCUPANCY AGREEMENT

# INTERIM USE AND OCCUPANCY AGREEMENT

**AGREEMENT** made as of this ____ day of _____, 2016, by and between **MADISON 33 OWNER LLC** (the "**Sponsor**"), and _____ (the "**Purchaser**").

W I T N E S S E T H :

WHEREAS, Purchaser has executed a purchase agreement ("**Purchase Agreement**"), for the purchase of Unit _____ (referred to as the "**Unit**") at 172 Madison Avenue, New York, New York ("**Building**"), pursuant to the terms and conditions set forth in the Condominium Offering Plan, as amended, for the Building (the "Offering Plan");

WHEREAS, Purchaser has requested permission from Sponsor to occupy for the purposes of storing furniture and painting the Unit and move himself and his personal property into the Unit prior to the Closing Date (as such term is defined in the Purchase Agreement); and

WHEREAS, in order to accommodate Purchaser, Sponsor is willing to permit Purchaser to have a limited occupancy right to the Unit upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Prior to Sponsor's delivery of the Unit to Purchaser for occupancy under this Agreement, Purchaser shall inspect the Unit in the presence of Sponsor's representative. Purchaser and Sponsor's representative shall complete, date and sign the statement ("Inspection Statement") that the condition of the Unit is acceptable to Purchaser at the conclusion of the inspection, and the statement shall be retained by Sponsor's representative. The Inspection Statement shall contain a list of work to be done ("Punch List Work") by the Sponsor in order to complete the Unit in accordance with the terms of the Offering Plan and Purchase Agreement. Any Punch List Work set forth on the Inspection Statement may be completed by the Sponsor in a reasonable period of time following the execution of this Agreement, and shall not be grounds for delaying the Closing. Purchaser shall provide Sponsor with reasonable access to the Unit during Purchaser's occupancy in order to complete the Punch List Work. Purchaser (i) shall not

be entitled to another inspection of the Unit prior to the Closing Date; and (ii) at Closing, shall accept possession to the Unit in its "as is" condition.

2. Sponsor hereby agrees that Purchaser shall have the right to occupy the Unit for the period ("**Occupancy Period**") commencing on the date hereof and continuing until the earlier of: (i) the Closing Date on which Purchaser purchases the Unit pursuant to the Purchase Agreement; (ii) the date Purchaser seeks to rescind or terminate or rescinds or terminates the Purchase Agreement; (iii) the Cancellation Date, as defined in paragraph 4 below and (iv) that date Sponsor abandons the Offering Plan, or otherwise terminates this offer of Units under the Offering Plan. Each of the dates referred to in (i), (ii) (iii) and (iv) above is referred to as the **"Termination Date."** On the Termination Date, the Cancellation Date, or such earlier date on which the term of this Agreement ends, if Tenant does not simultaneously close under the Purchase Agreement, Purchaser shall deliver to Sponsor possession of the Unit, in broom clean condition and free of all tenancies and occupants. In addition, Purchaser shall repair all damage to the Unit caused by Purchaser.

3. The "**Occupancy Date**" shall be _____, 2016. As consideration for the occupancy of the Unit, Purchaser shall pay to Sponsor a use and occupancy charge for the term of Purchaser's occupancy pursuant to this Agreement in an amount of $_____ [insert sum of monthly common charges and real estate taxes] per month ("**Use Payment**"). No portion of the Use Payment will be credited towards the Unit's purchase price. In addition, Purchaser shall be responsible to pay all utility charges resulting from occupancy of the Unit, including but not limited to, cable, electricity and telephone. Purchaser hereby indemnifies Sponsor from and against any claims made by third parties as a result of Purchaser's failure to pay such charges. This indemnity shall survive the Closing and/or termination of this Agreement. Purchaser shall make the first monthly Use Payment on the date hereof, in addition to the sum of $_____, representing the pro-rated Use Payment for the period commencing on the Occupancy Date, and ending on _____, 2016 (last day of month in which term begins). Purchaser shall thereafter make monthly payments of the Use Payment during the remaining Occupancy Period on the first day of each month. If the Termination Date, or such earlier date on which the term of the Agreement ends, occurs on any day other than the first day of a month, the Use Payment paid for that month shall be subject to adjustment by pro-rating the Use Payment based on the number of days which constituted the Occupancy Period in that month. In the event Purchaser defaults

under the Purchase Agreement, or Purchaser rescinds its obligations under the Purchase Agreement, Purchaser shall not be entitled to the return of any Use Payment. Purchaser's failure to pay the Use Payment or purchase the Unit pursuant to the Purchase Agreement shall be deemed to be a breach of the terms of this Agreement.

4. (A) If Purchaser fails to close or defaults under the Purchase Agreement, or if Purchaser shall default in the performance of any obligations pursuant to this Agreement and/or the executed Purchase Agreement, then in any one or more of such events, upon Sponsor serving Purchaser written notice (the "Default Notice") of no less than thirty (30) days (the "Default Notice Period"), specifying the nature of said default, then upon the expiration of the Default Notice Period, if Purchaser shall have failed to remedy such default, Sponsor may serve Purchaser with a written notice cancelling this Agreement ("Cancellation Notice") of no less than five (5) days (the "Cancellation Notice Period"), and upon the expiration of the Cancellation Notice Period (the "Cancellation Date"), this Agreement and the term hereunder shall end and expire as fully and completely as if the Cancellation Date were the day herein definitely fixed for the end and expiration of this Agreement and the term thereof, and Purchaser shall then immediately deliver possession of the Unit to Sponsor, but Purchaser shall remain liable as hereinafter provided.

(B) If the Cancellation Notice provided for in (A) of this paragraph 4 shall have been given, and the term hereunder shall expire as aforesaid; or if Purchaser shall be in default of payment of the Use Payment or any other sums due under this Agreement, or if the term of this occupancy agreement expires for any other reason, then and in any such events, Sponsor may without notice, re-enter the Unit either by force or otherwise, remove Purchaser's effects, and hold the Unit as if this Agreement had not been made; and Purchaser hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

(C) In the event of a default under this Agreement, Purchaser agrees to reimburse Sponsor for (i) the reasonable costs of repairing or replacing any damage to the Unit resulting from Purchaser's occupancy and (ii) all actual and incidental costs incurred by Sponsor as a result of Purchaser's occupancy of the Unit, including but not limited to, recovering possession of the Unit, storage fees for Purchaser's belongings, utility charges, restoring the Unit to its original condition, and reasonable attorneys' fees.

5. During the Occupancy Period, Purchaser shall be obligated to maintain and keep the Unit clean and in good repair and condition. Purchaser shall have no right to alter the Unit in any way including, but not limited to, painting or installing wall-to-wall carpeting. No persons other than Purchaser and Purchaser's immediate family may occupy the Unit, and the Unit may not be sublet, and/or occupied by any other person without the express written consent of Sponsor, which consent may be denied in Sponsor's absolute discretion.

6. Purchaser acknowledges that while the Unit may be in all other respects complete and ready for occupancy, certain other services and facilities in the Building may be subject to shut-off or otherwise unavailable as a result of ongoing construction in the Building. Purchaser agrees that the failure of any such services or facilities shall not be an objection or defense by Purchaser to any of the conditions or obligations stated hereunder or under any executed Purchase Agreement.

7. It is specifically understood and agreed that Sponsor shall be exempt from, and Purchaser shall indemnify and hold Sponsor harmless from, any and all liability for any damage or injury to persons or property or arising from any cause or happening whatsoever in, on, or to the Unit from the Occupancy Date (including without limitation, reasonable attorney's fees incurred in connection with the enforcement of this Agreement) ("Claims"). This indemnity shall survive the Closing and/or termination of this Agreement. Commencing on the Occupancy Date, Purchaser shall maintain general comprehensive liability and fire insurance coverage in an amount of no less than $2,000,000 per occurrence, and against any loss or damage to Purchaser's personal belongings, and such insurance policy shall name the Sponsor, the Condominium and the managing agent as additional insureds, and shall not be cancellable without prior notification to, and consent of, Sponsor. Purchaser shall not take possession of the Unit until such time as the certificate of insurance has been delivered to Sponsor.

8. It is specifically understood and agreed that nothing contained herein shall waive or modify the rights of Sponsor or Purchaser under the executed Purchase Agreement in the event the parties hereto fail to close title to the Unit in accordance with the terms of the Purchase Agreement.

9. The parties hereto acknowledge that this Agreement is a revocable license and not a lease and that a landlord/tenant relationship is not established by virtue of Purchaser's

occupancy of the Unit, which occupancy is provided solely as an accommodation to Purchaser, at the request of Purchaser. Purchaser also acknowledges that no rental protection laws are applicable to Purchaser or any member of Purchaser's family who occupies the Unit pursuant to this Agreement.

10. Purchaser acknowledges that if this Agreement terminates by reasons other than the Purchaser's purchase of the Unit, the timely surrender by Purchaser of the Unit upon the Termination Date is an important inducement to Sponsor in entering into this Agreement. If the Unit is not surrendered upon the Termination Date, Purchaser, at the option of Sponsor, shall be deemed to be occupying the Unit on a month-to-month basis, at a monthly rental equal to $10,000.0 per month, subject to all of the other terms of this Agreement. Purchaser acknowledges that the monthly sum payable to Sponsor during the period Purchaser holds over past the term of this Agreement is not a penalty, and constitutes the fair value of the Unit for the applicable holdover period. Purchaser's obligations under this paragraph shall survive the termination of this Agreement.

11. In the event the Purchaser holds over beyond the Cancellation Date or the Termination Date, Purchaser (i) agrees that the Sponsor, without notice, may forthwith commence a summary holdover proceeding for the purpose of regaining possession of the Unit; (ii) agrees in said holdover proceeding to consent to the personal and subject matter jurisdiction of the Court and to waive any and all substantive defenses to the proceeding; (iii) consents to the immediate entry of a final judgment of possession of the Unit, warrant to issue forthwith; (iv) represents that the above-referenced final judgment of possession is absolute and unconditional; and (v) agrees not to apply for any stay of execution of the warrant of eviction.

12. Purchaser acknowledges and agrees that while residing in the Unit under this Agreement, Purchaser is subject to the By-Laws, Rules and Regulations and provisions of the Declaration Establishing a Plan for Condominium Ownership (collectively, the "Document") of the Condominium. Purchaser further acknowledges and agrees that Purchaser shall not perform any act, or fail to perform an act, if the performance or failure to perform would be a violation of or default under the Document. Purchaser agrees to observe and be bound by all the terms contained in the Document that apply to the occupant or user of the Unit or a user of the

Condominium common areas and facilities. Purchaser agrees to observe all of the Rules and Regulations of the Condominium, as referenced in the Document and otherwise.

13. Purchaser acknowledges that Purchaser has obtained the advice of counsel prior to executing this Agreement.

14. In the event of any conflict between the terms of this Agreement and the terms of the Purchase Agreement, the terms of this Agreement shall control. If a term or provision of this Agreement is deemed illegal or unenforceable, that term or provision shall no longer apply and the remainder of this Agreement shall remain in full force and effect.

15. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

16. The parties hereto agree that any terms and provisions referred to in the attached Purchase Agreement are hereby incorporated by reference into this Agreement.

17. Any notices shall be sent pursuant to the terms set forth in the attached Purchase Agreement.

18. This Agreement may be executed in one or more counterparts and together shall constitute one and the same document.

19. Any default by Purchaser under this Agreement, including but not limited to failing to pay the Use Payment, shall constitute a default by Purchaser under the Purchase Agreement. Upon such default, Sponsor, in its sole discretion, may enforce all of its rights under the Purchase Agreement, including, but not limited to, terminating the Purchase Agreement, retaining the Deposit held under the Purchase Agreement, together with all interest earned thereon. Before Sponsor utilizes the default under this Agreement as the sole reason to declare a default under the Purchase Agreement, Sponsor shall either obtain an order of eviction or other judgment or order from a court or agency of competent jurisdiction against the Purchaser unless the Purchaser has vacated the Unit. Upon the cancellation of the Purchase Agreement, Purchaser and Sponsor will be released and discharged of all further liability and obligations under the Purchase Agreement and under the Plan, and the Unit may be sold to another as though the Purchase Agreement had never been made, and without any obligation to account to Purchaser for any of the proceeds of such sales.

20. This Agreement may not be changed or terminated orally but only by an agreement in writing signed by the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of this day and year first above written.

**SPONSOR:**

**MADISON 33 OWNER LLC**

By:_____

**PURCHASER:**

_____

_____

# LETTER OF PODELL, SCHWARTZ, SCHECHTER & BANFIELD, LLP

LAW OFFICES 292

# PODELL, SCHWARTZ, SCHECHTER & BANFIELD, LLP

605 THIRD AVENUE
NEW YORK, N.Y. 10158

(212) 883-6500
FAX: (212) 883-6518
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SENIOR COUNSEL
ALLAN C. SCHWARTZ

SPECIAL COUNSEL
VICTOR HADE

1205 FRANKLIN AVENUE
GARDEN CITY, NY 11530
TEL. (516) 248-5827
FAX (516) 248-5854

October 2, 2014

Madison 33 Owner, LLC
Tessler Development
461 Park Avenue South, 2nd Floor
New York, NY 10016

Re: THE 172 MADISON CONDOMINIUM
172 Madison Avenue
Block: 863 Lots: 17, 18 & 21 (tentative Lot No. 17)
Borough: Manhattan

Gentlemen:

You have requested that we provide you with estimates of the real estate tax assessments and real estate taxes on the new mixed-use condominium to be constructed at 172 Madison Avenue.

You have advised us that you are the fee owner of certain real property located at 172 Madison Avenue, New York, New York, and designated as Block 863, Lots 17, 18 & 21 on the Official Tax Map of the City of New York. According to New York City Department of Finance records: lot 17 consists of 2723 square feet of vacant, unimproved land; lot 18 consists of 4,686 square feet of vacant, unimproved land; and lot 21 consists of 3,238 square feet of vacant, unimproved land. All three parcels are classified in commercial tax class "4." You have advised us that you have filed an application for lot consolidation with the New York City Surveyors' Office to combine the three parcels into a single tax lot and that the combined lot has been tentatively designated by the Surveyors' office as tax lot 17.

You have advised us that you intend to improve the consolidated site with a new, 141,799 square-foot (gross, above grade), 34 story, mixed-use condominium consisting of the following:

- 69 residential units located on floors 3 through 33 (the second and 34th floors consist of mechanical space);
- two (2) commercial units consisting of 4,382 square feet of retail space located on the first floor and 2,087 square feet of related storage space in the cellar;
- Residential amenities including: A lounge and children's room in the cellar consisting of approximately 1,975 square feet in total; 32 residential storage units

located in the sub-cellar consisting of approximately 455 square feet; bicycle storage in the sub-cellar consisting of approximately 585 square feet; and a pool, Jacuzzi, pet grooming room, yoga room and gym located in the sub-cellar consisting of approximately 6,540 square feet in total; and

- A public plaza consisting of approximately 3,615 square feet.

You have advised us that you anticipate commencing construction in September 15, 2014, and plan on completing the project in June, 2016. You have informed us that the first year of condominium operation will be from July 1, 2016 through June 30, 2017.

Although the setting of an assessment on any particular property is subject to an individual assessor's subjective determination based upon general assessment guidelines, it is possible to estimate an approximate assessed value based upon a number of factors. These factors include actual construction costs (if applicable), the property's location, a hypothetical economic analysis of the condominium as if it were a rental property (as required pursuant to section 581 of the New York Real Property Tax Law), assessed valuations of comparable buildings and New York City Department of Finance Assessment Guidelines. We have examined these factors in arriving at our estimates.

New York City is an annual assessing jurisdiction and is required to assess property for each upcoming fiscal tax year (July 1 – June 30) based upon its use and condition on January 5th (taxable status date). Annual increases or decreases in assessed value resulting from construction, demolition or other physical changes to the property (i.e., "physical" or "alteration" increases) are taxable the year they are levied. For class "4" commercial properties and for class "2" residential properties having more than 10 units, annual assessment increases or decreases not resulting from physical changes (i.e., "equalization" changes) are phased in for tax purposes over a five (5) year period at 20% per year. Hence, two assessed values: 1) the "actual assessment," which is reflective of the City's claimed market value; and 2) the "transitional assessment," which is based on physical increases and the 5-year phase in of equalization changes. Real property taxes in any given year are based on the lesser of the actual or transitional assessment.

The subject property's assessment history is as follows:

| Lot 17: | Tax Year | Tax Class | | Land | Total |
|---|---|---|---|---|---|
| Final | 2014/15 | 4 | Actual | $ 922,050 | $ 922,050 |
| | | | Transitional | $ 864,347 | $ 864,347 |
| Final | 2013/14 | 4 | Actual | $ 901,584 | $ 901,584 |
| | | | Transitional | $ 924,738 | $ 924,738 |
| Final | 2012/13 | 4 | Actual | $ 857,250 | $ 857,250 |
| | | | Transitional | $ 819,571 | $ 819,571 |

| Lot 18: | Tax Year | Tax Class | | Land | Total |
|---|---|---|---|---|---|
| Final | 2014/15 | 4 | Actual | $ 2,108,700 | $ 2,108,700 |
| | | | Transitional | $ 1,591,855 | $ 1,591,855 |
| Final | 2013/14 | 4 | Actual | $ 1,551,412 | $ 1,551,412 |
| | | | Transitional | $ 1,642,350 | $ 1,642,350 |
| Final | 2012/13 | 4 | Actual | $ 1,475,100 | $ 1,475,100 |
| | | | Transitional | $ 1,737,068 | $ 1,737,068 |
| Lot 21: | | | | | |
| Final | 2014/15 | 4 | Actual | $ 1,457,100 | $ 1,457,100 |
| | | | Transitional | $ 1,099,924 | $ 1,099,924 |
| Final | 2013/14 | 4 | Actual | $ 1,071,986 | $ 1,071,986 |
| | | | Transitional | $ 1,150,055 | $ 1,150,055 |
| Final | 2012/13 | 4 | Actual | $ 1,019,250 | $ 1,019,250 |
| | | | Transitional | $ 1,059,857 | $ 1,059,857 |

As of January 5, 2016, which will be the second taxable status date following the anticipated September, 2014 start of construction and the basis for the property's 2016/17 assessed value, you have advised us that construction work will be approximately eighty percent (80%) complete. We assume that the partially completed project will be classified for tax purposes in residential tax class "2." Given the anticipated level of project completion, we estimate that the property's 2016/17 assessed value will be in the approximate amount of $ 23,200,000.

The most recent tax rates available as of the date of this letter are those passed by the City Council for the 2014/15 tax year. The 2014/15 "class 2" tax rate is 12.855%. For purposes of this projection, we utilized 12.855% as the 2016/17 residential "class 2" tax rate. Based on the projected 2016/17 taxable assessed value in the amount of $23,200,000, we estimate that the gross real estate taxes due for the fiscal year July 1, 2016 through June 30, 2017 will be in the approximate amount of $2,985,000.

The first taxable status date following the anticipated June, 2016 completion of construction and the property's apportionment into separate condominium tax lots will be January 5, 2017, which will be the basis for the property's 2017/18 assessed values. We estimate that the property's total post-completion assessed values will be in the following amounts:

| | Est. 2017/18 Taxable Assessments |
|---|---|
| 69 Residential Units . . . | $26,000,000 |
| 2 Commercial Units . . . | $ 1,800,000 |

We assume that for the 2017/18 tax year the residential units will be classified for tax purposes in residential tax "class 2" and that the commercial unit will be classified in commercial tax "class 4." As set forth above, the most recent tax rates available as of the date of this letter are those passed by the City Council for the 2014/15 tax year. The 2014/15 "class 2" tax rate is in the amount of 12.855% and the "class 4" rate is 10.684%. For purposes of this projection, we utilized 12.855% and 10.684% as the 2017/18 "class 2" and "class 4" rates, respectively. Given the foregoing projected 2017/18 taxable assessed values and tax rates, we estimate that the gross real estate taxes due for the fiscal year July 1, 2017 through June 30, 2018 will be in the following amounts:

| | Est. 2017/18 Taxes |
|---|---|
| 69 Residential Units . . . | $ 3,345,000 |
| 2 Commercial Units . . . | $ 193,000 |

You have advised us that the first year of Condominium operation will be from July 1, 2016 through June 30, 2017. Based on the foregoing projection for the 2016/17 fiscal tax year and apportioning related estimated taxes between the residential and commercial units based on their relative estimated 2017/18 post-completion assessed values (i.e., approximately 92.7% residential and 7.3% commercial), we estimate gross real estate taxes for the Condominium's first year of operation to be in the following amounts:

| | Est. First Yr. (July 1, 2016 – June 30, 2017) Taxes |
|---|---|
| 69 Residential Units . . . | $ 2,767,000 |
| 2 Commercial Units . . . | $ 218,000 |

**It should be noted that the estimated real property taxes for the first year of condominium operation (i.e., July 1, 2016 through June 30, 2017) do not reflect the completed building.**

We have been advised that it is the policy and practice of the New York City Department of Finance to assign separate tax lots and apportion the residential assessed valuation of a condominium among the various units based upon the percentage of common interest contained in the Condominium Declaration.

A schedule of estimated real property taxes by residential unit for the first year of condominium operation as well as estimated assessed values and taxes for the first post-completion tax year (i.e., 2017/18) based on relative percentages of residential common interest set forth in schedule "A" in the Offering Plan is attached.

It should be noted that, although it is currently Finance's stated policy to apportion the assessed values of condominium properties among the various units on this basis, Finance has used different methodologies in the past. No warranty or guarantee is made herein that assessed values will not be apportioned based on a different method.

Following the property's completion and apportionment into condominium units, individual residential unit owners may qualify for Condominium Abatement Program benefits pursuant to section 467-a of the New York Real Property Tax Law. The Program, which is set to expire June 30, 2015, provides partial tax relief for residential "class 2" condominium unit owners whose unit is their primary residence. Currently, abatement benefits for condominiums with an average taxable assessed value per unit greater than $60,001 are calculated and determined at 17.5% of the taxes otherwise payable.

We have not included this potential benefit in our estimates set forth above and, while the program has regularly been extended since its initial passage in 1999 (most recently on January 30, 2013), **we make no warranty or guarantee that the Condominium Abatement Program will be extended or available to unit owners upon completion of construction or that the Program will not be revised in a manor impacting potential availability.**

Assuming the Program is extended beyond June 30, 2015, the Condominium Board of Managers or its agent must file an application for the Condominium Abatement on behalf of all eligible unit owners (unit owners do not apply individually). Applications have historically been due by February 15th for the following fiscal tax year starting July 1st.

This letter was prepared at the sponsor's request. The figures set forth herein are approximations derived from material submitted by the sponsor and publicly available tax records and are subject to amendment. No government agency has passed upon these figures or the estimates of assessed valuation and taxes herein. We have not passed on the accuracy of any figures or estimates contained in the Offering Plan, and offer no warranties on real estate assessments, tax classifications, taxes, or tax rates for any period. All prospective purchasers are advised that, although the estimates of assessed valuations upon conversion are good faith estimates, such assessed valuations when actually made may be less or greater than as estimated herein.

The above estimates do not take into account any future increases in the level of assessed valuation applied to residential property or any increase in the real estate tax rates. The above opinion is based upon our interpretation of The New York State Real Property Tax Law and The Administrative Code of the City of New York and is not intended to be a guarantee or assurance that the actual or transitional tax assessments, tax rates or actual taxes will be as estimated.

No representation is made that the provisions of law or New York City Department of Finance policies and practices will apply at the time the property's conversion is complete. You should be aware that the laws, regulations and practices of the Department of Finance 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 of more agencies of the City of New York, or Courts of competent jurisdiction.

While we believe our opinions are well-founded, they are not intended, and should not be construed as representations or warranties that assessments, tax rates, and taxes will not be determined in a different amount. The foregoing analysis is based upon our knowledge of the making and review of assessments by the Real Property Assessment Department and the Tax Commission of the City of New York with respect to mixed-use properties held in the condominium form of ownership. Application of a particular approach to valuation by an individual assessor may yield a different result.

We consent to the inclusion of this letter in the Offering Plan.

Very truly yours,
PODELL, SCHWARTZ, SCHECHTER
& BANFIELD, LLP

BY: _____
PAUL V. GRECO

PVG:

Schedule of Estimated Real Property Taxes By Residential Unit (as of as of October 2, 2014):

THE 172 MADISON AVENUE CONDOMIONIUM
172 MADISON AVENUE

| | First Post-Conversion Tax Year | | | |
|---|---|---|---|---|
| Unit | Percentage of Residential Common Interest | Estimated 2017/18 Taxable Assessed Value | Estimated 2017/18 Taxes | Estimated Taxes 7/1/16 Through 6/30/17 |
| 3 | 3.2836% | $ 853,736 | $ 109,836 | $ 90,857 |
| 4A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 5A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 6A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 7A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 8A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 9A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 10A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 11A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 12A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 14A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 15A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 16A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 17A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 18A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 19A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 20A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 21A | 1.3143% | $ 341,718 | $ 43,963 | $ 36,367 |
| 22A | 1.9319% | $ 502,294 | $ 64,622 | $ 53,456 |
| 23A | 1.9070% | $ 495,820 | $ 63,789 | $ 52,767 |
| 24A | 1.9070% | $ 495,820 | $ 63,789 | $ 52,767 |
| 25A | 1.9070% | $ 495,820 | $ 63,789 | $ 52,767 |
| 26A | 1.9070% | $ 495,820 | $ 63,789 | $ 52,767 |
| 27A | 1.9070% | $ 495,820 | $ 63,789 | $ 52,767 |
| 4B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 5B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 6B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 7B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 8B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 9B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 10B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 11B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 12B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 14B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 15B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 16B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 17B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 18B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 19B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 20B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 21B | 1.3223% | $ 343,798 | $ 44,231 | $ 36,588 |
| 22B | 1.3943% | $ 362,518 | $ 46,639 | $ 38,580 |
| 23B | 1.3943% | $ 362,518 | $ 46,639 | $ 38,580 |
| 24B | 1.3943% | $ 362,518 | $ 46,639 | $ 38,580 |
| 25B | 1.3943% | $ 362,518 | $ 46,639 | $ 38,580 |
| 26B | 1.3943% | $ 362,518 | $ 46,639 | $ 38,580 |
| 27B | 1.3943% | $ 362,518 | $ 46,639 | $ 38,580 |
| 4C-RM | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 5C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 6C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 7C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 8C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 9C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 10C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 11C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 12C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 14C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 15C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 16C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 17C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 18C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 19C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 20C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| 21C | 0.7918% | $ 205,868 | $ 26,486 | $ 21,909 |
| PHA | 3.2769% | $ 851,994 | $ 109,612 | $ 90,672 |
| PHB | 3.2315% | $ 840,190 | $ 108,094 | $ 89,416 |
| PHC | 3.2315% | $ 840,190 | $ 108,094 | $ 89,416 |
| PHD | 3.2315% | $ 840,190 | $ 108,094 | $ 89,416 |
| PH | 5.6295% | $ 1,463,670 | $ 188,307 | $ 155,768 |
| TOTAL | 100.000% | $ 26,000,000 | $ 3,345,000 | $ 2,767,000 |

# DECLARATION OF CONDOMINIUM

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# DECLARATION

**Establishing a Plan for Condominium Ownership**

**of the Premises known as**
**172 MADISON AVENUE CONDOMINIUM**
**and**
**having a street address of**
**172 Madison Avenue**
**New York, New York 10016**

**Pursuant to Article 9-B of the Real Property Law of the State of New York**

**Name:** **172 MADISON AVENUE CONDOMINIUM**

**Sponsor:** **Madison 33 Owner LLC**
**461 Park Avenue South, Suite 200**
**New York, NY 10016**

**Date of Declaration:** **_____, 201__**

**Prepared by:**
**Gerstein Strauss & Rinaldi LLP**
**Attorneys At Law**
**57 West 38th Street**
**New York, New York 10018**
**(212) 398-7900**

**The land affected by the within instrument lies in**
**Block 863**
**f/k/a Lots 17, 18 and 21**
**n/k/a Lot(s) ____**
**on the Tax Map of the Borough of Manhattan,**
**County of New York, City of New York**

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# DECLARATION
# OF
# 172 MADISON AVENUE CONDOMINIUM

**(Pursuant to Article 9-B of the Real Property Law of the State of New York)**

Madison 33 Owner LLC, a limited liability company organized under the laws of the State of Delaware, having an office at 461 Park Avenue South, Suite 200, New York, NY 10016 ("Sponsor"), does hereby declare as follows:

## ARTICLE 1

## DEFINITIONS

All capitalized terms used in this Declaration that are not otherwise defined in the Articles hereof shall have the meanings set forth in Exhibit C annexed hereto, unless the context in which they are used shall otherwise require. All capitalized terms used in this Declaration that are defined in any of the Articles hereof shall have the meanings ascribed to them in such Articles, unless the context in which the same are used shall otherwise require. Each of the said capitalized terms shall be applicable to singular and to plural nouns, as well as to verbs of any tense.

## ARTICLE 2

## SUBMISSION OF THE PROPERTY

Sponsor hereby submits the Property to the provisions of the Condominium Act and pursuant thereto, does hereby establish a regime for the condominium ownership of the Property as more particularly set forth herein and in the By-Laws.

## ARTICLE 3

## NAME OF THE CONDOMINIUM

The Condominium shall be known as 172 Madison Avenue Condominium. Until all Units of the Condominium have been sold and conveyed by Sponsor, the name of the Condominium may not be changed, except by Sponsor, in Sponsor's sole and absolute discretion.

## ARTICLE 4

## THE LAND

Included in the Property is the Land which is more particularly described in Exhibit A annexed hereto.

## ARTICLE 5

## THE PROPERTY AND THE BUILDING

5.1 The Property is improved by a mixed use building ("Building"). The Building contains a total of 69 Residential Units ("Residential Units"), including a Resident Manager's

Unit, and two (2) Commercial Units, (the "Commercial Unit"). The Building consists of a sub-cellar, a cellar and thirty-four floors. The 2nd and 34th floors are mechanical floors. The Building's superstructure is reinforced concrete.

## ARTICLE 6

## THE UNITS

6.1 Exhibit B annexed hereto sets forth the following data with respect to each Unit necessary for the proper identification thereof: Unit designation; tax lot number; approximate location in the Building; approximate square foot area of Units and Limited Residential Common Element(s); number of rooms; the portions of the Common Elements to which such Unit has immediate access; and the Common Interest and Residential Common Interest appurtenant to such Unit. The precise location of each Unit is shown on the Floor Plans.

6.2 Measured horizontally, the Residential Unit sizes are calculated from the exterior face of the exterior walls adjacent to the Unit, to the centerline of the demising wall between Units, corridors, elevator, stairs and other mechanical equipment spaces or any Common Elements not within a Unit (or to the exterior face of the opposite exterior wall). Columns, mechanical pipes, shaftways, chases, chaseways and conduits are included in the measurement of each such Unit. Where the Residential Unit encompasses a full floor, garbage chutes and elevator shafts are also included in the calculation of size.

Measured vertically, each Residential Unit will consist of the volume from the top of the floor slab (located under the finished flooring and sub-floor materials, if any) to the underside of the concrete ceiling above. The size of Common Elements which fall within the boundaries of a Residential Unit are included in the square foot area of the Unit, even though they are not part of the Unit.

6.3 Measured horizontally, each Commercial Unit size is calculated from the exterior face of the exterior walls adjacent to the Unit, to the centerline of the demising wall between Units, corridors, elevator, stairs and other mechanical equipment spaces or any Common Elements not within a Unit, or to the exterior face of the opposite exterior wall. Columns, mechanical pipes, shafts, shaftways, chases, chaseways and conduits are not deducted from measurement of a Commercial Unit.

Measured vertically, each Commercial Unit will consist of the volume from the top of the floor slab (located under the finished flooring and sub-floor materials, if any) to the underside of the concrete ceiling above. The size of Common Elements which fall within the boundaries of each Commercial Unit are included in the square foot area of the Unit, but are not part of the Unit. The size of Common Elements which fall within the boundaries of each Commercial Unit are included in the square foot area of the Unit, but are not part of the Unit.

The space so measured, as is customary in New York, is greater than the usable space in a Unit.

6.4 Each Unit includes, and each Unit Owner shall be responsible for, the entrance doors and any other doors in or to such Unit, along with frames, saddles and caulking associated therewith, the interior walls and partitions, floors and floor coverings and ceilings affixed, attached or appurtenant to such Unit, smoke detectors, carbon monoxide detectors, window panes and frames and caulking associated therewith, storefronts, seals, retaining mechanisms, and caulking associated therewith, and windows included in storefronts, all plumbing, gas and heating fixtures and equipment such as refrigerators, dishwashers, washers and dryers (whether or not installed by Sponsor), fireplaces and electronic controls igniters, gas valves and draft switches for such fireplaces, heating, ventilating and air conditioning units (including the fans inside the

units), heating equipment, ranges and other appliances, sinks, bathtubs, water closets and all other Facilities as may be affixed, attached or appurtenant to such Unit and serving such Unit exclusively, such as window panes and frames and caulking associated therewith. Plumbing, gas and heating fixtures and equipment as used in the preceding sentence shall include exposed gas and water pipes from branch or fixture shut-off valves attached to fixtures, appliances and equipment in the Unit and the fixtures, appliances and equipment to which they are attached, and any special pipes or equipment which a Unit Owner may install within a wall or ceiling, or under the floor, but shall not include gas, water or other pipes, conduits, wiring or ductwork within the walls, ceilings or floors. Each Unit shall also include all lighting and electrical fixtures and appliances within the Unit and any special equipment, fixtures or Facilities affixed, attached or appurtenant to the Unit, to the extent located within a Unit from the panel and serving or benefiting only that Unit. Any Common Elements located within a Unit shall not be considered a part of such Unit.

6.5 Notwithstanding anything contained in this Article to the contrary, each Unit Owner will have the right, exercisable at any time, to install, at such Unit Owner's sole cost and expense, decorations, fixtures and coverings (including, without limitation, painting, finishing, wall to wall carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the walls, ceilings and floors that face the interior of such Unit Owner's Unit and to a depth of one inch behind such surfaces for the purposes of installing nails, screws, bolts and the like, provided that no such installation shall impair the structural integrity, sound integrity and mechanical and electrical systems of such Unit or of the Building or violate Law.

6.6 As of the date of the filing of this Declaration with the Register's Office, fee simple absolute title shall automatically vest in Sponsor in all Units, individually and collectively, without the need to execute specific and particular deeds or indentures for each and every Unit.

## ARTICLE 7

## THE COMMON ELEMENTS

7.1 The Common Elements consist of the entire Property, including the Land and all parts of the Building and improvements thereon other than the Units. The Common Elements are comprised of the General Common Elements, the Residential Common Elements and the Limited Residential Common Elements.

7.2 The General Common Elements consist of the Land and those rooms, areas, corridors and other portions of the Building (other than the Units, the Residential Common Elements and the Limited Residential Common Elements), as well as those Facilities therein, either currently or hereafter existing for the common use of the Units or of the Unit Owners or necessary for, or convenient to, the existence, maintenance, management, operation, or safety of the Property. Without intending to limit the generality of the foregoing in any respect, the General Common Elements include (A) the Land (including the landscaping), with all easements, rights and privileges appurtenant thereto; (B) those rooms, areas and corridors that are delineated on the Floor Plans as General Common Elements (the "GCE Areas"), as well as those Facilities therein; and (C) the following elements of the Building:

(i) all foundations, structural slabs, columns, beams, supports, girders, structural members and supports, and exterior walls of the Building;

(ii) all floor slabs and concrete ceilings, all sidewalks, curbs, hallways, corridors, mechanical and electrical spaces, trash room, service entrances, vestibules and basements and cellars, storage spaces, mechanical equipment, entrances to, and exits

from, the Building and spaces devoted to the use of persons employed with the operation of the Property, to the extent that the same are not expressly included as part of the Residential Common Elements pursuant to the terms of Paragraph (7.3) below or the Limited Residential Common Elements pursuant to the terms of Paragraph (7.4) below or a Unit pursuant to the terms of Article 6 hereof;

(iii) to the extent with or bounding the GCE Areas, interior walls, partitions, floors, window systems other than the glass within window systems; ceilings in, on, or under the Building, separating a Unit from a General Common Element, and that portion of all such interior walls, partitions, floors and ceilings separating a General Common Element from a Residential Unit and/or the Commercial Unit, and/or a Residential Common Element and/or a Limited Residential Common Element, from the midpoint of any such wall, partition, floor or ceiling to the boundary line of such General Common Element, as the case may be, to the extent that the same are not expressly included as part of the Residential Common Elements pursuant to the terms of Paragraph (7.3) below or the Limited Residential Common Elements pursuant to the terms of Paragraph (7.4) below or a Unit pursuant to the terms of Article 6 hereof;

(iv) staircases from the cellar to the ground floor, marked on the Floor Plans as General Common Elements;

(v) the elevator shafts

(vi) all central and appurtenant installations and Facilities for services such as power, light, telephone, intercom, gas, sewer, plumbing, drainage, hot and cold water distribution, heat, garbage disposal, master and cable television and other mechanical and electrical systems, which service all the Units and/or all of the General Common Elements, the Residential Common Elements and the Limited Residential Common Elements, to the extent that the same are not expressly included as a part of the Residential Common Elements pursuant to the terms of Paragraph (7.3) below or the Limited Residential Common Elements pursuant to the terms of Paragraph (7.4) below or a Unit pursuant to the terms of Article 6 hereof;

(vii) the portion of the roof of the Building, marked on the Floor Plan as a General Common Element; and

(viii) all other parts of the Property, and all apparatus and installations now existing or hereafter constructed in the Building or on the Property, either existing for the common use of the Units or the Unit Owners or necessary for, or convenient to, the existence, maintenance, or safety of the Property or the Building to the extent same are not expressly included as part of any Unit or any other specific category of Common Elements or Limited Common Elements as set forth in this Article.

7.3 The Residential Common Elements consist of the portions of the Building that are delineated on the Floor Plans as constituting Residential Common Elements, as well as those Facilities therein, either currently or hereafter existing for the exclusive common use of the Residential Units or of the Residential Unit Owners only. Without intending to limit the generality of the foregoing in any respect, the Residential Common Elements include:

(i) the two (2) passenger elevators and their respective shafts, pits, equipment machine rooms and stairways and their vestibules;

(ii) the gas, electric, sprinkler and compactor rooms in the cellar;

(iii) the residential vestibule, hallway and lobby on the ground floor;

(iv) the utility rooms on the roof of the Building;

(v) all masonry walls, partitions, floors and ceilings in, on or under the Building, separating a Residential Unit from another Residential Unit or a Residential Common Element from another Residential Common Element and that portion of all such masonry walls, partitions, floors and ceilings separating a Residential Common Element from a General Common Element or the Commercial Units, from the midpoint of any such wall, partition, floor or ceiling to the boundary line of such Residential Common Element;

(vi) the exterior façade of the Building and window systems not appurtenant to a Unit from the 2nd floor and above, as well as the exterior façade of the portion of the Building adjacent to the residential vestibule, hallway and lobby;

(vii) all central and appurtenant installations and Facilities for services such as power, light, telephone, intercom, gas, sewer, plumbing, sprinklers, fire protection, hot and cold water distribution, heat, garbage disposal, master & cable television and other mechanical and electrical systems which serve the Residential Units and/or the Residential Common Elements and/or the Limited Residential Common Elements only;

(viii) all interior portions of the Building, to the extent that the same are not expressly included as part of the General Common Elements pursuant to the terms of Paragraph (7.2) above or the Limited Residential Common Elements pursuant to the terms of Paragraph (7.4) below or a Unit pursuant to the terms of Article 6 hereof;

(ix) the stair and landings from the ground floor to the roof;

(x) the Storage Bins; and

(xi) all interior portions of the Building and Facilities that exclusively serve the Residential Units and Residential Common Elements, but only if and to the extent that the same are not expressly included as part of any Unit, the General Common Elements or any other specific category of Common Elements or Limited Common Elements set forth in this Article 7.

7.4 The Limited Residential Common Elements consist of all portions of the Land and Building that are delineated on the Floor Plans as constituting Limited Residential Common Elements as well as the Facilities therein, and that are for the use of one or more specified Residential Units to the exclusion of all other Units. Without intending to limit the generality of the foregoing in any respect, the Limited Residential Common Elements include any terraces, balconies, outdoor roof areas or mechanical equipment rooms which shall be for the exclusive use of such Residential Unit Owners; also included are the 2nd floor mechanical space that contains equipment for the operation of the Mansion Unit pool, and the 32nd Mezzanine floor mechanical space that contains the pool and spa equipment for the Skyhouse Unit.

7.5 The Common Elements shall remain undivided, and no Unit Owner or any other Person shall bring, or shall have the right to bring, any action for partition or division thereof, except as is expressly permitted pursuant to the terms of Article 15 hereof and Section 5.6 of the By-Laws.

## ARTICLE 8

## DETERMINATION OF COMMON INTEREST AND RESIDENTIAL COMMON INTEREST

8.1 The undivided percentage interest of each Unit in the Common Elements is based upon floor space, subject to 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.

8.2 The percentage interest of each Residential Unit in the Residential Common Elements is apportioned in the same proportion that each Residential Unit bears to the aggregate Common Interests of all of the Residential Units in the Condominium.

8.3 Common Expenses may be allocated to one or more Units in a manner different from the allocation of Common Interests, as permitted by the Condominium Act, provided that such allocation is based on (i) estimated usage of a particular service, or based upon special or exclusive use or availability or exclusive control or particular Common Elements by particular Unit Owners, or (ii) a Percentage Interest in Common Elements, and in each case as determined by the Condominium Board, in accordance with and subject to the restrictions set forth in this Declaration and the By-Laws. With respect to the Commercial Unit, Common Expenses shall be allocated by the Condominium Board as are fairly attributable to such Unit, provided, that such expense items are actually utilized in connection with the operation or occupancy of such Unit, and any such allocation must be based on usage or changes in use or from changed circumstances.

## ARTICLE 9

## USE OF UNITS

9.1 As more particularly set forth in, and subject to the provisions of Law and the By-Laws, the Residential Units may be used for residential purposes. A Residential Unit owned or leased by an individual, corporation, partnership, limited liability company, fiduciary or any other entity (including, but not limited to, the United States government and any instrumentality thereof and foreign governments and any embassy, consulate, or other instrumentality thereof, any foreign government or any embassy, consulate or other instrumentality thereof) may only be occupied (unless the Condominium Board otherwise consents) by said individual, or an individual officer, director, stockholder or employee of such corporation, or by an individual partner, member, manager or employee of such partnership or limited liability company, or by said individual fiduciary (including directors, officers, stockholders or employees of corporate fiduciaries or partners or employees of partnership fiduciaries) or by an individual beneficiary of said fiduciary, or an individual principal or employee of such other entity, respectively, or by Family Members or non-paying guests of any of the foregoing (and nothing contained in this sentence shall be deemed to prohibit the exclusive occupancy of any Residential Unit by such Family Members or non-paying guests); however, the foregoing restrictions shall not apply to Unsold Units. Any Unit may be used for any lawful home occupation, subject, however, to the following conditions: (1) that same do not violate the terms and conditions of the then existing certificate of occupancy for the Building, (2) that same do not violate applicable Law, (3) the use of such Unit does not adversely affect the use and enjoyment of neighboring or adjacent Units for residential purposes, and (4) no Residential Unit shall be used as a hotel room, hotel suite, hotel type use, short term vacation use, for any short term use for which a Residential Unit Owner, or any Person on his account, receives a payment or fee, or on a transient or short-term stay basis, nor may any Residential Unit be rented, leased or subleased to a Person or entity or transient occupant pursuant to a transient or short-term stay or hotel usage agreement. Notwithstanding the foregoing, Sponsor may rent out an Unsold Residential Unit for short-term use. For the purpose of this entire Section, a Person or entity shall not be considered or defined as a guest if they pay, deliver, convey or give to or on behalf of the Residential Unit Owner any payment, fee or other consideration relating, regarding or otherwise associated with their or someone else's use and occupancy of the Residential Unit. Except as otherwise permitted by this Declaration, no radio, television, telecommunications or cable aerial or similar devise shall be erected on any terrace or

balcony, roof or exterior walls of the Building or the Property without, in each instance, the prior written consent of the Condominium Board.

9.2 The Commercial Units may be used for any legally permitted purposes, except that in no event may all or any portion of any Commercial Unit be used for: (i) any sex-related commercial establishment or massage parlor, or establishment where pornographic material is displayed or distributed, or obscene, nude or semi-nude performances are shown live or in a videotaped or other recorded format, except in conjunction with legitimate theatrical or dance performances as permitted by applicable law; or (ii) any drug rehabilitation clinic or treatment center.

9.3 Notwithstanding the foregoing or anything contained in the By-Laws or the Rules and Regulations to the contrary, Sponsor may, without the permission of the Condominium Board (1) grant permission for the use of any Unsold Unit as a professional office or for any other purpose, provided such use is permitted by Law, and does not violate the then existing certificate of occupancy for the Building or any other governmental regulations, (2) use any Unsold Units as model Units and offices for the selling, leasing, management, operation and promotion of the Unsold Units or for any other purpose, subject only to compliance with Law, and (3) lease an Unsold Unit to third parties.

9.4 A Storage Bin may be used only for the storage of personal property in accordance with the license agreement issued by the Condominium to the licensee.

## ARTICLE 10

## EASEMENTS FOR THE ENJOYMENT OF THE COMMON ELEMENTS

10.1 Subject to the terms of the By-Laws and the Rules and Regulations, Sponsor, the Unit Owners, all other permitted tenants and occupants of the Building, the Selling Agent, the Managing Agent, the Condominium Board and all officers, partners, employees, agents, guests, invitees and licensees of the foregoing shall have, in common with all of the others, an easement for ingress and egress through, as well as for the use and enjoyment of, all of the General Common Elements, and the General Common Elements shall be subject to such easement. Notwithstanding the foregoing, however, no Person shall use or enjoy the General Common Elements except in accordance with the reasonable purposes for which they are intended and without encroaching upon the rights of other Persons to do so.

10.2 Subject to the terms of the By-Laws and the Rules and Regulations, Sponsor, the Residential Unit Owners, all other permitted tenants and occupants of Residential Units, the Selling Agent, the Managing Agent, the Condominium Board and all officers, partners, employees, agents, guests, invitees and licensees of the foregoing shall have, in common with all of the others, an easement for ingress and egress through, as well as for the use and enjoyment of, all of the Residential Common Elements, and the Residential Common Elements shall be subject to such easement. Notwithstanding the foregoing, however, no person shall use or enjoy the Residential Common Elements except in accordance with the reasonable purposes for which they are intended and without encroaching upon the rights of other persons to do so.

10.3 The Commercial Unit Owners shall have an easement, to the extent permitted by Law, to erect, maintain, repair and replace, from time to time, one or more signs, on the storefront to their respective Units for the purpose of advertising the sale or lease of all or any portion of a Commercial Unit and the operation of any business of a tenant or occupant of all or any portion of the applicable Commercial Unit. A Commercial Unit Owner shall not have the right to place or install any sign or other advertisement on any part of the Building other than the storefront without the prior written consent of the Condominium Board. However, for so long as Sponsor

or Sponsor's designee is Owner of a Commercial Unit, Sponsor, Sponsor's designee, and their tenants shall have the right to install signage on the façade of the Building abutting the second floor above such Commercial Unit, without the consent of the Condominium Board. There shall be no consent requirement of the Condominium Board relative to the size, design and lighting of any sign placed on the Property by Sponsor or the tenant of that Commercial Unit. There shall be no consent required from the Condominium Board relative to Sponsor placing one or more signs, or the size, design and lighting of any sign placed on the Property by Sponsor.

10.4 Each Residential Unit Owner whose Residential Unit has one or more appurtenant Limited Residential Common Elements shall have an exclusive easement for the use thereof. The Residential Unit(s) having the same are indicated on Exhibit B.

10.5 Notwithstanding anything to the contrary contained in Section 10.1, or 10.4 hereof, Sponsor and its invitees, licensees, contractors, employees, agents and tenants shall have an easement in, over, under, through and upon the Common Elements to use the same, without being subject to any fee or charge, for all purposes and activities in connection with the sale or renting of Unsold Residential Units and shall have the right to use any one or more Unsold Residential Units as sales, rental and/or management offices and/or as model units. Such Unsold Residential Units shall remain Units within the meaning of this Declaration, the By-Laws and the Condominium Act, and shall not comprise a part of the Common Elements. In addition, Sponsor shall have the right, to the extent permitted by Law, to use one or more portions of the Common Elements (including but not limited to, lobbies, hallways and corridors), as designated by Sponsor in its sole discretion, without being subject to any fee or charge, for all purposes and activities in connection with the sale or renting of Unsold Units, which right shall include, without limitation, the right to place "for sale", "for rent" and other signs and promotional materials, of such size and content as Sponsor shall determine, in, on, about and adjacent to the exterior walls of the Building.

10.6 Sponsor, its designees and the Commercial Unit Owners shall each have an easement to erect, use, lease, maintain, repair, replace and operate antennae, satellite dishes and other communications equipment, as permitted by Law, on any part of the roof and/or façade of the Building and elsewhere on the General Common Elements, the location of which to be reasonably approved by the Condominium Board, and to utilize any risers, conduits, piping, cables, ducts and electrical panels and rooms, telephone/cable panels and rooms in connection therewith. Sponsor, its designee(s) and the Commercial Unit Owners shall each be entitled to utilize such easement for their own account or the account of any tenants or licensees of Sponsor or of Sponsor's designee(s) and/or the Commercial Unit Owners, as the case may be. However, the easement shall not be used by a Commercial Unit Owner or its tenant, for the operation of a telecommunications company or any other business whose primary purpose is the broadcasting and/or receiving of telephone, radio, communications or other signals. Sponsor's easement includes the right of Sponsor and/or its designee(s) to enter into agreements with one or more providers of communications equipment and services, such as, without limitation, cellular equipment, cable, internet, satellite dish and similar or dissimilar equipment, which would permit such providers the right to: (i) install, maintain, repair and replace their equipment on the roof of the Building, (ii) install, maintain, repair, replace and remove wires, conduits, cables, ducts, connective equipment and such other equipment whether similar or dissimilar, in and through the Common Elements, and (iii) use a portion of the Common Elements for the placement and operation of equipment. Sponsor and/or its designee(s) shall be entitled, to the exclusion of the Condominium, to retain any revenues from any such provider. In addition, Sponsor shall have an easement, to the extent permitted by law, to: (i) erect, maintain, repair and replace, from time to time, one or more flues, ducts, conduits and/or mechanical equipment in any exterior court or shaft; and (ii) attach to the façade, signs of such size and content as the Sponsor shall determine,

on or about or adjacent to the Property (including the exterior walls of the Building) for the purposes of advertising the sale of any Unit, the leasing of space in any Unit and the operation of any business of a tenant or occupant of any Unit.

10.7 Sponsor has an easement for access in and to the Common Elements once Sponsor has conveyed all of its Units for promotional purposes relating to other ventures of Sponsor or principals or affiliates of Sponsor.

10.8 Unless otherwise stated, any person who exercises a right of access or easement under the provisions of this Offering Plan shall indemnify the party who suffers the burden of the exercise of such right of access or easement ("servient estate"). This indemnification obligation requires the party who exercises such right of access to hold harmless the owner of the servient estate from any actual out-of-pocket expense, cost, loss, damage, claim or liability arising, directly or indirectly, from the exercise of any right of access or affirmative easement.

## ARTICLE 11

## OTHER EASEMENTS

11.1 Subject to the terms of the By-Laws and to the Rules and Regulations, each Unit Owner shall have an easement in common with all other Unit Owners to use, maintain, repair, alter and replace all Common Elements located in any of the other Units or elsewhere on the Property which serve such Unit Owner's Unit and all Units. Each Unit shall be subject to an easement in favor of all Unit Owners to use, maintain, repair, alter and replace all Common Elements located in such Unit or elsewhere on the Property which serve other Units or the Property. All easements and rights of access described in this section shall be exercised by the Condominium Board on behalf of all Unit Owners. The Condominium Board shall have an easement and a right of access to each Unit and to the Common Elements, to inspect the same, to remove violations therefrom and to install, operate, maintain, repair, alter, rebuild, restore and replace any of the Common Elements located in, over, under, through, adjacent to, or upon the same. Each Unit and the Common Elements shall be subject to such easement and right of access in favor of the Condominium Board incident to the performance of its rights and obligations under the Condominium Documents. Such right of access shall be exercisable by or on behalf of the Condominium Board in such a manner as will not unreasonably interfere with the use of the Units for their permitted purposes. Such entry shall be permitted on reasonable prior notice based on the nature of the repair or replacement but in no event on less than 2 days' notice, except that no notice will be necessary in the case of an "emergency" (i.e., a condition requiring repair or replacement immediately necessary for the preservation or safety of the Building or for the safety of occupants of the Building, or other persons, or required to avoid the suspension of any necessary service in the Building). Plans and specifications with respect to any such proposed work shall be submitted by the Unit Owner who has requested that the Condominium Board exercise any such easement or right of access, to the Unit Owner whose Unit is to be accessed and all work is to be prosecuted diligently to completion. Any of the foregoing actions proposed to be taken by a Residential Unit Owner other than Sponsor may be done only with prior written approval of the Condominium Board in its sole discretion and, until a final certificate of occupancy for the Building is obtained, Sponsor, and upon such other conditions as the Condominium Board in its sole discretion shall impose in accordance with the provisions of the Declaration and the By-Laws. Notwithstanding any other provision of this Declaration, the By-Laws or the Rules and Regulations, any alterations carried out in connection with the easements granted hereinabove shall be such that neither the configuration nor the usable area of the affected Unit shall be materially adversely affected.

11.2 The following easements shall be applicable, notwithstanding anything to the contrary contained in the Declaration or in the By-Laws:

11.2.1 The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit Owners, and the licensees and invitees of the foregoing, who are physically handicapped, will have a right of access through the residential lobby to use the elevators for the limited purpose of entering and leaving the portion of the cellar level of the Building which comprises a Commercial Unit.

11.2.2 The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Units, and the licensees and invitees of the foregoing, shall have a right of access through the portion of the hallway on the first floor of the Building for the purpose of having secondary means of egress from the Building in case of an emergency.

11.2.3 The Commercial Unit Owner, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit, and the authorized agents of the tenants of the Commercial Units will have a right of access through the residential lobby, to use the elevator to gain access to the cellar for the purpose of installing, maintaining, replacing and effecting repairs to any equipment or machinery servicing the Commercial Units and located in the cellar.

11.2.4. The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit Owners, and the authorized agents of the tenants of the Commercial Unit Owners will have a right of access through the residential lobby, which is a Residential Common Element, to use the westerly elevator (Elevator 1), which is a Residential Common Element, and through the 33rd floor common area hallway, to the staircases leading from the 33rd floor of the Building to the 34th floor mechanical room and/or roof of the Building, for the purpose of installing, maintaining, replacing and effecting repairs to any equipment servicing the Commercial Units located on the roof or in the 34th floor mechanical room.

11.2.5 The Commercial Unit Owners and their tenants shall have an easement for so long as the Condominium shall remain in existence, to use the sidewalks appurtenant to such Commercial Unit, but not the Plaza, for any purposes permitted by Law, including, without limitation, food and beverage service and the placement of outdoor seating and tables. The use of such easement is subject to the reasonable rules and regulations promulgated by the Condominium Board, and compliance with all applicable Law.

All such rights of access mentioned above shall be exercised in accordance with Law, with reasonable care and in the presence of either the Resident Manager/porter or a representative of the Managing Agent if required by the Managing Agent for the Building.

11.3 Sponsor, for so long as it shall own any Unsold Residential Unit, the Commercial Unit Owner(s) with respect to the Commercial Units, and the Condominium Board, on behalf of all Unit Owners, shall have the right to grant such additional electric, gas, steam, cable television, telephone, water, storm drainage, sewer and other utility easements in, or to relocate any existing utility easements to, any portion of the Property as Sponsor, the Commercial Unit Owner(s) or the Condominium Board, as the case may be, shall deem necessary or desirable for the proper operation and maintenance of the Building or any portion thereof, or for the general health or welfare of the owners, tenants and occupants of the appropriate Units, provided that the granting of such additional utility easements or the relocation of existing utilities will not prevent or unreasonably interfere with the normal conduct of business carried on within the Commercial Unit or with the use of the Residential Units for their permitted purposes, and shall not result in

the imposition of any mechanic's lien against any of the Units, subject however, to the provisions and requirements of the Notice of Certification. Any utility company and its employees and agents shall have the right of access to each Unit or the Common Elements in furtherance of such easement, provided such right of access shall be exercised in such manner as shall not unreasonably interfere with the normal conduct of business carried on within the Commercial Unit or with the use of the Residential Units or the Plaza for their permitted purposes. Notwithstanding any other provision of this Declaration, the By-Laws or the Rules and Regulations, any alterations carried out in connection with the easements granted hereinabove shall be such that neither the configuration nor the usable area of the affected Unit shall be materially adversely affected.

11.4 Sponsor and its contractors, employees and agents for so long as Sponsor shall own any Unsold Unit, shall have an easement for ingress and egress through all of the Common Elements in order to make alterations, additions, or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon Unsold Units.

11.5 Each Unit and the Common Elements shall have easements of subjacent support and necessity, and the same shall be subject to such easements in favor of all of the other Units and the Common Elements.

11.6 Subject to the terms of the Notice of Certification, the By-Laws and the Rules and Regulations, and subject to the last two sentences of this Section 11.6, but without the prior consent of the Condominium Board, each Commercial Unit Owner, for its benefit, and the benefit of the tenants of the Commercial Units, shall have an easement to: (i) install, operate, maintain, repair, alter, rebuild, restore and replace the Commercial Unit, and any pipes, wires, ducts, flues, vents, cables, conduits or other lines, equipment or facilities forming a part of or relating to the Unit, located in, over, under, through or upon the Common Elements or elsewhere on the Property; and (ii) install pipes, wires, ducts, flues, vents, cables, conduits or other lines, equipment or facilities in connection with the design, construction, use, operation and/or occupancy of such Unit in, over, under, through or upon Common Elements, including but not limited to, penetrating floor slabs, or attaching flues, ducts or mechanical equipment to the exterior of the Building, or elsewhere on the Property; provided that access to the Common Elements or other portions of the Property in furtherance of such easement shall be exercised in such a manner as will not unreasonably interfere with the use of the Common Elements and such other portions of the Property for their permitted purposes. The relocation of any pipes, wires, ducts, flues vents, cables, conduits or other lines, equipment or facilities shall require the prior written consent of the Condominium Board.

11.7 The Condominium and Building shall be designated and known as 172 Madison Avenue Condominium. Sponsor shall own and control all rights and interest, appurtenant to the name of the Condominium and/or the Building. Only Sponsor shall have the right to change or assign the name of the Condominium subject to the consent of the Condominium Board. Sponsor shall have an exclusive easement for so long as the Condominium shall remain in existence to erect, maintain, repair and replace, from time to time, a plaque and/or sign ("Plaque"), without charge, on the exterior portion of the Building setting forth the name and address of Sponsor, or such other information as the Sponsor desires in its sole discretion. Only Sponsor shall the right to remove the Plaque, unless mandated by Law.

11.8 If (a) any portion of the Common Elements encroaches upon any Unit or upon any other portion of the Common Elements, (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements or (c) any such encroachment shall hereafter occur as a result of (i) the settling or shifting of the Building, (ii) any alteration, repair or restoration of the Common Elements made by or with the consent (when required by the By-Laws) of the Condominium Board, or made by Sponsor in accordance with this Declaration or the By-Laws or

(iii) any alteration, repair or restoration of the Building (or any portion thereof) or of any Unit or Common Element after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same as long as the Building shall stand.

11.9 In addition to the specific easements set forth in this Article 11 and in Article 10 hereof, the Property and every portion thereof shall be subject to all easements made with the City of New York or with any utility companies or other Persons in effect prior to the recording of this Declaration.

11.10 If any of the parties granted easements herein exercise their rights under such easement, then they shall, as applicable, indemnify and hold the Condominium Board, the Unit Owners, and Sponsor (if Sponsor is not the exercising party) harmless from any actual out-of-pocket cost, loss, damage, expense, claim, or liability arising, directly or indirectly, from the exercise of such easement.

## ARTICLE 12

## ALTERATIONS, ADDITIONS, IMPROVEMENTS AND CHANGES TO UNSOLD RESIDENTIAL UNITS AND THE COMMERCIAL UNITS

12.1 Except to the extent prohibited by Law, Sponsor shall have the right, without the vote or consent or approval of the Condominium Board, other Unit Owners, the Selling Agent, or the Managing Agent, to:

(a) make alterations, additions or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon Unsold Units and their appurtenant Limited Residential Common Elements, if any;

(b) change the layout of, or number of rooms in, any Unsold Units;

(c) change the size and/or number of Unsold Units by (w) subdividing one or more Unsold Units into two or more separate Units, (x) combining separate Unsold Units (including those resulting from such subdivision or otherwise) into one or more Units, (y) altering the boundary walls between any Unsold Unit or, or (z) otherwise, including incorporating Residential Common Elements (such as a portion of a hallway used exclusively by the occupant(s) of such Unsold Residential Unit) which exclusively benefit an Unsold Residential Unit into such Unit; and

(d) if appropriate, reapportion among the Unsold Units affected by such change in size or number pursuant to the preceding clauses their Common Interest and Residential Common Interest provided, however, that, with respect to any such alteration, addition, improvement, or change in, to, of, or upon any Unsold Unit:

(i) no physical modifications shall be made to any other Unit and the Common Interest and Residential Common Interest (other than Unsold Units), as the case may be, or interior dimensions of any other Units (other than Unsold Units) shall not be changed by reason thereof, unless the owner of such other affected Unit shall consent thereto;

(ii) Sponsor shall comply with Law and shall agree to hold the Condominium Board and all other Unit Owners harmless from any liability arising therefrom; and

(iii) such alteration, addition, improvement, or change shall not jeopardize the soundness or structural integrity of any part of the Building.

Notwithstanding the foregoing, however, the aggregate amounts of both the Common Interests of all the Units and the Residential Common Interests of all Residential Units shall always remain at 100%, and no reapportionment of the Common Interest or Residential Common Interest appurtenant to any Unit, as the case may be, shall be made unless there is first delivered to the Condominium Board a written certification stating that the new Common Interest and, if applicable, Residential Common Interest of the affected Unit has been based upon the factors set forth in Article 8 hereof. The certification referred to in the preceding sentence shall be delivered, at Sponsor's election, by Sponsor, the Selling Agent, the Managing Agent, or any other Person reasonably acceptable to the Condominium Board. The provisions of this Article 12 may not be added to, amended, modified, or deleted without the prior written consent of Sponsor. By written permission of the Condominium Board which permission, shall not be unreasonably withheld, any other Unit Owner, may be given with respect to his Unit, the same rights and be subject to the same limitations and conditions as are set forth in this Article with respect to Unsold Units. Notwithstanding the other provisions of this Article, no reapportionment of the Common Interest appurtenant to any Unit shall be made unless there is first delivered to the Condominium Board a written certification stating that the new Common Interest of the affected Unit has been based upon the factors set forth in Article 8 hereof. The certification referred to in the preceding sentence shall be delivered, at Sponsor's election, by Sponsor, the Managing Agent or any other Person reasonably acceptable to the Condominium Board. The provisions of this Article may not be added to, amended, modified or deleted without the prior written consent of Sponsor.

12.2 Except to the extent prohibited by Law, each Commercial Unit Owner shall have the right, without the consent or approval of the Condominium Board, the Unit Owners, the Selling Agent, or the Managing Agent, with respect to the Commercial Unit, respectively, to:

(a) make alterations, additions, or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon the Commercial Unit;

(b) change the use of the Commercial Unit pursuant to Law;

(c) change the layout of, or number of rooms therein;

(d) change the size of the Commercial Unit by (w) subdividing the Commercial Unit into 2 or more separate Units, (x) combining 2 or more Commercial Units resulting from such subdivision or otherwise into 1 or more Commercial Units, (y) altering the boundary walls between any 2 or more separate Units resulting from such subdivision or combination, or (z) otherwise including and incorporating Common Elements which exclusively benefit any one of such Commercial Units into such Unit;

(e) if appropriate, reapportion among the Units affected by such change in size or number pursuant to the preceding clause (c) their respective Common Interests; provided, however, that, with respect to any such alteration, addition, improvement, or change in, to, of, or upon the Unit:

(i) no physical modification shall be made to any other Unit, and the Common Interest or interior dimensions of any other Unit shall not be changed by reason thereof, unless the owner of such other affected Unit shall consent thereto;

(ii) the Commercial Unit Owner(s) shall comply with Law;

(iii) the Commercial Unit Owner(s) shall agree to hold the Condominium Board and all other Unit Owners harmless from any liability arising therefrom; and

(iv) such alteration, addition, improvement, or change shall not jeopardize the soundness or structural integrity of any part of the Building or the safety of any tenant or other persons at the Property; and

(f) penetrate any concrete floor slab within the Commercial Unit, provided same does not impair the structural integrity of the Building.

In the event of the subdivision of either Commercial Unit into separate Units, the owner of each such newly created Unit shall have all the rights, privileges and benefits, and shall be subject to all the obligations of the original Unit Owner, as provided in this Declaration, the By-Laws and the Rules and Regulations; provided, however, that the owners of such newly created Units shall continue collectively to be entitled to designate one (1) member to the Condominium Board.

Notwithstanding the foregoing, however, the aggregate amounts of the Common Interest of all the Units and the Residential Common Interests of all Residential Units shall always remain at 100%, and no reapportionment of the Common Interest appurtenant to the Commercial Unit shall be made unless there is first delivered to the Condominium Board a written certification stating that the new Common Interest has been based upon the factors set forth in Article 8 hereof. The certification referred to in the preceding sentence shall be delivered, at such Unit Owner's election, by the Commercial Unit Owner, the Selling Agent, the Managing Agent, or any other Person reasonably acceptable to the Condominium Board. The provisions of this Article 12 may not be added to, amended, modified, or deleted without the prior written consent of the Commercial Unit Owner(s) as applicable.

## ARTICLE 13

## ACQUISITION OF UNIT BY THE CONDOMINIUM BOARD

If (a) any Unit Owner surrenders his Unit, together with its Appurtenant Interests to the Condominium Board pursuant to the terms of the By-Laws or Section 339-x of the Condominium Act, (b) the Condominium Board, pursuant to the By-Laws or otherwise, either acquires or leases a Unit, together with its Appurtenant Interests, or purchases a Unit, together with its Appurtenant Interests, at a foreclosure or other similar sale, then, in all such events, title to any such Unit and such Appurtenant Interests shall be held by the Condominium Board or its designee, corporate or otherwise, if a Residential Unit, on behalf of all Residential Unit Owners, in proportion to their respective Common Interests and, if a Commercial Unit on behalf of all Unit Owners in proportion to their respective Common Interests. Any lease or sublease of any Unit leased or subleased by the Condominium Board or its designee shall be held by the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, in proportion to their respective Common Interests.

## ARTICLE 14

## POWER OF ATTORNEY TO SPONSOR AND THE CONDOMINIUM BOARD

14.1 Each Residential Unit Owner, by acceptance of a deed or otherwise succeeding to title to a Residential Unit, shall be deemed to have irrevocably nominated, constituted and appointed as such Residential Unit Owner's attorney-in-fact, coupled with an interest and with power of substitution, (i) Sponsor, to amend the Condominium Documents pursuant to the terms

of Article 18 hereof, and (ii) the Persons who shall from time to time constitute the Condominium Board, jointly, to:

(a) employ counsel for purposes of protesting the New York City real property tax assessments with the Tax Commission and instituting tax certiorari proceedings on behalf of the Residential Unit Owners for the reduction of the assessed valuation of their Residential Units, such Residential Unit Owners agreeing not to protest said assessments and bring such tax certiorari proceedings at their own initiative and on their own behalf;

(b) acquire or lease any Residential Unit, together with its Appurtenant Interests whose owner desires to sell, convey, transfer, assign, lease, or surrender the same or acquire any Residential Unit, together with its Appurtenant Interests that becomes the subject of a foreclosure or other similar sale, in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Residential Unit Owners;

(c) convey, sell, lease, mortgage, or otherwise deal with (but not to vote the Common Interest, appurtenant to) any Residential Unit so acquired or to sublease any Residential Unit so leased; and

(d) execute, acknowledge and deliver (1) any declaration or other instrument affecting the Condominium that the Condominium Board deems necessary or appropriate to comply with any law applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Condominium or (2) any consent, covenant, restriction, easement, or declaration, or any amendment thereto, affecting the Condominium or the Common Elements that the Condominium Board deems necessary or appropriate or (3) any protests and tax certiorari proceeding affecting Residential Units.

14.2 In confirmation of the foregoing power of attorney, each Residential Unit Owner, upon the request of either Sponsor or the Condominium Board, shall duly execute, acknowledge and deliver to the requesting party, for recording in the Register's Office, a Unit Power of Attorney in the form set forth as an Exhibit E to this Declaration, or in the form otherwise required by Sponsor and/or the Condominium Board.

## ARTICLE 15

## TERMINATION OF CONDOMINIUM

The Condominium shall continue and the Property shall not be subject to an action for partition (unless terminated by casualty loss, condemnation or eminent domain, as more particularly provided in the By-Laws) until such time as withdrawal of the Property from the provisions of the Condominium Act is authorized by a vote of eighty percent (80%) in number and in Common Interest of all Residential Unit Owners and all Commercial Unit Owners. Such vote shall not be effective, however, unless written consents are obtained from the Mortgage Representatives, if any. In the event said withdrawal is authorized as aforesaid, but only in such event, 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 Unit Owners in proportion to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid from out of his share of such net proceeds all liens on his Unit (other than mortgages which are not Permitted Mortgages), in the order of priority of such liens.

## ARTICLE 16

## COVENANT OF FURTHER ASSURANCES

16.1 Any Person who is subject to the terms of this Declaration, whether such Person is a Unit Owner, a lessee or sublessee of a Unit Owner, an occupant of a Unit, a member or officer of the Condominium Board or otherwise, shall, upon prior reasonable written request at the expense of any such other Person requesting the same, execute, acknowledge and deliver to such other Person such instruments, in addition to those specifically provided for herein, and take such other action as such other Person may reasonably request to effectuate the provisions of this Declaration or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

16.2 If any Unit Owner who is subject to the terms of this Declaration fails or refuses, within 10 days after request therefor, either (i) to execute, acknowledge or deliver any instrument, or to take any action which the Unit Owner is required to execute, acknowledge and deliver or to take pursuant to this Declaration, or (ii) to deliver a written notice to the Person requesting such execution, acknowledgement or delivery, and to the Condominium Board stating the reasons why such Unit Owner refuses to execute, acknowledge or deliver such instrument or take such action, then the Condominium Board is hereby authorized as attorney-in-fact for such Unit Owner, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action in the name of such Unit Owner, and such document or action shall be binding on such Unit Owner.

16.3 If any Unit Owner who is subject to the terms of this Declaration fails or refuses, within 10 days after request therefor, either (i) to execute, acknowledge or deliver any instrument, or to take any action which such Unit Owner is required to execute, acknowledge and deliver pursuant to this Declaration at the request of Sponsor or (ii) to deliver a written notice to Sponsor and to the Condominium Board stating the reasons why such Unit Owner refuses to execute, acknowledge or deliver such instrument or take such action, then Sponsor is hereby authorized, as attorney-in-fact for such Unit Owner, coupled with an interest, to execute, acknowledge and deliver such instrument or to take such action in the name of such Unit Owner, and such document or action shall be binding on such Unit Owner.

## ARTICLE 17

## COVENANTS RUNNING WITH THE LAND

17.1 All provisions of this Declaration, the By-Laws and the Rules and Regulations which are annexed hereto and made a part hereof, including, without limitation, the provisions of this Article, shall to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in or for the benefit of the general public. All present and future owners, tenants, subtenants, licensees, and other 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 of a lease or the entering into 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 or use and occupancy agreement thereof.

17.2 If any provision of this Declaration or the By-Laws is invalid under, or would cause this Declaration and 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 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 provision as a covenant running with the Land. If any provision which is necessary to cause this Declaration and 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 part of this Declaration or the By-Laws, as the case may be, for the purposes of submitting the Property to the provisions of the Condominium Act.

17.3 Subject to Section 17.2, if this Declaration and the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the provisions of this Declaration and the By-Laws shall nevertheless be valid and binding upon and 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 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 provision as a covenant running with the Land.

## ARTICLE 18

## AMENDMENTS TO THIS DECLARATION

18.1 Subject to the provisions contained herein or in the By-Laws with respect to amendments, modifications, additions or deletions affecting Sponsor, or any Unsold Units, any provision of this Declaration may be added to, amended, modified or deleted by the vote of at least 66 2/3% in number and in Common Interest of all Unit Owners having voting rights taken in accordance with the provisions of the By-Laws; provided, however, that the Common Interest appurtenant to each Unit as expressed in this Declaration shall not be altered without the written consent of all Unit Owners directly affected. No such amendment, modification, addition or deletion shall be effective until recorded in the Register's Office. Subject to the provisions contained herein or in the By-Laws with respect to amendments, modifications, additions or deletions affecting Sponsor, or any Unsold Units, any such amendment, modification, addition or deletion shall be executed by either the Condominium Board as attorney-in-fact for the Unit Owners, coupled with an interest, and the Condominium Board is hereby authorized by such Unit Owners so to act as their attorney-in-fact. Subject to the rights of Sponsor under Articles 9, 10, 11, 12, 13 and 14 of this Declaration, Articles 9, 10, 11, 12, 13 and 14 of this Declaration may not be amended, modified, added to or deleted unless 80% in number and in Common Interest of all Unit Owners having voting rights affected thereby, approve such amendment, modification, addition or deletion in the manner set forth above. Article 27 of this Declaration cannot be amended without the consent of Sponsor.

18.2 Sponsor shall have the right, at its sole cost and expense and without the vote or consent of any other Unit Owners, or the Condominium Board, to execute, acknowledge and record (or, at Sponsor's sole option, to require the Condominium Board or any other Unit Owners to execute, acknowledge and record) in the Register's Office and elsewhere, if required by Law, one or more amendments to this Declaration (including, Exhibit B hereto), together with such documents, plans and maps as Sponsor deems appropriate to effectuate the same:

(i) to reflect any changes in Unsold Units or a Commercial Unit and/or the reapportionment of the Common Interest of the affected Unsold Units or a Commercial Unit resulting therefrom made by Sponsor in accordance with the terms of Article 12 hereof; or

(ii) required by (x) an Institutional Lender designated by Sponsor to make a loan secured by a mortgage on any Unit, (y) any governmental agency having regulatory jurisdiction over the Condominium, or (z) any title insurance company selected by Sponsor to insure title to any Unit,

provided, however, that any amendment made pursuant to the terms of subparagraph (i) or (ii) of this Section shall not (1) change the Common Interest of any Unit other than a Unit owned by Sponsor, or (2) require a physical modification of any Unit other than a Unit owned by Sponsor, or (3) adversely affect the priority or validity of the lien of any purchase money mortgage or any mortgage held by an Institutional Lender unless the owner of such affected Unit (in the event described in subparagraph (1) or (2) of this Section) or the holder of such mortgage (in the event described in subparagraph (3) of this Section) shall consent thereto by joining in the execution of such amendment.

18.3 A Commercial Unit Owner shall have the right, at its sole cost and expense and without the vote or consent of any other Unit Owners, or the Condominium Board, to require the Condominium Board to execute, acknowledge and record in the Register's Office or elsewhere, if required by Law, one or more amendments to this Declaration (including, to Exhibit B hereto), together with such documents, plans and maps as the Commercial Unit Owner deems appropriate to effectuate the same to reflect any changes in the Commercial Unit and/or the reapportionment of the Common Interest of the Commercial Unit resulting from changes made to the Commercial Unit by the Commercial Unit Owner in accordance with the terms of Article 12 hereof; provided, however, that any such amendment shall not (1) change the Common Interest or Residential Common Interest of any other Unit, or (2) require a physical modification of any other Unit, or (3) adversely affect the priority or validity of the lien of any mortgage held by an Institutional Lender.

18.4 Any amendment to this Declaration may be executed; (i) if on behalf of Sponsor pursuant to the terms of Section 18.2 hereof, by any principal of Sponsor, or, (ii) if on behalf of the Unit Owners or by the Condominium Board, by any officer of the Condominium, or (iii) if on behalf of a Commercial Unit Owner pursuant to the terms of Section 18.3 hereof, by such Commercial Unit Owner. If the amendment requires the approval of a specific percentage of Unit Owners pursuant to the terms of this Declaration or the By-Laws, then there shall be attached to such amendment an original executed Secretary's Certificate, certifying that the requisite number and percentage of Unit Owners approved the amendment at a duly constituted meeting or (when permitted in this Declaration or the By-Laws) in writing without a meeting, in which Certificate shall be described the number and percentage of Unit Owners so consenting and (if voted upon at a meeting) the date and time of the meeting.

18.5 Notwithstanding anything contained in the Condominium Documents to the contrary, but subject to any limitation imposed by the Condominium Act, no amendment to the Condominium Documents shall be adopted for so long as Sponsor or an affiliate of Sponsor owns

any Unit if the same would (i) unreasonably interfere with the sale, lease, or other disposition of a Unit owned by Sponsor, (ii) abridge, modify, suspend, eliminate, or otherwise affect any right, power, easement, privilege, or benefit granted to Sponsor, or (iii) impose any discriminatory charge or fee against Sponsor. Notwithstanding anything contained in the Condominium Documents to the contrary, but subject to any limitation imposed by the Condominium Act, no amendment to the Condominium documents shall be adopted if same would (i) unreasonably interfere with the sale, lease, or other disposition of the Commercial Unit(s) by the Commercial Unit Owner(s), (ii) abridge, modify, suspend, eliminate, or otherwise affect any right, power, easement, privilege, or benefit granted to the Commercial Unit Owner(s), or (iii) impose any discriminatory charge or fee against the Commercial Unit Owner(s).

18.6 Notwithstanding anything to the contrary, an amendment to the Declaration and Floor Plans reflecting a combination of Units or a subdivision of a Unit, which combination or subdivision has been approved by the Condominium Board, shall not require the consent of Unit Owners.

18.7 The provisions of this Article 18 may not be modified, amended, added to or deleted, in whole or in part, without the consent of Sponsor or an affiliate of Sponsor if the same relate to Sponsor and without the consent of the applicable Commercial Unit Owner if the same relate to a Commercial Unit Owner.

## ARTICLE 19

## CONSENTS BY SPONSOR

When the consent, approval, satisfaction, or permission of Sponsor is required under this Declaration or the By-Laws, such consent, approval, satisfaction, or permission shall not be required when Sponsor no longer owns any Units.

## ARTICLE 20

## PERSON TO RECEIVE SERVICE

The Secretary of State of the State of New York is hereby designated to receive service of process in any action which may be brought against the Condominium.

## ARTICLE 21

## INCORPORATION BY REFERENCE

The terms, covenants, conditions, descriptions and other information contained in (i) the property description annexed hereto as Exhibit A; (ii) the description of the Units annexed hereto as Exhibit B; (iii) the table of definitions annexed hereto as Exhibit C; (iv) the By-Laws annexed hereto as Exhibit D; (v) the Unit Power of Attorney annexed hereto as Exhibit E; and (vi) the Floor Plans are, by this reference, each incorporated herein and made a part of this Declaration as if set forth at length in the text hereof.

## ARTICLE 22

## 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.

## ARTICLE 23

## SEVERABILITY

Subject to the provisions of Section 17.2 and 17.3 of Article 17 hereof, if any provision of the Condominium Documents is invalid or unenforceable as against any Person or under certain circumstances, the remainder of the Condominium Documents and the applicability of such provision to other Persons or circumstances shall not be affected thereby. Each provision of the Condominium Documents shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by Law. Any conflict between any provisions of the Condominium Documents and the Condominium Act, or any questions regarding the interpretation of any of the Condominium Documents, shall be governed by the Condominium Act.

## ARTICLE 24

## SUCCESSORS AND ASSIGNS

The rights and/or obligations of Sponsor as set forth herein shall inure to the benefit of and be binding upon any successor or assign or designee of Sponsor or, with the consent of Sponsor, any transferee of all then Unsold Units. Sponsor shall have the right, at any time, in its sole discretion, to assign or otherwise transfer its interest therein, whether by merger, consolidation, lease, assignment, or otherwise.

## ARTICLE 25

## CAPTIONS

The index hereof and the captions herein inserted are included only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

## ARTICLE 26

## CERTAIN REFERENCES

26.1 A reference in this Declaration 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.

26.2 The terms "herein," "hereof" or "hereunder" or similar terms used in this Declaration refer to this entire Declaration and not to the particular provision in which the terms are used, unless the context otherwise requires.

26.3 Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of this Declaration.

## ARTICLE 27

## PROVISIONS REGARDING MORTGAGES ENCUMBERING RESIDENTIAL UNITS OTHER THAN UNSOLD RESIDENTIAL UNITS

27.1 The following provisions apply to Permitted Mortgagees whose mortgages encumber Residential Units which are not Unsold Residential Units ("Sold Residential Units"):

(i) Amendments to the Declaration that are of a material adverse nature to Permitted Mortgagees of Sold Residential Units will require the written consent of Permitted Mortgagees that represent at least 51% of the Sold Residential Units that are subject to Permitted Mortgages who have provided the Condominium with written notice of their respective Permitted Mortgages.

(ii) The vote to terminate the Condominium, as provided for in Article 15 of this Declaration, shall also require the written consent of Permitted Mortgagees that represent at least 51% of the Sold Residential Units that are subject to Permitted Mortgages who have provided the Condominium with written notice of their respective Permitted Mortgages.

(iii) Any required consent and/or approval required from a Permitted Mortgagee will be deemed given if such Permitted Mortgagee, who has provided the Condominium with written notice of its Permitted Mortgage, fails to submit its written response to the Condominium within 60 days after such Permitted Mortgagee receives notice of the applicable proposal requesting consent and/or approval from the Condominium, provided the applicable proposal from the Condominium was delivered by certified or registered mail with a return receipt requested.

27.2 Any written notice required to be given to the Condominium by a Permitted Mortgagee shall be deemed valid only (i) if delivered by certified or registered mail with a return receipt requested to the Condominium, attention "President, Board of Managers, 172 Madison Avenue, New York, New York 10016, or to such other address as the Condominium may require, provided written notice of such other address is sent to a Permitted Mortgagee by the Condominium; and (ii) with a copy delivered by certified or registered mail with a return receipt requested to Sponsor, c/o Madison 33 Owner LLC, 461 Park Avenue South, Suite 200, New York, New York 10016.

IN WITNESS WHEREOF, Sponsor has caused this Declaration to be executed as of the ____ day of _____, 20___.

**SPONSOR:**

MADISON 33 OWNER LLC

By:_____
Name:
Title:

STATE OF NEW YORK )
) ss:
COUNTY OF )

On the _____ day of _____, in the year 20___ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

172 MADISON AVENUE CONDOMINIUM

172 MADISON AVENUE

NEW YORK, NEW YORK

TAX LOT 17:

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

BEGINNING at a point on the Northerly line of 33rd Street, distant 95 feet Westerly from the corner formed by the intersection of the Westerly line of Madison Avenue with the Northerly line of 33rd Street;

RUNNING THENCE Westerly along the Northerly line of 33rd Street, 25 feet;

THENCE Northerly and parallel with Madison Avenue, 108 feet 8-3/4 inches;

THENCE Easterly and parallel with 33rd Street, 25 feet;

THENCE Southerly and parallel with Madison Avenue, 108 feet 8-3/4 inches to the point or place of BEGINNING.

TAX LOT 18:

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

BEGINNING at the corner formed by the intersection of the Northerly side of East 33rd Street with the Westerly side of Madison Avenue;

RUNNING THENCE Northerly along the Westerly side of Madison Avenue, 49 feet 4 1/2 inches;

THENCE Westerly and parallel with East 33rd Street 95 feet;

THENCE Southerly and parallel with Madison Avenue, 49 feet 4 1/2 inches to the Northerly side of East 33rd Street;

THENCE Easterly along the Northerly side of East 33rd Street, 95 feet to the point or place of BEGINNING.

TAX LOT 21:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the Westerly side of Madison Avenue, distant 49 feet 4 1/2 inches Northerly from the corner formed by the intersection of the Westerly side of Madison Avenue with the Northerly side of 33rd Street;

RUNNING THENCE Northerly along the Westerly side of Madison Avenue 34 feet 8 inches;

THENCE Westerly parallel with 33rd Street 95 feet;

THENCE Southerly parallel with Madison Avenue, 34 feet 8 inches; and

THENCE Easterly and parallel with 33rd Street, 95 feet to the point or place of BEGINNING.

## EXHIBIT B

## DESCRIPTION OF THE UNITS

**172 MADISON AVENUE CONDOMINIUM**
**172 MADISON AVENUE**
**NEW YORK, NEW YORK 10016**

| Unit Designation | # of Rooms Bedrooms/ Baths | Location in Portion of Bldg. Facing Direction Set Forth Below | Approx. Area Sq. Ft. | Approx. Sq. Ft. of Limited Residential Common Elements | Tax Lot No. | Percentage of Common Interest | Percentage of Residential Common Interest | Common Elements to which Unit has Immediate Access |
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W -West
E - East
N -North
S - South

H – Hallway
EL–Elevator
ST - Stairway

T – Terrace

# EXHIBIT C

## DEFINITIONS

For convenience of presentation, general definitions of certain of the terms used in the Plan are set forth below, which definitions are subject in most cases to the more particular definitions of such terms set forth in the Declaration, the By-Laws and the Condominium Act. Other capitalized terms not defined herein shall have the meanings ascribed to them throughout Part I and Part II of the Plan.

"Adverse Effect", or "adverse effect", as used in the Condominium Documents, shall mean, with respect to any action or proposed change and with respect to any Unit Owner or Unit Owners, that such action or change could, if realized, (i) increase the Common Charges payable by such Unit Owner or Unit Owners by more than 25% per year, or (ii) materially and permanently interfere with such Unit Owner's access to his Unit, or (iii) decrease the useable square footage of a Unit by 5%.

"Appurtenant Interest" shall mean, with respect to any Unit, the undivided interest of the owner thereof, pursuant to the terms of Section 339-x of the Condominium Act, in and to: (i) the Common Elements; (ii) any other Units owned or leased at the time in question by the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners; (iii) any proceeds of the sale or lease of Units of the nature described in subdivision (ii) above; and (iv) any other assets of the Condominium.

"Building" shall mean the Building located at 172 Madison Avenue, New York, New York, in which the sixty nine (69) Residential Units and two (2) Commercial Units of the Condominium will be located.

"Buildings Department" or "Department of Buildings" shall mean the Department of Buildings of The City of New York or any successor agency.

"By-Laws" shall mean the By-Laws governing the operations of the Condominium, which are set forth as Exhibit D to the Declaration, as the same may be amended from time to time.

"Closing of Title" or "Closing" or "Closing Date" shall mean the date upon which, among other things, a Unit and its appurtenant Common Interest is conveyed to a Purchaser by the delivery by Sponsor to a Purchaser of a deed upon payment by a Purchaser to Sponsor of the purchase price for the Unit.

"Commercial Unit(s)" shall mean the two (2) Commercial Units in the Building designated as such in the Declaration together with their respective Common Interests.

"Commercial Unit Owner" shall mean the Owner of a Commercial Unit. To the extent the Commercial Unit is further divided, a Commercial Unit Owner shall refer to all owners of Units resulting from the subdivision of the applicable Commercial Unit.

"Common Charges" shall mean the charges allocated and assessed by the Condominium Board to the Unit Owners, pro-rata, in accordance with their respective Common Interests (except as otherwise provided in the Declaration or in the By-Laws or in the First Year's Budget) to meet the Common Expenses.

"Common Elements" shall mean the Property, other than the Units themselves, being comprised of the General Common Elements, Residential Common Elements and the Limited Residential Common Elements.

"Common Expenses" shall mean all costs and expenses to be incurred generally by the Unit Owners pursuant to the Declaration and/or the By-Laws in connection with: (i) the repair, maintenance, replacement, restoration and operation of, and any alteration, addition, or improvement to, the Common Elements; (ii) the establishment and/or maintenance of a general operating reserve, or a reserve fund for working capital, for replacements with respect to the Common Elements, or to make up any deficit in the

Common Charges for any prior year(s); (iii) generally, the conduct of the affairs of the Condominium; and (iv) the amount of real estate taxes for the Property due and owing prior to the date the Units are separately assessed for real estate tax purposes. Common Expenses shall be either General Common Expenses attributable to all Unit Owners or Residential Common Expenses attributable to Residential Unit Owners only.

"Common Interest" shall mean the proportionate undivided interest, expressed as a numerical percentage, in the Common Elements appurtenant to each Unit, as determined in accordance with the Declaration. The total of all Common Interest percentages appurtenant to all Units equals 100%. The Common Interest attributable to each Unit is set forth on Exhibit B annexed to the Declaration.

"Condominium" shall mean 172 Madison Avenue Condominium, which was established pursuant to the terms of the Declaration and which is governed pursuant to the terms of the By-Laws.

"Condominium Act" shall mean the New York Condominium Act, as amended from time to time, and presently found in the New York Real Property Law, Article 9-B.

"Condominium Board" shall mean the board of managers of the Condominium who will manage the affairs of the Condominium.

"Condominium Documents" shall mean the Declaration, the By-Laws and the Rules and Regulations.

"Construction Lender" shall mean Deutsche Bank Trust Company Americas as agent for German American Capital Corporation and other lenders signatory to a Building Loan Agreement, dated May 6, 2014, between Madison 33 Owner LLC and the above-named financial institutions. For so long as the Construction Loan or any part thereof is unpaid, Construction Lender shall be a Permitted Mortgagee and Mortgage Representative.

"Construction Loan" shall mean the mortgage loan in the amount of $141,900,000.00, currently held by Construction Lender, as same may be refinanced, assigned, or modified.

"Declaration" shall mean the instrument creating the Condominium, as the same may be amended from time to time.

"Deposit" shall mean all deposits, additional deposits, down-payments, advances or payments made by Purchasers prior to the closing of each individual transaction.

"Effective Date" shall mean the date upon which Sponsor has declared the Plan effective pursuant to the provisions of Part 20 of Title 13 NYCRR.

"Facilities" shall mean all personal property and fixtures now or hereafter existing in, on, or under the Land or the Building and either existing for the common use of the Units or the Unit Owners or necessary or convenient for the existence, maintenance, or safety of the Property. For purposes of illustrating the broad scope of such term and without intention to limit the generality of the foregoing in any respect, the term "Facilities" shall include all systems, equipment, all pool equipment, apparatus, convectors, radiators, heaters, converters, heat exchangers, mechanisms, devices, machinery, induction units, fan coil units, motors, pumps, controls, tanks, tank assemblies, installations, condensers, compressors, fans, dampers, blowers, thermostats, thermometers, coils, vents, sensors, shut off valves, other valves, gongs, panels, receptacles, outlets, relays, alarms, sprinkler heads, electric distribution facilities, wiring, wireways, switches, switchboards, circuit breakers, transformers, fittings, siamese connections, hoses, plumbing fixtures, lighting fixtures, other fixtures, bulbs, signs, antennae, telephones, intercom equipment, playground equipment, meters, meter assemblies, scaffolding, piping, lines, ducts, conduits, cables, risers, mains, shafts, pits, flues, locks, hardware, racks, screens, strainers, traps, drains, catch basins, leaders, filters, incinerators, canopies, closets, cabinets, doors, railings, copings, steps, furniture, mirrors, furnishings, appurtenances, urns, baskets, mail chutes, mail boxes, carpeting, tiles,

floor coverings, draperies, shades, window coverings, wallpaper, wallcoverings, trees, shrubbery, flowers, plants, horticultural tubs and horticultural boxes.

"Family Members" shall mean the spouse, children (natural and adopted), stepchildren, grandchildren, siblings, nieces, nephews, parents, parents-in-law, and grandparents of a Unit Owner who reside in such Unit Owner's Unit.

"Filing Date" shall mean the date a letter is issued by the Department of Law accepting the Plan or an amendment to the Plan, as the case may be, for filing.

"First Closing" shall mean the Closing of Title with respect to the first Residential Unit or Commercial Unit to be conveyed to a Purchaser pursuant to the terms of the Plan.

"First Year's Budget" shall mean the Section of the Plan entitled "Schedule B - First Year's Budget". First Year's Budget is sometimes referred to herein as "Schedule B".

"Floor Plans" shall mean the floor plans of the Units certified by a professional engineer or licensed architect, filed in the Register's Office simultaneously with the recording of the Declaration, together with any supplemental floor plans thereto.

"Force Majeure" shall mean delays caused by weather, casualty, labor difficulties (including work stoppages and strikes), late delivery or inability to obtain materials, government restrictions or other events beyond Sponsor's reasonable control.

"General Common Elements" shall mean those certain portions of the Property (other than the Units, the Residential Common Elements and the Limited Residential Common Elements), as well as those Facilities therein, either existing for the common use of the Units or the Unit Owners or necessary for, or convenient to, the existence, maintenance, or safety of the Property, as more particularly described in the Declaration.

"General Common Expenses" shall mean all costs and expenses to be incurred generally by the Unit Owners pursuant to the Declaration and/or By-Laws in connection with (i) the repair, maintenance, replacement, restoration and operation of, and any alteration, addition, or improvement to, the General Common Elements; or (ii) the establishment and/or maintenance of a general operating reserve fund for working capital, for replacements with respect to the General Common Elements.

"Initial Control Period" shall mean the period ending on the earlier of: (i) the closing of title with Purchasers under the Plan to Residential Units having at least 90% of the aggregate Common Interest appertaining to all Residential Units, or (ii) 5 years after the first Closing of a Residential Unit.

"Institutional Lender" shall mean (i) a savings bank, savings and loan association, bank or trust company, insurance company, real estate investment trust, mortgage trust, or a group of lenders which shall include one of the foregoing, or (ii) a federal, state, municipal, teacher's or union employee, welfare, pension or retirement fund or system, or (iii) Sponsor.

"Institutional Mortgage" shall mean any first mortgage covering one or more Units that is a Permitted Mortgage and the initial holder of which is either Sponsor or an Institutional Lender.

"Insurance Trustee" shall mean a bank or a trust company, in either event having both an office in the City of New York and a capital surplus and undivided profits of $500,000,000 or more, from time to time appointed to serve as such by the Condominium Board. For so long as the Construction Loan is not fully repaid, the Construction Lender shall be an Insurance Trustee.

"Land" shall mean the land located in the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York as Block 863, Lot 17, Lot 18 and Lot 21 and more particularly described in Exhibit A to the Declaration.

"Law" shall mean the laws and ordinances of any or all of the Federal, New York State, New York City, County and Borough governments, the rules, regulations, orders and directives of any or all departments, subdivisions, bureaus, agencies, or offices thereof or of any other governmental, public or quasi-public authorities having jurisdiction over the Property and/or the Condominium and/or the direction of any public officer pursuant to law.

"Limited Residential Common Element(s)" shall mean those portions of the Property (other than the Units, the General Common Elements and the Residential Common Elements) existing for the use and enjoyment of certain Residential Unit Owners or one or more specified Residential Units to the exclusion of all other Unit Owners, as more particularly described in the Declaration. By way of example, a balcony and/or a private roof terrace appurtenant to a Unit, and pool mechanical equipment rooms, are Limited Residential Common Elements.

"Majority of Residential Unit Owners" shall mean those Residential Unit Owners consisting of more than 50% of the total authorized votes of all Residential Unit Owners who have voting rights (determined in accordance with the terms of Section 4.8 of the By-Laws) and are present, in person or by proxy, and voting at any constituted meeting of Residential Unit Owners at which a quorum is present.

"Majority of Unit Owners" shall mean those Unit Owners consisting of more than 50% of the total authorized votes of all Unit Owners who have voting rights (determined in accordance with the terms of Section 4.8 of the By-Laws) and are present, in person or by proxy, and voting at any duly constituted meeting of the Unit Owners at which a quorum is present.

"Managing Agent" shall mean the managing agent or manager named in the Plan or any successor managing agent at the time in question.

"Mortgage Representatives" shall mean the representatives of the holders of all mortgages encumbering Units, designated by the holders of Institutional Mortgages in accordance with the terms of paragraph (B) of Section 8.6 of the By-Laws.

"Permitted Encumbrances" shall mean those matters encumbering title to a Unit subject to which a Purchaser agrees to take title, as more particularly described on Schedule B annexed to the form of Purchase Agreement and Schedule B annexed to the Unit Owner's Specimen Title Policy set forth in Part II of the Plan.

"Permitted Mortgage" shall mean a first mortgage permitted to be placed upon a Unit pursuant to the provisions of the By-Laws.

"Permitted Mortgagee" shall mean any holder of a Permitted Mortgage at the time in question.

"Person" shall mean any natural person, partnership, corporation, trust, estate, fiduciary, unincorporated association, syndicate, joint venture, organization, government or any department or agency thereof, or any other entity.

"Plan" shall mean that certain condominium offering plan relating to the Property, as accepted for filing by the Department of Law of the State of New York pursuant to Section 352-e of the General Business Law of the State of New York and any amendments thereto.

"Plans and Specifications" shall mean the plans and specifications for the construction of the Building which (to the extent required by Law) have been or will be filed with the Department of Buildings and which may from time to time be amended. Any inconsistency in the Plans and Specifications and the Description of Property and Building Condition contained in Part II of the Plan shall be interpreted in accordance with the Description of Property and Building Condition.

"Plaza Rules of Conduct" shall mean the rules and regulations governing the use of the Plaza, as any of the same may be amended, modified, added to, or deleted from time to time by the Condominium Board pursuant to the terms of the By-Laws, provided that they are not in conflict with the terms of the

applicable Law, the Condominium Act, the Declaration, or the By-Laws. The initial Plaza Rules of Conduct are provided in Part II of the Plan.

"Presentation Date" shall mean the date on which the Plan or an amendment thereto, as the case may be, is personally delivered or the 5th day after mailing to prospective Purchasers and Unit Owners following acceptance of the Plan or an amendment thereto for filing with the Department of Law.

"Property" shall mean the Land, the Building (and any structures attached thereto), all the improvements erected or to be erected on the Land, all easements, rights and appurtenances pertaining thereto and all other property, real, personal, or mixed, used or intended to be used in connection therewith.

"Purchase Agreement" shall mean the agreement to purchase a Residential Unit the form of which is set forth in Part II of the Plan.

"Purchaser" shall mean a Purchaser of a Residential Unit under a Purchase Agreement.

"Register's Office" shall mean the New York County Office of the Register of The City of New York.

"Residential Common Elements" shall mean those portions of the Common Elements which are available for common use by all Residential Unit Owners.

"Residential Common Expenses" shall mean all costs and expenses to be incurred generally by the Residential Unit Owners pursuant to the Declaration and/or By-Laws in connection with (i) the repair, maintenance, replacement, restoration and operation of, and any alteration, addition, or improvement to, the Residential Common Elements and/or the Limited Residential Common Elements; or (ii) the establishment and/or maintenance of an operating reserve fund for working capital, for replacements with respect to the Residential Common Elements and/or Limited Residential Common Elements.

"Residential Unit" shall mean any space designated as a Residential Unit in the Declaration together with its Common Interest and Residential Common Interest. All such Residential Units, are collectively, referred to as the "Residential Units".

"Residential Unit Owner" shall mean the owner of a Residential Unit.

"Residential Common Interest" shall mean the proportionate undivided interest, expressed as a numerical percentage, of each Residential Unit Owner in the Residential Common Elements. The total of all Residential Common Interest percentages appurtenant to all Residential Units equals 100%. The Residential Common Interests are the basis for determining a Residential Unit Owner's liability for his share of the Residential Common Expenses. The Residential Common Interest attributable to each Residential Unit is set forth on Exhibit B annexed to the Declaration.

"Rules and Regulations" shall mean the rules and regulations of the Condominium, which are annexed as an addendum to the By-Laws, as any of the same may be amended, modified, added to, or deleted from time to time pursuant to the terms of the By-Laws, provided that they are not in conflict with the terms of the Condominium Act, the Declaration, or the By-Laws.

"Sales Office" shall mean the sales office for the Sponsor or Selling Agent, at a location to be designated by either Sponsor or Selling Agent from time to time.

"Schedule A" shall mean the Section of the Plan entitled "Schedule A - Purchase Prices and Related Information".

"Schedule B" shall mean the Section of the Plan entitled "Schedule B - First Year's Budget". Schedule B is sometimes referred to herein as the "First Year's Budget".

"Selling Agent" shall mean the selling agent named in the Plan or any successor selling agent at the time in question.

"Special Assessments" shall mean the charges allocated and assessed by the Condominium Board to the Unit Owners, pro-rata in accordance with their respective Common Interest (except as otherwise provided in the Declaration or in the By-Laws), in accordance with the By-Laws of the Condominium.

"Sponsor" shall mean Madison 33 Owner LLC and any of its designees, successors and assigns.

"Storage Bins" shall mean the individual storage bins that are part of the Residential Common Elements. The Sponsor will (i) license from the Condominium the use of the Storage Bins, and (ii) sell the right to use the Storage Bins to purchasers under the Plan.

"Storage Bin License" shall mean the agreement under which a Residential Unit Owner shall be entitled to use a Storage Bin, the form of which is included in Part II of the Plan.

"Unit" shall mean any space designated as a Unit in the Declaration together with its percentage of Common Interest. All such Units, are collectively, referred to as the "Units".

"Unit Owner" shall mean any owner of a Unit. All such owners of Units are, collectively, referred to as "Unit Owners".

"Unit Specific Property" shall, as to any Unit, mean (i) the improvements and betterments (including fixtures, furnishings and equipment) that (x) are located entirely within the interior volume of space defined by the dimensional boundaries of the Unit (or any Limited Common Elements serving only such Unit), measured from the inside surfaces of all exterior or interior separating/demising walls, and (y) in all events, are non-structural or otherwise not part of any Common Elements (other than Limited Common Elements serving only such Unit), and (ii) any personal property located within such Unit (or any Limited Common Elements serving only such Unit) and belonging to the Unit Owner or tenant or other occupant of the Unit.

"Unsold Unit or Unsold Residential Unit" shall mean any Unit (or Residential Unit), as applicable, owned or retained, by way of lease or any other arrangement by which management and/or financial responsibility is retained, by Sponsor at the time in question. All such Unsold Units are, collectively, referred to as the "Unsold Units".

"Zoning Resolution" shall mean the Zoning Resolution of the City of New York effective December 15, 1961, as amended to date, and as same may be hereafter amended.

**EXHIBIT D**
**TO THE DECLARATION**

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**BY-LAWS**

**OF**

**172 MADISON AVENUE CONDOMINIUM**

**Prepared by:**

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ADDENDUM TO THE BY-LAWS

RULES AND REGULATIONS

# BY-LAWS

## ARTICLE 1
## GENERAL

Section 1.1 *Purpose.* The purpose of these By-Laws is to set forth the rules and procedures concerning the conduct of the affairs of the Condominium. The Condominium covers the Property, which consists of: (i) the Land, which is more particularly described in Exhibit A to the Declaration; (ii) the Building, which includes, without limitation, the Units, the Common Elements and all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith; and (iii) all other property, real, personal, or mixed, intended for use in connection therewith. The Property has been submitted to the provisions of the Condominium Act by the recording of the Declaration in the Register's Office, of which Declaration these By-Laws form a part. The purpose of the Condominium is to carry on the acquisition, construction, management, maintenance and care of the Common Elements and to perform related functions with respect to the other portions of the Property.

Section 1.2 *Definitions.* All capitalized terms used in these By-Laws that are not otherwise defined in any of the Articles hereof shall have the meanings set forth in Exhibit C to the Declaration, or as same may be otherwise defined in the Declaration, unless the context in which the same are defined in any of the Articles hereof shall have the meanings ascribed to them in such Articles, unless the context in which the same are used shall otherwise require. Each of the aforedescribed capitalized terms shall be applicable to singular and to plural nouns, as well as to verbs of any tense.

Section 1.3 *Applicability of By-Laws.* These By-Laws are applicable to the Property and to the use and occupancy thereof.

Section 1.4 *Application of By-Laws.* All present and future Unit Owners, mortgagees, lessees, sublessees and occupants of Units, and employees and guests of Unit Owners, as well as all other Persons who may use the Property, are and shall be subject to the Declaration, these By-Laws and the Rules and Regulations, as each of the same may be amended from time to time. The acceptance of a deed or other instrument of conveyance, or the succeeding to title to, or the execution of a lease or sublease for, or the act of occupancy of, a Unit shall constitute an agreement that the provisions of the Declaration, these By-Laws and the Rules and Regulations, as each of the same may be amended from time to time, are accepted, ratified and will be complied with.

## ARTICLE 2
## CONDOMINIUM BOARD

Section 2.1 *General.* As more particularly set forth in Sections 2.4, 2.5 and 2.6 hereof, the affairs of the Condominium shall be governed by the Condominium Board. In exercising its powers and performing its duties under the Declaration and these By-Laws, the Condominium Board shall act as, and shall be, the Agent of the Unit Owners, subject to, and in accordance with, the terms of the Declaration and these By-Laws.

Section 2.2 *Status of the Condominium Board.* Unless and until the Condominium Board shall incorporate in accordance with the terms of Section 2.4 hereof, the Condominium Board shall have, to the extent permitted by Law, the status conferred upon unincorporated associations under, or pursuant to, the terms of the General Association Law of the State of New York. If the Condominium Board shall incorporate in accordance with the terms of Section 2.4 hereof, the Condominium Board shall have, to the

extent permitted by Law, the status conferred upon it under, or pursuant to, the terms of the applicable statutes of the State of New York. In either event, however, the Condominium Board shall also have the status conferred upon it under, or pursuant to, the terms of the Condominium Act.

Section 2.3 *Principal Office of the Condominium Board.* The principal office of the Condominium Board shall be located either at the Property or at such other place reasonably convenient thereto as may be designated from time to time by the Condominium Board.

Section 2.4 *Powers and Duties of the Condominium Board*

(A) The Condominium Board shall have all of the powers and duties necessary for, or incidental to, the administration of the affairs of the Condominium, provided, however, that the Condominium Board shall not have such powers and duties that by Law, or pursuant to the terms of the Declaration and these By-Laws, may not be delegated to the Condominium Board by the Unit Owners. Without intention to limit the generality of the foregoing in any respect, the Condominium Board shall have the following specific powers and duties:

(i) to operate, maintain, repair, restore, add to, improve, alter and replace the Common Elements including, but not limited to, the Common Elements described in the Declaration, as the Condominium Board shall deem necessary or proper in connection therewith, including (a) the purchase and leasing of supplies, equipment and material, and (b) the employment, compensation and dismissal of personnel;

(ii) to acquire, in the name of the Condominium Board or its designee, corporate or otherwise, and on behalf of the Unit Owners, all right, title and interest in real and personal property deemed necessary or proper by the Condominium Board for use in connection with the ownership and operation of the Property as a condominium;

(iii) to maintain complete and accurate books and records with respect to the finances and the operation of the Condominium, including without limitation: (a) detailed accounts, in chronological order, of receipts and expenditures affecting the Property; (b) detailed books of account of the Condominium Board; (c) other financial records, as well as other books of account of the Condominium, as may be required to be kept pursuant to the terms of these By-Laws; and (d) minutes and other records of all meetings held pursuant to the terms of these By-Laws;

(iv) to prepare and adopt a budget for the Condominium for each fiscal year thereof, setting forth, without limitation: (a) a detailed accounting of the anticipated Common Expenses for the ensuing fiscal year and (b) a detailed projection of all sources and amounts of income necessary to discharge the same;

(v) to approve the amount and the means and methods of payment of, and collection of, the Common Charges and Special Assessments from the Unit Owners; provided, however, that in no event shall Common Charges or Special Assessments or other funds received by the Condominium Board in connection with the General Common Elements be utilized to defray any Residential Common Expenses and in no event shall Common Charges or Special Assessments or other funds received by the Condominium Board in connection with the Residential Common Elements be utilized to defray any General Common Expenses;

(vi) to borrow money on behalf of the Condominium in accordance with Section 339-jj of the Real Property Law when required in connection with the operation, maintenance, repair, restoration, improvement, alteration and replacement of the Common Elements, provided, however, that: (a) the affirmative consent of at least 66 2/3% of the members of the Condominium Board shall be required for the borrowing of any sum in excess of $500,000 in any one fiscal year (regardless of the balance of any loans outstanding from previous fiscal years); (b) and with respect to the operation, maintenance, repair, restoration, improvement, alteration

and replacement of the General Common Elements, additionally, the affirmative consent of at least 66 2/3%, in aggregate Common Interest, of all Unit Owners shall be required for the borrowing of any sum in excess of $500,000 in any one fiscal year (regardless of the balance of any loans outstanding from previous fiscal years); (c) and with respect to the operation, maintenance, repair, restoration, improvement, alteration and replacement of the Residential Common Elements and/or the Limited Residential Common Elements, additionally, the affirmative consent of at least 66 2/3%, in aggregate Residential Common Interest, of all Residential Unit Owners shall be required for the borrowing of any sum in excess of $500,000 in any one fiscal year (regardless of the balance of any loans outstanding from previous fiscal years) and the Commercial Units Owners will not be liable for the repayment of any portion of such loan; (d) no lien to secure repayment of any sum borrowed may be created on any Unit or its Appurtenant Interests without the express written consent of the Owner of such Unit; and (e) the documentation executed in connection with any such borrowing shall provide that, if any sum borrowed by the Condominium Board pursuant to this subparagraph (vi) shall not be repaid by the Condominium Board, any Unit Owner who pays to the creditor thereunder such proportion of the then outstanding indebtedness represented or secured thereby as such Unit Owner's Common Interest or Residential Common Interest, as applicable, bears to the aggregate Common Interests of all Unit Owners or Residential Common Interests of all Residential Unit Owners, as applicable, shall be entitled to obtain from the creditor a release of any judgment or other lien that the said creditor shall have filed, or shall have the right to file against such Unit Owner's Unit;

However, notwithstanding the provisions of Article 2.4(A)(vi) above concerning the consent of Unit Owners required for the Condominium Board to borrow money on behalf of the Condominium, such consent shall not be required for the Condominium Board to obtain any loan for the purpose of purchasing the Resident Manager's Unit;

(vii) to open and maintain bank accounts on behalf of the Condominium and to designate the signatories required therefor which shall at no time be less than two and that each check drawn on such account shall need at least two signatures;

(viii) to use the Common Charges and Special Assessments collected from Unit Owners, as well as all other funds held by the Condominium Board or received in connection with the operation of the Property, for the administration of the Condominium, including, without limitation: (a) the payment of Common Expenses; and (b) the making of restorations, additions, alterations and improvements to the Common Elements, the Residential Common Elements and the Limited Residential Common Elements;

(ix) to obtain insurance for the Property, including the Units, pursuant to the terms of Section 5.5 hereof,

(x) to adjust and settle claims under insurance policies obtained pursuant to the terms of Section 5.5 hereof, and to execute and deliver releases upon such adjustment and settlement on behalf of: (a) all Unit Owners (except as otherwise provided herein); (b) all holders of mortgages and other liens on Units; and (c) all holders of any other interest in the Property;

(xi) to make, or to contract with others for the making of, repairs, maintenance, additions and improvements to, and alterations, restorations and replacements of, the Property after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings, all in accordance with the terms of these By-Laws;

(xii) to obtain and keep in force fidelity bonds, in amounts deemed appropriate by the Condominium Board, but in no event less than $100,000, for: (a) all members of the Condominium Board; (b) all officers and employees of the Condominium; and (c) the Managing

Agent, and the premiums on all such fidelity bonds shall constitute a part of the Common Expenses;

(xiii) to accept the surrender of any of any Residential Unit pursuant to the terms of paragraph (C) of Section 6.2 hereof, in the name of the Condominium Board or its designee, corporate or otherwise, and on behalf of all Residential Unit Owners;

(xiv) to accept the surrender of the Commercial Unit pursuant to the terms of paragraph (C) of Section 6.2 hereof, in the name of the Condominium Board or its designee, corporate or otherwise, and on behalf of all Unit Owners;

(xv) to purchase, lease, or otherwise acquire Residential Units offered for sale or lease by their owners, in the name of the Condominium Board or its designee, corporate or otherwise, and on behalf of all Residential Unit Owners but only with the consent of a majority of Residential Unit Owners and in connection with a purchase of a Residential Unit, to obtain a mortgage loan secured by such Residential Unit, and/or assess a special assessment for the down payment, purchase price and/or closing costs;

(xvi) to purchase Units at foreclosure or other judicial sales, in the name of the Condominium Board or its designee, corporate or otherwise and on behalf of all Unit Owners;

(xvii) to sell, lease, mortgage and otherwise deal with Residential Units acquired by, and to sublease Residential Units leased by, the Condominium Board or its designee, corporate or otherwise, on behalf of all Residential Unit Owners, provided, however, that the Condominium Board or its designees shall in no event be entitled to vote the votes appurtenant to any such Unit;

(xviii) to adopt and amend the Rules and Regulations and the Plaza Rules of Conduct and to levy and authorize collection of fines against Unit Owners for violations of the Rules and Regulations, the Plaza Rules of Conduct and these By-Laws (any such fines and fees shall be deemed to constitute Common Charges payable by Unit Owners of the Unit against which they are levied);

(xix) to enforce by legal means the terms, covenants and conditions contained in the Condominium Documents and to bring or defend against any proceedings that may be instituted on behalf of, or against, the Unit Owners;

(xx) to incorporate, to the extent and in the manner provided in the Condominium Act, provided, however, that: (a) the certificate of incorporation and By-Laws of any such resulting corporation shall conform as closely as practicable to the terms of the Declaration and these By-Laws and (b) the terms of the Declaration and these By-Laws shall prevail in the event of any inconsistency or conflict between the terms thereof and the terms of such certificate of incorporation and By-Laws;

(xxi) to organize corporations to act as the designees of the Condominium Board in acquiring title to, or leasing of, Units and in acquiring rights, titles and interests in real and personal property for use in connection with the ownership and operation of the Property as a condominium;

(xxii) to execute, acknowledge and deliver: (a) any declaration (including a declaration of single zoning lot) or other instrument affecting the Property that the Condominium Board deems necessary or appropriate to comply with any law applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Building; and (b) any consent, covenant, restriction, easement, or declaration affecting the Property that the Condominium Board deems necessary or appropriate; and (c) any consent, covenant, restriction, easement or declaration or other writing affecting the Property as requested by Sponsor pursuant to Article 27 of the Declaration;

(xxiii) to prepare, execute, acknowledge and record on behalf of all Unit Owners, as their attorney in fact, coupled with an interest, a restatement of the Declaration or these By-Laws, whenever, in the Condominium Board's estimation, it is advisable to consolidate and restate all amendments, modifications, additions and deletions theretofore made to the same;

(xxiv) to prepare, execute, acknowledge and institute on behalf of all Residential Unit Owners, as their attorney-in-fact, coupled with an interest, protests of real property tax assessments and tax certiorari proceedings with respect to all Residential Units and to assess any costs incurred thereby as a Residential Common Expense;

(xxv) to commence summary eviction proceedings in the name of or on behalf of the Condominium Board and/or a Residential Unit Owner or Residential Unit Owners, as the case may be, against an authorized or unauthorized guest and/or a tenant of a Residential Unit Owner if such authorized or unauthorized guest and/or tenant does not conform to the Rules and Regulations of the Condominium, annexed hereto as an Addendum to the By-Laws, as said Rules and Regulations may at any time and from time to time, be modified, amended or added to in accordance with the terms of these By-Laws. All costs in connection with the removal of the authorized or unauthorized guest and/or tenant, including reasonable attorney's fees, shall be borne by the Residential Unit Owner;

(xxvi) to impose move-in fees and charges and transfer fees in connection with the sale or lease of a Residential Unit, provided no such fees or charges or other conditions of transfer or lease may be imposed upon Sponsor;

(xxvii) to provide for and establish, utilizing Common Charges or Special Assessments, (but not against the Commercial Units Owners without their consent), such reserve funds as the Condominium Board, in its discretion, believes are prudent to provide periodic repair, replacement and maintenance of the Building's capital plant, subject to the limitations set forth in the Declaration and these By laws, including but not limited to Section 6.1(E) of these By Laws;

(xxviii) to carry out any other duties imposed upon the Condominium Board pursuant to the Declaration and these By-Laws; and

(xxix) to borrow money for the purpose of purchasing the Resident Manager's Unit.

(B) The Condominium Board shall be responsible for carrying out the duties imposed upon it under the Condominium Documents regardless of whether a Unit is vacant or occupied by the owner thereof or by a permitted lessee or other permitted occupant.

Section 2.5 *Certain Limitations on the Powers of the Condominium Board*

(A) Notwithstanding anything to the contrary contained in these By-Laws, so long as Sponsor shall continue to own any Residential Units, but in any event, no later than five (5) years after the first Closing of a Residential Unit, the Condominium Board may not, without Sponsor's prior written consent:

(i) make any addition, alteration, or improvement to the Common Elements or to any Unit, unless the same shall be required by Law; or

(ii) assess any Common Charges or Special Assessments for the creation or replacement of, or the addition to, all or any part of a reserve, contingency, or surplus fund, except as set forth in the First Year's Budget; or

(iii) increase or decrease the number or change the kind of employees employed by the Condominium as described in the First Year's Budget;

(iv) enter into any service or maintenance contracts for work or otherwise contract for work or otherwise provide services not covered in the First Year's Budget set forth in the Plan, except as is required to reflect normal annual increases in operating services; or

(v) borrow money on behalf of the Condominium; or

(vi) exercise a right of refusal to lease or purchase a Unit.

The written consent of Sponsor shall not be necessary to perform any function or take any action described in clauses (i) through (vi) above, if, and only if, the performance of such action or the carrying out of such action is necessary (and no other alternative is available) to enable the Condominium Board to: (i) comply with Law; or (ii) remedy any notice of violation; or (iii) remedy any work order of the Condominium's insurer. In no event will the limitations imposed herein continue for more than 5 years from the First Closing. Sponsor shall not exercise veto power over the expenses described in Schedule B or expenses required to (i) comply with Law; or (ii) remedy any notice of violation; or (iii) remedy any work order of the Condominium's insurer.

(B) Notwithstanding anything to the contrary in these By-laws, all determinations of the Condominium Board which affect only the:

(i) Residential Units and do not materially and adversely affect the use and operation of the Commercial Unit(s) and shall not result in any Common Charge or Special Assessment being imposed on the Commercial Units Owners, shall be made by the members of the Condominium Board elected or designated by the Residential Unit Owners;

(ii) Commercial Units and do not materially and adversely affect the use and operation of the Residential Units and shall not result in any Common Charge or Special Assessment being imposed on a Residential Unit Owners, shall be made by the members of the Condominium Board designated by the Commercial Units Owners.

Any dispute as to whether or not a determination materially and adversely affects any Units shall be settled by arbitration in accordance with the provisions of these By-laws. No dispute with respect to whether a determination materially and adversely affects a Unit shall be deemed to exist unless the objecting party specifies the grounds for its objection in writing to the Condominium Board within 10 business days of receipt by it of notice of such determination.

(C) Notwithstanding anything to the contrary contained in these By-Laws, the Condominium Board must obtain the consent of 66 2/3% of the aggregate Common Interest or Residential Common Interest of all Unit Owners in connection with capital expenditures or assessments exceeding $500,000 per fiscal year.

Section 2.6 *Exercise and Delegation of Powers and Duties.*

(A) Any act within the power of the Condominium Board to perform, or deemed necessary or desirable to be performed by the Condominium Board, shall be performed by the Condominium Board or shall be performed on its behalf and at its direction by the agents, employees, or designees of the Condominium Board.

(B) The Condominium Board may appoint an Executive Committee by duly adopted resolution, which Executive Committee shall have, and may exercise, all of the powers of the Condominium Board, subject to both the exceptions and limitations as the Condominium Board may from time to time deem appropriate, during the intervals between the meetings of the Condominium Board. In addition, the Condominium Board may from time to time appoint, by duly adopted resolutions, such other

committees as the Condominium Board may deem appropriate to perform such duties and services as the Condominium Board shall direct, each of which committees shall have, and may exercise, all of the powers delegated to it in its enabling resolution, subject, however, to the exceptions and limitations contained in paragraph (D) of this Section 2.6. The Executive Committee and each other committee shall consist of three members of the Condominium Board, at least one of whom shall be a member designated by Sponsor for so long as Sponsor shall have the right to designate or elect one or more members of the Condominium Board.

(C) The Condominium Board may employ a Managing Agent to serve at a compensation approved by the Condominium Board and to perform such duties and services as the Condominium Board shall direct. Subject to the exceptions and limitations contained in paragraph (D) of this Section 2.6, the Condominium Board may delegate to the Managing Agent any of the powers granted to the Condominium Board in these By-Laws.

(D) Notwithstanding anything to the contrary contained in this Section 2.6, the Executive Committee and the Managing Agent shall neither have nor be entitled to exercise, and the Condominium Board shall not delegate to either of them or to any other committee, the powers or duties described in subparagraphs (ii), (iv), (v), (vi), (xiii), (xiv), (xv), (xvi), (xvii), (xix), (xxi), (xxii) or (xxiii) of paragraph (A) of Section 2.4 hereof. In addition, neither the Managing Agent nor any of the committees described in Subsection (B) of this Section 2.6 shall have, or be entitled to exercise, any of the powers of the Condominium Board, except to the extent permitted by Law.

Section 2.7 *Number, Election and Qualification of Members.* Until the first annual meeting of the Unit Owners held pursuant to the terms of Section 4.1 hereof, the Condominium Board shall consist of three (3) individuals, all of which are to be designated from time to time by Sponsor. From and after the first annual meeting of the Unit Owners and for so long as Sponsor continues to own at least one Unsold Residential Unit, the Condominium Board shall consist of seven (7) individuals, five (5) of which individuals shall be elected and/or designated by the Residential Unit Owners (including Sponsor) ("Residential Members"), and two (2) individuals shall be designated by the Commercial Units Owners ("Commercial Members"), provided however, that during the Initial Control Period, four (4) of the five (5) Residential Members shall be designated by Sponsor. Sponsor may designate the same individual as each of its Residential Members. Each of the two (2) Commercial Unit Owners has the right to designate one (1) Commercial Member. Except for members designated or elected by Sponsor or the Commercial Units Owners pursuant to the terms of this Section 2.7 or of Section 2.10 or 4.9 hereof, all members of the Condominium Board shall be either: (i) individual Residential Unit Owners or adult Family Members of an individual Residential Unit Owner; or (ii) individual Permitted Mortgagees; or (iii) members, officers, directors, shareholders, partners, principals, employees, or beneficiaries of corporations, partnerships, fiduciaries, limited liability companies, or any other entities that are Residential Unit Owners or Permitted Mortgagees. In addition, no Unit Owner may be elected to serve on the Condominium Board, (nor may continue to serve on the Condominium Board) if the Condominium Board has perfected a lien against such Unit Owner's Unit and the amount necessary to release such lien has not been paid at the time of such election, or so long as such lien remains unpaid. In no event may more than one individual of a designated Unit serve on the Condominium Board or as an officer of the Condominium Board at the same time during the term of office.

Section 2.8 *Term of Office of Members.* The term of office of the three (3) Members of the Condominium Board designated by Sponsor prior to the first annual meeting of the Residential Unit Owners shall expire when the seven (7) individuals to be elected or designated at such meeting are so elected and designated, as the case may be. The term of office of each of the seven (7) individuals elected and qualified or designated, as the case may be, at the first annual meeting of the Unit Owners pursuant to the terms of Section 4.9 hereof, shall be fixed at one (1) year. Notwithstanding anything to the contrary contained in this Section 2.8, however, each member of the Condominium Board shall serve until said member's successor shall be elected and qualified or designated, as the case may be.

Section 2.9 *Removal and Resignation of Members.*

(A) Any member of the Condominium Board may be removed for cause. Any member of the Condominium Board elected thereto either by the Residential Unit Owners, pursuant to the terms of Section 4.9 hereof, or by the Condominium Board, pursuant to the terms of Section 2.10 hereof, may be removed from office, with or without cause, by a vote of a Majority of Residential Unit Owners. Any member of the Condominium Board who was designated as such or elected by Sponsor pursuant to the terms of Section 2.7, 2.10, or 4.9 hereof, may be removed without cause only by Sponsor. If any member of the Condominium Board who was designated or elected by Sponsor is removed, his successor shall also be designated or elected by Sponsor. Any member of the Condominium Board who was designated by a Commercial Unit Owner may be removed from office without cause only by the Commercial Unit Owner who designated such member. If any member of the Condominium Board who was designated by the Commercial Unit Owner is removed, his successor shall also be designated by the Commercial Unit Owner. Any member of the Condominium Board whose proposed removal is to be acted upon at a meeting of the Unit Owners shall be given prior written notice thereof and an opportunity to be present and heard thereat.

(B) Any member of the Condominium Board may resign his membership at any time by giving written notice thereof to the Condominium Board and, with respect to members of the Condominium Board designated as such by Sponsor, to Sponsor. In addition, any member of the Condominium Board who shall cease to be qualified for membership pursuant to the terms of Section 2.7 hereof shall be deemed to have resigned his membership effective as of the date upon which such qualification shall cease.

Section 2.10 *Vacancies.*

(A) Any vacancy on the Condominium Board that is caused by the removal, resignation, or death of a member who was elected thereto by the Residential Unit Owners shall be filled by an individual who is qualified to be a member pursuant to the terms of Section 2.7 hereof and who is elected by a vote of the majority of the Residential members of the Condominium Board then in office. A special meeting of the Condominium Board shall be held for the purpose of filling any such vacancy promptly after the occurrence thereof, and the election held thereat shall be effective to fill such vacancy even if the number of members present at such meeting shall not constitute a quorum.

(B) Any vacancy on the Condominium Board that is caused by the removal, resignation, or death of a member who was designated as such or elected by Sponsor shall be filled by an individual designated by Sponsor. Any vacancy on the Condominium Board that is caused by the removal, resignation or death of a member who was designated as such by a Commercial Unit Owner shall be filled by an individual designated by that Commercial Unit Owner. The Unit Owner permitted to fill a vacancy, may do so by sending written notice to the remaining members of the Condominium Board of the identity of the newly designated Board member, without the need for a special meeting.

(C) Each member of the Condominium Board who is elected thereto or designated as such to fill a vacancy pursuant to the terms of paragraph (A) or (B), respectively, of this Section 2.10 shall serve as a member of the Condominium Board for the remainder of the term of the member replaced and until his successor shall be selected and qualified at the appropriate annual meeting of the Unit Owners pursuant to the terms of Section 4.9 hereof.

Section 2.11 *Organizational Meeting of the Condominium Board.* The first meeting of the Condominium Board following each annual meeting of the Unit Owners shall be held within ten (10) days of such annual meeting, at such time and place as shall be both fixed informally by a majority of the members of the Condominium Board and designated by the Secretary of the Condominium in a written notice given to all members thereof by personal delivery, mail, or overnight delivery service not later than

five business days prior to such date. At such meeting, the officers of the Condominium Board shall be elected.

Section 2.12 *Regular Meetings of the Condominium Board.* Regular meetings of the Condominium Board may be held at such time and place as shall be determined from time to time by a majority of the members thereof, provided that at least four (4) such meetings shall be held during each fiscal year. Written notice of all regular meetings of the Condominium Board shall be given by the Secretary to each member thereof by personal delivery, mail or telegram at least five (5) business days prior to the day named for such meeting.

Section 2.13 *Special Meetings of the Condominium Board.* The President may call a special meeting of the Condominium Board whenever he deems the same to be necessary or desirable. However, the President shall call such a meeting upon the written request of three (3) or more members of the Condominium Board. Written notice of all special meetings shall be given by the Secretary to each member thereof by personal delivery, mail, or telegram at least three (3) business days prior to the day named for such meeting, which notice shall state the time, place and purpose of the meeting.

Section 2.14 *Waiver of Notice of Meetings.* Any member of the Condominium Board may, at any time, waive notice of any meeting thereof in writing, and such waiver shall be deemed equivalent to the giving of notice. Attendance by a member of the Condominium Board at any meeting thereof shall constitute a waiver by him of notice of the time and place thereof. If all of the members of the Condominium Board are present at any meeting thereof, no notice of such meeting shall be required and any business may be transacted at such meeting.

Section 2.15 *Quorum of the Condominium Board.* A quorum of the Condominium Board is required to be present at a Condominium Board meeting in order to make any determination or to transact any business. To constitute a quorum of the Condominium Board, the following majority of the members of the Condominium Board shall be present at the Condominium Board meeting:

(A) Attendance of a majority of all of the members of the Condominium Board, including at least one (1) member designated by a Commercial Unit Owner, will be required for any business relating to the General Common Elements, the General Common Expenses, or, all or a portion of the Residential Units and either Commercial Unit.

(B) Attendance of a majority of the Residential Members of the Condominium Board will be required for any business relating solely to the Residential Common Expenses, the Residential Common Elements, or Limited Residential Common Elements or, all or a portion of the Residential Units.

In connection with any meeting of the Condominium Board, one or more members of the Condominium Board may participate in any meeting thereof by means of a conference telephone or similar communications equipment permitting all individuals participating in the meeting to hear each other at the same time, and such participation shall constitute presence at such a meeting for all purposes. If, at any meeting of the Condominium Board, there shall be less than a quorum present, a majority of the members of the Condominium Board in attendance may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called but for the lack of a quorum may be transacted without further notice.

Section 2.16 *Conduct of Meetings.* The President shall preside at all meetings of the Condominium Board, and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Condominium Board and a record of all transactions and proceedings occurring thereat. The then current edition of Robert's Rules of Order, or any other rules of procedure from time to time acceptable to a majority of the Condominium Board, shall

govern the conduct of the meetings of the Condominium Board unless the same shall be in conflict with the terms of the Declaration, these By-Laws, or the Condominium Act.

Section 2.17 *Decisions by the Condominium Board.* Except as otherwise provided in the Declaration or these By-Laws:

(A) The vote of a majority of those Residential Members, together with Commercial Members attending a duly constituted meeting of the Condominium Board at which a quorum is present shall decide all matters on behalf of the Condominium Board relating solely to the General Common Elements; the General Common Expenses; or relating to both the Residential Units and either Commercial Unit.

(B) The vote of a majority of those Residential Members attending a duly constituted meeting of the Residential Members at which a quorum is present shall decide all matters on behalf of the Condominium Board relating solely to the Residential Common Expenses; the Residential Common Elements and Limited Residential Common Elements; or, all or a portion of the Residential Units.

Alternatively, any decision that is required or permitted to be made by the Condominium Board may be made without a meeting thereof if all of the members of the Condominium Board shall individually or collectively consent in writing to such decision, and all such written consents, together with a copy of the motion or resolution to which the consent relates, shall be duly filed by the Secretary of the Condominium in the minutes of, and retained with the records of, the Condominium Board.

(C) If there is a vote by the Condominium Board on the issue of whether to sue the Sponsor, the Board Members who were designated by Sponsor shall recuse themselves from voting on this issue.

Section 2.18 *Compensation of Members.* No member of the Condominium Board shall receive any compensation from the Condominium for acting as such.

Section 2.19 *Common or Interested Members of the Condominium Board.* Each member of the Condominium Board shall perform his duties, and shall exercise his powers, in good faith and with a view to the interests of the Condominium. To the extent permitted by Law, no contract or other transaction between the Condominium Board and either (i) any of its members or (ii) any corporation, partnership, fiduciary, firm, association, or other entity in which any of the members of the Condominium Board are officers, directors, employees, partners, fiduciaries, beneficiaries, or principals, or are otherwise interested, pecuniarily or otherwise, shall be deemed either void or voidable because either (a) any such member of the Condominium Board was present at the meeting or meetings of the Condominium Board during which such contract or transaction was discussed, authorized, approved, or ratified, or (b) the vote of any such member was counted for such purpose, provided, however, that either:

(x) the fact thereof is disclosed to, or known by, the Condominium Board and noted in the minutes thereof, and the Condominium Board shall authorize, approve, or ratify such contract or transaction in good faith by a vote of a majority of the entire Condominium Board, less the number of such interested members; or, if the votes of the disinterested members of the Condominium Board are insufficient to constitute a quorum, by unanimous vote of the disinterested members of the Condominium Board.

(y) the fact thereof is disclosed to, or known by, a Majority of Unit Owners, and a Majority of Unit Owners having voting rights shall authorize, approve, or ratify such contract or transaction.

Any such member of the Condominium Board may be counted in determining the presence of a quorum of any meeting of the Condominium Board that authorizes, approves, or ratifies any such contract or transaction, but no such member shall be entitled to vote thereat to authorize, approve, or ratify such contract or transaction.

Section 2.20 *Indemnification.*

(A) Indemnification of Board Members and Officers.

(i) Any person made, or threatened to be made, a party to an action or proceeding (other than one by or in the right of the Condominium to procure a judgment in its favor), whether civil or criminal, including an action by or in the right of the Condominium, which any member of the Condominium Board or an officer of the Condominium served in any capacity at the request of the Condominium, by reason of the fact that he, his testator or intestate, was a member of the Condominium Board or an officer of the Condominium, shall be indemnified by this Condominium, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred by him in defense of such action or as a result of such action or proceeding, or any appeal therein, except that no indemnification shall be made to or on behalf of any member of the Condominium Board or an officer if a judgment or other final adjudication adverse to the member of the Condominium Board or an officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(ii) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such member of the Condominium Board or officer acted in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(iii) The Condominium shall indemnify any person made, or threatened to be made, a party to an action by or in the right of the Condominium to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a member of the Condominium Board or officer of the Condominium, or is or was serving at the request of the Condominium as a member of the Condominium Board or officer against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such member of the Condominium Board or officer acted, in good faith, for a purpose which he reasonably believed to be in the best interest of the Condominium, except that no indemnification shall be made to or on behalf of any member of the Condominium Board or officer if a judgment or other final adjudication adverse to the member of the Condominium Board or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

(iv) Payment of any amount due an officer or member of the Condominium Board, former officer or member of the Condominium Board or the beneficiaries of a deceased former officer or member of the Condominium Board pursuant to the indemnification created by paragraph (i), (ii) or (iii) above shall be authorized by:

(a) Court order; or

(b) By the Condominium Board acting by a quorum consisting of members of the Condominium Board who are not parties to such action or proceeding upon a finding that the member of the Condominium Board or officer has met the standard of conduct established pursuant to paragraph (i), (ii) or (iii).

(c) If a quorum under subparagraph (b) is not obtainable or, even if obtainable, a quorum of disinterested directors so directs; or

(d) Where a person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in Section 722 of the Business Corporation Law as authorized in such Section:

(1) By the Condominium Board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in paragraph (i), (ii) or (iii) above has been met by such member of the Condominium Board or officer; or

(2) By the Unit Owners of the Condominium upon a finding that the member of the Condominium Board or officer has met the applicable standard of conduct set forth in paragraph (i), (ii) or (iii).

(v) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the Condominium in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such member or officer to repay such amount if the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this Section, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the Condominium or allowed by the court exceed the indemnification to which he is entitled.

(vi) No indemnification, advancement, or allowance shall be made under this Section in any circumstances where it appears that if there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

(vii) If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the Unit Owners, the Condominium shall, not later than the next annual meeting of Unit Owners unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months from the date of such payment, mail to its Unit Owners of record at the time entitled to vote for the election of members of the Condominium Board a statement specifying the person(s) paid, the amount(s) paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

(viii) The Members of the Condominium Board shall have no personal liability with respect to any contract, act or omission of the Condominium Board or of any Managing Agent or manager in connection with the affairs or operation of the Condominium (except in their capacities as Unit Owners) and the liability of any Unit Owner with respect thereto shall be limited as set forth in Section 4.13 hereof. Every contract made by the Condominium Board or by the Managing Agent shall state that it is made by the Condominium Board or the Managing Agent, only as agent for all Unit Owners and that the members of the Condominium Board or the Managing Agent shall have no personal liability thereon (except in their capacities as Unit Owners). Any such contract may also provide that it covers the assets, if any, of the Condominium Board. To the extent permitted by Law, the members of the Condominium Board shall have no liability to Unit Owners except that a member of the Condominium Board shall be liable for his or her own bad faith or willful misconduct. All Unit Owners shall jointly and severally, to the extent of their respective interests in their Units and their appurtenant Common Interests, indemnify each member of the Condominium Board against any liability or claim except those arising out of such member's own bad faith or willful misconduct. The Condominium Board may contract or effect any other transaction with any member of the Condominium Board, any Unit Owner, Sponsor or affiliate of any of them without incurring any liability for self-dealing, except in cases of bad faith or willful misconduct.

(ix) Neither the Condominium Board nor any member thereof shall be liable for either:

(a) any failure or interruption of any utility or other services to be obtained by, or on behalf of, the Condominium Board or to be paid for as a Common Expense except when any

such failure or interruption is caused by the acts of bad faith or willful misconduct of the Condominium Board or any member thereof; or

(b) any injury, loss or damage to any individual or property, occurring in or upon either a Unit or the Common Elements and either: (x) caused by the elements, by any Unit Owner, or by any other Person; (y) resulting from electricity, water, snow, or ice that may leak or flow from a Unit or any portion of the Common Elements; or (z) arising out of theft or otherwise.

(B) Nothing contained in this Section 2.20 shall limit any right to indemnification to which any member or any officer may be entitled by contract or under any law now or hereinafter enacted.

## ARTICLE 3

## OFFICERS

Section 3.1 *General.* The principal officers of the Condominium shall be the President, the Vice President, the Secretary and the Treasurer. The Condominium Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its discretion may be necessary or desirable. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium shall be executed, upon the direction of the Condominium Board, by any two officers of the Condominium or by such lesser number of officers or by such other Person or Persons as may be designated from time to time by the Condominium Board.

Section 3.2 *President.* The President shall be the chief executive officer of the Condominium and shall preside at all meetings of the Unit Owners and of the Condominium Board. The President shall have all of the general powers and duties that are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York (hereinafter referred to as the "BCL"), including, but not limited to, the power to appoint the members of all committees created by the Condominium Board from amongst the Unit Owners from time to time as he may decide, in his discretion, are appropriate to assist in the conduct of the affairs of the Condominium.

Section 3.3 *Vice President.* The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If both the President and the Vice President are unable to act, the Condominium Board shall appoint some other member of the Condominium Board to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall be imposed upon him from time to time by the Condominium Board or by the President.

Section 3.4 *Secretary.* The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Condominium Board. The Secretary shall have charge of such books and papers as the Condominium Board shall direct and, in general, shall perform all of the duties that are incident to the office of secretary of a stock corporation organized under the BCL.

Section 3.5 *Treasurer.* The Treasurer shall have the care and custody of the funds and securities of the Condominium and shall be responsible for keeping full and accurate financial records and books of account thereof, showing all receipts and disbursements necessary for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all funds and other securities in the name of the Condominium Board or in the name of the Managing Agent in such depositories as may from time to time be designated by the Condominium Board and, in general, shall perform all of the duties incident to the office of treasurer of a stock corporation organized under the BCL.

Section 3.6 *Election, Term of Office and Qualification of Officers.* Each of the officers of the Condominium shall be elected annually by a majority vote of the Condominium Board taken at the organizational meeting of each new Condominium Board, and shall serve at the pleasure of the Condominium Board. The President, Vice President, and the Treasurer shall be elected from amongst the

members of the Condominium Board. The officers of the Condominium Board generally need not be Unit Owners and need not have any interest in the Condominium or in a Unit Owner, as long as those officers have a legal capacity to bind the Unit Owner represented by such officer. However, except where the Residential Member is designated by Sponsor, any officer that is a Residential Member shall be a Residential Unit Owner, or an adult Family Member of a Residential Unit Owner, or an officer, director, partner, manager, member or shareholder of a Residential Unit Owner.

Section 3.7 *Removal and Resignation of Officers*. Any officer of the Condominium Board may be removed from office, with or without cause, by an affirmative vote of a majority of the members of the Condominium Board. In addition, any officer may resign at any time by giving written notice to the Condominium Board. Finally, if the President, Vice President, or the Treasurer of the Condominium shall cease to be or shall be suspended as a member of the Condominium Board during his term of office, such officer shall be deemed to have resigned his office effective upon the date upon which his membership shall cease.

Section 3.8 *Vacancies*. Any vacancy in an office shall be filled by a majority vote of the Condominium Board at any regular meeting of the Condominium Board or at a special meeting thereof called for such purpose.

Section 3.9 *Compensation of Officers*. No officer of the Condominium shall receive any compensation from the Condominium for acting as such.

Section 3.10 *Indemnification of Officers*. Each officer shall be indemnified as set forth in Paragraph 2.20.

## ARTICLE 4

## UNIT OWNERS

Section 4.1 *Annual Meetings of the Unit Owners*. The first annual meeting of the Unit Owners shall be held within approximately 30 days after the earlier to occur of: (a) the first anniversary of the First Closing, or (b) the Sponsor has closed title to Residential Units with Purchasers with respect to at least 90% of the Common Interest appertaining to all Residential Units. At such meeting a seven (7) member Condominium Board shall be established, as provided both in this Article 4 and in Article 2 hereof. Thereafter, annual meetings of the Unit Owners shall be held on or about the anniversary date of the first annual meeting. At each such subsequent meeting, the Unit Owners (including Sponsor) shall elect or designate successors to the members of the Condominium Board whose term of office expires on the day of such meeting and shall transact such other business as may properly come before such meeting.

Section 4.2 *Special Meetings of the Unit Owners*. The President shall call a special meeting of the Unit Owners whenever so directed by a duly adopted resolution of the Condominium Board or upon receipt by the Secretary of a petition calling for such a meeting signed by Unit Owners having, in the aggregate, not less than 40% of the Common Interests of all Residential Unit Owners (excluding the Common Interest Appurtenant to the Commercial Unit). Each such resolution or petition shall set forth, in reasonable detail, the purposes for calling such a meeting, and no business shall be transacted at such special meeting except business reasonably related to such stated purposes.

Section 4.3 *Place of Meetings*. Meetings of the Unit Owners shall be held at the principal office of the Condominium or at such other suitable and convenient place in the Borough in which the Property is located as may be designated by the Condominium Board.

Section 4.4 *Notice of Meetings*.

(A) The Secretary of the Condominium shall give notice of each annual or special meeting of the Unit Owners to all Unit Owners then of record entitled to vote at such meeting, which notice shall set

forth the purpose, time and place of such meeting. Such notice may be given to any Unit Owner by personal delivery, mail, or overnight delivery service addressed to his address at the Property, not less than 10 nor more than 30 days prior to the day fixed for the meeting. Any Unit Owner may designate an address for the giving of notice other than such Unit Owner's address at the Property by giving written notice thereof to the Secretary of the Condominium not less than ten (10) days prior to the giving of notice of the applicable meeting.

(B) If the business to be conducted at any meeting of the Unit Owners shall include the consideration of a proposed amendment to the Declaration or to these By-Laws, the notice of such meeting shall be mailed to all Unit Owners at least thirty (30) days prior to the day fixed for such meeting and shall be accompanied by a copy of the text of such proposed amendment.

Section 4.5 *Quorum of the Residential Unit Owners.* Except as otherwise provided in these By-Laws, the presence, in person or by proxy, of Residential Unit Owners owning Residential Units to which 40% or more of the aggregate Common Interests appertain (excluding the Common Interests appurtenant to the Commercial Unit) shall constitute a quorum at all meetings of the Residential Unit Owners. If, at any meeting of the Unit Owners, there shall be less than a quorum present, a majority of the Residential Unit Owners present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours from the time fixed for the original meeting.

Section 4.6 *Conduct of Meetings.* The President shall preside at all meetings of the Unit Owners, and the Secretary shall faithfully record the minutes thereof, which minutes shall include the full text of all resolutions duly adopted by the Unit Owners having voting rights and a record of all transactions and proceedings occurring thereat. The then current edition of Robert's Rules of Order, or any other rules of procedure acceptable to a Majority of the Unit Owners having voting rights and present at any meeting, in person or by proxy, shall govern the conduct of the meetings of the Unit Owners, unless the same shall be in conflict with the terms of the Declaration, these By-Laws, or the Condominium Act. All votes of the Unit Owners having voting rights shall be tallied by the persons appointed by the presiding officer of the meeting.

Section 4.7 *Order of Business.* The order of business at all meetings of the Unit Owners shall be as follows:

(i) Roll call;

(ii) Proof of notice of meeting;

(iii) Reading of the minutes of the preceding meeting (unless waived);

(iv) Reports of officers of the Condominium;

(v) Reports of members of the Condominium Board;

(vi) Reports of committees;

(vii) Election of inspectors of election (when so required);

(viii) Election of members of the Condominium Board (when so required);

(ix) Unfinished business; and

(x) New business.

The order of business at meetings of Unit Owners can be adjusted in the sole discretion of the Condominium Board.

Section 4.8 *Voting.*

(A) Subject to the terms of Section 4.9 hereof, each Residential Unit Owner (including Sponsor for so long as Sponsor shall own Unsold Units) shall be entitled to cast one (1) vote at all

meetings of the Unit Owners for each .0001% of Common Interest attributable to such Unit Owner's Unit(s). Unless a greater percentage is required elsewhere herein or in the Declaration, the vote of a Majority of the Unit Owners entitled to vote shall be binding upon all Unit Owners for all purposes.

(B) Notwithstanding the terms contained in paragraph (A) hereof, no Unit Owner may vote at any meeting of the Unit Owners if the Condominium Board has perfected a lien against such Unit Owner's Unit and the amount necessary to release such lien has not been paid at the time of such meeting. In addition, neither the Condominium Board nor any designee thereof shall be entitled to vote the Common Interest appurtenant to any Unit owned by the Condominium Board or such designee. The Common Interests of all Units whose owners are precluded from voting pursuant to the terms of this paragraph (B) will be excluded when computing the aggregate Common Interests of all Unit Owners for voting purposes.

(C) A fiduciary shall be the voting member with respect to a Unit owned in a fiduciary capacity. In addition, if two (2) or more Persons own a Unit, they shall designate one (1) Person amongst them to vote the Common Interest appurtenant to their Unit in a writing given to the Secretary of the Condominium, and the vote of such designee shall be binding upon all of such Persons. Failing such a designation, all of such Persons shall mutually vote such Common Interest under one (1) ballot without division, and the concurrence of all such Persons shall be conclusively presumed if any one of them purports to vote such Common Interest without protest being contemporaneously made to the individual presiding over the meeting at which such vote is taken. If protest is made, the Common Interest appurtenant to such Unit shall be counted solely for the purpose of determining whether a quorum is present for such voting.

(D) The owner(s) of any Unit may designate any Person to act as a proxy on his behalf. The designation of any such proxy shall be made in a written notice both signed and dated by the designator and delivered to the Secretary of the Condominium at or before the appointed time for the meeting(s) during which the same is to be effective. Any such designation shall be revocable at any time upon written notice given to the Secretary of the Condominium; however, no revocation of such designation shall be effective with respect to any votes cast by such proxy prior to the receipt of such revocation notice by the Secretary of the Condominium or, if such revocation is made at a meeting of the Unit Owners during which the Secretary of the Condominium is not in attendance, by the individual acting as the secretary of such meeting, except with respect to the designation of a Permitted Mortgagee to act as the proxy of its mortgagor(s), no designation to act as a proxy shall be effective for a period in excess of six months after the date thereof.

(E) Except where otherwise provided by Law, the Declaration and these Bylaws, the affirmative vote of Majority of Unit Owners entitled to vote shall be binding upon all Unit Owners for all purposes.

(F) Except where otherwise provided by law, the Declaration and these By-Laws, the affirmative vote of a Majority of Residential Unit Owners entitled to vote shall be binding upon all Residential Unit Owners for all purposes.

Section 4.9 *Election of Members to the Condominium Board.*

(A) When voting for Residential members of the Condominium Board, each Residential Unit Owner (including Sponsor for so long as Sponsor shall own Unsold Residential Units) shall be entitled to cast one (1) vote for each 0.0001% of Common Interest attributable to his Residential Unit per member to be elected. However, nothing contained herein shall be deemed to permit any Unit Owner to cumulate the votes attributable to the ownership of a Unit in favor of any one (1) or more members to be elected. In addition, the terms of paragraphs (B), (C), (D), (E) and (F) of Section 4.8 hereof shall apply to all elections of members of the Condominium Board.

(B) All elections of members of the Condominium Board shall be by written ballot, and each ballot cast shall state: (i) the name of the voting Unit Owner and, if such ballot is cast by proxy, the name of the proxy; (ii) the designation number(s) of the Unit(s) owned by the voting Unit Owner; (iii) the percentage(s) of the Common Interest appurtenant to such Unit(s); and (iv) the names of the candidates for whom such ballot is cast (the number of which names shall not exceed the number of members to be elected). Any ballot that is not cast in conformity with this paragraph (B) shall not be counted. All election ballots shall be retained in the records of the Condominium, appropriately segregated by election for a period of 2 years.

(C) Subject to the terms of paragraph (D) of this Section 4.9, all elections of Residential Members of the Condominium Board shall be determined by plurality vote of Residential Unit Owners having voting rights and present, in person or by proxy, at a duly convened meeting.

(D) At meetings of the Unit Owners, Sponsor will have the right to vote all of the Common Interests attributable to the Residential Units owned by Sponsor as it sees fit. However, at elections of members to the Condominium Board held during the Initial Control Period, including, but not limited to, an election held at the first meeting of Unit Owners, Sponsor will have the right to designate four (4) of the five (5) Residential Members to the Condominium Board and all Residential Unit Owners (including Sponsor) shall have the right to vote for the one (1) remaining Residential Member of the Condominium Board.

Subsequent to the Initial Control Period, and for so long as Sponsor continues to own at least one Unsold Residential Unit, Sponsor shall have the right to designate one (1) Residential Member to the Condominium Board, and shall have the right to vote its Common Interest attributable to the Unsold Residential Units for the remaining Residential Members of the Condominium Board. There is no restriction on the right of the Unsold Unit Owners (including Sponsor) to vote for members of the Condominium Board who are not related to or affiliated with Sponsor or other Unsold Unit Owners.

(E) Within 30 days after the Initial Control Period, and at the meeting of the Unit Owners called for the purpose of electing the new members, three (3) of the four (4) members of the Condominium Board who were designated by Sponsor shall immediately resign upon the election of their replacements by the vote of the Unit Owners, including Sponsor.

Section 4.10 *Designation of Commercial Members to the Condominium Board.* The Commercial Unit Owners shall be entitled to designate two (2) Commercial Members to the Condominium Board, (with each of the two Commercial Unit Owners having the right to designate one (1) Commercial Member), subject to the Sponsor's rights during the Initial Control Period and thereafter.

Section 4.11 *Action Without a Meeting.* Any action required or permitted to be taken by the Unit Owners at a duly constituted meeting may be taken without such a meeting if the number of Unit Owners sufficient (both in absolute number and in aggregate Common Interests whenever applicable) to approve such an action at a duly constituted meeting of the Unit Owners pursuant to the Declaration or to these By-Laws consent in writing to the adoption of a resolution approving such action. All written consents given by Unit Owners pursuant to this Section 4.11, together with the motion or resolution acted upon, shall be retained in the records of the Condominium together with a true copy of the resolutions to which they relate.

Section 4.12 *Title to Units.* Title to any Unit may be taken by any Person or by any two or more Persons as joint tenants, tenants in common, or tenants by the entirety, as may be appropriate. The sale of a Unit to a corporation, limited liability company, partnership, limited partnership, trust or any other entity shall require the delivery to the Condominium Board or its managing agent of such documents as are reasonably requested by the Condominium Board.

Section 4.13 *Contractual Liability of Unit Owners.* Every contract made by the Condominium Board, by any officer of the Condominium, or by any superintendent or Managing Agent of the Building

shall state (if obtainable and in addition to the limitation of liability of the members of the Condominium Board and the officers of the Condominium pursuant to the terms of Sections 2.20 and 3.10 hereof, respectively) that the liability of any Unit Owner with respect thereto shall be limited to: (i) such proportionate share of the total liability thereunder as the Common Interest of such Unit Owner bears to the aggregate Common Interests of all Unit Owners in the case of a contract relating to the General Common Elements, (ii) such proportionate share of the total liability thereunder as the Residential Common Interest of such Residential Unit bears to the aggregate Residential Common Interests of all Residential Unit Owners in the case of a contract relating to the Residential Common Elements, and (iii) such Unit Owner's interest in his Unit and its Appurtenant Interests, unless otherwise provided by Law.

## ARTICLE 5

## OPERATION OF THE PROPERTY

Section 5.1 *Maintenance and Repairs.*

(A) Except as otherwise provided in the Declaration or in these By-Laws, all painting, decorating, maintenance, repairs and replacements, whether structural or non-structural, ordinary or extraordinary:

(i) in or to any Unit and all portions thereof (including, but not limited to, the interior walls, partitions, ceilings, and floors in the Unit, kitchen and bathroom fixtures and appliances, window panes and frames and caulking associated therewith, fireplace, all doors in or to the Unit, including those from a terrace, balcony, and service entrance, and their frames and saddles, terrace pavers, exposed plumbing, gas and heating fixtures and equipment, storefronts, seals, retaining mechanisms, and caulking associated therewith, and windows included in storefronts, air conditioning units, lighting and electrical fixtures, the intercom panel in a Unit, and any Common Elements exclusively used by a Unit Owner pursuant to paragraph (C) of Section 5.9 hereof, but excluding any other Common Elements contained therein) shall be performed by the owner of such Unit at such Unit Owner's sole cost and expense; and

(ii) in or to the General Common Elements (other than any General Common Elements incorporated into one or more Units pursuant to the terms of paragraph (C) of Section 5.9 hereof), including sidewalk snow and ice removal, shall be performed by the Condominium Board and the cost and expense thereof shall be charged to all Unit Owners as a General Common Expense;

(iii) in or to the Residential Common Elements (other than any Residential Common Elements incorporated into one or more Units pursuant to the terms of paragraph (C) of Section 5.9 hereof) shall be performed by the Condominium Board and the cost thereof shall be charged to all Residential Unit Owners as a Residential Common Expense; and

(iv) in or to the Limited Residential Common Elements shall be performed (a) by the Condominium Board as a Residential Common Expense, if involving structural or extraordinary maintenance, repairs, or replacements, other than to a pool, its equipment and structure, water features or spas (including, but not limited to, the repair of any leaks on terraces and balconies that are not caused by the acts or omissions of the Residential Unit Owner having direct and exclusive access thereto), or (b) by the Residential Unit Owner having direct and exclusive access thereto at such Residential Unit Owner's sole cost and expense, if involving a deck, pool, water feature or spa or non-structural ordinary maintenance, repairs or replacements. Residential Unit Owners are responsible for the maintenance, repair and replacement of any pools, their equipment and structure, water features, spas, pavers and support pedestals located in any Limited Residential Common Element to which the Residential Unit has exclusive use of.

Promptly upon obtaining knowledge thereof, each Unit Owner shall report to the Condominium Board or to the Managing Agent any defect or need for repairs for which the

Condominium Board is responsible pursuant to the terms hereof. All painting, decorating, maintenance, repairs and replacements performed hereunder or otherwise, whether by or at the behest of a Unit Owner or the Condominium Board, shall be performed in such a manner as shall not unreasonably disturb or interfere with any Unit Owners or the tenants and occupants of any Units. Any paint applied to the exterior side of any door opening from a Residential Unit must be the same color as all other such doors for Residential Units in the Building and as approved by the Managing Agent, so as not to alter the conformity of the Building. Additionally, all entry door hardware and doorbells shall conform to the Building standard and as approved by the Managing Agent. No other hardware, decorations or fixtures shall be installed in the Residential hallways unless approved by the Managing Agent.

(B) Notwithstanding anything to the contrary provided in paragraph (A) of this Section 5.1, if any painting, decorating, maintenance, repairs, or replacements to the Property or any part thereof, whether structural or non-structural, ordinary or extraordinary, is necessitated by the negligence, misuse, or abuse of (i) any Unit Owner, the entire cost and expense thereof shall be borne by such Unit Owner, or (ii) the Condominium Board, the entire cost and expense thereof shall be borne by the Condominium as a General Common Expense attributable to all Unit Owners if relating to the General Common Elements, and as a Residential Common Expense attributable to all Residential Unit Owners if relating to the Residential Common Elements and/or the Limited Residential Common Elements except, in all events, to the extent that such cost and expense is covered by the proceeds of any insurance maintained pursuant to the terms of these By-Laws. Similarly, each Unit Owner shall be responsible for any and all damage to any Unit or to the Common Elements resulting from such Unit Owner's failure to maintain, repair, or replace his Unit or any portion thereof as required herein.

(C) Each Unit and all portions of the Common Elements shall be kept in first-class condition, order and repair (and free of snow, ice and accumulation of water with respect to any roof, balcony or terrace, or other part of the Property exposed to the elements) by the Unit Owner or the Condominium Board, whichever is responsible for the maintenance thereof as set forth herein, and such Unit Owner or the Condominium Board, as the case may be, shall promptly make or perform, or cause to be made or performed, all maintenance work (including, without limitation, painting, repairs and replacements) that is necessary in connection therewith. In addition, the public areas of the Building and those residential areas exposed to public view shall be kept in good appearance, in conformity with the dignity and character of the Building, by (i) the Condominium Board, with respect to such parts of the Building required to be maintained by it, and (ii) each Unit Owner, with respect to the interior surfaces of windows and shades, venetian or other blinds, drapes, curtains or other window decorations in or appurtenant to his Unit. To promote a consistent appearance of the Building from the outside, no Unit Owner shall be allowed to enclose, erect a greenhouse and/or alter a terrace or balcony appurtenant to a Unit in such a way that will alter the conformity of the Building, without the prior written consent of the Condominium Board. The Commercial Unit Owner shall have the right to change the color of that part of the exterior of the Building which encompasses a Commercial Unit without the consent of the Condominium Board.

(D) In the event that any Unit Owner, after receipt of written notice from the Condominium Board, fails or neglects in any way to perform any of its obligations with respect to the painting, decorating, maintenance, repair or replacement of its Unit as provided in this Section 5.1 or of any Common Elements for which such Unit Owner is responsible under the Declaration or these By-Laws, the Condominium Board may perform or cause to be performed such painting, decorating, maintenance, repair or replacement unless such Unit Owner, within five days after receiving notice of such default by the Condominium Board, cures such default, or in the case of a default not reasonably susceptible to cure within such period, commences and thereafter prosecutes to completion, with due diligence, the curing of such default. All sums expended and all costs and expenses incurred in connection with the making of any such painting, decorating, maintenance, repair or replacement in such Unit Owner's Unit or to any such Common Element for which such Unit Owner is responsible, together with interest thereon at the rate of 2% per month (but in no event in excess of the maximum rate permitted by Law), shall be

immediately payable by such Unit Owner to the Condominium Board and shall, for all purposes hereunder, constitute Common Charges payable by such Unit Owner.

Section 5.2 *Alterations, Additions, Improvements, or Repairs in and to Units.*

(A) Subject to the terms of paragraph (B) of this Section 5.2, no Residential Unit Owner may make any structural alteration, addition, improvement or repair, in or to his Unit or its appurtenant Limited Residential Common Elements, without the prior written approval of the Condominium Board. In the event, however, that the Condominium Board shall fail to answer any written, reasonably detailed request by a Residential Unit Owner for such approval to changes to its Residential Unit or its appurtenant Limited Residential Common Element, within 30 days after such request is received, such failure to respond shall constitute the Condominium Board's consent thereto. Prior to, and as a condition of, the granting of any such approval, the Condominium Board may, at its sole option, require the Residential Unit Owner to procure and agree to maintain during the course of such work such insurance as the Condominium Board may reasonably prescribe and to execute an agreement, in form and substance satisfactory to the Condominium Board, setting forth the terms and conditions under which such alteration, addition, or improvement, may be made, including, without limitation, the indemnity referred to in paragraph (D) hereof and the days and hours during which any such work may be done. The Condominium Board may impose charges upon the Residential Unit Owner to reimburse the Condominium for architectural, engineering, legal and other fees incurred in reviewing the Residential Unit Owner's request for approval and in monitoring the work performed until completion.

(B) Notwithstanding anything to the contrary contained in paragraph (A) of this Section 5.2, however, Sponsor shall have the right, pursuant to the terms of Article 12 of the Declaration, to (i) make any alterations, additions, improvements, or repairs in or to any, Unsold Residential Unit or its appurtenant Limited Residential Common Elements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, and (ii) subdivide, combine and change the boundary walls of Unsold Residential Units, all without the approval of the Condominium Board. In addition, the Commercial Unit Owner shall have the right, pursuant to the terms of Article 12 of the Declaration, to make any alterations, additions, improvements or repairs in or to the Commercial Unit, whether structural or non-structural, interior or exterior, ordinary or extraordinary, subdivide and combine such Commercial Unit, all without the approval of the Condominium Board.

(C) All alterations, additions, improvements and repairs by Unit Owners shall be made in compliance with Law. In connection therewith, the Condominium Board shall execute applications to any departments of the City of New York, or to any other governmental agencies having jurisdiction thereof, for any and all permits required in connection with the making of alterations, additions, improvements, or repairs in or to a Unit provided that, with respect to all such work of a structural nature to a Residential Unit or its appurtenant Limited Residential Common Elements (but other than that of the nature described in paragraph (B) hereof), the same was approved by the Condominium Board pursuant to the terms of paragraph (A) hereof. Any decorations, fixtures, plantings or wall coverings to be made to or located on a terrace or balcony must first be approved by the Condominium Board.

(D) Neither the Condominium Board nor any Unit Owner (other than the Unit Owner(s) making any alterations, improvements, additions, or repairs, or causing any of the same to be made, in or to his, or their Unit(s) and appurtenant Limited Residential Common Elements), shall incur any liability, cost, or expense either (i) in connection with the review, preparation, execution, or submission of the applications referred to in paragraph (C) hereof; (ii) to any contractor, subcontractor, materialman, architect, or engineer on account of any alterations, improvements, additions, or repairs made or caused to be made by any Unit Owner; or (iii) to any Person asserting any claim for personal injury or property damage arising therefrom. Any Unit Owner(s) making any alterations, improvements, additions, or repairs, or causing any of the same to be made, in or to his or their Unit(s) and appurtenant Limited Residential Common Elements, shall agree (in a writing executed and delivered to the Condominium

Board, if the Condominium Board shall so request), and shall be deemed to agree (in the absence of such writing), to indemnify and hold the Condominium Board, the members of the Condominium Board, the officers of the Condominium, the Managing Agent and all other Unit Owners harmless from and against any such liability, cost and expense.

(E) In addition to the requirements set forth above in this Section 5.2, until a final certificate of occupancy is obtained for the Building, no Residential Unit Owner shall make any alterations in or to its Unit which may delay obtaining the final certificate of occupancy for the Building, without first notifying Sponsor or the Condominium Board in writing and obtaining consent of the Condominium Board. If consent is granted, such consent may impose requirements with respect to the alterations. Such requirements may include, but need not be limited to, the requirements that:

(i) the Unit Owner use the Sponsor's expediter for all filings with the Buildings Department;

(ii) such work not include any change that would result in a delay in obtaining a temporary or final certificate of occupancy for the Building, or any amendment to, or extension of, the certificate of occupancy if theretofore issued;

(iii) the Unit Owner post a bond or other similar security that is reasonably acceptable to Sponsor in any amount sufficient (in Sponsor's reasonable judgment) to insure the diligent completion of the work and the filing of any required notices or certificates with respect to such work and the completion of the work with all governmental authorities having jurisdiction;

(iv) such work not be commenced until the Unit Owner causes all required plans, specifications, notices and/or certifications to be filed with all governmental authorities having jurisdiction, procures all required permits and licenses with respect to the same, and delivers copies of all such plans, specifications, notices, certifications, permits and licenses to Sponsor;

(v) such work be diligently prosecuted to completion in compliance with all plans, specifications, notices and/or certifications and in conformity with all permits and licenses;

(vi) Sponsor and its representatives shall be given reasonable opportunity, from time to time, to inspect such work as it progresses;

(vii) promptly after the completion of such work, all necessary inspections and approvals of the work shall be obtained, all necessary notices and/or certifications shall be filed with the appropriate governmental authorities and Sponsor shall be given a copy of all such inspections, approvals, notices and certifications;

(viii) the Unit Owner shall indemnify and hold Sponsor harmless from any cost, expense, claim, or liability arising, directly or indirectly, from such work, including, without limitation, any cost, expense, claim, or liability incurred or suffered by Sponsor due to any violation of Law or due to any delay in obtaining a temporary or final certificate of occupancy for the Building (or any amendment to, or extension of, the certificate of occupancy if theretofore issued) as a result of such work or the failure to make all appropriate governmental filings in connection with same; and

(ix) all contractors shall be duly licensed to the extent required by applicable Law and, if required under any contract with any union whose members are performing services at the Building (including, without limitation, services directly or indirectly at the behest, for the benefit, or for the account of Sponsor, any other Unit Owner, or the Condominium Board), such work shall be performed solely by union members.

If any Unit Owner commences any such alterations in violation of the foregoing terms and conditions, or fails to comply with the reasonable requirements of Sponsor in connection with the alterations, Sponsor shall be entitled to cause such work by the Unit Owner to be halted, including, without limitation, to cause the Managing Agent to deny access to the Building to the Unit Owner's

workers and suppliers, until the Unit Owner complies with the same. During the period until such Unit Owner is permitted hereunder to resume its work, Sponsor shall have the right to perform any and all work in and to such Unit Owner's Unit as shall be necessary, in Sponsor's sole judgment, in order to avoid any delay in obtaining a temporary or final certificate of occupancy for the Building (or any amendment to, or extension of, the certificate of occupancy if theretofore issued), whether or not such work shall be in compliance with the plans and specifications for the work theretofore performed by, or on behalf of, such Unit Owner. The cost and expense of any such work performed by Sponsor shall be borne by such Unit Owner and shall be paid to Sponsor within 15 days of Sponsor's written demand therefor.

Section 5.3 *Alterations, Additions, or Improvements to the Common Elements.* Except as otherwise provided in the Declaration or in these By-Laws, all necessary or desirable alterations, additions, or improvements in or to any of the Common Elements shall be made by the Condominium Board, and the cost and expense thereof shall constitute a General Common Expense attributable to all Unit Owners, if relating to the General Common Elements, or a Residential Common Expense attributable to all Residential Unit Owners, if relating to the Residential Common Elements and/or Limited Residential Common Elements. The Mansion Unit Owners are responsible for any and all expenses relating to the repair, maintenance or replacement of the equipment for the operation of the Mansion Unit pool. Similarly, the Skyhouse Unit Owners are responsible for any and all expenses relating to the repair, maintenance or replacement of the equipment for the operation of the Skyhouse Unit pool and spa. Both the Mansion Unit Owner and the Skyhouse Unit Owner are required to utilize the same pool maintenance company(ies) engaged by the Condominium for the maintenance of the pools/spa appurtenant to their Units. In the event that, in the sole opinion of the Condominium Board, the Owners of either the Mansion or Skyhouse Units do not maintain their pools, spa or pool or spa equipment adequately or permits them to freeze, the Condominium Board has the right to perform such maintenance work or take such action to prevent freezing wholly at the expense of the affected Mansion or Skyhouse Unit Owner.

Notwithstanding the foregoing, however, whenever the cost and expense of such alterations, additions, or improvements would, in the judgment of the Condominium Board, exceed $500,000 with respect to the General Common Elements or the Residential Common Elements and/or the Limited Residential Common Elements, at any one time, in any fiscal year, such proposed alterations, additions or improvements shall not be made unless first approved by the Unit Owners if relating to the General Common Elements, or the Residential Unit Owner's, if relating to the Residential Common Elements and/or the Limited Residential Common Elements (including Sponsor if Sponsor then owns any Unsold Residential Unit) owning 66 2/3% of the aggregate Common Interests or Residential Common Interests, as applicable, at a duly constituted meeting of the Unit Owners or the Residential Unit Owners, as applicable, and by the Mortgage Representatives, if any. Except as otherwise provided in the Declaration and in these By-Laws, all such alterations, additions, or improvements costing $500,000 or less, in any fiscal year may be made as aforesaid without the approval of either the Unit Owners or any Mortgage Representatives. Notwithstanding the foregoing, no additions, alterations, or improvements shall be made to any of the Common Elements, regardless of the cost thereof, unless the prior written consent of Sponsor (so long as Sponsor shall own at least one (1) Unsold Residential Unit) is first obtained. In no event will the limitations imposed in the preceding sentence continue for more than five (5) years from the First Closing. Sponsor will not withhold consent to any addition, alteration or improvement to the Common Elements, if such addition, alteration or improvement is required to comply with Law, or to remedy any notice of violation or to remedy any work order by an insurer.

Section 5.4 *Lot Line Windows*

(A) Lot Line windows are located in the following units: (a) 3rd to 27th floors: Unit B in the living room; (b) 28th to 32nd floors: Unit A in the kitchen; (c) Skyhouse, 32nd floor, 32nd floor Mezzanine stairs, and the Skyhouse 33rd floor stairs.

In the event that any or all of the Lot Line Windows must be sealed, all construction to enclose the windows shall be performed by the Board of Managers of the Condominium. The cost and expense of such construction shall be the sole responsibility of the Unit Owner or Owners affected and the cost shall be charged to the affected Unit Owner as a Special Assessment.

(B) In the event that any or all of the Lot-Line Windows must be sealed, all construction to enclose the windows shall be performed by the Board of Managers of the Condominium. The cost and expense of such construction shall be the sole responsibility of the Unit Owner or Owners whose Unit(s) contains a Lot-Line Window and such cost and expense shall be charged to the individual Unit Owners affected as a Special Assessment.

(C) The Board of Managers, their agents, contractors and employees, will have the right to enter any Unit(s) necessary to effect the enclosure of such lot-lined windows, should same be necessary. The Unit side of the enclosure will be finished with the same material originally used when the Sponsor completed the Unit, if available, or if not available, then with such other finish material as will nearly as possible resemble such original material. Decoration of the affected area on the Unit side of the enclosure will also be the responsibility of the Unit Owner, at his or her sole expense.

Section 5.5 *Insurance.*

(A) If the same shall be obtainable, the Condominium Board shall obtain, and shall maintain in full force and effect, special multi-peril property insurance policies including fire with extended "all risk" coverage, with 100% full replacement cost coverage as more fully described below, and agreed valuation, vandalism and malicious mischief endorsements, insuring (a) the entire Building (both the Units and Common Elements therein), including, but not limited to, the public plaza, and (b) the personal property constituting or part of, and/or located within, and/or used in connection with the operation of, the Common Elements, otherwise belonging to the Condominium; except for, in either case, Unit Specific Property as to any of the Units (the "Condominium Property Insurance"). "Unit Specific Property" shall, as to any Unit, mean (i) the improvements and betterments (including fixtures, furnishings and equipment) that (x) are located entirely within the interior volume of space defined by the dimensional boundaries of the Unit (or any Limited Residential Common Elements serving only such Unit), measured from the inside surfaces of all exterior or interior separating/demising walls, and (y) in all events, are non-structural or otherwise not part of any Common Elements (other than Limited Residential Common Elements serving only such Unit), and (ii) any personal property located within such Unit (or any Limited Residential Common Elements serving only such Unit) and belonging to the Unit Owner or tenant or other occupant of the Unit. The policies of Condominium Property Insurance shall name the Condominium Board, all of the Unit Owners and all Permitted Mortgagees (collectively, the "PI Named Parties"), as their respective interest may appear. Each of the said policies shall contain:

(i) waivers, in favor of each PI Name Party, of (a) subrogation, (b) any defense based upon co-insurance or other insurance, (c) invalidity arising out of any acts of the insured, and (d) pro-rata reduction of liability;

(ii) a provision that any adjustment of loss will be made by the Condominium Board and that all proceeds thereof shall be paid to either the Condominium Board or the Insurance Trustee ("Loss Payees"), as provided in Section 5.6 hereof.

(iii) a New York standard mortgagee clause in favor of each Permitted Mortgagee, which shall provide that the proceeds thereof shall be paid to such Permitted Mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Condominium Board and the Insurance Trustee set forth in subparagraph (ii) above and in Section 5.6 hereof; and

(iv) a provision that such policy may not be either canceled or substantially modified except upon at least 30 days prior written notice to the Condominium Board and all insureds who may have requested such notice, including Permitted Mortgagees.

Duplicate originals or certificates of insurance of all such policies and of all renewals thereof, together with proof of payment of premiums, shall be on file at the office of the Managing Agent. Copies thereof shall be delivered to any Unit Owner or Permitted Mortgagee on written request thereof.

(B) The Condominium Board shall also obtain and maintain, to the extent it deems practicable:

(i) commercial general liability insurance, covering all claims on an "occurrence basis" for personal injury, death, or property damage including, without limitation, contractual liability, independent contractors and products and completed operations mobility, arising out of any occurrence on, in or about the Common Elements, including but not limited to the public plaza, or adjoining streets, sidewalks and passageways, and listing as additional insureds (except, the Unit Owners shall not be named insureds, but rather additional insureds, with respect to occurrences within such Unit Owner's Unit or its Limited Residential Common Elements, if any) (a) the Condominium Board and each member thereof, (b) the Managing Agent or manager (if any), (c) each officer and employee of the Condominium and (d) each Unit Owner (except, however, that such insurance shall not cover any liability of a Unit Owner arising from occurrences within his own Unit or its Limited Residential Common Elements, if any);

(ii) rent insurance;

(iii) worker's compensation and New York State disability benefits insurance;

(iv) boiler and machinery insurance;

(v) water damage insurance;

(vi) officers and directors liability insurance;

(vii) fidelity insurance and bonds covering all officers, directors and employees of the Condominium and Managing Agent;

(viii) plate glass insurance;

(ix) elevator liability and collision insurance;

(x) an "increased cost of construction" endorsement; and an endorsement covering demolition, the loss of the value of the undamaged portions of the Building and the cost of debris removal;

(xi) at the option of the Condominium Board, umbrella or excess liability insurance, at a limit to be determined by the Condominium Board;

(xii) such other insurance as the Condominium Board shall from time to time determine.

Each of the aforementioned policies of insurance shall also cover cross-liability claims of one insured against another and shall be written on such forms and with such substance as is customary under then-existing market conditions for other property and buildings similar in nature, use, location, height and type of construction to the Property, in New York County.

(C) All policies of insurance to be maintained by the Condominium Board shall contain such limits as the Condominium Board shall from time to time determine, provided, however, that:

(i) with respect to insurance policies maintained by the Condominium Board pursuant to paragraph (A) hereof, the coverage shall be in an amount equal to not less than 100%

of the full replacement cost of the Building, exclusive of footings and foundations, without deduction for depreciation, as approved by a casualty insurance company, a qualified insurance broker, or another qualified source;

(ii) with respect to insurance policies maintained by the Condominium Board pursuant to subparagraph (i) of paragraph (B) hereof, such policies shall contain single limits of not less than $1,000,000 in the aggregate; and

(iii) with respect to insurance policies maintained by the Condominium Board pursuant to subparagraph (ii) of paragraph (B) hereof, the coverage shall be in an amount equal to the aggregate of all of the Unit Owners' Common Charges for one year.

Any insurance policies maintained by the Condominium Board may also provide for such deductible amounts as the Condominium Board shall determine. The Condominium Board shall review the limits of each insurance policy, as well as the amount of any deductible sum thereunder, at least once each year.

(D) The cost of all insurance maintained by the Condominium Board pursuant to this Section 5.5, together with the fees and disbursements of any Insurance Trustee appointed by the Condominium Board pursuant to the terms of these By-Laws, shall be borne by the Unit Owners as a General Common Expense or the Residential Unit Owners as a Residential Common Expense, depending on the item to which the coverage relates.

(E) Each Residential Unit Owner will be required to maintain, at and from the Closing of Title to his Unit, property insurance policies, including fire with extended "all risk" coverage, with full replacement cost coverage, covering all Unit Specific Property, in that the insurance to be maintained by the Condominium shall not cover Unit Specific Property. In addition, each Residential Unit Owner shall maintain liability insurance with respect to occurrences in or about the Unit and Limited Residential Common Elements appurtenant to such Unit. All such policies shall contain waivers of subrogation and further provide that the liability of the carriers issuing the insurance maintained by the Condominium Board shall not be affected or diminished by reason of any such additional insurance carried by any Residential Unit Owner. The casualty and liability insurance, each with coverage of no less than $1,000,000, shall include the Condominium as an additional insured. A Residential Unit Owner shall provide the Managing Agent with a certificate of insurance evidencing such coverage at Closing and shall provide the Managing Agent with an updated certificate of insurance each year at least thirty (30) days prior to the expiration of such coverages. The certificate should also include a requirement of at least 30 days notice of cancellation or material change be given to the Condominium. A Residential Unit Owner shall also require any tenant of its Unit to maintain similar coverages and to provide the Managing Agent a certificate of insurance evidencing such coverage at the time of lease signing and at each anniversary thereafter. The tenant's certificate must include the Residential Unit Owner and the Condominium as additional insureds and the certificate should include a requirement that at least thirty (30) days' notice of cancellation or material change be given to the Condominium and the Residential Unit Owner. It will be the responsibility of the Residential Unit Owner to obtain the documents required from its tenant and to submit them to the Managing Agent and/or the Condominium.

(F) If there shall be a Casualty Loss, proof of loss statements shall be promptly submitted to the insurance company(ies) issuing the Condominium Property Insurance by (i) the Board, with respect to any damage to the Common Elements, or (ii) each Unit Owner, with respect to any damage to its Unit (but not including damage to any of its Unit Specific Property). The adjustment and settlement of any and all claims under the Condominium Property Insurance shall be made by the Condominium Board, acting on behalf of all the PI Named Parties.

(G) After the settlement of all claims in respect of any Casualty Loss under the policies of Condominium Property Insurance has been finalized by the Condominium Board consistent with the

provisions of this Section 5.5, then, consistent with Section 5.6 hereof, the Loss Payees shall direct the payment of proceeds of such insurance to either (x) the Condominium Board (if such proceeds of such insurance are $1,000,000 or less in the aggregate) or (y) the Insurance Trustee (if such proceeds of such insurance are greater than $1,000,000 in the aggregate), in any such case to be held in Trust Funds as more particularly provided in Section 5.6 hereof.

Section 5.6 *Casualty or Condemnation.*

(A) In the event that either (i) the Building or any part thereof is damaged or destroyed by fire or other casualty ("Casualty Loss") or (ii) the General Common Elements and/or Residential Common Elements and/or Limited Residential Common Element, or any part thereof is taken in condemnation or by eminent domain ("Taking"), the net insurance proceeds payable under the insurance policies maintained by the Condominium Board pursuant to the terms of Section 5.5 hereof by reason of such Casualty Loss or the net condemnation awards receivable by reason of such Taking, as the case may be, shall be payable either to the Condominium Board, if the same shall be $1,000,000 or less in the aggregate, or to the Insurance Trustee, if the same shall exceed $1,000,000 in the aggregate. In either instance, all such monies actually received ("Trust Funds") shall be held in trust for the benefit of all Unit Owners, with respect to the portion thereof allocated to a Casualty Loss to or Taking of the General Common Elements and the Units, and for the benefit of all Residential Unit Owners with respect to the portion thereof allocated to a Casualty Loss to or Taking of the Residential Common Elements, the Limited Residential Common Elements and the Residential Units, and their Permitted Mortgagees and shall be disbursed pursuant to the terms of this Section 5.6. Notwithstanding anything to the contrary contained either in this paragraph (A) or elsewhere in this Section 5.6, however, no Unit Owner whose Unit, its appurtenant Limited Residential Common Elements, if any, or any portion thereof are taken in condemnation or by eminent domain (whether or not all or a part of the Common Elements are contemporaneously taken) shall be deemed to have waived whatever rights that he may have to pursue a separate claim against the condemning authority by reason thereof.

(B) Subject to the terms of paragraph (D) hereof, the Condominium Board shall arrange for the prompt repair or restoration ("Work") of: (i) in the event of a Casualty Loss, the portion(s) of the Building comprising the Common Elements and Units affected by such Casualty Loss, other than Unit Specific Property or (ii) in the event of a Taking, the portion(s) of the Common Elements or the Units (but not Unit Specific Property) affected by such Taking. If, pursuant to the immediately preceding sentence, Work is to be performed in or to Units, Common Elements that service or enclose Units and other Common Elements, or any combination of the foregoing, the Work shall be performed to the extent practicable, first in or to the Units, next in or to the Common Elements that service or enclose Units and then in or to the balance of the Common Elements. Each Unit Owner whose Unit, its appurtenant Limited Residential Common Elements, if any, or any portion thereof, shall be the subject of all or part of any Work shall have the right subject to the terms of Section 5.2 hereof, to supervise any redecorating of his Unit or of such Limited Residential Common Element, if any. The Unit Owners shall arrange for the prompt repair or restoration of the Unit Specific Property and any other interior portion of their respective Units which is their responsibility to repair and/or restore, or the responsibility of the tenant of such Unit, such as appliances, fixtures, improvements made therein by a Unit Owner or tenant of a Unit Owner, or any furniture, furnishings, flooring, decorations, belongings, or other personal property supplied or installed by either Unit Owners or the tenants of Unit Owners.

(C) In the event that Work shall be performed pursuant to the terms of paragraphs (B) and (D) of this Section 5.6, the Condominium Board or the Insurance Trustee, as the case may be, shall disburse the Trust Funds to the contractors engaged in the Work in appropriate progress payments. If the Trust Funds shall be less than sufficient to discharge the cost and expense of performing the Work, the Condominium Board shall levy a Special Assessment against all Unit Owners for the amount of such deficiency in proportion to their respective Common Interests, for Work to the General Common Elements and against all Residential Unit Owners for Work to the Residential Common Elements and/or

the Limited Residential Common Elements, and all proceeds of such Special Assessment shall become part of the Trust Funds. If, conversely, the Trust Funds shall prove to be more than sufficient to discharge the cost and expense of performing the Work, such excess shall be paid to all Unit Owners in proportion to their respective Common Interests, with respect to Work to the Common Elements, except that no payment shall be made to a Unit Owner until there has first been paid, out of such Unit Owner's share of such excess, such amounts as may be necessary to reduce unpaid liens on the Unit Owner's Unit (other than mortgages that are not Permitted Mortgages) in the order of priority of such liens. Notwithstanding the foregoing, however, in the event that the Unit Owners are assessed pursuant to the terms of the second sentence of this paragraph (C) for any projected deficiency in the amount of the Trust Funds available to the Condominium Board and, after the payment of all costs and expenses incurred in connection with the Work, any portion of the Trust Funds remaining unspent, such excess Trust Funds shall, to the extent of such Special Assessment, be deemed to be, and shall constitute, an unspent Special Assessment and shall be paid to the Unit Owners so assessed in proportion to their respective Common Interests, with respect to Work to the Common Elements, free of any claim of any lienor (including without limitation, any Permitted Mortgagee).

(D) If either 75% or more of the Building is destroyed or substantially damaged by fire or other casualty or 75% or more of the Building is taken in a Taking, the Work shall not be performed unless 75% or more of all Unit Owners (including Sponsor if Sponsor shall then own any Units), in aggregate Common Interests, shall promptly resolve to proceed with the same. In the event that a sufficient number of Unit Owners shall so resolve, the Work shall be performed pursuant to the terms of paragraphs (B) and (C) hereof. Conversely, in the event that such sufficient number of Unit Owners shall either fail or refuse to so resolve, the Work shall not be performed and 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 the resulting sale, together with any Trust Funds, shall be paid to all Unit Owners in proportion to their respective Common Interest, to the extent allocated to destroyed or damaged portions of the General Common Elements and to all Residential Unit Owners in proportion to their respective Residential Common Interest, to the extent allocated to destroyed or damaged portions of the Residential Units or the Residential Common Elements or the Limited Residential Common Elements, and to the Commercial Unit Owner, to the extent allocated to destroyed or damaged portions of the Commercial Unit, except that no payment shall be made to a Unit Owner until there first has been paid, out of such Unit Owner's share of such funds, such amounts as may be necessary to pay off any Permitted Mortgage and other unpaid liens on the Unit Owner's Unit.

(E) In the event that the damage resulting from a Casualty Loss shall (i) render one or more Units wholly or partially unusable for the purposes permitted herein and in the Declaration or (ii) destroy the means of access to one or more Units, the installments of Common Charges otherwise payable by the owner of any Unit so affected thereby shall proportionately abate until such Unit shall again be rendered usable for such purposes and/or until the means of access thereto shall be restored, as the case may be. Notwithstanding the foregoing, however, if such Casualty Loss shall be caused by the act, the omission to act, or the negligence of the owner of a Unit so affected thereby, by a Family Member of such Unit Owner, or by a tenant or other occupant of such Unit, such installments of Common Charges shall abate only to the extent of any proceeds of rent insurance actually collected by the Condominium Board with respect to such Unit.

(F) If (i) a portion of any Unit shall be taken in condemnation or by eminent domain and (ii) the Condominium shall not be terminated by reason of a simultaneous Taking pursuant to the terms of paragraph (D) hereof, the Common Interest and Residential Common Interest, where applicable, appurtenant to such Unit shall be adjusted in the proportion that the total floor area of such Unit and its appurtenant Limited Residential Common Elements, if any, after such Taking bears to the total floor area of such Unit and its appurtenant Limited Residential Common Elements, if any, prior to such Taking. The Condominium Board shall promptly prepare and record an amendment to the Declaration reflecting

the new Common Interest and new Residential Common Interest, where applicable, appurtenant to such Unit, which amendment shall be executed by the owner of such Unit together with the holders of record of any liens thereon (or, in lieu of execution by such Unit Owner and lienors, the same may execute a consent to such amendment in recordable form). Following the Taking of a portion of a Unit and the recording of the aforementioned amendment to the Declaration, the votes appurtenant to such Unit shall be based upon the new Common Interest and new Residential Common Interest, where applicable, of such Unit, and, in the event of a Taking of an entire Unit, the right to vote appurtenant to such Unit shall wholly terminate. In either event, the Common Interests and Residential Common Interest, where applicable, of the other or remaining Units shall be adjusted accordingly and reflected in an amendment to the Declaration duly executed and acknowledged by the Condominium Board and the owners of, all of the other or remaining Units together with the holders of the Permitted Mortgages.

(G) As used in this Section 5.6, the terms:

(i) "Prompt repair or restoration" shall mean that the Work is to be commenced not more than either: (a) 60 days after the date upon which the Insurance Trustee notifies the Condominium Board that it has received Trust Funds sufficient to discharge the estimated cost and expense of the Work, or (b) 90 days after the date upon which the Insurance Trustee notifies the Condominium Board that it has received Trust Funds insufficient to discharge the estimated cost and expense of the Work, or (c) in the event that the Trust Funds are payable to the Condominium Board pursuant to the terms of paragraph (A) of this Section 5.6, 60 days after the date upon which the Condominium Board notifies the Unit Owners that it has received the Trust Funds, whether or not the same are sufficient to discharge the cost and expense of the Work; and

(ii) "Promptly resolve" shall mean that a resolution shall be duly made not more than 60 days after the date upon which the Condominium Board notifies the Unit Owners that it has received the Trust Funds and that the same are or are not sufficient to discharge the estimated cost and expense of the Work, as the case may be.

(H) Any dispute that may arise under this Section 5.6 between Unit Owners or between any Unit Owner(s) and the Condominium Board shall be resolved by arbitration pursuant to the terms of Article 10 hereof.

Section 5.7 *Use of the Property.*

(A) No nuisance shall be allowed on the Property, nor shall any use or practice be allowed that either is a source of annoyance to its residents or interferes with the peaceful possession or proper use of the Property by its residents or occupants. No immoral, improper, offensive, or unlawful use shall be made of the Property or any portion thereof, and all valid Laws relating to any portion of the Property shall be complied with at the sole cost and expense of the respective Unit Owners or the Condominium, whoever shall have the obligation to maintain or repair such part of the Property.

(B) Nothing shall be done or kept in any Residential Unit or in any of the Common Elements that would increase the rate of insurance for the Property, except upon the prior written consent of the Condominium Board. In the event that the rate of insurance for the Property is increased as a direct result of a particular or unique use being made of a Commercial Unit and not as a result of the typical uses for which such Commercial Unit may be occupied or used, that Commercial Unit Owner shall be obligated to pay the amount of such increase in the rate of insurance. No Unit Owner shall permit anything to be done or kept in a Unit or in the Common Elements that will result in the cancellation of insurance on the Property or the contents thereof, or that would be in violation of any Law. No waste shall be committed in the Common Elements.

(C) Nothing shall be done in any Unit or in, on, or to the Common Elements that will impair the structural integrity of the Property or will structurally change the Building, except as is otherwise

provided in the Declaration or in these By-Laws. In no event shall interior partitions contributing to the support of any Unit or the Common Elements be altered or removed.

Section 5.8 *Use of the Units.*

The terms and provisions of Article 9 of the Declaration govern the use of the Units and the terms and provisions of Article 9 of the Declaration are incorporated herein by reference.

Section 5.9 *Use of the Common Elements*

(A) Subject to the terms of paragraphs (B) and (C) of this Section 5.9, the Common Elements (including, without limitation, the electrical, heating, gas, plumbing and other mechanical systems and equipment of the Building and the Facilities) may be used only for the furnishing of the services and facilities, and for the other uses, for which they are reasonably suited and capable. In addition, no furniture, packages, or objects of any kind shall be placed in the lobbies, vestibules, public halls, stairways, public elevator, or any other part of the Common Elements (except for those areas designated as storage areas) without the prior written consent of the Condominium Board. The lobbies, vestibules, public halls, stairways and public elevator shall be used only for normal passage through them. Accordingly, all Unit Owners shall require their tradesmen to utilize exclusively the elevator and entrance designated by the Condominium Board for transporting packages, merchandise, or other objects.

(B) Each Storage Bin shall be used only for storage purposes, in compliance with Law and the Rules and Regulations. No articles or materials which pose a threat to the health or safety of Unit Owners or tenants or other occupants of the Building, or that cause noxious odor, dirt or other sanitary problems or otherwise create a nuisance shall be permitted to be brought into or stored in any Storage Bin.

(C) The Owner or Owners of any two or more Units, which Units are the only Units serviced or benefited by any General or Residential Common Element adjacent or appurtenant to such Units (for example, that portion at the end of any residential hallway that is directly adjacent to any such Units located on opposite sides of such hallway) shall, with the consent of the Condominium Board (which consent shall not be unreasonably withheld or delayed), have the right to use such General or Residential Common Elements exclusively, as if it were a part of such Units (including the right, in the above example of a portion of a hallway, to enclose such portion), and no amendment to the Declaration or reallocation of Common Interests shall be made by reason thereof. In such event, however, such Owner or Owners shall, at his or their sole cost and expense, both (i) operate, maintain and repair such General or Residential Common Element for so long as such owner or owners exercise such exclusive right of use and (ii) restore such General or Residential Common Element to its original condition, reasonable wear and tear excepted, after such owner or owners cease to exercise such exclusive right of use.

(D) The terms of paragraph (A) of this Section 5.9 shall not apply to Sponsor for so long as there are any Unsold Residential Units. Sponsor shall have the right, without charge or limitation, to: (i) erect and maintain signs, of any size or content determined by Sponsor on or about any portion of the Common Elements chosen by Sponsor including, without limitation, on the exterior walls of the Building or adjacent to the main entrance thereof; (ii) have its employees, contractors, subcontractors and sales agents present on the Property; and (iii) do all things necessary or appropriate, including the use of the Common Elements (such as lobbies, corridors and the like), to sell, lease, manage, or operate Unsold Residential Units, to complete any work or repairs to the Building expressly undertaken by Sponsor and to comply with Sponsor's obligations under the Plan and the Condominium Documents. In no event, however, shall Sponsor be entitled to use any Common Elements in such a manner as will unreasonably interfere with the use of any Unit for its permitted purposes.

(E) The Commercial Units Owners shall have an easement, to the extent permitted by Law, to erect, maintain, repair and replace, from time to time, one or more signs on the storefront to their respective Units for the purpose of advertising the sale or lease of all or any portion of a Commercial Unit

and the operation of any business of a tenant or occupant of all or any portion of the applicable Commercial Unit. A Commercial Unit Owner shall not have the right to place or install any sign or other advertisement on any part of the Building other than the storefront without the prior written consent of the Condominium Board. However, for so long as Sponsor or Sponsor's designee is the Owner of a Commercial Unit, Sponsor, Sponsor's designee, and their tenants shall have the right to install signage on the façade of the Building abutting the second floor above such Commercial Unit, without the consent of the Condominium Board. There shall be no consent required from the Condominium Board relative to Sponsor placing one or more signs, or the size, design and lighting of any sign placed on the Property by Sponsor.

Section 5.10 *Rights of Access.*

(A) Subject to the rights of existing tenants and other occupants of Unsold Residential Units, each Unit Owner shall grant to the Condominium Board, to the Managing Agent or manager (if any), to the superintendent, if any, or to any other Person authorized by any of the foregoing a right of access (including the right of forced entry if required in the discretion of the party seeking such entry) to his Unit and its appurtenant Limited Residential Common Elements, if any, or Storage Bin, if any, and any other category of Common Element appurtenant to his Unit for the purposes of:

(i) making inspections of, or removing violations noted or issued by any governmental authority against, the Common Elements or any other part of the Property;

(ii) curing defaults hereunder or under the Declaration or violations of the Rules and Regulations committed by such Unit Owner or correcting any conditions originating in his Unit and threatening another Unit or all or a portion of the Common Elements;

(iii) performing maintenance, installations, alterations, repairs, or replacements to the mechanical or electrical services, air conditioning equipment or other portions of the Common Elements or Limited Common Elements appurtenant to its Unit or elsewhere in the Building;

(iv) reading, maintaining, or replacing utility meters relating to the Common Elements, to his Unit, or to any other Unit;

(v) correcting any condition in a Residential Unit that violates the provisions of any Permitted Mortgage encumbering another Unit;

(vi) conducting an inspection, with an insurance adjuster, relative to an insurance claim; or

(vii) inspecting and maintaining, on a quarterly basis, a Residential Unit's heating, ventilation and air-conditioning equipment.

If the Condominium Board exercises any such right of access to any Unit for the purposes described above, then the Condominium Board shall indemnify and hold the Owner of such Unit harmless from any actual out-of-pocket cost, loss, damage, expense, claim, or liability arising, directly or indirectly, from the exercise of any such easement and/or any such right of access; provided, however, that such indemnification obligation shall not be applicable to the extent such easement or such right of access was exercised in order to remove any violations from such Unit.

(B) Commercial Unit Owner Access:

(i) The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit Owners, and the licensees and invitees of the foregoing, who are physically handicapped, will have a right of access through the residential lobby to use the elevators for the limited purpose of entering and leaving the portion of the cellar level of the Building which comprises a Commercial Unit.

(ii) The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Units, and the licensees and invitees of the foregoing, shall have a right of access through the portion of the hallway on the first floor of the Building for the purpose of having secondary means of egress from the Building in case of an emergency.

(iii) The Commercial Unit Owner, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit, and the authorized agents of the tenants of the Commercial Units will have a right of access through the residential lobby, to use the elevator to gain access to the cellar for the purpose of installing, maintaining, replacing and effecting repairs to any equipment or machinery servicing the Commercial Units and located in the cellar.

(iv) The Commercial Unit Owners, the authorized agents of the Commercial Unit Owners, the tenants of the Commercial Unit Owners, and the authorized agents of the tenants of the Commercial Unit Owners will have a right of access through the residential lobby, which is a Residential Common Element, to use the westerly elevator (Elevator 1), which is a Residential Common Element, and through the thirty third floor common area hallway, to the staircases leading from the thirty third floor of the Building to the thirty fourth floor mechanical room and/or roof of the Building, for the purpose of installing, maintaining, replacing and effecting repairs to any equipment servicing the Commercial Units located on the roof or in the thirty fourth floor mechanical room. Such rights of access shall be exercised with reasonable care and in the presence of either the Resident Manager/porter or a representative of the Managing Agent.

(v) The Commercial Unit Owners and their tenants shall have an easement for so long as the Condominium shall remain in existence, to use the sidewalks appurtenant to such Commercial Unit, but not the Plaza, for any purposes permitted by Law, including, without limitation, food and beverage service and the placement of outdoor seating and tables. The use of such easement is subject to the reasonable rules and regulations promulgated by the Condominium Board, and compliance with all applicable Law.

Except in cases of emergency (that is, a condition requiring repairs or replacement immediately necessary for the preservation or safety of the Building or for the safety of the occupants of the Building or other individuals, or required to avoid the suspension of any necessary service in the Building), the foregoing rights of access shall be exercised only upon not less than one day's advance notice and only in such a manner as will not unreasonably interfere with the normal conduct of business of a Commercial Unit Owner or with the use of the Residential Units and their appurtenant Limited Residential Common Elements for their permitted purposes. In cases of emergency, however, such rights of access may be exercised immediately, without advance notice and whether or not the Unit Owner is present.

If a Commercial Unit Owner exercises, or its tenants, authorized agents, licensees or invitees exercise, any such right of access to any Unit or the Common Elements, then that Commercial Unit Owner shall indemnify and hold the Owner of such Unit and/or the Condominium Board harmless from any actual out-of-pocket cost, loss, damage, expense, claim, or liability arising, directly or indirectly, from the exercise of any such right of access.

(C) Each Unit Owner shall grant a right of access to his Unit and its appurtenant Limited Residential Common Elements, if any, and the Condominium Board shall grant rights of access to the Common Elements, to Sponsor and its contractors, subcontractors, agents and employees for the purpose of fulfilling Sponsor's obligations as set forth in the Plan or in any amendment thereto, provided that access thereto shall not be exercised, with respect to any Unit and its appurtenant Limited Residential

Common Elements, if any, in such a manner as will unreasonably interfere with the use of such Unit and its appurtenant Limited Residential Common Elements, if any, for their permitted purposes.

(D) Sponsor also reserves a right of access in and to the Common Elements, once Sponsor has conveyed all of its Units, for promotional purposes relating to other ventures of Sponsor or principals or affiliates of Sponsor.

Unless otherwise stated, any person who exercises a right of access or easement under the provisions of this Offering Plan shall indemnify the party who suffers the burden of the exercise of such right of access or easement ("servient estate"). This indemnification obligation requires the party who exercises such right of access to hold harmless the owner of the servient estate from any actual out-of-pocket expense, cost, loss, damage, claim or liability arising, directly or indirectly, from the exercise of any right of access or easement.

Section 5.11 *Modification of the Rules and Regulations.* The Condominium Board shall have the right to amend, modify, add to, or delete any of the Rules and Regulations from time to time, provided, however, that any such amendment, modification, addition, or deletion may be overruled by a vote of at least 66 2/3% of all Unit Owners having voting rights, in number and Common Interest. Copies of the text of any amendments, modifications, additions, or deletions to the Rules and Regulations shall be furnished to all Unit Owners not less than thirty days prior to the effective date thereof. Notwithstanding the foregoing, the Condominium Board shall not have the right to amend, modify, add to, or delete any of the Rules and Regulations if the same would adversely affect Unsold Units owned by Sponsor and the sale, lease or use thereof, without the prior written consent of Sponsor. Notwithstanding the foregoing, the Condominium Board shall not have the right to amend, modify, add to, or delete any of the Rules and Regulations if the same would adversely affect a Commercial Unit and the use thereof, without the prior written consent of that Commercial Unit Owner.

Section 5.12 *Real Estate Taxes.* Unless and until real estate taxes are billed directly to Unit Owners by the City Collector, the Condominium Board shall assess against each Unit Owner its proportionate share of the taxes due and promptly pay such taxes as a Common Expense and shall include the amount to be paid on account of a Unit in Common Charges. In the event of a proposed sale of any Unit, the Condominium Board (for so long as the Condominium Board is still paying such real estate taxes) shall, upon the written request of the selling Unit Owner, execute and deliver to the Purchaser of such Unit, or to such Purchaser's title company, a letter agreeing to promptly pay all such real estate taxes affecting such Owner's Unit to the date of the closing of title to such Unit.

Section 5.13 *Fuel and Electricity.* Unless and until electricity and fuel is billed directly to Unit Owners by the Condominium or the supply company, in accordance with and subject to the provisions of the Plan, the cost and expense of electricity and fuel (for heating and cooling) serving or benefiting any Unit and/or Common Element shall be: (i) considered part of the expense of maintaining such Unit and/or Common Element, (ii) determined by the Condominium Board, (iii) paid by the Condominium Board, and (iv) charged to: (a) the Unit Owners as a General Common Expense for such portion attributable to the General Common Elements, (b) each Commercial Unit Owner as a General Common Expense for such portion attributable to such Commercial Unit, and (c) the Residential Unit Owners as a Residential Common Expense for such portion attributable to the Residential Units and/or the Residential Common Elements and/or the Limited Residential Common Elements. In the event there is a particular or unique use being made of a Unit and/or Common Element, the Condominium Board shall cause a new survey to be made the cost of which shall be borne by the Unit Owners as a General Common Expense.

Section 5.14 *Water Charges and Sewer Rents.* Unless and until water is separately metered in a Unit and water charges and sewer rents are billed directly to a Unit Owner by the City Collector, in accordance with and subject to the provisions of the Plan, the cost and expense of water serving or benefiting a Unit and/or Common Element shall be: (i) considered part of the expense of maintaining

such Unit and/or Common Element, (ii) determined by the Condominium Board, (iii) paid by the Condominium Board, and (iv) charged to: (a) the Unit Owners as a General Common Expense for such portion attributable to the General Common Elements, (b) each Commercial Unit Owner as a General Common Expense for such portion attributable to such Commercial Unit, and (c) the Residential Unit Owners as a Residential Common Expense for such portion attributable to the Residential Units and/or the Residential Common Elements and/or the Limited Residential Common Elements. In the event there is a particular or unique use being made of a Unit and/or Common Element, the Condominium Board shall cause a new survey to be made the cost of which shall be borne by the Unit Owners as a General Common Expense.

If, in the reasonable determination of the Condominium Board, any occupant of a Commercial Unit uses water for other than ordinary lavatory purposes, the applicable Commercial Unit Owner shall install a water meter or sub-meter at its sole cost and expense to measure the amount of water used by or on account of such occupant. The cost of installation of such meter or sub-meter shall be deemed a Common Charge payable by the applicable Commercial Unit Owner. If a meter is installed, the applicable Commercial Unit Owner will pay all charges for water/sewer usage directly to the municipality or utility company providing the water/sewer. If a sub-meter is installed, the Condominium will cause the applicable Commercial Unit Owner to be billed for water/sewer usage and the monies payable shall be deemed a Common Charge.

Section 5.15 *Record and Audits.*

(A) The Treasurer of the Condominium, or the Managing Agent under the supervision of such Treasurer, shall keep full, detailed and accurate records and books of account with respect to the financial affairs of the Condominium, which records and books of account shall include, without limitation, (i) a listing of all receipts of and expenditures by the Condominium Board and the Managing Agent and (ii) a separate listing for each Unit, setting forth, among other things, the amount of each assessment of Common Charges and Special Assessments levied against such Unit, the date when due, the amounts paid thereon and the balance, if any, remaining unpaid, as well as all Permitted Mortgages having an interest in such Unit.

(B) Within four (4) months after the end of each fiscal year of the Condominium, the Condominium Board shall submit to each Unit Owner, and, if so requested, to any Permitted Mortgagee, an annual report of the receipts and expenditures of the Condominium prepared and certified by an independent certified public accountant. The cost of preparing and distributing each such report shall be borne by the Condominium Board as a General Common Expense. The fiscal year of the Condominium shall be a calendar year.

(C) Copies of the Condominium Documents, the Plan and the contract with any Managing Agent shall be maintained at the office of the Condominium Board and shall be available for inspection by the Unit Owners and their authorized agents during reasonable business hours.

## ARTICLE 6
## COMMON CHARGES

Section 6.1 *Determination of Common Expenses and Fixing of Common Charges and Special Assessments*

(A) From time to time, but not less frequently than once a year, the Condominium Board shall: (i) prepare and adopt a budget for the Condominium, subject, in all respects, to the strictures set forth in Section 2.5 hereof; (ii) determine the aggregate amount of Common Charges necessary to be charged to the Unit Owners in order to meet the Common Expenses; and (iii) allocate and assess such Common Charges amongst the Unit Owners in accordance with allocations set forth in the First Year's Budget and as provided in Section 6.1(E) below, which allocations are based on the proportion of

expenses and charges fairly attributable to Units, based upon estimated usage of particular services, or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. The Condominium Board shall advise all Unit Owners promptly thereafter in writing of the amount of Common Charges payable by each of them, not later than ten (10) days prior to the date upon which the first installment of newly determined Common Charges is due, shall furnish copies of the budget (in a reasonably itemized form) upon which such Common Charges are based to all Unit Owners and to their respective Permitted Mortgagees whenever requested in writing by such Permitted Mortgagees. The Condominium Board may, subject to Section 6.1 (E) hereof, at its sole discretion, from time to time increase or decrease the amount of Common Charges allocated to the Units and payable by the Unit Owners and may modify its prior determination of the Common Expenses for any fiscal year so as to increase or decrease the amount of Common Charges payable for such fiscal year or portion thereof; however, no such revised determination of Common Expenses shall have a retroactive effect on the amount of Common Charges payable by Unit Owners for any period prior to the date of such new determination. Notwithstanding the foregoing, however, the Condominium Board shall not reduce the Common Charges payable during any fiscal year occurring within the Initial Control Period solely as a result of either reducing the number of employees of the Condominium below the number employed (or anticipated in the First Year's Budget) for the Property on the date of recording the Declaration, except with the Sponsor's prior written consent, or eliminating or reducing the insurance coverage below that provided for the Property on such date, except with the concurrence of a majority of the members of the Condominium Board elected by Unit Owners other than Sponsor. All Unit Owners will be given a copy of the proposed annual budget of the Condominium at least ten (10) days prior to the date set for adoption thereof by the Condominium Board.

(B) The failure or delay of the Condominium Board to prepare or adopt a budget or to determine the Common Expenses for any fiscal year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof or a release of any Unit Owner from the obligation to pay Common Charges. In such event, the Common Charges that were computed on the basis of the Common Expenses last determined for any fiscal year or portion thereof shall continue thereafter to be the Common Charges payable by the Unit Owners until a new determination of the Common Expenses shall be made.

(C) In addition to the foregoing duty to determine the amount of and assess Common Charges, the Condominium Board shall have the right, subject, in all respects, to the strictures contained in Section 2.5 hereof, to levy Special Assessments to meet the Common Expenses. All Special Assessments relative to the General Common Elements shall be allocated between the Residential Units and the Commercial Units in accordance with the allocations set forth in the First Year's Budget and as provided in Section 6.1(E) below. In the event the cost or expense resulting in the Special Assessment does not fall within one of the categories in the First Year's Budget or as set forth in Section 6.1(E) below, then the Special Assessment shall be based on the proportion of expenses and charges fairly attributable to Units, based upon estimated usage of particular services, or based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. Special Assessments levied against the Residential Unit Owners relative to (i) the General Common Elements, after the aforementioned allocation between the Residential Units and the Commercial Units is effected, and (ii) the Residential Common Elements and/or the Limited Residential Common Elements shall be levied against all Residential Unit Owners in proportion to their respective Residential Common Interests. Special Assessments may be payable either in one lump sum or in installments, as the Condominium Board shall determine, provided, however, that the Condominium Board shall give each Unit Owner not less than fifteen (15) days' written notice prior to the date upon which such Special Assessment, or the first installment thereof, shall be due and payable, which notice shall set forth, in reasonable detail, the nature and purpose thereof. The Condominium Board shall have all rights and remedies for the collection of Special Assessments as are provided herein for the collection of Common Charges (including, without limitation, the provisions of Section 6.4 hereof).

(D) The excess of all rents, profits and revenues derived from the rental or use of any space forming a part of, or included in, any, General Common Element, or Residential Common Element remaining after deduction of all expenses incurred in connection with generating the same shall constitute income of the Unit Owners or the Residential Unit Owners, as applicable and shall be collected on behalf of the Unit Owners or Residential Unit Owners, as applicable by the Condominium Board and applied against the General Common Expenses attributable to the General Common Elements, or the Residential Common Expenses attributable to the Residential Common Elements, or the Limited Residential Common Elements, as appropriate for the fiscal year in which collected. In the event that such net rents, profits and revenues, together with the Common Charges and any Special Assessments collected from the Unit Owners, for any year of operation shall exceed the Common Expenses for such year, then such excess shall be applied by the Condominium Board against the General Common Expenses attributable to the General Common Elements, or the Residential Common Expense attributable to the Residential Common Elements or the Limited Residential Common Elements depending on whether the excess relates to the General Common Elements or the Residential Common Elements or the Limited Residential Common Elements for the next succeeding year(s) of operation. No Unit Owner shall be entitled to a distribution of any portion of such excess unless the Condominium Board shall determine to distribute all or part of such excess to all Unit Owners pro-rata, in proportion to their respective Common Interests, or Residential Common Interests, as appropriate and any such distributions must be made out of the Common Charges collected from Unit Owners.

(E) Common Expenses may be allocated in a manner different from the allocation by Common Interest, as permitted by the Condominium Act and these By-Laws, provided that such allocation is based on the proportion of expenses and charges fairly attributable to such Units, based on actual usage of particular services and based upon special or exclusive use or availability or exclusive control of particular Common Elements by particular Unit Owners. Pursuant to the foregoing, allocations of the following Common Expenses based other than on General Common Interest are set forth below. Any dispute among the Owners of the Residential Units, Commercial Unit 1 or Commercial Unit 2 concerning the allocation of Common Expenses shall be resolved pursuant to the Arbitration procedures in Article 10 of these By-Laws. For purposes of this allocation, the Common Charges for Commercial Unit 1 and Commercial Unit 2 have been combined. The allocations of Common Expenses between the Residential Units and the Commercial Units in the First Year's Budget are deemed presumptive evidence of reasonableness. The Condominium Board may not modify the allocations set forth in Schedule B without the unanimous consent of the Commercial Unit Owners.

| ESTIMATED EXPENSES | Residential Units* | Commercial Units | Mansion Unit | Skyhouse Unit |
|---|---|---|---|---|
| Payroll and Related Expenses<br>(a) Resident Building Manager<br>(b) Other Staff | <br>(a) 95.8570%<br>(b) 100% | <br>(a) 4.1430%<br>(b) 0% | <br>(a) 0%<br>(b) 0% | <br>(a) 0%<br>(b) 0% |
| Gas (a) Heating/Hot Water<br>(b) Gas for Mansion Pool<br>(c) Gas for Skyhouse Pool | (a) 100%<br>(b) 0%<br>(c) 0% | (a) 0%<br>(b) 0%<br>(c) 0% | (a) 0%<br>(b) 100%<br>(c) 0% | (a) 0%<br>(b) 0%<br>(c) 100% |
| Electricity<br>(a) Building HVAC, mechanical systems, elevators and common area lighting<br>(b) Public Plaza, service elevator | <br>(a) 100%<br><br>(b) 95.8570% | <br>(a) 0%<br><br>(b) 4.1430% | <br>(a) 0%<br><br>(b) 0% | <br>(a) 0%<br><br>(b) 0% |

* The items allocated to Residential Units are allocated to all Residential Units, including but not limited to Mansion and Skyhouse Units, in accordance with their Percentage Interest in Residential Common Elements.

| ESTIMATED EXPENSES | Residential Units | Commercial Units | Mansion Unit | Skyhouse Unit |
|---|---|---|---|---|
| Water and Sewer Consumption<br>(a) Residential Units and Commercial Units<br>(b) Public Plaza<br>(c) Mansion Unit Pool and Spa<br>(d) Skyhouse Unit Pool | (a) 100%<br><br>(b) 95.8570%<br>(c) 0%<br>(d) 0% | (a) 0%<br><br>(b) 4.1430%<br>(c) 0%<br>(d) 0% | (a) 0%<br><br>(b) 0%<br>(c) 100%<br>(d) 0% | (a) 0%<br><br>(b) 0%<br>(c) 0%<br>100% |
| Repairs, Maintenance, Supplies | 100% | 0% | 0% | 0% |
| Service Contracts<br>(a) Elevator<br>(b) Fire Alarm<br>(c) Pest Control<br>(d) Public Plaza | (a) 95.8570%<br>(b) 95.8570%<br>(c) 95.8570%<br>(d) 95.8570% | (a) 4.1430%<br>(b) 4.1430%<br>(c) 4.1430%<br>(d) 4.1430% | (a) 0%<br>(b) 0%<br>(c) 0%<br>(d) 0% | (a) 0%<br>(b) 0%<br>(c) 0%<br>(d) 0% |
| Service Contracts (continued)<br>(e) Skyhouse Elevators and Generator<br>(f) Gas Meter Readings for Mansion and Skyhouse Units and Pool Maintenance Contract | (e) 0%<br><br>(f) 0% | (e) 0%<br><br>(f) 0% | (e) 0%<br><br>(f) 50% | (e) 100%<br><br>(f) 50% |
| Resident Manager's Unit | 98.9642% | CUA – 0.6304%<br>CUB – 0.4054% | 0% | 0% |
| Insurance | 95.8570% | 4.1430% | 0% | 0% |
| Management Fee | 95.8570% | 4.1430% | 0% | 0% |
| Legal and Accounting | 95.8570% | 4.1430% | 0% | 0% |
| Capital Reserve | 95.8570% | 4.1430% | 0% | 0% |
| Contingency | 100% | 0% | 0% | 0% |
| Miscellaneous Expenses | 100% | 0% | 0% | 0% |
| Events Budget | 100% | 0% | 0% | 0% |

(F) Delay in Collection of Common Charges. During the Initial Control Period, Sponsor shall have the right, in its sole discretion, to delay the obligation of the Unit Owners to pay Common Charges from and after the First Closing, for a period to be determined by the Sponsor provided that the expenses of the Condominium (including, but not limited to, insurance premiums) during such period are paid by, and the reserve fund line item on Schedule B to the Offering Plan is funded by, Sponsor. Upon commencement of the payment obligation for Common Charges, there will not be a special assessment for any item set forth in the First Year's Budget for the Condominium. Sponsor shall remain obligated to update the budget for the Condominium, as provided for in the governing regulations. In the event Sponsor elects to delay the collection of Common Charges, it will disclose such fact in the Closing Notice to Purchasers, and will further disclose such fact in the post-closing amendment to the Plan. Such amendment will also disclose the anticipated period of delay. Sponsor will notify all Unit Owners in writing of the expiration of the delay period at least 30 days prior to the commencement of collection of Common Charges and will disclose such fact in the subsequent amendment to the Plan. (See Section 6.4 of the By-Laws and the Section of the Plan entitled "Rights and Obligations of Sponsor".)

Section 6.2 *Payment of Common Charges and/or Special Assessments*

(A) All Unit Owners (including Sponsor with respect to Residential Unsold Units for so long as the same are owned thereby) shall be obligated to pay Common Charges and Special Assessments assessed by the Condominium Board pursuant to the terms of Section 6.1 hereof at such time or times (but not less than annually) as the Condominium Board shall determine. Unless otherwise determined by the Condominium Board, Common Charges shall be payable in installments on the first day of every month in advance. To the extent permitted by Law, the Condominium Board shall have a lien on each Unit, on behalf of all Unit Owners, for unpaid Common Charges and Special Assessments assessed against such Unit. Such lien, however, shall be subordinate, to the extent required by Law, to any liens for real estate taxes assessed against such Unit and any sums unpaid on a Permitted Mortgage recorded against the Unit.

(B) No Unit Owner shall be liable for the payment of any part of the Common Charges and any Special Assessments assessed against his Unit subsequent to a sale, transfer, or other conveyance by him of such Unit, together with its Appurtenant Interests, made in compliance with the terms of Article 7 hereof. A Purchaser or other successor-in-title to the owner of a Unit shall be liable for the payment of all Common Charges and any Special Assessments accrued and unpaid against such Unit prior to his acquisition thereof, except that, to the extent permitted by Law, a Permitted Mortgagee acquiring title to a mortgaged Unit or a Purchaser at a mortgage foreclosure sale held with respect to a Permitted Mortgage shall not be liable, and such mortgaged Unit shall not be subject to a lien, for the payment of any Common Charges and Special Assessments assessed subsequent to the recording of such Permitted Mortgage and prior to the acquisition of title to such Unit by the Permitted Mortgagee or by such Purchaser. However, in the event of a foreclosure of a Permitted Mortgage (whether by sale, deed in lieu of foreclosure, or otherwise), the defaulting Unit Owner shall remain fully liable for the payment of all unpaid Common Charges and Special Assessments that accrued prior to such foreclosure or sale. Any excess proceeds from such foreclosure or sale shall be paid directly to the Condominium Board in payment of all unpaid Common Charges and Special Assessments. In the case of a Residential Unit, any remaining unpaid Common Charges and Special Assessments that are not collected from such foreclosure sale or from the defaulting Residential Unit Owner shall be deemed a Residential Common Expense, collectible from all those who are Residential Unit Owners at the time the same is levied. In the case of a Commercial Unit, any remaining unpaid Common Charges and Special Assessments that are not collected from such foreclosure or sale or from the defaulting Commercial Unit Owner shall be deemed a Common Expense, collectible from all those who are Commercial Unit Owners, as the case may be, at the time that the same is levied.

(C) Subject to the terms and conditions contained in these By-Laws, any Unit Owner may convey his Unit and/or Storage Bin License, together with its Appurtenant Interests, to the Condominium Board or to its designee, corporate or otherwise, on behalf of all Unit Owners, without being compensated therefor, and, in such event, be exempt from the payment of Common Charges and Special Assessments thereafter accruing, provided, however, that: (i) all Common Charges and any Special Assessments then due and payable with respect to such Unit have been paid; (ii) such Unit is free and clear of all liens and encumbrances other than a Permitted Mortgage and the statutory lien for unpaid Common Charges and Special Assessments; and (iii) no violation of any provision of the Condominium Documents then exists with respect to such Unit. However, in no event shall Sponsor be permitted to convey any Unsold Residential Unit to the Condominium Board and thereby exempt itself from Common Charges and any Special Assessments attributable to such Residential Unit thereafter accruing unless the aggregate Residential Common Interests then appertaining to the Unsold Residential Units constitute 15% or less of the total Residential Common Interests then appertaining to all Residential Units, at least five years shall have elapsed from the date of the first Closing of a Residential Unit and, at the time of conveyance, Sponsor shall pay to the Condominium Board an amount equal to the product of the then current monthly Common Charges for the Unsold Residential Unit(s) being conveyed multiplied by 24. With respect to

Commercial Unit, at least five (5) years shall have elapsed from the date of the First Closing and, at the time of conveyance, Sponsor shall pay to the Condominium Board an amount equal to the product of the then current monthly Common Charges for such Commercial Unit being conveyed multiplied by 24.

(D) No Unit Owner shall be exempted from liability for the payment of Common Charges or Special Assessments by waiving the use or enjoyment of any or all of the Common Elements or by abandoning his Unit (except with respect to a conveyance of the same to the Condominium Board, without compensation, pursuant to the terms of paragraph (C) hereof). Except as expressly provided to the contrary in paragraph (E) of Section 5.6 hereof, no Unit Owner shall be entitled to a diminution or abatement in the Common Charges or Special Assessments payable thereby for any inconvenience or discomfort arising from: (i) the failure or interruption of any utility or other services; (ii) the making of repairs or improvements to the Common Elements or any Unit (including, without limitation, such Unit) pursuant to the terms of Section 5.1, 5.2, or 5.3 hereof; or (iii) any action taken by the Condominium Board or the officers of the Condominium to comply with Law.

Section 6.3 *Statement of Common Charges and/or Special Assessments.* The Condominium Board shall promptly provide a written statement of unpaid Common Charges and/or Special Assessments due from any Unit Owner upon its receipt of a written request therefor from such Unit Owner. In addition, each Unit Owner shall be permitted to examine the books of account of the Condominium at reasonable times on business days, but not more frequently than once a month.

Section 6.4 *Default in Payment of Common Charges and/or Special Assessments.*

(A) The Condominium Board shall take prompt action to collect any Common Charges and/or Special Assessments due to the Condominium Board that remain unpaid for more than fifteen (15) days after the due date for the payment thereof, including, but not limited to the imposition of late charges, notice fees and the institution of such actions for the recovery of interest and expenses as provided in this Article 6. All costs and expenses incurred by the Condominium Board (including reasonable attorney's fees) as a result of its attempt to collect unpaid Common Charges and/or Special Assessments shall be borne by the Unit Owner and shall constitute Common Charges payable by such Unit Owner. In connection with the collection of Common Charges and/or Special Assessments, the Condominium Board shall have the right and obligation to cause liens for all sums due and owing to the Condominium Board to be filed in the Register's Office pursuant to the terms of Section 339-z of the Condominium Act, to cause such liens to be foreclosed in the manner provided in Section 339-aa of the Condominium Act and/or to institute all other proceedings deemed necessary or desirable by the Condominium Board to recover all such unpaid Common Charges and/or Special Assessments, together with all additional sums of money collectible by the Condominium Board by reason of such nonpayment pursuant to the terms of paragraph (B) hereof. A suit to recover a money judgment for unpaid Common Charges and/or Special Assessments, however, shall be maintainable without foreclosing or waiving the lien securing such charges.

(B) In the event that any Unit Owner shall fail to make prompt payment of Common Charges and/or Special Assessments, such Unit Owner shall be obligated to pay: (i) interest thereon at the rate of 1.5% per month of such unpaid amounts (less any late "charges" theretofore collected), to be computed from the due date thereof until paid in full, together with all costs and expenses paid or incurred by the Condominium Board, the Managing Agent, or the manager (if any) in connection with collecting such unpaid Common Charges and/or Special Assessments with interest as aforesaid and/or in foreclosing the aforementioned lien, including, without limitation, reasonable attorneys' fees and disbursements and court costs; (ii) a late charge of $150 per month for Common Charges and/or Special Assessments which remain unpaid for more than ten (10) days after the date when due, plus all expenses of collection including but not limited to reasonable attorneys' fees, in such amount as may be determined by the Condominium Board from time to time, to be computed from the due date thereof until paid in full. In

addition, if the Condominium Board shall bring an action to foreclose the aforementioned lien, the defaulting Unit Owner will be required to pay a reasonable rental for the use of his Unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. All such late charges, interest, costs and expenses and rentals shall be added to and shall constitute Common Charges payable by such Unit Owner.

(C) In any action brought by the Condominium Board to foreclose a lien on a Unit because of unpaid Common Charges and/or Special Assessments, the Condominium Board shall have, on behalf of all Unit Owners, the power to purchase such Unit at the foreclosure sale thereof and to acquire, hold, lease, mortgage, convey, or otherwise deal with such Unit (but not to vote the votes appurtenant to the same). In the event that the net proceeds received on such foreclosure (after deduction of all legal fees and disbursements, advertising costs, brokerage commissions, court costs and other costs and expenses paid or incurred in connection therewith) shall be insufficient to satisfy the defaulting Unit Owner's obligations to the Condominium, such Unit Owner shall remain liable for the deficit. Any surplus on such foreclosure shall be paid to the defaulting Unit Owner after first paying all liens on such Unit Owner's Unit in the order of priority of such liens.

(D) If the Residential Unit Owner shall at any time lease its Residential Unit and shall default in the payment of any Common Charges and/or Special Assessments or additional Common Charges and/or Special Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from the tenant the rent due or becoming due from such tenant to the Residential Unit Owner, and apply the amount to pay sums due and to become due from the Unit Owner to the Condominium. Any payment by a tenant to the Condominium shall constitute a discharge of the obligation of such tenant to the Unit Owner, to the extent of the amount so paid. The acceptance of rent from any tenant shall not be deemed a consent to or approval of any leasing by the Unit Owner, or a release or discharge of any of the obligations of the Unit Owner hereunder. In the event the tenant fails to pay the rent to the Condominium after demand by the Condominium Board, the Condominium Board shall have the right to commence summary eviction proceedings in the name of or on behalf of the Unit Owner, against the tenant. All costs and expenses incurred by the Condominium Board (including reasonable attorneys' fees) in connection with the above shall be borne by the Unit Owner and shall constitute Common Charges payable by such Unit Owner.

## ARTICLE 7

## SELLING AND LEASING OF RESIDENTIAL UNITS

Section 7.1 *General.* Subject to the terms of Section 7.5 hereof, each Residential Unit Owner may (i) sell his Residential Unit, and (ii) lease his Residential Unit for periods of one (1) year or more only, provided however, no Residential Unit Owner may sell or lease his Unit except in compliance with the applicable provisions of this Article 7. Any purported sale or lease consummated in default in the applicable terms hereof shall be voidable at the sole election of the Condominium Board, and, if the Condominium Board shall so elect, the selling or leasing Residential Unit Owner shall be deemed to have authorized and empowered the Condominium Board to institute legal proceedings to eject the purported Purchaser (in the event of an unauthorized sale) or to evict the purported tenant (in the event of an unauthorized lease) in the name of such Residential Unit Owner. Such Residential Unit Owner shall reimburse the Condominium Board for all costs and expenses paid or incurred in connection with such proceedings, including, without limitation, reasonable attorneys' fees and disbursements and court costs. Either Commercial Unit may be sold or leased without the consent of the Condominium Board or any other Unit Owner.

Section 7.2 *Right of First Refusal.*

(A) Subject to the terms of Sections 7.5 and 7.9 hereof, any contract to sell a Residential Unit, together with the Appurtenant Interests and any lease of a Residential Unit ("Sale Agreement or Lease Agreement") shall contain the following language: "THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER ARE HEREBY MADE EXPRESSLY SUBJECT TO THE RIGHTS IF ANY, OF THE CONDOMINIUM BOARD OF THE CONDOMINIUM WITH RESPECT TO THE TRANSACTION EMBODIED HEREIN PURSUANT TO THE TERMS OF SECTIONS 7.2 AND 7.3 OF THE BY-LAWS OF THE CONDOMINIUM, AS THE SAME MAY HAVE BEEN AMENDED". Promptly after any such bona fide Sale Agreement or Lease Agreement shall be fully executed, the Residential Unit Owner executing the same ("Offeree Unit Owner") shall send written notice thereof to the Condominium Board by (i) certified or registered mail, return receipt requested, or (ii) overnight delivery service, which notice shall be accompanied by a fully executed, original counterpart of the Sale Agreement or Lease Agreement, as the case may be, containing all of the terms offered in good faith by the prospective purchaser or tenant ("Outside Offeror").

(B) The sending of the notice referred to in paragraph (A) of this Section 7.2 shall constitute an offer by the Offeree Unit Owner to sell his Residential Unit, together with the Appurtenant Interests, or to lease his Residential Unit, as the case may be, to the Condominium Board or to its designee, corporate or otherwise, on behalf of all Residential Unit Owners, subject, however, to any variance therefrom provided in Section 7.3 hereof. The giving of such notice shall further constitute a representation and warranty by the Offeree Unit Owner to the Condominium Board, on behalf of all Residential Unit Owners, that such Offeree Unit Owner believes the Sale Agreement or Lease Agreement to be bona fide in all respects. Thereafter, upon the written demand of the Condominium Board, the Offeree Unit Owner shall submit to the Condominium Board, in writing, such further information with respect to the Outside Offeror and the Sale Agreement or Lease Agreement as the Condominium Board may reasonably request.

(C) The Condominium Board may elect on behalf of the Residential Unit Owners, by sending written notice thereof to the Offeree Unit Owner by certified or registered mail not later than thirty (30) business days (in the event of a proposed sale) and fifteen (15) business days (in the event of a proposed lease) after receipt of the notice referred to in paragraph (A) hereof together with such further information as may have been requested pursuant to the terms of paragraph (B) hereof, to purchase such Residential Unit together with its Appurtenant Interests or to lease such Residential 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 Residential Unit Owners upon the same terms and conditions as were contained in the Sale Agreement or Lease Agreement and stated in the response(s) by the Offeree Unit Owner to any requests for additional information pursuant to the terms of paragraph (B) hereof. Notwithstanding anything to the contrary contained herein, however, the Condominium Board shall not exercise any option set forth in this Section 7.2 to purchase or lease any Residential Unit without the prior approval of a Majority of all Residential Unit Owners. The Condominium Board shall, however, have the right to release or waive any such option without prior approval of a Majority of Residential Unit Owners.

The Condominium Board may use the Unit for any use permitted under the Declaration or these By-Laws.

(D) The Condominium Board may not discriminate against any person on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability, marital status or other grounds prohibited by Law in connection with its exercise of its right of first refusal with respect to the sale or lease of a Unit.

Section 7.3 *Acceptance of Offer*

(A) In the event that the Condominium Board, on behalf of the Residential Unit Owners, shall elect, within the time and in the manner provided in Section 7.2 hereof, to purchase a Residential Unit

together with its Appurtenant Interests, to lease such Residential Unit, or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed, in either event in accordance with the terms of the Sale Agreement or Lease Agreement, at the office of the attorneys for the Condominium Board within forty-five (45) days after the day upon which the Condominium Board shall give notice of its election to accept such offer.

(B) If such Residential Unit and its Appurtenant Interests are to be purchased by the Condominium Board or its designee on behalf of all Residential Unit Owners, such purchase may be made from the funds deposited in the capital and/or expense accounts of the Condominium that are specifically funded for such purposes and not commingled with any funds in which the Commercial Unit Owners have an interest. If the funds in such accounts are insufficient to effectuate such purchase, the Condominium Board may levy a Special Assessment against each Residential Unit Owner (other than the Offeree Unit Owner) in accordance with the terms of paragraph (C) of Section 6.1 hereof and/or the Condominium Board may, in its discretion, finance the acquisition of such Residential Unit; provided, however, that no such financing may be secured by an encumbrance on or a hypothecation of any portion of the Property other than the Residential Unit to be purchased together with its Appurtenant Interests. In addition, if the Outside Offeror was to assume or to take title to the Residential Unit subject to the Offeree Unit Owner's existing mortgage or mortgages pursuant to the Sale Agreement, the Condominium Board may purchase the Residential Unit and assume or take title thereto subject to such mortgage or mortgages as the case may be. At the closing of title, the Offeree Unit Owner shall convey the Residential Unit, together with its Appurtenant Interests, to the Condominium Board or to its designee, on behalf of all Residential Unit Owners, by deed in the form required by Section 399-o of the Condominium Act with all tax and/or documentary stamps affixed at the expense of the Offeree Unit Owner, who shall also pay all other transfer taxes arising out of such sale (including, if applicable, the New York State Real Estate Transfer Tax and the New York City Real Property Transfer Tax) notwithstanding any terms of the Sale Agreement to the contrary. Real estate taxes, mortgage interest (if applicable) and Common Charges shall be apportioned between the Offeree Unit Owner and the Condominium Board or its designee as of the closing date, notwithstanding any terms of the Sale Agreement to the contrary. Thereafter, such Residential Unit shall be held, so long as the same is owned by the Condominium Board or its designee, on behalf of all Residential Unit Owners, as tenants-in-common, and all such Unit Owners shall be deemed to have waived all rights of partition with respect to such Residential Unit and the entire Property, as herein provided.

(C) In the event that such Residential Unit is to be leased by the Condominium Board or its designee on behalf of all Residential Unit Owners, the Offeree Unit Owner shall execute and deliver to the Condominium Board or such designee a lease covering such Residential Unit by and between the Offeree Unit Owner, as landlord, and the Condominium Board or such designee, as tenant. Such lease shall be in the then current form of apartment lease recommended by the Real Estate Board of New York, Inc., and shall contain all of the terms and conditions of the Lease Agreement not in conflict with such form of lease, including, without limitation, the rental and term provided for therein. Notwithstanding anything to the contrary set forth hereinabove or in the Lease Agreement, however, such lease shall expressly provide that the Condominium Board or such designee may enter into a sublease of the premises demised thereunder without consent of the landlord.

Section 7.4 *Failure to Accept Offer.*

(A) In the event that the Condominium Board shall fail to accept an offer made pursuant to the terms of Section 7.2 hereof within the respective times set forth in paragraph (C) thereof, the Offeree Unit Owner shall be free to consummate the transaction embodied in the Sale Agreement or Lease Agreement within sixty (60) days after (i) notice of refusal is sent to the Offeree Unit Owner by the Condominium Board or (ii) the expiration of the period within which the Condominium Board or its designee might have accepted such offer, as the case may be. If the Offeree Unit Owner shall fail to consummate the transaction embodied in the Sale Agreement or Lease Agreement within such sixty (60)

day period, then, should the Offeree Unit Owner thereafter elect to sell such Residential Unit together with its Appurtenant Interests or to lease such Unit(s), the Offeree Unit Owner shall be required again to comply with all of the terms and provisions of Section 7.2, 7.3 and 7.4 hereof, but not more often than once in any twelve (12) month period, except the Condominium Board shall have the right to waive this limitation for good cause shown, in its sole discretion.

(B) Any deed of a Residential Unit and its Appurtenant Interests to an Outside Offeror shall expressly provide that the acceptance thereof by the grantee shall constitute an assumption of all of the terms of the Condominium Documents, and, in the absence of such express language, the same shall be conclusively deemed to have been included therein.

(C) Each lease of a Residential Unit to an Outside Offeror shall be in the then current form of apartment lease recommended by the Real Estate Board of New York, Inc., subject to such modifications as may be approved in writing by the Condominium Board or such other form approved in writing by the Condominium Board. Notwithstanding the foregoing, however, each such lease shall be consistent with the Condominium Documents and shall expressly provide that:

(i) such lease may not be amended, modified, or extended without the prior written consent of the Condominium Board in each instance;

(ii) the tenant thereunder shall not assign his interest in such lease or sublet the premises demised thereunder or any part thereof without the prior written consent of the Condominium Board in each instance; and

(iii) the Condominium Board 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 (a) a default by the tenant in the performance of its obligations under such lease or (b) a foreclosure of the lien granted by Section 339-z of the Condominium Act.

Section 7.5 *Termination of, and Exceptions to, the Right of First Refusal.*

(A) A certificate executed and acknowledged by the Secretary of the Condominium or the Managing Agent, stating that the provisions of Section 7.2 hereof have been met by a Residential Unit Owner or that the right of first refusal provided for therein has been duly released or waived by the Condominium Board and that, as a result thereof, the rights of the Condominium Board thereunder have terminated, shall be conclusive upon the Condominium Board and all Unit Owners in favor of all persons who rely upon such certificate in good faith. After the due issuance of such a certificate, the Residential Unit to which the same shall relate, together with its Appurtenant Interests, may be sold, conveyed, or leased free and clear of the terms and conditions contained in Section 7.2 hereof. The Condominium Board shall furnish or cause the Managing Agent to furnish without charge, such certificate upon written request to any Residential Unit Owner in respect to whom the provisions of Sections 7.2 hereof have, in fact, been terminated. In no event, however, shall the right of first refusal described in Section 7.2 hereof be deemed released or waived by the Condominium Board (as opposed to satisfied pursuant to the express terms of Sections 7.2, 7.3 and 7.4 hereof) in the absence of the certificate that has been duly executed, acknowledged and issued by the Secretary of the Condominium or the Managing Agent as aforesaid.

(B) The terms and conditions contained in Section 7.2, 7.3 and 7.4 hereof shall not apply with respect to any sale, lease or conveyance of a Residential Unit together with its Appurtenant Interests by:

(i) the Residential Unit Owner thereof to any of his adult Family Members, to any combination of the same, or to a trust for the benefit of any of them, or to any entity wholly-owned by any combination of the foregoing; provided, however, that if the succeeding Residential Unit Owner is an infant or a person judicially declared incompetent of managing his affairs, then such Residential Unit shall be held by the personal representative of such infant or incompetent, or in the case of a Residential Unit Owner that is not an individual, to any entity or individual that owns more than 50% of the legal and

beneficial interests of such Residential Unit Owner or to any entity with respect to which such Residential Unit Owner (individual or otherwise) owns more than 50% of the legal and beneficial interest thereof;

(ii) Sponsor or its designee with respect to the Residential Units owned by Sponsor or its designee;

(iii) the Condominium Board;

(iv) any proper officer conducting the sale of a Residential Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of such foreclosure; or

(v) any Permitted Mortgagee or its nominee, that has acquired title to any Residential Unit at any foreclosure sale of its Permitted Mortgage or by deed in lieu thereof delivered in a bona fide transaction;

provided, however, that each succeeding Residential Unit Owner shall be bound by, and his Unit shall be subject to, all of the terms and conditions of this Article 7.

(C) The terms and conditions contained in Section 7.2, 7.3 and 7.4 hereof shall not apply with respect to any sale, lease or conveyance of a Commercial Unit, together with its Appurtenant Interests.

Section 7.6 *No Severance of Ownership.* No Unit Owner shall execute any deed or other instrument conveying title to his Unit without including therein its Appurtenant Interests, it being the intention to prevent any severance of such combined ownership. Any deed or other instrument purporting to affect one or more such interests shall be 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, conveyed, or otherwise disposed of, except as part of a sale, conveyance, or other disposition of the Unit to which such interests are appurtenant or as part of a sale, conveyance, or other disposition of such part of the Appurtenant Interests of all Units. Nothing contained in this Section 7.6, however, shall prohibit the lease of any Unit without the simultaneous lease of its Appurtenant Interests.

Section 7.7 *Payment of Common Charges.* No Unit Owner shall be permitted to convey or lease his Unit unless he shall have paid in full to the Condominium Board all unpaid Common Charges and Special Assessments theretofore assessed against such Unit and shall have satisfied all unpaid liens, other than that of Permitted Mortgages, levied against such Unit. However, where the payment of such unpaid Common Charges and/or Special Assessments is made by the grantee or provided for out of the proceeds of the sale, a sale may take place notwithstanding the foregoing.

Section 7.8 *Power of Attorney.* At the time of acquiring title to a Residential Unit and as a condition thereof, the new Residential Unit Owner shall duly execute, acknowledge and deliver to the representative of his title insurance company (or, if no such representative is present, to the Condominium Board for recording in the Register's Office at such Unit Owner's sole cost and expense), the Unit Owner's Power of Attorney required in Article 14 of the Declaration, in the form set forth as Exhibit E to the Declaration, or in the form otherwise required by Sponsor and/or the Condominium Board.

Section 7.9 *Gifts and Devises, Etc..* Any Residential Unit Owner shall be free to convey or transfer his Residential Unit, together with its Appurtenant Interests, by gift, or to devise the same by will or to have the same pass by intestacy, without restriction, provided, however, that each succeeding Residential Unit Owner shall be bound by, and his Residential Unit shall be subject to, the provisions of this Article 7.

Section 7.10 *Commencement of Time.* The period of time set forth in Section 7.2 for which the Condominium Board has to waive its right of first refusal shall not commence until such time as the Condominium Board or its managing agent has received a completed sales or lease package, including all fees set forth therein, as the case may be, from a Unit Owner. If the information provided by the Unit

Owner or prospective purchaser or tenant, as the case may be, is incomplete, the Condominium Board shall have the right to request additional information and the thirty (30) day period will commence on receipt by the Condominium Board of the additional information.

Section 7.11 *Costs and Expenses.* All costs and expenses incurred by the Condominium Board, including, without limitation, attorneys' fees and disbursements paid or incurred by the Condominium Board or by its Managing Agent in connection with any action taken by the Condominium Board as a result of a violation of this Article 7, shall be borne by the Unit Owner as an Additional Common Charge.

## ARTICLE 8

## MORTGAGING OF UNITS

Section 8.1 *General.* Each Unit Owner shall have the right to mortgage his Unit, subject only to the terms and conditions contained in Section 8.2 hereof. Any Unit Owner who mortgages his Unit, or the holder of such mortgage, shall supply the Condominium Board with the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Condominium Board. Any Unit Owner who satisfies a mortgage covering his Unit shall so notify the Condominium Board and shall file a conformed copy of the satisfaction of mortgage with the Condominium Board. The Secretary of the Condominium shall maintain such information in a book entitled "Mortgages of Units". The terms and conditions contained in this Section 8.1, however, shall not apply to Sponsor or the owners of the Commercial Units.

Section 8.2 *Restrictions on Mortgaging*

(A) No Residential Unit Owner shall be permitted to mortgage, pledge, or hypothecate his Unit unless and until he shall have paid in full to the Condominium Board all unpaid Common Charges and Special Assessments theretofore assessed against such Unit and shall have satisfied all unpaid liens, except the liens of Permitted Mortgages levied against such Unit.

(B) No Residential Unit Owner shall execute any mortgage or other document mortgaging, pledging, or hypothecating title to his Unit without including therein its Appurtenant Interests, it being the intention to prevent any severance of such combined ownership. Any 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.

(C) Any mortgage covering a Residential Unit shall be substantially in the form used by any Institutional Lender.

(D) Any mortgage covering a Residential Unit shall be made by an Institutional Lender, Sponsor, or by a Residential Unit Owner providing purchase money financing in connection with the sale of his Residential Unit.

Section 8.3 *Notice of Unpaid Common Charges and Default.* Whenever requested in writing by a Permitted Mortgagee, the Condominium Board shall promptly report to such Permitted Mortgagee any default by his mortgagor(s) in the payment of Common Charges or Special Assessments or in the observance or performance of any of the provisions of the Condominium Documents as to which the Condominium Board has knowledge then exists. The Condominium Board shall, when giving notice to a Unit Owner of any such default, also send a copy of such notice to his Permitted Mortgagee, if so requested. However, the Condominium Board shall have no liability for any failure, through oversight or negligence, in notifying a Permitted Mortgagee of any default by his mortgagor under the Condominium Documents, provided that (i) the Condominium Board shall advise such Permitted Mortgagee of the default promptly after discovering such failure and (ii) if the Condominium Board shall foreclose a lien

on such mortgagor's Unit pursuant to the terms of Section 6.4 hereof by reason of such default, the Condominium Board shall pay to such Permitted Mortgagee any net proceeds of any foreclosure sale of such Unit (after retaining all sums due and owing to the Condominium Board pursuant to the Condominium Documents) or such lesser sum as shall be due and owing to such Permitted Mortgagee.

Section 8.4 *Performance by Permitted Mortgagees.*

Any sum of money to be paid or any act to be performed by a Unit Owner pursuant to the terms of the Condominium Documents may be paid or performed by his Permitted Mortgagee, and the Condominium Board shall accept such Permitted Mortgagee's payment or performance with the same force and effect as if the same were paid or performed by such Unit Owner.

Section 8.5 *Examination of Books.* Each Permitted Mortgagee shall be permitted to examine the books of account of the Condominium at reasonable times on business days, but not more frequently than once a month.

Section 8.6 *Consent of Mortgagees; Designation of Mortgage Representatives.*

(A) Except as otherwise expressly provided for herein or in the Declaration, no consent or approval by any mortgagee shall be required with respect to any determination or act of the Condominium Board or any Unit Owner, provided, however, that nothing contained herein shall be deemed to limit or affect the rights of any mortgagee against his mortgagor. In the event that any such consent or approval shall be expressly required pursuant to the terms of the Declaration or these By-Laws, the decision of a majority of the Mortgage Representatives, if any are designated pursuant to the terms of paragraph (B) of this Section 8.6, shall be deemed binding upon the holders of all mortgages encumbering Units.

(B) The holders of Institutional Mortgages constituting a majority in principal amount of all Institutional Mortgages may, if they so elect, designate not more than three (3) Mortgage Representatives by giving written notice thereof to the Condominium Board, which Mortgage Representatives shall thereby be empowered to act as the representatives of the holders of all mortgages encumbering Units with respect to any matter requiring the consent or approval of mortgagees under the Declaration or these By-Laws. Any designation of a Mortgage Representative pursuant to the terms of this paragraph (B) shall be effective until any successor Mortgage Representative is designated pursuant to the terms hereof and written notice thereof is given to the Condominium Board. Unless otherwise required by Law, no holders of mortgages (which are not Institutional Mortgages) shall be entitled to participate in the designation of Mortgage Representatives, but all holders of mortgages encumbering Units shall be subject to all determinations made by the Mortgage Representatives pursuant to the terms of the Declaration or these By-Laws.

## ARTICLE 9

## CERTAIN REMEDIES

Section 9.1 *Self Help.* If any Unit Owner shall violate or breach any of the provisions of the Condominium Documents on his part to be observed or performed, including, without limitation, any breach of his obligation to paint, decorate, maintain, repair, or replace his Unit or its appurtenant Limited Residential Common Elements, if any, pursuant to the terms of Article 5 hereof, and shall fail to cure such violation or breach within five (5) days after receipt of written notice of the same from the Condominium Board, the Managing Agent, or any manager (or, with respect to any violation or breach of the same not reasonably susceptible to cure within such period, to commence such cure within such five (5) day period and, thereafter, to prosecute such cure with due diligence to completion), the Condominium Board shall have the right to enter such Unit Owner's Unit and/or its appurtenant Limited Residential Common Elements, if any, and summarily to abate, remove, or cure such violation or breach without thereby being deemed guilty or liable in any manner of trespass. In addition, in the event that the

Condominium Board shall determine that the abatement, removal, or cure of any such violation or breach is immediately necessary for the preservation or safety of the Building or for the safety of the occupants of the Building or other individuals or is required to avoid the suspension of any necessary service in the Building, the Condominium Board may take such action immediately, without prior notice and without allowing the said Unit Owner any period of time within which to cure or to commence to cure such violation or breach.

Section 9.2 *Abatement and Enjoinment.*

(A) In the event that any Unit Owner shall violate or breach any of the provisions of the Condominium Documents on his part to be observed or performed, the Condominium Board shall have the right (i) to enter any Unit or Common Elements 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 resulting in such violation or breach and the Condominium Board shall not thereby be deemed guilty or liable in any matter of trespass, and/or (ii) to enjoin, abate, or remedy the continuance or repetition of any such violation or breach by appropriate proceedings brought either at law or in equity, provided that the Condominium Board gives the Unit Owner notice (which may be by telephone or in writing) that such violation exists, that repairs or replacements are necessary and that the Condominium Board will complete such repairs or replacements in the event the Unit Owner does not promptly act or complete the repairs or replacements, and/or (iii) to levy such fines and penalties as the Condominium Board may deem appropriate, and the Condominium Board shall have the same remedies for non-payment of such fines and penalties as for non-payment of Common Charges.

(B) The violation or breach of any of the terms of the Condominium Documents with respect to any rights, easements, privileges, or licenses granted to Sponsor or the Commercial Unit Owners shall give to Sponsor and the Commercial Unit Owners the right to enjoin, abate, or remedy the continuation or repetition of any such violation or breach by appropriate proceedings brought either at law or in equity.

Section 9.3 *Remedies Cumulative.* The remedies specifically granted to the Condominium Board, Sponsor, the Commercial Unit Owner in this Article 9 or elsewhere in the Condominium Documents shall be cumulative, shall be in addition to all other remedies obtainable at law or in equity and may be exercised at one time or at different times, concurrently or in any order, in the sole discretion of the Condominium Board, Sponsor or the Commercial Unit Owners, as the case may be. Further, the exercise of any remedy shall not operate as a waiver, or preclude the exercise or non-exercise, of any other remedy.

Section 9.4 *Costs and Expenses.* All sums of money expended, and all costs and expenses incurred, by (i) the Condominium Board in connection with the abatement, enjoinment, removal, or cure of any violation, breach, or default committed by a Unit Owner pursuant to the terms of Section 9.1 or paragraph (A) of Section 9.2 hereof or (ii) Sponsor or the Commercial Unit Owners in connection with any abatement, enjoinment, or remedy of any violation or breach of the Condominium Documents pursuant to the terms of paragraph (B) of Section 9.2 hereof, shall be immediately payable by (a) in the event set forth in subparagraph (i) hereof, such Unit Owner to the Condominium Board or (b) in the event set forth in subparagraph (ii) hereof, the offending party (i.e., the Condominium Board or the Unit Owner) to Sponsor or the Commercial Unit Owners, as the case may be, which amount shall, in either event, bear interest (to be computed from the date expended) at the rate of two percent per month (but in no event in excess of the maximum rate chargeable to such Unit Owner pursuant to Law). All sums payable by a Unit Owner to the Condominium Board pursuant to the terms of this Section 9.4 shall, for all purposes hereunder, constitute Common Charges payable by such Unit Owner.

## ARTICLE 10

## ARBITRATION

Section 10.1 *Procedure.*

(A) 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 the City of 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 the City of New York before one (1) arbitrator appointed, upon the application of any party, by any Justice of the highest court of appellate jurisdiction then located in the City of New York. The decision of the arbitrator so chosen shall be given within ten (10) days after his selection or appointment. Any arbitrator appointed or selected in connection with any arbitration to be conducted hereunder shall be a disinterested attorney having at least ten (10) years experience in real estate and shall be a member of a law firm having at least five (5) members whose principal office is located in the City of New York.

(B) The decision of the arbitrator shall be rendered in a signed and acknowledged written instrument, original counterparts of which shall be sent simultaneously to the parties to the dispute within ten (10) days after the determination of the question at issue by the arbitrator.

(C) No arbitrator shall have any liability to any party to the arbitration by reason of the arbitrator's participation in any determination made under this Article 10, and each of the parties to the arbitration shall indemnify and hold harmless the arbitrator from and against any and all claims asserted against such arbitrator by reason of his participation in any such determination.

(D) All arbitrators shall apply the law of the State of New York without regard to conflicts of laws principles, and shall have no power to issue any monetary award for damages, whether compensatory or punitive, or to modify any of the provisions of the Declaration or these By-Laws, the Plan, and their power and jurisdiction are hereby limited accordingly.

Section 10.2 *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 10.1 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 New York Civil Practice Law and Rules and known as "New York Simplified Procedure for Court Determination of Disputes".

Section 10.3 *Binding Effect.* The decision in any arbitration conducted pursuant to the terms of Section 10.1 and 10.2 hereof shall be binding upon all of the parties thereto and may be entered in any court of appropriate jurisdiction.

Section 10.4 *Costs 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 counsel and expert witnesses.

(B) 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 General Common Expenses, to be borne by all Unit Owners, if such arbitration relates to the Units, generally, or to the General Common Elements, and shall constitute Residential Common Expenses, to be borne by all Residential Units Owner if such arbitration relates solely to the Residential Units or the Residential Common Elements or the Limited Residential Common Elements.

## ARTICLE 11

## NOTICES

Section 11.1 *General.* All notices required or desired to be given hereunder (except for notices of regular annual or special meetings of the Unit Owners and except all meetings of the Condominium Board) shall be sent by (i) registered or certified mail, return receipt requested, postage prepaid, or (ii) "Federal Express" or other nationally recognized next business day delivery service, with proof of delivery and receipt, addressed:

(i) if to the Condominium Board, to the Condominium Board at its principal office as set forth in Section 2.3 hereof, with a copy sent by regular first class mail to the Managing Agent (if any) at its principal office address as aforesaid;

(ii) if to a Unit Owner other than Sponsor, to such Unit Owner at his address at the Property;

(iii) if to Sponsor, to Sponsor at its principal office as set forth in the Plan;

(iv) if to a Permitted Mortgagee, to such Permitted Mortgagee at its latest address designated in writing to the Condominium Board.

Any of the foregoing parties may change the address to which notices are to be sent, or may designate additional addresses for the giving of notice, by sending written notice to the other parties as aforesaid. All notices sent pursuant to the terms of this Section 11.1 shall be deemed given when (1) deposited with the U.S. Postal Service by registered or certified mail, or (2) deposited with an office of a nationally recognized overnight next business day delivery service, provided, however, that notices of change of address and notices designating additional addresses shall be deemed to have been given when received, or when deposited with the overnight delivery service.

Section 11.2 *Waiver of Service of Notice.* Whenever any notice is required to be given by Law or pursuant to the terms of the Condominium Documents, a waiver thereof in writing, signed by the Persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## ARTICLE 12

## AMENDMENTS TO BY-LAWS

Section 12.1 *General.*

(A) Subject to the terms of paragraph (B) hereof and subject, further, to any provisions contained in the Declaration or these By-Laws with respect to any amendments ("Special Amendments") affecting or in favor of Sponsor, any Unsold Residential Unit(s), the Commercial Unit Owners, the Commercial Units, and/or any Permitted Mortgagee, any provision of these By-Laws may be amended, modified, added to, or deleted by the affirmative vote of not less than 66 2/3% in number and aggregate Common Interest of all Unit Owners having voting rights either taken at a duly constituted meeting thereof or given in writing without a meeting as provided in Section 4.11 hereof. Each duly adopted amendment, modification, addition, or deletion hereof or hereto shall be effectuated in an instrument executed and recorded in the Register's Office by or on behalf of the Condominium Board as attorney-in-fact of all Unit Owners having voting rights, which power-of-attorney shall be deemed irrevocable and coupled with an interest. Attached to each such instrument shall be an original, executed Secretary's Certification, certifying that the requisite number and percentage (where applicable) of Unit Owners approved the amendment, modification, addition, or deletion set forth therein either at a duly constituted meeting of Unit Owners or in writing without a meeting pursuant to the terms of Section 4.11

hereof, in which Secretary's Certification there shall be described the number and percentage (where applicable) of Unit Owners having voting rights approving the same and, if voted at a meeting, the date, time and place of such meeting. No such amendment, modification, addition, or deletion shall be effective unless and until such an instrument shall be duly recorded in the Register's Office.

(B) Notwithstanding anything to the contrary contained in paragraph (A) hereof, but still subject to any provision contained in the Declaration or these By-Laws with respect to Special Amendments:

(i) the Common Interest and Residential Common Interest, if any, appurtenant to any Unit, as set forth in the Declaration, shall not be altered without the consent of the Unit Owner thereof, except as otherwise provided in paragraph (F) of Section 5.6 hereof;

(ii) no amendment, modification, addition, or deletion agreed to pursuant to the terms of paragraph (A) hereof shall be effective without the prior written consent of the Mortgage Representatives, if any, provided, however, that no such consent shall be unreasonably withheld or delayed; and

(iii) the terms of Section 5.8 hereof may not be amended, modified, added to, or deleted unless (in addition to the consent, if required, of the Mortgage Representatives as provided above) not less than 80% in number and in aggregate Common Interests of all Unit Owners affected thereby shall approve such amendment, modification, addition or deletion in writing.

Section 12.2 *Special Amendments.*

(A) Any amendment, modification, addition, or deletion of or to any of the provisions of these By-Laws that, pursuant to the terms of the Declaration or these By-Laws, may be effected by Sponsor or the Commercial Unit Owners, without the consent of the Condominium Board or the Unit Owners shall be embodied in an instrument executed and recorded in the Register's Office by Sponsor or Commercial Unit Owners, as the case may be, as attorney-in-fact of both the Condominium Board and all Unit Owners, which power-of-attorney shall be deemed to be irrevocable and coupled with an interest. Attached to each such instrument shall be an original, executed Certification by Sponsor or Commercial Unit Owners certifying that the amendment, modification, addition, or deletion set forth therein was effectuated by Sponsor or Commercial Unit Owners pursuant to the terms of the Declaration and/or these By-Laws, in which Certification there shall be set forth the Article and/or Section of the Declaration or these By-Laws pursuant to which the same was effectuated. No such amendment, modification, addition, or deletion shall be effective unless and until such an instrument shall be duly recorded in the Register's Office.

(B) Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition, or deletion of or to these By-Laws shall be effective in any respect against Sponsor, any Commercial Unit Owner, any Unsold Residential Unit, or the holder of any present mortgage, pledge, lien, or security agreement covering any Unsold Residential Unit or Commercial Unit unless and until Sponsor, and/or such holder in the case of an Unsold Residential Unit or affected Commercial Unit Owner, and/or the holder in the case of a Commercial Unit Owner, shall consent to the same in writing.

(C) Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition, or deletion of or to Section 5.5 or 5.6, paragraph (B) of Section 6.2, or Article 8, or Article 16 hereof shall be effective with respect to the holder of any Permitted Mortgage theretofore made unless and until such Permitted Mortgagee shall have given its written consent thereto.

(D) Amendments, modifications, additions or deletions of or to the Declaration, these By-Laws and the Rules and Regulations may be necessary, appropriate or desirable in connection with the operation of a Commercial Unit or the subdivision, combination, altering, or improvement to a

Commercial Unit and it is contemplated that in connection therewith an affected Commercial Unit Owner will cause the Declaration, these By-Laws and the Rules and Regulations to be so amended, modified, added to or deleted from and that the resulting provisions thereof may be similar or dissimilar to those affecting the Residential Units and the Residential Unit Owners. In the case of any such amendment, modification, addition or deletion which does not adversely affect the Residential Units or the Residential Unit Owners, a Commercial Unit Owner shall be the attorney-in-fact for the Residential Unit Owners (including Sponsor so long as Sponsor owns any Unsold Residential Units), coupled with an interest, for the purpose of approving, executing and recording any instrument effecting such amendment, modification, addition or deletion.

## ARTICLE 13

## FURTHER ASSURANCES

Section 13.1 *General.* Any Person that is subject to the terms of these By-Laws, whether such Person is a Unit Owner, a lessee or sublessee of a Unit Owner, an occupant of a Unit, a member of the Condominium Board, an officer of the Condominium, or otherwise, shall, at the expense of any other Person requesting the same, execute, acknowledge and deliver to such other Person such instruments, in addition to those specifically provided for herein, and take such other action as such other Person may reasonably request in order either to effectuate the provisions of these By-Laws or any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

Section 13.2 *Failure to Deliver or Act.*

(A) If any Residential Unit Owner or other Person that is subject to the terms of these By-Laws fails to execute, acknowledge, or deliver any instrument, or fails or refuses, within 10 days after request therefor, to take any action that such Residential Unit Owner or Person is required to execute, acknowledge and deliver or to take pursuant to these By-Laws, then the Condominium Board is hereby authorized, as attorney-in-fact for such Residential Unit Owner or other Person, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Residential Unit Owner or other Person, and such document or action shall be binding on such Residential Unit Owner or other Person.

(B) If the Condominium Board, any Residential Unit Owner, or other Person that is subject to the terms of these By-Laws fails to execute, acknowledge, or deliver any instrument, or fails or refuses, within ten (10) days after request therefor, to take any action that the Condominium Board, such Residential Unit Owner, or Person is required to execute, acknowledge and deliver or to take pursuant to these By-Laws or the Declaration, including but not limited to Article 27 of the Declaration, at the request of Sponsor or a Commercial Unit Owner, as the case may be, then Sponsor or a Commercial Unit Owner, as the case may be, is hereby authorized, as attorney-in-fact for the Condominium Board, such Unit Owner, or other Person, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action, in the name of the Condominium Board, such Unit Owner or other Person, and such document or action shall be binding on the Condominium Board, such Unit Owner, or other Person. The Condominium Board shall not unreasonably withhold, condition, delay or deny its consent or approval with respect to any matter contained in these By-Laws or the Declaration which requires the consent or approval of the Condominium Board.

## ARTICLE 14

## MISCELLANEOUS

Section 14.1 *Inspection of Documents.* Copies of the Declaration, these By-Laws, the Rules and Regulations and the Floor Plans, as the same may be amended from time to time, shall be maintained at the office of the Condominium Board and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours.

Section 14.2 *Waiver.* No provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur.

Section 14.3 *Conflict.* In the event that any provision of these By-Laws or of the Rules and Regulations shall be construed to be inconsistent with any provision of the Declaration or of the Condominium Act, the provision contained in the Declaration or in the Condominium Act shall control.

Section 14.4 *Severability.* If any provision of these By-Laws is invalid or unenforceable as against any Person or under certain circumstances, the remainder of these By-Laws and the applicability of such provision to other Persons or circumstances shall not be affected thereby. Each provision of these By-Laws shall, except as otherwise provided herein, be valid and enforced to the fullest extent provided by Law.

Section 14.5 *Successors and Assigns.* The rights and/or obligations of Sponsor as set forth herein shall inure to the benefit of, and shall be binding upon, any successor or assignee of Sponsor or, with the consent of Sponsor, any transferee of all of the then Unsold Residential Units. The rights and/or obligations of a Commercial Unit Owner as set forth herein shall inure to the benefit of, and shall be binding upon, any successor or assignee of that Commercial Unit Owner or, with the consent of a Commercial Unit Owner, any transferee of such Commercial Unit.

Section 14.6 *Gender.* A reference in these By-Laws to any one gender, masculine or feminine, includes the other one, and the singular includes the plural, and vice-versa, unless the context otherwise requires.

Section 14.7 *Captions.* The index hereof and the captions herein inserted are included only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision hereof.

## ARTICLE 15

## TAX STATUS AS A HOMEOWNERS ASSOCIATION

Section 15.1 *General.* The Condominium Board will not meet the requirements for qualification as a "homeowners association" under Section 528 of the Internal Revenue Code of 1986, as amended.

Section 15.2 *Organization.* The Condominium is and will be organized and operated to provide for the acquisition, construction, management, maintenance and care of the Property.

Section 15.3 *Inurement.* No part of the Condominium's net earnings shall inure, and the Condominium Board will act in a manner such that no part of such earnings will inure to the benefit of any private shareholder or individual (other than by acquiring, constructing, or providing management, maintenance, and care of the Property, and other than by rebate of excess membership dues, fees, or assessments).

Section 15.4 *Use.* The Residential Units are intended to be used in accordance with applicable Law.

## ARTICLE 16

## PROVISIONS REGARDING MORTGAGES ENCUMBERING RESIDENTIAL UNITS OTHER THAN UNSOLD RESIDENTIAL UNITS

Section 16.1 *Applicability.* The following provisions apply to (i) Permitted Mortgages made by Permitted Mortgagees encumbering Residential Units other than Unsold Residential Units ("Sold Residential Units"), and (ii) any Person who is a guarantor of a mortgage on a Sold Residential Unit made by a Permitted Mortgagee ("Guarantor").

Section 16.2 *Termination of Condominium Due to Casualty Loss or Condemnation.* Notwithstanding anything contained to the contrary in these By-Laws, any vote by Unit Owners to terminate the Condominium due to casualty loss or a taking shall also require the written consent of Permitted Mortgagees that represent at least 51% of the Sold Residential Units that are subject to Permitted Mortgages who have provided the Condominium with written notice of their respective Permitted Mortgages.

Section 16.3 *Notices to Permitted Mortgagees and Guarantor.*

Notwithstanding anything to the contrary contained in these By-Laws, any Permitted Mortgagee and Guarantor who has provided the Condominium with written notice of, as applicable, its respective Permitted Mortgage or guaranty, shall have the right to timely written notice of the following:

(A) Any casualty loss or taking that affects either a material portion of the Building or the Unit secured by the applicable Permitted Mortgage.

(B) Any 60-day delinquency in the payment of Common Charges or Special Assessments owed by the Residential Unit Owner subject to a Permitted Mortgage or a guaranty from a Guarantor.

(C) A lapse, cancellation, or material modification of any insurance policy maintained by the Condominium.

(D) Any proposed action that requires the consent of a specified percentage of Permitted Mortgagees.

Section 16.4 *Condominium Property Insurance.* The policies of condominium property insurance shall name each Permitted Mortgagee who has provided the Condominium with written notice of its Permitted Mortgage, as its interest may appear. Any such Permitted Mortgagee shall be considered and shall have the rights as their interest may appear and any such Permitted Mortgagee shall be listed as an additional insured on the Condominium Property Insurance.

Section 16.5 *Unpaid Common Charges and Special Assessments.* A Permitted Mortgagee who obtains title to a Sold Residential Unit pursuant to the remedies in its Permitted Mortgage or through foreclosure shall not be liable for the payment of unpaid Common Charges and Special Assessments accrued prior to the acquisition date of the Sold Residential Unit by the Permitted Mortgagee.

Section 16.6 *Consent or Approval from a Permitted Mortgagee.* Any required consent and/or approval required from a Permitted Mortgagee will be deemed given if a Permitted Mortgagee, who has

provided the Condominium with written notice of its Permitted Mortgage, fails to submit its written response to the Condominium within 60 days after such Permitted Mortgagee receives notice of the applicable proposal requesting consent and/or approval from the Condominium, provided the applicable proposal from the Condominium was delivered by certified or registered mail with a return receipt requested.

Section 16.7 *Notice from a Permitted Mortgagee.* Any written notice required to be given to the Condominium by a Permitted Mortgagee shall be deemed valid only (i) if delivered by certified or registered mail with a return receipt requested to the Condominium, attention "President, Board of Managers, 172 Madison Avenue, New York, New York 10016, or such other address as the Condominium may require, provided written notice of such other address is sent to a Permitted Mortgagee by the Condominium.

## ARTICLE 17

## STORAGE BINS

Section 17.1 *Master License Agreement.* Sponsor is hereby granted a master license of the area in the sub-cellar of the Building designated "Residential Storage" on the Floor Plans, which area is a Residential Common Element, on which Sponsor constructed Storage Bins. Sponsor shall not pay a use and occupancy fee for the licensed area. The Sponsor shall cause the Condominium Board to enter into Storage Bin License agreements for individual Storage Bins with Residential Unit Owners who have purchased from Sponsor the right to use a Storage Bin. Upon entering into such license agreement, the applicable Storage Bin shall be released from the Sponsor's master license. The purchase prices paid to Sponsor for the initial sale of the Storage Bin Licenses shall belong to Sponsor, not the Condominium.

Section 17.2 *Restriction on Sublicense or Sublet.* Storage Bins may not be sublicensed or sublet, except by Sponsor. Sponsor may assign, sublicense or sublet Storage Bins without any preconditions or consent, including that of the Condominium Board.

Section 17.3 *Use.* The use of the Storage Bins will be subject to the terms of the Storage Bin Licenses. Each Storage Bin License allows assignment of such license by a Residential Unit Owner, provided that the assignor is current in its obligations to the Condominium, written notification of the assignment is delivered to the Condominium Board in compliance with its requirements, assignee is a Residential Unit Owner, and assignee assumes the obligations of the respective License. The Sponsor may, at any time, surrender its Storage Bin License to the Condominium Board. A Residential Unit Owner shall also have the option of surrendering its Storage Bin License to the Condominium Board. Upon such surrender, any such Storage Bin License will be deemed cancelled, and the Sponsor or Residential Unit Owner shall have no obligation to pay any additional fee or maintenance fee which may be imposed by the Condominium Board after the date of surrender.

Section 17.4 *Surrender.* The Condominium Board may use or further license any Storage Bin so surrendered to the Condominium Board, and the Condominium shall be entitled to the consideration for such further license.

Section 17.5 *Fees.* During the Initial Control Period, the Condominium will not charge an additional fee or maintenance fee for the Storage Bins. Thereafter, the Condominium can charge the holders of Storage Bin Licenses fees in an amount necessary to reimburse the Condominium for the costs to operate, maintain, repair, and replace the Storage Bins. Sponsor will not, in any event, be subject to any fee, additional fee or maintenance fee for the Storage Bins which may be imposed by the Condominium Board after the Initial Control Period.

Section 17.6 *Access.* The Condominium Board shall have the right to deny any Residential Unit Owner who holds one or more Storage Bin Licenses access to and/or use of the applicable Storage

Bin in the event that the Residential Unit Owner is in default of its obligations under the Condominium Documents, including but not limited to the obligation to pay Common Charges, Special Assessments and/or fees due and payable pursuant to the Storage Bin License, and such default continues for thirty (30) or more days after the delivery to such Residential Unit Owner of a notice of default and opportunity to cure. In addition, the Condominium Board shall have the right to terminate any Storage Bin License in the event that the Residential Unit Owner is in default of its obligations under the Condominium Documents, including but not limited to the obligation to pay Common Charges, Special Assessments and/or fees due and payable pursuant to the Storage Bin License, and such default continues for thirty (30) or more days after the delivery to such Residential Unit Owner of a notice of default and opportunity to cure.

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## ADDENDUM TO THE BY-LAWS

## RULES AND REGULATIONS

1. The sidewalks, entrance passages, public halls, elevators, vestibules, corridors and stairways of or appurtenant to the Building shall not be obstructed or used for any purpose other than ingress to and egress from the Units.

2. No velocipedes, bicycles, rollerblades, scooters, or similar vehicle or any motorized vehicle shall be taken into or from the Building through the main entrance or shall be allowed in any of the elevators of the Building other than the elevator designated by the Condominium Board or the Managing Agent for such purpose, and no baby carriages or any of the above-mentioned vehicles shall be allowed to stand in the public halls, passageways, or other public areas of the Building.

3. All service and delivery persons will be required to use the service entrance or such other entrance of the Building designated by the Condominium Board or the Managing Agent. In addition, all servants, messengers and tradespeople visiting the Building shall use the elevator designated by the Condominium Board or the Managing Agent for the purpose of ingress and egress, and shall not use any of the other elevators, if any, for any purpose, provided, however, that nurses in the employ of Unit Owners or their Family Members, guests, tenants, subtenants, licensees, or invitees may use any elevator when accompanying said Unit Owners, Family Members, guests, subtenants, licensees, or invitees.

4. Trunks and heavy baggage shall be taken in or out of the Building only by the elevator designated by the Condominium Board or the Managing Agent for the purpose and only through the service entrance, if any.

5. No article (including, but not limited to, garbage cans, bottles or mats) shall be placed or stored in any of the halls or on any of the staircases or fire tower landings of the Building, nor shall any fire exit thereof be obstructed in any manner.

6. No Unit or Storage Bin may be used for the storage of any flammable materials or any other materials the storage of which may constitute a building code violation or which will increase the insurance requirements for the Building.

7 No refuse from the Units shall be sent to the service area of the Building, except at such times and in such manner as the Condominium Board or the Managing Agent may direct. Nothing shall be hung or shaken from any doors, windows, or placed upon the window sills, of the Building, and no Unit Owner shall sweep or throw, or permit to be swept or thrown, any dirt, debris or other substance therefrom.

8. There shall be no playing or lounging in the entrances, passages, public halls, elevators, vestibules, corridors, stairways, or fire towers of the Building.

9. The Condominium Board or the Managing Agent may, from time to time, curtail or relocate any portion of the Common Elements devoted to storage or service purposes in the Building.

10. Nothing shall be done or kept in any Residential Unit or in the Common Elements that will increase the rate of insurance of the Building, or the contents thereof. No Unit Owner shall permit anything to be done or kept in his Unit, in his Storage Bin, if any, or in the Common Elements that will result in the cancellation of insurance on the Building, or the contents thereof, or that would be in violation of any Law. No Unit Owner or any of his Family Members, agents, servants, employees, licensees, or visitors shall, at any time, bring into or keep in his Unit or Storage Bin, if any, any inflammable, combustible, or explosive fluid, material, chemical, or substance, except as shall be necessary and appropriate for the permitted uses of such Unit.

11. There shall be no barbecuing in the Units, in their appurtenant Limited Common Elements, if any, or in the Common Elements. Notwithstanding the foregoing, barbecuing and/or cooking will be permitted on terraces only if permitted under applicable law and Building Department rules and regulations.

12. No Residential Unit Owner shall make, cause, or permit any unusual, disturbing, or objectionable noises or odors to be produced upon or to emanate from his Residential Unit or its appurtenant Limited Residential Common Elements, if any, or permit anything to be done therein that will interfere with the rights, comforts, or conveniences of the other Unit Owners. No Residential Unit Owner shall play upon or suffer to be played upon any musical instrument, or shall operate or permit to be operated a phonograph, radio, television set, or other loudspeaker in such Unit Owner's Unit or its appurtenant Limited Residential Common Elements, if any, between midnight and the following 8:00 A.M., if the same shall disturb or annoy other occupants of the Building, and in no event shall any Residential Unit Owner practice of suffer to be practiced either vocal or instrumental music between the hours of 8:00 P.M. and the following 9:00 A.M. No construction, repair work, or other installation involving noise shall be conducted in any Residential Unit except on weekdays (not including legal holidays) and only between the hours of 9:00 A.M. and 5:00 P.M., unless such construction or repair work is necessitated by an emergency.

13. No pets other than dogs, caged birds, cats and fish (which do not cause a nuisance, health hazard or unsanitary condition) may be kept in a Residential Unit without the written consent of the Condominium Board. In no event shall any Unit Owner maintain more than two (2) pets in a Unit without the consent of the Condominium Board. Each Unit Owner who keeps any type of pet in his Unit will be required to and shall: (a) indemnify and hold harmless the Condominium, all Unit Owners and the Managing Agent from all claims and expenses resulting from acts of such pet; and (b) abide by any and all Rules and Regulations of the Condominium Board adopted with respect thereto. In no event shall any bird, reptile, or animal be permitted in any public elevator of the Building, other than the elevator designated by the Condominium Board or the Managing Agent for that purpose, or in any of the public portions of the Building, unless carried or on leash. No pigeons or other birds or animals shall be fed from the window sills, or other public portions of the Building, or on the sidewalk or street adjacent to the Building. In no event may pets be kept on a terrace or balcony.

14. No group tour or exhibition of any Residential Unit or its contents shall be conducted, nor shall any auction sale be held in any Residential Unit, without the consent of the Condominium Board or the Managing Agent in each instance. In the event that any Residential Unit shall be used for home occupation purposes in conformance with the Declaration and the By-Laws, no patients, clients, or other invitees shall be permitted to wait in any lobby, public hallway, or vestibule.

15. Unless expressly authorized by the Condominium Board in each instance, not less than 80% of the floor area of each Residential Unit (excepting only kitchens, pantries, bathrooms, closets and foyers) must be covered with rugs, carpeting, or equally effective noise reducing material.

16. No window guards or other window decorations shall be used in or about any Residential Unit, except such as shall have been approved in writing by the Condominium Board or the Managing Agent, which approval shall not be unreasonably withheld or delayed. In no event, however, shall any windows of any Residential Unit be colored or painted.

17. No ventilator or air conditioning device shall be installed in any Residential Unit or its appurtenant Limited Residential Common Elements, if any, without the prior written approval of the Condominium Board, which approval may be granted or refused in the sole discretion of the Condominium Board.

18. No radio or television aerial shall be attached to or hung from the exterior of the Building, and no sign, notice, advertisement, or illumination (including, without limitation, "For Sale",

"For Lease", or "For Rent" signs) shall be inscribed or exposed on or at any window or other part of the Building, except such as are permitted pursuant to the terms of Declaration and/or the By-Laws or shall have been approved in writing by the Condominium Board or the Managing Agent. The foregoing restriction does not apply to the Commercial Unit Owners. Nothing shall be projected from any window of a Residential Unit without similar approval.

19. All radio, television, or other electrical equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements, or recommendations of the New York Board of Fire Underwriters and the public authorities having jurisdiction, and the Unit Owner alone shall be liable for any damage or injury caused by any radio, television, or other electrical equipment.

20. Water-closets and other water apparatus in the Building shall not be used for any purpose other than those for which they were designed, and no sweepings, rubbish, rags or any other article shall be thrown into same. Any damage resulting from misuse of any water-closets or other apparatus in a Unit shall be repaired and paid for by the owner of such Unit.

21. Each Unit Owner shall keep his Unit and its appurtenant Limited Residential Common Elements, if any, in a good state of preservation, condition, repair and cleanliness in accordance with the terms of the By-Laws.

22. The agents of the Condominium Board or the Managing Agent, and any contractor or workman authorized by the Condominium Board or the Managing Agent, may enter any room or Unit at any reasonable hour of the day, on at least one (1) day's prior notice to the Unit Owner, for the purpose of inspecting such Unit for the presence of any vermin, insects, or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects, or other pests; however, such entry, inspection and extermination shall be done in a reasonable manner so as not to unreasonably interfere with the use of such Unit for its permitted purposes.

23. The Condominium Board or the Managing Agent may retain a pass-key to each Residential Unit and Storage Bin. If any lock is altered or a new lock is installed, the Condominium Board or the Managing Agent shall be provided with a key thereto immediately upon such alteration or installation. If the Residential Unit Owner is not personally present to open and permit an entry to his Residential Unit or Storage Bin, if any, at any time when an entry therein is necessary or permissible under these Rules and Regulations or under the By-Laws, and has not furnished a key to the Condominium Board or the Managing Agent, then the Condominium Board or Managing Agent or their agents (but, except in an emergency, only when specifically authorized by an officer of the Condominium or an officer of the Managing Agent) may forcibly enter such Unit or Storage Bin without liability for damages or trespass by reason thereof (if, during such entry, reasonable care is given to such Residential Unit Owner's property).

24. If any key or keys are entrusted by a Unit Owner, by any Family Member thereof, or by his agent, servant, employee, licensee, or visitor to an employee of the Condominium or of the Managing Agent, whether for such Unit Owner's Unit or an automobile, trunk, or other item of personal property, the acceptance of the key shall be at the sole risk of such Unit Owner, and neither the Condominium Board nor the Managing Agent shall (except as provided in Rule 23 above) be liable for injury, loss, or damage of any nature whatsoever, directly or indirectly resulting therefrom or connected therewith.

25. Unit Owners and their respective Family Members, guests, servants, employees, agents, visitors, or licensees shall not at any time or for any reason whatsoever, enter upon, or attempt to enter upon, the roof of the Building unless such roof is part of a lawful common terrace. Such roof includes a Limited Residential Common Element which is for the exclusive use of a particular Unit Owner.

26. No occupant of the Building shall send any employee of the Condominium or of the Managing Agent out of the Building on any private business.

27. Any consent or approval given under these Rules and Regulations may be amended, modified, added to, or repealed at any time by resolution of the Condominium Board. Further, any such consent or approval may, in the discretion of the Condominium Board or the Managing Agent, be conditional in nature.

28. No Residential Unit Owner shall install any plantings on any terrace, balcony, or roof without the prior written approval of the Condominium Board. Plantings shall be placed in containers impervious to dampness and standing on supports at least two inches from the terrace, decking or roof surface, and if adjoining a wall, at least three inches from such wall. Suitable weep holes shall be provided in the containers to draw off water. In special locations, such as a corner abutting a parapet wall, plantings may be contained in containers which shall be at least three inches from the parapet and flashing, with the floor of drainage tiles and suitable weep holes at the sides to draw off water. Such masonry planting beds shall not, however, rest directly upon the surface of such terrace or roof but shall stand on supports at least two (2) inches above such surface. No planting shall be permanently affixed to the terrace or roof surface and shall be able to be easily moved. It shall be the responsibility of the Residential Unit Owner to maintain the containers in good condition, and the drainage tiles and weep holes in operating condition. Such Residential Unit Owner shall pay the cost of any repairs rendered necessary by or damage caused by such plantings. The Condominium Board shall have an easement and a right of access to the roof, balcony or terrace appurtenant to a Unit to inspect the same and to remove violations therefrom and to install, operate, maintain, repair, alter, build, restore, and replace any of the Common Elements located in, over, under through, adjacent to, or upon the same.

29. No Residential Unit Owner shall enclose, erect a greenhouse and/or alter any balcony or terrace appurtenant to a Residential Unit in such a way that will alter the conformity of the Building, without the prior written consent of the Condominium Board.

30. Complaints regarding the service of the Condominium shall be made in writing to the Condominium Board or to the Managing Agent.

31. A Residential Unit Owner must notify the Managing Agent in writing when a child or children under the age of eleven (11) years lives or resides (even temporarily) in the applicable Residential Unit. In such event, each Residential Unit Owner shall have installed at the Residential Unit, at the Residential Owner's expense, the required window guards (or safety stops or limiters in lieu of window guards, designed specifically to prevent a child from falling out of a window), in all windows of the Unit, in compliance with applicable Law, and shall not remove them until permitted by Law, and in any event, without first notifying the Managing Agent of the intended removal of the window guards or safety stops.

32. No minor children are allowed on a common area terrace, if any, without the supervision of a parent or an authorized adult.

33. Sponsor shall be deemed to have a master license agreement with the Condominium Board for an area in the sub-cellar of the Building that is designated a Residential Common Element into which Sponsor may construct Storage Bins. Sponsor may cause the Condominium Board to enter into licenses for individual Storage Bins with Unit Owners, and upon entering into such license agreement, the applicable Storage Bin shall be released from the master license. Upon the release of the last Storage Bin from the master license, the master license shall be terminated. The consideration for the license shall belong to Sponsor and not the Condominium.

34. With the exception of Sponsor, Storage Bins may not be sublicensed or sublet. Sponsor may assign, sublicense or sublet a Storage Bin without any preconditions and consent, including that of the Condominium Board.

35. The use of the Storage Bins will be subject to a Storage Bin License. The Storage Bin License allows assignment by a Residential Unit Owner provided that the assignor is current in its

obligations to the Condominium, written notification of the assignment is delivered to the Condominium Board in compliance with its requirements, assignee is a Residential Unit Owner and assignee assumes the obligations of the Storage Bin License. Sponsor may, at any time, surrender its Storage Bin License to the Condominium Board. A Residential Unit Owner shall also have the option of surrendering its Storage Bin License to the Condominium Board. Upon such surrender, such Storage Bin License will be deemed cancelled and the Residential Unit Owner shall have no obligation to pay any additional fee or maintenance fee which may be imposed by the Condominium Board. The Condominium Board may use or further license any Storage Bin so surrendered and the Condominium shall be entitled to the consideration for such license.

36. The Skyhouse and Mansion Unit Owners shall not allow the water in their respective pools, spas or water features to freeze.

37. The Commercial Unit Owners shall have an easement, to the extent permitted by Law, to erect, maintain, repair and replace, from time to time, one or more signs on the storefront to their respective Units for the purpose of advertising the sale or lease of all or any portion of a Commercial Unit and the operation of any business of a tenant or occupant of all or any portion of the applicable Commercial Unit. A Commercial Unit Owner shall not have the right to place or install any sign or other advertisement on any part of the Building other than the storefront without the prior written consent of the Condominium Board. However, for so long as Sponsor or Sponsor's designee is the Owner of a Commercial Unit, Sponsor, Sponsor's designee, and their tenants shall have the right to install signage on the façade of the Building abutting the second floor above such Commercial Units, without the consent of the Condominium Board. There shall be no consent required from the Condominium Board relative to Sponsor placing one or more signs, or the size, design and lighting of any sign placed on the Property by Sponsor.

38 The Condominium shall not perform any or all or the following services to Residential Unit Owners, their occupants or tenants, where the Residential Unit Owner (a) is more than sixty days in arrears in the payment of common charges, assessments or sums due under the Condominium Documents, or (b) is in violation, beyond applicable grace and notice periods, if any, of a Condominium Document:

(i) Housekeeping and/or maintenance or service requests that are a Unit Owner's responsibility (which could have been performed by building staff and billed back to the Unit Owner as an additional charge).
(ii) Fax and copy services.
(iii) Doorman/Concierge services, such as (a) the acceptance of packages or deliveries of any kind (except prescription medicines), (b) ordering limousines, car services, cabs, (c) making restaurant reservations, (d) arranging tickets for the theater or any other form of entertainment, and (e) announcement of visitors, delivery persons or service people.
(iv) Providing a duplicate key or access to anyone not in the company of the Residential Unit Owner, other than in the event of an emergency.

**EXHIBIT E**

**TO THE DECLARATION**

# UNIT OWNER POWER OF ATTORNEY

# UNIT OWNER POWER OF ATTORNEY

Terms used in this Residential Unit Owner Power of Attorney which are used (a) in the declaration (the "Declaration") establishing a plan for condominium ownership of the premises known as 172 Madison Avenue Condominium ("Condominium") and by the street number 172 Madison Avenue, New York, New York under Article 9-B of the Real Property Law of the State of New York, dated _____, 2015, and recorded in the New York County Office of the Register of The City of New York on _____, 201___ in CRFN:_____, or (b) in the By-Laws of the Condominium ("By-Laws") attached to, and recorded together with, the Declaration, shall have the same meanings in this Power of Attorney as in the Declaration or the By-Laws.

The undersigned, _____, (having an office) (residing at) _____, the owner of Residential Unit ____ (the "Unit") in 172 Madison Avenue Condominium which is designated and described as Unit No. _____ in the Declaration and also designated as Tax Lot _____ in Block 863 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans, do(es) hereby nominate, constitute and appoint the persons who may from time to time constitute the Condominium Board, true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, in their own names, as members of the Condominium Board or in the name of their designee (corporate or otherwise), on behalf of all Residential Unit Owners, in accordance with such Residential Unit Owners' respective interests in the Common Elements, subject to the provisions of the By-Laws then in effect, (1)(a) following due authorization by a Majority of Residential Unit Owners having voting rights, to acquire or lease any Residential Unit, together with its Appurtenant Interests, from any Residential Unit Owner desiring to sell, convey, transfer, assign, surrender or lease the same, (b) to acquire any Residential Unit, together with its Appurtenant Interests, from any Residential Unit Owner who elects to surrender the same pursuant to the By-Laws, and (c) following due authorization by a Majority of Residential Unit Owners having voting rights, to acquire any Residential Unit, together with its Appurtenant Interests, which becomes the subject of a foreclosure or other similar sale, all on such terms and at such price or rental, as the case may be, as said attorneys-in-fact shall deem proper, in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Residential Unit Owners, and, after any such acquisition or leasing, to convey, sell, lease, sublease, mortgage or otherwise deal with (but not vote the interest appurtenant thereto) any such Residential Unit so acquired by them, or to sublease any Residential Unit so leased by them without the necessity of further authorization by the Residential Unit Owners, on such terms as said attorneys-in-fact may determine, granting to said attorneys-in fact the power to do all things in the said premises which the undersigned could do if the undersigned were personally present, (2) to commence, pursue, appeal, settle and/or terminate administrative and certiorari proceedings to obtain reduced real estate tax assessments with respect to Residential Units, including retaining counsel and taking any other actions which the Condominium Board deems necessary or appropriate, and (3) to execute, acknowledge and deliver (a) any declaration or other instrument affecting the Property which the Condominium Board 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 maintenance, demolition, construction, alteration, repair or restoration of the Property or necessary for the combination or subdivision of Units, or (b) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting the Property or the Common Elements which the Condominium Board deems necessary or appropriate.

The acts of a majority of such persons constituting the Condominium Board shall constitute the acts of said attorneys-in-fact.

The undersigned (does) (do) hereby irrevocably nominate, constitute and appoint Madison 33 Owner LLC (hereinafter referred to as "Sponsor") as attorney-in-fact for the undersigned, coupled with an

interest, with power of substitution, to amend from time to time the Declaration, By-Laws and the Rules and Regulations of the Condominium, or any of said documents, when such amendment (1) shall be required to reflect any changes in Unsold Residential Units and/or the reapportionment of the Common Interests of the affected Unsold Residential Units resulting therefrom made by Sponsor in accordance with the Declaration or (2) shall be required by (a) an Institutional Lender designated by Sponsor to make a mortgage loan secured by a mortgage on any Residential Unit, (b) any governmental agency having regulatory jurisdiction over the Condominium, or (c) any title insurance company selected by Sponsor to insure title to any Residential Unit provided, however, that any amendment made pursuant to the terms of subdivision (1) or (2) of this paragraph shall not (i) change the Common Interest of the Undersigned's Residential Unit, (ii) require a material, physical modification to the Undersigned's Residential Unit, or (iii) adversely affect the priority or validity of the lien of any mortgage held by an Institutional Lender covering the Undersigned's Residential Unit unless the undersigned (in the event described in subdivision (i) or (ii) of this paragraph) or the holder of such mortgage (in the event described in subdivision (iii) of this paragraph shall consent thereto by joining in the execution of such amendment. The terms, covenants and conditions contained in, and the powers granted pursuant to, this paragraph shall remain in full force and effect until such time as Sponsor shall cease to own any Residential Unit in the Condominium.

This Power of Attorney shall be irrevocable.

IN WITNESS WHEREOF, the undersigned has/have executed this Power of Attorney as of the ____ day of _____, ____.

_____

**ACKNOWLEDGEMENT**

STATE OF )
) ss:
COUNTY OF )

On _____, _____, before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s) or the person on behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

# UNIT OWNER'S SPECIMEN TITLE POLICY

# SPECIMEN POLICY

## SCHEDULE A

Title No. :

Amount of Insurance: $ T.B.D.

Date of Policy: T.B.D.

1. Name of Insured: T.B.D.

2. The estate or interest in the land which is covered by this policy is:

   FEE SIMPLE

3. Title to the estate or interest in the land is vested in:

   Prospective Purchaser by deed from dated and recorded in CRFN .

4. The land referred to in this policy is described as follows:

SEE SCHEDULE 'C' ATTACHED

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SCHEDULE B

Title No.: Policy No.:

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

1. Setback, building and nuisance covenants and restrictions in Liber 536 Page 351 and repeated in Liber 664 Page 561, Liber 693 Page 204, Liber 1448 Page 469 and Liber 1459 Page 336 (SEE POST) (AFFECTS ALL LOTS).

2. Easement in Reel 1122 Page 146 (AFFECTS ALL LOTS).

3. Certification in CRFN 2009000017394 (AFFECTS ALL LOTS).

4. For Information Only: Zoning Lot Certification in CRFN 2007000310706 (AFFECTS ALL LOTS).

5. For Information Only: Zoning Lot Description in CRFN 2007000311056 (AFFECTS ALL LOTS).

6. Window Agreement in Reel 901 Page 1901 (AFFECTS LOT 17 ONLY).

7. Steam Agreement in Reel 1844 Page 1219 (SEE POST). (AFFECTS LOT 17 ONLY).

8. Ingress and Egress Easement in Liber 5301 Page 198 (AFFECTS LOTS 17 & 21).

9. For Information Only: Zoning Lot Description in CRFN 2014000158726 and in CRFN 2014000201478.

10. Notice of Certification in CRFN 2014000259638.

11. Survey of all three lots described in Schedule A made by True North Surveyors P.C. dated 06/21/2013 and last revised 10/25/2013 show premises to be vacant land.

Also shows:

A. Minor variations between buildings on adjacent parcels and record lines.

B. Variations between top parapet on building on premises to the West and Westerly line

SCHEDULE C

TAX LOT 17:

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

BEGINNING at a point on the Northerly line of 33rd Street, distant 95 feet Westerly from the corner formed by the intersection of the Westerly line of Madison Avenue with the Northerly line of 33rd Street;

RUNNING THENCE Westerly along the Northerly line of 33rd Street, 25 feet;

THENCE Northerly and parallel with Madison Avenue, 108 feet 8-3/4 inches;

THENCE Easterly and parallel with 33rd Street, 25 feet;

THENCE Southerly and parallel with Madison Avenue, 108 feet 8-3/4 inches to the point or place of BEGINNING.

TAX LOT 18:

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

BEGINNING at the corner formed by the intersection of the Northerly side of East 33rd Street with the Westerly side of Madison Avenue;

RUNNING THENCE Northerly along the Westerly side of Madison Avenue, 49 feet 4 1/2 inches;

THENCE Westerly and parallel with East 33rd Street 95 feet;

THENCE Southerly and parallel with Madison Avenue, 49 feet 4 1/2 inches to the Northerly side of East 33rd Street;

THENCE Easterly along the Northerly side of East 33rd Street, 95 feet to the point or place of BEGINNING.

TAX LOT 21:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the Westerly side of Madison Avenue, distant 49 feet 4 1/2 inches Northerly from the corner formed by the intersection of the Westerly side of Madison Avenue with the Northerly side of 33rd Street;

RUNNING THENCE Northerly along the Westerly side of Madison Avenue 34 feet 8 inches;

THENCE Westerly parallel with 33rd Street 95 feet;

THENCE Southerly parallel with Madison Avenue, 34 feet 8 inches; and

THENCE Easterly and parallel with 33rd Street, 95 feet to the point or place of BEGINNING.

**FORM W-8BEN (INDIVIDUALS)**
**AND**
**FORM W-8BEN-E (ENTITIES)**

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Form **W-8BEN**

(Rev. February 2014)

Department of the Treasury
Internal Revenue Service

# Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)

► For use by individuals. Entities must use Form W-8BEN-E.
► Information about Form W-8BEN and its separate instructions is at *www.irs.gov/formw8ben*.
► Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

| **Do NOT use this form if:** | **Instead, use Form:** |
|---|---|
| • You are NOT an individual | W-8BEN-E |
| • You are a U.S. citizen or other U.S. person, including a resident alien individual | W-9 |
| • You are a beneficial owner claiming that income is effectively connected with the conduct of trade or business within the U.S. (other than personal services) | W-8ECI |
| • You are a beneficial owner who is receiving compensation for personal services performed in the United States | 8233 or W-4 |
| • A person acting as an intermediary | W-8IMY |

## Part I Identification of Beneficial Owner (see instructions)

1 Name of individual who is the beneficial owner

2 Country of citizenship

3 Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address.**

City or town, state or province. Include postal code where appropriate.

Country

4 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country

5 U.S. taxpayer identification number (SSN or ITIN), if required (see instructions)

6 Foreign tax identifying number (see instructions)

7 Reference number(s) (see instructions)

8 Date of birth (MM-DD-YYYY) (see instructions)

## Part II Claim of Tax Treaty Benefits (for chapter 3 purposes only) (see instructions)

9 I certify that the beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.

10 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article _____ of the treaty identified on line 9 above to claim a _____ % rate of withholding on (specify type of income): _____

Explain the reasons the beneficial owner meets the terms of the treaty article: _____

## Part III Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the individual that is the beneficial owner (or am authorized to sign for the individual that is the beneficial owner) of all the income to which this form relates or am using this form to document myself as an individual that is an owner or account holder of a foreign financial institution,
- The person named on line 1 of this form is not a U.S. person,
- The income to which this form relates is:
  (a) not effectively connected with the conduct of a trade or business in the United States,
  (b) effectively connected but is not subject to tax under an applicable income tax treaty, or
  (c) the partner's share of a partnership's effectively connected income,
- The person named on line 1 of this form is a resident of the treaty country listed on line 9 of the form (if any) within the meaning of the income tax treaty between the United States and that country, and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner. **I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.**

**Sign Here** ▶ _____ _____

Signature of beneficial owner (or individual authorized to sign for beneficial owner) — Date (MM-DD-YYYY)

Print name of signer — Capacity in which acting (if form is not signed by beneficial owner)

# Instructions for Form W-8BEN

(Rev. February 2014)

**Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)**

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Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

## Future Developments

For the latest information about developments related to Form W-8BEN and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/formw8ben*.

## What's New

**FATCA.** In 2010, Congress passed the Hiring Incentives to Restore Employment Act of 2010, P. L. 111-147 (the HIRE Act), which added chapter 4 of Subtitle A (chapter 4) to the Code, consisting of sections 1471 through 1474 of the Code and commonly referred to as "FATCA" or "chapter 4". Under chapter 4, participating foreign financial institutions (FFIs) and certain registered-deemed compliant FFIs are generally required to identify their U.S. account holders, regardless of whether a payment subject to withholding is made to the account. The IRS has published regulations that provide due diligence, withholding, and reporting rules for both U.S. withholding agents and FFIs under chapter 4.

This form, along with Form W-8ECI, W-8EXP, and W-8IMY, has been updated to reflect the documentation requirements of chapter 4. In particular, this Form W-8BEN is now used exclusively by individuals. Entities documenting their foreign status, chapter 4 status, or making a claim of treaty benefits (if applicable) should use Form W-8BEN-E.

Individual account holders (both U.S. and foreign) that do not document their status may be deemed recalcitrant and, in some cases, subject to 30% withholding on certain payments. Foreign individuals can avoid being classified as recalcitrant account holders by using Form W-8BEN to document their foreign status.

Foreign individuals should use Form W-8BEN to document their foreign status and claim any applicable treaty benefits for chapter 3 purposes (including a foreign individual that is the single member of an entity that is disregarded for U.S. tax purposes). See the instructions to Form W-8BEN-E concerning claims for treaty benefits and chapter 4 certifications in the case of a hybrid entity.

**Reportable payment card transactions.** Section 6050W was added by section 3091 of the Housing Assistance Tax Act of 2008 and requires information returns to be made by certain payers with respect to payments made to participating payees in settlement of payment card transactions and third party payment network transactions. Information returns are not required with respect to payments made to payees that are foreign persons, however.

A payer of a reportable payment may treat a payee as foreign if the payer receives an applicable Form W-8 from the payee. Provide this Form W-8BEN to the requestor if you are a foreign individual that is a participating payee receiving payments in settlement of payment card transactions that are not effectively connected with a U.S. trade or business of the payee.

**More information.** For more information on FATCA, go to *www.irs.gov/fatca*.

## General Instructions

For definitions of terms used throughout these instructions, see *Definitions*, later.

## Purpose of Form

**Establishing status for chapter 3 purposes.** Foreign persons are subject to U.S. tax at a 30% rate on income they receive from U.S. sources that consists of:

- Interest (including certain original issue discount (OID));
- Dividends;
- Rents;
- Royalties;
- Premiums;
- Annuities;
- Compensation for, or in expectation of, services performed;
- Substitute payments in a securities lending transaction; or
- Other fixed or determinable annual or periodical gains, profits, or income.

This tax is imposed on the gross amount paid and is generally collected by withholding under section 1441. A payment is considered to have been made whether it is made directly to the beneficial owner or to another person, such as an intermediary, agent, or partnership, for the benefit of the beneficial owner.

In addition, section 1446 requires a partnership conducting a trade or business in the United States to withhold tax on a foreign partner's distributive share of the partnership's effectively connected taxable income. Generally, a foreign person that is a partner in a partnership that submits a Form W-8BEN for purposes of section 1441 or 1442 will satisfy the documentation requirements under section 1446 as well. However, in some cases the documentation requirements of sections 1441 and 1442 do not match the documentation requirements of section 1446. See Regulations sections 1.1446-1 through 1.1446-6.

**Note.** The owner of a disregarded entity (including an individual), rather than the disregarded entity itself, must submit the appropriate Form W-8BEN for purposes of section 1446.

If you receive certain types of income, you must provide Form W-8BEN to:

- Establish that you are not a U.S. person;
- Claim that you are the beneficial owner of the income for which Form W-8BEN is being provided or a foreign partner in a partnership subject to section 1446; and
- If applicable, claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty and who is eligible for treaty benefits.

You may also be required to submit Form W-8BEN to claim an exception from domestic information reporting and backup withholding (at the backup withholding rate under section 3406) for certain types of income that are not subject to foreign-person withholding at a rate of 30% under section 1441. Such income includes:

- Broker proceeds;
- Short-term (183 days or less) original issue discount (OID);
- Bank deposit interest;
- Foreign source interest, dividends, rents, or royalties; and
- Proceeds from a wager placed by a nonresident alien individual in the games of blackjack, baccarat, craps, roulette, or big-6 wheel.

A withholding agent or payer of the income may rely on a properly completed Form W-8BEN to treat a payment associated with the Form W-8BEN as a payment to a foreign person who beneficially owns the amounts paid. If applicable, the withholding agent may rely on the Form W-8BEN to apply a reduced rate of, or exemption from, withholding at source.

Provide Form W-8BEN to the withholding agent or payer before income is paid or credited to you. Failure to provide a Form W-8BEN when requested may lead to withholding at the foreign-person withholding rate of 30% or the backup withholding rate under section 3406.

**Establishing status for chapter 4 purposes.** An FFI may rely on a properly completed Form W-8BEN to establish your chapter 4 status as a foreign person. The Form W-8BEN should be provided to the FFI when requested. Failure to do so could result in 30 percent withholding on income paid or credited to you as a recalcitrant account holder from sources within the United States. See the definition of amounts subject to withholding, later.

**Additional information.** For additional information and instructions for the withholding agent, see the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY.

## Who Must Provide Form W-8BEN

You must give Form W-8BEN to the withholding agent or payer if you are a nonresident alien who is the beneficial owner of an amount subject to withholding, or if you are an account holder of an FFI documenting yourself as a nonresident alien. If you are the single owner of a disregarded entity, you are considered the beneficial owner of income received by the disregarded entity. Submit Form W-8BEN when requested by the withholding agent, payer, or FFI whether or not you are claiming a reduced rate of, or exemption from, withholding.

You should also provide Form W-8BEN to a payment settlement entity (PSE) requesting this form if you are a foreign individual receiving payments subject to reporting under section 6050W (payment card transactions and third-party network transactions) as a participating payee. However, if the payments are income which is effectively connected to the conduct of a U.S. trade or business, you should instead provide the PSE with a Form W-8ECI.

***Do not use Form W-8BEN if you are described below.***

- You are a foreign entity documenting your foreign status, documenting your chapter 4 status, or claiming treaty benefits. Instead, use Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities).
- You are a U.S. citizen (even if you reside outside the United States) or other U.S. person (including a resident alien individual). Instead, use Form W-9, Request for Taxpayer Identification Number and Certification, to document your status as a U.S. person.
- You are acting as a foreign intermediary (that is, acting not for your own account, but for the account of others as an agent, nominee, or custodian). Instead, provide Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.
- You are a disregarded entity with a single owner that is a U.S. person. Instead, the owner should provide Form W-9. If the disregarded entity is a hybrid entity claiming treaty benefits, the entity should complete Form W-8BEN-E even if the single owner of such entity is a U.S. person that must also provide a Form W-9. See the instructions to Form W-8BEN-E for information on hybrid entities claiming treaty benefits.
- You are a nonresident alien individual who claims exemption from withholding on compensation for independent or dependent personal services performed in the United States. Instead, provide Form 8233, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, or Form W-4, Employee's Withholding Allowance Certificate.
- You are receiving income that is effectively connected with the conduct of a trade or business in the United States, unless it is allocable to you through a partnership. Instead, provide Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States. If any of the income for which you have provided a Form W-8BEN becomes effectively connected, this is a change in circumstances and Form W-8BEN is no longer valid with respect to such income. You must file Form W-8ECI. See *Change in circumstances*, later.

**Giving Form W-8BEN to the withholding agent.** Do not send Form W-8BEN to the IRS. Instead, give it to the person who is requesting it from you. Generally, this will be the person from whom you receive the payment, who

credits your account, or a partnership that allocates income to you. An FFI may also request this form from you to document your account as other than a U.S. account. Give Form W-8BEN to the person requesting it before the payment is made to you, credited to your account, or allocated. If you do not provide this form, the withholding agent may have to withhold at the 30% rate (under chapter 3 and 4), backup withholding rate, or the rate applicable under section 1446. If you receive more than one type of income from a single withholding agent for which you claim different benefits, the withholding agent may, at its option, require you to submit a Form W-8BEN for each different type of income. Generally, a separate Form W-8BEN must be given to each withholding agent.

**Note.** If you own the income or account jointly with one or more other persons, the income or account will be treated by the withholding agent as owned by a foreign person that is a beneficial owner of a payment only if Forms W-8BEN or W-8BEN-E are provided by all of the owners. If the withholding agent or financial institution receives a Form W-9 from any of the joint owners, however, the payment must be treated as made to a U.S. person and the account treated as a U.S. account.

**Change in circumstances.** If a change in circumstances makes any information on the Form W-8BEN you have submitted incorrect, you must notify the withholding agent, payer, or FFI with which you hold an account within 30 days of the change in circumstances and you must file a new Form W-8BEN or other appropriate form.

If you use Form W-8BEN to certify that you are a foreign person, a change of address to an address in the United States is a change in circumstances. Generally, a change of address within the same foreign country or to another foreign country is not a change in circumstances. However, if you use Form W-8BEN to claim treaty benefits, a move to the United States or outside the country where you have been claiming treaty benefits is a change in circumstances. In that case, you must notify the withholding agent, payer, or FFI within 30 days of the move.

If you become a U.S. citizen or resident alien after you submit Form W-8BEN, you are no longer subject to the 30% withholding rate under section 1441 or the withholding tax on a foreign partner's share of effectively connected income under section 1446. To the extent you have an account with an FFI, your account may be subject to reporting by the FFI under chapter 4. You must notify the withholding agent, payer, or FFI within 30 days of becoming a U.S. citizen or resident alien. You may be required to provide a Form W-9. For more information, see Form W-9 and its instructions.

CAUTION *You may be a U.S. resident for tax purposes depending on the number of days you are physically present in the United States over a 3-year period. See Publication 519, available at irs.gov/publications/p519. If you satisfy the substantial presence test, you must notify the withholding agent, payer, or financial institution with which you have an account within 30 days and provide a Form W-9.*

**Expiration of Form W-8BEN.** Generally, a Form W-8BEN will remain in effect for purposes of establishing foreign status for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8BEN signed on September 30, 2015, remains valid through December 31, 2018.

However, under certain conditions a Form W-8BEN will remain in effect indefinitely until a change of circumstances occurs. To determine the period of validity for Form W-8BEN for purposes of chapter 4, see Regulations section 1.1471-3(c)(6)(ii). To determine the period of validity for Form W-8BEN for purposes of chapter 3, see Regulations section 1.1441-1(e)(4)(ii).

## Definitions

**Account holder.** An account holder is generally the person listed or identified as the holder or owner of a financial account. For example, if a partnership is listed as the holder or owner of a financial account, then the partnership is the account holder, rather than the partners of the partnership (subject to some exceptions). However, an account that is held by a single-member disregarded entity is treated as held by the person owning the entity.

**Amounts subject to withholding.** Generally, an amount subject to chapter 3 withholding is an amount from sources within the United States that is fixed or determinable annual or periodical (FDAP) income. FDAP income is all income included in gross income, including interest (as well as OID), dividends, rents, royalties, and compensation. FDAP income does not include most gains from the sale of property (including market discount and option premiums), as well as other specific items of income described in Regulations section 1.1441-2 (such as interest on bank deposits and short-term OID).

For purposes of section 1446, the amount subject to withholding is the foreign partner's share of the partnership's effectively connected taxable income.

Generally, an amount subject to chapter 4 withholding is an amount of U.S. source FDAP income that is also a withholdable payment as defined in Regulations section 1.1473-1(a). The exemptions from withholding provided for under chapter 3 are not applicable when determining whether withholding applies under chapter 4. For specific exceptions applicable to the definition of a withholdable payment, see Regulations section 1.1473-1(a)(4) (exempting, for example, certain nonfinancial payments).

**Beneficial owner.** For payments other than those for which a reduced rate of, or exemption from, withholding is claimed under an income tax treaty, the beneficial owner of income is generally the person who is required under U.S. tax principles to include the payment in gross income on a tax return. A person is not a beneficial owner of income, however, to the extent that person is receiving the income as a nominee, agent, or custodian, or to the extent the person is a conduit whose participation in a transaction is disregarded. In the case of amounts paid that do not constitute income, beneficial ownership is determined as if the payment were income.

Foreign partnerships, foreign simple trusts, and foreign grantor trusts are not the beneficial owners of income paid to the partnership or trust. The beneficial owners of income paid to a foreign partnership are generally the partners in the partnership, provided that the partner is not itself a partnership, foreign simple or grantor trust, nominee or other agent. The beneficial owners of income paid to a foreign simple trust (that is, a foreign trust that is described in section 651(a)) are generally the beneficiaries of the trust, if the beneficiary is not a foreign partnership, foreign simple or grantor trust, nominee or other agent. The beneficial owners of a foreign grantor trust (that is, a foreign trust to the extent that all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679) are the persons treated as the owners of the trust. The beneficial owners of income paid to a foreign complex trust (that is, a foreign trust that is not a foreign simple trust or foreign grantor trust) is the trust itself.

For purposes of section 1446, the same beneficial owner rules apply, except that under section 1446 a foreign simple trust rather than the beneficiary provides the form to the partnership.

The beneficial owner of income paid to a foreign estate is the estate itself.

**Note.** A payment to a U.S. partnership, U.S. trust, or U.S. estate is treated as a payment to a U.S. payee that is not subject to 30% withholding under chapter 3 or 4. A U.S. partnership, trust, or estate should provide the withholding agent with a Form W-9. For purposes of section 1446, a U.S. grantor trust or disregarded entity shall not provide the withholding agent a Form W-9 in its own right. Rather, the grantor or other owner shall provide the withholding agent the appropriate form.

**Chapter 3.** Chapter 3 means Chapter 3 of the Internal Revenue Code (Withholding of Tax on Nonresident Aliens and Foreign Corporations). Chapter 3 contains sections 1441 through 1464.

**Chapter 4.** Chapter 4 means Chapter 4 of the Internal Revenue Code (Taxes to Enforce Reporting on Certain Foreign Accounts). Chapter 4 contains sections 1471 through 1474.

**Deemed-compliant FFI.** Under section 1471(b)(2), certain FFIs are deemed to comply with the regulations under chapter 4 without the need to enter into an FFI agreement with the IRS. However, certain deemed-compliant FFIs are required to register with the IRS and obtain a GIIN. These FFIs are referred to as ***registered deemed-compliant FFIs***. See Regulations section 1.1471-5(f).

**Disregarded entity.** A business entity that has a single owner and is not a corporation under Regulations section 301.7701-2(b) is disregarded as an entity separate from its owner. A disregarded entity does not submit this Form W-8BEN to a partnership for purposes of section 1446 or to an FFI for purposes of chapter 4. Instead, the owner of such entity provides appropriate documentation. See Regulations section 1.1446-1 and section 1.1471-3(a)(3)(v), respectively.

Certain entities that are disregarded for U.S. tax purposes may be recognized for purposes of claiming treaty benefits under an applicable tax treaty (see the definition of hybrid entity below). A hybrid entity claiming treaty benefits is required to complete Form W-8BEN-E. See Form W-8BEN-E and its instructions.

**Financial account.** A financial account includes:

- A depository account maintained by a financial institution;
- A custodial account maintained by a financial institution;
- Equity or debt interests (other than interests regularly traded on an established securities market) in investment entities and certain holding companies, treasury centers, or financial institutions as defined in Regulations section 1.1471-5(e);
- Cash value insurance contracts; and
- Annuity contracts.

For purposes of chapter 4, exceptions are provided for accounts such as certain tax-favored savings accounts; term life insurance contracts; accounts held by estates; escrow accounts; and annuity contracts. These exceptions are subject to certain conditions. See Regulations section 1.1471-5(b)(2). Accounts may also be excluded from the definition of financial account under an applicable IGA.

**Financial institution.** A financial institution generally means an entity that is a depository institution, custodial institution, investment entity, or an insurance company (or holding company of an insurance company) that issues cash value insurance or annuity contracts.

**Foreign financial institution (FFI).** A foreign financial institution (FFI) generally means a foreign entity that is a financial institution.

**Foreign person.** A foreign person includes a nonresident alien individual and certain foreign entities that are not U.S. persons (entities should complete Form W-8BEN-E rather than this Form W-8BEN).

**Hybrid entity.** A hybrid entity is any person (other than an individual) that is treated as fiscally transparent in the United States but is not treated as fiscally transparent by a country with which the United States has an income tax treaty. Hybrid status is relevant for claiming treaty benefits.

**Intergovernmental agreement (IGA).** An IGA means a Model 1 IGA or a Model 2 IGA. For a list of jurisdictions treated as having in effect a Model 1 or Model 2 IGA, see "List of Jurisdictions" available at www.irs.gov/fatca.

A ***Model 1 IGA*** means an agreement between the United States or the Treasury Department and a foreign government or one or more agencies to implement FATCA through reporting by FFIs to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS. An FFI in a Model 1 IGA jurisdiction that performs account reporting to the jurisdiction's government is referred to as a ***reporting Model 1 FFI***.

A ***Model 2 IGA*** means an agreement or arrangement between the U.S. or the Treasury Department and a foreign government or one or more agencies to implement

FATCA through reporting by FFIs directly to the IRS in accordance with the requirements of an FFI agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS. An FFI in a Model 2 IGA jurisdiction that has entered into an FFI agreement is a participating FFI, but may be referred to as a ***reporting Model 2 FFI***.

**Nonresident alien individual.** Any individual who is not a citizen or resident alien of the United States is a nonresident alien individual. An alien individual meeting either the "green card test" or the "substantial presence test" for the calendar year is a resident alien. Any person not meeting either test is a nonresident alien individual. Additionally, an alien individual who is a resident of a foreign country under the residence article of an income tax treaty, or an alien individual who is a bona fide resident of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa is a nonresident alien individual. See Pub. 519, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.

CAUTION *Even though a nonresident alien individual married to a U.S. citizen or resident alien may choose to be treated as a resident alien for certain purposes (for example, filing a joint income tax return), such individual is still treated as a nonresident alien for chapter 3 withholding tax purposes on all income except wages. For purposes of chapter 4, a nonresident alien individual who holds a joint account with a U.S. person will be considered a holder of a U.S. account for chapter 4 purposes.*

**Participating FFI.** A participating FFI is an FFI (including a Reporting Model 2 FFI) that has agreed to comply with the terms of an FFI agreement. The term participating FFI also includes a qualified intermediary (QI) branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

**Participating payee.** A participating payee means any person that accepts a payment card as payment or accepts payment from a third party settlement organization in settlement of a third party network transaction.

**Payment settlement entity (PSE).** A payment settlement entity is a merchant acquiring entity or third party settlement organization. Under section 6050W, a PSE is generally required to report payments made in settlement of payment card transactions or third party network transactions. However, a PSE is not required to report payments made to a beneficial owner that is documented as foreign with an applicable Form W-8.

**Recalcitrant account holder.** A recalcitrant account holder for purposes of chapter 4 includes an individual who fails to comply with the requests of an FFI for documentation and information for determining the U.S. or foreign status of the individual's account, including furnishing this Form W-8BEN when requested.

**U.S. person.** A U.S. person is defined in section 7701(a)(30) and includes an individual who is a citizen or resident of the United States.

**Withholding agent.** Any person, U.S. or foreign, that has control, receipt, custody, disposal, or payment of U.S. source FDAP income subject to chapter 3 or 4 withholding is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity, including (but not limited to) any foreign intermediary, foreign partnership, and U.S. branches of certain foreign banks and insurance companies.

For purposes of section 1446, the withholding agent is the partnership conducting the trade or business in the United States. For a publicly traded partnership, the withholding agent may be the partnership, a nominee holding an interest on behalf of a foreign person, or both. See Regulations sections 1.1446-1 through 1.1446-6.

## Specific Instructions

### Part I

**Line 1.** Enter your name. If you are a foreign individual who is the single owner of a disregarded entity that is not claiming treaty benefits as a hybrid entity, with respect to a payment, you should complete this form with your name and information. If the account to which a payment is made or credited is in the name of the disregarded entity, you should inform the withholding agent of this fact. This may be done by including the name and account number of the disregarded entity on line 7 (reference number) of the form. However, if the disregarded entity is claiming treaty benefits as a hybrid entity, it should complete Form W-8BEN-E instead of this Form W-8BEN.

**Line 2.** Enter your country of citizenship. If you are a dual citizen, enter the country where you are both a citizen and a resident at the time you complete this form. If you are not a resident in any country in which you have citizenship, enter the country where you were most recently a resident. However, if you are a United States citizen, you should not complete this form even if you hold citizenship in another jurisdiction. Instead, provide Form W-9.

**Line 3.** Your permanent residence address is the address in the country where you claim to be a resident for purposes of that country's income tax. If you are completing Form W-8BEN to claim a reduced rate of withholding under an income tax treaty, you must determine your residency in the manner required by the treaty. Do not show the address of a financial institution, a post office box, or an address used solely for mailing purposes. If you do not have a tax residence in any country, your permanent residence is where you normally reside.

If you reside in a country that does not use street addresses, you may enter a descriptive address on line 3. The address must accurately indicate your permanent residence in the manner used in your jurisdiction.

**Line 4.** Enter your mailing address only if it is different from the address you show on line 3.

**Line 5.** If you have a social security number (SSN), enter it here. To apply for an SSN, get Form SS-5 from a Social Security Administration (SSA) office or online at www.socialsecurity.gov/online/ss-5.html. If you are in the

United States, you can call the SSA at 1-800-772-1213. Complete Form SS-5 and return it to the SSA.

If you do not have an SSN and are not eligible to get one, you can get an individual taxpayer identification number (ITIN). To apply for an ITIN, file Form W-7 with the IRS. It usually takes 4-6 weeks to get an ITIN. To claim certain treaty benefits, you must complete line 5 by submitting an SSN or ITIN, or line 6 by providing a foreign tax identification number (foreign TIN).

*An ITIN is for tax use only. It does not entitle you to social security benefits or change your employment or immigration status under U.S. law.*

A partner in a partnership conducting a trade or business in the United States will likely be allocated effectively connected taxable income. The partner is required to file a U.S. federal income tax return and must have a U.S. taxpayer identification number (TIN).

You must provide an SSN or TIN if you are:

- Claiming an exemption from withholding under section 871(f) for certain annuities received under qualified plans, or
- Submitting the form to a partnership that conducts a trade or business in the United States.

If you are claiming treaty benefits, you are generally required to provide an ITIN if you do not provide a tax identifying number issued to you by your jurisdiction of tax residence on line 6. However, an ITIN is not required to claim treaty benefits relating to:

- Dividends and interest from stocks and debt obligations that are actively traded;
- Dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund);
- Dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the SEC under the Securities Act of 1933; and
- Income related to loans of any of the above securities.

**Line 6.** If you are providing this Form W-8BEN to document yourself with respect to a financial account that you hold at a U.S. office of a financial institution, provide the tax identifying number (TIN) issued to you by your jurisdiction of tax residence unless:

- You have not been issued a TIN, or
- The jurisdiction does not issue TINs.

If you have not provided your jurisdiction of residence TIN on line 6, provide your date of birth in line 8.

**Line 7.** This line may be used by the filer of Form W-8BEN or by the withholding agent to whom it is provided to include any referencing information that is useful to the withholding agent in carrying out its obligations. For example, withholding agents who are required to associate the Form W-8BEN with a particular Form W-8IMY may want to use line 7 for a referencing number or code that will make the association clear. A beneficial owner can use line 7 to include the number of the account for which he or she is providing the form. A foreign single owner of a disregarded entity can use line 7 to inform the withholding agent that the account to which a payment is made or credited is in the name of the disregarded entity (see instructions for line 1).

**Line 8.** If you are providing this Form W-8BEN to document yourself with respect to a financial account that you hold with a U.S. office of a financial institution, provide your date of birth. Use the following format to input your information MM-DD-YYYY. For example, if you were born on April 15, 1956, you would enter 04-15-1956.

## Part II

**Line 9.** If you are claiming treaty benefits as a resident of a foreign country with which the United States has an income tax treaty for payments subject to withholding under chapter 3, identify the country where you claim to be a resident for income tax treaty purposes. For treaty purposes, a person is a resident of a treaty country if the person is a resident of that country under the terms of the treaty. A list of U.S. tax treaties is available at http://www.irs.gov/Individuals/International-Taxpayers/Tax-Treaties.

*If you are related to the withholding agent within the meaning of section 267(b) or 707(b) and the aggregate amount subject to withholding received during the calendar year exceeds $500,000, then you are generally required to file Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b). See the Instructions for Form 8833 for more information on the filing requirements.*

**Line 10.** Line 10 must be used only if you are claiming treaty benefits that require that you meet conditions not covered by the representations you make on line 9 and Part III. For example, persons claiming treaty benefits on royalties must complete this line if the treaty contains different withholding rates for different types of royalties. However, this line should always be completed by foreign students and researchers claiming treaty benefits. See *Scholarship and fellowship grants*, later, for more information.

This line is generally not applicable to treaty benefits under an interest or dividends (other than dividends subject to a preferential rate based on ownership) article of a treaty.

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual can use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause" which preserves or "saves" the right of each country to tax its own residents as if no tax treaty existed. Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes. The individual must use Form W-9 to claim the tax treaty benefit. See the instructions for Form W-9 for more information. Also see *Nonresident alien student or researcher who becomes a resident alien*, later, for an example.

**Scholarship and fellowship grants.** A nonresident alien student (including a trainee or business apprentice) or researcher who receives noncompensatory scholarship

or fellowship income can use Form W-8BEN to claim benefits under a tax treaty that apply to reduce or eliminate U.S. tax on such income. No Form W-8BEN is required unless a treaty benefit is being claimed. A nonresident alien student or researcher who receives compensatory scholarship or fellowship income must use Form 8233, instead of Form W-8BEN, to claim any benefits of a tax treaty that apply to that income. The student or researcher must use Form W-4 for any part of such income for which he or she is not claiming a tax treaty withholding exemption. Do not use Form W-8BEN for compensatory scholarship or fellowship income. See *Compensation for Dependent Personal Services* in the Instructions for Form 8233.

*If you are a nonresident alien individual who received noncompensatory scholarship or fellowship income and personal services income (including compensatory scholarship or fellowship income) from the same withholding agent, you may use Form 8233 to claim a tax treaty withholding exemption for part or all of both types of income.*

***Completing lines 3 and 9.*** Most tax treaties that contain an article exempting scholarship or fellowship grant income from taxation require that the recipient be a resident of the other treaty country at the time of, or immediately prior to, entry into the United States. Thus, a student or researcher may claim the exemption even if he or she no longer has a permanent address in the other treaty country after entry into the United States. If this is the case, you can provide a U.S. address on line 3 and still be eligible for the exemption if all other conditions required by the tax treaty are met. You must also identify on line 9 the tax treaty country of which you were a resident at the time of, or immediately prior to, your entry into the United States.

***Completing line 10.*** You must complete line 10 if you are a student or researcher claiming an exemption from taxation on your noncompensatory scholarship or fellowship grant income under a tax treaty.

***Nonresident alien student or researcher who becomes a resident alien.*** You must use Form W-9 to claim an exception to a saving clause. See *Nonresident alien who becomes a resident alien*, earlier, for a general explanation of saving clauses and exceptions to them.

***Example.*** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would complete Form W-9.

## Part III

Form W-8BEN must be signed and dated by the beneficial owner of the amount subject to withholding or the account holder of an FFI (or an agent with legal authority to act on the person's behalf). If Form W-8BEN is completed by an agent acting under a duly authorized power of attorney for the beneficial owner or account holder, the form must be accompanied by the power of attorney in proper form or a copy thereof specifically authorizing the agent to represent the principal in making, executing, and presenting the form. Form 2848, Power of Attorney and Declaration of Representative, can be used for this purpose. The agent, as well as the beneficial owner or account holder, may incur liability for the penalties provided for an erroneous, false, or fraudulent form.

*If any information on Form W-8BEN becomes incorrect, you must submit a new form within 30 days unless you are no longer an account holder of the requester that is an FFI and you will not receive a future payment with respect to the account.*

**Broker transactions or barter exchanges.** Income from transactions with a broker or a barter exchange is subject to reporting rules and backup withholding unless Form W-8BEN or a substitute form is filed to notify the broker or barter exchange that you are an exempt foreign person.

You are an exempt foreign person for a calendar year in which:

- You are a nonresident alien individual or a foreign corporation, partnership, estate, or trust;
- You are an individual who has not been, and does not plan to be, present in the United States for a total of 183 days or more during the calendar year; and
- You are neither engaged, nor plan to be engaged during the year, in a U.S. trade or business that has effectively connected gains from transactions with a broker or barter exchange.

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**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to provide the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

| | |
|---|---|
| **Recordkeeping** . . . . . | 2 hr., 52 min. |
| **Learning about the law or the form** . . . | 2 hr., 05 min. |
| **Preparing the form** . . . . . | 2 hr., 13 min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from *www.irs.gov/formspubs/*. Click on "More Information" and then on "Give us feedback".

You can write to Internal Revenue Service, Tax Forms and Publications, SE:W:CAR:MP:TFP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form W-8BEN to this office. Instead, give it to your withholding agent.

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Form **W-8BEN-E**
(February 2014)
Department of the Treasury
Internal Revenue Service

# Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)

▶ For use by entities. Individuals must use Form W-8BEN. ▶ Section references are to the Internal Revenue Code.
▶ Information about Form W-8BEN-E and its separate instructions is at *www.irs.gov/formw8bene.*
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

| **Do NOT use this form for:** | **Instead use Form:** |
|---|---|
| • U.S. entity or U.S. citizen or resident | W-9 |
| • A foreign individual | W-8BEN (Individual) |
| • A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the U.S. (unless claiming treaty benefits) | W-8ECI |
| • A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions) | W-8IMY |
| • A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected U.S. income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (unless claiming treaty benefits) (see instructions) | W-8ECI or W-8EXP |
| • Any person acting as an intermediary | W-8IMY |

## Part I Identification of Beneficial Owner

**1** Name of organization that is the beneficial owner

**2** Country of incorporation or organization

**3** Name of disregarded entity receiving the payment (if applicable)

**4** Chapter 3 Status (entity type) (Must check one box only):

☐ Corporation ☐ Disregarded entity ☐ Partnership
☐ Simple trust ☐ Grantor trust ☐ Complex trust ☐ Estate ☐ Government
☐ Central Bank of Issue ☐ Tax-exempt organization ☐ Private foundation

If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? If "Yes" complete Part III. ☐ Yes ☐ No

**5** Chapter 4 Status (FATCA status) (Must check one box only unless otherwise indicated). (See instructions for details and complete the certification below for the entity's applicable status).

☐ Nonparticipating FFI (including a limited FFI or an FFI related to a Reporting IGA FFI other than a registered deemed-compliant FFI or participating FFI).
☐ Participating FFI.
☐ Reporting Model 1 FFI.
☐ Reporting Model 2 FFI.
☐ Registered deemed-compliant FFI (other than a reporting Model 1 FFI or sponsored FFI that has not obtained a GIIN).
☐ Sponsored FFI that has not obtained a GIIN. Complete Part IV.
☐ Certified deemed-compliant nonregistering local bank. Complete Part V.
☐ Certified deemed-compliant FFI with only low-value accounts. Complete Part VI.
☐ Certified deemed-compliant sponsored, closely held investment vehicle. Complete Part VII.
☐ Certified deemed-compliant limited life debt investment entity. Complete Part VIII.
☐ Certified deemed-compliant investment advisors and investment managers. Complete Part IX.
☐ Owner-documented FFI. Complete Part X.
☐ Restricted distributor. Complete Part XI.
☐ Nonreporting IGA FFI (including an FFI treated as a registered deemed-compliant FFI under an applicable Model 2 IGA). Complete Part XII.
☐ Foreign government, government of a U.S. possession, or foreign central bank of issue. Complete Part XIII.
☐ International organization. Complete Part XIV.
☐ Exempt retirement plans. Complete Part XV.
☐ Entity wholly owned by exempt beneficial owners. Complete Part XVI.
☐ Territory financial institution. Complete Part XVII.
☐ Nonfinancial group entity. Complete Part XVIII.
☐ Excepted nonfinancial start-up company. Complete Part XIX.
☐ Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XX.
☐ 501(c) organization. Complete Part XXI.
☐ Nonprofit organization. Complete Part XXII.
☐ Publicly traded NFFE or NFFE affiliate of a publicly traded corporation. Complete Part XXIII.
☐ Excepted territory NFFE. Complete Part XXIV.
☐ Active NFFE. Complete Part XXV.
☐ Passive NFFE. Complete Part XXVI.
☐ Excepted inter-affiliate FFI. Complete Part XXVII.
☐ Direct reporting NFFE.
☐ Sponsored direct reporting NFFE. Complete Part XXVIII.

**6** Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address** (other than a registered address).

City or town, state or province. Include postal code where appropriate. | Country

**7** Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate. | Country

**8** U.S. taxpayer identification number (TIN), if required | **9a** ☐ GIIN | **b** ☐ Foreign TIN | **10** Reference number(s) (see instructions)

**Note.** Please complete remainder of the form including signing the form in Part XXIX.

**Part II** **Disregarded Entity or Branch Receiving Payment.** (Complete only if disregarded entity or branch of an FFI in a country other than the FFI's country of residence.)

11 Chapter 4 Status (FATCA status) of disregarded entity or branch receiving payment

☐ Limited Branch. ☐ Reporting Model 1 FFI. ☐ U.S. Branch.

☐ Participating FFI. ☐ Reporting Model 2 FFI.

12 Address of disregarded entity or branch (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address** (other than a registered address).

City or town, state or province. Include postal code where appropriate.

Country

13 GIIN (if any)

**Part III** **Claim of Tax Treaty Benefits** (if applicable). (For chapter 3 purposes only)

14 I certify that (check all that apply):

a ☐ The beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.

b ☐ The beneficial owner derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).

c ☐ The beneficial owner is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation and meets qualified resident status (see instructions).

15 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article _____ of the treaty identified on line 14a above to claim a _____ % rate of withholding on (specify type of income): _____.
Explain the reasons the beneficial owner meets the terms of the treaty article: _____

**Part IV** **Sponsored FFI That Has Not Obtained a GIIN**

16 Name of sponsoring entity: _____

17 **Check whichever box applies.**

☐ I certify that the entity identified in Part I:

- Is an FFI solely because it is an investment entity;
- Is not a QI, WP, or WT; **and**
- Has agreed with the entity identified above (that is not a nonparticipating FFI) to act as the sponsoring entity for this entity.

☐ I certify that the entity identified in Part I:

- Is a controlled foreign corporation as defined in section 957(a);
- Is not a QI, WP, or WT;
- Is wholly owned, directly or indirectly, by the U.S. financial institution identified above that agrees to act as the sponsoring entity for this entity; **and**
- Shares a common electronic account system with the sponsoring entity (identified above) that enables the sponsoring entity to identify all account holders and payees of the entity and to access all account and customer information maintained by the entity including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to account holders or payees.

**Part V** **Certified Deemed-Compliant Nonregistering Local Bank**

18 ☐ I certify that the FFI identified in Part I:

- Operates and is licensed solely as a bank or credit union (or similar cooperative credit organization operated without profit) in its country of incorporation or organization;
- Engages primarily in the business of receiving deposits from and making loans to, with respect to a bank, retail customers unrelated to such bank and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organization;
- Does not solicit account holders outside its country of organization;
- Has no fixed place of business outside such country (for this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions);
- Has no more than $175 million in assets on its balance sheet and, if it is a member of an expanded affiliated group, the group has no more than $500 million in total assets on its consolidated or combined balance sheets; **and**
- Does not have any member of its expanded affiliated group that is a foreign financial institution, other than a foreign financial institution that is incorporated or organized in the same country as the FFI identified in Part I and that meets the requirements set forth in this Part V.

## Part VI Certified Deemed-Compliant FFI with Only Low-Value Accounts

19 ☐ I certify that the FFI identified in Part I:

- Is not engaged primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts, or any interest (including a futures or forward contract or option) in such security, partnership interest, commodity, notional principal contract, insurance contract or annuity contract;
- No financial account maintained by the FFI or any member of its expanded affiliated group, if any, has a balance or value in excess of $50,000 (as determined after applying applicable account aggregation rules); **and**
- Neither the FFI nor the entire expanded affiliated group, if any, of the FFI, have more than $50 million in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.

## Part VII Certified Deemed-Compliant Sponsored, Closely Held Investment Vehicle

20 Name of sponsoring entity: _____

21 ☐ I certify that the entity identified in Part I:

- Is an FFI solely because it is an investment entity described in §1.1471-5(e)(4);
- Is not a QI, WP, or WT;
- Has a contractual relationship with the above identified sponsoring entity that agrees to fulfill all due diligence, withholding, and reporting responsibilities of a participating FFI on behalf of this entity; **and**
- Twenty or fewer individuals own all of the debt and equity interests in the entity (disregarding debt interests owned by U.S. financial institutions, participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100 percent of the equity interests in the FFI and is itself a sponsored FFI).

## Part VIII Certified Deemed-Compliant Limited Life Debt Investment Entity

22 ☐ I certify that the entity identified in Part I:

- Was in existence as of January 17, 2013;
- Issued all classes of its debt or equity interests to investors on or before January 17, 2013, pursuant to a trust indenture or similar agreement; **and**
- Is certified deemed-compliant because it satisfies the requirements to be treated as a limited life debt investment entity (such as the restrictions with respect to its assets and other requirements under § 1.1471-5(f)(2)(iv)).

## Part IX Certified Deemed-Compliant Investment Advisors and Investment Managers

23 ☐ I certify that the entity identified in Part I:

- Is a financial institution solely because it is an investment entity described in §1.1471-5(e)(4)(i)(A); **and**
- Does not maintain financial accounts.

## Part X Owner-Documented FFI

**Note.** This status only applies if the U.S. financial institution or participating FFI to which this form is given has agreed that it will treat the FFI as an owner-documented FFI (see instructions for eligibility requirements). In addition, the FFI must make the certifications below.

24a ☐ (All owner-documented FFIs check here) I certify that the FFI identified in Part I:

- Does not act as an intermediary;
- Does not accept deposits in the ordinary course of a banking or similar business;
- Does not hold, as a substantial portion of its business, financial assets for the account of others;
- Is not an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account;
- Is not owned by or in an expanded affiliated group with an entity that accepts deposits in the ordinary course of a banking or similar business, holds, as a substantial portion of its business, financial assets for the account of others, or is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account; **and**
- Does not maintain a financial account for any nonparticipating FFI.

## Part X Owner-Documented FFI *(continued)*

**Check box 24b or 24c, whichever applies.**

**b** ☐ I certify that the FFI identified in Part I:

- Has provided, or will provide, an FFI owner reporting statement that contains:
- The name, address, TIN (if any), chapter 4 status, and type of documentation provided (if required) of every individual and specified U.S. person that owns a direct or indirect equity interest in the owner-documented FFI (looking through all entities other than specified U.S. persons);
- The name, address, TIN (if any), chapter 4 status, and type of documentation provided (if required) of every individual and specified U.S. person that owns a debt interest in the owner-documented FFI (including any indirect debt interest, which includes debt interests in any entity that directly or indirectly owns the payee or any direct or indirect equity interest in a debt holder of the payee) that constitutes a financial account in excess of $50,000 (disregarding all such debt interests owned by participating FFIs, registered deemed-compliant FFIs, certified deemed-compliant FFIs, excepted NFFEs, exempt beneficial owners, or U.S. persons other than specified U.S. persons); **and**
- Any additional information the withholding agent requests in order to fulfill its obligations with respect to the entity.

**c** ☐ I certify that the FFI identified in Part I has provided, or will provide, an auditor's letter, signed within four years of the date of payment, from an independent accounting firm or legal representative with a location in the United States stating that the firm or representative has reviewed the FFI's documentation with respect to all of its owners and debt holders identified in §1.1471-3(d)(6)(iv)(A)(2), and that the FFI meets all the requirements to be an owner-documented FFI. The FFI identified in Part I has also provided, or will provide, an FFI owner reporting statement of its owners that are specified U.S. persons and Form(s) W-9, with applicable waivers.

**Check box 24d if applicable.**

**d** ☐ I certify that the entity identified in line 1 is a trust that does not have any contingent beneficiaries or designated classes with unidentified beneficiaries.

## Part XI Restricted Distributor

**25a** ☐ (All restricted distributors check here) I certify that the entity identified in Part I:

- Operates as a distributor with respect to debt or equity interests of the restricted fund with respect to which this form is furnished;
- Provides investment services to at least 30 customers unrelated to each other and less than half of its customers are related to each other;
- Is required to perform AML due diligence procedures under the anti-money laundering laws of its country of organization (which is an FATF-compliant jurisdiction);
- Operates solely in its country of incorporation or organization, has no fixed place of business outside of that country, and has the same country of incorporation or organization as all members of its affiliated group, if any;
- Does not solicit customers outside its country of incorporation or organization;
- Has no more than $175 million in total assets under management and no more than $7 million in gross revenue on its income statement for the most recent accounting year;
- Is not a member of an expanded affiliated group that has more than $500 million in total assets under management or more than $20 million in gross revenue for its most recent accounting year on a combined or consolidated income statement; **and**
- Does not distribute any debt or securities of the restricted fund to specified U.S. persons, passive NFFEs with one or more substantial U.S. owners, or nonparticipating FFIs.

**Check box 25b or 25c, whichever applies.**

I further certify that with respect to all sales of debt or equity interests in the restricted fund with respect to which this form is furnished that are made after December 31, 2011, the entity identified in Part I:

**b** ☐ Has been bound by a distribution agreement that contained a general prohibition on the sale of debt or securities to U.S. entities and U.S. resident individuals and is currently bound by a distribution agreement that contains a prohibition of the sale of debt or securities to any specified U.S. person, passive NFFE with one or more substantial U.S. owners, or nonparticipating FFI.

**c** ☐ Is currently bound by a distribution agreement that contains a prohibition on the sale of debt or securities to any specified U.S. person, passive NFFE with one or more substantial U.S. owners, or nonparticipating FFI and, for all sales made prior to the time that such a restriction was included in its distribution agreement, has reviewed all accounts related to such sales in accordance with the procedures identified in §1.1471-4(c) applicable to preexisting accounts and has redeemed or retired any, or caused the restricted fund to transfer the securities to a distributor that is a participating FFI or reporting Model 1 FFI securities which were sold to specified U.S. persons, passive NFFEs with one or more substantial U.S. owners, or nonparticipating FFIs.

## Part XII Nonreporting IGA FFI

**26** ☐ I certify that the entity identified in Part I:

- Meets the requirements to be considered a nonreporting financial institution pursuant to an applicable IGA between the United States and _____;
- Is treated as a _____ under the provisions of the applicable IGA (see instructions); **and**
- If you are an FFI treated as a registered deemed-compliant FFI under an applicable Model 2 IGA, provide your GIIN:

## Part XIII Foreign Government, Government of a U.S. Possession, or Foreign Central Bank of Issue

27 ☐ I certify that the entity identified in Part I is the beneficial owner of the payment and is not engaged in commercial financial activities of a type engaged in by an insurance company, custodial institution, or depository institution with respect to the payments, accounts, or obligations for which this form is submitted (except as permitted in §1.1471-6(h)(2)).

## Part XIV International Organization

**Check box 28a or 28b, whichever applies.**

28a ☐ I certify that the entity identified in Part I is an international organization described in section 7701(a)(18).

b ☐ I certify that the entity identified in Part I:

- Is comprised primarily of foreign governments;
- Is recognized as an intergovernmental or supranational organization under a foreign law similar to the International Organizations Immunities Act;
- The benefit of the entity's income does not inure to any private person;
- Is the beneficial owner of the payment and is not engaged in commercial financial activities of a type engaged in by an insurance company, custodial institution, or depository institution with respect to the payments, accounts, or obligations for which this form is submitted (except as permitted in §1.1471-6(h)(2)).

## Part XV Exempt Retirement Plans

**Check box 29a, b, c, d, e, or f, whichever applies.**

29a ☐ I certify that the entity identified in Part I:

- Is established in a country with which the United States has an income tax treaty in force (see Part III if claiming treaty benefits);
- Is operated principally to administer or provide pension or retirement benefits; **and**
- Is entitled to treaty benefits on income that the fund derives from U.S. sources (or would be entitled to benefits if it derived any such income) as a resident of the other country which satisfies any applicable limitation on benefits requirement.

b ☐ I certify that the entity identified in Part I:

- Is organized for the provision of retirement, disability, or death benefits (or any combination thereof) to beneficiaries that are former employees of one or more employers in consideration for services rendered;
- No single beneficiary has a right to more than 5% of the FFI's assets;
- Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operated; **and**
- Is generally exempt from tax on investment income under the laws of the country in which it is established or operates due to its status as a retirement or pension plan;
- Receives at least 50% of its total contributions from sponsoring employers (disregarding transfers of assets from other plans described in this part, retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, other retirement funds described in an applicable Model 1 or Model 2 IGA, or accounts described in §1.1471-5(b)(2)(i)(A));
- Either does not permit or penalizes distributions or withdrawals made before the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in §1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), to retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or to other retirement funds described in this part or in an applicable Model 1 or Model 2 IGA); **or**
- Limits contributions by employees to the fund by reference to earned income of the employee or may not exceed $50,000 annually.

c ☐ I certify that the entity identified in Part I:

- Is organized for the provision of retirement, disability, or death benefits (or any combination thereof) to beneficiaries that are former employees of one or more employers in consideration for services rendered;
- Has fewer than 50 participants;
- Is sponsored by one or more employers each of which is not an investment entity or passive NFFE;
- Employee and employer contributions to the fund (disregarding transfers of assets from other plans described in this part, retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or accounts described in §1.1471-5(b)(2)(i)(A)) are limited by reference to earned income and compensation of the employee, respectively;
- Participants that are not residents of the country in which the fund is established or operated are not entitled to more than 20 percent of the fund's assets; **and**
- Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates.

d ☐ I certify that the entity identified in Part I is formed pursuant to a pension plan that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States.

e ☐ I certify that the entity identified in Part I is established exclusively to earn income for the benefit of one or more retirement funds described in this part or in an applicable Model 1 or Model 2 IGA, accounts described in §1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA.

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## Part XV Exempt Retirement Plans (Continued)

f ☐ I certify that the entity identified in Part I:

- Is established and sponsored by a foreign government, international organization, central bank of issue, or government of a U.S. possession (each as defined in §1.1471-6) or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the sponsor (or persons designated by such employees); **or**

- Is established and sponsored by a foreign government, international organization, central bank of issue, or government of a U.S. possession (each as defined in §1.1471-6) or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA to provide retirement, disability, or death benefits to beneficiaries or participants that are not current or former employees of such sponsor, but are in consideration of personal services performed for the sponsor.

## Part XVI Entity Wholly Owned by Exempt Beneficial Owners

30 ☐ I certify that the entity identified in Part I:

- Is an FFI solely because it is an investment entity;
- Each direct holder of an equity interest in the investment entity is an exempt beneficial owner described in §1.1471-6 or in an applicable Model 1 or Model 2 IGA;
- Each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity) or an exempt beneficial owner described in §1.1471-6 or an applicable Model 1 or Model 2 IGA.
- Has provided an owner reporting statement that contains the name, address, TIN (if any), chapter 4 status, and a description of the type of documentation provided to the withholding agent for every person that owns a debt interest constituting a financial account or direct equity interest in the entity; **and**
- Has provided documentation establishing that every owner of the entity is an entity described in §1.1471-6(b), (c), (d), (e), (f) and/or (g) without regard to whether such owners are beneficial owners.

## Part XVII Territory Financial Institution

31 ☐ I certify that the entity identified in Part I is a financial institution (other than an investment entity) that is incorporated or organized under the laws of a possession of the United States.

## Part XVIII Excepted Nonfinancial Group Entity

32 ☐ I certify that the entity identified in Part I:

- Is a holding company, treasury center, or captive finance company and substantially all of the entity's activities are functions described in §1.1471-5(e)(5)(i)(C) through (E);
- Is a member of a nonfinancial group described in §1.1471-5(e)(5)(i)(B);
- Is not a depository or custodial institution (other than for members of the entity's expanded affiliated group); **and**
- Does not function (or hold itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle with an investment strategy to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

## Part XIX Excepted Nonfinancial Start-Up Company

33 ☐ I certify that the entity identified in Part I:

- Was formed on (or, in the case of a new line of business, the date of board resolution approving the new line of business) _____ (date must be less than 24 months prior to date of payment);
- Is not yet operating a business and has no prior operating history or is investing capital in assets with the intent to operate a new line of business other than that of a financial institution or passive NFFE;
- Is investing capital into assets with the intent to operate a business other than that of a financial institution; **and**
- Does not function (or hold itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

## Part XX Excepted Nonfinancial Entity in Liquidation or Bankruptcy

34 ☐ I certify that the entity identified in Part I:

- Filed a plan of liquidation, filed a plan of reorganization, or filed for bankruptcy on _____;
- During the past 5 years has not been engaged in business as a financial institution or acted as a passive NFFE;
- Is either liquidating or emerging from a reorganization or bankruptcy with the intent to continue or recommence operations as a nonfinancial entity; **and**
- Has, or will provide, documentary evidence such as a bankruptcy filing or other public documentation that supports its claim if it remains in bankruptcy or liquidation for more than three years.

## Part XXI 501(c) Organization

35 ☐ I certify that the entity identified in Part I is a 501(c) organization that:

- Has been issued a determination letter from the IRS that is currently in effect concluding that the payee is a section 501(c) organization that is dated _____; **or**
- Has provided a copy of an opinion from U.S. counsel certifying that the payee is a section 501(c) organization (without regard to whether the payee is a foreign private foundation).

## Part XXII Non-Profit Organization

36 ☐ I certify that the entity identified in Part I is a non-profit organization that meets the following requirements:

- The entity is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes;
- The entity is exempt from income tax in its country of residence;
- The entity has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- Neither the applicable laws of the entity's country of residence nor the entity's formation documents permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities or as payment of reasonable compensation for services rendered or payment representing the fair market value of property which the entity has purchased; **and**
- The applicable laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to an entity that is a foreign government, an integral part of a foreign government, a controlled entity of a foreign government, or another organization that is described in this Part XXII or escheats to the government of the entity's country of residence or any political subdivision thereof.

## Part XXIII Publicly Traded NFFE or NFFE Affiliate of a Publicly Traded Corporation

**Check box 37a or 37b, whichever applies.**

37a ☐ I certify that:

- The entity identified in Part I is a foreign corporation that is not a financial institution; **and**
- The stock of such corporation is regularly traded on one or more established securities markets, including _____ (name one securities exchange upon which the stock is regularly traded).

b ☐ I certify that:

- The entity identified in Part I is a foreign corporation that is not a financial institution;
- The entity identified in Part I is a member of the same expanded affiliated group as an entity the stock of which is regularly traded on an established securities market;
- The name of the entity, the stock of which is regularly traded on an established securities market, is _____; **and**
- The name of the securities market on which the stock is regularly traded is _____.

## Part XXIV Excepted Territory NFFE

38 ☐ I certify that:

- The entity identified in Part I is an entity that is organized in a possession of the United States;
- The entity identified in Part I:
  - Does not accept deposits in the ordinary course of a banking or similar business,
  - Does not hold, as a substantial portion of its business, financial assets for the account of others, or
  - Is not an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account; **and**
- All of the owners of the entity identified in Part I are bona fide residents of the possession in which the NFFE is organized or incorporated.

## Part XXV Active NFFE

39 ☐ I certify that:

- The entity identified in Part I is a foreign entity that is not a financial institution;
- Less than 50% of such entity's gross income for the preceding calendar year is passive income; **and**
- Less than 50% of the assets held by such entity are assets that produce or are held for the production of passive income (calculated as a weighted average of the percentage of passive assets measured quarterly) (see instructions for the definition of passive income).

## Part XXVI Passive NFFE

40a ☐ I certify that the entity identified in Part I is a foreign entity that is not a financial institution (other than an investment entity organized in a possession of the United States) and is not certifying its status as a publicly traded NFFE (or affiliate), excepted territory NFFE, active NFFE, direct reporting NFFE, or sponsored direct reporting NFFE.

**Check box 40b or 40c, whichever applies.**

b ☐ I further certify that the entity identified in Part I has no substantial U.S. owners, or

c ☐ I further certify that the entity identified in Part I has provided the name, address, and TIN of each substantial U.S. owner of the NFFE in Part XXX.

## Part XXVII Excepted Inter-Affiliate FFI

41 ☐ I certify that the entity identified in Part I:

- Is a member of an expanded affiliated group;
- Does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group);
- Does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches;
- Does not hold an account (other than a depository account in the country in which the entity is operating to pay for expenses) with or receive payments from any withholding agent other than a member of its expanded affiliated group; **and**
- Has not agreed to report under §1.1471-4(d)(2)(ii)(C) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

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## Part XXVIII Sponsored Direct Reporting NFFE

42 Name of sponsoring entity: _____

43 ☐ I certify that the entity identified in Part I is a direct reporting NFFE that is sponsored by the entity identified in line 42.

## Part XXIX Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- The entity identified on line 1 of this form is the beneficial owner of all the income to which this form relates, is using this form to certify its status for chapter 4 purposes, or is a merchant submitting this form for purposes of section 6050W,
- The entity identified on line 1 of this form is not a U.S. person,
- The income to which this form relates is: (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, **and**
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which the entity on line 1 is the beneficial owner or any withholding agent that can disburse or make payments of the income of which the entity on line 1 is the beneficial owner.

**I agree that I will submit a new form within 30 days if any certification on this form becomes incorrect.**

**Sign Here** ▶

| Signature of individual authorized to sign for beneficial owner | Print Name | Date (MM-DD-YYYY) |
|---|---|---|
| | | |

☐ **I certify that I have the capacity to sign for the entity identified on line 1 of this form.**

## Part XXX Substantial U.S. Owners of Passive NFFE

As required by Part XXVI, provide the name, address, and TIN of each substantial U.S. owner of the NFFE. Please see instructions for definition of substantial U.S. owner.

| Name | Address | TIN |
|---|---|---|
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# UPDATED INFORMATION FOR USERS OF FORM W-8BEN-E - - USE OF FORM W-8BEN (REVISION DATE FEBRUARY 2006) BEFORE JANUARY 1, 2015

The Form W-8BEN-E reflects changes made by the Foreign Account Tax Compliance Act (FATCA) and is for use by beneficial owners that are entities. Entities also may use the Form W-8BEN (revision date February 2006) through December 31, 2014.

For purposes of chapter 3 of the Internal Revenue Code, a Form W-8BEN (revision date February 2006) provided to a withholding agent by an entity before January 1, 2015 will remain valid until the form's validity expires under Treasury Regulations section 1.1441-1(e)(4)(ii).

For purposes of chapter 4 of the Internal Revenue Code, a Form W-8BEN (revision date February 2006) provided to a withholding agent by an entity before January 1, 2015 is and will remain valid to the extent permitted in Treasury Regulations section 1.1471-3(d)(1) (describing the allowance for use of a "pre-FATCA Form W-8"). See also Treasury Regulations section 1.1471-2T(a)(4)(ii) (describing a transitional exception to withholding for certain payments made with respect to a preexisting obligation).

A withholding agent may request that you provide a Form W-8BEN (revision date February 2006) before January 1, 2015. The Form W-8BEN (revision date February 2006) can be found on irs.gov in the Forms and Publications section, under the "Prior Year Forms" tab, by searching the cumulative list of forms posted there for the term "Form W-8". It does not reflect the changes made by FATCA.

**FORM W-9**
**(REQUEST FOR TAXPAYER IDENTIFICATION NUMBER)**

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Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

**Give Form to the requester. Do not send to the IRS.**

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____

**Note.** For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

*(Applies to accounts maintained outside the U.S.)*

5 Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

**Social security number**

☐☐☐ - ☐☐ - ☐☐☐☐

**or**

**Employer identification number**

☐☐ - ☐☐☐☐☐☐☐

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here** | **Signature of U.S. person ▶** | **Date ▶**

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding.* See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

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**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

***Example.*** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

# Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note. ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

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## Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

## Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

## Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

| IF the payment is for . . . | THEN the payment is exempt for . . . |
|---|---|
| Interest and dividend payments | All exempt payees except for 7 |
| Broker transactions | Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012. |
| Barter exchange transactions and patronage dividends | Exempt payees 1 through 4 |
| Payments over $600 required to be reported and direct sales over $5,000[1] | Generally, exempt payees 1 through 5[2] |
| Payments made in settlement of payment card or third party network transactions | Exempt payees 1 through 4 |

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

## Line 6

Enter your city, state, and ZIP code.

# Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at *www.ssa.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** *A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.*

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

| For this type of account: | Give name and SSN of: |
|---|---|
| 1. Individual | The individual |
| 2. Two or more individuals (joint account) | The actual owner of the account or, if combined funds, the first individual on the account[1] |
| 3. Custodian account of a minor (Uniform Gift to Minors Act) | The minor[2] |
| 4. a. The usual revocable savings trust (grantor is also trustee) | The grantor-trustee[1] |
| b. So-called trust account that is not a legal or valid trust under state law | The actual owner[1] |
| 5. Sole proprietorship or disregarded entity owned by an individual | The owner[3] |
| 6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A)) | The grantor* |
| **For this type of account:** | **Give name and EIN of:** |
| 7. Disregarded entity not owned by an individual | The owner |
| 8. A valid trust, estate, or pension trust | Legal entity[4] |
| 9. Corporation or LLC electing corporate status on Form 8832 or Form 2553 | The corporation |
| 10. Association, club, religious, charitable, educational, or other tax-exempt organization | The organization |
| 11. Partnership or multi-member LLC | The partnership |
| 12. A broker or registered nominee | The broker or nominee |
| 13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity |
| 14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B)) | The trust |

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov*. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: *spam@uce.gov* or contact them at *www.ftc.gov/idtheft* or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

# CERTIFICATION OF SPONSOR AND PRINCIPALS

## PART 20: CERTIFICATION OF SPONSOR AND PRINCIPAL

New York State Department of Law
Real Estate Financing Bureau
23rd Floor
120 Broadway
New York, New York 10271

Re: Condominium Offering Plan
172 Madison Avenue Condominium
172 Madison Avenue
New York, New York 10016

We are the sponsor and the principal of 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 this certification. We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us which amend or supplement the offering plan will:

(i) set forth the detailed terms of the transaction and be complete, current and accurate;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

(iii) not omit any material fact;

(iv) not contain any untrue statement of a material fact;

(v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) not contain any 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 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.

NYS,
NY County

Sworn to before me this
13th day of March, 2015

Notary Public LEO TAKEDA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TA6265164
Qualified in Queens County
My Commission Expires July 09, 2016

**SPONSOR**:

**MADISON 33 OWNER LLC**

By: _____
~~Yitzchak~~ Tessler, Director

**PRINCIPAL**:

Sworn to before me this
13th day of March, 2015

Notary Public

LEO TAKEDA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TA6265164
Qualified in Queens County
My Commission Expires July 09, 2016

**YITZCHAK TESSLER**, Principal

## CERTIFICATION OF ARCHITECT

433

KARL
FISCHER
ARCHITECT PLLC

CERTIFICATION OF ARCHITECT

October 30th, 2014

New York State Department of Law
Real Estate Financing Bureau
120 Broadway, 23rd Floor
New York, New York 10271

Re: Condominium Offering Plan
172 Madison Avenue Condominium
172 Madison Avenue
New York, New York 10016

The sponsor of the condominium offering plan for the captioned condominium property retained our firm to prepare a report describing the construction of the property (the "Report"). We examined the building plans and specifications that were prepared by Karl Fischer Architecture PLLC dated October 21st, 2014 and prepared the Report dated October 21st, 2014, a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

We are registered architects in the State of New York.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to this Report.

We 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 for this certification which relies in part upon facts provided by the structural and mechanical engineers. This certification is made for the benefit of all persons to whom this offer is made.

NEW YORK 530 BROADWAY, 9TH FLOOR, NEW YORK, NY 10012 Tel: 212-219-9733 Fax: 212-219-8980
e-mail: karl@kfarchitect.com internet: www.kfarchitect.com

434

We 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 in accordance with the plans and specifications that we examined;

(ii) in our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description and/or physical condition of the condominium property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that we 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 or suppression;

(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 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 representation or statement made.

We further certify that we are not owned or controlled by and have no beneficial interest in the sponsor and that our compensation for preparing this Report is not contingent on the success of the condominium offering plan or on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the condominium property.

**KARL FISCHER ARCHITECTURE PLLC**

By: _____
Name: KARL FISCHER
Title: PRINCIPAL

(Architect's Seal)

REGISTERED ARCHITECT KARL FISCHER STATE OF NEW YORK No. 020082

Sworn to before me this
30th day of October, 2014

_____
Notary Public

MARIA LAMPHERE
Notary Public, State of New York
No. 01LA6278314
Qualified in Kings County
Term Expires March 25, 2017

NEW YORK 530 BROADWAY, 9TH FLOOR, NEW YORK, NY 10012
Tel: 212-219-9733 Fax: 212-219-8980 e-mail: karl@kfarchitect.com internet: www.kfarchitect.com

## CERTIFICATION OF BUDGET EXPERT

# MAXWELL-KATES, INC. 436

PART 20: CERTIFICATION BY EXPERT AS TO
ADEQUACY OF CONDOMINIUM BUDGET

October 14, 2014

New York State Department of Law
Real Estate Financing Bureau
120 Broadway
23rd Floor
New York, New York 10271

Re: Condominium Offering Plan
172 Madison Avenue Condominium
172 Madison Avenue
New York, New York 10016

The sponsor of the condominium offering plan for the captioned condominium property retained our firm to prepare or review Schedules B and B-1 (the "Schedules") containing projections of income and expenses for the first year of condominium operation, commencing July 1, 2014. Maxwell-Kates Inc. ("Maxwell-Kates") is a full service residential property management firm that was founded in 1986. Our experience in this field includes the management of condominium, cooperative and rental properties for more than twenty five years. Maxwell-Kates currently manages over 12,000 units in approximately 125 buildings in the Greater New York metropolitan area, including some of both the newest and oldest luxury residences in New York City.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the Schedules.

We have prepared Schedule B and reviewed Schedule B-1 and investigated the facts set forth in the Schedules and the facts underlying them with due diligence in order to form a basis for this certification. We also have relied on our experience with residential buildings.

We certify that the projections in the Schedules appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the projected first year of condominium operation.

We certify that Schedules B and B-1:

(i) set forth in detail the projected income and expenses for the first year of condominium operation;

9 East 38th Street, 6th Floor, New York, NY 10016
Tel: 212.684.8282 Fax: 212.684.8077 www.maxwellkatesinc.com

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of condominium operation;

(iii) do not omit any pertinent fact;

(iv) do not contain any untrue statement of a material fact;

(v) do not contain any fraud, deception, concealment or suppression;

(vi) do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) do not contain any 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 representation or statement made.

We further certify that we are not owned or controlled by the sponsor. We understand that a copy of this certification is intended to be incorporated into the condominium offering plan. This statement is not intended as a guarantee or warranty of the income or 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.

MAXWELL-KATES, INC.

By: Robert Freedman
Name: ROBERT Freedman
Title: PRESIDENT

Sworn to before me this
20 day of October, 2014.

Notary Public

CRISTINA CHIARIZIA
Notary Public, State of New York
Registration #01CH5060129
Qualified In Richmond County
Commission Expires May 13, 20

## CERTIFICATION OF BUDGET EXPERT CONCERNING ADEQUACY OF COMMON CHARGES PAYABLE BY COMMERCIAL UNIT OWNER

# MAXWELL - KATES, INC.

CERTIFICATION BY SPONSOR'S EXPERT CONCERNING ADEQUACY OF COMMON CHARGES PAYABLE BY COMMERCIAL UNIT OWNERS PURSUANT TO SECTION 20.4 (e) OF PART 20 OF THE REGULATIONS ISSUED PURSUANT TO GENERAL BUSINESS LAW ARTICLE 23-A, AS AMENDED

November 10, 2014

New York State Department of Law
120 Broadway, 23F
New York, NY 10271
Attn: Real Estate Financing Bureau

Re: 172 Madison Condominium
172 Madison Avenue, New York, New York ("Property")

The undersigned, Maxwell-Kates, Inc. certifies as follows:

The sponsor of the condominium Offering Plan for the above captioned property retained our firm to prepare Schedule B to the Offering Plan, which includes projections of Common Charges payable by the owners of the Commercial Units for the fiscal year July 1, 2016 through June 30, 2017.

Maxwell-Kates, Inc. has been engaged in the management of residential and commercial real estate for over 25 years, managing approximately 125 buildings, and is a licensed real estate broker in the State of New York and New Jersey.

We understand that we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the commercial units listed in Schedule B.

We have reviewed the Schedule as it impacts upon the commercial units and investigated the facts underlying it with due diligence in order to form a basis for this certification. We also have relied on our experience in managing residential buildings and commercial areas of such buildings.

We certify that the projections in the Schedule for Common Charges payable by the owners of the Commercial Units appear reasonable and adequate under existing circumstances to meet the anticipated operating expenses fairly attributable to such Commercial Units for the operation of the Condominium during fiscal year July1, 2016 through June 30, 2017 and that the allocation of Common Charges attributable to commercial units also reflects any special or exclusive use or availability or exclusive control of particular common areas.

We certify that the estimates in Schedule B for the Common Charges payable by the owners of the Commercial Units:

(i) Set forth in detail in the projected Common Charges for the Commercial Units of the Condominium operation for fiscal year July 1, 2016 through June 30, 2017;

# MAXWELL-KATES, INC.

(ii) Afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the Common Charges payable by the owners of the Commercial Units;

(iii) Do not omit any material fact;

(iv) Do not contain any untrue statement of material fact

(v) Do not contain any fraud, deception, concealment or suppression;

(vi) Do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) Do not contain any 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.

We further certify that we are not owned or controlled by the sponsor. We 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 the 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.

MAXWELL-KATES, INC.
By: Robert Freedman
Name: Robert Freedman
Title: President

Sworn to before me this
10th day of ~~October~~ Nov 2014
Andreana Napolitano
Notary Public

ANDREANA NAPOLITANO
Notary Public, State of New York
Registration #01NA4873309
Qualified In Richmond County
Commission Expires October 6, 2018

## REAL PROPERTY LAW SECTION 339-KK

McKinney's Real Property Law § 339-kk

## § 339-kk. Rents

(a) For the purposes of this section, "non-occupying owner" shall mean a unit owner in a condominium association who does not occupy the dwelling unit.

(b) If a non-occupying owner rents any dwelling unit to a rental tenant and then fails to make payments due for common charges, assessments or late fees for such unit within sixty days of the expiration of any grace period after they are due, upon notice in accordance with subdivision (c) of this section, all rental payments from the tenant shall be directly payable to the condominium association.

(c) If the common charges, assessments or late fees due for any unit have not been paid in full, within sixty days after the expiration of any grace period of the earliest due date, the board of managers shall provide written notice to the tenant and the non-occupying owner providing that, commencing immediately and until such time as all payments for common charges, assessments or late fees are made current, all rental payments due subsequent to the issuance of such notice are to be made payable to the condominium association at the address listed on the notice. Where a majority of the board of managers has been elected by and from among the unit owners who are in occupancy, the board may elect not to require that rental payments be made payable to the condominium association. At such time as payments for common charges, assessments and late fees from the non-occupying owner are once again current, notice of such fact shall be given within three business days to the rental tenant and non-occupying owner. Thereafter all rental payments shall be made payable to the non-occupying owner or a designated agent. A non-occupying owner who disputes the association's claim to rental payments pursuant to this section shall be entitled to present facts supporting such owner's position at the next scheduled meeting of the board of managers, which must be held within thirty days of the date that such board receives notice that such owner seeks to dispute such claim.

(d) Nothing in this section shall limit any rights of unit owners or of the board of managers existing under any other law or agreement.

(e) Payment by a rental tenant to the condominium association made in connection with this section shall relieve that rental tenant from the obligation to pay such rent to the non-occupying owner and shall be an absolute defense in any non-payment proceeding commenced by such non-occupying owner against such tenant for such rent.

(Added L.1998, c. 422, § 3, eff. July 22, 1998.)

## WINDOW AGREEMENT DATED AS OF APRIL 16, 1985

REEL 901 PG 1901

AGREEMENT made the 16 day of April, 1985 between JESSIE SMITH NOYES FOUNDATION, INC., a New York not-for-profit corporation, having an office at 16 East 34th Street, New York, New York ("Foundation") and 1634 ASSOCIATES, a New York limited partnership, having an office at 39 Broadway, New York, New York 10006 (hereinafter called "Adjacent Owner").

W I T N E S S E T H:

WHEREAS,

A. The Foundation is the owner of certain premises known as 21 East 33rd Street, New York City, New York, and more particularly described in Schedule A annexed hereto and hereinafter referred to as the "Foundation Premises".

B. There is presently erected on the Foundation Premises a four-story building (hereinafter called the "Foundation Building").

C. The Foundation has this date conveyed to Adjacent Owner the premises known as 16-22 East 34th Street and 15-19 East 33rd Street, New York City, New York, more particularly described in Schedule B annexed hereto (hereinafter called the "Adjacent Premises") upon which there is presently existing a twenty-story building (hereinafter called the "Existing Adjacent Building").

D. The windows on the easterly brick wall of the Existing Adjacent Building, in part, overlook the Foundation Building and the Adjacent Owner desires to insure that as long as

said easterly wall of the Existing Adjacent Building remains standing, said existing windows will not be blocked out by a building hereafter erected on the Foundation Premises.

NOW, THEREFORE, in consideration of One ($1.00) Dollar and other good and valuable consideration paid by the Adjacent Owner to the Foundation and as an express inducement to Adjacent Owner to purchase Adjacent Building, the Foundation does hereby agree for the benefit of the Adjacent Owner, its successors and assigns as follows:

1. As long as the easterly brick wall of the Existing Adjacent Building remains standing, there shall not (i) be erected any addition to the Foundation Building which would block up or render unlawful, at the time of such addition, any window both now and then existing in said easterly wall of the Existing Adjacent Building and (ii) be erected, if the Foundation Building is demolished, a new building on the Foundation Premises which would block up or render unlawful any windows both now and then existing in said easterly wall of the Existing Adjacent Building, provided, however, nothing herein shall be in any way construed to prevent, restrict or prohibit a new building being erected on the Foundation Premises which, to the extent such new building is situate within the boundary lines of the Foundation Premises, is no greater in height than the Foundation Building.

2. Nothing herein contained shall be construed to prevent, restrict or prohibit in any way the owner of the Foundation Premises from entering into a Declaration of Restrictions

under Section 12-10 of the Zoning Resolution of the City of New York as amended wherein there is transferred to an adjacent parcel of land or any eligible transferee any unused floor area and development rights of the Foundation Premises and no consent thereto shall be required of the owner of the Adjacent Premises, but if by law such consent is required by reason of this agreement or otherwise, then the owner of the Adjacent Premises shall promptly give such required consent.

3. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. In the event the Foundation receives an offer to acquire the unused floor area and development rights of the Foundation Premises which is acceptable to the Foundation, the Foundation shall so notify the Adjacent Owner and shall deliver a copy of the offer to the Adjacent Owner. The Adjacent Owner shall have twenty (20) days following the receipt of such notice to accept the offer on the same terms and conditions as are contained therein. If the Adjacent Owner does not so accept the offer or fails to respond to the offer with said twenty-day period, the Foundation may accept the offer and close the transaction in accordance with the terms thereof. If such transaction is not consummated within the time period set forth in the offer as same may be reasonably extended or if the terms of the transaction materially vary from the terms set forth in the offer, then the Foundation may not sell the unused floor area and

development rights without first offering it to the Adjacent Owner.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

JESSIE SMITH NOYES FOUNDATION, INC.

By: _____

1634 ASSOCIATES

By _____
General Partner

REEL 901 PG 1905

SCHEDULE A

Description

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point in the Northerly line of 33rd Street, distant ninety-five feet Westerly from the corner formed by the intersection of the Westerly line of Madison Avenue with the Northerly line of 33rd Street and running thence Westerly along the Northerly line of 33rd Street, twenty-five feet; thence Northerly and parallel with Madison Avenue, one hundred eight feet eight and three-quarters inches; thence Easterly, parallel with 33rd Street, twenty-five feet, and thence Southerly and parallel with Madison Avenue, one hundred eight feet eight and three-quarter inches to the place of BEGINNING.

REEL 901 PG 1906

SCHEDULE B

Description

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

BEGINNING at a point on the northerly side of East 33rd Street, distant 120 feet westerly from the corner formed by the intersection of the said northerly side of East 33rd Street with the westerly side of Madison Avenue;

RUNNING THENCE northerly parallel with Madison Avenue 197 feet 6 inches to the southerly side of East 34th Street;

THENCE westerly along the southerly side of East 34th Street, 75 feet;

THENCE southerly parallel with Madison Avenue, 98 feet 9 inches to the center line of the block between East 33rd Street and East 34th Street;

THENCE westerly along the center line of the block, 5 feet;

THENCE southerly parallel with Madison Avenue, 98 feet 9 inches to the northerly side of East 33rd Street;

THENCE easterly along the northerly side of East 33rd Street, 80 feet to the point or place of BEGINNING.

REEL 901 PG 1907

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

On the 16th day of April, 1985, before me personally came NICHOLAS JACANGELO, to me known, who, being by me duly sworn, did depose and say that he resides at No. [redacted], that he is the Vice President of Jessie Smith Noyes Foundation, Inc., the corporation described in and which executed the foregoing instrument; ~~that he knows the seal of said corporation; that the~~ seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors ~~of said corporation~~, and that he signed his name thereto by like order.

Roslyn Friedman
Notary Public

ROSLYN FRIEDMAN
Notary Public, State of New York
No. 24-4772634
Qualified in Kings County
Commission Expires March 30, 1986

REEL 901 PG 1903

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

On the 16 day of April, 1985, before me personally came Joseph Neuman to me known to be a General Partner of 1634 Associates, and the person described in, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same as the act and deed of said partnership.

Victoria P. Gosch
Notary Public

VICTORIA APOSTLE
Notary Public, State of New York
No. 41-4613741
Qualified in Queens County
Term Expires March 30, 1987

REEL 901 PG 1909

REAL ESTATE
APR 24 1985
TRANSFER TAX
NEW YORK
COUNTY

10715

RECORDED BY
[illegible]

OFFICE OF CITY REGISTER
New York County
RECORDED
Witness my hand
and official seal

Jay E. Grunfeld
CITY REGISTER

REC. FEE

SBT #

TPT # R 3128

Bl. 863
Lot 13, 17
County New York
M-23316
R & R

Fidley Kumble Wagner
425 Park Ave
NYC NY. 10022
Attn. Mitchell Fenton Esq

## DEPARTMENT OF CITY PLANNING NOTICE OF CERTIFICATION (PLAZA)

**NYC DEPARTMENT OF FINANCE**
**OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.

2014072500636001002EEE69

**RECORDING AND ENDORSEMENT COVER PAGE** **PAGE 1 OF 38**

**Document ID:** 2014072500636001 Document Date: 07-24-2014 Preparation Date: 07-25-2014
Document Type: SUNDRY AGREEMENT
Document Page Count: 37

**PRESENTER:**
CONTINETAL ABSTRACT LLC P/U DENNISE ANTEQUERRA
1 OLD COUNTRY ROAD - SUITE 467
27M2149
CARLE PLACE, NY 11514
516-248-1180

**RETURN TO:**
ARI HERMAN
TESSLER DEVELOPMENT LLC
461 PARK AVENUE SOUTH
NEW YORK, NY 10016

**PROPERTY DATA**

| Borough | Block | Lot | Unit | Address |
|---|---|---|---|---|
| MANHATTAN | 863 | 17 | Entire Lot | 21 EAST 33RD STREET |

**Property Type:** COMMERCIAL REAL ESTATE

**CROSS REFERENCE DATA**

CRFN_____ *or* DocumentID_____ *or* _____ Year____ Reel____ Page____ *or* File Number_____

**PARTIES**

**PARTY 1:**
MADISON 33 OWNER LLC
C/O TESSLER DEVELOPMENTS LLC, 461 PARK AVENUE SOUTH, SUITE 200
NEW YORK, NY 10016

**FEES AND TAXES**

| | | |
|---|---|---|
| **Mortgage :** | | |
| Mortgage Amount: | $ | 0.00 |
| Taxable Mortgage Amount: | $ | 0.00 |
| Exemption: | | |
| TAXES: County (Basic): | $ | 0.00 |
| City (Additional): | $ | 0.00 |
| Spec (Additional): | $ | 0.00 |
| TASF: | $ | 0.00 |
| MTA: | $ | 0.00 |
| NYCTA: | $ | 0.00 |
| Additional MRT: | $ | 0.00 |
| TOTAL: | $ | 0.00 |
| Recording Fee: | $ | 222.00 |
| Affidavit Fee: | $ | 0.00 |

Filing Fee: $ 0.00
NYC Real Property Transfer Tax: $ 0.00
NYS Real Estate Transfer Tax: $ 0.00

**RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK**
Recorded/Filed 08-06-2014 15:38
City Register File No.(CRFN): **2014000259638**

*City Register Official Signature*

[EXECUTION COPY]

**NOTICE OF CERTIFICATION**

**(Plaza)**

This Notice of Certification, made as of the 24th day of July, 2014, by MADISON 33 OWNER LLC, a Delaware limited liability company having an address at c/o Tessler Developments LLC, 461 Park Avenue South, Suite 200, New York, New York 10016 (the "Owner").

**WHEREAS**, Owner is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, which property is designated as Tax Block 863, Lot 17, and commonly known by the street address of 172 Madison Avenue, New York, New York, and which is more particularly described in Exhibit A attached hereto (the "Property"); and

**WHEREAS**, publicly accessible open space is proposed for the Property for which valuable benefits will be received in the form of additional floor area (the "Plaza"); and

**WHEREAS**, Owner has submitted an application designated number N 150007 ZCM dated July 2, 2014 (the "Application") to the Chairperson of the City Planning Commission (the "Chairperson") requesting certification pursuant to Section 37-78 of Article III, Chapter 7 of the Zoning Resolution of the City of New York (the "ZR") that a site plan for a public plaza that complies with ZR Section 37-70 has been submitted to the Chairperson; and

**WHEREAS**, in connection with and as a requirement of certification, Owner is required to file a Notice of Certification with the Office of the New York City Register, New York County (the "City Register"); and

**WHEREAS**, the former owner of the Property, NMP-Group LLC, obtained Chairperson certification of a proposed plaza on the Property pursuant to application number N 090190 ZCM and recorded a Notice of Certification, dated December 19, 2008, on January 21, 2009 (CRFN 2009000017394) (the "Prior Notice"), which proposal is not being pursued; and

**WHEREAS**, Owner desires to restrict the manner in which the Property may be developed, redeveloped, maintained and operated in the future and intends these restrictions to benefit all the land, including land owned by the City of New York, lying within one-half mile of the Property;

**THEREFORE**, Owner gives this Notice of Certification to the City of New York and future owners and to every party now or hereafter having any right, title or interest in the Property and their respective heirs, successors, or assigns:

1. The Plaza shall be developed and maintained substantially in accordance with the following drawings, prepared by Karl Fischer Architect and SCAPE Landscape Architecture PLLC and attached hereto as Exhibit B (the "Drawings"):

| Drawing No./Title | Last Revised Date |
|---|---|
| ZL-100/ Zoning Compliance – ZR 37-70 | 07/02/2014 |
| ZL-100.1/Zoning Compliance – ZR 37-70 | 07/02/2014 |
| ZL-101/Site Plan | 07/02/2014 |
| ZL-101A/Plaza Plan | 07/02/2014 |
| ZL-101B/Permitted Obstructions and Circulation Plan | 07/02/2014 |
| ZL-101C/Seating and Planting Area Plan | 07/02/2014 |
| ZL-101D/Plaza Grading and Paving Plan | 07/02/2014 |

| | |
|---|---|
| ZL-102/Lighting Plan | 07/02/2014 |
| ZL-103/Planting Plan, Schedule and Details | 07/02/2014 |
| ZL-200/Plaza Sections | 07/02/2014 |
| ZL-201/Plaza Elevation | 07/02/2014 |
| ZL-300/Site Details | 07/02/2014 |
| ZL-301/Site Details | 07/02/2014 |
| ZL-302/Site Details | 07/02/2014 |
| ZL-400/Site Furnishings | 07/02/2014 |

2. The Plaza shall be accessible to the public at all times, in accordance with ZR Section 37-727, and shall be maintained in accordance with ZR Section 37-77.

3. Prior to certification of the Application by the Chairperson, Owner shall file and duly record this Notice of Certification with the City Register, indexing it against the Property. Owner shall, promptly following recordation, deliver to the Chairperson a true copy of this Notice of Certification as recorded and certified by the City Register. Such recording is a precondition of the filing for or the issuance of any building permit for any development or enlargement on the zoning lot or any construction/site preparation/filing with the New York City Department of Buildings in connection with such development or enlargement on the Property.

4. A duly recorded copy of this Notice of Certification shall be attached to and submitted with any application relating to the Property filed with the New York City Department of Buildings or New York City Department of Transportation. These agencies and any other agency of the City of New York may enforce the restrictions contained herein by any method authorized by law or in equity.

5. No temporary or final certificate of occupancy shall be issued for any additional floor area generated by the Plaza unless and until the Plaza has been substantially completed in accordance with the Drawings.

6. The recording information that appears on this Notice of Certification shall be included on any certificate of occupancy issued in connection with the Property after such recording date.

7. A plaza compliance report shall be provided to the Department of City Planning and the affected Community Board, pursuant to ZR Section 37-78(b).

8. This Notice of Certification shall supersede in all respects the Prior Notice, which is hereby null and void and of no further force or effect.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Owner has executed this Notice of Certification as of the date written above.

MADISON 33 OWNER LLC

By: _____
Name: Yitzchak Tessler
Title: Managing Member

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

On the 24th day of July in the year 2014 before me, the undersigned, a Notary Public in and for said state, personally appeared YITZCHAK TESSLER, 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 or entity upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

SEAL

LEO TAKEDA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TA6265164
Qualified In Queens County
My Commission Expires July 09, 2016

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# Exhibit A

Legal Description of Property

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

BEGINNING at the corner formed by the intersection of the northerly side of East 33rd Street with the westerly side of Madison Avenue;

RUNNING THENCE northerly along the westerly side of Madison Avenue, 84 feet and ½ inch;

THENCE westerly and parallel to East 33rd Street, 95 feet;

THENCE northerly, parallel with Madison Avenue, 24 feet 8 ¼ inches;

THENCE westerly and parallel with East 33rd street, 25 feet;

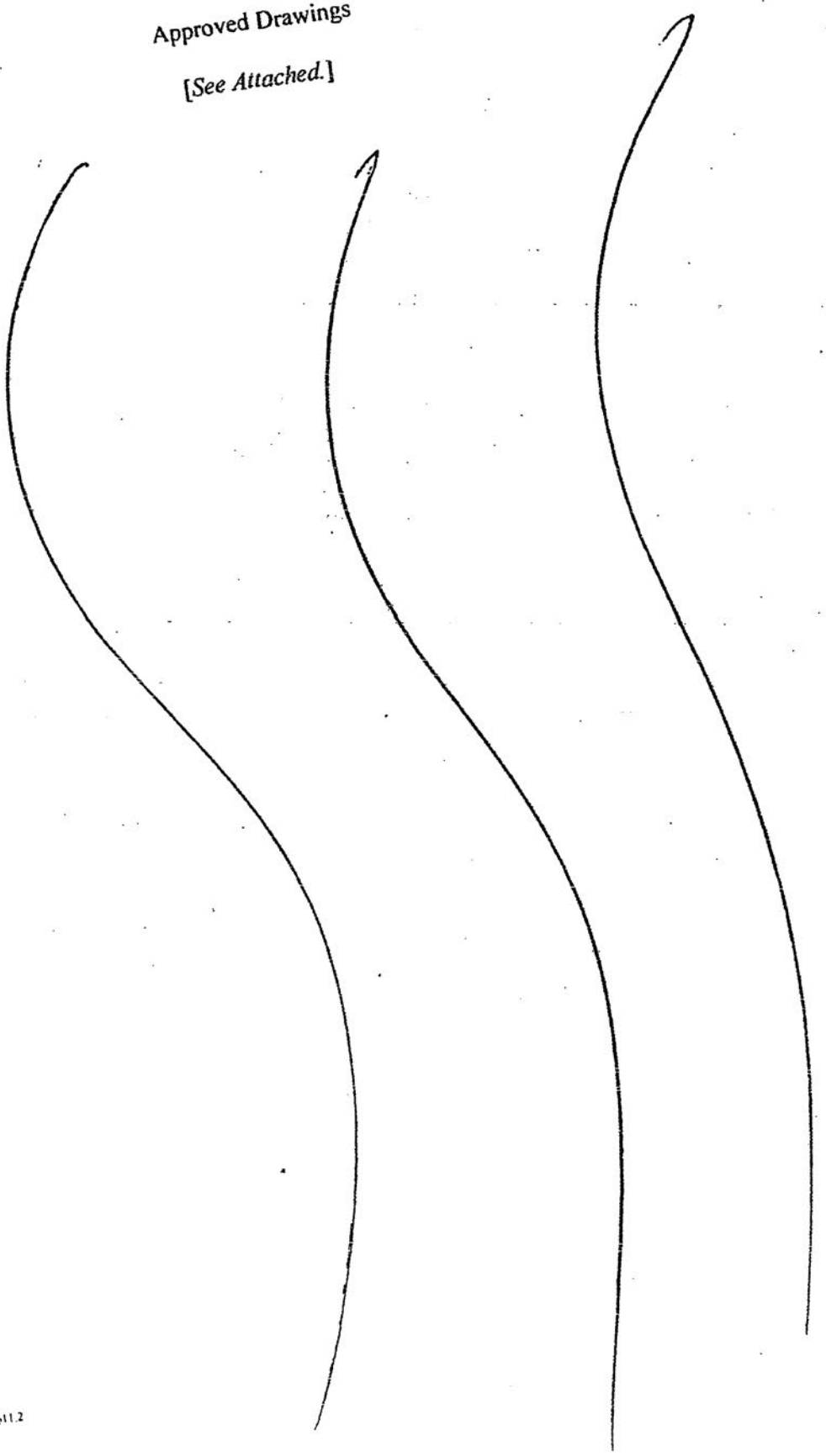
THENCE southerly and parallel with Madison Avenue, 108 feet 8 ¾ inches;

THENCE easterly and parallel with East 33rd street, 120 feet to the point or place of BEGINNING.

**Exhibit B**

Approved Drawings

[*See Attached.*]

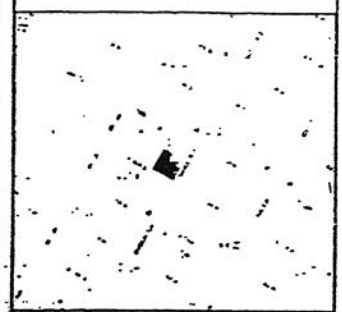


## 172 MADISON MIXED USE DEVELOPMENT: PRIVATELY OWNED PUBLIC PLAZA

| 37-70: PUBLIC PLAZA REQUIREMENTS | REQUIRED | PROVIDED |
|---|---|---|
| **37-715: AREA DIMENSIONS** | | |
| -A public plaza shall contain an area of not less than 2,000 square feet. | AREA > 2000 SF | 3,612 SF PROVIDED |
| -An open area which does not qualify for bonus floor area may not be located between two public plazas, or between a public plaza and a building wall or arcade. | | |
| -Any non-bonused open area located adjacent to a public plaza, other than an open area bounding a street line used for pedestrian access, must either: | | |
| (a) be separated from the public plaza by a buffer, such as a wall, decorative fence, or dense plantings at least six feet in height; or | | |
| (b) meet all requirements for minor portions of public plazas related to size, configuration, orientation, as specified in Section 37-715. | | COMPLIES |
| **37-713: LOCATIONAL RESTRICTIONS** | | |
| -No public plaza, or portion thereof, shall be located within 175 feet of an existing publicly accessible open area or public park as measured along the street line on which the existing assembly fronts. | 175 LF MINIMUM FROM AN EXISTING PUBLIC PLAZA | 175' DISTANCE PROVIDED<br>COMPLIES |
| **37-714: ORIENTATION RESTRICTIONS** | | |
| (a) Where the major portion of a public plaza fronts on only one street line, such major portion is not permitted to front on a north-facing street line of a zoning lot. | NO FRONTING ON A NORTH-FACING STREET | MAJOR PORTION OF PLAZA FACES SOUTH |
| (b) No major portion of a public plaza shall only front on a west-facing street line or an east-facing street line if the zoning lot also has frontage that is 40 feet or more in length on a south-facing street line. | MAJOR PORTION CANNOT FACE EAST OR WEST WHEN A 40' SOUTHERN FRONTAGE EXISTS | N/A |
| (c) A corner public plaza must have its major portion, as defined in Section 37-715, paragraph (b), front on the south-facing street line. In the case of a zoning lot having frontage on a south-facing street line of less than 40 feet, or having its frontage at the intersection of a north-facing street line with either an east- or west-facing street line, the major portion must front on the east- or west-facing street line. | MAJOR PORTION OF CORNER PLAZAS MUST FACE SOUTH WHEN POSSIBLE, OTHERWISE THEY MUST FACE EAST OR WEST | N/A<br>COMPLIES |
| **37-715: REQUIREMENTS FOR MAJOR PORTIONS OF PUBLIC PLAZAS** | | |
| -Major portions shall be generally regular in shape, directly accessible from adjoining buildings and public spaces, and simultaneously visible from within all portions of the public plaza and from adjoining public spaces. Major portions shall occupy no less than 75 percent of the total public plaza area. | MAJOR PORTIONS SHALL NOT BE LESS THAN 75% OF THE PLAZA AND MUST BE CONTINUOUSLY VISIBLE | PLAZA AREA = 3,612 SF<br>MAJOR PORTION = 2,697 SF<br>2,697 / 3,612 = 80.3%<br>80.3% > 75% |
| (a) All contiguous public plaza areas on a zoning lot shall be considered as one public plaza. | | |
| (b) All points within the major portion shall be visible when viewed perpendicular from each adjacent street. Corner public plazas that front on two streets that do not meet at a 90 degree angle must be fully visible when viewed perpendicular from one adjoining street and at least 50 percent of the public plaza must be visible when viewed perpendicular to the other adjoining street. | ALL POINTS MUST BE VISIBLE WHEN VIEWED PERPENDICULAR FROM THE STREET | COMPLIES |
| (c) The major portion shall have a minimum average width and depth of 40 feet. For public plazas that front on only one street, no more than 20 percent of the public plaza area may have a width of less than 40 feet. Dimensions shall be measured parallel and perpendicular to the street line on which the public plaza fronts. | MIN. AVG. WIDTH AND DEPTH OF 40' NO MORE THAN 30% OF PLAZA AREA WIDTH MAY BE LESS THAN 40' | AVG WIDTH = 40 FT<br>AVG DEPTH = 82.05' + 82.75' = 164.83' / 2 = 72.42' |
| (d) The maximum width measured parallel to any one street shall not be greater than three times the average depth of the public plaza. | WIDTH TO DEPTH SHALL NOT EXCEED 3:1 | 3 x 80.6' = 271.8'<br>40'(W) : 271.8'(D) = 1 : 6.8<br>COMPLIES |
| **37-716: REQUIREMENTS FOR MINOR PORTIONS OF PUBLIC PLAZAS** | | |
| -Minor portions shall not occupy more than 25 percent of the total area of the public plaza. The width of a minor portion shall be measured parallel to the line separating the major and minor portions. The depth of a minor portion shall be measured perpendicular to the line separating the major and minor portions. | MINOR PORTIONS SHALL NOT BE MORE THAT 25% OF THE PLAZA | PLAZA AREA = 3,612 SF<br>MINOR PORTION = 715 SF<br>715 / 3,612 = 19.8%<br>19.8% < 25% |
| (a) The minor portion shall have a minimum average width and depth of 15 feet. | MIN. AVERAGE DEPTH OF 15' | AVERAGE DEPTH 15' |
| (b) The minor portion must be directly adjacent to the major portion. | DIRECTLY ADJACENT | COMPLIES |
| (c) All points within the minor portion must be visible from within the major portion when viewed perpendicular to the line separating the major and minor portions. | ALL POINT VISIBLE VIEWED PERP. FROM DIVISION LINE | COMPLIES |
| (d) The minor portion must front directly on the same street as the major portion unless the minor portion has: | | |
| (1) a width to depth ratio of at least 2:1; and | WIDTH TO DEPTH AT LEAST 2:1 | WIDTH: 45', DEPTH 15', RATIO: 3:1 |
| (2) the longest dimension contiguous with the major portion. | LONGEST DIM. CONTIGUOUS WITH MAJOR PORTION | COMPLIES<br>COMPLIES |
| **37-717: REGULATIONS FOR THROUGH BLOCK PUBLIC PLAZAS** | N/A | N/A |
| **37-718: PAVING** | | |
| -The paving of the public plaza shall be of non-skid durable materials that are decorative and acceptable to color and pattern with other design features of the public plaza. | NON-SKID DECORATIVE PAVEMENT | ARCHITECTURAL CONCRETE NARROW MODULAR PAVERS<br>COMPLIES |
| **37-721: SIDEWALK FRONTAGE** | | |
| -Within 15 feet of a street line or sidewalk widening line: | | |
| (a) At least 50 percent of such area shall be free of obstructions and comply with the following provisions: | AREA WITH 15' = 600 SF<br>600 SF x 50% = 300 SF | OBSTRUCTED AREA = 173.4 SF<br>173.4 SF < 300.0 SF; |
| (1) at least 50 percent of the public plaza frontage along each street line or sidewalk widening line shall be free of obstructions; and | STREET FRONTAGE = 40'<br>40' x 50% = 20' | FREE AREA OF FRONTAGE = 20' |
| (2) such unobstructed access area shall extend to a depth of 15 feet measured perpendicular to the street line. The width of each access area need not be contiguous provided that no portion of each area shall have a width of less than five feet measured parallel to the street line, and at least one portion of such area shall have a width of at least eight feet measured parallel to the street line. | UNOBSTRUCTED ACCESS EXTEND TO A DEPTH OF 15' | COMPLIES |
| (b) In the remaining 50 percent of such area, only those obstructions listed in Section 37-726 (Permitted obstructions) shall be allowed, provided such obstructions are not higher than two feet above the level of the public sidewalk fronting the public plaza, except for light standards, public space signage, railings for steps, exterior wall thickness pursuant to Section 33-23 trash receptacles, trees and fixed or moveable seating and tables. | NO OBSTRUCTIONS HIGHER THAN 2' ABOVE THE SIDEWALK | NOTHING HIGHER THAN 2' ABOVE CURB LEVEL EXCEPT BENCHES, TRASH RECEPTACLE, ETC.<br>COMPLIES |
| **37-722: LEVEL OF PLAZA** | | |
| -The level of a public plaza, inclusive of major and minor portions, shall not at any point be less than the average elevation of curb level of the nearest adjoining street nor more than two feet above the average curb level of the nearest adjoining street in front of the major and minor portions of the public plaza. | GRADE CHANGE LESS THAN 2' FROM AVE. CURB ELEVATION | COMPLIES |

| 37-70: PUBLIC PLAZA REQUIREMENTS | REQUIRED | PROVIDED |
|---|---|---|
| **37-721: CIRCULATION PATHS** | | |
| -Unobstructed pedestrian circulation throughout the minor and major portions of the public plaza and shall, at a minimum, connect all streets on which the public plaza fronts and all major elements of the public plaza, including seating areas, building entrances, approved open air cafes and kiosks, and significant design features of the public plaza. A minimum of one such circulation path shall be provided of at least eight feet clear width. Circulation paths shall extend to at least 80 percent of the depth of the major portion of the public plaza, measured perpendicular from each street line. Trees planted flush to grade, light standards, trash receptacles, and public space signage shall be considered permitted obstructions within circulation paths; however, all trees located within circulation paths must comply with the requirements for flush-to-grade trees in Section 37-742. | PROVIDE 8' WIDE UNOBSTRUCTED PATHWAY TO 80% OF THE DEPTH OF THE PLAZA | COMPLIES |
| **37-724: SUBWAY ENTRANCES** | N/A | N/A |
| **37-725: STEPS** | N/A | N/A |
| **37-726: PERMITTED OBSTRUCTIONS** | | |
| (a) Public plazas shall be open to the sky and unobstructed. | | |
| (b) For public plazas less than 10,000 square feet in area permitted obstructions may occupy a maximum of 40 percent. Obstructions that are non-permanent or moveable, such as moveable chairs, open air cafes, or temporary exhibitions shall be confined within gross areas designated on the site plan, and not measured as individual pieces of furniture. | MAXIMUM ALLOWABLE PERMITTED OBSTRUCTIONS 40% OF TOTAL PLAZA AREA | 3,612 SF x 40% = 1,444.8 SF<br>TOTAL PERMITTED OBSTRUCTIONS = 1,372.8 SF<br>1,372.8 SF < 1,444.8 SF |
| (c) Canopies, awnings, marquees and sun control devices. | | COMPLIES |
| **37-727: HOURS OF ACCESS** | | |
| -All public plazas shall be accessible to the public at all times, except where the City Planning Commission has authorized a nighttime closing. | OPEN 24/7 | COMPLIES |
| **37-728: STANDARDS OF ACCESSIBILITY FOR PERSONS WITH DISABILITIES** | | |
| -All public plazas shall conform with applicable laws pertaining to access for persons with disabilities regardless of whether the building associated with the public plaza is existing or new. | | COMPLIES |
| **37-73 KIOSKS AND OPEN AIR CAFES** | N/A | N/A |
| **37-741: SEATING** | | |
| -There shall be a minimum of one linear foot of seating for each 30 square feet of public plaza area. | 3,612 SF / 30 SF = 120.4 LF OF SEATING REQUIRED | 125.93 LF OF SEATING PROVIDED |
| -A minimum of one linear foot of the required seating for every two linear feet of street frontage must be located within 15 feet of the street line. At least 50 percent of this seating shall have backs and at least 50 percent of the seats with backs shall face the street. | 402 LF / 2 LF = 201 LF MIN.<br>33.17 LF x 50% = 16.58 LF MIN.<br>32.78 LF x 50% = 16.37 LF MIN. | 33.17 LF PROVIDED<br>20.78 LF PROVIDED<br>12.33 LF PROVIDED |
| -All public plazas shall provide at least two seating types: moveable seating, fixed individual seats, fixed benches with and without backs, and design feature seating such as seat walls, planter ledges, or seating steps. | 2 TYPES OF SEATING REQUIRED | FIXED BENCHES AND PLANTER LEDGES PROVIDED |
| -Not more than 50 percent of the linear seating capacity may be in moveable seats. | MOVEABLE SEATING 50% MAX. | N/A |
| (1) Seating shall have a minimum depth of 18 inches. When required seating is provided on a planter ledge, such ledge must have a minimum depth of 22 inches. | DIMENSION REQUIREMENTS | COMPLIES, SEE DTL. 4 / ZL-300 AND ZL-400 |
| (2) Seating shall have a height not less than 16 inches nor greater than 20 inches above the level of the adjacent walking surface. | DIMENSION REQUIREMENTS | COMPLIES, SEE DTL. 4 / ZL-300 AND ZL-400 |
| (3) At least 50 percent of the linear feet of fixed seating shall have backs at least 14 inches high and a minimum seat depth of 28 inches. All seat backs must either be contoured in form for comfort or shall be reclined from vertical between 10 to 15 degrees. | 120.4 LF x 50% = 60.2 LF OF BACKED SEATING REQUIRED | 62.62 LF PROVIDED |
| (4) Moveable seating or chairs, excluding seating for open air cafes, may be credited as 24 inches of linear seating per chair. | MOVABLE SEAT COUNT AS 2 LF | N/A |
| (5) Seating steps and seating walls may be used for required seating if such seating does not, in aggregate, represent more than 15 percent of the linear feet of required seating in the public plaza. | SEAT WALLS AND STEPS CAN BE NO MORE OF 15% OF REQ. | N/A |
| (6) Seating in open air cafes shall not count towards meeting the seating requirement of this Section. | OPEN AIR CAFE SEATING DOES NOT COUNT FOR REQUIRED | N/A |
| (7) Seats that face walls must be a minimum of six feet from such wall | 6' FROM WALLS | N/A |
| | | COMPLIES |
| **37-742: PLANTING AND TREES** | | |
| -At least 20 percent of the area of a public plaza shall be comprised of planting beds with a minimum dimension of two feet, exclusive of any bounding walls. | 3,612 SF x 20% = 722.4 SF REQUIRED | 734.2 SF OF PLANTING PROVIDED |
| -All public plazas shall provide a minimum of four trees. | 4 TREES REQUIRED | 4 TREES PROVIDED |
| -For all public plazas, at least 50 percent of required trees shall be planted flush-to-grade or planted at grade within planting beds with no raised curbs or railings. Trees planted flush-to-grade shall be surrounded by a porous surface (such as grating or open-joint paving) that allows water to penetrate into the soil for a minimum radius of 2 feet, 6 inches. Such porous surface shall be of sufficient strength and density to accommodate pedestrian circulation, including all requirements related to accessibility for the disabled, and shall be of a design that allows for tree growth. | 4 x 50% = 2 TREES REQUIRED FLUSH TO GRADE WITH PERVIOUS SURFACE 2.5' MIN. RADIUS | 2 FLUSH TO GRADE TREES PROVIDED<br>2.5' MIN. PERVIOUS SURFACE PROVIDED<br>AT GRADE TREE PLANTER: 175.5 SF @ 42" OC<br>75 SF = CAPACITY 2.3 TREES; CONTAINS 2 |
| -Where trees are planted within a public plaza, they shall measure at least four inches in caliper at the time of planting, unless alternative, multi-stemmed equivalents are accepted in the approved planting plans. Each tree shall be planted in at least 200 cubic feet of soil with a depth of soil of at least 3 feet, 6 inches. | 4" CALIPER TREES REQUIRED<br>W/ 200 CU. FT. OF SOIL PER TREE MIN. SOIL DEPTH OF 3.5' | 4" CALIPER TREES PROVIDED<br>RAISED TREE PLANTER: 407.5 SF @ 42" OC / 75 SF = CAPACITY 5.4 TREES; CONTAINS 2 MIN. SOIL VOLUME IS 307.13 CF / 1 TREE |
| -Planting beds shall have a soil depth of at least eighteen inches for grass or other ground cover, three feet for shrubs and 3 feet, 6 inches for trees. Tree planters or planting beds shall have bounding walls that exceed 18 inches in height above an adjacent walking surface. Any planting bed containing required trees shall have a continuous area of at least 75 square feet for each tree exclusive of bounding walls. Furthermore, each tree located within a planting bed shall be surrounded by a continuous permeable surface measuring at least five feet square. | 1.5' OF SOIL FOR GRASS AND GROUND COVER<br>3' OF SOIL FOR SHRUBS<br>75 SQ. FT. MIN. FOR EACH TREE IN PLANTERS | DEPTHS COMPLY<br>COMPLIES |
| -All planted areas shall either be automatically irrigated or shall consist of species that do not require regular watering. | AUTOMATIC IRRIGATION REQUIRED | AUTOMATIC IRRIGATION PROVIDED |
| -All planted areas located above subsurface structures such as cellars or garages shall have drainage systems to prevent collection and ponding of water within planted areas. | SUB-GRADE DRAINAGE REQUIRED ON STRUCTURE | SUB-GRADE DRAINAGE PROVIDED, SEE ZL-1010 |
| -Street trees are required to be planted in the public sidewalk area adjacent to a zoning lot that contains some floor area for public places in accordance with Section 25-41 (Street Tree Planting). The length of frontage of the zoning lot for the purpose of computing required street trees may be reduced by 50 feet for each street intersection fronted by the zoning lot, if the Department of Parks and Recreation determines that the tree planting requirements of this paragraph are infeasible, the number of required street trees that cannot be planted shall be planted in accordance with the off-site tree provisions set forth in Section 26-41 or within the public plaza. | MADISON AVE.: 64 LF<br>33RD STREET: 126 LF<br>TOTAL: 205 LF - 50 LF (INTERSECTION) = 155 LF<br>155 LF / 25 LF = 6 TREES REQUIRED | 3 EXISTING STREET TREES<br>3 STREET TREES PROVIDED |
| | | COMPLIES |

KEY PLAN



BLOCK: 863 LOT: 17, 18 & 21

ISSUES/REVISIONS

KARL FISCHER ARCHITECT

NEW MIXED USE DEVELOPMENT
172 MADISON AVE., NEW YORK, NY 10016

ZONING COMPLIANCE Z.R. 37-70

| | |
|---|---|
| N/A | 1330 |
| 02.24.2014 | ZL-100 |
| CU | |
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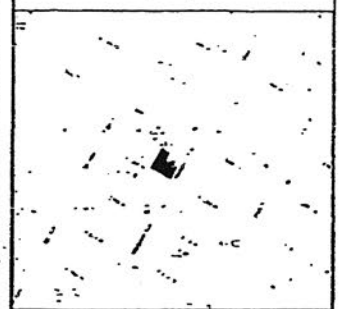
| 37-70: PUBLIC PLAZA REQUIREMENTS | REQUIRED | PROVIDED |
|---|---|---|
| **37-743: LIGHTING AND ELECTRICAL POWER** | | |
| -Public plazas shall be illuminated to provide for safe use and enjoyment of all areas of the public plaza. Special attention should be provided to lighting steps and other changes in elevation and areas under tree canopies and permitted canopies within the public plaza. | LIGHT TREES AND GRADE CHANGES | TREE UPLIGHTS AND RECESS WALL LIGHTS PROVIDED |
| -Public plazas shall be illuminated with a minimum level of illumination of not less than two horizontal foot candles (lumens per foot) throughout all walkable and sitting areas, including sidewalks directly adjacent to the public plaza, and a minimum level of illumination of not less than 0.5 horizontal foot candles (lumens per foot) throughout all other areas. All lighting sources used to satisfy this illumination requirement shall be located outdoors on the subject zoning lot. Such level of illumination shall be maintained from one hour before sunset to one hour after sunrise, including public plazas that are authorized to close at night. | 2.0 FOOTCANDLES REQUIRED AT ALL WALKABLE AND SEATING AREAS<br>0.5 FOOTCANDLE REQUIRED IN ALL OTHER AREAS | REQUIRED FOOTCANDLES PROVIDED, SEE ZL-102 |
| -All lighting sources that illuminate the public plaza and are mounted on or located within buildings adjacent to the public plaza shall be shielded from direct view. In addition, all lighting within the public plaza area shall be shielded to minimize any adverse effect on surrounding residences. | SHIELD LIGHTING SOURCE | LIGHT SHIELDS REQUIRED, SEE ZL-102<br>COMPLIES |
| **37-744: LITTER RECEPTACLES** | | |
| -One litter receptacle shall be provided for every 1,800 square feet of public plaza area, up to a maximum of 6,000 square feet. Plazas greater than 6,000 square feet in area shall provide an additional litter receptacle for every additional 2,000 square feet of public plaza area. Public plazas that contain open air cafes or kiosks providing food service shall provide one additional litter receptacle for each 1,000 square feet of public plaza area occupied by such outdoor eating area. All litter receptacles must have a volume capacity of at least 25 gallons and shall be located in visible and convenient locations. All top or side openings must have a minimum dimension of 12 inches. Litter receptacles shall be provided within 50 feet of required seating areas in the public plaza. | 3,612 SF / 1,800 SF = 2.4 RECEPTACLES REQUIRED | 2 LITTER RECEPTACLES PROVIDED<br>COMPLIES |
| **37-745: BICYCLE PARKING** | | |
| -All public plazas shall provide parking for at least two bicycles. Public plazas greater than 10,000 square feet in size shall provide parking for at least four bicycles. Bike racks must be provided on the sidewalk directly adjacent to the public plaza in accordance with Department of Transportation standards, unless the Department of Transportation has determined that the sidewalk area adjacent to the public plaza cannot accommodate the required bicycle parking. | PARKING FOR 2 BIKES REQUIRED | PARKING FOR 2 BIKES PROVIDED<br>COMPLIES |
| **37-746: DRINKING FOUNTAINS** | | |
| -A minimum of one drinking fountain shall be provided in all public plazas. | 1 DRINKING FOUNTAIN REQUIRED | 1 DRINKING FOUNTAIN PROVIDED<br>COMPLIES |
| **37-748: ADDITIONAL AMENITIES** | N/A | N/A |
| **37-751: PUBLIC SPACE SIGNAGE SYSTEMS** | | |
| (a) Entry plaque | | |
| -The entry plaque shall be located at each street frontage or point of pedestrian entry to the public plaza. On each street frontage occupied by the public plaza, a minimum of one entry plaque shall be provided for every 40 feet of linear street frontage occupied by the public plaza. The entry plaque shall contain: | 46 LF / 40 LF = 1 ENTRY PLAQUE REQUIRED | 1 ENTRY PLAQUE PROVIDED |
| (1) a public space symbol which is 12 inches square in dimension and dark green or black in color with a highly contrasting background, a grid and tree-shaped symbol, as shown in this paragraph, (a) (1). The symbol shall match exactly the symbol provided in the Required Signage Symbols file at the Department of City Planning website(37-751Ast, 37-751st) | ENTRY SIGN DESIGN REQUIREMENTS | COMPLIES, SEE ZL-302 |
| (2) lettering at least two inches in height stating "OPEN TO PUBLIC." This lettering shall be located immediately adjacent to the public space symbol; | | |
| (3) lettering at least one inch in height stating the words "Open 24 hours" or, if a nighttime closing has been authorized, pursuant to Section 37-727, shall contain the words "Open to the public" followed by the approved hours of operation; and | | |
| (4) an International Symbol of Access for persons with disabilities that is at least three inches square. | | |
| -The entry plaque shall be mounted on a wall or a permanent free-standing post within five feet of the sidewalk with its center five feet above the elevation of the nearest walkable pavement. The maximum height of each free-standing post shall be six feet, with a maximum width and depth of 12 inches. It shall be in a position that clearly identifies the entry into the public plaza, and placed so that the entry plaque is obvious and directly visible, without any obstruction, along every line of sight from all paths of pedestrian access to the public plaza. | MOUNT SIGN ON PERMANENT STRUCTURE WITHIN 5' OF THE SIDEWALK | COMPLIES, SEE ZL-302 |
| (b) Information plaque | | |
| -An information plaque constructed from the same permanent materials as the entry plaque or combined with one or more of the required entry plaques shall be provided. Information plaques shall be displayed on a wall or a permanent freestanding post within five feet of the sidewalk and shall have all required lettering located three feet above the elevation of the nearest walkable pavement. The maximum height of each free-standing post shall be six feet, with a maximum width and depth of 12 inches. The information plaque shall consist of: | MOUNT INFORMATION SIGN ON PERMANENT STRUCTURE WITHIN 5' OF THE SIDEWALK | COMPLIES, INFORMATION PLAQUE COMBINED WITH ENTRY PLAQUE, SEE ZL-302 |
| (1) if provided as a separate plaque from a required entry plaque, a public space symbol which is at least six inches square in dimension and dark green or black in color with a highly contrasting background, a grid and tree-shaped symbol, as shown in paragraph (a)(1) of this Section. The symbol shall match exactly the symbol provided in the Required Signage Symbols file at the Department of City Planning website; | INFORMATION SIGN DESIGN REQUIREMENTS | COMPLIES, SEE ZL-302 |
| (2) if provided as a separate plaque from a required entry plaque, the words, in lettering one-half inch in height, "Open 24 hours" or, if a nighttime closing has been authorized pursuant to Section 37-727, the words, in lettering one-half inch in height, "Open to the public," followed by the approved hours of operation; | | |
| (3) in lettering three-eighths of an inch in height, the words "This public plaza contains" followed by the total linear feet of seating, the type and quantity of trees, the number of bike racks, the number of drinking fountains and the number of any additional required amenities, such as moveable seating; | | |
| (4) in lettering three-eighths of an inch in height, the name of the current owner of the building and the name, address, phone number and email address of the person designated to maintain the public plaza; | | |
| (5) in lettering three-eighths of an inch in height, the statement, "Complaints or Questions: Call 311 and reference the public plaza at (insert building address); and | | |
| (6) the statement, "This public plaza is accessible to persons with disabilities." | | |
| (c) Hours of access plaque | N/A PLAZA OPEN 24/7 | N/A<br>COMPLIES |
| **37-753: PROHIBITION SIGNS** | N/A | N/A |

## 37-70: PUBLIC PLAZA REQUIREMENTS

| | REQUIRED | PROVIDED |
|---|---|---|
| **37-752: ACCESSORY SIGNS** | | |
| A public plaza shall be treated as a street for the purposes of the applicable sign regulations. Signs, except for the plaques required by Section 37-751, are permitted only as accessory to uses permitted within the public plaza and uses adjoining the public plaza, and are otherwise regulated by the applicable district regulations set forth in Section 32-60 (SIGN REGULATIONS), except as provided below: | | |
| (a) each establishment fronting on the public plaza shall be permitted to have not more than one sign affixed to the building wall fronting on the public plaza; | 3 ESTABLISHMENTS FRONT THE PLAZA 3 SIGNS PERMITTED | 3 SIGNS PROVIDED |
| (b) all signs shall be non-illuminated; | NO ILLUMINATED SIGNS | COMPLIES |
| (c) all signs shall contain only the building or establishment name and address; | ESTABLISHMENT NAME AND ADDRESS ONLY | COMPLIES |
| (d) all signs accessory to retail uses affixed to building walls may not exceed four square feet in size; | 4 SQ. FT. MAXIMUM SIGN AREA | COMPLIES, SEE ZL-201 |
| (e) not more than three accessory signs may be located within the public plaza, of which one may be freestanding. All such signs, including structures to which they are affixed, shall not be higher than three feet above the level of the adjoining public access area. Such signs shall not exceed an area of five square feet. In addition, no portion of such sign, including structures to which they are affixed, shall exceed a width of 18 inches facing a street, and 24 inches when not facing a street. For corner public plazas, such limitations shall apply to only one street frontage. If such sign is associated with a building used for office use, such sign shall contain only the address of principal building tenants and shall also contain the public space symbol as described in Section 37-751 and the words "Open to Public" in lettering at least two inches in height; and | 3 SIGNS MAXIMUM<br>1 MAY BE FREE STANDING<br>CORNER PLAZA RULES | COMPLIES, SEE ZL-201<br>N/A<br>N/A |
| (f) all signs located on permitted canopies or awnings within the public plaza shall contain only the building or establishment name and shall not exceed a height of one foot. | 1' MAXIMUM FOR SIGNS ON CANOPIES | N/A |
| **37-73: MANDATORY ALLOCATION OF FRONTAGES FOR PERMITTED USES** | | |
| (b) Ground floor level uses. At least 50 percent of the total frontage of all new building walls fronting on a public plaza, or fronting on an arcade adjoining a public plaza, exclusive of such frontage occupied by building lobbies and frontage used for entrance access, shall be allocated for occupancy at the ground floor level by retail or service establishments permitted by the applicable district regulations but not including uses in Use Groups 6B, 6E, 7C, 8C, 8D, 9B, 11 and 12B, or banks, automobile showrooms or plumbing, heating or ventilating equipment showrooms. In addition, libraries, museums and art galleries shall be permitted. At such ~~least~~ areas: | TOTAL FRONTAGE: 81.4' LF x 60% = 40.7 LF OF RETAIL REQUIRED | RETAIL 1: 22.66' LF<br>RETAIL 2: 2 PEOPLE<br>22.66' + 36.42' = 58.08 LF<br>58.08' > 40.7' |
| (1) be directly accessible from the major portion of the public plaza, an adjoining arcade, or a street frontage shared by the establishment and the public plaza; | DIRECT ACCESS TO PLAZA | COMPLIES, SEE ZL-101B |
| (2) have a minimum depth of 15 feet, measured perpendicular to the wall adjoining the public plaza; and | MIN. DEPTH OF RETAIL = 15' | COMPLIES, SEE ZL-101B |
| (3) occupy such frontage for the life of the increased floor area of the increased development. | | |
| The remaining frontage may be occupied by such uses, lobby entrances or vertical circulation elements, in accordance with the district regulations. | | |
| As an alternative, where retail or service establishments located on an existing building were on a public plaza or an arcade adjoining a public plaza, at least 50 percent of the total frontage of all building walls fronting on the public plaza, or fronting on an arcade adjoining a public plaza, exclusive of such frontage occupied by building lobbies and frontage used for entrance access, shall be allocated for occupancy at the ground floor level by retail or service establishments permitted by the applicable district regulations but not including uses in Use Groups 6B, 6E, 7C, 8C, 8D, 9B, 11 and 12B, or banks, automobile showrooms or plumbing, heating or ventilating equipment showrooms. In addition, libraries, museums and art galleries shall be permitted. All such uses shall comply with the provisions of paragraphs (a)(1), (a)(2) and (a)(3) of this Section. | N/A | N/A |
| (c) Public entrances | | |
| A public entrance to the principal use of the building associated with the public plaza shall be located within 10 feet of the major portion of the public plaza. Frontage on the public plaza that is occupied by a building entrance or lobby shall not exceed 60 feet or 40 percent of the total aggregate frontage of the ~~one~~ building walls on the major and minor portions of the public plaza, whichever is less, but in no case shall building entrances or lobbies occupy less than 20 feet of frontage on the public plaza. | 81.4' x 40% = 32.56 MAX. LOBBY FRONTAGE<br>MIN. LOBBY FRONTAGE | LOBBY FRONTAGE = 23.33' |
| (d) Transparency | | |
| All new building walls fronting on the major and minor portions of the public plaza shall be treated with clear, untinted transparent material for 60 percent of the surface area below 14 feet above the public plaza level, or the ceiling level of the ground floor of the building, whichever is lower. Any non-transparent area of a new or existing building wall fronting on the major or minor portion of a public plaza shall be treated with a decorative element or material or shall be screened with planting to a minimum height of 15 feet above the public plaza. | WEST ELEVATION<br>TOTAL AREA = 1132.6 SF<br>1132.6 SF x 50% = 566.3 SF<br>REQUIRED TRANSPARENCY | WEST ELEVATION<br>TRANSPARENT AREA = 604 SF<br>604 SF > 566 SF<br>COMPLIES |
| **37-77: MAINTENANCE** | | |
| The building owner shall be responsible for the maintenance of the public plaza including, but not limited to, the location of permitted obstructions pursuant to Section 37-726, litter control, management of planters and rodents, maintenance of required lighting levels, and the care and replacement of landscape and vegetation within the zoning lot. | MAINTENANCE REQUIRED | MAINTAINED BY OWNER<br>COMPLIES |

KEY PLAN



BLOCK: 863 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

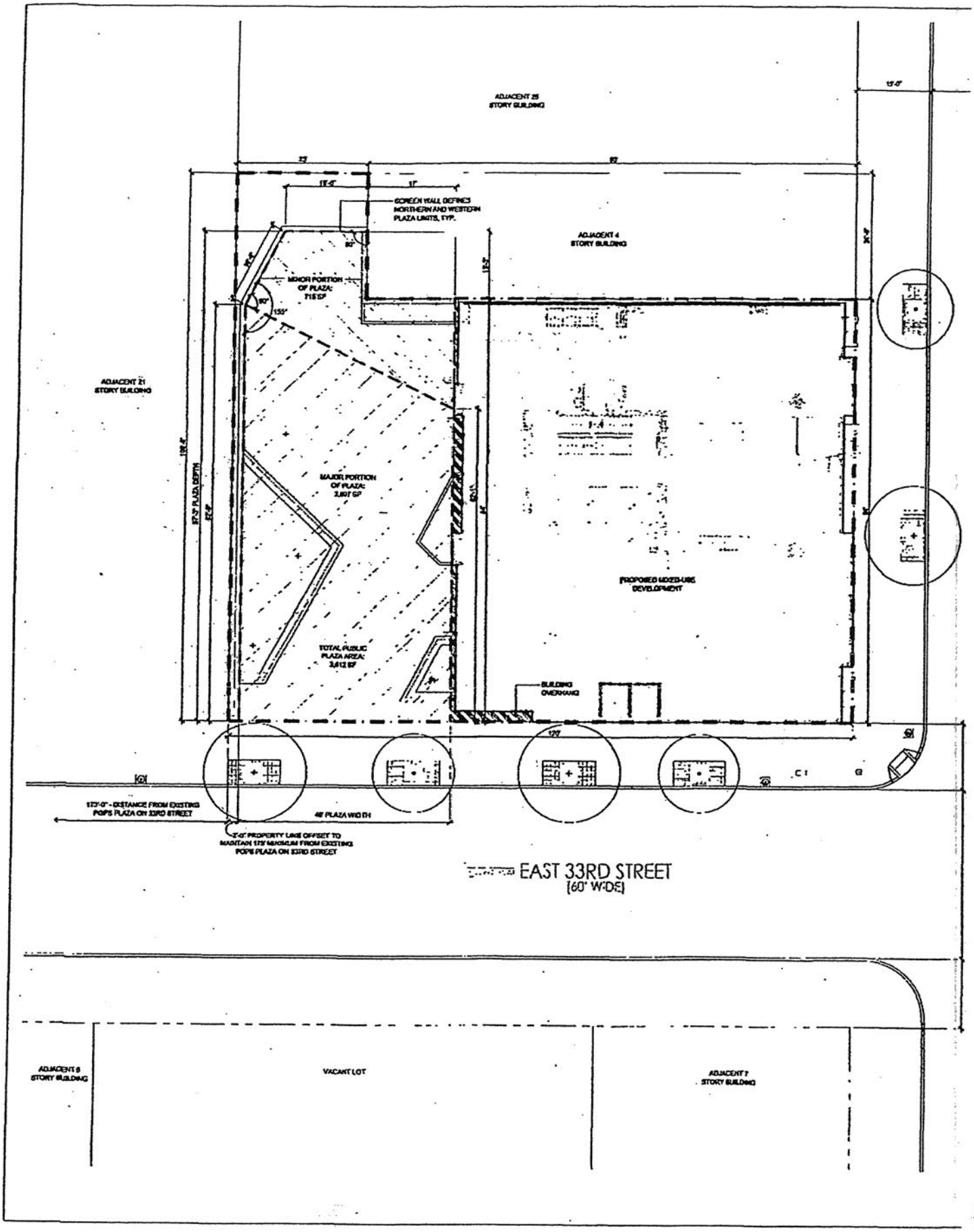
ISSUES/REVISIONS

KARL FISCHER ARCHITECT

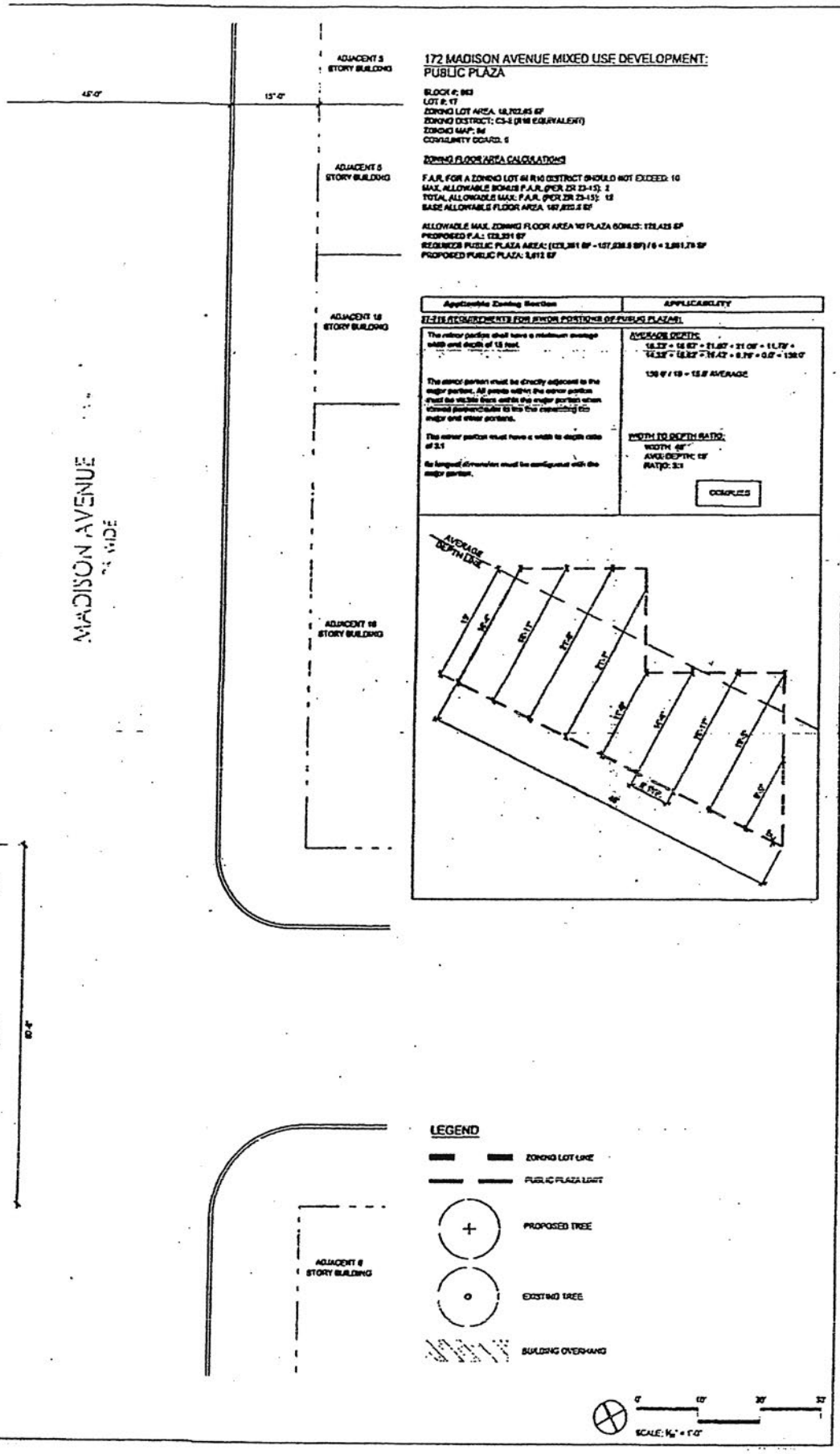
177 MADISON AVE., NEW YORK, NY 10016

ZONING COMPLIANCE Z.R. 37-70

| | |
|---|---|
| N/A | |
| 02.24.2014 | |
| CB | |
| JD | ZL-100.1 |


ADJACENT 25 STORY BUILDING
SCREEN WALL DEFINES NORTHERN AND WESTERN PLAZA LIMITS, TYP.
ADJACENT 4 STORY BUILDING
MINOR PORTION OF PLAZA: 715 SF
ADJACENT 21 STORY BUILDING
MAJOR PORTION OF PLAZA: 2,697 SF
PROPOSED MIXED-USE DEVELOPMENT
TOTAL PUBLIC PLAZA AREA: 3,412 SF
BUILDING OVERHANG
123'-0" - DISTANCE FROM EXISTING POPS PLAZA ON 33RD STREET
48' PLAZA WIDTH
2'-0" PROPERTY LINE OFFSET TO MAINTAIN 123' MINIMUM FROM EXISTING POPS PLAZA ON 33RD STREET
EAST 33RD STREET
(60' WIDE)
ADJACENT 6 STORY BUILDING
VACANT LOT
ADJACENT 7 STORY BUILDING

467




## 172 MADISON AVENUE MIXED USE DEVELOPMENT:
## PUBLIC PLAZA

BLOCK #: 863
LOT #: 17
ZONING LOT AREA: 18,703.85 SF
ZONING DISTRICT: C5-2 (R10 EQUIVALENT)
ZONING MAP: 8d
COMMUNITY BOARD: 5

ZONING FLOOR AREA CALCULATIONS

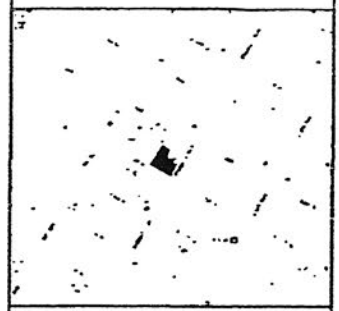
F.A.R. FOR A ZONING LOT IN R10 DISTRICT SHOULD NOT EXCEED: 10
MAX. ALLOWABLE BONUS F.A.R. (PER ZR 23-13): 2
TOTAL ALLOWABLE MAX. F.A.R. (PER ZR 23-13): 12
BASE ALLOWABLE FLOOR AREA: 187,038.5 SF

ALLOWABLE MAX. ZONING FLOOR AREA W/ PLAZA BONUS: 172,435 SF
PROPOSED F.A.: 133,391 SF
REQUIRED PUBLIC PLAZA AREA: ((23,391 SF - 187,038.5 SF) / 6 = 2,891.79 SF
PROPOSED PUBLIC PLAZA: 3,612 SF

| Applicable Zoning Section | APPLICABILITY |
|---|---|
| 37-715 REQUIREMENTS FOR MINOR PORTIONS OF PUBLIC PLAZAS | |
| The minor portion shall have a minimum average width and depth of 15 feet.<br><br>The minor portion must be directly adjacent to the major portion. All points within the minor portion must be visible from within the major portion when viewed perpendicular to the line separating the major and minor portions.<br><br>The minor portion must have a width to depth ratio of 3:1<br><br>Its longest dimension must be contiguous with the major portion. | AVERAGE DEPTH:<br>18.33' + 16.67' + 21.08' + 21.08' + 11.79' + 14.58' + 18.83' + 19.42' + 8.79' + 0.0' = 130.0'<br><br>130.0' / 10 = 13.0' AVERAGE<br><br>WIDTH TO DEPTH RATIO:<br>WIDTH: 68'<br>AVG. DEPTH: 13'<br>RATIO: 3:1<br><br>COMPLIES |




KEY PLAN



BLOCK: 863 LOT: 17, 18 & 21

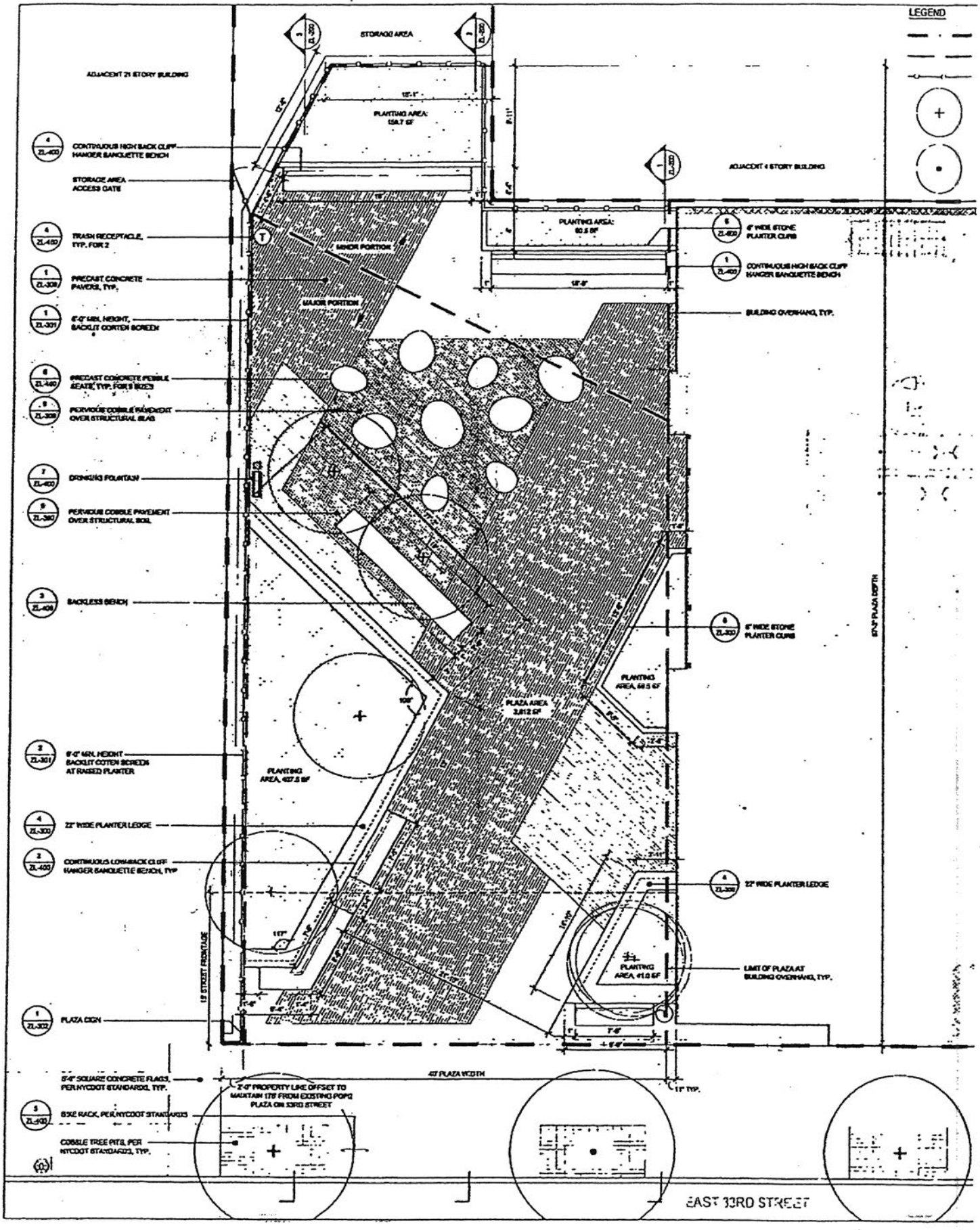
REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

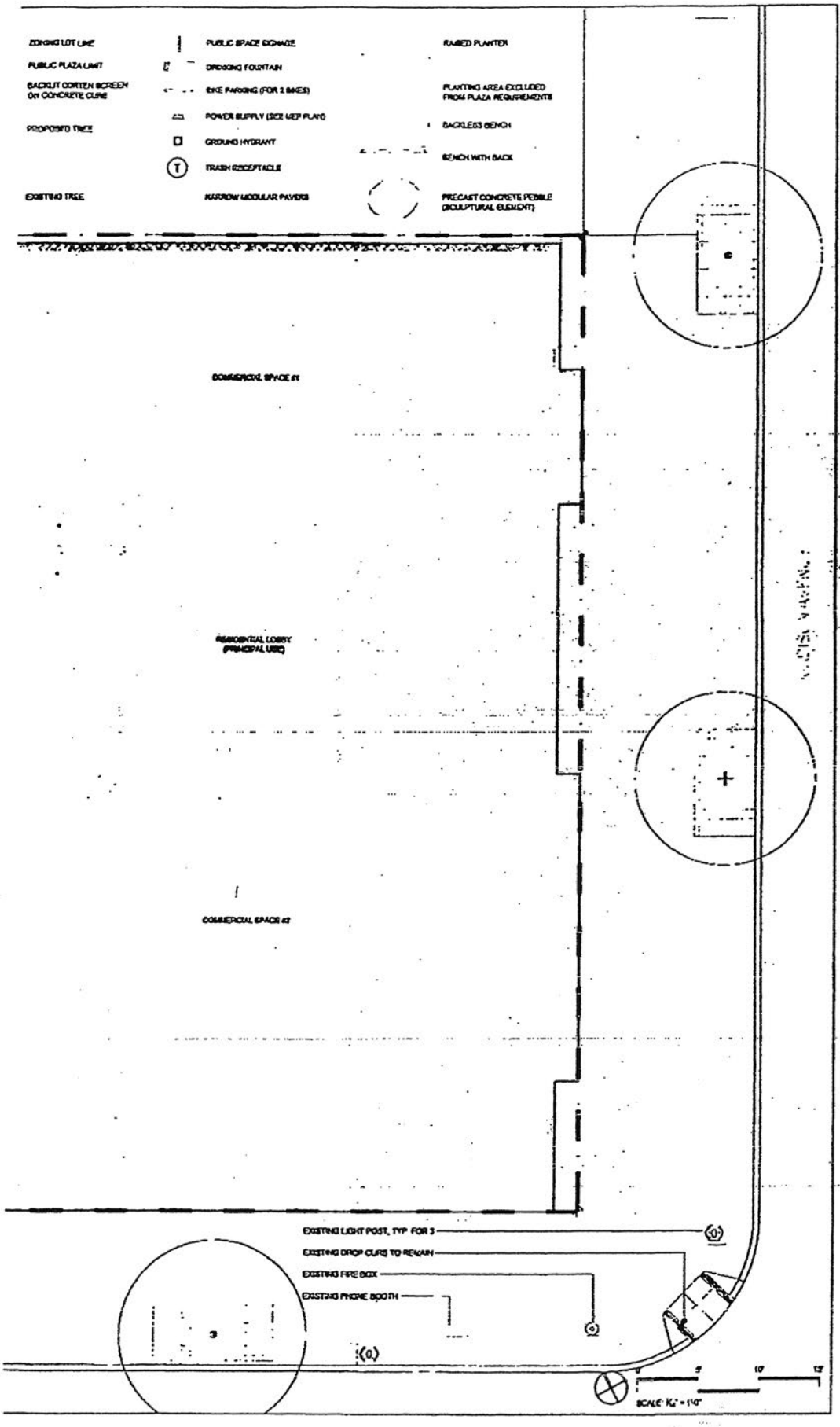
ISSUES/REVISIONS

NEW MIXED USE DEVELOPMENT
172 MADISON AVE., NEW YORK, NY 10016

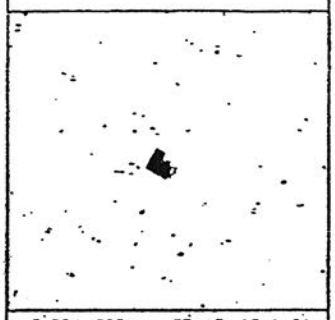
SITE PLAN

| | |
|---|---|
| 3/32" = 1' | 1330 |
| 06.23.2014 | 01 |
| CH | ZL-101 |
| JD | |


LEGEND
ADJACENT 21 STORY BUILDING
STORAGE AREA
PLANTING AREA: 159.7 SF
ADJACENT 4 STORY BUILDING
PLANTING AREA: 60.5 SF
MINOR PORTION
MAJOR PORTION
BUILDING OVERHANG, TYP.
PLAZA AREA 3,812 SF
PLANTING AREA, 407.5 SF
PLANTING AREA, 68.5 SF
PLANTING AREA, 41.0 SF
LIMIT OF PLAZA AT BUILDING OVERHANG, TYP.
CONTINUOUS HIGH BACK CLIFF HANGER BANQUETTE BENCH
STORAGE AREA ACCESS GATE
TRASH RECEPTACLE, TYP. FOR 2
PRECAST CONCRETE PAVERS, TYP.
6'-0" MIN. HEIGHT, BACKLIT CORTEN SCREEN
PRECAST CONCRETE PEBBLE SEATS, TYP. FOR 3 SIZES
PERVIOUS COBBLE PAVEMENT OVER STRUCTURAL SLAB
DRINKING FOUNTAIN
PERVIOUS COBBLE PAVEMENT OVER STRUCTURAL SOIL
BACKLESS BENCH
6" WIDE STONE PLANTER CURB
6'-0" MIN. HEIGHT BACKLIT CORTEN SCREEN AT RAISED PLANTER
22" WIDE PLANTER LEDGE
CONTINUOUS LOW BACK CLIFF HANGER BANQUETTE BENCH, TYP.
PLAZA SIGN
6'-6" SQUARE CONCRETE FLAGS, PER NYCDOT STANDARDS, TYP.
BIKE RACK, PER NYCDOT STANDARDS
COBBLE TREE PIT, PER NYCDOT STANDARDS, TYP.
7'-0" PROPERTY LINE OFFSET TO MAINTAIN 170' FROM EXISTING POPE PLAZA ON 53RD STREET
40' PLAZA WIDTH
19' STREET FRONTAGE
87'-9" PLAZA DEPTH
EAST 53RD STREET




KEY PLAN



BLOCK: 863 LOT: 17, 19 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

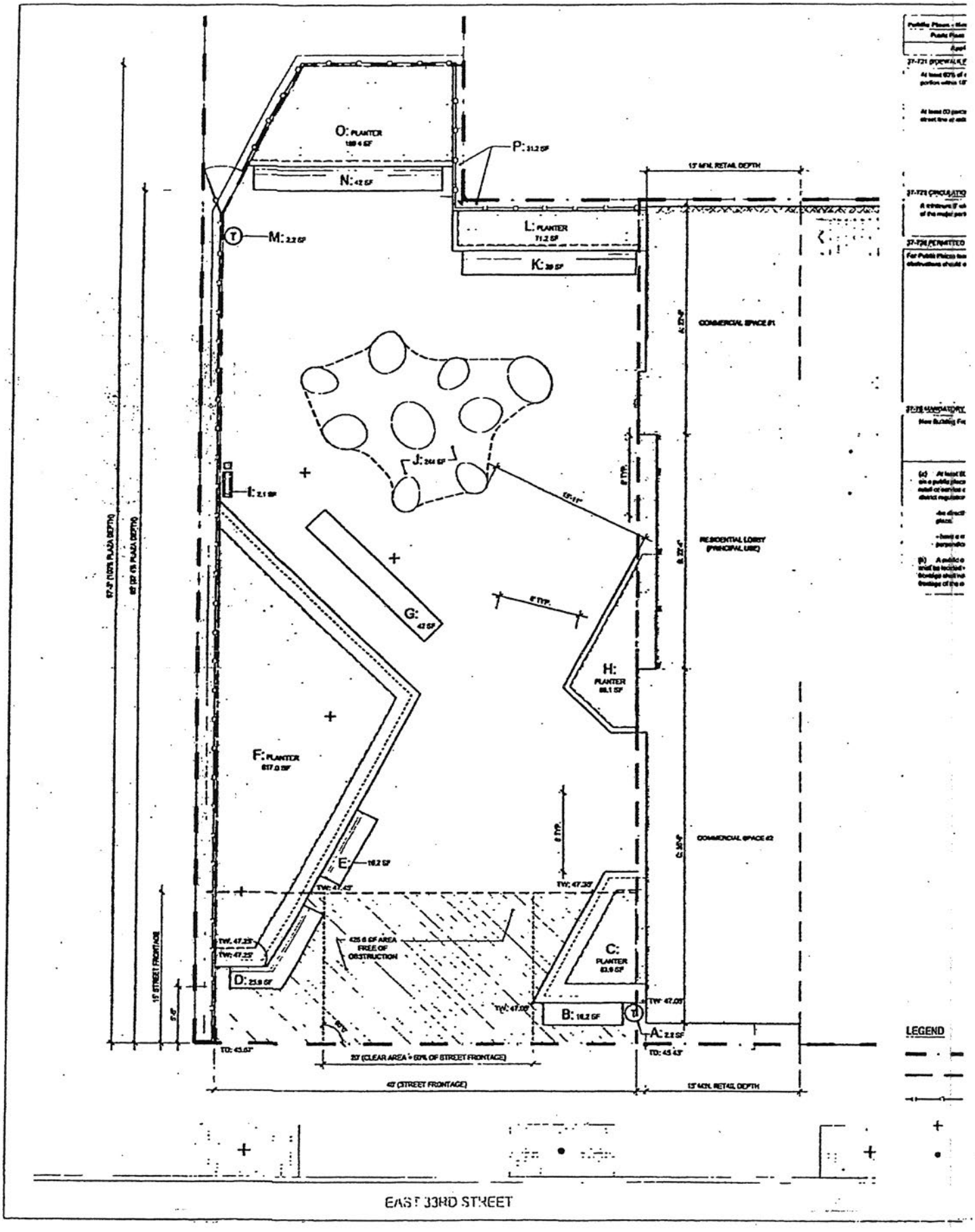
ISSUES/REVISIONS

KARL FISCHER ARCHITECT

NEW YORK JSL DEVELOPMENT
1/2 MADISON AVE, NEW YORK, NY 10016

PLAZA PLAN

3/16" = 1'-0"
06.23.2016
ZL-101A


O: PLANTER
P:
N:
L: PLANTER
K:
M:
15' MIN. RETAIL DEPTH
COMMERCIAL SPACE #1
J:
I:
RESIDENTIAL LOBBY (PRINCIPAL USE)
G:
H: PLANTER
F: PLANTER
E:
COMMERCIAL SPACE #2
C: PLANTER
D:
B:
A:
425.6 SF AREA FREE OF OBSTRUCTION
15' STREET FRONTAGE
37' (CLEAR AREA = 93% OF STREET FRONTAGE)
40' (STREET FRONTAGE)
15' MIN. RETAIL DEPTH
LEGEND
EAST 33RD STREET

...ace Requirements for Public Plaza - Section 37-70

...Total Area: 3,612 sq.ft.

...Quality Zoning Section

APPLICABILITY

FRONTAGE:

...each aggregate street frontage of the major ...of a street line shall be free of obstructions.

...rent of the public plaza frontage along each ...treet, excluding this shall be free of obstructions.

AREA OF TOTAL SIDEWALK FRONTAGE:
= 608.6 SF
= 608.6 SF x 50% = 304.3 SF MIN. CLEARANCE REQ.

SIDEWALK FRONTAGE:
= 40'
= 40' x 60% = 20' MIN. CLEARANCE REQ.

436.8 SF > 304 SF
20' CLEAR - COMPLIES

...ON PATH(S):

...ide each entrance to at least 60% of the depth ...dth of the plaza

8' WIDE CIRCULATION PATH EXTENDS 63' (OR 67.4%) INTO PLAZA - COMPLIES

...OBSTRUCTIONS:

...re than 10,000 sqft in area: Permitted ...cover no more than 40% of the total area

PUBLIC PLAZA AREA (SF):
= 3,612 SF
= 3,612 SF x 40% = 1,444 SF MAX. OBSTRUCTION

PERMITTED OBSTRUCTION AREAS (SF):

| | |
|---|---|
| SEATING: | B. 14.2 + D. 73.6 + E. 16.2 + G. 42 + K. 29 + M. 47 = 181.3 |
| PLANTERS: | C. 63.9 + F. 61.7 + H. 66.1 + L. 71.2 + O. 109.4 = 352.6 |
| LITTER RECEPTACLES: | A. 2.2 + M. 2.2 = 4.4 |
| SCULPTURE: | J. 244 = 244 |
| DRINKING FOUNTAIN: | L. 2.1 = 2.1 |
| CURB AND SCREEN WALL: | P. 21.2 = 21.2 |
| TOTAL PERMITTED OBSTRUCTIONS: | 1,372.6 SF |

1,372.6 < 1,444.8 SF - COMPLIES

...ALLOCATION OF FRONTAGES FOR PERMITTED USES:

...ntages

| | |
|---|---|
| A. COMMERCIAL SPACE #1 FRONTAGE | 22.66' (27.8%) |
| B. RESIDENTIAL LOBBY FRONTAGE | 23.33' (28.7%) |
| C. COMMERCIAL SPACE #2 FRONTAGE | 35.47' (43.5%) |
| TOTAL FRONTAGE | 81.47' (100%) |

...52% of the frontage of building wall fronting ...ay, should be allocated for occupancy by ...establishments permitted by the applicable ...se.

...ily accessible from the major portions of the ...

...minimum depth of 15' measured ...olar to the adjoining wall.

...entrance to the principal use of the building ...within 15' of the major portion of the plaza, ...ed across 60% or 40% of the total aggregate ...ase building, or less than 20'.

| | |
|---|---|
| EXCLUDED FRONTAGE: | |
| A. COMMERCIAL SPACE #1 FRONTAGE | 22.66' (27.8%) |
| C. COMMERCIAL SPACE #2 FRONTAGE | 35.47' (43.5%) |
| TOTAL RETAIL FRONTAGE | 58.09' (71.3%) |

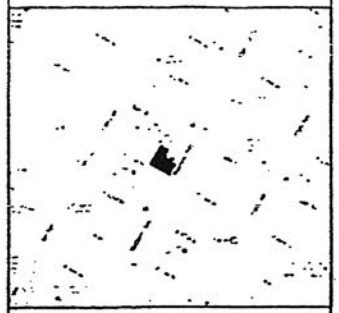
58.09' < 59% - COMPLIES

COMPLIES

ZONING LOT LINE
PUBLIC PLAZA LOT
BACKLIT CORTEN SCREEN ON CONCRETE CURB
PROPOSED TREE
EXISTING TREE
MARRON MODULAR PAVERS
PUBLIC SPACE SIGNAGE
DRINKING FOUNTAIN
BIKE PARKING (FOR 2 BIKES)
POWER SUPPLY (SEE MEP PLAN)
GROUND HYDRANT
TRASH RECEPTACLE
RAISED PLANTER
PLANTING AREA EXCLUDED FROM PLAZA REQUIREMENTS
BACKLESS BENCH
BENCH WITH BACK
PRECAST CONCRETE POSSIBLE (SCULPTURAL ELEMENT)

0' 3' 10' 15'
SCALE: 1/8" = 1'-0"

KEY PLAN



BLOCK: 863 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

ISSUES/REVISIONS

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...@GSMARCHITECTS.COM

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...ARCHITECTS
SCAPE / LANDSCAPE ARCHITECTURE, P.C.
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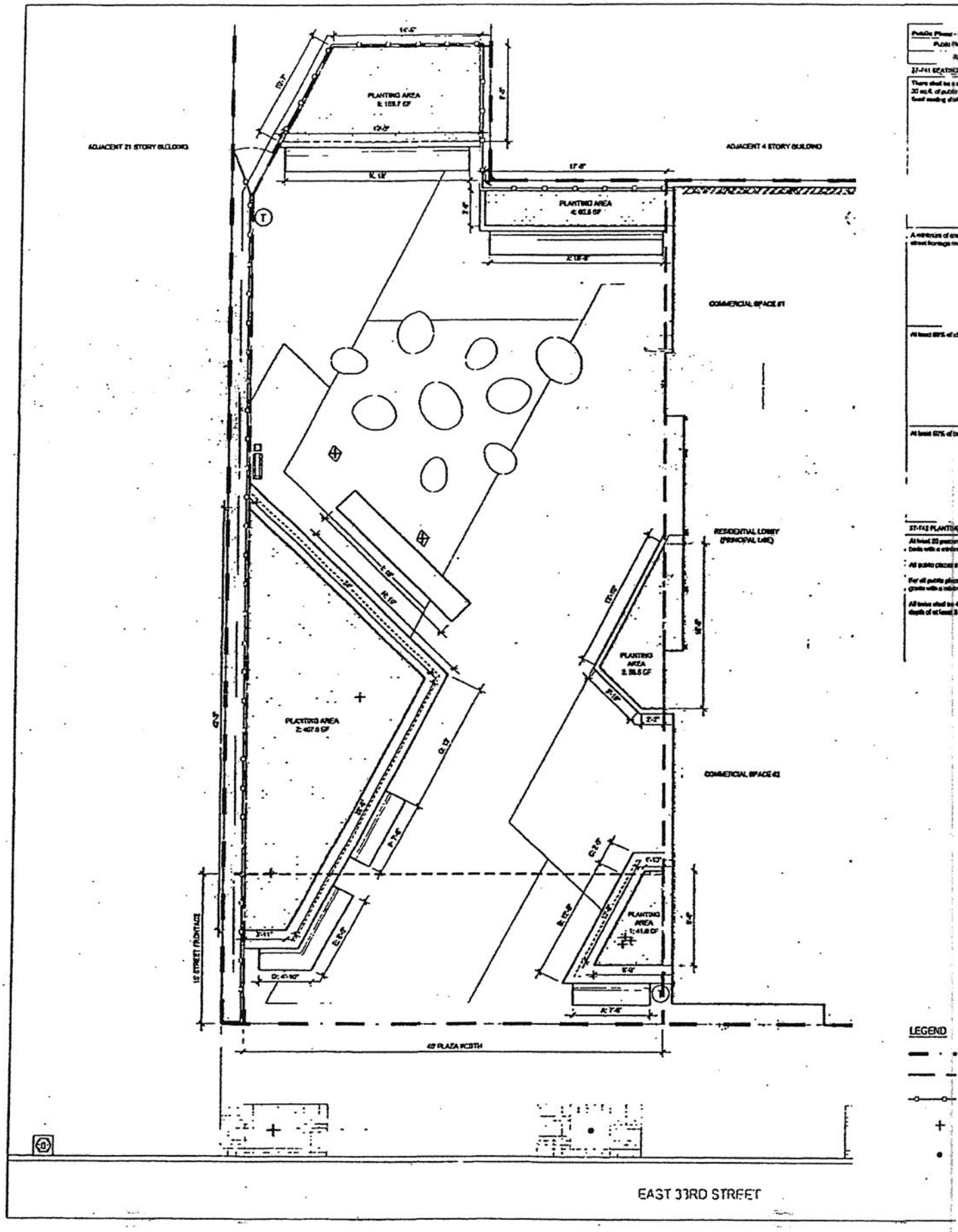
...@SCAPESTUDIO.COM

KARL HISCHER ARCHITECT
...CHITECTS, PLLC

NEW MIXED USE DEVELOPMENT
172 MADISON AVE, NEW YORK, NY 10016

SEPARATE OBSTRUCTIONS AND CIRCULATION PLAN

| | |
|---|---|
| SCALE: 3/16" = 1' | JOB NO: 1330 |
| DATE: 06.23.2014 | SHEET NO: 07 |
| DRAWN BY: CJ | |
| CHECKED BY: JD | ZL-101B |


ADJACENT 21 STORY BUILDING
ADJACENT 4 STORY BUILDING
PLANTING AREA
PLANTING AREA
COMMERCIAL SPACE #1
RESIDENTIAL LOBBY
(PRINCIPAL LOBBY)
PLANTING AREA
PLANTING AREA
COMMERCIAL SPACE #2
PLANTING AREA
15' STREET FRONTAGE
40' PLAZA WIDTH
LEGEND
EAST 33RD STREET

473

Plaza Requirement for Public Place - Section 37-70

Total Area: 3,612 sq ft.

Applicable Zoning Section

APPLICABILITY

...minimum of one linear foot of seating for each ... area. At least 50% of the linear feet of ... have backs.

PUBLIC PLAZA AREA (SQFT):
= 3,612 SF
= 3,612 SF / 30 SF = 120.4 LF MIN. SEATING REQ.

PLAZA SEATING (LF):

| | | | |
|---|---|---|---|
| A. 7.8' (B) | G. 4.83' (B) | G. 13.0' | J. 18.67' (B) |
| B. 12.42' | E. 8.42' (B) | H. 19.0' | K. 18.0' (B) |
| C. 2.42' | F. 7.8' (B) | I. 18.0' | |

TOTAL SEATING: 123.78' LF

TOTAL SEATING WITH BACKS (B): 62.83' LF
(50% OF TOTAL PROVIDED)

123.83' = 120.4' - COMPLIES
50% = 50% - COMPLIES

...linear foot of the required seating for every two linear feet of ... be located within 15 feet of the street line.

STREET FRONTAGE (LF):
= 40.0 LF
= 40.0 LF / 2 = 20.0 LF MIN. SEATING REQ.

STREET FRONTAGE ZONE SEATING (LF):
A. 7.8' B. 12.42' D. 4.83' E. 8.42'

TOTAL SEATING: 33.17'

33.17' = 20.0' - COMPLIES

...street frontage seating shall have backs

REQ. STREET FRONTAGE SEATING (LF):
= 33.17 LF
= 33.17 LF ± 50% = 16.65 LF MIN. SEATING WITH BACKS

STREET FRONTAGE ZONE BACKED SEATING (LF):
A. 7.8' D. 4.83' E. 8.42'

TOTAL SEATING: 20.75'

20.75' = 16.65' - COMPLIES

...ected street frontage seating shall face the street

REQ. BACKED STREET FRONTAGE SEATING (LF):
= 20.75 LF
= 20.75 LF ± 50% = 10.37 LF MIN. BACKED SEATING

STREET FRONTAGE ZONE BACKED SEATING FACING STREET (LF):
A. 7.8' D. 4.83'

TOTAL SEATING: 12.33'

12.33' = 10.37' - COMPLIES

...of the area of a public plaza shall be comprised of planting ... dimension of two feet, exclusive of any bounding walls.

...shall provide a minimum of four trees.

...at least 50 percent of required trees shall be planted flush to ... radius of 2'-0" porous surface.

...of subject and shall have at least 300 cubic feet of soil with a ... feet, 6 inches.

PUBLIC PLAZA AREA (SF):
= 3,612 SF
= 3,612 SF ± 20% = 722.4 SF MIN. PLANTING AREA

PERMITTED OBSTRUCTION AREAS (SF):
1. 41.8 2. 407.8 3. 68.8 4. 60.8 5. 100.7

TOTAL PLANTED AREA: 724.2 SF

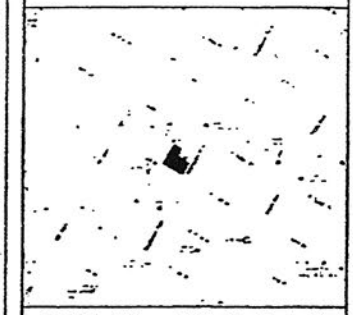
724.2 = 722.4 SF - COMPLIES

ALL PLANTING REQ.: COMPLIES

| | | | |
|---|---|---|---|
| ZONING LOT LINE | PUBLIC SPACE SIGNAGE | | RAISED PLANTER |
| PUBLIC PLAZA LIMIT | DRINKING FOUNTAIN | | |
| BACKLIT CORTEN SCREEN ON CONCRETE CURB | BIKE PARKING (FOR 2 BIKES) | | PLANTING AREA EXCLUDED FROM PLAZA REQUIREMENTS |
| PROPOSED TREE | POWER SUPPLY (SEE MEP PLAN) | | BACKLESS BENCH |
| EXISTING TREE | GROUND HYDRANT | | BENCH WITH BACK |
| NARROW MODULAR PAVERS | TRASH RECEPTACLE | | PRECAST CONCRETE PEBBLE (SCULPTURAL ELEMENT) |

SCALE: 1/8" = 1'-0"

KEY PLAN



BLOCK: 863 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

SSUES/REVISIONS

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LANDSCAPE ARCHITECT
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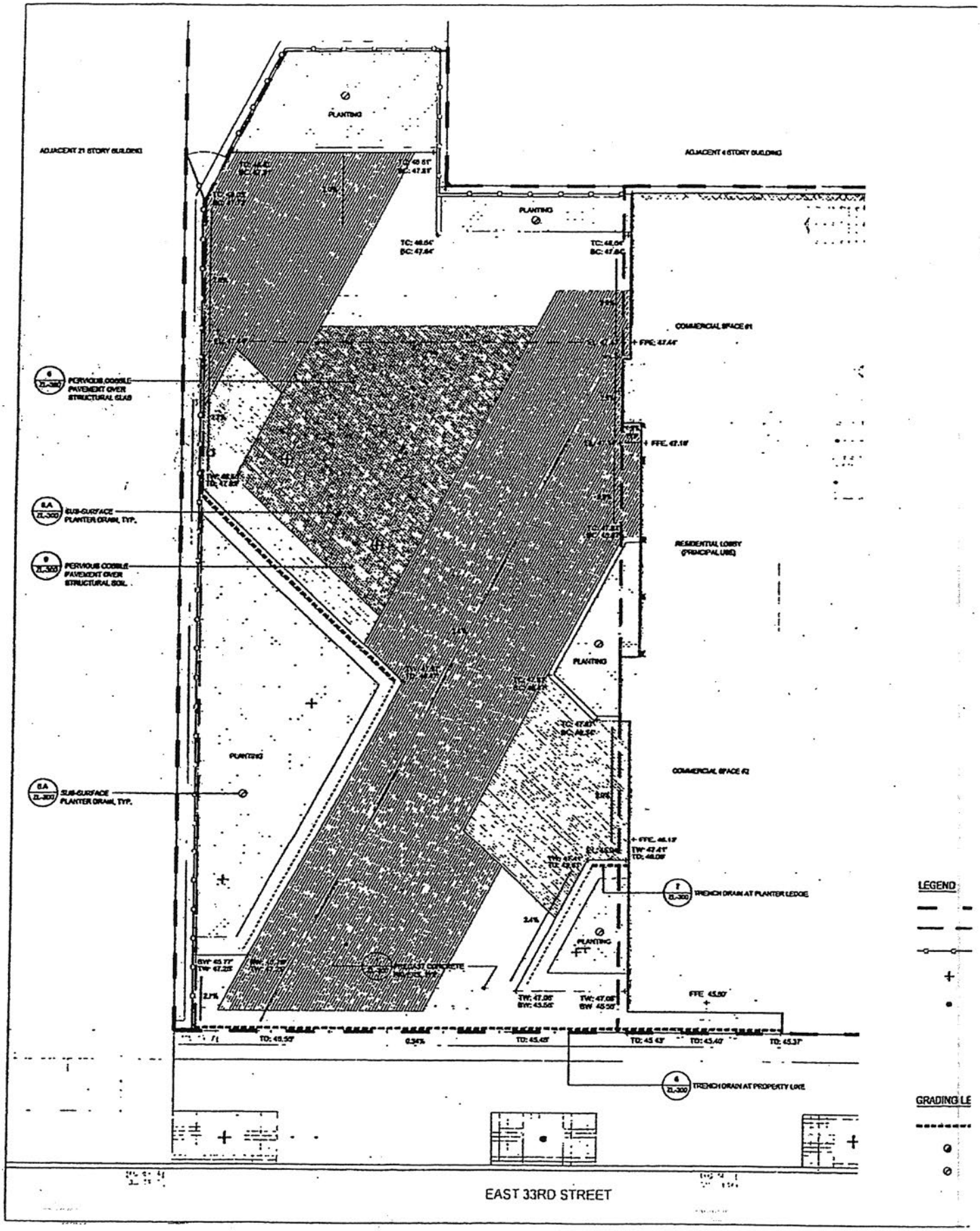
KARL HISCHER ARCHITECT
ORG. CAN. RAC. AIA

NEW MIXED USE DEVELOPMENT
172 MADISON AVE., NEW YORK, NY 10016

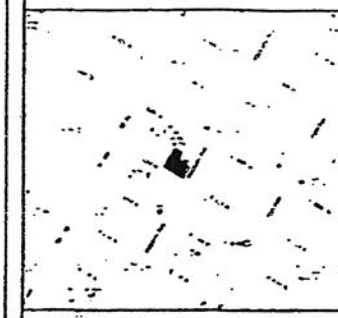
SEATING AND PLANTING AREA PLAN

| | |
|---|---|
| 3/16" = 1' | 1330 |
| 06.23.2014 | CF |
| CR | ZL-101C |
| JC | |


ADJACENT 21 STORY BUILDING
ADJACENT 4 STORY BUILDING
PLANTING
COMMERCIAL SPACE #1
RESIDENTIAL LOBBY (PRINCIPAL USE)
COMMERCIAL SPACE #2
PERVIOUS COBBLE PAVEMENT OVER STRUCTURAL SLAB
SUB-SURFACE PLANTER DRAIN, TYP.
PERVIOUS COBBLE PAVEMENT OVER STRUCTURAL SOIL
TRENCH DRAIN AT PLANTER LEDGE
TRENCH DRAIN AT PROPERTY LINE
LEGEND
GRADING LE
EAST 33RD STREET

475

KEY PLAN



BLOCK: 863 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

ISSUES/REVISIONS

KARL FISCHER ARCHITECT
DAD DAA RMC AA

NEW MIXED USE DEVELOPMENT
172 MADISON AVE NEW YORK, NY 10016

PLAZA GRADING AND PAVING PLAN

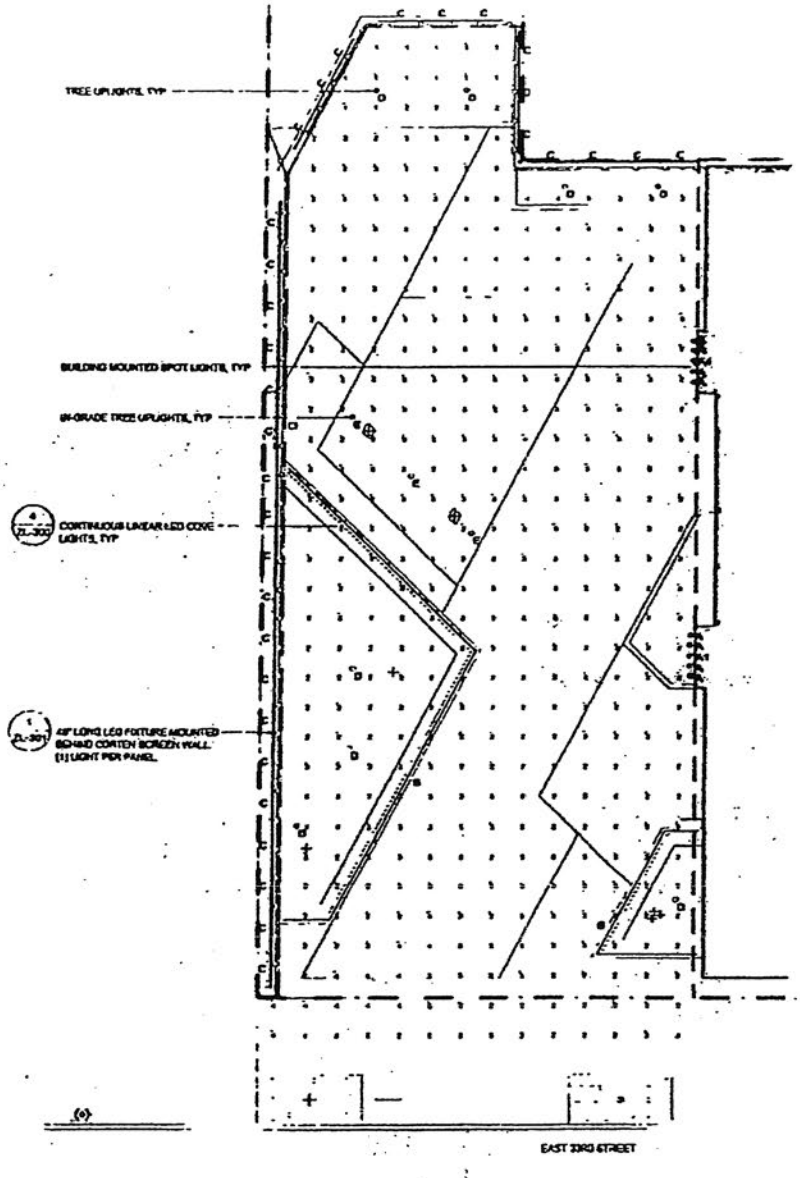
| | |
|---|---|
| 3/16" | 1.1.10 |
| 06.23.2014 | OF |
| CR | ZL-101D |
| JD | |

ZONING LOT LINE
PUBLIC PLAZA LIMIT
BACKLIT CORTEN SCREEN ON CONCRETE CURB
PROPOSED TREE
EXISTING TREE
NARROW MODULAR PAVERS
PUBLIC SPACE SIGNAGE
DRINKING FOUNTAIN
BIKE PARKING (FOR 2 BIKES)
POWER SUPPLY (SEE MEP PLAN)
GROUND HYDRANT
RAISED PLANTER
PLANTING AREA EXCLUDED FROM PLAZA REQUIREMENTS

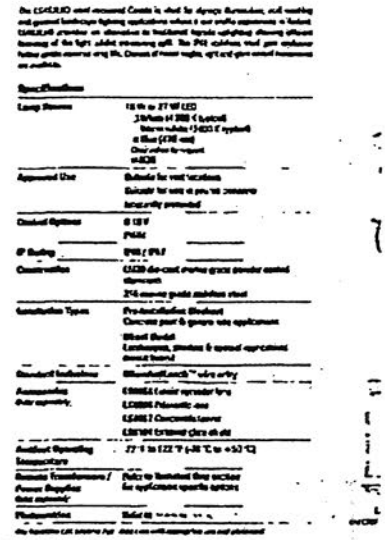
EGEND

| | | | | |
|---|---|---|---|---|
| TRENCH DRAIN | | EXISTING ELEVATION | TW | TOP OF WALL ELEVATION |
| BI-LEVEL DRAIN | +EL: 00.00' | PROPOSED ELEVATION | BW | BOTTOM OF WALL ELEVATION |
| SUB-SURFACE PLANTER DRAIN | +TO: 00.00' | TOP OF DRAIN ELEVATION | F.F.E. | FINISHED FLOOR ELEVATION |
| | 5.0% | SLOPE DIRECTION (DOWNHILL) AND DEGREE | | |

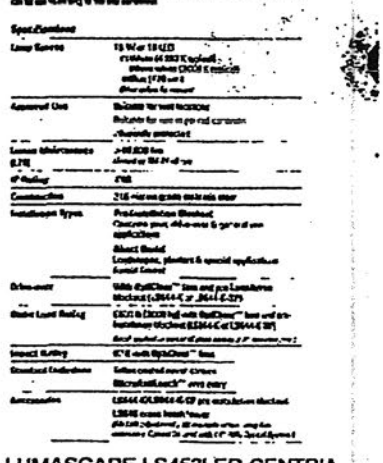
0' 5' 10' 15'
SCALE: 3/16" = 1'-0"




8 LIGHTING PLAN AND PHOTOMETRIC ANALYSIS
1/8" = 1'-0"



6 LUMASCAPE LS363LED
N.T.S.



5 LUMASCAPE LS452LED CENTRIA
N.T.S.

LUMINAIRE SCHEDULE

| SYMBOL | QTY | FIXTURE | ARRANGEMENT | LUMENS | DESCRIPTION | LOCATION | NOTE |
|---|---|---|---|---|---|---|---|
| A | 8 | BEGA 77021LED WIDE FLOOD LIGHT | CLUSTER | 1712 LM | 36 W LED | MOUNTED TO PRECAST BUILDING COLUMN AT +/- 46', SEE ARCH. ELEVATIONS | 40° SPREAD, DIMMABLE, PROVIDE GLARE SHI |
| A1 | 2 | BEGA 77011LED NARROW FLOOD LIGHT | CLUSTER | 1712 LM | 36 W LED | MOUNTED TO PRECAST BUILDING COLUMN AT +/- 40', SEE ARCH. ELEVATIONS | 28° SPREAD, DIMMABLE, PROVIDE GLARE SHI |
| B | 92.75 LF | COVELIGHTE 2 - 6.5 | SERIAL | 134 LM/FT | 4.8 W / FT LED | COVE MOUNTED BELOW PLANTER WALLS, SEE 4/ZL-200 | 120° SPREAD, DIMMABLE, PROVIDE CONTINUC LENGTH FOR EACH PLANTER EDGE W/ 6" INCF |
| C | 22 | ACCLAIM DYNAGRAZE | SERIAL | 834 LM/FT | 60 W LED / 4 LF | MOUNTED TO REAR OF CORTEN SCREEN WALL; SEE 1/ZL-201 | 60° SPREAD, DIMMABLE |
| D | 6 | LUMASCAPE LS452LED CENTRIA | SINGLE | 1761 LM | 27 W LED | DIRECT BURIAL IN RAISED PLANTERS | 25° SPREAD, DIMMABLE, 3000K |
| E | 3 | LUMASCAPE LS363LED | SINGLE | 918 LM | 16 W LED | FLUSH MOUNTED IN PERVIOUS COBBLE PAVEMENT | 14° SPREAD, DIMMABLE, 3000K |

CALCULATION SUMMARY

| LABEL | CALCTYPE | UNITS | AVG | MAX | MIN | AVG/MIN | MAX/MIN |
|---|---|---|---|---|---|---|---|
| PLAZA | Illuminance | Fc | 3.30 | 6.0 | 1.0 | 3.30 | 6.0 |

7 LIGHTING SCHEDULE
N.T.S.

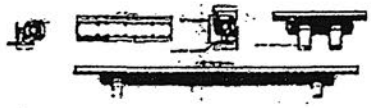
477

The Dynamic axis Extender is a high power, white LED, outdoor linear fixture.
Available in 1' and 4' sections, it offers smooth linear dimming with ELV modules and 1-100% with most commercially available TRIAC dimmer. Featuring class-leading output, robust housing, LSF filter options, and a glare shield, it is the perfect option for any structure that calls for outdoor linear grazing.

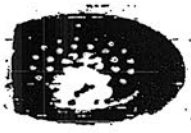
SPECIFICATIONS

| | |
|---|---|
| Optical Component Options | 4, WDC, 30DC, 31DC, 46DC |
| Beam Angle | 10°, 40°, 10° x 60°, 30° x 60°, CSF (Via LDF) |
| Max. Fixture Runs | 20' (10.6m) @ 120V / 10' (3.3m) @ 240V |
| Power Consumption | Min (1') / Max (4') |
| Total Lumens | 434 (1') @ 3100K - (1344') / 4,370 (4') @ 4000K - (3%dd) |
| Efficacy (lm/W) | 34 @ 3100K / 33 @ 3000K, 41 @ 3100K, 38 @ 4000K |
| CRI | 87 @ 4000K |
| Lumen Maintenance | 70% @ 50,000 hours |
| Finish | Anodized Brushed Aluminum |
| Lenses | Acrylic Polycarbonate Lens |
| Operating & Storage Temp | -40°F to 122°F (-40°C to 50°C) |
| Operating Voltage | 100-120VAC, 220-240VAC |
| Dimming | ELV or TRIAC |
| Fixture Connection | Straight, 3 Pin Male & Female Connector |
| Rating | IP 66, IK08 Listed |
| Warranty | 5 Years |
| Weight | 1' 1.5 lb (0.6 kg)<br>4' 6.2 lb (2.8 kg) |
| Dimensions | 1' 2.5" H x 3.4" W x 12" D<br>(7.4 cm x 10.5 cm x 305 mm / 1,212 cm) |
| Certifications | cULus, CE |

DIMENSIONS



## 4 ACCLAIM DYNAGRAZE
N.T.S.

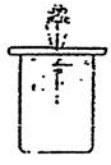


COVEBRITE 2 - ES

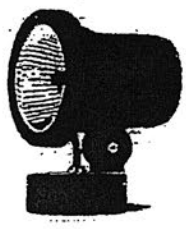
PRODUCT SPECIFICATIONS

| | |
|---|---|
| Lens Material | Polycarbonate |
| Max. Number of Units | 10 |
| Max. Cable Run | 20' (6.1m) |
| Cable Type | 3AWG, 3 Conductor |
| Cable Length | 6' |
| Cable Entry | Side |
| Lens Options | 10°, 40°, 10° x 60°, 30° x 60° |
| Finish | Black |
| Mounting | Surface Mount |
| Dimensions | 4.5" H x 4.5" W x 3.5" D |
| Weight | 1.5 lbs |
| Input Voltage | 120V |
| Color Temperature | 4000K |
| Color Rendering Index | 80 |
| Lumens | 1,200 |
| Efficacy | 80 lm/W |
| Power Consumption | 15W |

## 3 COVEBRITE 2 - ES
N.T.S.



## 2 BEGA 7701LED NARROW FLOOD LIGHT
N.T.S.



## 1 BEGA 7702LED WIDE FLOOD LIGHT
N.T.S.

KEY PLAN

BLOCK: 963 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

ISSUES/REVISIONS


KAREN ASSOCIATES
[illegible] KARL FISCHER FLOOR
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EMAIL@KFA.COM

STRUCTURAL ENGINEER
STRONGIF CONSULTING ENGINEERS
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INTERIOR DESIGNER
SHAW & SHAW DESIGN
70 GREENE STREET NEW YORK, NY 10013
T 212 334 1476
F - 212 334 1111
EMAIL@SHAWSHAWDESIGN.COM

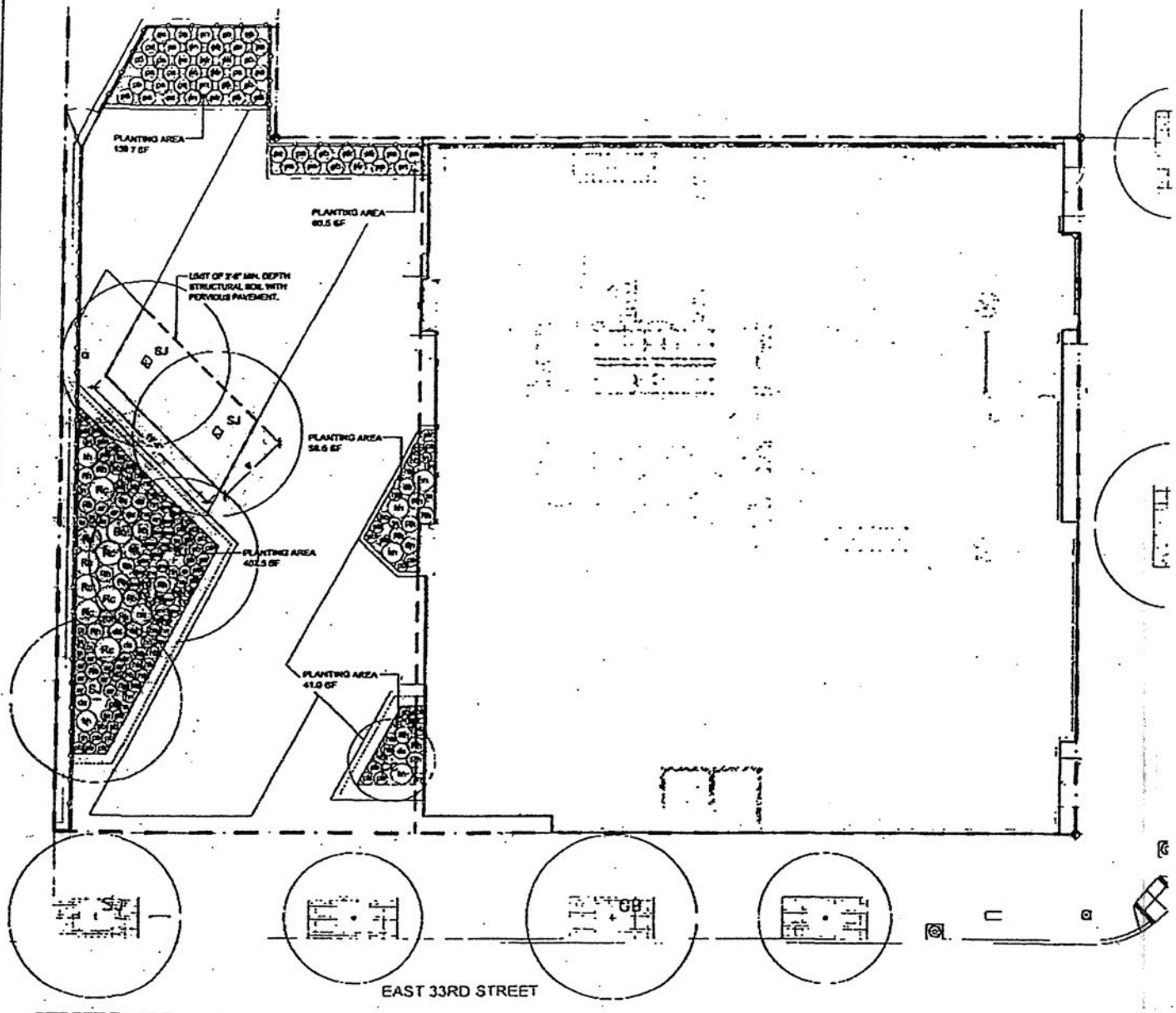
LANDSCAPE ARCHITECT
SCAPE / LANDSCAPE ARCHITECTURE, PLLC
217 BROADWAY SUITE 505
NEW YORK, NY 10007
T - 212 966 3615 F - 957 1454
EMAIL@SCAPEstudio.com

KARL FISCHER ARCHITECT
[illegible]

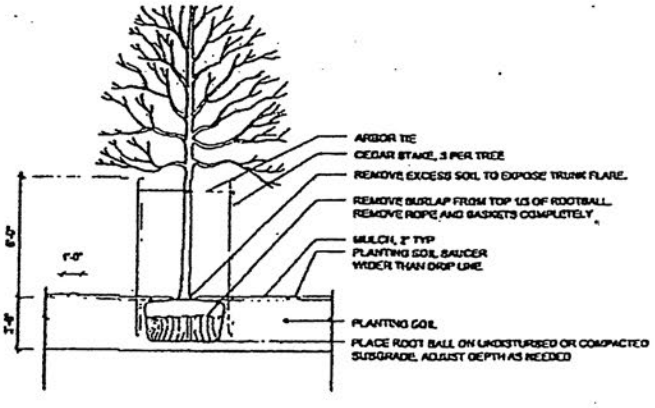

NEW MIXED USE DEVELOPMENT
772 MADISON AVE., NEW YORK, NY 10016

LIGHTING PLAN

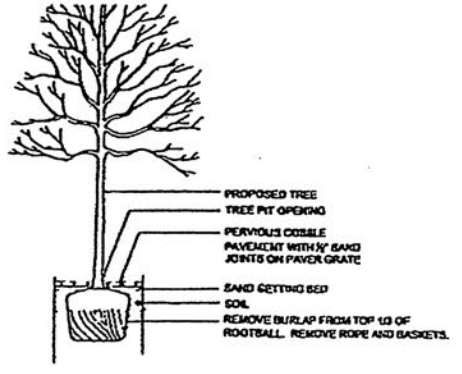
| | |
|---|---|
| SCALE | AS NOTED |
| DATE | 05.21.2014 |
| DRAWN BY | JJ |
| CHECKED BY | JJ |
| PROJECT NO. | 1350 |
| SHEET NO. | 01 |
| DRAWING NO. | ZL-102 |



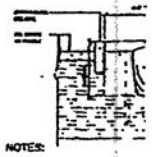

8 STREET TREE PLANTING
1/8" = 1'-0"




7 TREE PLANTING IN PLANTER
1/4" = 1'-0"




6 TREE PLANTING AT COBBLE
1/4" = 1'-0"



NOTES:

1. TREE PIT DETAIL IN AC AND SPECIFICATIONS.
2. ALL MATERIALS AND CI SECTION #6.18 OF THE LATEST EDITION
3. TREE STAKES ARE TO I LESS THAN ONE YEAR FINAL ACCEPTANCE O

4 STREET TREE
1/4" = 1'-0"

## PLANT LIST

### TREES & SHRUBS

| QTY | SYMB | BOTANICAL NAME | COMMON NAME | SIZE | CONDITION |
|---|---|---|---|---|---|
| 1 | CC | Cercis canadensis | Redbud | 2"-2.5" cal. | B&B |
| 1 | GB | Ginkgo biloba | Ginkgo | 4" cal. | B&B |
| 1 | QP | Quercus palustris | Pin Oak | 4" cal. | B&B |
| 5 | SJ | Styphnolobium japonicum | Scholar Tree | 4" cal. | B&B |
| 8 | Rg | Rhododendron x'Chionoides' | Chionoides Rhododendron | 36" ht. | B&B |
| 20 | Rh | Rhododendron 'Hino-Crimson' | Hino-Crimson Azalea | 18"-24" ht. | B&B |

### BAMBOO

| QTY | SYMB | BOTANICAL NAME | COMMON NAME | SIZE | CONDITION |
|---|---|---|---|---|---|
| 19 | ps | Phyllostachys aureosulcata | Bamboo | 8-10' HT | MIN 6 CULMS EACH, 2' O.C. |
| 16 | pb | Phyllostachys bissetii | Bamboo | 8-10' HT | MIN 6 CULMS EACH, 2' O.C. |
| 12 | pn | Phyllostachys nuda | Bamboo | 8-10' HT | MIN 6 CULMS EACH, 2' O.C. |

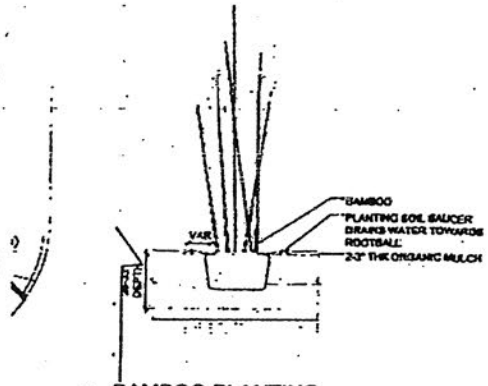
### PERENNIALS & GROUNDCOVERS

| QTY | SYMB | BOTANICAL NAME | COMMON NAME | SIZE | CORD./SPACING |
|---|---|---|---|---|---|
| 12 | ar | Astilbe x arendsii 'Red Sentinel' | Red Sentinel plume flower | 1 gal. | |
| 16 | aw | Astilbe x arendsii 'White Gloria' | White Gloria plume flower | 1 gal. | |
| 9 | df | Dicentra spectabilis | Bleeding Heart | 1 gal. | |
| 11 | hh | Helleborus x hybridus 'Honeybell Jay' | Honeybell Jay Hellebore | 1 gal. | |
| 12 | hp | Helleborus x 'Peppermint Ice' | Peppermint Ice Hellebore | 1 gal. | |
| 12 | hb | Heuchera 'Bridget Bloom' | Coral Bells | 1 gal. | |
| 8 | hh | Hosta 'Halcyon' | Halcyon Hosta | 1 gal. | |
| 40 | pb | Pulmonaria saccharata | Tassel fern | 1 gal. | |
| 18 | th | Tiarella 'Iron Butterfly' | Foam flower | 1 gal. | |
| 1100 | vm | Vinca minor | Periwinkle | 4" pots | 6" o.c. |

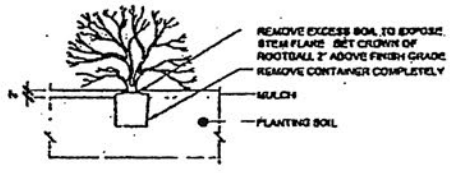
NOTE: ALL PLANTING AREAS TO BE WATERED BY AUTOMATIC IRRIGATION SYSTEM

### LEGEND

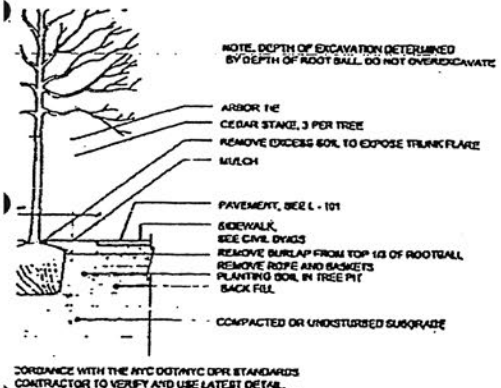
- ZONING LOT LINE
- PUBLIC PLAZA LIMIT
- BACKLIT CORTEN SCREEN ON CONCRETE CURB




5 BAMBOO PLANTING
1/4" = 1'-0"



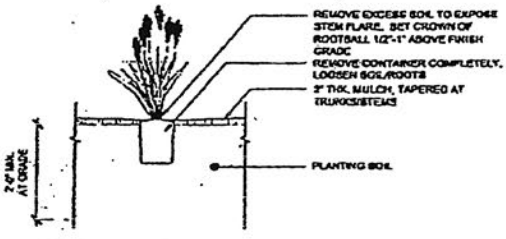

3 SHRUB PLANTING
1/2" = 1'-0"



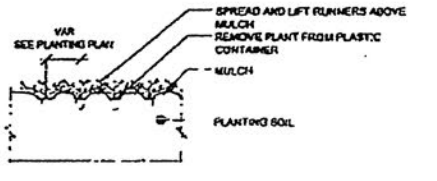

ORDANCE WITH THE NYC DOT/NYC DPR STANDARDS
CONTRACTOR TO VERIFY AND USE LATEST DETAIL.
INSTRUCTION METHODS USED ARE TO CONFORM TO
BUREAU OF HIGHWAY OPERATIONS SPECIFICATIONS

E REMOVED BY THE TREE SUBCONTRACTOR NOT
AFTER PLANTING OF SAID TREES AND PRIOR TO THE
F THE WORKS.

PLANTING

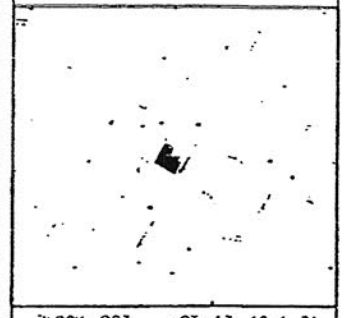



2 PERENNIAL PLANTING
1/2" = 1'-0"




1 GROUND COVER PLANTING
1/2" = 1'-0"

KEY PLAN



BLOCK: 803 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELEONORE BRESCIA
No. 001797
STATE OF NEW YORK

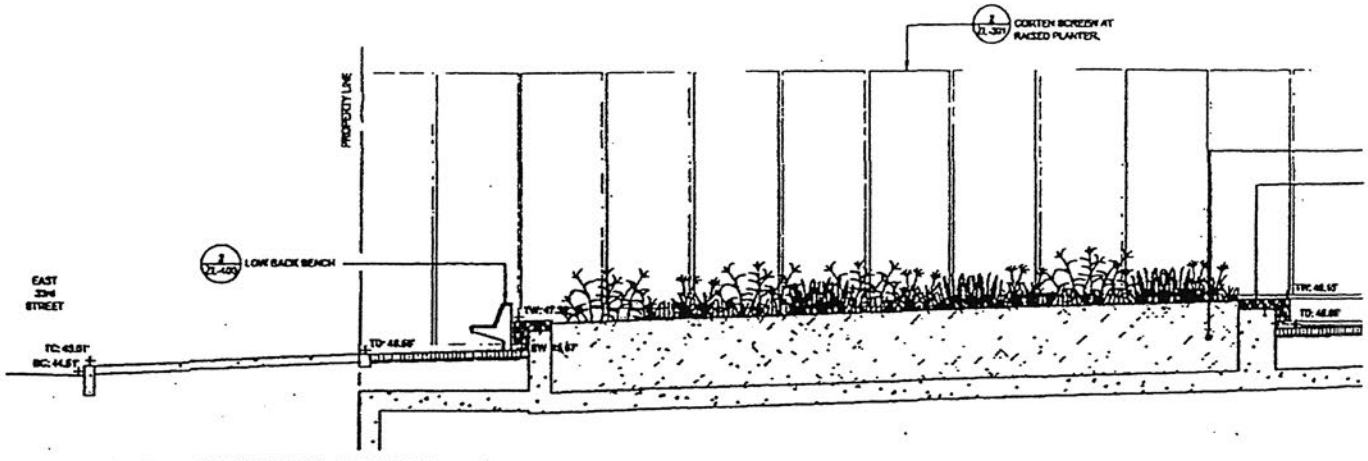
ISSUES/REVISIONS

KARL FISCHER ARCHITECT

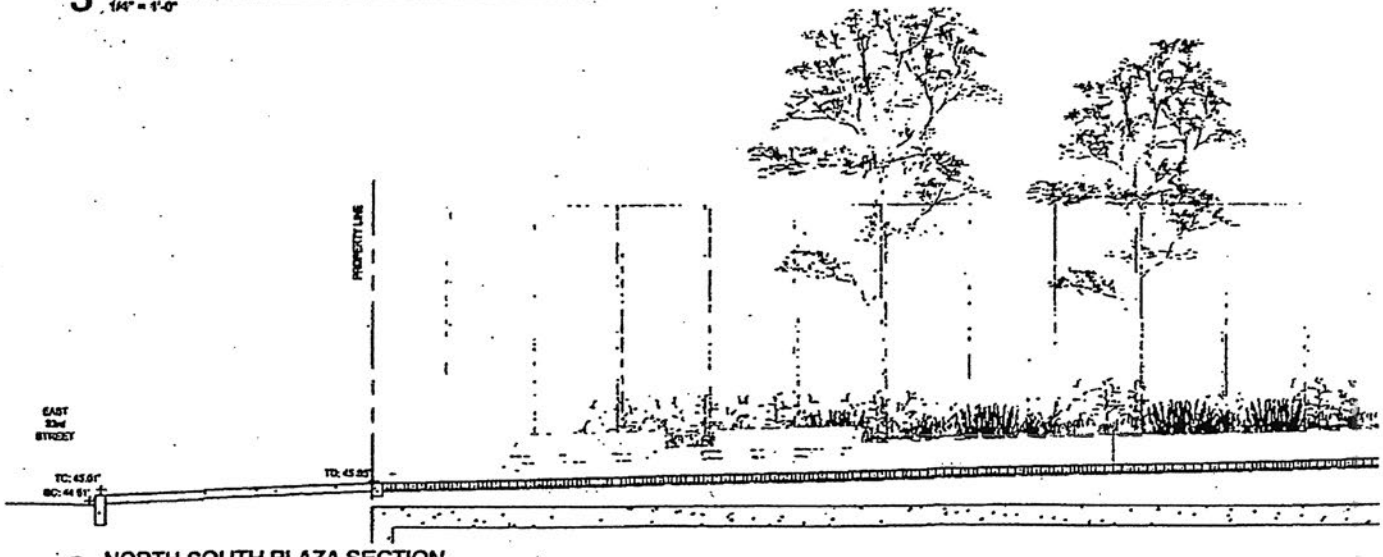
NEW MIXED USE DEVELOPMENT
172 MADISON AVE, NEW YORK, NY 10016

PLANTING PLAN, DETAILS AND DATA

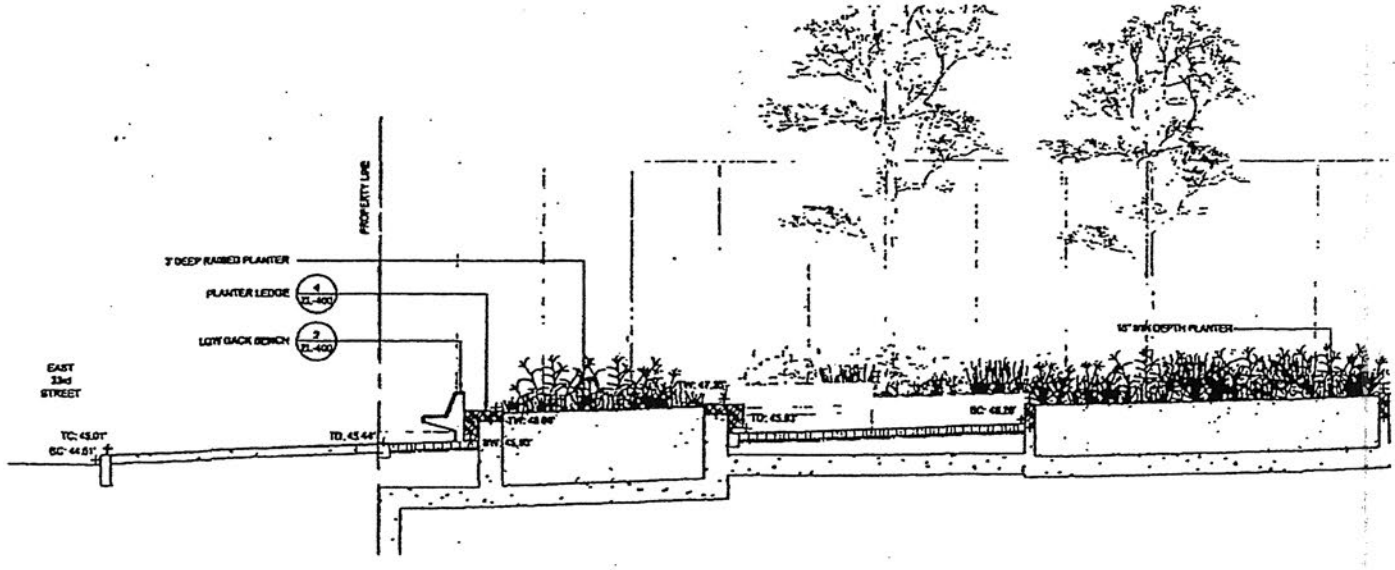
AS NOTED
08.25.2014
0
ZL-103




3 NORTH-SOUTH PLAZA SECTION
1/4" = 1'-0"

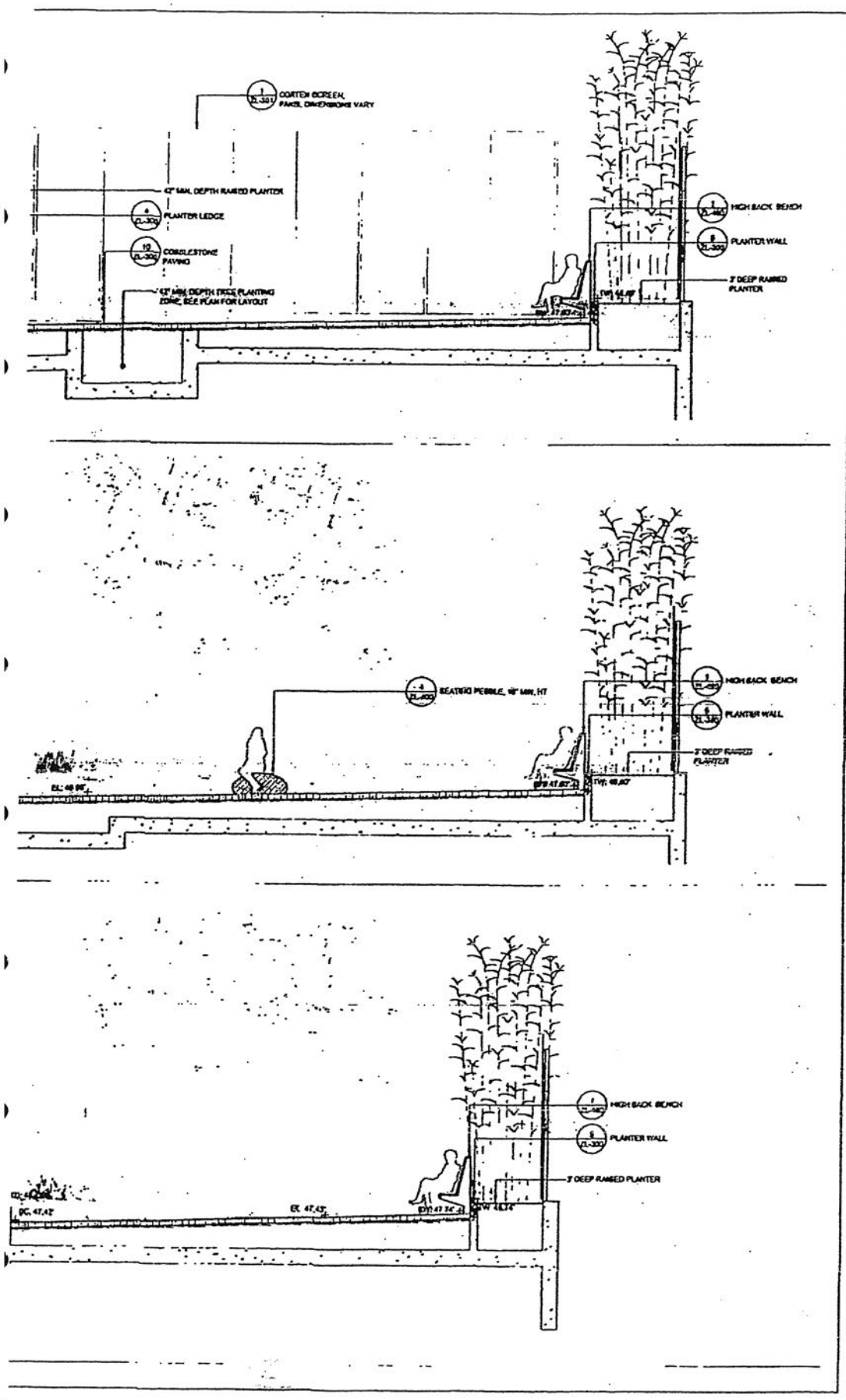



2 NORTH-SOUTH PLAZA SECTION
1/4" = 1'-0"




1 NORTH-SOUTH PLAZA SECTION
1/4" = 1'-0"

481




BLOCK: 863 LOT 17, 18 & 71

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

SSUES/REVISIONS

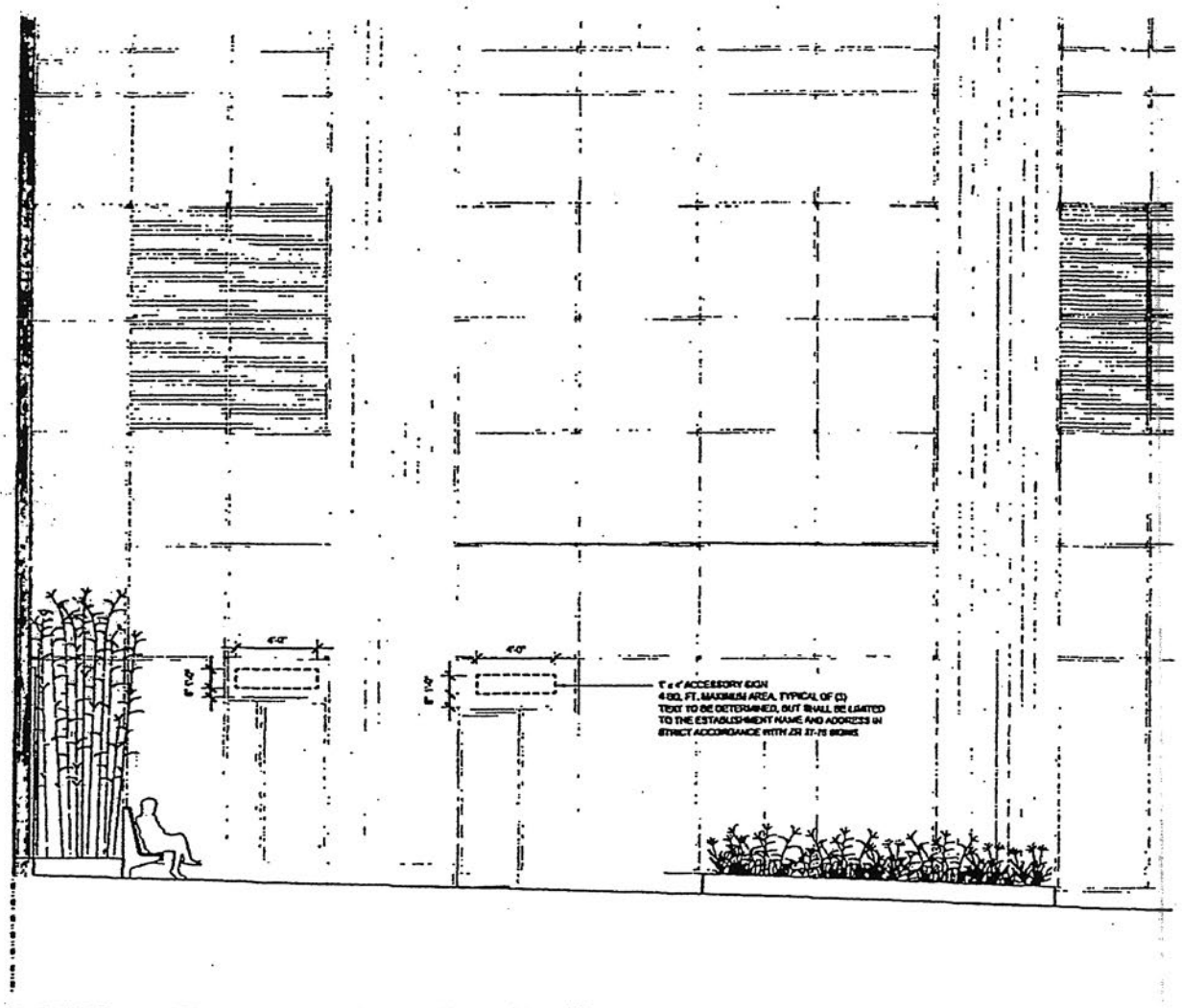
KARL FISCHER ARCHITECT

NEW MIXED USE DEVELOPMENT
172 MADISON AVE, NEW YORK, NY 10016

A/A SECTIONS

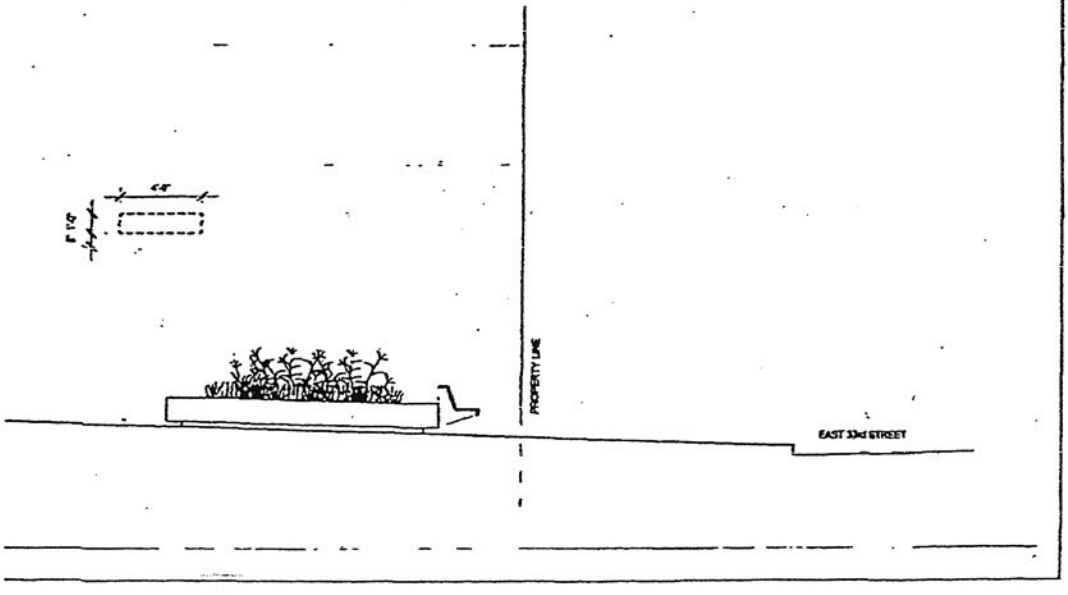
06 23 2014

ZL-200

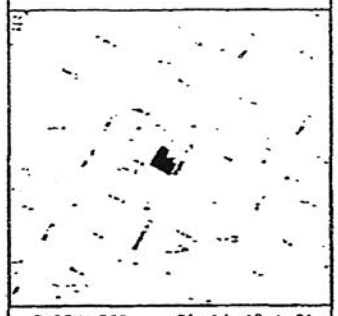



1 BUILDING ELEVATION WITH ACCESSORY SIGNS AT PUBLIC PLAZA
1/4" = 1'-0"

483




CITY PLAN



BLOCK: 863 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

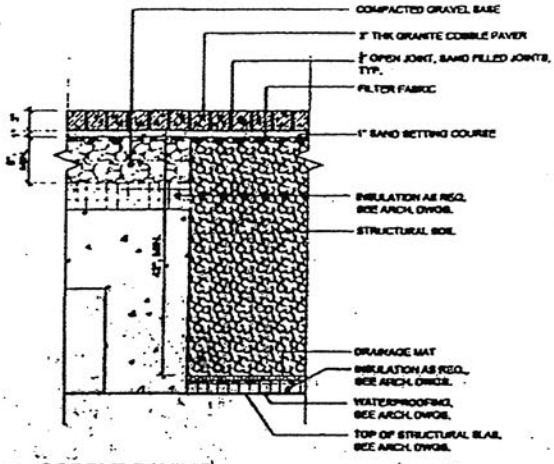
ISSUES/REVISIONS

KARL FISCHER ARCHITECT

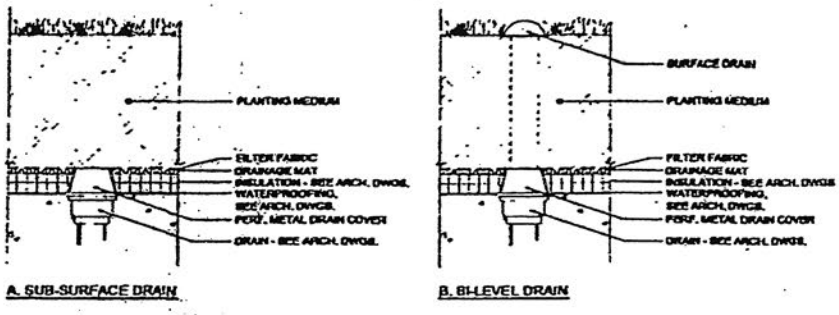
NEW MIXED USE DEVELOPMENT
177 MADISON AVE., NEW YORK, NY 10016

PLAZA ELEVATION

| | |
|---|---|
| 1/4" | 350 |
| 06.30.2014 | C- |
| JJ | ZL-201 |
| JJ | |



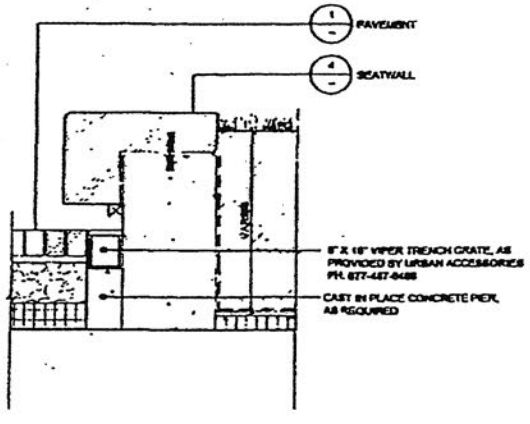

9 COBBLE PAVING
1" = 1'-0"



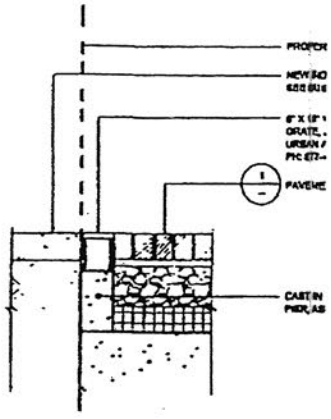

A. SUB-SURFACE DRAIN

B. BI-LEVEL DRAIN

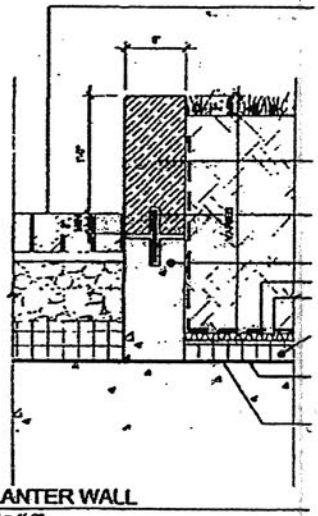
8 PLANTER DRAINS
1" = 1'-0"



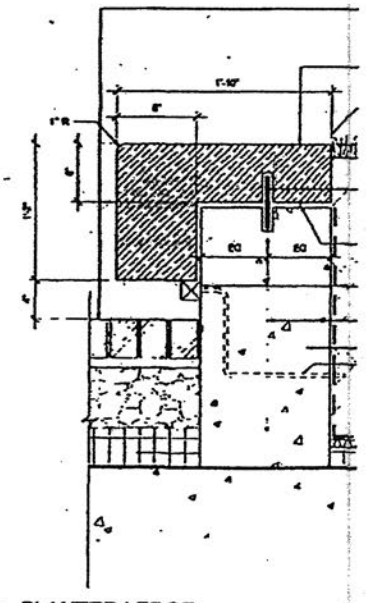

7 TRENCH DRAIN AT PLANTER LEDGE
1" = 1'-0"




6 TRENCH DRAIN AT PROPERTY LI
1" = 1'-0"

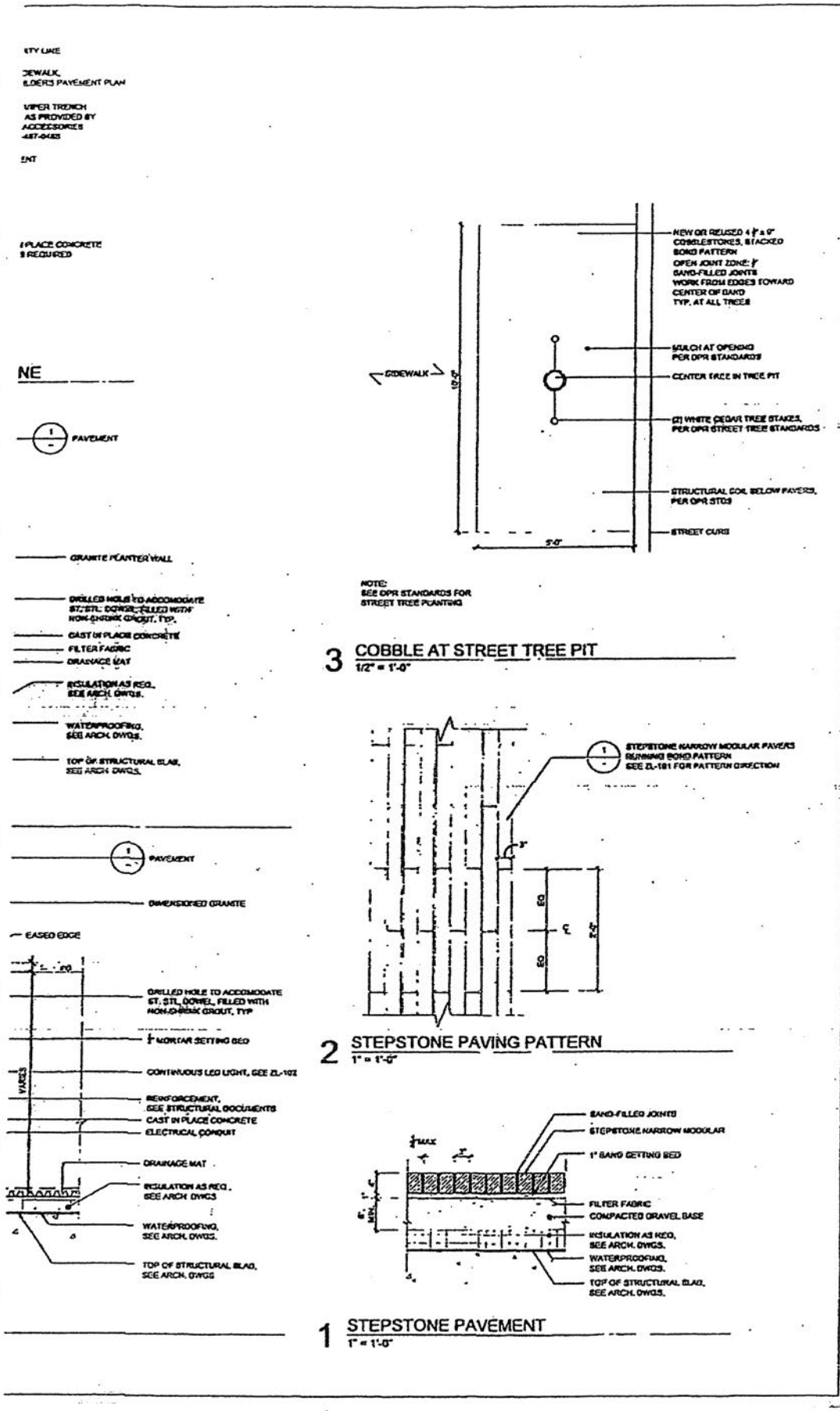


5 PLANTER WALL
1/2" = 1'-0"

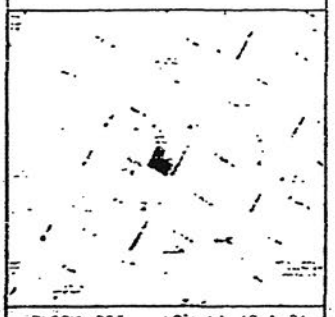


4 PLANTER LEDGE
1 - 1/2" = 1'-0"

485




KEY PLAN



BLOCK 863 LOT 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

ISSUES/REVISIONS

COSENTINI ASSOCIATES
NEW YORK, NY 10017
212 615 3600 T 212 615 3700
WWW.COSENTINI.COM

JERUSALEM CONSULTING ENGINEERS
NEW YORK, NY 10011
212 532 7211 T 212 [illegible]

SHAWN SHAH DESIGN
10 CHELSEA STREET NEW YORK, NY 10013
212 274 7475
212 274 7477
WWW.SHAWNSHAHDESIGN.COM

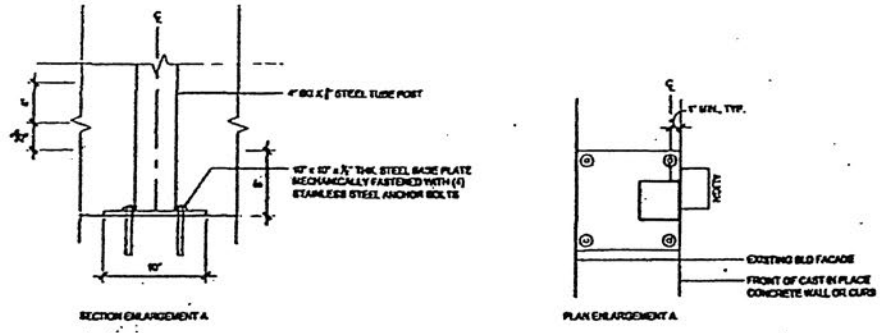
SCAPE / LANDSCAPE ARCHITECTURE PLLC
217 BROADWAY SUITE 1605
NEW YORK, NY 10007
212 462 2623 F 462 4104
WWW.SCAPESTUDIO.COM

KARL FISCHER ARCHITECT
LONG CHAMPING AIA

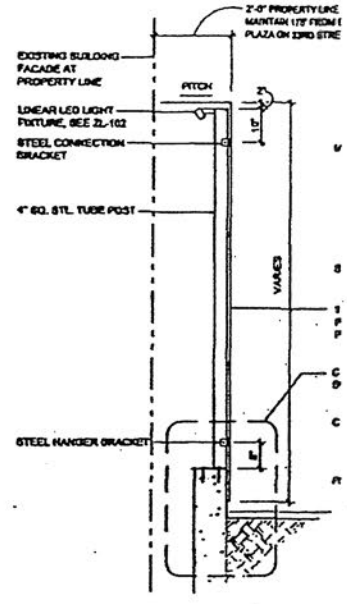
NEW MIXED USE DEVELOPMENT
172 MADISON AVE., NEW YORK, NY 10016

SITE DETAILS

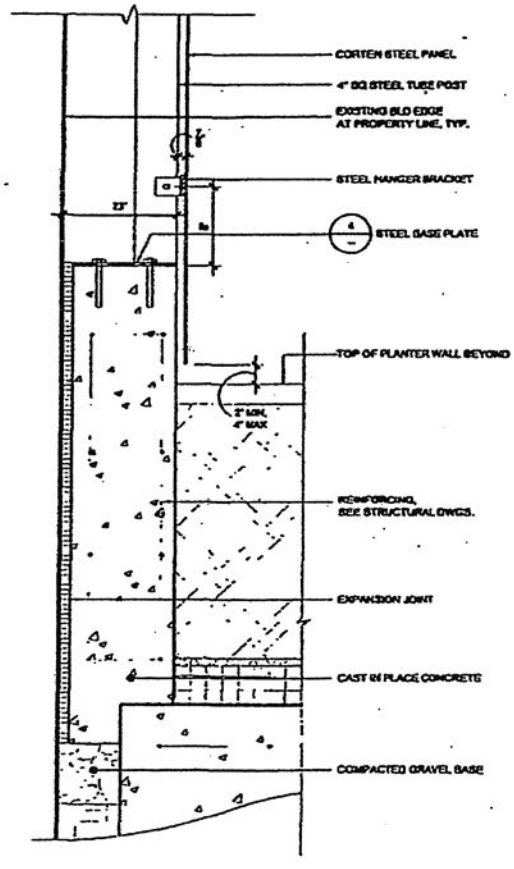
| | |
|---|---|
| AS SHOWN | 1330 |
| 05.23.2014 | 0 |
| CB | ZL-300 |




## 4 CORTEN SCREEN WALL BASE PLATE
1 - 1/2" = 1'-0"

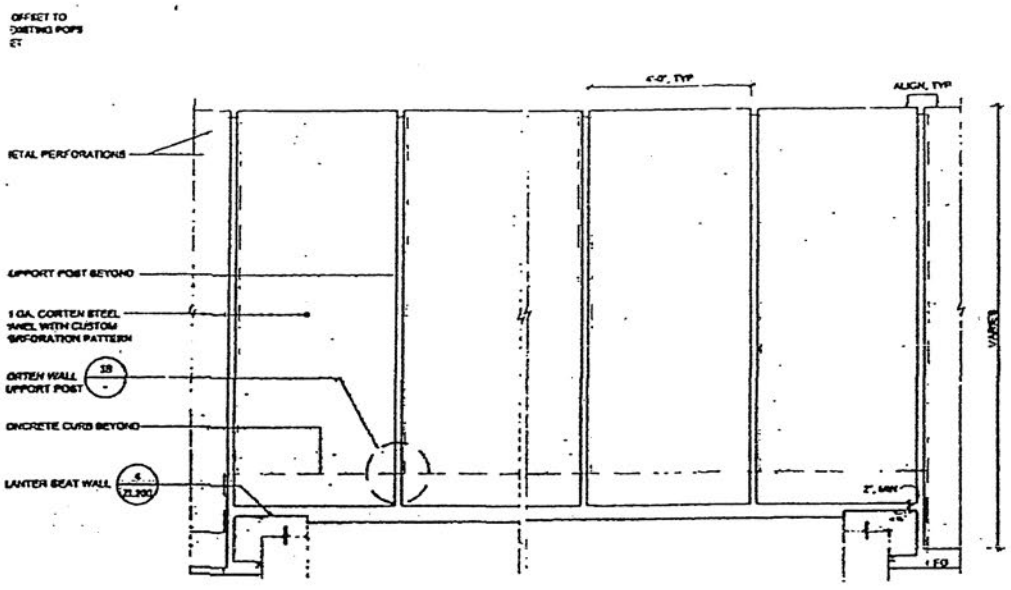



## 2 BACKLIT COR-TEN SCREEN AT I
1/2" = 1'-0"

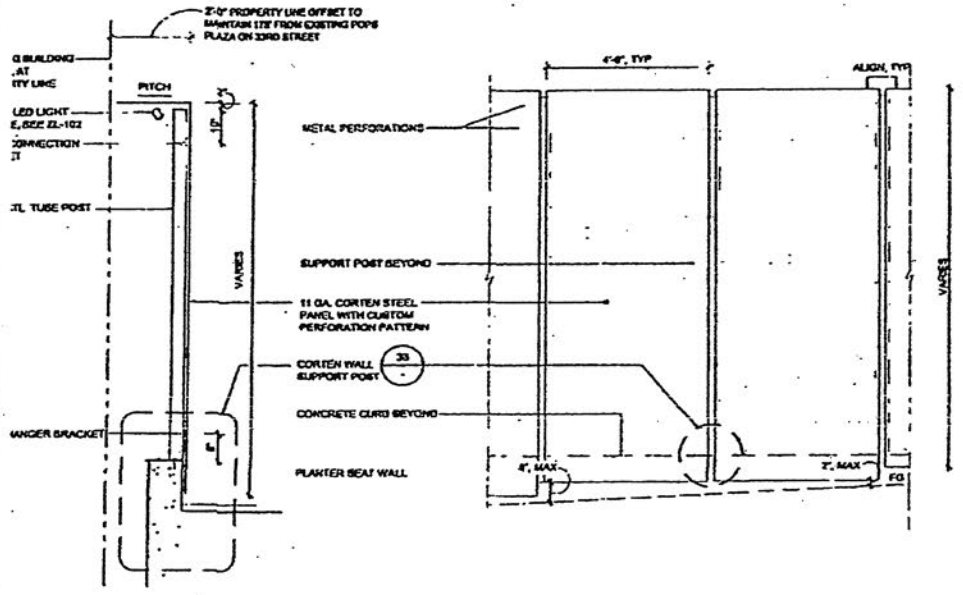



## 3 CORTEN SCREEN WALL SUPPORT POST
1 - 1/2" = 1'-0"

1 B
1/




RAISED PLANTER




BACKLIT COR-TEN SCREEN AT PLAZA EDGE
2" = 1'-0"

BLOCK: 863 LOT: 17, 18 & 21

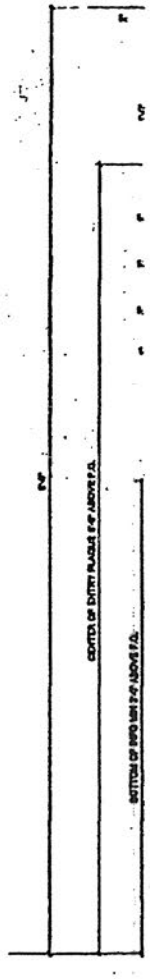
REGISTERED L
ELENA
No. 001792
STATE OF NEW YORK

ISSUES/REVISIONS

KARI FISCHER ARCHITECT

SITE DETAILS

ZL-301

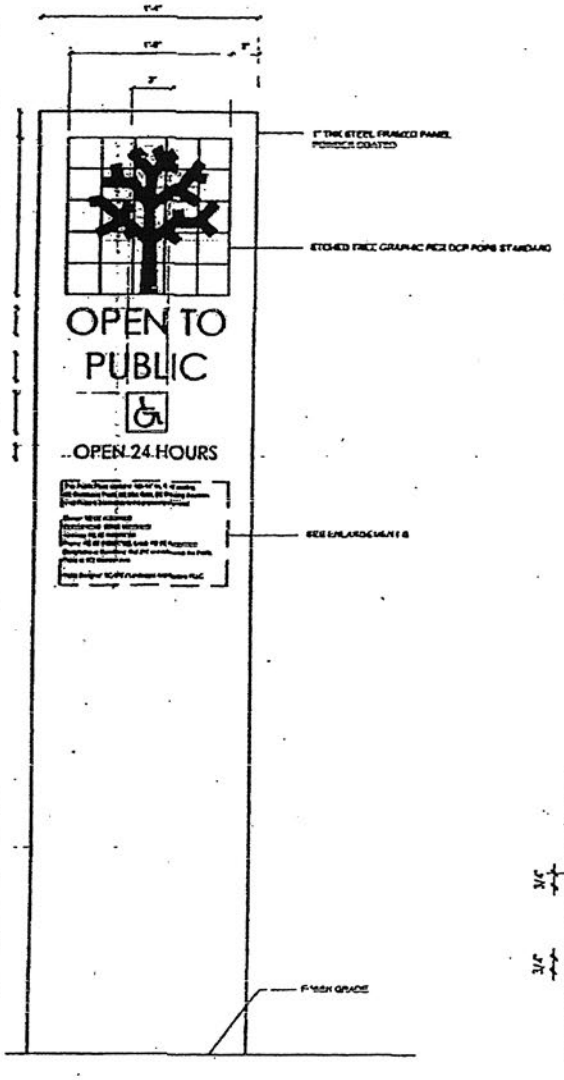


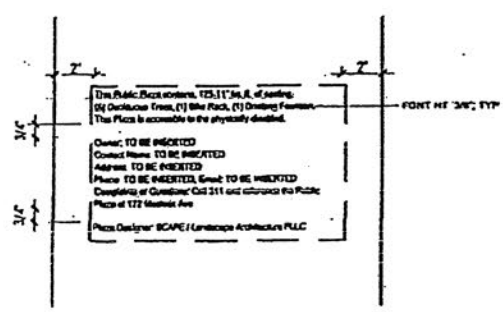
NOTE:
1. TEXTS SHALL BE I
2. GRAPHIC COLOR:
3. FONT SHALL BE C
4. EACH MOUNTED T

ELEVATION
SCALE: 2" = 1'

1 PLAZA SIGN
AS NOTED

489




TCHED AND FILLED WITH COLOR
SABIL GREEN BY BENJAMIN MOORE
EARVIEW
SUBGRADE CONCRETE BASE W/ (4) 1/2" Ø ST. STL. ANCHOR BOLTS

0"

ENLARGEMENT B
SCALE: 3" = 1'-0"

KEY PLAN

BLOCK 863 LOT 17, 18 & 21

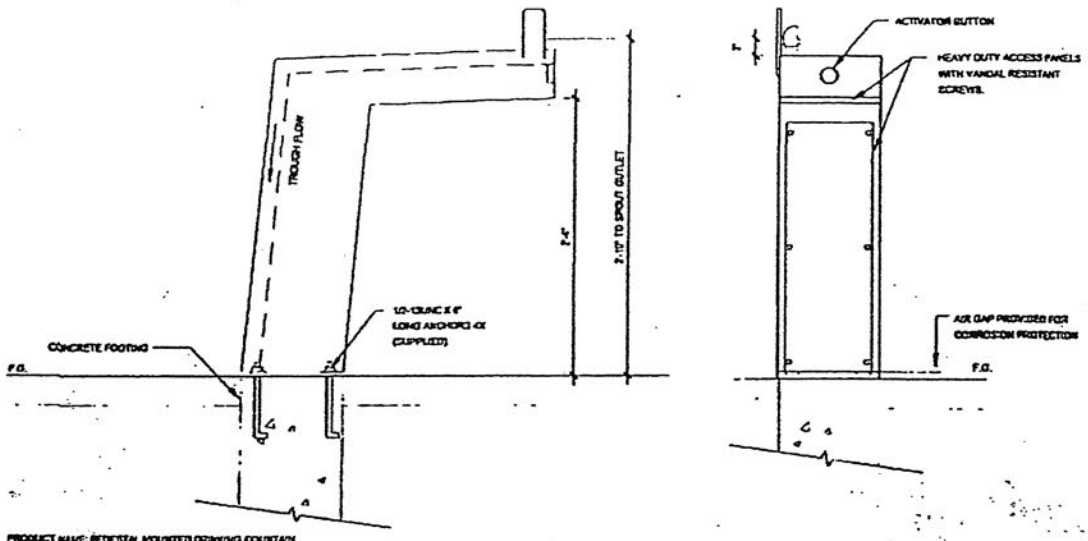
REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

SSUES/REVISIONS

KARL FISCHER ARCHITECT
ORG. OAA, RAC, AA

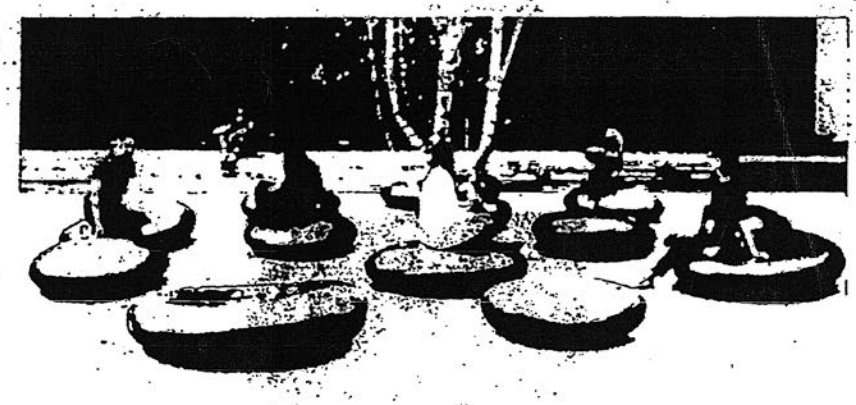
NEW VIXED USE DEVELOPMENT
172 MADISON AVE., NEW YORK, NY 10016

AS SHOWN
06.23.2014
1330
ZL-302

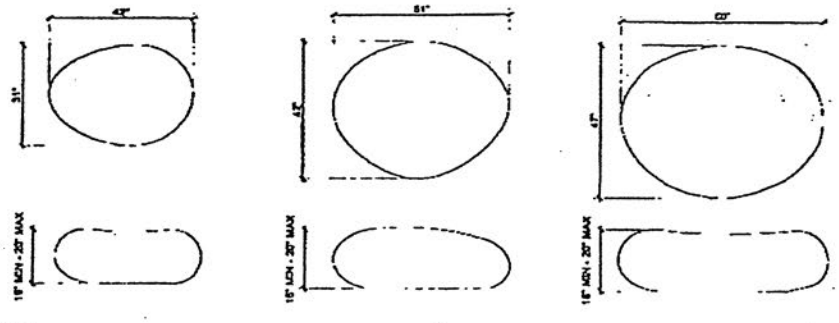



PRODUCT NAME: PEDESTAL MOUNTED DRINKING FOUNTAIN
MFG: HAWS CORPORATION

## 7 DRINKING FOUNTAIN
1-1/2" = 1'-0"



| | | | |
|---|---|---|---|
| Material | Precast Concrete | | |
| Lead Time | 4-6 weeks | | |
| Size | Small | Medium | Large |
| Weight | 160 lbs | 215 lbs | 245 lbs |

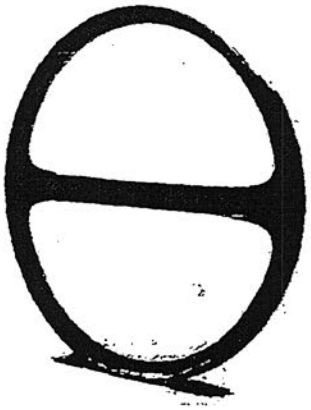


COLOR: BLACK
PRODUCT NAME: COMA STONE
MFG: SOMA STONEWORKS

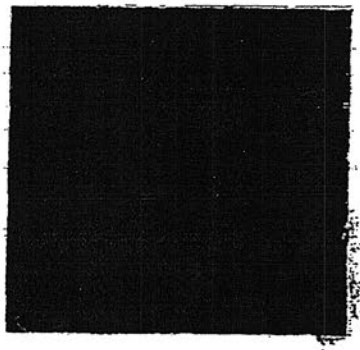
## 6 PEBBLE SEATING
1/2" = 1'-0"

## 3 DOUBLE WIDE BA
1"=1'-0"

491

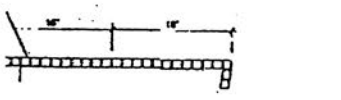


5 NYC STANDARD BIKE RACK



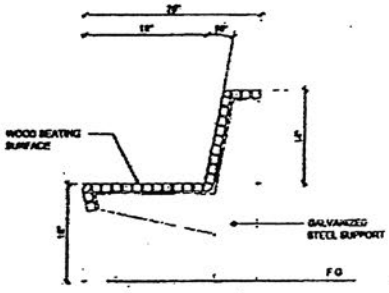
COLOR: RUST
FINISH: POWDER COAT
PRODUCT NAME: SWISSIN
MFG: MAKITE

4 TRASH RECEPTACLE
1/2"=1'-0"



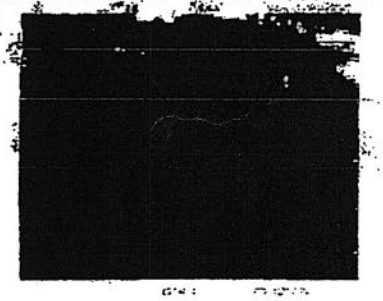

NAME: BACKLESS CLIFFHANGER BENCH
STREETLIFE FURNITURE

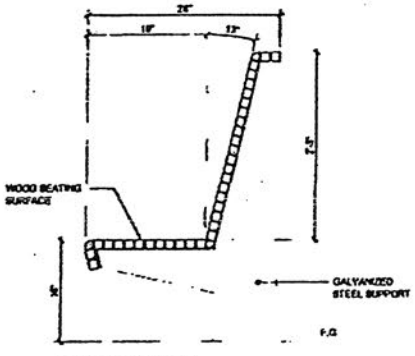
CKLESS BENCH




WOOD: CUMARU
METAL: GALVANIZED STEEL
PRODUCT NAME: BACKED CLIFFHANGER BENCH
MFG: STREETLIFE FURNITURE

2 LOW BACK BENCH
1"=1'-0"

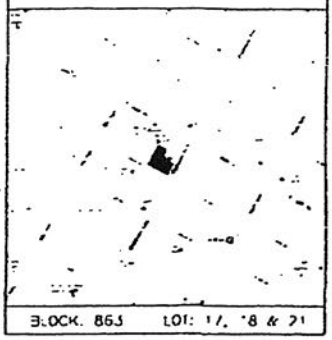





METAL: GALVANIZED STEEL
WOOD: CUMARU
PRODUCT NAME: BACKED CLIFFHANGER BENCH
MFG: STREETLIFE FURNITURE

1 HIGH BACK BENCH
1"=1'-0"

KEY PLAN



BLOCK: 865 LOT: 17, 18 & 21

REGISTERED LANDSCAPE ARCHITECT
ELENA MARIE BRESCIA
No. 001792
STATE OF NEW YORK

ISSUES/REVISIONS

KARL FISCHER ARCHITECT

NEW MIXED USE DEVELOPMENT
777 MADISON AVE, N.W. YORK, NY 10016

SITE FURNISHINGS

AS NOTED
06 23 2014
ZL-400

# PLAZA RULES OF CONDUCT

# 172 MADISON AVENUE CONDOMINIUM

## PLAZA RULES OF CONDUCT

**This is a privately owned space designed and intended for use and enjoyment by the general public and building residents.**

- All users should be respectful of others and mindful of how activity and noise affect other users and residents in adjacent buildings.
- New York City laws and ordinances are in full force and effect at all times.
- Pets must be kept on a leash at all times and are not permitted in any planted areas. Owners must clean up after their pets.

**For everyone's safety and enjoyment, the following types of behavior are prohibited:**

- Sleeping, loitering, or disorderly conduct.
- Smoking, drinking of alcoholic beverages, or card playing.
- Shopping carts, obstructions, or unattended packages.
- Loud music, including musical instruments, radios, stereos, or use of amplification equipment.
- Camping or the erection of tents or other structures; sleeping bags, tarps, or other covering on the property.
- Lying on the ground, walkway, or benches; storage of personal property which unreasonably interferes with the use of such areas, or which poses the risk of damage to planting beds, plants, or trees.
- Use of bicycles, skateboards, rollerblades, and roller-skates.
- Defacement of property, littering, or the removal of objects from trash receptacles.
- Panhandling or solicitation.

**All users are to heed directions and requests made by authorized building management, including those to leave the Plaza.**

**Entire Plaza area is under 24 hour surveillance.**