

---

CONDOMINIUM OFFERING PLAN FOR THE SALE  
OF UNITS IN A CONDOMINIUM TO BE KNOWN AS

**96 16<sup>th</sup> STREET CONDOMINIUM**

96-16<sup>th</sup> Street  
Brooklyn, Kings County, New York 11215

---

4 Residential Units - \$6,308,900

**TOTAL OFFERING - \$6,308,900**

---

**SPONSOR**

**96 16<sup>th</sup> STREET LLC**  
**137 Varick Street, Suite 503**  
**New York, New York 11228**

**SELLING AGENT**

**COMPASS**  
**90 5<sup>th</sup> Avenue, 3<sup>rd</sup> Floor**  
**New York, New York 10011**

**SPONSOR'S ATTORNEY**

**Moritt Hock & Hamroff LLP**  
**1407 Broadway, 39th Floor**  
**New York, New York 10018**

---

The Date of Acceptance for Filing is \_\_\_, 2020. The Offering Plan  
May Not Be Used After \_\_\_, 2021 Unless Extended by Amendment.

---

**THIS PLAN CONTAINS SPECIAL RISKS TO PURCHASERS. SEE PAGE (iv).**

**BECAUSE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER THAN SELL THE RESIDENTIAL UNITS AFTER PLAN CONSUMMATION, 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. SEE SPECIAL RISK 1 OF THE OFFERING PLAN.**

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

---

**TABLE OF CONTENTS**  
**PART I**

|                                                                             | <u>Page</u> |
|-----------------------------------------------------------------------------|-------------|
| SPECIAL RISKS .....                                                         | iv          |
| I. INTRODUCTION .....                                                       | 1           |
| II. DEFINITIONS .....                                                       | 9           |
| III. DESCRIPTION OF PROPERTY AND IMPROVEMENTS .....                         | 11          |
| IV. LOCATION AND AREA INFORMATION .....                                     | 13          |
| V. SCHEDULE A .....                                                         | 16          |
| VI. SCHEDULE B .....                                                        | 20          |
| VII. SCHEDULE B-1 .....                                                     | 25          |
| VIII. COMPLIANCE WITH REAL PROPERTY LAW SECTION 339-i .....                 | 27          |
| IX. CHANGES IN PRICES OF RESIDENTIAL UNITS .....                            | 28          |
| IXA. INTERIM LEASES .....                                                   | 29          |
| X. PROCEDURE TO PURCHASE .....                                              | 29          |
| XI. FINANCING FOR QUALIFIED PURCHASERS .....                                | 38          |
| XII. EFFECTIVE DATE OF THE PLAN .....                                       | 41          |
| XIII. TERMS OF SALE .....                                                   | 43          |
| XIV. CLOSING COSTS AND ADJUSTMENTS .....                                    | 47          |
| XV. RIGHTS AND OBLIGATIONS OF THE SPONSOR .....                             | 51          |
| XVI. CONTROL BY THE SPONSOR .....                                           | 62          |
| XVII. BOARD OF MANAGERS .....                                               | 64          |
| XVIII. RIGHTS AND OBLIGATIONS OF UNIT OWNERS AND BOARD OF<br>MANAGERS ..... | 73          |
| XIX. REAL ESTATE TAXES .....                                                | 84          |

**TABLE OF CONTENTS (continued)**  
**PART I**

|         |                                                                                            | <u>Page</u> |
|---------|--------------------------------------------------------------------------------------------|-------------|
| XX.     | INCOME TAX DEDUCTIONS TO RESIDENTIAL UNIT OWNERS<br>AND TAX STATUS OF THE CONDOMINIUM..... | 86          |
| XXI.    | OPINION OF COUNSEL .....                                                                   | 87          |
| XXII.   | RESERVE FUND.....                                                                          | 92          |
| XXIII.  | WORKING CAPITAL FUND .....                                                                 | 92          |
| XXIV.   | MANAGEMENT AGREEMENT, CONTRACTS AND LEASES.....                                            | 92          |
| XXV.    | IDENTITY OF PARTIES .....                                                                  | 93          |
| XXVI.   | REPORTS TO RESIDENTIAL UNIT OWNERS.....                                                    | 95          |
| XXVII.  | DOCUMENTS ON FILE.....                                                                     | 95          |
| XXVIII. | GENERAL.....                                                                               | 95          |
| XXIX.   | SPONSOR'S STATEMENT OF SPECIFICATIONS<br>OR BUILDING CONDITION .....                       | 96          |

## **PART II - SCHEDULES**

|                                                                            | <u>Page</u> |
|----------------------------------------------------------------------------|-------------|
| D PURCHASE AGREEMENT .....                                                 | 96          |
| D-1 LIMITED WARRANTY .....                                                 | 120         |
| D-2 FORM TO RELEASE ESCROW FUNDS.....                                      | 130         |
| D-3 WAIVER OF NOTICE OF CLOSING. ....                                      | 131         |
| D-4 EXPRESS ASSUMPTION OF RISK .....                                       | 132         |
| D-5 TENDER OF ESCROW FORM.....                                             | 133         |
| D-6 MORTGAGE CONTINGENCY RIDER.....                                        | 134         |
| E POWER OF ATTORNEY .....                                                  | 136         |
| F FORM OF DEED.....                                                        | 143         |
| G DESCRIPTION OF PROPERTY (SPECIFICATIONS<br>AND BUILDING CONDITION) ..... | 146         |
| 1. Site Plan .....                                                         | 160         |
| 2. Unit Plans .....                                                        | 161         |
| 3. Elevations.....                                                         | 165         |
| H FEE TITLE DESCRIPTION.....                                               | 169         |
| I DECLARATION OF CONDOMINIUM .....                                         | 170         |
| J CONDOMINIUM BY-LAWS .....                                                | 195         |
| K ESCROW AGREEMENT .....                                                   | 234         |
| L CERTIFICATIONS                                                           |             |
| 1. SPONSOR .....                                                           | 242         |
| 2. SPONSOR'S ENGINEER (OR ARCHITECT) .....                                 | 248         |
| 3. SPONSOR'S EXPERT CONCERNING ADEQUACY<br>OF BUDGET .....                 | 250         |
| M SECTION 339-KK OF THE REAL PROPERTY LAW .....                            | 252         |
| N HOUSING MERCHANT IMPLIED WARRANTY LAW.....                               | 253         |

## **SPECIAL RISKS**

1. The Sponsor has the right to maintain a majority of the Board of Managers of the Condominium Sponsor initial control period for a period ending (i) three (3) years from date of the closing of the first Residential Unit, or (ii) one hundred and twenty (120) days after the closing of seventy-five (75%) percent of all Residential Units in the Condominium, whichever is later. Thereafter, the Sponsor shall retain the right to designate one (1) Member of the Board of Managers until such time as Sponsor no longer owns a Residential Unit. During said time the individual Residential Unit Owners will not be able to enforce Sponsor's obligations through the Board of Managers. Notwithstanding said fact, Sponsor has the right to voluntarily relinquish a majority of the Members of the Board of Managers before the closing of title to the last Residential Unit. If Sponsor relinquishes control of the Board of Managers there is no provision in the By-Laws that requires a majority of the Board of Managers to be owner occupants who are unrelated to the Sponsor or its principals. Owner-occupants and non-resident owners, including Sponsor, may have inherent conflicts on how the Condominium should be managed as a result of their different reasons for purchasing, i.e. purchasing a Residential Unit to live in as opposed to purchasing as an investment. See Sections XVI and XVII of the Offering Plan.

2. Paragraph 28 of the Purchase Agreement provides as follows:

"28. Restrictions on Sale. Purchaser covenants and agrees to retain ownership in the Residential Unit for a period of two (2) years from the date Purchaser acquired the Residential Unit, except in the case of the death of Purchaser or spouse. Failure to abide by this requirement shall result in the Purchaser paying the Seller a sum equal to 25% of the difference between the new purchase price of the Residential Unit and the Purchase Price set forth in paragraph 1 of this Purchase Agreement but in no event less than 10% of the purchase price set forth in paragraph 1 of this Purchase Agreement. The provisions of this Paragraph shall survive delivery of the deed and the closing of title." See Section I of the Offering Plan."

3. If Sponsor does not voluntarily relinquish control of the Board of Managers, the Sponsor will have the right to retain control over certain expenditures and fiscal actions of the Board of Managers of the Condominium for a period ending not more than five (5) years after the closing of the first Residential Unit or whenever the unsold Residential Units constitute less than twenty-five (25%) percent of the Common Interest, whichever is sooner. During this period the Sponsor will have control of maintenance, facilities and services to be provided and will determine the Common Charges to be paid by all Unit Owners, including the Sponsor and will also have control over the enforcement of the Sponsor's obligations. During this period, Sponsor will have the right to control all decisions including but not limited to the determination of Common Expenses, management of the Condominium, the hiring and termination of employees of the Condominium, placing easements on the property and making improvements to Common Elements. Purchasers individually or as a group may take legal or administrative action to enforce the Sponsor's obligations to the Condominium.

However, they will be unable to do so in the name of the Condominium. In addition the funds utilized for such actions will either have to be obtained by a special assessment of all Unit Owners excluding the Sponsor or obtained through independent funds of the Unit Owners. In the event the Unit Owners are unsuccessful in an action against the Sponsor, Sponsor has the right to request that the court or administrative department hearing the action grant the Sponsor reimbursement of legal fees, which would be payable by the Unit Owners, excluding the Sponsor. At no time may Sponsor exercise veto power over expenses described in Schedule B or over expenses required to (i) comply with applicable laws or regulations, (ii) to remedy any notice of violation, (iii) to remedy any work order by an insurer, or (iv) remedy a matter regarding the health and safety of the occupants of the Building. See Section XVI of the Offering Plan and Schedule B.

4. Sponsor will endeavor in good faith to sell the Residential Units in the Condominium. However, Sponsor is retaining the unconditional right to rent rather than sell the Residential Units, upon consummation of the Plan. Because Sponsor is retaining the unconditional right to rent rather than sell the Residential Units, this plan may result in the creation of a condominium in which a majority of the Residential Units are not owned by owner-occupants or investors who are unrelated to the Sponsor. Due to the fact Sponsor is not limiting the conditions under which it will rent rather than sell the Residential Units, there is no commitment to sell more Residential Units than the fifteen (15%) percent necessary to declare the plan effective and owner-occupants may never gain effective control and management of the Condominium. See Section I of the Offering Plan.

5. Sponsor is transferring its statutory obligation to pay New York State Transfer Tax of 0.4% of the Purchase Price where the consideration is less than \$3,000,000 and 0.65% of the Purchase Price where the consideration is \$3,000,000 or greater; New York City Real Property Transfer Taxes of one (1%) percent of the Purchase Price where the consideration is less than \$500,000 and 1.425% where the consideration is \$500,000 or greater. Both taxes are considered additional consideration on which the respective tax is based. In addition, the Purchaser will be responsible for New York State Mansion Tax pursuant to Section 1402-a of the Tax Law of one (1%) percent of the Purchase Price for any Residential Unit which has a combined sales price of \$1,000,000 or more.

The Mansion Tax is required to be paid by the Purchaser, however the Tax Law was amended to provide that when the Purchaser fails to pay the tax, the seller is required to pay. When the seller is required to pay the additional tax because the Purchaser failed to pay, the additional tax becomes the joint and several liability of the seller and the Purchaser.

The Tax Law was amended to provide for an addition to the base tax (additional base tax) in the amount of \$1.25 for each \$500, or fractional part, of the consideration for certain conveyances of real property located in New York City. The tax applies to:

- The conveyance of residential real property where the consideration for the entire conveyance is \$3 million or more.
- The conveyance of real property other than residential real property where the consideration for the entire conveyance is \$2 million or more.

The seller is required to pay the additional base tax, but here Sponsor is transferring its statutory obligation to the Purchaser. If the seller fails to pay the tax or is exempt from the tax, the Purchaser is required to pay the tax. When the Purchaser is required to pay the tax because the seller has failed to pay, the additional base tax becomes the joint and several liability of the seller and the Purchaser. For purposes of the additional base tax, all mixed-use real property is considered residential real property. Therefore, if the consideration for the conveyance of mixed-use real property is \$3 million or more, the entire consideration is subject to the additional base tax.

Residential real property includes any premises that is or may be used in whole or in part as a personal residence, and includes a one-, two- or three-family house, an individual condominium unit or a cooperative apartment unit. Mixed-use real property is real property that is used for both residential and other than residential (for example, commercial) purposes.

The Tax Law was also amended to add a supplemental tax on the conveyance of residential real property located in New York City where the consideration for the conveyance is \$2 million or more. The supplemental tax differs depending on the amount of the consideration for the entire conveyance. For example: entire conveyance amount of at least \$ 2 million but less than \$ 3 million = Supplemental tax rate of one-quarter of one percent (.25%), and entire conveyance amount of at least \$ 3 million but less than \$ 5 million = Supplemental tax rate of one-half of one percent (.5%). The Purchaser is required to pay the supplemental tax. If the Purchaser fails to pay the tax or is exempt, the seller is required to pay the tax. When the seller is required to pay the tax because the Purchaser has failed to pay, the supplemental tax becomes the joint and several liability of the seller and the Purchaser. The supplemental tax is due on the conveyance of mixed use real property when the consideration for the entire property is \$2 million or more. Tax is computed only on the consideration attributed to the residential portion of the property. See Section XIV of the Offering Plan as to how the above taxes are calculated. See the Purchase Agreement set forth as Schedule D.

6. Sponsor has not been required to post a completion bond with the City of New York covering the Common Elements. In addition, no bond has been posted to secure Sponsor's obligations under the Offering Plan. See Section XV.

7. Although all funds received by Sponsor for upgrades or extras to a Residential Unit will initially be placed in the Escrow Account as described in Section X of the Offering Plan, such funds may be released from the Escrow Account as long as the Sponsor uses the funds for such upgrade or extra. As a result, in the event a Purchaser is entitled to rescission, the Purchaser will not receive a refund of any funds paid to the Sponsor for upgrades or extras. In the event the Offering Plan is

abandoned, the Sponsor will return funds received for upgrades or extras. See Section X of the Offering Plan.

8. In the event Sponsor still retains a Unit during the first year of Condominium operation, the first annual meeting of the Residential Unit Owners may not be held until one (1) year after the date of the closing of title to the first Residential Unit in the Condominium.

9. Sponsor reserves the right to delay the commencement of collection of Common Charges. During any such delay, the Sponsor will timely pay all expenses of the Condominium, including but not limited to insurance premiums and any reserve fund payments required by lenders. Upon commencement of collection of Common Charges, there will not be an assessment for any item set forth in the approved budget for the Condominium. Sponsor shall remain obligated to update the budget for the Condominium as provided for in governing regulations. In the event Sponsor elects to delay the collection of Common Charges, it will disclose such a fact in the closing notice to Purchasers and will further disclose such fact in the Post-Closing Amendment to the Offering Plan. Such Amendment will also disclose the anticipated period of delay. Sponsor will notify all Owners in writing 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 following Amendment to the Offering Plan.

10. No Residential Unit Owner will be permitted to make any addition, alteration or improvement (of either a temporary or permanent nature) of a structural nature in or to the Residential Unit Owner's Residential Unit, or any Residential Unit Limited Common Element, without the prior written approval of the Board of Managers. Said provision requiring the written consent of the Board of Managers does not apply to the Sponsor. See Article Twenty of Schedule I and Article VIII of Schedule J.

11. The obligations of a purchaser under a Purchase Agreement are not conditioned on obtaining financing. Any prospective purchaser who executes as Purchase agreement and does not obtain financing may lose his or her deposit if he or she is unable to otherwise raise the monies for the balance of the purchase price. Prospective purchasers who require financing are advised to consult with a lending institution before execution of a Purchase Agreement. No representation is made by the sponsor as to the availability or cost of such financing. In no event will the Sponsor be obligated to return a Purchaser's down payment in the event a Purchaser is unable to obtain a mortgage. In addition, the Purchase Agreement will remain in full force and effect and Purchaser will be obligated to pay the balance of the purchase price at closing regardless of the availability of financing. In the event a Purchaser does not close title to the Home as a result of their inability to obtain a mortgage, the down payment plus the cost of any custom work ordered, will be retained by Sponsor as liquidated damages.

Notwithstanding the foregoing, the Sponsor has engaged the following lenders to be the on-site mortgage consultants throughout the sales process (the "Preferred Lenders"):

Popular Community Bank  
85 Broad Street  
New York, NY 10004  
Attn: Philip Robles  
Sr. Home Lending Officer  
Tel: (917) 405-4536

Wells Fargo Home Mortgage  
150 E 42nd Street, 32nd Floor  
New York, NY 10017  
Attn: Alan Kreit  
Private Mortgage Banker  
Tel: (212) 214-7534

Purchasers that complete a loan application and obtain a pre-approval letter for mortgage financing from either of the Preferred Lenders will be given a mortgage contingency in their Purchase Agreement, in which case the Purchase Agreement will be contingent upon financing.

In the event Purchaser elect to utilize the Preferred Lenders, the obligation of Purchaser to purchase under this Agreement shall be conditioned upon issuance, on or before forty five (45) days after a fully executed copy of the Purchase Agreement is given to Purchaser, or Purchaser's attorney, in the manner set forth therein, (hereinafter called the "Commitment Date"), of a written commitment from one of the Preferred Lenders, pursuant to which the Preferred Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, in the amount equal to eighty (80%) percent of the total purchase price of the Unit, for a term of at least thirty (30) years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or adjustable rate of interest and on other customary commitment terms, (hereinafter called the "Commitment"). To the extent a Commitment is conditioned on Preferred Lender's approval of an appraisal, the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met. Purchaser's obligations are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this Agreement even if the Commitment lapses or expires prior to the Closing, except as mentioned herein, the Preferred Lender fails or refuses to fund the loan or revokes the Commitment for any reason, including, but not limited to, a change in Purchaser's financial condition or employment, or Purchaser's inability or refusal to pay all required costs, fees and expenses to extend the Commitment up to the Closing.

PURCHASER UNDERSTANDS THAT PURCHASER IS FREE TO SEEK FINANCING DIRECTLY FROM OTHER LENDERS, EITHER SOLELY OR PARALLEL WITH THE APPLICATION TO THE PREFERRED LENDER, BUT THE CONTINGENCY CONTAINED IN THIS AGREEMENT SHALL ONLY APPLY IF AN APPLICATION ON THE ABOVE-SPECIFIED TERMS IS MADE IN GOOD FAITH TO THE PREFERRED LENDER AND IS DILIGENTLY PURSUED. THEREFORE, REFUSAL BY ANY LENDER TO MAKE A COMMITMENT TO PURCHASER WILL NOT ENTITLE

PURCHASER TO CANCEL THIS AGREEMENT OR RECEIVE A REFUND OF THE DEPOSIT.

Any purchaser who executes a purchase agreement and does not obtain financing through the Preferred Lenders may lose the deposit if unable to pay the balance of the purchase price. Prospective 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 Sponsor as to the availability or cost of such financing.

The Sponsor makes no representation as to the Lenders compliance with Fannie Mae, Freddie Mac or FHA loan requirements. Purchasers are directed to contact the individual Lenders to confirm compliance with same.

Sponsor represents that the Condominium complies with the Preferred Lenders current requirements applicable to condominiums, including, without limitation, the amount of the reserve fund contained in the Schedule B and the terms of the Condominium By-Laws. The Preferred Lenders have indicated that they will close a loan with a minimum of 15% of the Units being offered for sale in contract and may require up to ninety (90%) percent of the Units to be sold to owners for occupancy or investment.

*Note that under New York law, when a mortgage commitment is not fulfilled through no fault of Purchaser, performance is excused. Sponsor may not condition Purchaser's obligations upon obtaining a commitment. If Purchaser acts in good faith and lender revokes a commitment after contingency period expires, performance is excused.*

See Section XII of the Offering Plan and Exhibit D-6 Mortgage Contingency Rider for a full description of the contingency language contained within the Mortgage Contingency Rider.

12. Sponsor may declare the Plan effective by selling a minimum of fifteen (15%) percent of the Residential Units being offered for sale. Even if the Plan is declared effective with a minimum number of sales, it is possible that the Sponsor may be able to close Residential Units with fewer than the minimum number of sales, if Purchasers counted towards effectiveness do not ultimately purchase a Residential Unit. Purchasers should note that in the current real estate market, banks and other lenders are imposing various restrictions on purchase financing. Such restrictions include requiring that a certain percentage of apartments in a building or group of buildings be sold before a lender will consider making a loan. Thus, it may be possible for a purchaser to experience difficulty obtaining a loan in a building or group of buildings where the sponsor or holder of unsold shares has not sold a substantial percentage of the apartments in the building or group of buildings, which in some cases may be as high as seventy (70%) percent. 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 ten (10%) percent or more. It also may be difficult for a purchaser to resell an apartment if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions.

Notwithstanding the fact that not all Purchasers used for purposes of declaring the Plan effective may actually close, the Sponsor will re-declare the Plan effective if all purchase agreements are either rescinded or terminated prior to the date of first Unit Closing, regardless of whether the Condominium Declaration has been recorded.

See Section XII as to the requirements of declaring the Plan effective.

13. In the event Sponsor is unable to convey title to a Residential Unit twelve (12) months after the proposed date of delivery set forth in the Purchase Agreement a Purchaser shall have the option to cancel the Purchase Agreement and have the downpayment advanced by Purchaser returned to Purchaser. Purchaser shall be obligated to notify the Sponsor in writing of its intent to exercise said option no later than thirty (30) days after the twelve (12) month period. Failure to so notify Sponsor shall be deemed a waiver of this provision, and Purchaser shall continue to be bound by the terms of the Purchase Agreement. In addition, in the event Sponsor is not able to close title to a Unit within twelve (12) months of the projected date of the commencement of the first year of condominium operation, purchasers will be offered rescission. See Paragraph 6 of the Purchase Agreement in Part II of the Plan.

14. All deposits received from Purchaser will initially be deposited into an escrow account of the law firm of Moritt Hock & Hamroff LLP (the "Escrow Agent") located at 1407 Broadway, 39<sup>th</sup> Floor, New York, New York 10018, as described in Section X of the Offering Plan. The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured. In the event Purchasers have accounts at the same bank as the bank holding the escrowed funds, Purchaser's funds at the escrow bank will factor into the \$250,000 insurance limit.

15. The Board of Managers has the right to borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements provided, however, that no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the written consent of the Unit Owners of said Unit.

16. The projections for the first year of operation of the Condominium contained in the budget are only estimates and the actual expenses may vary from the amounts shown. Purchasers should further note that premiums for insurance have been extremely volatile and have increased substantially in recent years. Sponsor cannot predict whether or not the insurance rates will continue to increase or stabilize. Sponsor makes no representation that the premium costs for the insurance reflected in the proposed first year budget will be applicable at the time of the first closing of a Residential Unit in the Condominium. Furthermore, the insurance estimates do not

include any amount for flood insurance, which may be required in the future. See Schedule B, the proposed first year budget and the footnotes immediately following thereto.

17. Purchasers should note that it shall be the responsibility of each Purchaser to pay the following additional closing costs: (a) an initial non-reimbursable capital contribution equal to two (2) months Common Charges to the Condominium; and (b) \$2,500 to Sponsor's attorney for the preparation of the closing documents. See Section XIV of the Offering Plan.

18. Purchasers should be aware that they may be living in an active construction site after they close on their Residential Unit. During this period of construction there may be dirt and debris and construction material on site, construction vehicular traffic, construction noises, unfinished areas of the Development and other inconveniences which are normal in a community undergoing construction.

19. If through no fault of Sponsor, Purchaser fails for any reason to close title after the date originally scheduled in Sponsor's Notice of Closing or such later date (if applicable) to which Sponsor in a subsequent Notice for Closing adjourned the Closing, all of the apportionments shall be made as of midnight of the day preceding (i) the date originally scheduled for Closing or (ii) Sponsor's adjourned Closing Date (as the case may be).

In addition, Purchaser shall pay to Sponsor at or prior to the actual Closing an amount equal to .0438% per day (which equals an annual rate of 16%) of the purchase price for the Unit for each day beyond such originally scheduled or Sponsor adjourned Closing Date, to and including the date of actual Closing, for reimbursement and defrayal of Sponsor's carrying costs and other charges. See Section XIV of the Offering Plan.

20. Purchasers should note that if a Purchaser fails to appear and close title in accordance with this Purchase Agreement on the date and at the time and place stated in Seller's Notice for Closing, or if Purchaser fails to observe or perform any other thing to be observed or performed by Purchaser under this Purchase Agreement, Seller may send Purchaser a written notice of default giving Purchaser thirty (30) days from the date of such notice to cure any such default, **time being of the essence**. See Paragraph 21 of the Purchase Agreement in Part II of the Offering Plan.

21. The square footage of each Residential Unit has been based on the area from the exterior side of the exterior walls of the Building, approximately to the centerline of the interior partitions separating the Residential Units and to the exterior side of the partitions separating the Residential Units from the public corridors, stairs or elevator. As such the areas are not based upon measurements from interior surfaces of interior walls, and the actual floor area comprising the Residential Unit is significantly less than the area listed in Schedule A.

22. 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 Department of Buildings ("DOB"). A TCO is intended to indicate that the property is safe for occupancy, but means that not all of the construction work and/or inspections have been performed, or that not all of the required documents have been submitted to the DOB. All TCOs have an expiration date. A TCO typically expires 90 days after the date of issuance. When a TCO expires and is not renewed, it may be difficult or impossible to buy insurance, refinance, or sell units. In New York City, it is common for sponsors to commence unit closings when some or all units are covered by a TCO rather than a FCO. Sponsor anticipates this scenario may occur. Sponsor and its principals will undertake the responsibility for extending each TCO received prior to expiration thereof, and ultimately for obtaining a FCO covering the entire building within two years from the date of the issuance of the first TCO. However, Sponsor and its principals make no representation or guarantee that DOB will issue the FCO within such two year period. Notwithstanding the foregoing, Sponsor and its principals are obligated to procure the FCO for the entire building, and shall exercise best efforts to obtain the FCO within such two year period while keeping the TCO current. Unit owners and Board of Managers shall be obligated to cooperate with and refrain from obstructing sponsor in these undertakings.

Furthermore, because Sponsor and the By-laws of the Condominium may permit Unit Owners to undertake renovations to individual Units prior to the procurement of an FCO, such renovations may cause additional delays in the issuance thereof. Notwithstanding the foregoing, Sponsor and its principals are obligated to procure the FCO. Purchasers are advised to visit the DOB website for further recommendations when purchasing a Unit in a Building that does not have an FCO. A factsheet on Certificates of Occupancy is available on the DOB website at: [http://www.nyc.gov/html/dob/downloads/pdf/co\\_factsheet.pdf](http://www.nyc.gov/html/dob/downloads/pdf/co_factsheet.pdf).

In the event Sponsor obtains a TCO for the Building, a tenant protection plan will be put in place prior to any occupancy of the Building.

23. Purchasers should note there is a rebuttable presumption that a variation of five (5%) percent or less in the estimated square footage of the Units, closet space and/or cabinets shall not be considered a material adverse change. See Section IX of the Offering Plan.

24. Purchasers should note that the Sponsor reserves the right to select the ultimate location of kitchen and bathroom cabinets, which may differ from the locations set forth on the floor plans. In the event an affected Unit is under contract, Sponsor shall first obtain consent from the Purchaser of said Unit. Furthermore, no material

change to the kitchen and bathroom cabinets will be made without prior consent of affected Purchasers. See Section XV of the Offering Plan.

25. Purchasers should note Sponsor excludes the specific warranties of Article 36-B of the GBL and all other warranties and is instead providing each purchaser with a limited warranty, Limited Warranty. Notwithstanding the foregoing, the Sponsor's obligation, regardless of any limitations in the warranty or in this Offering Plan, is to construct the premises in accordance with all applicable codes and filed plans and specifications (as same may be amended), and that any conflict between the disclaimers and the Sponsor's obligation to construct the premises in accordance with all applicable codes and filed plans and specifications (as same may be amended) shall be resolved in favor of the latter. See Section XV of the Plan.

This Development is subject to the New York State Housing Merchant Implied Warranty Law, Article 36-B of the General Business Law, which pertains to warranties on the sale of certain new Residential Units. This law is applicable to all Residential Units offered for sale under this Plan. Pursuant to the terms of this law, the Sponsor is giving a Limited Warranty to Purchasers which provides for a Limited Warranty on certain items. The limitations contained in the Limited Warranty are noted as follows: the Limited Warranty provides coverage for the first Residential Unit Buyer only, not to subsequent purchasers; Sponsor's liability is limited to Fifty Thousand (\$50,000.00) Dollars; incidental, special, indirect consequential or other similar damages are excluded; and detailed procedures must be followed for giving notice of a warranty claim to Sponsor, and for commencing a lawsuit against Sponsor. See Part II of the Plan, Schedule N.

Purchasers are advised to review Section XV of the Offering Plan, entitled Rights and Obligations of the Sponsor, which discusses items that are not considered material adverse conditions.

26. Purchasers should note that the Storage Closet may not be used to store any combustible material or other items that may be illegal or cause the Condominium insurance to be increased.

27. No representation is made that the reserve fund will be adequate for future replacements of Common Elements. If additional funds are required over and above the reserve fund, it may be necessary to increase the Common Charges payable by the Unit Owners or to collect a Special Assessment from each Unit Owner.

28. Purchasers should note, it is expected that no superintendent will be employed and that routine maintenance will be undertaken by the Unit Owners. Should the Board of Managers elect at any time to employ the services of a superintendent this will represent an additional cost, which would result in a concomitant increase in the Common Charges. Activities the Unit Owners will need to perform in the event no superintendent is employed include cleaning, painting, bulb replacement, snow removal, landscaping and minor repairs.

29. The insurance coverage provided for in the Budget does not include officers' and directors' liability, rent insurance, water damage, auto collision, auto liability, flood insurance, fidelity bond or excess liability insurance, all of which may be available at extra cost.

30. Sponsor has obtained construction financing (the "Construction Loan") from Columbia Bank, 19-01 Route 208 North, Fair Lawn, New Jersey 07410 ("Construction Lender"), which has enabled Sponsor to construct the Development. The Sponsor will be obligated to pay off and otherwise comply with the terms of the Construction Loan on the entire Condominium. After the recording of the Declaration and before the closing of title to the first Unit, any Construction Loan mortgage will be satisfied, or released, or subdivided, extended and consolidated with the individual permanent mortgages, which will be placed on the Units of those Purchasers obtaining a mortgage. In addition, before the closing of title to the first Unit, all liens and mortgages affecting the Condominium shall be paid and satisfied or the Unit being conveyed and its appurtenant Common Interest shall be released therefrom by partial release duly recorded. In order to obtain partial releases, the Construction Lender will require that the Sponsor pay a release price on the sale of each Unit, until the loan is repaid in full. The terms of the Construction Loan contemplate the project as a "for-sale" condominium project.

31. If additional funds are required over and above the reserve fund, it may be necessary to increase the Common Charges payable by the Unit Owners or to collect a Special Assessment from each Unit Owner.

32. The Sponsor anticipates that the first closing of a Unit will occur by May 1, 2020. Purchasers will be offered a right of rescission if: (i) the actual date of closing of title to the first Unit; or (ii) the projected date of closing of title to the first unit occurs later than April 30, 2021, twelve (12) months after the projected date for the first Unit closing. If the Plan is amended to provide for a later projected date for the first Unit closing, Purchasers will be entitled to an offer of rescission if the first closing occurs more than twelve (12) months beyond that amended, later date.

However, if the first Unit closing occurs before April 30, 2021, the Sponsor may schedule the closings of title to other Units significantly later than such date. Unless your Purchase Agreement contains an outside closing date, the Sponsor is not obligated to schedule your closing within any specified time frame or to ensure that closing of title to your 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.

33. Purchasers should note that the roofing system will have a two-year minimum manufacturer's warranty. The warranty is issued by manufacturer and installation to shall comply with the manufacturer's requirements. It is expected that the roofing system will have a minimum useful life of up to 10 years from the date of final

installation. See the Description of Property Report included as Schedule G in Part II of the Offering Plan.

34. In compliance with Local Law 147 and pursuant to Article 17 of the New York City Administrative Code, the Board of Managers (the "Board") of 5811 6th Avenue Condominium (the "Condominium"), have adopted the following smoking policy (the "Smoking Policy") for the Building:

Smoking is PROHIBITED (i) in all commons areas of the Building, including, but not limited to, the lobby, entryways, vestibules, ante rooms, mail rooms, storage rooms, bike rooms, common rooms, amenity rooms, gym, roof decks, garbage chute rooms, compactor rooms, basement, corridors, hallways, stairwells, elevators, playroom, garage, garage ramp, walkways; and (ii) within twenty-five (25) feet of any outside entrance to the Building or within twenty-five (25) feet of any outdoor air intake or operable window opening onto Common Elements or Units.

For the purposes of this Smoking Policy, the term "smoking" includes, but is not limited to, inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or any other form of lighted object or device which contains tobacco, including the use of electronic cigarettes or any similar device that delivers vapor for inhalation (including any refill, cartridge or other component of an electronic cigarette or similar device), or any other items or materials that may be smoked, whether such substance is a legal substance or an illegal substance. This Smoking Policy applies to all unit owners, tenants, subtenants, occupants and residents of the Building, and to any guests, agents, licensees and invitees of a Unit Owner. It is the Unit Owner's responsibility to ensure that its tenants, subtenants, occupants, residents, guests, agents, licensees and invitees comply with this Smoking Policy.

Smoking is PERMITTED within individual apartments and on the terraces, balconies, patios and yards attached to individual apartments (except within twenty-five (25) feet of any outside entrance to the Building or within twenty-five (25) feet of any outdoor air intake or operable window opening onto Common Elements or Units). However, if there are reported and substantiated incidents of infiltration of smoke/smoke odors into common areas of the Building (including, but not limited to, hallways) and/or other apartments in the Building, it will be the offending Unit Owner's responsibility, at its sole cost and expense, to abate the nuisance.

Any Unit Owner who sells, leases, or subleases its apartment must include a copy of this Smoking Policy in the contract of sale, lease or sublease.

In the event of a violation of this Smoking Policy, in addition to and not in diminution of, all other remedies available to the Condominium, as provided in its Declaration of Condominium and By-Laws, or at law or in equity, with regard to a default by the Unit Owner, the Board shall have the right to impose an administrative fee in the amount of Two Hundred Fifty (\$250.00) Dollars on the Unit Owner for each such

violation of this Smoking Policy. A continuing violation shall be considered a new violation.

35. Purchasers should note that on November 15, 2018 the Financial Crimes Enforcement Network ("FinCEN") announced the issuance of an updated Geographic Targeting Order ("GTO"), which requires U.S. title insurance companies to report to FinCEN the personal identity of purchasers in residential real estate transactions in which: (1) the purchaser is a legal entity as defined in the GTO; (2) the purchaser purchases residential real property (including condominium units) located in the Boroughs of Bronx, Brooklyn, Queens, Manhattan and Staten Island; (3) the total purchase price is in an amount of \$300,000 or more; (4) such purchase is made without a bank loan or other similar form of external financing; and (5) the purchase is made, at least in part, using currency or cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, a funds transfer, or virtual currency.

As long as the updated GTO remains in effect, the reporting requirements set forth above apply to all residential real property closings (including condominium units) meeting the above criteria and occurring on or after November 17, 2018.

Further information regarding the revised GTO is available at the following web address: [https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC\\_111518\\_FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC_111518_FINAL.pdf)

See Section XI of the Offering Plan.

36. The architect who prepared the report in Part II and who executed the Certification in Part II is Ahmed Emara, AIA, LEED GA, 1133 Broadway, Suite 1607, NY, NY 10010. Mr. Emara has had prior experience in the preparation of plans and specifications for other condominiums and home owner associations in the Metropolitan area. Mr. Emara is an independent licensed architect, however he has collaborated and worked with Jorge Mastropietro Architect Atelier, PLLC, which is owned and controlled by a Principal of the Sponsor.

**96 16<sup>th</sup> STREET CONDOMINIUM**  
**PLAN OF CONDOMINIUM OWNERSHIP**

**I. INTRODUCTION**

This is an Offering Plan (the "Plan") for the sale of four (4) Residential Units (the "Residential Units") in a Condominium to be known as 96 16<sup>th</sup> Street Condominium located at 96 16<sup>th</sup> Street, Brooklyn, New York 11215.

The purpose of the Plan is to set forth all material terms of the offer for the benefit of Prospective Purchasers.

The Plan may be amended at any time and from time to time provided that the amendment is duly filed with the Department of Law of the State of New York and is served on Purchasers and Residential Unit Owners.

A Declaration submitting the property to Article 9-B of the Real Property Law of the State of New York (hereinafter referred to as the "Condominium Act") and By-Laws will be recorded prior to conveyance of title to the first Residential Unit by the Sponsor. The property will be subject to the Condominium Act. The Declaration and By-Laws will be substantially similar to those set forth in this Offering Plan and will not be changed so as to adversely affect the Purchaser. This Offering Plan and the accompanying documentation should be carefully studied by Prospective Purchasers and their attorneys prior to the purchase of a Residential Unit. The Condominium is subject to and complies with the New York Condominium Act.

The Sponsor of the Offering Plan is 96 16<sup>th</sup> Street LLC. Sponsor acquired the property by deed dated August 14, 2014.

The Condominium will contain four (4) Residential Units located in a four (4) story building. The Condominium will consist of a total lot area of approximately 2,500 square feet.

The Condominium will not contain any parking facilities.

The purpose of the Plan is to set forth all the terms of the offer for the benefit of prospective Purchasers.

All portions of the Condominium, excluding the Units, are Common Elements of the Condominium. The Common Elements are divided into General Common Elements for use by all Unit Owners and Limited Common Elements which are Common Elements irrevocably restricted in use to specified Residential Units and Residential Unit Owners.

The Sponsor has not reserved any air development rights.

A. General Common Elements - General Common Elements are those shared by all Unit Owners and include all portions of the Condominium except for the individual Units and the Limited Common Elements (irrevocably restricted in use to specified Residential Units or Residential Unit Owners) and include without limitation the following:

1. The land on which the Building is erected and all other land within the boundaries of the property;
2. All foundations, columns, girders, beams and supports;
3. Those portions of the walls and partitions dividing Residential Units located between the unexposed faces of the sheetrock walls enclosing the Residential Units; those portions of the ceilings of the highest floor above the unexposed face of the sheetrock;
4. Roofs, stairs and stairways, which are not located wholly within a Residential Unit and entrances to and exits from a Building other than entrances to the individual Residential Units;
5. All improved and unimproved areas of the property outside the boundary of an individual Unit except for any Limited Common Elements;
6. All central and appurtenant installations in the Building or Property that provide service to the entire Building, such as power, light, telephone, television, gas, hot and cold water and heat (including all pipes, ducts, wires, chutes, cables and conduits used in connection therewith located in the Common Elements) and all other mechanical equipment spaces;
7. All sewer pipes and drainage pipes and facilities that provide service to the entire Building or two (2) or more Units;
8. All meter rooms, compactor rooms, refuse rooms, equipment rooms and any other mechanical rooms or areas that service two (2) or more Units;
9. All pedestrian walkways, intended for the common use of all Unit Owners;
10. The intercom system; and
11. All other parts of the property and all apparatus and installations existing in a Building or on the property for common use to all Units or necessary or convenient to the existence, maintenance or safety of the property.

B. Irrevocably Restricted Areas/Limited Common Elements - Certain portions of the Common Elements are irrevocably restricted in use to specified Residential Units or Residential Unit Owners, subject to the right of the Board of Managers of the Condominium to enter upon any restricted area for maintenance, repair or improvement of a Residential Unit or Common Element and subject to the rules of the Board of Managers. Said irrevocably restricted Common Elements are also referred to as a Limited Common Element. Any portion of the Common Elements which is not restricted in use may be used by any Residential Unit Owner. Following are detailed descriptions of the irrevocably restricted Limited Common Elements:

1. The rear yard appurtenant to Residential Units 1 and 2.
2. The porch appurtenant to Residential Unit 3.
3. The roof terrace appurtenant to Residential Unit 4.
4. Any heating, cooling or other mechanical system servicing an individual Residential Unit that is located in or on the Common Elements.
5. All apparatus, installations, systems equipment and facilities in the Common Elements (including pipes, wire, ducts, vents, cables, conduits and lines) which will serve or benefit a Residential Unit exclusively.

See Schedule A.

All general maintenance, repairs and replacements of the rear yard, porch and roof terrace that are Limited Common Elements, including cleaning, snow removal and all repairs not structural in nature (including the repair of leaks and the repair or replacement of the surface of the rear yard, porch and or terrace), shall be the responsibility of the Residential Unit Owner whose rear yard, porch or terrace is a Limited Common Element of their Residential Unit. Although the cost of repairs and replacements to Limited Common Elements shall be borne by the Residential Unit Owners, the Board of Managers shall be charged with performing all repairs and replacements at the Residential Unit Owners sole cost and expense.

All repairs, maintenance and any replacement of any heating, cooling or other mechanical system servicing an individual Residential Unit that is located in or on the Common Elements and/or all apparatus, installations, systems equipment and facilities in the Common Elements (including pipes, wire, ducts, vents, cables, conduits and lines) which will serve or benefit exclusively a Residential Unit shall be the responsibility of the Residential Unit Owner for such equipment services, etc.

The rear yard, porch and terrace are not permitted to be used for storage or trash storage and are not permitted to be enclosed.

No flammable, combustible or explosive fluid, material, chemical or substance is permitted to be stored in a Storage Unit. All maintenance and repair and costs of the Storage Closet will be the responsibility of the Condominium.

There are a variety of different model types of Residential Units. See Schedule G in Part II of the Plan for a detailed description of each model. The land and all improvements to be erected thereon are hereinafter referred to as the "Development" or the "Condominium".

Sponsor will endeavor in good faith to market and sell the Units in the Condominium however, Sponsor is retaining the unconditional right to rent rather than sell the Residential Units, upon consummation of the Plan. Because Sponsor is retaining the unconditional right to rent rather than sell Units this Plan may result in the creation of a condominium in which a majority of the Units are not owned by owner-occupants or investors who are unrelated to the Sponsor. Due to the fact Sponsor is not limiting the conditions under which it will rent rather than sell Units, there is no commitment to sell more Residential Units than the fifteen (15%) percent necessary to declare the plan effective and owner-occupants may never gain effective control and management of the Condominium. In the event Sponsor makes a bulk sale of all or some of its unsold Residential Units, the transferee successor Sponsor will be bound by Sponsor's representations regarding its commitment to sell Units and will also be responsible for all Sponsor's obligations under the Offering Plan with respect to such Units.

Sponsor has obtained construction financing (the "Construction Loan") from Columbia Bank, 19-01 Route 208 North, Fair Lawn, New Jersey 07410 ("Construction Lender"), which has enabled Sponsor to construct the Development. The Sponsor will be obligated to pay off and otherwise comply with the terms of the Construction Loan on the entire Condominium. After the recording of the Declaration and before the closing of title to the first Unit, any Construction Loan mortgage will be satisfied, or released, or subdivided, extended and consolidated with the individual permanent mortgages, which will be placed on the Units of those Purchasers obtaining a mortgage. In addition, before the closing of title to the first Unit, all liens and mortgages affecting the Condominium shall be paid and satisfied or the Unit being conveyed and its appurtenant Common Interest shall be released therefrom by partial release duly recorded. In order to obtain partial releases, the Construction Lender will require that the Sponsor pay a release price on the sale of each Unit, until the loan is repaid in full. The terms of the Construction Loan contemplate the project as a "for-sale" condominium project.

As in the ownership of a private one (1) family home, the Purchaser of a Residential Unit in a Condominium (the "Residential Unit Owner") owns their Residential Unit in fee simple absolute and is entitled to exclusive possession of their Residential Unit. Each Purchaser of a Residential Unit will also own an undivided interest in and right to use the General Common Elements and a right to use the Limited Common Elements that pertain to an individual Residential Unit or to all the Residential Units. A

full description of the General and applicable Limited Common Elements is described above.

Each Residential Unit basically includes the inside face of the exterior walls of the Building, approximately to the apartment side of the facade at the halls and partitions dividing the Residential Units from corridors and stairs, and the centerline of the walls separating one Residential Unit from another. For a detailed description of the Residential Unit to be conveyed see Schedule J, Article Third in Part II of the Plan.

A Unit Owner is required to pay monthly Common Charges assessed by the Board of Managers for the operation and maintenance of the Condominium pursuant to Sections 339-i and 339-m of the New York Condominium Act. Monthly Common Charges may commence with the closing of the first Residential Unit, which is expected to be in May of 2020, however, see Section XVIII as to the right of the first Board of Managers to commence the collection of Common Charges at a subsequent date. Until title to a Residential Unit has passed to a Purchaser, the Sponsor will pay such Common Charges and special assessments as are assessed by the Board of Managers on the Units to which title has not passed. Once title has passed to a Purchaser, the Purchaser will be responsible for all costs, including all Common Charges and individual expenses associated with the Unit, as well as any costs associated with the Limited Common Elements that pertain to the Purchasers' Unit.

Sponsor reserves the right to delay the commencement of collection of Common Charges. During any such delay, the Sponsor will timely pay all expenses of the Condominium, including but not limited to insurance premiums and any reserve fund payments required by lenders. Upon commencement of collection of Common Charges, there will not be an assessment for any item set forth in the approved budget for the Condominium. Sponsor shall remain obligated to update the budget for the Condominium as provided for in governing regulations. In the event Sponsor elects to delay the collection of Common Charges, it will disclose such a fact in the closing notice to Purchasers and will further disclose such fact in the Post-Closing Amendment to the Offering Plan. Such Amendment will also disclose the anticipated period of delay. Sponsor will notify all Owners in writing 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 following Amendment to the Offering Plan.

A Unit Owner, upon acquiring title to their Unit, will be obligated to comply with the Declaration of Condominium, Condominium By-Laws and its rules and regulations and any other requirements of the Board of Managers of the Condominium.

There is no restriction upon ownership of a Residential Unit. Occupancy of a Residential Unit, however, may only be for residential purposes as described in Section XVIII of the Offering Plan. Units can be sold by a Residential Unit Owner, provided that the Unit Owner is not in arrears on the payment of Common Charges (except where the payment of such unpaid Common Charges is paid by the Grantee or provided for out of the proceeds of the sale) and subject to restrictions contained in the mortgage, if any,

covering their Unit. A Purchaser is free to make a gift of their Unit to anyone during their lifetime or to devise their Unit by will, or to have it pass by intestacy without any restriction. No Unit can be sold without a simultaneous sale of the undivided interest in the Limited Common Elements that pertain to the Unit.

Each Residential Unit Owner can sell their Residential Unit to whomever they desire. Residential Unit Owners may lease their Residential Units subject to the conditions contained in Section XVIII of the Offering Plan. The Board of Managers does not have the right to approve or disapprove Purchasers.

The Units can be purchased for all cash or may be purchased partly for cash and partly by mortgage. The Purchase Agreement is not conditioned upon a Purchaser securing satisfactory mortgage financing. Obtaining a mortgage shall be the sole responsibility of each Purchaser. In no event will the Sponsor be obligated to return a Purchaser's down payment in the event a Purchaser is unable to obtain a mortgage. In addition, the Purchase Agreement will remain in full force and effect and Purchaser will be obligated to pay the balance of the purchase price at closing regardless of the availability of financing. In the event a Purchaser does not close title to the Home as a result of their inability to obtain a mortgage, the down payment plus the cost of any custom work ordered, will be retained by Sponsor as liquidated damages.

Notwithstanding the foregoing, the Sponsor has engaged the following lenders to be the on-site mortgage consultants throughout the sales process (the "Preferred Lenders"):

Popular Community Bank  
85 Broad Street  
New York, NY 10004  
Attn: Philip Robles  
Sr. Home Lending Officer  
Tel: (917) 405-4536

Wells Fargo Home Mortgage  
150 E 42nd Street, 32nd Floor  
New York, NY 10017  
Attn: Alan Kreit  
Private Mortgage Banker  
Tel: (212) 214-7534

Purchasers that complete a loan application and obtain a pre-approval letter for mortgage financing from either of the Preferred Lenders will be given a mortgage contingency in their Purchase Agreement, in which case the Purchase Agreement will be contingent upon financing.

In the event Purchaser elect to utilize the Preferred Lenders, the obligation of Purchaser to purchase under this Agreement shall be conditioned upon issuance, on or before forty five (45) days after a fully executed copy of the Purchase Agreement is given to Purchaser, or Purchaser's attorney, in the manner set forth therein, (hereinafter called the "Commitment Date"), of a written commitment from one of the Preferred Lenders, pursuant to which the Preferred Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, in the amount equal to eighty (80%) percent of the total purchase price of the Unit, for a term of at least thirty (30) years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or

adjustable rate of interest and on other customary commitment terms, (hereinafter called the "Commitment"). To the extent a Commitment is conditioned on Preferred Lender's approval of an appraisal, the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met. Purchaser's obligations are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this Agreement even if the Commitment lapses or expires prior to the Closing, except as mentioned herein, the Preferred Lender fails or refuses to fund the loan or revokes the Commitment for any reason, including, but not limited to, a change in Purchaser's financial condition or employment, or Purchaser's inability or refusal to pay all required costs, fees and expenses to extend the Commitment up to the Closing.

PURCHASER UNDERSTANDS THAT PURCHASER IS FREE TO SEEK FINANCING DIRECTLY FROM OTHER LENDERS, EITHER SOLELY OR PARALLEL WITH THE APPLICATION TO THE PREFERRED LENDER, BUT THE CONTINGENCY CONTAINED IN THIS AGREEMENT SHALL ONLY APPLY IF AN APPLICATION ON THE ABOVE-SPECIFIED TERMS IS MADE IN GOOD FAITH TO THE PREFERRED LENDER AND IS DILIGENTLY PURSUED. THEREFORE, REFUSAL BY ANY LENDER TO MAKE A COMMITMENT TO PURCHASER WILL NOT ENTITLE PURCHASER TO CANCEL THIS AGREEMENT OR RECEIVE A REFUND OF THE DEPOSIT.

Any purchaser who executes a purchase agreement and does not obtain financing through the Preferred Lenders may lose the deposit if unable to pay the balance of the purchase price. Prospective 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 Sponsor as to the availability or cost of such financing.

The Sponsor makes no representation as to the Lenders compliance with Fannie Mae, Freddie Mac or FHA loan requirements. Purchasers are directed to contact the individual Lenders to confirm compliance with same.

*Note that under New York law, when a mortgage commitment is not fulfilled through no fault of Purchaser, performance is excused. Sponsor may not condition Purchaser's obligations upon obtaining a commitment. If Purchaser acts in good faith and lender revokes a commitment after contingency period expires, performance is excused.*

See Section XII of the Offering Plan and Exhibit D-6 Mortgage Contingency Rider for a full description of the contingency language contained within the Mortgage Contingency Rider.

A Unit Owner may mortgage their Unit at any time after they acquire title to the Unit in whatever amount and under whatever terms they can obtain. Any Unit Owner may also, upon the resale of their Unit, grant a purchase money mortgage to a Purchaser of their Unit. A Unit Owner may mortgage their Unit only if all arrears for Common Charges, if any, are provided for at the closing of the mortgage.

Primary responsibility for operating the Condominium rests with the Board of Managers who is elected by the Residential Unit Owners. See Schedule J, Article III in Part II of the Plan. For information concerning Sponsor's initial control of the Board of Managers, see Section XVI of the Offering Plan.

Each Residential Unit Owner, upon obtaining title, will automatically have one (1) vote at all meetings of the Unit Owners for each of the Residential Units owned by such Residential Unit Owner.

Each Unit will be taxed separately for real estate tax purposes and may be separately mortgaged. Therefore, no Unit Owner is liable for the payment of real estate taxes or mortgage payments on any other Unit. In the opinion of counsel, a Residential Unit Owner may presently be entitled to deductions for income tax purposes for payments for real estate taxes applicable to their Residential Unit up to a maximum of \$10,000. In addition, provided the Residential Unit will be the Purchaser's principal residence or one (1) other residence selected pursuant to Section 163(h)(5)(A)(i)(II) of the Internal Revenue Code of 1986 and the Tax Cuts and Jobs Act of 2017, a Residential Unit Owner may also deduct the interest on the mortgage they procure to finance the purchase of their Residential Unit for income tax purposes up to a maximum loan amount of \$750,000. See Section XX of the Offering Plan.

Fire and liability insurance covering the General Common Elements are included with other items as part of Common Charges, but fire and liability insurance for the Purchaser's personal effects, the interior of the Residential Unit and the Limited Common Elements for an individual Residential Unit Owner's exclusive use must be carried by the individual Purchaser. Common Charges are levied in proportion to the interest in the "Common Elements" appurtenant to each Unit. For possible increases in Common Charges upon default in payment by a Unit Owner see Section XVIII of the Offering Plan. Each Residential Unit Owner is responsible for the cost of their own interior repairs and decoration in their Residential Unit after closing.

The price of the Residential Units will include only the appliances and fixtures detailed in the Description of Property Report contained in Part II of the Plan. A washer and dryer are not included in the price of a Residential Unit. Installation and the cost of any upgraded appliance or appliance not provided is the sole responsibility of each Residential Unit Owner.

The prices for the Units are set forth in Schedule A. THESE PRICES HAVE BEEN SET BY THE SPONSOR ALONE AND ARE NOT SUBJECT TO APPROVAL BY THE DEPARTMENT OF LAW OR ANY OTHER GOVERNMENTAL AGENCY.

This Offering Plan contains all of the material terms of this transaction. Parts I and II along with Parts A, B, C and D of the Exhibits submitted along with the Offering Plan together constitute the entire Offering Plan. Copies of the Plan and Parts A, B, C and D of the Exhibits will be available for inspection by Prospective Purchasers and their attorneys without charge and for copying at a reasonable charge at the Condominium site whenever the on-site sales office is open, at the office of the Sponsor or any Selling Agent engaged by Sponsor and at the New York State Department of Law, 120 Broadway, 23<sup>rd</sup> Floor, New York, New York 10271.

There are no restrictions on who may purchase a Residential Unit in the Condominium except that this offer is made only to persons over eighteen (18) years of age. Each Residential Unit Owner can sell their Residential Unit to whomever they desire.

**THE PURCHASE OF A CONDOMINIUM UNIT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A PURCHASE AGREEMENT.**

## **II. DEFINITIONS**

The following words as hereinafter referred to shall be defined as follows:

1. "Board of Managers" – The governing body of the Condominium responsible for its affairs.
2. "Board Member" or "Member" – Each individual representative elected, designated or appointed to the Board of Managers.
3. "Building" – The four (4) story building containing four (4) Residential Units.
4. "By-Laws" – The document governing the operation of the Condominium.
5. "Common Charges" – Each Unit Owner's proportionate share of the General Common Expenses as determined in accordance with the Common Interest appurtenant to the Unit.
6. "Common Elements" – All portions of the Condominium, other than the Units. Common Elements are divided into General Common Elements which are Common Elements shared by all Unit Owners, including all sewer and drainage pipes for the Building, and Limited Common Elements which are Common Elements that are irrevocably restricted for the exclusive use of an individual Residential Unit Owner.

7. "Common Expenses" – (a) Expenses incurred by all Unit Owners for the purpose of paying costs of the Condominium in connection with the repair, maintenance, replacement, restoration or operation of, and any alteration, addition or improvement to the General Common Elements; and (b) All sums designated common expenses by or pursuant to the provisions of the Condominium Act, the Declaration or the By-Laws.
8. "Common Interest" – The proportionate, undivided interest each Unit Owner has in the Common Elements.
9. "Community" or "Development" – As used herein refers to 96 16<sup>th</sup> Street Condominium.
10. "Condominium" – 96 16<sup>th</sup> Street Condominium, which is comprised of the Common Elements, Residential Units, and Unit Owners.
11. "Declaration of Condominium" – The instrument by which the property is submitted to the provisions of the Condominium Act, and such instrument as from time to time is amended, consistent with the provisions of the Condominium Act and of the By-Laws.
12. "Equal or better quality" – Comparable or better quality as recognized by industry standards for performance, efficiency, longevity, and/or classifications, as applicable.
13. "Escrow Account" – The attorney's account where a Purchaser's initial deposit will be held as provided for in Section X of the Offering Plan.
14. "Escrow Agent" – The attorney or law firm overseeing the Escrow Account as provided for in Section X of the Offering Plan.
15. "Irrevocably Restricted" or "Limited Common Elements" – A Common Element appurtenant to a particular Residential Unit or Units, the use of which is restricted to the Owners of such Residential Unit or Units.
16. "Purchaser" – The person(s) who have entered into a Purchase Agreement to acquire a Residential Unit and Storage Unit, if applicable, in the Condominium.
17. "Purchase Agreement" – The document to be executed by the Purchaser which will obligate the Purchaser to acquire the Residential Unit and Storage Unit, if applicable, in the Condominium and which will obligate the Seller to sell to Purchaser the Residential Unit and Storage Unit, if applicable, in the Condominium.

18. "Residential Units" – The four (4) Residential Units designated in the Declaration of Condominium for residential use. As used herein the terms "Residential Unit" is equivalent to the term "Unit" in Article 9-B of the Real Property Law of the State of New York.
19. "Sponsor" – 96 16<sup>th</sup> Street LLC, a New York limited liability company with an address at 137 Varick Street, Suite 503, New York, New York 11228 , and its successors and/or assigns.
20. "Unit" – A Unit includes all the Residential Units in the Condominium. As used herein the term "Residential Unit is equivalent to the term "Unit" in Article 9-B of the Real Property Law of the State of New York.
21. "Unit Owner" – A Unit Owner includes all the Residential Unit Owners in the Condominium.
22. "Unsold or Untitled Residential Unit" – Any Residential Unit in which title is retained by the Sponsor and any successors or assigns until such time as the same has been sold and title conveyed to a third party. It shall not include a Residential Unit which is used for personal occupancy of the Sponsor, any of its principals or any of its successors or assigns.

### **III. DESCRIPTION OF PROPERTY AND IMPROVEMENTS**

#### **Improvements – General Description/Topographical Features**

The Condominium as fully developed will consist of four (4) Residential Units set in a new construction, four (4) story, building.

There are a variety of types of Residential Units. The types and number of rooms, layouts and variations of the Residential Units are set forth in the Description of Property Report in Part II of the Plan. The site consists of one (1) building over flat land.

The Building Plans are available for inspection at the Sponsor's office.

The Residential Units, the Building containing them and all other improvements will comply with all applicable rules, regulations, laws, and other requirements of all governmental authorities having jurisdiction thereof, including those governing zoning and construction, and the Sponsor and all other persons engaged by the Sponsor in connection with this Plan have complied and will comply with all applicable laws, rules and regulations and other governmental requirements pertaining thereto. Construction of the Condominium will comply with the Building Code of the City of New York. Before the closing of title to a Residential Unit, a temporary or permanent Certificate of Occupancy will be issued for such Residential Unit or the Building in which it is located. At the time of the first closing of title to a Residential Unit, the construction of all Residential Units in the Building will have been partially or substantially completed.

Each Residential Unit will contain a washer/dryer unit and customary appliances as further described in the description of property report contained in Part II of the Offering Plan.

### Recreation Facilities

The Condominium will not contain any recreational facilities.

### Construction Data for Residential Units and Common Elements

The Residential Units and Common Elements will be constructed substantially in the manner set forth in the Building Plans filed with Building Department of the City of New York and any amendments thereto, which Plans will not be changed so as to materially adversely affect the Residential Unit Owners. For a detailed description see Schedule G in Part II of the Plan.

Construction of the Building has commenced and completion and closing of title to the first Residential Unit is expected to occur in May of 2020, barring any strikes, material shortages, acts of God, sales activity or other unforeseen delays beyond the control of the Sponsor. All measurements within the Condominium and Units are approximate and Sponsor retains the right to make changes to the Condominium as long as they comply with the City of New York Department of Buildings. There is a rebuttable presumption that variations of five (5%) percent or less of the estimated square footage of the Units, closet space and/or cabinet space shall not be considered materially adverse changes to the Units.

### Easements

Each Unit Owner will have an easement in common with all other Unit Owners for the use, maintenance and repair of all pipes, wires, conduits and public utility lines located in the Common Elements, including any Limited Common Elements, or located in other Units and servicing the Unit Owner's Unit. Each Unit will have an easement of support from all structural members (including, but not limited to, columns, footings, bracings, foundations, slabs, and exterior walls) supporting or serving the Building and any replacements thereof and additions thereto and an easement of necessity, and each Unit will be subject to an easement of support and necessity in favor of all other Units and the Common Elements. Further, each Unit Owner will have an easement for the continuance of any encroachment by their Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter as a result of the settling of the Building or repair or alteration of the Unit by the Board of Managers, after damage by fire or other casualty or as a result of condemnation or eminent domain proceeding, or by reason of an alteration made by the Board to the Common Elements so that any such encroachment may remain undisturbed so long as the Unit stands. Each Unit will be subject to such encroachments and easements in favor of all other Units. The Board of Managers, its agents and employees shall have a right of access to the Units and the Common Elements (irrespective of the restricted nature of such

Common Element) to inspect, maintain or repair the Common Elements or to make repairs to the Unit to prevent damage to the Common Elements or any other Unit.

#### Allocation of Common Interest

The Common Interest of the Condominium establishes the Unit Owners' percentage of ownership in the Common Elements and percentage of liability for the payment of Common Charges. Each Unit Owner has the percentage of Common Interest in the Condominium set forth on Schedule A. Such allocation has been made 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. Said method of determining the percentage of Common Interest in a condominium complies with and is pursuant to Section 339-i (1) (iv) of the Real Property Law of the State of New York.

#### Parking Facilities

The Condominium will not include parking facilities.

### **IV. LOCATION AND AREA INFORMATION**

#### Location and Acreage

The Condominium is located at 96 16<sup>th</sup> Street, Brooklyn, New York 11215. Access to the Condominium is off of 16<sup>th</sup> Street, a New York City public street. The Condominium will consist of a total lot area of approximately 2,500 square feet. The property is zoned R6B, which permits construction of the Condominium.

#### Area Information

The Condominium is located in the Gowanas section of Brooklyn, fronting 16<sup>th</sup> Street.

The immediate area consists of multi-occupancy housing with elementary schools within walking distance. Located nearby are public, private and parochial schools, religious institutions, various synagogues, and day care.

The nearest police station is the New York City Police Department 72<sup>nd</sup> Precinct located at 830 4<sup>th</sup> Avenue, Brooklyn, New York. Fire Department Engine Co. 323 is located at 640 5<sup>th</sup> Avenue Brooklyn, New York. Presbyterian Brooklyn Methodist Hospital is located at 506 6<sup>th</sup> Street, Brooklyn, New York.

Many retail facilities such as supermarkets, grocery stands and variety stores exist on the surrounding streets.

The City of New York provides police, fire, sanitation, snow removal and road maintenance.

### Utilities

The following utilities will service the Condominium:

Water: Water is obtained from a tap to the water main located in a public street maintained by New York City Water Board and will be metered for the entire Building. All water expenses will be a Common Charge of the Condominium.

Sewer: The Building will be connected to the sanitary sewer located on a public street and maintained by the New York City Sewer Department. The Condominium will be responsible to maintain and repair the sewer within the boundary of the Condominium. The sewer tax will be paid as part of the Common Charges of the Condominium.

Gas: Gas service will be provided by Consolidated Edison. All charges for gas service will be included in the Common Expenses of the Condominium and charged to each Residential Unit Owner as part of their Common Charges.

Electric: Electric service will be brought in from the terminal point, owned and maintained by Con Edison. All Residential Units will be separately metered for individual electric consumption and all costs associated therewith will be the sole responsibility of each Residential Unit Owner. See Schedule C for estimated individual electrical costs. All common electric will be included in the Common Expenses of the Condominium and charged to each Residential Unit Owner as part of their Common Charges.

Sanitation: Refuse removal will be provided by the City of New York. The individual Residential Unit Owners will be responsible for placing their trash into the trash chutes located on each floor. The Building Superintendent will be responsible for removal of the trash from the compactor room and placing same at the curb for pickup. Normal pickup is two times a week but is subject to change.

Telephone: Verizon will provide telephone service. Each Residential Unit will be separately billed and the telephone service to each Residential Unit will be the sole responsibility of each Residential Unit Owner.

Cable Television/Internet: Time Warner Cable and/or Verizon Fios will provide cable television/internet services. Each Residential Unit will be separately billed and the cable service to each Residential Unit will be the sole responsibility of each Residential Unit Owner.

Snow Removal/Road Maintenance: Snow removal and road maintenance for all public streets adjoining the Condominium is provided by The New York City Sanitation Department.

### Medical, Educational and Religious Facilities

#### Hospitals

New York Presbyterian Brooklyn Methodist Hospital is located at 506 6<sup>th</sup> Avenue, Brooklyn, New York.

#### Schools

The Condominium is located in School District 5. The K-5 School is P.S. 295 located at 330 18<sup>th</sup> Street. The Middle School is JHS 088 Peter Rouget, located at 544 7<sup>th</sup> Avenue. High schools include: P.S. K053, located at 544 7<sup>th</sup> Avenue and A1-Noor School located at 675 4<sup>th</sup> Avenue.

Although the schools referred to above will probably be the schools that the children of the Condominium will attend, no representation can be made as to the actual schools, nor whether the children will have school bus service provided.

There are houses of worship of many faiths in the vicinity of the property.

### Zoning

The Condominium is zoned R6B which allows for construction of the Condominium. The surrounding areas are basically developed as follows:

|        |                                         |
|--------|-----------------------------------------|
| North: | Mixed Use -- Residential and Commercial |
| South: | Residential Use -- Multi-Family Homes   |
| East:  | Residential Use -- Multi-Family Homes   |
| West:  | Residential Uses -- Multi-Family Homes  |

The adjoining properties are currently developed. No representation is made as to the eventual use or zoning of any parcel surrounding the Condominium except as noted above.

Neither Sponsor nor any of its Principals have an option or right to acquire any of the adjoining properties.

# V. SCHEDULE A

## ESTIMATED INDIVIDUAL EXPENSES FOR THE FIRST FULL YEAR AT

96 16th STREET

CONDOMINIUM

For the Period of May 1, 2020 to April 30, 2021

| Unit         | (1)<br>Price       | (2)<br>Number of<br>Rooms,<br>Bedrooms<br>(BR),<br>Bathrooms<br>(BTH) | Approximate Floor Area in Square Feet |                 | (3)<br>Percentage of<br>Common<br>Interest | (4)<br>Estimated Monthly<br>Common Charges | Estimate of<br>Monthly Real<br>Estate Taxes | Estimate of<br>Annual Real Estate<br>Taxes | Total Monthly<br>Combined<br>Common<br>Charges & Real<br>Estate Taxes |
|--------------|--------------------|-----------------------------------------------------------------------|---------------------------------------|-----------------|--------------------------------------------|--------------------------------------------|---------------------------------------------|--------------------------------------------|-----------------------------------------------------------------------|
|              |                    |                                                                       | Unit                                  | Balcony/Terrace |                                            |                                            |                                             |                                            |                                                                       |
| 1            | \$1,999,400        | 1 Br/ 1.5 Bth                                                         | 1,538                                 | 579             | 31.03%                                     | \$908.95                                   | \$1,829.22                                  | \$21,950.58                                | \$2,738.17                                                            |
| 2            | \$1,365,000        | 2 Br/ 2 Bth                                                           | 1,050                                 | 752             | 22.82%                                     | \$668.45                                   | \$1,345.24                                  | \$16,142.84                                | \$2,013.69                                                            |
| 3            | \$1,365,000        | 2 Br/ 2 Bth                                                           | 1,050                                 | 130             | 19.97%                                     | \$584.97                                   | \$1,177.23                                  | \$14,126.75                                | \$1,762.20                                                            |
| 4            | \$1,579,500        | 2 Br/ 2 Bth                                                           | 1,215                                 | 818             | 26.18%                                     | \$766.88                                   | \$1,543.31                                  | \$18,519.70                                | \$2,310.19                                                            |
| <b>Total</b> | <b>\$6,308,900</b> | <b>N/A</b>                                                            | <b>4,853</b>                          | <b>2,279</b>    | <b>100.00%</b>                             | <b>\$2,162.37</b>                          | <b>\$5,895.00</b>                           | <b>\$70,739.87</b>                         | <b>\$8,824.25</b>                                                     |

\* 2 months Common Charges will be collected from each Purchaser for Working Capital.

\*\* The Terrace/Balcony area may not be enclosed and may not be legally used as bedroom or living space. Terrace/Balcony areas are non-habitable space.

## FOOTNOTES TO SCHEDULE A

1. No change in the sales prices will be made other than pursuant to a duly filed amendment, except that the Sponsor reserves the right to decrease the sales prices below the Offering Plan prices without filing an amendment to the Plan at any time during the Offering where a reduction in sales price does not constitute a general offering but is rather the result of an individually negotiated Unit purchase. See Section IX of the Offering Plan as to other terms of the offering which are negotiable. See Section XIV of the Offering Plan for estimated closing costs and adjustments, which costs are in addition to the sale prices set forth herein.
2. Purchasers should refer to the floor plans in Schedule G of Part II of the Plan for details of each type of Unit. The square footage of each Residential Unit has been based on the area from the exterior side of the exterior walls of the Building, approximately to the centerline of the interior partitions separating the Residential Units and to the exterior side of the partitions separating the Residential Units from the public corridors, stairs or elevator. As such the areas are not based upon measurements from interior surfaces of interior walls, and the actual floor area comprising the Residential Unit is significantly less than the area listed in Schedule A.
3. The Common Interest of each Residential Unit has been 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. Said method of determining the percentage of Common Interest in a condominium complies with and is pursuant to Section 339-i (1) (iv) of the Real Property Law of the State of New York. This percentage determines the amount that the Residential and Parking Space Unit Owners will pay for their Common Charges.
4. Common Charges have been estimated by the Sponsor and include fire and liability insurance for the Units and Common Elements and maintenance and operation of the General Common Elements. Common Charges exclude repair and decoration to the inside of a Residential Unit, electric and gas utilities for each Residential Unit, cable television service for each Residential Unit and insurance for personal belongings. See Schedule B-1 for estimated heating and electrical costs for the Residential Units.
5. The Building is not eligible for 421-a tax benefits, as such, Schedule A reflects the estimated taxes for the Residential Units without the 421-a tax abatement.

Real estate tax estimates are based upon information received from Moseson & Associates Corp., 769 Empire Avenue, Far Rockaway, N.Y. 11691, a real estate tax consultant, by letter dated November 3, 2017. The figures are based upon

the tax rate of \$12.892% per \$100 of assessed valuation for the Residential Units.

Based upon each Residential Unit's total sales price, the total estimated assessed valuation for the entire Development is approximately \$584,711.13 and the total estimated annual taxes for the building is \$70,739.87. Sponsor anticipates completion of the entire Development by May 2020.

Although the aforesaid estimate of actual assessed valuation is a good faith estimate, it is not possible to estimate the same with any degree of certainty. Assessed valuations, when actually made, may be lesser or greater based on interpretation of the administrative code and the applicable rules and regulations of the City of New York. The estimates are not intended, and should not be construed as warranties as to future assessed valuations of the Property. In no event will the consultant, the Sponsor, the Sponsor's counsel or any other person be liable if the assessed valuation, when actually made, is lesser or greater than that predicted above or if the administrative code and the applicable rules and regulations of the City of New York are in the future changed or if the facts as represented, prove to be untrue.

After the condominium is divided into individual tax lots, each Unit will be taxed as a separate tax lot for real estate tax purposes and the Unit Owner will not be responsible for the payment of, nor will the Unit be subject to, any lien arising from the non-payment of taxes on other Units. In addition, pursuant to the provisions of the Internal Revenue Code of 1986 and the Tax Cut and Job Act of 2017, the real estate taxes payable by a Residential Unit Owner, which are assessed against their Residential Unit by any governmental taxing authority up to a maximum of \$10,000, are a proper deduction in connection with Federal, State and City Income Taxes payable by such Residential Unit Owner.

Projected tax deductions (where applicable) may vary in future years due to changes in the interest rate on the Residential Unit Owner's mortgage (if any) or from changes in the allocation of constant debt service payments to interest and principal, or due to changes in real property taxes resulting from the expiration of real estate tax benefits, or from changes in the assessed value, the tax rate or the method of assessing real property.

See Section XIX for a full discussion of the real estate taxes applicable to the Units.

6. The Sponsor is not offering and has not procured mortgage financing. As a result, the projected monthly carrying charges for financing have not been included in Schedule A. In the event a Purchaser obtains a mortgage, a Purchaser's monthly carrying charges will increase. Any Purchaser who applies for a mortgage from a lending institution should check with that institution as to the monthly mortgage costs as well as any closing costs that the Purchaser will

be obligated to pay the lending institution. In the event a Purchaser of a Residential Unit obtains a mortgage, the interest payable on a mortgage up to \$750,000 will be deductible for income tax purposes provided the Residential Unit will be the Purchaser's principal residence or one (1) other residence selected pursuant to the Internal Revenue Code and the Tax Cut and Job Act of 2017.

7. Sponsor its transferring its statutory obligation to pay real estate transfer taxes to Purchaser to pay the New York State Transfer Tax of 0.4% of the Purchase Price where the consideration is less than \$3,000,000 and 0.65% of the Purchase Price where the consideration is \$3,000,000 or greater, and New York City Real Property Transfer Taxes of one (1%) percent of the Purchase Price where the consideration is less than \$500,000 and 1.425% where the consideration is \$500,000 or greater. See Section XIV.

**VI. SCHEDULE B**

**96 16<sup>th</sup> STREET CONDOMINIUM**

**PROJECTED BUDGET FOR FIRST YEAR OF OPERATION**

Beginning May 1, 2020 – April 30, 2021\*

**PROJECTED INCOME:**

|                    |             |
|--------------------|-------------|
| Common Charges (1) | \$34,998.63 |
|--------------------|-------------|

**PROJECTED EXPENSES:**

|                                                   |            |
|---------------------------------------------------|------------|
| Labor (2) .....                                   | \$ -0-     |
| Utilities (3).....                                | \$6,609.14 |
| Water Charges and Sewer Rents (4).....            | \$3,166.49 |
| Repairs, Maintenance and Supplies (5).....        | \$ 750     |
| Insurance (6) .....                               | \$ 2,687   |
| Management Fees (7) .....                         | \$ 7,200   |
| Cleaning Service (8) .....                        | \$ 7,200   |
| Software Service Package (9) .....                | \$ 360     |
| Fire Alarm Service (10).....                      | \$ 1,226   |
| Handicap Lift Inspection & Maintenance (11) ..... | \$ 1,045   |
| Legal Fees and Audit Fees (12) .....              | \$ 2,500   |
| Franchise Taxes (13).....                         | \$ 455     |
| Reserve Contingency (14).....                     | \$ 1,800   |

|                                       |                    |
|---------------------------------------|--------------------|
| <b>TOTAL PROJECTED EXPENSES .....</b> | <b>\$34,998.63</b> |
|---------------------------------------|--------------------|

---

\*In the event the actual first year budget differs from the actual commencement of the budget year by six (6) months or more, Sponsor will amend the Plan to include a revised budget. See explanatory footnotes. If the total of the amended budget exceeds the total of the above budget by twenty-five (25%) percent or more, the Sponsor will offer all purchasers the right to rescind their purchase agreement and have their deposits returned, with interest, if any, provided such election to rescind is received by Sponsor within fifteen (15) days of the date of presentation of the amendment disclosing the revised budget. Sponsor may not declare the Plan effective where there are material changes to the budget if these changes have not been disclosed in a duly filed amendment to the Plan. In the event Sponsor offers a Purchaser the right to rescind, such Purchaser shall be afforded a period of fifteen (15) days from the presentment of the offer of rescission to notify Sponsor of its election.

## FOOTNOTES TO SCHEDULE B

### **(1) COMMON CHARGES – (Budget - \$34,998.63)**

The estimated common charges to be collected from unit owners during the first year of condominium operation are based upon the assumption that the first year of condominium operation will be the twelve months commencing May 1, 2020. The actual first year of operation may be earlier or later.

In the event the projected commencement date of the first year of condominium operation is to be delayed more than six (6) months from the anticipated date of the First Closing, the Plan will be amended to include a revised budget disclosing the then current budget projections. Sponsor will not declare the Plan effective if any material changes to the budget are not yet disclosed in an amendment to the Plan.

If the common charges in the revised budget projections exceed the earlier budget projections by twenty-five percent (25%) or more, the sponsor will offer all purchasers the right to rescind their purchase agreements and have their deposits refunded to them, whether or not the sponsor offers to guarantee the earlier budget projections.

### **(2) LABOR – (Budget - \$-0-)**

Based on information provided by Modern Spaces, 47-34 Vernon Blvd., Long Island City, New York 11101, it is expected that no superintendent will be employed and that routine maintenance will be undertaken by the Unit Owners. Should the Board of Managers elect at any time to employ the services of a superintendent this will represent an additional cost, which would result in a concomitant increase in the Common Charges. Activities the Unit Owners will need to perform in the event no superintendent is employed include cleaning, painting, bulb replacement, snow removal, landscaping and minor repairs.

### **(3) UTILITIES – (Budget - \$6,609.14)**

Based on the building plans and information provided by AK Engineering PC, 276 Fifth Avenue, Suite 907, New York, New York 10001, each Unit will be served by separate electric and gas meters, which will be paid separately by each Unit Owner. The Common Area electrical costs include lighting, fan, and electric heaters. See Schedule B-1.

### **(4) WATER CHARGES & SEWER RENTS – (Budget - \$3,166.49)**

Based on the building plans and information provided by AK Engineering PC, 276 Fifth Avenue, Suite 907, New York, New York 10001, water is supplied to the building by the City of New York through a single water meter service for the entire building. As set forth in the annexed Schedule B-1 and the April 13, 2016 report of AK Engineering PC,

projected water and sewer usage for a single person is 80 gallons per day, which equates to 350,400 gallons annually based on occupancy of 12 people. The combined water and sewer rate of \$6.76 per 100 cubic feet of water consumed was used to arrive at the projected cost figure.

**(5) REPAIRS, MAINTENANCE & SUPPLIES – (Budget - \$750)**

Based on information provided by Modern Spaces, 47-34 Vernon Blvd, Long Island City, New York 11101, the figure for repairs and maintenance to the Building is based upon anticipated normal maintenance and repairs to the Common Elements of the building and its system and equipment. Insofar as this is a newly constructed building it is not anticipated that any major repairs will be required. The budgeted figure includes such items of regular maintenance as cleaning, painting and minor mechanical, carpentry or electrical work, as well as supplies expected to be consumed in the normal course of building operation, including light bulbs, cleaning supplies, paint and hardware items. Individual Unit Owners will be responsible for the cost of interior repairs, decorations and painting of their respective Units.

**(6) INSURANCE – (Budget - \$2,687)**

Based upon a proposal, dated March 2, 2016, from Allsure Insurance Brokerage, 5923 21<sup>st</sup> Avenue, Brooklyn, NY 11204, for the following coverage:

|                                       |                |
|---------------------------------------|----------------|
| Building All-risk, Stipulated Amount: | \$1,200,000.00 |
| Business Income:                      | \$ 35,000.00   |
| Deductible:                           | \$ 5,000.00    |
| General Liability Occurrence:         | \$1,000,000.00 |
| General Liability Aggregate:          | \$2,000,000.00 |

There will be no cancellation without notice to the Board of Managers. The insurance coverage provided for in the Budget does not include officers' and directors' liability, rent insurance, water damage, auto collision, auto liability, flood insurance, fidelity bond or excess liability insurance, all of which may be available at extra cost. The fire, casualty and general liability insurance will be on terms that provide each Unit Owner is an additional insured party; that there will be no cancellation without notice to the Board of Managers; a waiver of subrogation; a waiver of invalidity because of the acts of the insured and Unit Owners; and a waiver of pro-rata reduction if Unit Owners obtain additional coverage. There is no coverage provided by this budget, nor will any be provided by the Condominium for the individual units. Each individual Unit Owner should provide his own fire and extended coverage on the contents, fixtures and improvement in his Unit, as well as his own occupant's liability coverage. These estimates do not include any amount for flood insurance, which may be required in the future, as set forth in Special Risk 16 and the Description of Property Section of this Plan.

**(7) MANAGEMENT FEES– (Budget – \$7,200)**

Based on a proposal from Hudson Property Management, 420 Adams St, Ground Floor Hoboken, NJ 07030, the Condominium will have a management contract in place for the first Twelve (12) months with Hudson Properties. The monthly management fee will be Six Hundred (\$600) dollars per month, which is similar rates of other management companies. The management duties would entail general management tasks including the collection of Common Charges and the payments and supervision of the expenditures set forth in the Budget. In the event the Board of Managers determines in the future to change management companies, there is a possibility that Common Charges will increase.

Neither the Sponsor nor the principals of the Sponsor are affiliated with Hudson.

**(8) CLEANING SERVICE – (Budget – \$7,200)**

Based on information provided by Modern Spaces, 47-34 Vernon Blvd., Long Island City, New York 11101, cleaning services will include cleaning the common areas and removal of rubbish and recycling.

**(9) SOFTWARE SERVICE PACKAGE – (Budget – \$360)**

Based on information provided by Modern Spaces, 47-34 Vernon Blvd., Long Island City, New York 11101, video intercom system monthly service fee is \$30.00 per month for the building.

**(10) FIRE ALARM SERVICE – (Budget - \$1,226)**

Based on information provided by Modern Spaces, 47-34 Vernon Blvd., Long Island City, New York 11101, quarterly fire alarm inspections plus an additional annual fee.

**(11) HANDICAP LIFT INSPECTION & MAINTENANCE – (Budget – \$1,045)**

Based on information provided by Modern Spaces, 47-34 Vernon Blvd., Long Island City, New York 11101, annual Handicap Lift inspection and maintenance.

**(12) LEGAL FEES & AUDIT FEES – (Budget - \$2,500)**

Services for legal counsel who interpret legal documents or undertake collections of past due assessments, are budgeted at \$500. If an assessment proceeding against the Unit Owner is successful, the Unit Owner is responsible for legal fees and expenses of such proceeding. Accounting records will be received by a certified public accountant annually, who will prepare returns and financial statements for the Condominium at a cost of \$2,000.00. The budget also includes the cost of certifying the financial statement while the Sponsor is in control of the Board of Managers. This item will be eliminated when Sponsor is no longer in control of the Board of Managers. The foregoing is based

on a quotation from Reade Levine & Company LLC, 303 Jackson Avenue, Syosset, New York 11791.

**(13) FRANCHISE TAXES – (Budget - \$455)**

Based on New York State Franchise Tax of \$155.00 and New York City Franchise Tax of \$300.00.

**(14) RESERVE CONTINGENCY – (Budget – \$1,800)**

Based on information provided by Modern Spaces, 47-34 Vernon Blvd., Long Island City, New York 11101, the reserve for unanticipated expenditures or unanticipated increases in projected expenses, is approximately 10% of the total estimated expenses, which Sponsor believes to be a reasonable contingency reserve, and which is required in order for the Condominium to meet the minimum requirements for financing set by Fannie Mae. The Budget does not include a separate reserve for capital expenditures for replacement of Condominium property.

The projections set forth in this budget assume that the first year of Condominium operation will cover the period from May 1, 2020 – April 31, 2021.

Annexed is the Certification from Modern Spaces, 47-34 Vernon Blvd., Long Island City, New York 11101. Eric Benaim is a licensed real estate broker with over six years' experience in the management of residential properties, including condominiums, attesting to the adequacy of the budget.

IF THE OPERATION OF THE CONDOMINIUM BEINGS SIX OR MORE MONTHS AFTER, MAY 1, 2020, THIS PLAN WILL BE AMENDED TO INCLUDE A REVISED SCHEDULE OF ESTIMATED INCOME AND EXPENSE FOR THE FIRST YEAR OF THE CONDOMINIUM OPERATION. IF THE REVISED SCHEDULE ESTIMATES OPERATING EXPENSES TO EXCEED THE ABOVE ESTIMATES BY 25 PERCENT OR MORE, THE SPONSOR WILL OFFER ALL PURCHASERS RHE RIGHT, FOR A REASONABLE PERIOD OF TIME, NOT TO EXCEED THIRTY (30) DAYS AFTER NOTICE THEREOF TO PURCHASER, TO RESCIND THEIR AGREEMENT TO PURCHASE AND TO HAVE THEIR DEPOSITS REFUNDED.

## VII. SCHEDULE B-1

The following are the projected individual electrical costs for the Residential Units in the Condominium based on information provided by Concord Consulting Engineering PC, 28 Concord Drive, Livingston, New Jersey 07039, as follows:

The following are the projected individual Residential Unit electric costs for lighting, power and air conditioning:

| <u>Unit</u> | <u>Approx. Sq. Ft.</u> | <u>Average Cost/KWH</u> | <u>Electric Cost (Annual)</u> |
|-------------|------------------------|-------------------------|-------------------------------|
| 1           | 1,588                  | \$1.39                  | \$2,207.32                    |
| 2           | 1,060                  | \$1.39                  | \$1,473.40                    |
| 3           | 1,060                  | \$1.39                  | \$1,473.40                    |
| 4           | 1,230                  | \$1.39                  | \$1,709.30                    |

The following are the projected individual Residential Unit gas costs for cooking and hot water:

| <u>Unit</u> | <u>Approx. Sq. Ft.</u> | <u>Average Cost/Therm</u> | <u>Gas Cost (Annual)</u> |
|-------------|------------------------|---------------------------|--------------------------|
| 1           | 1,588                  | \$1.40                    | \$2,223.70               |
| 2           | 1,060                  | \$1.40                    | \$1,484.00               |
| 3           | 1,060                  | \$1.40                    | \$1,484.00               |
| 4           | 1,230                  | \$1.40                    | \$1,722.00               |

The above electrical and gas cost estimates have been calculated including an inflation factor of ten (10%) percent.

The above costs are estimated only, and are based on conditions outlined herein and the following natural gas, electric and water rates currently in effect which include the latest utility company surcharges for fuel adjustments plus applicable taxes. It also takes in account the variation of family size and lifestyle. The above costs may also vary depending upon the setting of the apartments' thermostats and the maintenance of the equipment in good and efficient condition. The projected costs presented herein cannot be guaranteed and should only be used as a guide. A true assessment of the costs can only be made after several years of stable building operation. In addition, the effect of inflation, fuel shortages and other factors may raise the cost of electricity and gas substantially higher than the current or projected rate.

Although the Sponsor is under obligation to provide accurate information to prospective Purchasers, factors beyond its control may substantially affect the cost of electricity and gas after the purchase of a Residential Unit or in subsequent years. Sponsor represents however, that it has followed the plans and specifications provided by the manufacturer of the appliances together with the recommendation of the

manufacturer and other experts to enable these items of equipment to operate at a optimum efficiency at the lowest cost.



# **VIII. COMPLIANCE WITH REAL PROPERTY LAW SECTION 339-i**

April 9, 2020

State of New York  
Department of Law  
28 Liberty Street  
New York, New York 10005

Re: **96 16<sup>th</sup> Street Condominium**

Gentlepeople:

The Sponsor of the Condominium Offering Plan for the captioned property has retained this office to review the percentage of Common Interest applied to the Units contained in Schedule A of the Offering Plan.

Our experience includes the preparation of numerous Condominium Offering Plans and legal representation of several Condominium Boards of Managers in the State of New York.

In reviewing said Schedule A, the percentage of Common Interest for each Unit as contained therein has been determined 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. Said method of determining the percentage of Common Interest in a condominium complies with and is pursuant to Section 339-i (1) (iv) of the Real Property Law of the State of New York.

I hereby authorize inclusion of this opinion in the Offering Plan for 96 16<sup>th</sup> Street Condominium to be filed with the Department of Law.

Very truly yours,

**MORITT HOCK & HAMROFF LLP**

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

Anthony J. Ficara, Partner

## **IX. CHANGES IN PRICES OF RESIDENTIAL UNITS**

Sponsor will not make any material change in the size or adverse material change in the quality of Common Elements without the consent of all Residential Unit Owners. However, Sponsor reserves the right to change the model mix of the Residential Units without consent of any Residential Unit Owner as long as the percentage of Common Interest for the Residential Units is not affected, there is no Purchase Agreement in effect for said Residential Unit and as long as the Sponsor does not change the total number of Residential Units being offered for sale, nor the total number of buildings in the development, nor substantially change the size of the Residential Unit. There is a rebuttable presumption that variations of five (5%) percent or less of the estimated square footage of the Units, closet space and/or cabinet space shall not be considered materially adverse changes to the Units.

Sponsor will not make any material change in the Residential Units size, layout, percentage of Common Interest or in the amount or quality of Common Elements directly affecting or servicing the Residential Unit if a Purchase Agreement has been executed and delivered to Sponsor for that Residential Unit and the Purchaser is not in default, unless the Purchaser consents in writing to such change. There is a rebuttable presumption that variations of five (5%) percent or less of the estimated square footage of the Units, closet space and/or cabinet space shall not be considered materially adverse changes to the Units.

Sponsor will not change the size or number of Units and/or their respective percentages of Common Interest, nor make a material change in the size or quality of Common Elements, without first amending the Offering Plan and, when applicable, the Declaration of Condominium.

Unless all Purchasers consent, no material change will be made in the size and no material adverse change will be made in the quality of the Common Elements.

The prices for these Condominium interests may be changed from those set forth in this Offering Plan so that Purchasers may pay different prices for similar interests. No such change will be made other than pursuant to a duly filed amendment, except that the Sponsor reserves the right to decrease the sales prices below the Offering Plan prices without filing an amendment to the Plan at any time during the offering where a reduction in sales prices does not constitute a general offering but is rather the result of an individually negotiated Unit purchase. All changes in prices which are an across the board increase or decrease affecting one (1) or more lines of Units or models, or is to be advertised or is a price increase for an individual Purchaser will be done by a duly filed amendment to the Offering Plan.

The Sponsor further reserves the right, but not the obligation, to negotiate with a Purchaser on an individual basis in connection with all aspects of the purchase price,

including but not limited to: upgrades to a Residential Unit or the fixtures or equipment contained therein or credits or allowances therefor; treatment of reduced and/or split down payment; financing contingency; extension of period to secure financing; payment of all or part of a Purchaser's acquisition or financing costs such as, but not limited to: origination fees and commitment fees; any and all other costs relating to the cost of acquiring title to a Unit; maintenance subsidies, rebates or other costs associated with maintaining a Unit as a credit against the purchase price or payable on a periodic basis or any other manner as is negotiated between the parties; promotional gifts on the purchase of a Unit and application of rent toward the purchase price. As a result, a Purchaser may receive different terms than a prior or subsequent Purchaser may receive for a similar Unit. Furthermore, the Sponsor reserves the right to amend the Plan from time to time to add and/or delete negotiable terms or, at its sole option, to expand the applicability of such negotiable terms to some or all Purchasers pursuant to Section 352-e of the General Business Law.

#### **IXA. INTERIM LEASES**

The Sponsor will not enter into interim leases with Purchasers for Residential Units prior to closing. In no event shall Purchaser take possession of the Residential Unit prior to the time of the delivery of the deed, nor shall Purchaser enter the Residential Unit or have his or her contractors or agents enter the Residential Unit to perform work prior to closing without the written authorization of the Sponsor. Should the Purchaser violate this provision, Sponsor will have the right to remove Purchaser from the Residential Unit as a squatter and intruder by summary proceedings. Upon the Purchaser's unauthorized possession, the Purchaser shall be deemed in default of the Purchase Agreement and Sponsor may retain the funds being held in escrow to a maximum of ten (10%) percent of the sales price plus the cost of extras ordered, as liquidated damages. Purchasers should refer to Paragraph 22 of the Purchase Agreement.

Sponsor will endeavor in good faith to market and sell the Units in the Condominium. Notwithstanding said fact, Sponsor is retaining the unconditional right to rent rather than sell the Units upon consummation of the Offering Plan. Because Sponsor is retaining the unconditional right to rent rather than sell Units, this Plan may result in the creation of a condominium in which a majority of the Units are not owned by owner-occupants or investors who are unrelated to the Sponsor.

#### **X. PROCEDURE TO PURCHASE**

The Sponsor hereby offers for sale the Residential Units under construction in the Condominium for residential occupancy in accordance with applicable municipal zoning regulations. Occupancy of the Residential Units or portion of a Residential Unit by a lessee or lessees of the Residential Unit Owner for the purposes set forth in this paragraph conform with the zoning regulations permitting construction of this Condominium.

Sponsor will endeavor in good faith to sell the Units in the Condominium. However, Sponsor is retaining the unconditional right to rent rather than sell the Units upon consummation of the Plan. Because Sponsor is retaining the unconditional right to rent rather than sell the Units, this plan may result in the creation of a condominium in which a majority of the Units are not owned by owner-occupants or investors who are unrelated to the Sponsor. Due to the fact Sponsor is not limiting the conditions under which it will rent rather than sell the Units, there is no commitment to sell more Residential Units than the fifteen (15%) percent necessary to declare the plan effective and owner-occupants may never gain effective control and management of the Condominium.

The sales prices at which the Units are being offered for sale are shown in detail in Schedule A. The Sponsor reserves the right to lower the sales prices and to negotiate other terms on an individual basis. All changes in prices which are an across the board increase or decrease affecting one or more lines of Units or models, or are to be advertised or is a price increase for an individual Purchaser will be done by a duly filed amendment to the Offering Plan. See Section IX of the Offering Plan. Any such change will not affect the Common Interest of the Unit, however, some Purchasers may pay less or more for the same model Unit or receive different terms.

Any person may accept Sponsor's offer to sell a Unit by entering into a Purchase Agreement with the Sponsor. The Agreement provides that the Purchaser will purchase from the Sponsor a designated Unit in 96 16<sup>th</sup> Street Condominium as described in the Declaration creating such Condominium. A Purchaser will be afforded a minimum of three (3) business days to review the Offering Plan and all filed amendments prior to executing a Purchase Agreement. Any conflict between the Offering Plan and the Purchase Agreement shall be resolved in favor of the Offering Plan.

Upon signing the Purchase Agreement the Purchaser shall make a down payment of a minimum of ten (10%) percent of the purchase price of a Unit plus the cost of any special work ordered by the Purchaser. Upon full payment of the balance of the purchase price and the balance of the cost of any special work ordered at the closing, in cash or by mortgage, Purchaser will receive a bargain and sale deed with covenant against grantor's acts and containing the provisions set forth in Section 13 Subdivision 5 of the Lien Law, which will convey good and marketable title to the ownership of fee ownership in the Unit and such percentage of Common Interest in the Common Elements as is set forth on Schedule A, free and clear of all liens and encumbrances other than those set forth in Section XIII of the Offering Plan. The Purchase Agreement may be modified with the consent of Purchaser and Sponsor in a manner not inconsistent with law, subject to the terms of this Offering Plan. Sponsor must either return a fully executed Purchase Agreement within twenty (20) days to the Purchaser or reject the Purchase Agreement and refund the deposit monies. In the event the Sponsor does not act within said twenty (20) day period the Purchase Agreement will be deemed rejected by the Sponsor.

The Power of Attorney included as Schedule E herein, as same may be amended from time to time so as to comply with applicable law, must be executed by Purchaser at the closing of title. Failure to execute the Power of Attorney will result in a default under the Purchase Agreement.

The Sponsor anticipates that the first closing of a Unit will occur by May 1, 2020. Purchasers will be offered a right of rescission if: (i) the actual date of closing of title to the first Unit; or (ii) the projected date of closing of title to the first unit occurs later than April 30, 2021, twelve (12) months after the projected date for the first Unit closing. If the Plan is amended to provide for a later projected date for the first Unit closing, Purchasers will be entitled to an offer of rescission if the first closing occurs more than twelve (12) months beyond that amended, later date.

However, if the first Unit closing occurs before April 30, 2021, the Sponsor may schedule the closings of title to other Units significantly later than such date. Unless your Purchase Agreement contains an outside closing date, the Sponsor is not obligated to schedule your closing within any specified time frame or to ensure that closing of title to your 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.

In the event Sponsor is unable to convey title to a Residential Unit twelve (12) months after the proposed date of delivery set forth in the Purchase Agreement a Purchaser shall have the option to cancel the Purchase Agreement and have the downpayment advanced by Purchaser returned to Purchaser. Purchaser shall be obligated to notify the Sponsor in writing of its intent to exercise said option no later than thirty (30) days after the twelve (12) month period. Failure to so notify Sponsor shall be deemed a waiver of this provision, and Purchaser shall continue to be bound by the terms of the Purchase Agreement. In the event Sponsor shall be unable to convey title to the Residential Unit within twenty-four (24) months of the proposed date of delivery through no fault of the Purchaser, the Purchase Agreement shall be deemed null and void and Sponsor shall return all monies being held in escrow within thirty (30) days thereafter. See Paragraph 6 of the Purchase Agreement in Part II of the Plan.

After the Offering Plan is declared effective, the Sponsor will give each Purchaser who enters into a Purchase Agreement not less than thirty (30) days' prior written notice of the date, time and place for the transfer of title to the Residential Unit unless a Purchaser waives such thirty (30) day notice. A form for such waiver is contained as Schedule D-2 to the Offering Plan.

Sponsor must make a written demand for payment after default at least thirty (30) days before forfeiture of the deposit may be declared. Time is of the essence for a Purchaser to cure a default within such thirty (30) day period.

The Purchase Agreement may not be assigned by Purchaser without the written consent of Sponsor.

In the event the Offering Plan is amended to permit interim leasing, any Purchaser who takes possession of a Home prior to closing shall assume the risk of losses not covered by insurance.

Purchasers should note that if a Purchaser fails to appear and close title in accordance with this Purchase Agreement on the date and at the time and place stated in Seller's Notice for Closing, or if Purchaser fails to observe or perform any other thing to be observed or performed by Purchaser under this Purchase Agreement, Seller may send Purchaser a written notice of default giving Purchaser thirty (30) days from the date of such notice to cure any such default, **time being of the essence**. See Paragraph 21 of the Purchase Agreement in Part II of the Offering Plan.

The Purchase Agreement may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating Sponsor's obligations under the Offering Plan or under Article 23-A of the General Business Law. Any conflict between the Purchase Agreement and the Plan will be resolved in favor of the Plan. The Purchase Agreement and Plan comply with Section 71.a(3) of the New York Lien Law. Said statute provides that the initial advance of the Purchase Agreement be deposited in an escrow account in a bank, trust company, savings bank, state or federal savings and loan association, located in New York State. The escrow and trust fund provisions disclosed below complies with said statute.

The Purchase Agreement is not conditioned upon a Purchaser securing satisfactory mortgage financing. Obtaining a mortgage shall be the sole responsibility of each Purchaser. In no event will the Sponsor be obligated to return a Purchaser's down payment in the event a Purchaser is unable to obtain a mortgage. In addition, the Purchase Agreement will remain in full force and effect and Purchaser will be obligated to pay the balance of the purchase price at closing regardless of the availability of financing. In the event a Purchaser does not close title to the Unit as a result of their inability to obtain a mortgage, the down payment plus the cost of any custom work ordered, will be retained by Sponsor as liquidated damages.

Notwithstanding the foregoing, the Sponsor has engaged the following lenders to be the on-site mortgage consultants throughout the sales process (the "Preferred Lenders"):

Popular Community Bank  
85 Broad Street  
New York, NY 10004  
Attn: Philip Robles  
Sr. Home Lending Officer  
Tel: (917) 405-4536

Wells Fargo Home Mortgage  
150 E 42nd Street, 32nd Floor  
New York, NY 10017  
Attn: Alan Kreit  
Private Mortgage Banker  
Tel: (212) 214-7534

Purchasers that complete a loan application and obtain a pre-approval letter for mortgage financing from either of the Preferred Lenders will be given a mortgage

contingency in their Purchase Agreement, in which case the Purchase Agreement will be contingent upon financing.

In the event Purchaser elect to utilize the Preferred Lenders, the obligation of Purchaser to purchase under this Agreement shall be conditioned upon issuance, on or before forty five (45) days after a fully executed copy of the Purchase Agreement is given to Purchaser, or Purchaser's attorney, in the manner set forth therein, (hereinafter called the "Commitment Date"), of a written commitment from one of the Preferred Lenders, pursuant to which the Preferred Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, in the amount equal to eighty (80%) percent of the total purchase price of the Unit, for a term of at least thirty (30) years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or adjustable rate of interest and on other customary commitment terms, (hereinafter called the "Commitment"). To the extent a Commitment is conditioned on Preferred Lender's approval of an appraisal, the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met. Purchaser's obligations are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this Agreement even if the Commitment lapses or expires prior to the Closing, except as mentioned herein, the Preferred Lender fails or refuses to fund the loan or revokes the Commitment for any reason, including, but not limited to, a change in Purchaser's financial condition or employment, or Purchaser's inability or refusal to pay all required costs, fees and expenses to extend the Commitment up to the Closing.

PURCHASER UNDERSTANDS THAT PURCHASER IS FREE TO SEEK FINANCING DIRECTLY FROM OTHER LENDERS, EITHER SOLELY OR PARALLEL WITH THE APPLICATION TO THE PREFERRED LENDER, BUT THE CONTINGENCY CONTAINED IN THIS AGREEMENT SHALL ONLY APPLY IF AN APPLICATION ON THE ABOVE-SPECIFIED TERMS IS MADE IN GOOD FAITH TO THE PREFERRED LENDER AND IS DILIGENTLY PURSUED. THEREFORE, REFUSAL BY ANY LENDER TO MAKE A COMMITMENT TO PURCHASER WILL NOT ENTITLE PURCHASER TO CANCEL THIS AGREEMENT OR RECEIVE A REFUND OF THE DEPOSIT.

Any purchaser who executes a purchase agreement and does not obtain financing through the Preferred Lenders may lose the deposit if unable to pay the balance of the purchase price. Prospective 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 Sponsor as to the availability or cost of such financing.

The Sponsor makes no representation as to the Lenders compliance with Fannie Mae, Freddie Mac or FHA loan requirements. Purchasers are directed to contact the individual Lenders to confirm compliance with same.

*Note that under New York law, when a mortgage commitment is not fulfilled through no fault of Purchaser, performance is excused. Sponsor may not condition Purchaser's obligations upon obtaining a commitment. If Purchaser acts in good faith and lender revokes a commitment after contingency period expires, performance is excused.*

Purchasers should note that on November 15, 2018 the Financial Crimes Enforcement Network ("FinCEN") announced the issuance of an updated Geographic Targeting Order ("GTO"), which requires U.S. title insurance companies to report to FinCEN the personal identity of purchasers in residential real estate transactions in which: (1) the purchaser is a legal entity as defined in the GTO; (2) the purchaser purchases residential real property (including condominium units) located in the Boroughs of Bronx, Brooklyn, Queens, Manhattan and Staten Island; (3) the total purchase price is in an amount of \$300,000 or more; (4) such purchase is made without a bank loan or other similar form of external financing; and (5) the purchase is made, at least in part, using currency or cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, a funds transfer, or virtual currency.

As long as the updated GTO remains in effect, the reporting requirements set forth above apply to all residential real property closings (including condominium units) meeting the above criteria and occurring on or after November 17, 2018.

Further information regarding the revised GTO is available at the following web address: [https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GNERIC\\_111518\\_FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GNERIC_111518_FINAL.pdf)

See Section XI of the Offering Plan and Exhibit D-5 Mortgage Contingency Rider for a full description of the contingency language contained within the Mortgage Contingency Rider.

A complete copy of the Purchase Agreement is contained in Part II of the Plan.

## **ESCROW AND TRUST FUND PROVISIONS**

The Sponsor will comply with the escrow and trust fund requirements of General Business Law Sections 352-e (2-b) and 352-h and the Attorney General's regulations promulgated pursuant thereto. All funds required to be held pursuant to GBL, Sections 352-e(2-b) and 352-h on the effective date of this section shall be transferred into escrow accounts in compliance with this regulation within 60 days thereafter.

Any provision of any contract or agreement, whether oral or in writing, by which a Purchaser purports to waive or indemnify any obligation of the Escrow Agent holding trust funds is absolutely void. The provisions of the Attorney General's regulations concerning escrow/trust funds shall prevail over any conflicting or inconsistent provision in the Offering Plan or in a Purchase Agreement. Purchasers shall not be obligated to

pay any legal or other expense of the Sponsor in connection with the establishment, maintenance or defense of obligations arising from the handling or disposition of trust funds.

All deposits, down payments, or advances made by Purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the Plan, will be placed, within five (5) business days after the Purchase Agreement is tendered to the Escrow Agent along with the deposit, in a segregated special Escrow Account of Moritt Hock & Hamroff LLP, the Escrow Agent, who address is 1407 Broadway, 39th Floor, New York, New York 10018 and whose telephone number is (212) 930-9700. The signatories on this account authorized to withdraw funds include the following Partners of MHH: Anthony J. Ficara, Ted A. Berkowitz and Robert M. Finkel. 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 name of the account is "Moritt Hock & Hamroff LLP, F/B/O 96-16<sup>th</sup> Street Condominium – IOLA Escrow Account." The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured.

The Escrow Account will be Interest-On-Lawyer-Account ("IOLA"). Pursuant to Judiciary Law, Section 497, all interest earned on the IOLA account will be paid to the State of New York.

**Purchasers should note as a special risk that although all funds received by Sponsor for upgrades or extras to a Residential Unit will initially be placed in the escrow account, such funds may be released from the Escrow Account without the requirements outlined below as long as the Sponsor uses the funds for such upgrade or extra. As a result, in the event a Purchaser is entitled to rescission, the Purchaser will not receive a refund of any funds paid to the Sponsor for upgrades or extras.**

All instruments shall be made payable to or endorsed to the order of Moritt Hock & Hamroff LLP, as Escrow Agent and shall be accepted subject to collection.

The Purchase Agreement is included herein as Schedule D in Part II of the Plan. The relevant escrow trust fund provisions are included in Paragraph 29 of the Purchase Agreement, which must be executed by the Escrow Agent.

Within five (5) business days after the Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Purchase Agreement and place the Deposit into the Escrow Account. Within ten (10) business days of the placing the deposit in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, conforming the Deposit. The notice shall provide the account number and the initial interest rate to be earned on the Deposit. Any Deposits made for upgrades, extras, or custom work shall be initially deposited into

the Escrow Account, and released in accordance to the terms of a written agreement between Purchaser and Sponsor.

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the Deposit, he or she may cancel the Purchase Agreement within ninety (90) days after tender of the Purchase Agreement and Deposit 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, 28 Liberty Street, New York, N.Y. 10005. 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.

Purchasers should note that the deposit of a Purchaser's downpayment into the Escrow Account shall not be deemed acceptance by the Sponsor of the Purchase Agreement. The Purchase Agreement shall be deemed accepted by the Sponsor only when countersigned by the Sponsor.

The Escrow Agent will hold funds in escrow until otherwise directed in:

- (i) a writing signed by both Sponsor and Purchaser. Sponsor and/or the Escrow Agent may require a Purchaser to execute a writing authorizing release of the funds by the Escrow Agent as a condition of closing. Authorization of the release of funds at closing in the Purchase Agreement will be deemed such a writing; or
- (ii) in a subsequent writing signed by both Sponsor and Purchaser; or
- (iii) a final, non-appealable judgment or order of a court of competent jurisdiction.

If the Escrow Agent is not directed to release the Deposit pursuant to paragraphs (i) through (iii) 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 (i) through (iii) 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 Building is located and shall give written notice to both parties of such deposit.

The Escrow Agent will also be permitted to release the escrow funds if:

- (i) the Escrow Agent is changed pursuant to the terms of the Escrow Agreement in connection with a transfer of funds to the new escrow agent. Notwithstanding, the Offering Plan must first be amended before any transfer of funds to provide the same full escrow trust fund disclosure with respect to the new escrow agent and escrow account; or
- (ii) funds which were deposited prior to the acceptance of the Purchase Agreement are returned to the Purchaser because of rejection of the Purchase Agreement by the Sponsor; or
- (iii) any governmental authority imposes a ban on the completion of the Residential Units or imposes restrictions on the manufacture, sale, distribution and/or use of materials from Sponsor's regular suppliers or from using same in the completion of the Residential Unit making the construction of the Condominium unlikely, in such an event the funds will be released to the Purchaser; or
- (iv) Sponsor is unable to obtain materials from its usual sources due to labor troubles, lockouts, war, military operations and requirements, civil unrest, acts of God or national emergencies making the completion of the construction of the Condominium unlikely, in such an event the funds will be released to the Purchaser; or
- (v) the installation of public utilities is restricted or curtailed making the completion of the construction of the Condominium unlikely, in such an event the funds will be released to the Purchaser; or

The Sponsor will not object to the release of the escrowed funds to:

- (i) a Purchaser who timely rescinds in accordance with an offer or rescission contained in the Plan or an Amendment to the Plan;
- (ii) all Purchasers after an Amendment abandoning the Plan is accepted for filing by the Department of Law.

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 General Business Law Sections 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.

Nothing contained herein shall diminish or impair the sponsor's statutory obligation to each purchaser pursuant to GBL section 352-h to hold in trust all deposits,

advances or payments made in connection with the offer until consummation of the transaction with such purchaser. Consummation of the plan does not relieve sponsor of its obligations pursuant to GBL section 352-h. Funds from the escrow account remain the property of the purchaser until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the sponsor or the escrow agent upon any bankruptcy, incapacity or death.

Under no circumstances shall Sponsor apply for release of the escrowed funds of a defaulting Purchaser until after consummation of the Plan, as evidenced by the acceptance of a post-closing amendment by the New York State Department of law. Consummation of the Plan does not relieve the Sponsor of its obligations pursuant to General Business Law Sections 352-3(2-b) and 352-h.

Purchasers should note that it shall be an express condition of closing of title that the Purchaser sign the form contained in Part II which will enable the Escrow Agent to release the escrow funds, if not previously released as provided above.

The Department of Law may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulation.

Sponsor must make a written demand for payment after a default at least thirty (30) days before forfeiture of the deposit may be declared.

A copy of the Escrow Agreement between the Sponsor and the Escrow Agent which incorporates the terms of the Attorney General's regulations is contained in Part II of the Plan as Schedule L. The Escrow Agent shall maintain all records concerning the escrow account for seven (7) years after release of the funds. Upon the dissolution of the law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of the Escrow Account records by one of them or by the successor firm and shall notify the Department of Law of such transfer.

Before escrow funds are transferred to a new escrow accounts, or if the Escrow Agent is replaced, the Plan shall be amended to provide the same full disclosure with respect to the new escrow account, the new Escrow Agent and Escrow Agreement, as was originally provided.

## **XI. FINANCING FOR QUALIFIED PURCHASERS**

THIS PLAN DOES NOT CONTAIN ANY FINANCING ARRANGEMENTS FOR PURCHASERS. PROSPECTIVE PURCHASERS WHO ARE INTERESTED IN SUCH FINANCING SHOULD CONTACT LENDING INSTITUTIONS, SUCH AS MUTUAL SAVINGS BANKS AND COMMERCIAL BANKS, MANY OF WHICH HAVE ADVERTISED THAT THEY OFFER FINANCING TO PURCHASERS OF CONDOMINIUM HOMES.

Any applications for such financing with lending institutions must be done on an individual basis by prospective Purchasers and will involve negotiations exclusively between the lending institution and the applicant. The Sponsor should not be construed hereunder as offering any such financing or representing the availability or terms of such financing.

The Purchase Agreement is not conditioned upon a Purchaser securing satisfactory mortgage financing. Obtaining a mortgage shall be the sole responsibility of each Purchaser. In no event will the Sponsor be obligated to return a Purchaser's down payment in the event a Purchaser is unable to obtain a mortgage. In addition, the Purchase Agreement will remain in full force and effect and Purchaser will be obligated to pay the balance of the purchase price at closing regardless of the availability of financing. In the event a Purchaser does not close title to the Residential Unit as a result of their inability to obtain a mortgage, the down payment plus the cost of any custom work ordered, will be retained as liquidated damages.

The Sponsor has engaged the following lenders to be the on-site mortgage consultants throughout the sales process (the "Lenders").

Purchasers that complete a loan application and are approved for financing with either of the Lenders will be given a mortgage contingency in their Purchase Agreement, regardless of whether they ultimately choose to accept a mortgage loan through either of the Lenders. The material terms of the mortgage contingency are set forth as follows:

1. The Purchase Agreement shall be subject to and conditioned upon issuance of a written commitment (the "Commitment") for a conventional (fixed or adjustable rate) mortgage loan encumbering the Premises from a reputable lender licensed to do business in New York (the "Lender"), for a term of fifteen (15) or thirty (30) years, at the prevailing rate of interest, in an amount as applied for by Purchaser, not to exceed eighty (80%) percent of the total Purchase Price of the Home (the "Loan"). Purchaser shall make application for the Loan within seven (7) days from the date hereof to Lender, and diligently, truthfully and in good faith pursue the Loan. Purchaser shall furnish and execute all documents and shall pay all costs and expenses required by the Lender to process the application and issue the Commitment.
2. Purchaser shall, at Sponsor's request, furnish Sponsor with a copy of its application for the Loan, along with the name and address of the Lender.
3. Purchaser shall represent that they have no judgments outstanding or proceedings pending against Purchaser in any Court, nor has Purchaser ever been adjudicated as bankrupt. Purchaser shall represent that they have inquired and are familiar with the requirements to obtain the

Commitment and that they have sufficient income and assets to qualify for same.

4. Upon issuance of a Commitment, Purchaser shall provide Sponsor with a copy of same and the provisions of the mortgage contingency rider shall be deemed satisfied and of no further force and effect. Therefore, the Purchase Agreement shall be deemed firm and unconditional and equivalent to an "all cash" deal. Any risk that the Commitment may be revoked or cancelled shall be borne solely by Purchaser (i.e., should Purchaser lose such Commitment after obtaining it, Purchaser shall be obligated to close hereunder in accordance with the terms of the Purchase Agreement or be deemed in default hereunder). In the event the Commitment contains a provision that it is conditioned upon the sale of any real estate or other assets owned by Purchaser or upon the occurrence of any other events, then such conditions in the Commitment shall not be grounds for Purchaser to cancel this Purchase Agreement, and to that extent, the Commitment shall be deemed unconditional. Notwithstanding the foregoing, should the Purchaser's Commitment lapse or expire, through no fault of Purchaser, prior to closing, due to Seller's inability to deliver the Home, and Purchaser has made a good faith effort to extend the Commitment without success, Sponsor shall grant Purchaser a right of rescission and a reasonable period of time in which to exercise such right.

See Exhibit D6, Mortgage Contingency Rider.

5. Upon receipt by Purchaser of a written denial of Purchaser's application for the Loan (the "Denial"), Purchaser shall promptly notify Sponsor of such Denial, but in no event later than five (5) days from the date of such Denial, and shall enclose a copy of the denial letter.
6. In the event Purchaser has not received a Commitment or a Denial within thirty (30) days from the date of the Purchase Agreement (the "Contingency Period"), then Purchaser may elect to cancel the Purchase Agreement by providing notice to Seller no later than thirty (30) days from such date. Should Purchaser provide notice of cancellation to Sponsor, as set forth in this Paragraph, and provided Purchaser shall have complied with all of the provisions contained herein, the down payment made hereunder shall be returned to Purchaser, and all rights and obligations between the parties shall cease and terminate, except for those herein which expressly survive termination of this Purchase Agreement. Notwithstanding the foregoing, in the event Purchaser sends a notice of cancellation within the Contingency Period, Sponsor may, in its sole discretion, extend Purchaser's time to obtain the Commitment for a period not to exceed thirty (30) days, and Purchaser's notice of cancellation shall not be deemed effective until the expiration of such

additional time. In the event Sponsor elects to extend Purchaser's time to obtain the Commitment, then Purchaser shall continue to diligently pursue the issuance of the Commitment within such additional time. Notwithstanding the foregoing, if Purchaser does not provide Sponsor with the notice of cancellation, as provided in this Paragraph, the provisions of the mortgage contingency rider shall be deemed satisfied and of no further force and effect, and the Purchase Agreement shall be deemed firm and unconditional.

7. In the event Purchaser elects to terminate the Purchase Agreement pursuant to the terms of the mortgage contingency rider, Sponsor shall have the right but not the obligation to require Purchaser to make application with another lender of Seller's choice within seven (7) days from the date Sponsor's receives notice of the Denial or Purchaser's notice of cancellation, or obtain a loan commitment letter for Purchaser from a lender licensed to do business in the State of New York or a licensed mortgage banker, upon similar terms and conditions as set forth herein (the "Loan Commitment Letter"). In the event that Sponsor obtains a Loan Commitment Letter pursuant to the terms of this Paragraph, Purchaser shall be obligated to accept such Loan Commitment Letter, comply with its requirements and close title.
8. In the event the Loan is approved in a reduced amount, Purchaser agrees to accept the Loan on the condition that it can be reduced no more than \$10,000.00, and Purchaser shall pay the difference at closing in cash or certified check.

NO REPRESENTATION IS MADE BY THE SPONSOR AS TO WHETHER ANY PURCHASER WILL QUALIFY FOR FINANCING OR AS TO THE TERMS, COST OR AVAILABILITY OF SUCH FINANCING. THE SPONSOR SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO ANY APPLICANT IF THEIR APPLICATION FOR FINANCING IS NOT ACCEPTED.

The closing of title to a Unit where the Purchaser has obtained financing will take place simultaneously with the closing of the mortgage loan and the proceeds will be applied towards the then balance of the purchase price.

## **XII. EFFECTIVE DATE OF THE PLAN**

Sponsor's offer to sell the Units is contingent upon the Plan being declared effective and no closing to a Unit will be held until the Plan is declared effective. This Offering Plan will not become effective until bona fide Purchasers, including investors, have executed Purchase Agreements which have been accepted by Sponsor for at least fifteen (15%) percent in number of the Residential Units offered under the Plan ( $4 \times 15\% = 1$  Residential Unit). The Sponsor will declare the Plan effective by personal service of notice on every Purchaser or commencement of service by mail, stating that

the Plan has been declared effective. Sponsor will, within five (5) business days of said notice, submit for filing an amendment to the Plan disclosing the Plan's effectiveness and will file an affidavit of service of the notice on all Purchasers. Sponsor will not close title to the first Residential Unit until the amendment disclosing the effectiveness of the Condominium has been accepted for filing by the Attorney General. 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) based on Purchase Agreements where the Purchaser has not had at least three (3) business days to review the Offering Plan and all filed amendments; or
- (iii) with any Purchaser who is the Sponsor, the selling agent, or the managing agent or is a Principal of the Sponsor, the selling agent or the managing agent or is related to the Sponsor, the selling agent or the managing agent or to any Principal of the Sponsor or the selling agent or the managing agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; except that such a Purchaser other than the Sponsor or a Principal of the Sponsor may be included if the Sponsor has submitted proof satisfactory to the Department of Law establishing that the Purchaser is bona fide.

Further, prior to declaring the Plan effective, the Sponsor has the option not to close title to the Units and to abandon the Plan at any time, if less than eighty (80%) percent in number of the Residential Units offered hereby are sold and title to any Residential Unit has not been conveyed ( $4 \times 80\% = 4$  Residential Units). In the event Sponsor exercises such option, it shall forthwith return to the Purchaser all monies paid with interest, if any, within five (5) days of acceptance of an amendment abandoning the Plan. When Purchase Agreements for eighty (80%) percent of the Residential Units have been entered into, the Sponsor must declare the Plan effective.

Notwithstanding the fact that not all Purchasers used for purposes of declaring the Plan effective may actually close, the Sponsor will re-declare the Plan effective if all purchase agreements are either rescinded or terminated prior to the date of first Unit Closing, regardless of whether the Condominium Declaration has been recorded.

Once the Plan has been declared effective, it may not be abandoned except for (i) a defect in title which cannot be cured for less than one-half ( $\frac{1}{2}\%$ ) percent of the total amount of the offering or (ii) substantial damage or destruction of a Building by fire or other casualty which cannot be cured for less than one-half ( $\frac{1}{2}\%$ ) percent of the total offering, or (iii) the taking of any material portion of the property by condemnation or eminent domain. Any stated dollar amount relied upon as basis for abandonment after effectiveness will exclude all attorneys' fees as well as any such title defects or

determinations of any authority or regulatory association which exist on the date of presentation of the Plan and are either known to the Sponsor or are a matter of public record. In the event Sponsor abandons the Plan, it shall do so by means of a filed amendment to the Plan. All monies advanced by Purchasers will be returned to them within five (5) days of the abandonment of the Plan. If Sponsor decides to abandon the Plan before declaring the Plan effective, Sponsor will file an amendment disclosing such abandonment and file a RS-3 Form with the Department of Law.

### **XIII. TERMS OF SALE**

After the Plan has been declared effective the Sponsor will fix a date for the closing of title to all Residential Units for which Purchase Agreements have been executed by serving notice on each Purchaser stating the date of the first closing and setting such Purchaser's closing date. Notice will be sent to all Purchasers who have executed and delivered Purchase Agreements to the Sponsor and whose Purchase Agreements are then in effect by (i) personal delivery; or (ii) mailing by regular mail or registered or certified mail with or without return receipt requested, addressed to the Purchasers at the last known residence of such Purchaser or, if the Purchaser has provided written information of an alternative address for notices, addressed to the Purchaser at the alternative address. If Sponsor has no information of the last known residence address, but has written information of the place of business or employment of such Purchaser, the mailing shall be addressed to such last business or employment address.

Such notice will be served no less than thirty (30) days before the date set for the closing of the Units. Sponsor shall permit Purchasers to waive the thirty (30) day provision by a written waiver. A form for such waiver is contained as Schedule D-2 to the Offering Plan. Said notice will also include notice of the obligation to pay the balance of the purchase price. On the closing date, fee title to the Unit will be conveyed to the Purchaser together with the Unit's undivided interest in the Common Elements. The closing of title to the first Residential Unit is expected to commence by approximately May of 2020. Such closing, however, will only take place after or simultaneously with the happening of the following events:

1. The delivery to the Unit Owner of a Bargain and Sale Deed with covenants against grantor's acts. A copy of the Deed is set forth as Schedule F in Part II of the Plan.
2. The Sponsor's repair of any damage from a casualty or other cause that occurs before the closing of Purchaser's Residential Unit. In the event a Home is damaged by casualty or other cause prior to the closing of Purchaser's Home, through no fault of Purchaser, Sponsor shall repair the Home to meet the specifications set forth in the architects and/or engineers property description report(s) contained herein prior to closing of title to such Home. In the event Sponsor cannot complete such repair within the anticipated delivery timeframe set forth in the Offering Plan or

Purchase Agreement, Purchaser shall be afforded a right of rescission.

3. The issuance of a permanent or temporary Certificate of Occupancy to the Residential Unit or Building in which the Residential Unit is located and any other necessary permits.
4. Title to each Unit and its appurtenant interest in the Common Elements will be conveyed at the closing free and clear of all liens, encumbrances and title exceptions other than those described in the Offering Plan and the proposed Unit Deed.
5. If so requested by the Purchaser Old Republic National Title Insurance Company, 521 Fifth Avenue, 23rd Fl., New York, New York 10175, (212) 599-1300 ("Old Republic"), shall agree to insure that such Purchaser has good and marketable fee title in the Unit, free and clear of all liens, encumbrances and title exceptions, except those set forth below, the Deed, and subject to the provisions of the Declaration and By-Laws and any mortgage executed by the Purchaser and that the Condominium was validly formed pursuant to Article 9-B of the Real Property Law. Purchasers are free to obtain title insurance from any title company authorized to do business in the State of New York without incurring any additional fees or penalty from Sponsor.
6. All articles of personal property, fixtures and equipment as set forth in the Offering Plan for the Residential Unit being purchased are to be included in the sale of such Residential Unit.
7. The Declaration, By-Laws, floor plans and engineers and tax authority certification required by Section 339-p of Article 9-B of the Real Property Law of the State of New York shall be recorded or filed as required by law in the New York City Registers Office, Kings County.
8. The Unit and its undivided interest in the Common Elements shall not be subject to the lien of any mortgage at the time of closing except any mortgage requested by the Purchaser at the time of closing representing a purchase money mortgage or mortgages taken by the Purchaser.
9. The Sponsor will give each Purchaser who has entered into a Purchase Agreement not less than thirty (30) days' prior written notice of the date, time and place for the transfer of title to their Unit unless a Purchaser waives such thirty (30) days notice. A form of such waiver is contained as Schedule D-3 to the Plan.
10. The filing of an amendment to the Offering Plan disclosing that the Plan has been declared effective and that the terms of this Section will be met, that the Residential Units to be closed have been constructed in

accordance with the plans filed with the Building Department of the City of New York and that the Sponsor has complied with the requirements of this Section.

11. Purchaser shall receive any manufacturers' warranty certificates with respect to equipment and appliances installed in the Residential Unit and Sponsor shall assign any warranties with respect to equipment and appliances installed in Common Elements to the Board of Managers.
12. The Purchaser shall execute an instrument in the form annexed to the Purchase Agreement designating the Board of Managers as the Purchaser's attorneys-in-fact, coupled with an interest for the sole purpose of managing, selling, mortgaging, leasing, subleasing, voting or otherwise dealing with any Units acquired by the Board of Managers in accordance with any of the provisions of the By-Laws and designating the Sponsor as their attorney-in-fact to file an amendment to the Declaration of Condominium permitting the certification by a registered architect or professional engineer, certifying that the floor plans filed as part of an amended Declaration are an accurate copy of portions of the plans of the building and fully and fairly depict the layout, location, designation and approximate dimensions of the Residential Units as built or amending such Declaration to create any utility easements or to carry out any of the provisions of the Offering Plan of such Condominium as described in Article Tenth, Section (c) of the Declaration of Condominium.

Title to the Unit and its appurtenant interest in the Common Elements will be conveyed at the closing free and clear of all liens, encumbrances and title exceptions other than those permitted below and/or described in the proposed Unit deed. Title to the Units will be subject to the following:

1. State of facts of the property as shown on a survey to be made prior to the closing of title provided such facts would not render title unmarketable and any state of facts which an accurate survey of the building would show provided such state of facts would not render title unmarketable.
2. Any sewer, water, gas, electric, drainage, telephone, cable television or utility easements granted or to be granted hereafter.
3. All of the terms, covenants and conditions of the Declaration, the By-Laws of the Condominium and the Building Plans, as they are subsequently filed or recorded, the Offering Plan and any amendment thereto.
4. All easements set forth in the By-Laws and Declaration of the Condominium as they are subsequently recorded in the Offering Plan and Purchase Agreement, including:

- (a) Easements in favor of the Owners of other Units to use the pipes, wires, conduits, cable television, and public utility lines located in the Common Elements or in the Unit itself servicing such other Units and/or the Common Elements.
  - (b) Easements in favor of the Board of Managers, its agents, contractors or employees to have a right of access to any Unit and to the Common Elements to inspect, maintain or repair or to make repairs to any Unit to prevent damage to the Common Elements or any other Units, to make repairs to the Common Elements, to any wires, pipes, conduits or cable television system servicing any of the Units or to make repairs to any other Unit, regardless of the nature of the Common Element.
  - (c) Easements in favor of those Residential Units having restricted use to portions of the Common Elements.
  - (d) Easements in favor of the Residential Unit Owners for access through any other part of a Building for the purpose of access, installation, maintenance, repair and replacement of any flues, vents, gas, air-conditioning, heating, ventilation, water and other mechanical lines and fixtures and any other machinery, pipes, wires, conduits, equipment or meters servicing an individual Residential Unit.
  - (e) Easements for the continuance of encroachments on any Unit and on the Common Elements by other Units or portions of the Common Elements, now existing by reason of the construction of the Units, or hereafter occurring by reason of the settling or shifting of the Units, or by reason of the repair and/or restoration by the Board of Managers of the Units or such other Units or such Common Elements, after damage by fire or other casualty or after taking in condemnation or eminent domain proceedings, or by reason of an alteration to the Common Elements made by the Board of Managers, so that any such encroachments may remain as long as the Units stand.
  - (f) Easement in favor of the Sponsor, its agents and employees for access through any part of a Building for the purpose of access, installation, maintenance, repair and replacement to of any portion of the Building, including but not limited to the installation of solar energy panels on the roof.
5. Any additional declarations, covenants, restrictions, exceptions, easements and agreements which have been recorded, or appear in

recorded documents, or are yet to be recorded, provided they do not prevent use of a Residential Unit as a one (1) family residence.

The Sponsor has been advised by its counsel that in counsel's opinion, none of the exceptions to title herein above set forth are contrary to the terms of the Purchase Agreement nor will they interfere with the quiet use or enjoyment of the Purchaser's Unit.

All personal property located within a Unit on the date the Purchase Agreement is signed, or located within the Common Elements on the date the declaration is filed, which is owned by the Sponsor or owner of the Property, is included in the conveyance unless specifically excluded the Offering Plan. As such, Sponsor specifically excludes all personal property located within the Units or within the Common Elements, which is not described in the Offering Plan as being included in a Unit or the Common Elements and which is not intended to be subject to this offering.

#### **XIV. CLOSING COSTS AND ADJUSTMENTS**

The estimated closing costs and expenses to be borne by each Purchaser are as follows:

1. Fee title insurance is available from Old Republic National Title Insurance Company, 521 Fifth Avenue, 23rd Fl., New York, New York 10175, (212) 599-1300 ("Old Republic"), at the estimated rates of \$5.81 per thousand for the first \$50,000 of fee title insurance, approximately \$4.74 for each additional \$1,000 of insurance up to \$100,000 and approximately \$3.80 per thousand for each additional \$1,000 up to \$500,000 plus six (6%) percent.
2. Mortgage title insurance at the estimated rates of \$4.84 per thousand for the first \$50,000 of mortgage title insurance, approximately \$3.95 for each additional \$1,000 of mortgage title insurance up to \$100,000 and approximately \$3.17 per thousand for each additional \$1,000 up to \$500,000 plus six (6%) percent.

In the event a Purchaser obtains both mortgage and fee title insurance at closing, the Mortgage Policy shall be issued at a reduced rate known as the Simultaneous Mortgage Rate. The fee title insurance policy will be based on the full fee rate and the Simultaneous Mortgage Policy is based on thirty (30%) percent of the applicable mortgage rate up to the amount of the Mortgage Policy. Any excess is based on the full mortgage rates.

Each Purchaser will be free to obtain title insurance from a title insurance company other than Old Republic without incurring any penalty from Sponsor, Sponsor, however, makes no representation or warranty as to cost, terms or availability of such other title insurance. Title insurance

rates and municipal fees for recording documents are uniform and should be consistent, regardless of the title company used.

3. Fees for the recording of the deed, power of attorney and any affidavit required in connection with the mortgage tax credit available under RPL §339-ee which are approximately \$235, \$100 and \$50 for each document.
4. In the event the Purchaser shall obtain a purchase money first mortgage, Purchaser shall pay recording fees for the mortgage of approximately \$100. For first mortgages in an amount less than \$500,000, Purchaser shall pay mortgage tax of 2.05% of the amount of the mortgage less \$25 and for first mortgages in an amount in excess of \$500,000, Purchaser shall pay mortgage tax of 2.175% of the amount of the mortgage less \$25. In addition, the Purchaser will be required to pay the lending institution's attorney's fees, any mortgage origination fees, bank credit an appraisal fees and other expenses that the lending institution may charge incident to the making of the permanent loan. If applicable, a portion of the mortgage recording tax set forth above will be computed in accordance with Section 339-ee subsection 2, of the New York Condominium Act, and shall be paid to the Sponsor in reimbursement of mortgage recording taxes which the Sponsor may have previously paid in connection with existing mortgage on the Condominium. There will be no mortgage closing costs pursuant to this paragraph 4 on Residential Units which are not covered by mortgages.
5. New York State Transfer Tax of 0.4% of the Purchase Price where the consideration is less than \$3,000,000 and 0.65% of the Purchase Price where the consideration is \$3,000,000 or greater, and New York City Real Property Transfer Taxes of one (1%) percent of the Purchase Price where the consideration is less than \$500,000 and 1.425% where the consideration is \$500,000 or greater. Sponsor, is transferring its statutory obligation to pay transfer taxes to the Purchaser. As a result, when a Purchaser assumes the obligation to pay these taxes, the amount of such taxes will be included in the consideration subject to tax. The steps to compute the tax are:
  - (a) Multiply the purchase price by the State Tax Rate to compute a tentative tax.
  - (b) Multiply the purchase price by the City Tax Rate to compute a tentative tax.
  - (c) Add both tentative taxes to the purchase price.
  - (d) Multiply the total of "c" above by the State Rate.

- (e) Multiply the total of "c" above by the City Rate.

EXAMPLE: Purchase Price = \$2,550,000

- (1)  $\$2,550,000 \times .004 = \$10,200$
  - (2)  $\$2,550,000 \times .014259 = \$36,360$
  - (3)  $\$2,550,000 + \$10,200 + \$36,360 = \$2,596,560$
  - (4)  $\$2,596,560 \times .004 = \$10,386 =$  amount due for State Transfer Tax
  - (5)  $\$2,596,560 \times .014259 = \$37,024 =$  amount due for New York City Real Property Transfer Tax.
6. Working capital equal to two month Common Charges to be paid to the Condominium. While Sponsor is in control of the Board of Managers, the working capital fund will not be used to reduce the Common Charges of the Condominium. If any portion of the working capital fund is used during this period to pay for items in the budget set forth, such amounts will be repaid to such fund out of Common Charges collected.
7. All Residential Units that are being offered for \$1,000,000 or more are also subject to the provisions of Section 1402-a of the Tax Law of the State of New York (Mansion Tax) which requires a New York State Tax of one (1%) percent of the Purchase Price. Pursuant to the provisions of the statute the obligation to pay the tax is the Purchasers.
8. Each Purchaser shall pay \$2,500 to Sponsor's counsel, representing a fee for services in connection with preparing the Unit Deed, the Unit Owner's Power of Attorney and for coordinating and attending the closing. Such fee shall be payable at or prior to the closing by Purchaser's unendorsed, personal check made payable directly to the order of Sponsor's attorney.
9. Any mortgage tax credit received pursuant to Section 339-ee of the Real Property Law will inure to the benefit of Sponsor.
10. A pro-rata portion of the estimated first year condominium insurance based on the percentage of Common Interest of the Unit being purchased.

As an example, a Purchaser of a Residential Unit in which the purchase price is \$2,550,000 and who procures a first mortgage in the amount of \$2,040,000 will pay the following approximated closing costs:

|                                  |          |
|----------------------------------|----------|
| Fee Title Insurance:             | \$ 8,808 |
| Mortgage Insurance:              | \$ 1,807 |
| Deed Recording Fee:              | \$ 235   |
| Power of Attorney Recording Fee: | \$ 100   |
| Mortgage Recording Fees:         | \$ 225   |
| §339-ee Affidavit Recording Fee: | \$ 50    |
| New York State Transfer Tax:     | \$ 8,700 |

|                                                                                                     |                 |
|-----------------------------------------------------------------------------------------------------|-----------------|
| New York City Transfer Tax:                                                                         | \$30,994        |
| Mortgage Tax:                                                                                       | \$33,465        |
| Condominium Working Capital:                                                                        | \$ 750          |
| Pro-Rata Insurance                                                                                  | \$ 1,110        |
| Sponsor Attorney Fees for<br>Preparation of Deed, Power of<br>Attorney and other Closing Documents: | <u>\$ 2,500</u> |

TOTAL            \$87,744

In addition, if a closing takes place, at the request of Purchaser, at any location other than the office of Sponsor's attorney, Purchaser shall pay to Sponsor's attorney a travel fee in the sum of \$500.

In addition, in the event the Sponsor's Attorney is required to prepare the New York City "ACRIS" transfer documents Purchaser shall be required to pay Sponsor's attorney an additional fee of \$250. In the event the title company prepares the ACRIS, Purchaser shall pay the applicable fee of the title company.

In the event a closing is adjourned with Sponsor's consent, at the request of Purchaser or Purchaser's attorney within forty-eight (48) hours of the scheduled time of Closing, Purchaser shall also pay Sponsor's attorney an adjournment fee in the sum of \$500.

In the event the Units have not been separately assessed for real estate tax purposes prior to the closing of title to the first Unit, Sponsor may place in escrow, in the name of the Board of Managers, an amount equal to the unpaid real estate taxes which will be levied against said Unit for the six (6) month period following the first closing. Said amount is to be paid by Purchaser. Alternatively, the Sponsor may place in escrow, in the name of Board of Managers, an amount equal to the real estate taxes attributable to the unsold Units for such six (6) month period and may collect at each closing the estimated amount of taxes attributable to such Unit for the balance of the six (6) month period. The Board of Managers will pay the real estate taxes from the escrow account when taxes are due and payable and either the Sponsor or the Board of Managers will be entitled to reimbursement from Unit owners to the extent of the actual assessment. Until the Units are separately assessed, all post closing amendments will disclose the amount of the funds deposited in escrow for the payment of the real estate taxes.

Purchaser shall also pay, or reimburse to Sponsor, if Sponsor has already made payment, the following charges: (a) inspections and (b) appraisals.

If through no fault of Sponsor, Purchaser fails for any reason to close title within seven (7) days after the date originally scheduled in Sponsor's Notice of Closing or such later date (if applicable) to which Sponsor in a subsequent Notice for

Closing adjourned the Closing, all of the aforementioned apportionments shall be made as of midnight of the day preceding (i) the date originally scheduled for Closing or (ii) Sponsor's adjourned Closing date (as the case may be). In addition, Purchaser shall pay to Sponsor at or prior to the actual Closing an amount equal to .0438% (which equals an annual rate of 16%) of the purchase price for the Residential Unit and Storage Unit (if applicable) for each day beyond such originally scheduled or Sponsor adjourned Closing date, to and including the date of actual Closing, for reimbursement and defrayal of Sponsor's carrying costs and other charges.

The fee title policy premiums and the recording charges set forth above are estimates based on the rates in effect as of the date of this Offering Plan. If said premiums, charges or rates are subsequently revised by the title company, the State, or Municipality, each Purchaser shall be required to pay the title policy premiums, recording charges and closing costs in effect as of the date of the closing of title to their Residential Unit.

The Sponsor anticipates that the only items which will be apportioned at the closing of title to the Units will be real estate taxes and sewer charges, if any, and Common Charges, if they have been declared by the Board of Managers. The adjustments will be made as of 11:59 P.M. on the day preceding the closing date. In the event there are any other items which are to be apportioned at closing, said items will be adjusted at the closing. The Sponsor will advise the Purchaser of the closing date by giving him written notice at least thirty (30) days prior to the closing date.

## **XV. RIGHTS AND OBLIGATIONS OF THE SPONSOR**

No bond or other security has been furnished to secure performance of the following obligations. All obligations pertaining to the Common Elements shall be enforceable only by the Board of Managers on behalf of the Unit Owners and not by the individual Unit Owners. During the time the principals of the Sponsor control the Board, it is within their sole power to enforce the obligations of the Sponsor pertaining to the Common Elements. The following shall pertain to the Sponsor:

1. Sponsor will endeavor in good faith to market and sell the Units in the Condominium. Notwithstanding, Sponsor retains the unconditional right to rent rather than sell the Units after consummation of the Plan. Because Sponsor is retaining the unconditional right to rent rather than sell Units, this Plan may result in the creation of a condominium in which a majority of the Units are not owned by owner-occupants or investors who are unrelated to the Sponsor. Due to the fact Sponsor is not limiting the conditions under which it will rent rather than sell Units, there is no commitment to sell more Residential Units than the fifteen (15%) percent necessary to declare the plan effective and owner-occupants may never gain effective control and management of the Condominium.

2. Sponsor has obtained construction financing (the "Construction Loan") from Columbia Bank, 19-01 Route 208 North, Fair Lawn, New Jersey 07410 ("Construction Lender"), which has enabled Sponsor to construct the Development. The Sponsor will be obligated to pay off and otherwise comply with the terms of the Construction Loan on the entire Condominium. After the recording of the Declaration and before the closing of title to the first Unit, any Construction Loan mortgage will be satisfied, or released, or subdivided, extended and consolidated with the individual permanent mortgages, which will be placed on the Units of those Purchasers obtaining a mortgage. In addition, before the closing of title to the first Unit, all liens and mortgages affecting the Condominium shall be paid and satisfied or the Unit being conveyed and its appurtenant Common Interest shall be released therefrom by partial release duly recorded. In order to obtain partial releases, the Construction Lender will require that the Sponsor pay a release price on the sale of each Unit, until the loan is repaid in full. The terms of the Construction Loan contemplate the project as a "for-sale" condominium project.
3. The Sponsor shall be obligated to defend any suit or proceeding arising out of Sponsor's acts or omissions and shall indemnify the Board of Managers and the Unit Owners for same.
4. All representations under the Offering Plan, all obligations pursuant to the General Business Law, and such additional obligations under the Offering Plan which are to be performed subsequent to the closing date will survive delivery of the deed.
5. Until title to a Unit is passed to a Purchaser, the Sponsor will pay such Common Charges, special assessments and real estate taxes, as are assessed by the Board of Managers of the Condominium and the City of New York on the Units to which title has not passed. Once title is passed to a Purchaser the Purchaser shall be solely responsible for all Common Charges, special assessments, real estate taxes and all other costs applicable to the Unit, as are assessed by the Board of Managers of the Condominium and the City of New York. No bond or other security has been posted to secure such obligations. Sponsor will fund its financial obligations to the Condominium from the income derived from the sale of the Units and Sponsor's assets. Sponsor currently has the resources necessary to meet its obligations under the Offering Plan.
6. The Sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing of a Purchaser's Unit.
7. Sponsor will initially procure fire and casualty insurance for the Condominium on the terms set forth in the budget and will collect a pro-

rata share of said insurance from a Purchaser at each closing based on the Unit's percentage of common interest. Notwithstanding, in the event the amount of insurance increases or additional funds are required to pay for such insurance, Sponsor will have the option to lend the Condominium such funds and Sponsor will be repaid out of subsequent Common Charges collected. No Board or Unit Owner approval is required to make such loan.

8. In the event of the dissolution or liquidation of the Sponsor or the transfer of twenty (20%) percent or more of the total number of Residential Units in the Condominium, the Principals of the Sponsor will provide financially responsible entities or individuals who will assume the status and all the obligations of the Sponsor for those Residential Units under the Offering Plan, applicable laws or regulations.
9. The Sponsor will diligently, expeditiously and at its own cost, complete construction of the Condominium substantially in accordance with the plans and specifications described in the architects and/or engineers property description report(s) contained herein and will diligently perform all of its obligations set forth in this Offering Plan and will deliver to the Board of Managers a copy of the "as built" plans filed with the recording of the Declaration or any amendment thereto and in addition will provide the Board with a full set of building plans filed with the local Municipality together with any "field changes" made during the course of construction. There is a rebuttable presumption that variations of five (5%) percent or less of the estimated square footage of the Units, closet space and/or cabinet space shall not be considered materially adverse changes to the Units and shall be accepted by Purchasers. Furthermore, Sponsor reserves the right to select the ultimate location of the kitchen and bathroom cabinets, counters and drawers, as same may differ from the locations set forth on the floorplans, upon receiving consent from any affected Purchasers. No such change will be made without the consent of the affected Purchasers. Although the Sponsor intends to use the materials, fixtures, appliances and equipment described herein and in the building plans, the Sponsor reserves the right to substitute materials, fixtures, appliances and equipment of equal or better quality or design for any of those set forth. The substitution of materials, fixtures, appliances and equipment will be disclosed in an amendment to the Offering Plan. Sponsor reserves the right to change the size, number and location of the improvements or Common Elements, provided (i) such changes do not change or adversely affect the percentage of Common Interest of any Residential Unit to which title has closed or for which a Purchase Agreement has been executed and is in effect, **AND** (ii) all affected Residential Unit Owners and Purchasers consent in writing to such a change. Sponsor further reserves the right to determine the ultimate Residential Unit type mix to be constructed at a Building; determine the location of electric, gas and water meters, electric transformers, air

conditioning compressors, speed bumps, mailboxes; and make any other changes required by the City of New York.

10. The Sponsor will obtain a temporary or permanent Certificate of Occupancy and any other certificate or permit required by law for the Building or Residential Unit before the closing of title to a Residential Unit and will, at its own cost, perform any work and supply any materials necessary to obtain the Certificates or permits. In addition, Sponsor will deliver a Bureau of Electrical Control Certificate to the Building Department of the City of New York prior to the issuance of a permanent Certificate of Occupancy.

In the event a Permanent Certificate of Occupancy for the Building or an individual Residential Unit has not been issued as of the date of closing for said Residential Unit, the Sponsor will continue to hold all deposits and funds in the special escrow account required pursuant to Section 352-e (2-b) and 352-h as described in Section X of the Offering Plan unless Sponsor's engineer or architect certifies that a lesser amount will be reasonably necessary to complete the work needed to obtain a permanent Certificate of Occupancy. Any sum of money exceeding the amount certified by the Sponsor's engineer or architect will be released to the Sponsor. Upon the issuance of the Permanent Certificate of Occupancy, such escrow deposit will be released to Sponsor without the consent of any other party. Alternatively, Sponsor may deposit with an escrow agent an unconditional, irrevocable letter of credit or post a surety bond in the amount certified by Sponsor's engineer or architect. In such event, it will disclose such fact by duly filed amendment to the Plan prior to releasing the escrow deposit. The amounts retained in escrow pending the delivery of a Permanent Certificate of Occupancy and the architect's certification(s), certifying such amount(s) will be included in each post closing amendment to the Offering Plan until such time as the Permanent Certificate of Occupancy is obtained.

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 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 TCOs have

an expiration date. A TCO typically expires 90 days after the date of issuance. When a TCO expires and is not renewed, it may be difficult or impossible to buy insurance, refinance, or sell units. In New York City, it is common for sponsors to commence unit closings when some or all units are covered by a TCO rather than a FCO. Sponsor anticipates this scenario may occur. Sponsor and its principals will undertake the responsibility for extending each TCO received prior to expiration thereof, and ultimately for obtaining a FCO covering the entire building within two years from the date of 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 FINAL CERTIFICATE OF OCCUPANCY 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.

11. At the closing of title, the Sponsor will deliver the certificates and warranties delivered to it and transferable to Purchaser. Sponsor's liability pursuant to any manufacturers' warranties covering heating, appliances, electricity, plumbing and roofing are limited solely to the extent that such warranties are delivered to Sponsor, transferable to the Purchaser or to the Condominium Board of Managers and then only as against such manufacturer.
12. The acceptance of a deed by a Purchaser will 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 this Plan) and in General Business Law Section 352-e to survive delivery of the deed. The Purchaser of a Residential Unit will inspect such Residential Unit prior to the Closing Date and will execute at such time an inspection statement acknowledging Purchaser's acceptance of the Residential Unit in good condition and in accordance with the terms of the Plan, provided that if Purchaser finds that Sponsor's improvements have not been completed as described in the Plan then Sponsor and the Purchaser in question will agree to include on the inspection statement a list of incomplete work of a material nature to be completed in the Residential Unit by Sponsor as provided in the Purchase Agreement. Sponsor will have no obligation to complete any work, which is not specifically designated by the Purchaser on the inspection statement. A Purchaser will receive prior notice that a Residential Unit is available for

inspection pursuant to this Paragraph, as more particularly set forth in the Purchase Agreement in Part II of the Plan. A Purchaser who fails to inspect such Residential Unit will be deemed to have accepted the Residential Unit in good condition and in accordance with the terms of the Plan. After Closing of title to each Residential Unit the Purchaser thereof must comply with the procedures established by the Managing Agent or the Board of Managers regarding such Purchaser's move into the Residential Unit. This may include "move in" fees, in a maximum amount of \$2,000, which will be refunded to the Purchaser unless the Purchaser or the Purchaser's agents cause damage to the Building during the move in. In such an event the move in fees will be used to repair said damage. In the event the move in fees are less than any damage caused, the Purchaser will be responsible for the additional amount. In the event the move in fees are greater than the damage caused, the Purchaser will be refunded the excess amount. At this time the Sponsor will not be collecting move in fees from Purchasers. In the event the Sponsor or the Board of Managers elects to collect move in fees from initial Purchasers, the Sponsor will amend the Offering Plan to disclose the amount of said fees.

13. This Development is subject to the New York State Housing Merchant Implied Warranty Law, Article 36-B of the General Business Law, which pertains to warranties on the sale of certain new Residential Units. This law is applicable to all Residential Units offered for sale under this Plan. Pursuant to the terms of this law, the Sponsor is giving a Limited Warranty to Purchasers which provides for a Limited Warranty on certain items. The limitations contained in the Limited Warranty are noted as follows: the Limited Warranty provides coverage for the first Residential Unit Buyer only, not to subsequent purchasers; Sponsor's liability is limited to Fifty Thousand (\$50,000.00) Dollars; incidental, special, indirect consequential or other similar damages are excluded; and detailed procedures must be followed for giving notice of a warranty claim to Sponsor, and for commencing a lawsuit against Sponsor. Sponsor's obligation, regardless of any limitation in the Limited Warranty, cannot go below the duty to construct the premises in accordance with all applicable codes and locally accepted building practices for items which are not covered by codes. General Business Law §777-b(4)(e)(i). The Limited Warranty provides the following coverages for the Residential Units.

FIRST YEAR BASIC COVERAGE: for one (1) year from the Effective Date of the Warranty (as shown on page 1 thereon), the Residential Unit will be free from latent defects that constitute:

- (a) defective workmanship by the Sponsor, or an agent, employee or subcontractor of the Sponsor;
- (b) defective materials furnished by the Sponsor, or an agent,

employee or subcontractor of the Sponsor;

- (c) defective design, provided by an architect, engineer, surveyor, or other design professional retained exclusively by the Sponsor; or
- (d) defective installation of appliances sold as part of the Residential Unit by the Sponsor or an agent, employee or subcontractor of the Sponsor.

TWO YEAR MAJOR SYSTEM COVERAGE: for two (2) years from the Effective Date of the Warranty, the Plumbing, Electrical, Heating, Cooling and Ventilation Systems of the Residential Unit which have been installed by the Sponsor are warranted to be free from latent defects resulting from defective installation by the Sponsor.

SIX YEAR MAJOR STRUCTURAL DEFECT COVERAGE: for six (6) years from the Effective Date of the Warranty, the Residential Unit will be free from latent Major Structural Defects that result from:

- (a) defective workmanship by the Sponsor, or an agent, employee or subcontractor of the Sponsor;
- (b) defective materials furnished by the Sponsor, or an agent, employee or subcontractor of the Sponsor; or
- (c) defective design, provided by an architect, engineer, surveyor, or other design professional retained exclusively by the Sponsor.

As permitted under the New York State Housing Merchant Implied Warranty Law, Article 36-B of the General Business Law, the Sponsor excludes the specific warranties set forth in Article 36-B of the General Business Law, and all other warranties, express or implied, and instead is providing each Purchaser with the Limited Warranty. See the complete terms of the Limited Warranty contained in the Rider to the Purchase

Agreement set forth in Exhibit D-1 and Article 36-B of the General Business Law set forth in Schedule M.

To the extent any coverage under this warranty applies to Common Elements of the Condominium, such coverage shall be deemed given to the Board of Managers of the Condominium.

Regarding the Common Elements of the Condominium the Sponsor will correct any defects in the construction of the Common Elements, or in the installation or operation of any mechanical equipment therein, due to improper workmanship or material substantially at variance with this

Offering Plan provided and on condition that Sponsor is notified of or becomes aware of such defect(s) within twelve (12) months from the date of the closing of the first Residential Unit. The quality of construction shall be comparable to local standards customary in the particular trade and in accordance with the plans and specifications. In no event will Sponsor be responsible for any condition resulting from (i) normal wear and tear or natural deterioration or from the normal movement, settlement and/or shrinkage of the Building and/or Building materials; (ii) defects of an insubstantial nature, such as, without limitation, partial or total loss of any trees, shrubs, bushes or other landscape improvements that may abut the Building, nail pops, protruding dry wall fastenings, ridging on gypsum board, lumber shrinkage, door or window sticking, door warpage including, without limitation, warpage of the main entrance door within reasonable tolerances of doors of similar size and weight, scratches in plastic laminate, vitreous china, natural stone, wood, stainless steel or porcelain surfaces; bathroom finish grouting; adjustment of doors; walls not square; electrical plates not straight; discoloration or shrinkage; slight separation between base and floors; (iii) normal settlement and deflection or any consequential damage resulting therefrom including, without limitation, cracks in roof ballast, or concrete cracks which do not reduce the structural integrity of the Building; (iv) minor deviations in the level of ceilings, and imperfections in ceiling finishes; (v) imperfections in painting finishes; (vi) deviations in the level of a floor or failure of finished floors and walls to be straight or on plane or at less than ninety (90°) degrees from each other; (vii) alignment of bathroom finishes and variation in grouting thickness; (viii) air infiltration and water infiltration from windows in accordance with customary practice and professional standards; (ix) noise from normal plumbing, and HVAC system; (x) normal floor noises and creaking; (xi) carpet or floor discoloring or stretching; (xii) minor scratches and imperfections or variations in width, length, thickness, finish or color range of wood floor strips or other flooring or floor finishes, also, normal shrinkage or expansion of wood flooring due to changes in moisture content of wood; (xiii) repair of chips, scratches, mars, breaks, dents, cracks or other defects in: exterior stone; windows, window glass, frames and hardware; swinging doors, frames, door glass and hardware; louvers; shower doors; lighting fixtures, lenses, baffles and globes; all painted surfaces; all sinks, tubs, basins, water closets; kitchen cabinets, back splashes and countertops; vanity tops and cabinets; all tile or natural stone floors and walls; saddles; all appliances; woodwork, millwork and doors; mirrors and after the Residential Unit Closing, paint touch-ups, repair of dented appliances, or replacement of light bulbs; (xiv) cracks or variations in tone or color of natural stone or variations in tone or color of vanity tops or variations in veining or any other natural stone surfaces; (xv) leaching or color variation in color mortar and colored brick, and dimensional variations in brick joints, and mortar droppings on bricks; (xvi) ponding and/or controlled drainage on the roof surface; (xvii) cracks in pressure-

treated lumber used or intended for use outside the Building; (xviii) cracks or discoloration in concrete and/or paving; (xix) discoloration to hardware and plumbing finishes; (xx) stains, runs, lumps, shags or imperfections in weave in fabric panels; (xxi) scratched, dirty or cracked lenses in light fixtures; or (xxii) terrace tiles not laid flat, or color variation in tiles or mortar, or stained tiles; (xxiii) subsequent to the Residential Unit Closing, paint touch-ups, repairs of dented appliances or replacement of fluorescent light ballasts, or (xxiv) salting or color variation in exterior colored mortar and deep colored brick. Sponsor will be obligated to repair only abnormally chipped stone, formica and porcelain surfaces, which repair will be made by filling the stone or formica or refinishing the porcelain, but Sponsor will not be obligated to replace such stone, formica or porcelain surfaces. THE ITEMS AND CONDITIONS DESCRIBED IN THIS PARAGRAPH ARE NOT DEFECTS AND MAY BE FOUND IN ANY NEWLY CONSTRUCTED BUILDING. PURCHASERS WHO PURCHASE A RESIDENTIAL UNIT IN THE BUILDING OR IN ANY OTHER NEWLY CONSTRUCTED BUILDING MAY EXPERIENCE SOME OR ALL OF THESE ITEMS AND CONDITIONS IN THEIR RESIDENTIAL UNIT, THE COMMON ELEMENTS OR ELSEWHERE IN THE BUILDING. SPONSOR HAS NO OBLIGATION TO CORRECT OR REPAIR ANY OF THESE ITEMS AND CONDITIONS AND WILL NOT BE LIABLE TO ANY PURCHASER OR THE BOARD THEREOF. IF PURCHASERS OR ANY BOARD DESIRES TO CORRECT OR REPAIR ANY OF THESE ITEMS OR CONDITIONS, TO THE EXTENT THEY CAN BE CORRECTED OR REPAIRED, THEY WILL HAVE TO PROCEED AT THEIR SOLE COST AND EXPENSE BY THEMSELVES AND/OR UNDER ANY WARRANTIES OR UNDERTAKINGS ASSIGNED TO THEM BY SPONSOR.

The Sponsor has no obligation to make any repair to the Common Elements except as expressly set forth in the Offering Plan.

Sponsor will not be obligated to correct and will not be liable to any Purchaser as a result of (i) any insubstantial variations from the Plans and Specifications or the description of any portion of the Building or a Residential Unit set forth in the Plan or (ii) variations from the Plans and Specifications or the description of any portion of the Building or a Residential Unit set forth in the Plan which are neither in violation of applicable building codes, nor require the approval of any governmental authority having jurisdiction, provided such variations are of substantially similar or better quality than as set forth in the Plans and Specifications or description in this Plan. Any such variation affecting the Property which is material will be disclosed in a duly filed amendment to the Plan.

Notwithstanding the above, any exception, exclusion or standard which does not meet or exceed a relevant specific standard of the applicable

building code, or in the absence of such relevant specific standard a locally accepted building practice, shall be void as contrary to public policy and shall be deemed to establish the applicable building code standard or locally accepted building practice as the warranty standard.

Furthermore, Sponsor's obligation, regardless of any limitation in the Limited Warranty, cannot go below the duty to construct the premises in accordance with all applicable codes and locally accepted building practices for items which are not covered by codes. Any conflict between the disclaimers and the Sponsor's obligation to construct the premises in accordance with all applicable codes and filed plans and specifications shall be resolved in favor of the applicable codes and filed plans and specifications.

All personal property located within the Residential Unit on the date the Purchase Agreement is executed or that is located within the Common Elements on the date the Declaration is filed, that is owned by the Sponsor or other person or entity will be included in the conveyance to Purchaser of their Residential Unit or be a part of the Common Elements unless specifically excepted in the Plan, as same may be amended from time to time.

14. The Sponsor will deliver to the Purchaser and/or the Board of Managers upon the recording of the Declaration all manufacturers' and sub-contractors' heating, electrical, plumbing, roofing and appliance warranties and bonds relating to the Purchaser's Unit or the Common Elements respectively, if any, to the extent made by such manufacturers and subcontractors and to the extent such warranties and bonds are assignable.
15. The Sponsor will pay all contractors, subcontractors and material men and all others involved in the construction of the Condominium for work performed and fixtures, material and equipment supplied or installed in the construction of the Condominium and will cause all mechanics' liens arising out of the construction of the Condominium or the furnishing or installation of fixtures or equipment, to be discharged or bonded promptly after the liens are filed.

The Sponsor will pay all expenses incurred prior to the establishment of the Condominium and will bear and pay all costs and expenses incurred in connection with the creation of the Condominium whenever such costs or expenses are incurred or in connection with the sale of all of the Residential Units held or owned by the Sponsor and will pay all selling expenses including, but not limited to, advertising and printing costs, architect fees, and costs of filing this Offering Plan and amendments thereto.

16. No bond or other security has been posted to secure Sponsor's obligations.
17. The Sponsor reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Common Elements of the Condominium for the purpose of completing its construction and sale of the Units and facilities in the Condominium and, towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, over and across the Common Elements for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities and for any other materials or services necessary for the completion of the work. Sponsor also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the Common Elements. Sponsor will be obligated to pay for the cost of any utilities it uses as a result of its use of the easements, licenses, rights and privileges of a right-of-way. Finally, the Sponsor reserves the right to continue to use the Common Elements and any facilities, sales offices, model units and signs located on the Common Elements, in its efforts to market the Units in the Condominium. Sponsor will be obligated to repair any damage to the Common Elements and Units caused as a result of its use of the easements, licenses, rights and privileges of a right-of-way to complete the construction of the Condominium. Sponsor's use of the easements, licenses, rights and privileges of a right-of way to complete the Condominium will not preclude a Unit Owner from using its Unit as a single family residence.
18. Pursuant to Section 352-e (9) of the General Business Law, copies of all documents mentioned in this Offering Plan, including without limitation the following, are and will be kept on file at the office of Sponsor set forth on the cover page of this Offering Plan for six (6) years from the date the Declaration is recorded for examination by any person who has purchased a condominium interest offered by this Plan or otherwise has participated in this offering: This Offering Plan; the proposed Declaration and By-Laws of the Condominium; public liability, fire and casualty policy, and Exhibits submitted to the Department of Law in conjunction with this Plan. A copy of the form of Residential Unit Owner's Purchase Agreement is submitted with this Offering Plan as Schedule D in Part II of the Offering Plan.
19. In accordance with Section 339-p of the Real Property Law, a registered architect or licensed professional engineer shall certify within reasonable tolerances that the floor plans filed with the recording of the declaration are an accurate copy of portions of the plans of the buildings as filed with

and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings.

20. As noted in Section IXA, Sponsor will not enter into interim leases with Purchaser for Residential Units prior to closing.
21. Sponsor reserves the right to delay the commencement of collection of Common Charges. During any such delay, the Sponsor will timely pay all expenses of the Condominium, including but not limited to insurance premiums and any reserve fund payments required by lenders. Upon commencement of collection of Common Charges, there will not be an assessment for any item set forth in the approved budget for the Condominium. Sponsor shall remain obligated to update the budget for the Condominium as provided for in governing regulations. In the event Sponsor elects to delay the collection of Common Charges, it will disclose such a fact in the closing notice to Purchasers and will further disclose such fact in the Post-Closing Amendment to the Offering Plan. Such Amendment will also disclose the anticipated period of delay. Sponsor will notify all Owners in writing 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 following Amendment to the Offering Plan.

## **XVI. CONTROL BY THE SPONSOR**

The Sponsor, as the owner of unsold Residential Units, will be entitled to designate a majority of the Members of the Board of Managers for a period ending (i) three (3) years from date of the closing of the first Residential Unit, or (ii) one hundred and twenty (120) days after the closing of seventy-five (75%) percent of all Residential Units in the Condominium, whichever is later. Thereafter, the Sponsor shall retain the right to designate one (1) Member of the Board of Managers until such time as Sponsor no longer owns a Residential Unit. The initial Board of Managers will consist of three (3) Sponsor appointees. A meeting will be held to elect new Board Members unrelated to Sponsor within thirty (30) days of the expiration of the control period. As a result the Sponsor will have voting control of the Board of Managers during this period. As a result of the fact Sponsor may retain a majority of the Board of Managers for a period ending (i) three (3) years from date of the closing of the first Residential Unit, or (ii) one hundred and twenty (120) days after the closing of seventy-five (75%) percent of all Residential Units in the Condominium, whichever is later, Purchasers for their own occupancy may never gain control of the Board of Managers under the terms of this Offering Plan. Purchasers should further note that the By-Laws do not contain any provision that provides that after the Sponsor relinquishes control of the Board a majority of the Board of Managers must be owner occupants who are unrelated to the Sponsor or its principals. The Sponsor will also, during this indeterminate period, have control of maintenance, facilities and services to be provided and will determine the Common Expenses to be paid by all Unit Owners, including the Sponsor and the

enforcement of the Sponsor's obligations through the Board of Managers. Purchasers individually or as a group may take legal or administrative action to enforce the Sponsor's obligations to the Condominium. However, they will be unable to do so in the name of the Condominium. In addition the funds utilized for such actions will either have to be obtained by a special assessment of all Unit Owners excluding the Sponsor or obtained through independent funds of the Unit Owners. In the event the Unit Owners are unsuccessful in an action against the Sponsor, Sponsor has the right to request that the court or administrative department hearing the action grant the Sponsor reimbursement of legal fees, which would be payable by the Unit Owners, excluding the Sponsor.

The first Board of Managers of the Condominium will consist of Jorge Mastropietro, Anish Karyat and Carolina Garcia Paris, who are all principals of the Sponsor. The Sponsor shall retain the right to substitute other persons in the place of the above-named individuals until the resignation of the first Board as set forth below. The first Board of Managers will call for the first Annual Meeting of the Residential Unit Owners to elect and designate a new Board within one (1) year of the closing of the first Residential Unit. Sponsor will continue to hold annual meetings during the period it controls the Board of Managers. At such time as all of the Residential Units are closed, Sponsor must relinquish control of the Board of Managers. Upon the election and designation of the new Board, the Members of the first Board will resign. Members of the Board of Managers shall not be compensated for their services. Members of the Board of Managers may be removed for cause by an affirmative vote of a majority of the Residential Unit Owners. Officers of the Condominium may be removed with or without cause, at anytime, by the affirmative vote of a majority of the whole Board of Managers.

For a period ending not more than five (5) years after the closing of title to the first Residential Unit or whenever the unsold Residential Units constitute less than twenty-five (25%) percent of the Common Interest, whichever is sooner, the Board of Managers may not, without the Sponsor's prior written consent, (i) make any additions, alterations or improvements to the Common Elements or to any Residential Unit costing cumulatively more than \$25,000, the foregoing not to include necessary repairs and maintenance work; or (ii) assess any Common Charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of the reserve for contingencies provided in Schedule B; or (iii) hire any employee in addition to the employees referred to in the Plan; or (iv) enter into any contracts not in existence on the date of the first closing of title to a Residential Unit; or (v) borrow money on behalf of the Condominium; or (vi) reduce the services or maintenance set forth in Schedule B; (vii) charge any special assessment for a non-budgeted item unless required by law, municipal agency, emergency or for the health and safety of the condominium; or (viii) increase the Common Charges of the Condominium more than ten (10%) from the prior year's budget, unless documentation is provided to the Sponsor in the nature of a financial statement, bids from contractors or verified increases in utility rates evidencing the need for an increase greater than ten (10%) percent, or (ix) utilize condominium funds or assess the Sponsor for the purpose of commencing a lawsuit against the Sponsor or any of its principals.

As noted above, the Sponsor has the right to retain control over certain expenditures and fiscal actions of the Board of Managers. Notwithstanding said fact, Sponsor may not exercise veto power over expenses described in Schedule B (the proposed first year budget), or over expenses required:

- (i) to comply with applicable laws or regulations; or
- (ii) to remedy any notice of violation; or
- (iii) to remedy any work order by an insurer.

The above provisions provide that during said period, significant financial decisions of the Board of Managers will be decided by the Sponsor. Examples of such decisions are, in part, the ability to borrow money, as provided in The Condominium Act (Article 9-B of the Real Property Law, §339-jj), for a capital improvement all Residential Unit Owners are in favor of, or the ability to enter into a contract with a lawyer and fund legal fees if the Sponsor fails to comply with provisions in the offering.

The detailed provisions for the management of the Condominium are set forth in the By-Laws which are contained in Part II of the Offering Plan in Schedule J. The By-Laws contain provisions, among others, dealing with the election of the Board of Managers, and Condominium officers, powers of the Board of Managers, voting rights of Residential Unit Owners, assessment of Common Charges, foreclosure of liens for non-payment of Common Charges, management of the Condominium and the use of the Residential Units. The By-Laws provide that the Condominium shall be governed by the Board of Managers, but that the Board of Managers shall have the right to designate Committees or a managing agent to carry out such function.

## **XVII. BOARD OF MANAGERS**

The form of the By-Laws and the Declaration of Condominium referred to in the Plan appear in Part II as Schedules I and J.

The following is a summary of certain provisions of the By-Laws and Declaration.

### **Board of Managers**

The affairs of the Condominium shall be governed by a Board of Managers (the "Board"). Until the first annual meeting, the first Board shall consist of three (3) Members designated by the Sponsor. Thereafter the Board of Managers shall consist of a total of three (3) Members who shall be elected or designated for staggered terms. See Section XVI of the Offering Plan as to Sponsor's right to designate a majority of the Board of Managers for a period ending (i) three (3) years from date of the closing of the first Residential Unit, or (ii) one hundred and twenty (120) days after the closing of seventy-five (75%) percent of all Residential Units in the Condominium, whichever is later. Purchasers should further note that the By-Laws do not contain any provision that

provides that after the Sponsor relinquishes control of the Board a majority of the Board of Managers must be owner occupants who are unrelated to the Sponsor or its principals.

The first Board of Managers of the Condominium will be Jorge Mastropietro, Anish Karyat and Carolina Garcia Paris, all of whom are principals of Sponsor.

At the first annual meeting of Unit Owners a total of three (3) Members shall be elected or designated. All Members, other than those designated by the Sponsor, shall be elected by the Residential Unit Owners. The term of office of one (1) of the Members shall be fixed for three (3) years, the term of office of one (1) of the Members shall be fixed at two (2) years, and the term of office of one (1) of the Members shall be fixed at one (1) year. Separate ballots shall be conducted for each of the three terms of office. Each Residential Unit Owner (including the Sponsor and the Board of Managers, if the Sponsor or the Board of Managers shall then own or hold title to one or more Units) shall be entitled to cast one vote for each .01% (rounded off to the nearest .01%) of Common Interest attributable to its Unit or Units, for each Board Member to be elected, in proportion to the Common Interest of all Units unless otherwise mandated by law or expressly provided for in the Declaration. The one nominee(s) on each of the ballots, as the case may be, receiving the highest number of votes on their ballot shall constitute the duly elected Board of Managers. At the expiration of the initial term of office of each respective Member, the Member's successor shall be elected to serve a term of three (3) years. The Members shall hold office until their successors have been elected and hold their first meeting. See Section XVI of the Offering Plan for details concerning Sponsor control of the Board of Managers.

The first annual meeting of the Board of Managers of the Condominium will take place within one (1) year of the closing of the first Residential Unit in the Condominium. Thereafter, annual meetings shall be held on the anniversary date of each succeeding year, unless such date is changed by the Board of Managers.

It shall be the duty of the President to call a special meeting of the Condominium, if so directed by the Board of Managers, or upon the presentation to the Secretary of a petition signed by a majority of the Residential Unit Owners. The secretary shall cause a notice of such special meeting stating the time, place and object thereof and the officer or other person or persons by whom the meeting is called, to be delivered personally or mailed to each Residential Unit Owner of the Condominium entitled to vote at such meeting not less than ten (10) nor more than thirty (30) days before such meeting. The date of the special meeting shall be determined by the Board of Managers and shall be held no later than sixty (60) days from receipt of any written request unless a later date is agreed to in writing by the Residential Unit Owners of the Condominium or the Board of Managers, requesting such meeting. No business other than that stated in such notice shall be transacted at such special meeting unless all Residential Unit Owners of the Condominium are present in person or by proxy. See Article II, Section 10 of the By-Laws of the Condominium.

Officers and Members of the Board of Managers shall not be entitled to compensation for serving on the Board.

#### Removal of Members of the Board of Managers

Members of the Board of Managers may be removed for cause by an affirmative vote of a majority of the respective Residential Unit Owners. No representative of the Board of Managers, other than a member of the first Board of Managers or Sponsor's designees or nominees, shall continue to serve on the Board if, during their term of office, the Member shall cease to be a Residential Unit Owner.

#### Powers and Duties of Board of Managers

The property and business of the Condominium shall be managed by its Board of Managers. The powers of the Board of Managers include, but are not limited to, the following items:

1. To determine and levy monthly assessments ("Common Charges") to cover the cost of Common Expenses, payable in advance. The Board of Managers may increase the monthly assessments or vote a special assessment in excess of annual Common Charges, if required, to meet any additional necessary expenses, but said increases can only be assessed among all the Unit Owners pro-rata according to their respective percentage of Common Interest.
2. To collect, use, and expend the Common Charges collected to maintain, care for and preserve the Units, the Building, and other Common Elements;
3. To open bank accounts on behalf of the Condominium and to designate the signatories to such bank accounts;
4. To make repairs, restore or alter any Unit or the Common Elements after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
5. To enter into and upon the Units when necessary and at as little inconvenience to the Unit Owners as possible in connection with the maintenance, care and preservation of the property. No notice is required to gain access for repairs. Any repairs required as the result of negligence of the Unit Owner will be at the expense of the Unit Owner;
6. To insure and keep insured the General Common Elements, Limited Common Elements and the Units. A Unit Owner may secure supplemental coverage for the Unit and its contents and the liability coverage for the Unit;

7. To collect delinquent Common Charges and special Common Charge assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from the Unit Owners of the property for violations of the house rules or rules and regulations herein referred to;
8. To make reasonable rules and regulations applicable to the Common Elements of Units and Unit Owners and to amend the same from time to time, and such rules and regulations and amendments shall be binding upon the Unit Owners when the Board has approved them in writing. A copy of such rules and all amendments shall be delivered to each Residential Unit;
9. To employ and terminate the employment of employees and independent contractors and to purchase supplies and equipment, to enter into contracts, and generally to have the powers of a manager in connection with the matters hereinabove set forth;
10. To bring and defend actions by or against more than one Residential Unit Owner and pertinent to the operation of the Condominium and to levy special Common Charge assessments to pay for the cost of such litigation;
11. To acquire a Unit in foreclosure or as a result of abandonment and to take any or all steps necessary to repair or renovate any Unit so acquired and to vote as a Residential Unit Owner, offer such Unit for sale or lease or take any other steps regarding such Unit as shall be deemed proper by the Board of Managers;
12. To make additions, alternations, or improvements to the General Common Elements of the Condominium and those portions of the Condominium which are included in the description of an individual Unit but which service two (2) or more Units in the Condominium;
13. To borrow money on behalf of the Condominium when required in connection with the operation, care upkeep and maintenance of the General Common Elements, provided, however, that no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the written consent of the Owners of said Unit.
14. Pursuant to Section 339-y(4) of the New York Real Property Law, the Board of Managers may (but is not obligated to) act as an agent for one or more Unit Owners who have given their written authorization to file a single complaint and bring a special proceeding on behalf of Unit Owners who wish to contest the real estate tax assessments of their Units. In such event, the Board could retain counsel on behalf of such Unit Owners

and charge each Unit Owner for whom it is acting a pro rata share of expenses, disbursements and legal fees, the payment for which would be secured by a lien on each Unit;

15. To grant utility or other easements over or to the Common Elements as may, at any time, be required for the benefit of the Condominium and the Unit Owners without the necessity of the consent thereto, or joinder therein, by the Unit Owners or any mortgagee (except that if the granting of such easement impairs the ability of one (1) or more Unit Owners who have the right to use such Common Elements to the exclusion of any other Unit Owners, the consent of all such affected Unit Owners shall be required in writing before such easement shall be granted); and
16. To impose reasonable fines upon Unit Owners for violating the rules and regulations of the Community, as contained in these By-Laws or as promulgated by the By-Laws.

#### Liability of Board of Managers and Residential Unit Owners

In order to limit the liability of the Unit Owners, any contract, agreement or commitment made by the Board of Managers or Officers of the Condominium shall state that it is made by the Board of Managers as agent for the Unit Owners as a group only and that no Member of the Board of Managers or Officers of the Condominium nor individual Unit Owner shall be liable for such contract, agreement or commitment except that every Unit Owner shall be liable to the extent that their proportionate interest in the Common Elements bears to the total liability under such commitment. The Board of Managers and Officers of the Condominium shall have no liability to the Unit Owners in the management of the Community except for willful misconduct or bad faith and the Unit Owners shall severally indemnify all Members of the Board of Managers against any liabilities or claims arising from acts taken by a Member of the Board of Managers in accordance with their duties except acts of willful misconduct or acts made in bad faith. Such several liability of the Unit Owners shall, however, be limited to the extent that their proportionate interest in the Common Elements bears to the total liability of the Member of the Board of Managers.

#### Indemnification of Board of Managers

The Unit Owners of the Condominium shall indemnify and hold harmless each of the Members of the Board of Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provision of the Declaration or of the By-Laws. It is intended that the Members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium (except as Unit Owners). In the event a Member of the Board of Managers acts in bad faith or contrary to the provisions of the Declaration or By-Laws, the individual Member may be personally liable.

## Officers

The first Board of Managers of the Condominium will consist of Jorge Mastropietro, Anish Karyat and Carolina Garcia Paris, who are all principals of the Sponsor.

The officers of the Condominium shall be chosen by the Board of Managers and shall be a president, a vice president, a secretary and a treasurer. The Board of Managers may also choose one (1) or more assistant secretaries and assistant treasurers and such other officers as in their judgment may be necessary. Officers do not need to be Residential Unit Owners. Two (2) or more offices may be held by the same person, except for the President whom can only hold the office of the President.

The President shall be the chief executive officer of the Condominium, shall preside at all meetings, shall have general and active management of the business of the Condominium and shall see that all orders and resolutions of the Board are carried into effect.

The Vice President shall take the place of the President and perform the duties of the President whenever the President is unable to do so.

The Secretary shall record all votes and the minutes of all proceedings in a book.

The Treasurer shall have the custody of the Condominium funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Condominium including the vouchers for such disbursements, and shall deposit all monies and other valuable effects in the name and to the credit of the Condominium in such depositories as may be designated by the Board of Managers.

The Treasurer shall disburse the funds of the Condominium.

The Treasurer shall keep detailed financial records and books of account of the Condominium, including a separate account for each Residential Unit which, among other things, shall contain the amount of each assessment of Common Charges against such Residential Unit, the date when due, the amounts paid thereon and the balance remaining unpaid.

## Repairs, Alterations and Improvements to Common Elements

All maintenance, repairs and replacements to the General Common Elements including but not limited to exterior walls of a Building, windows, roof and roof members, as well as all maintenance, repairs and replacements to any pipes, wires, conduits and public utility lines, any portion of which is located outside the Unit shall be made by the Board of Managers and the cost thereof shall be a Common Charge payable by all Unit Owners. The Board of Managers shall repair all plumbing stoppages and electrical

repairs occurring in the General Common Elements. All maintenance, repairs and replacements within and to the Residential Units, whether structural or nonstructural, ordinary or extraordinary, will be made by the respective Residential Unit Owners at their expense.

All general maintenance and repairs to the rear yard, porch and terrace that are Limited Common Elements, including cleaning, snow removal and all repairs not structural in nature, (including maintenance or replacement of the surface of the rear yard, porch, or terrace), shall be the responsibility of the Residential Unit Owner whose rear yard, patio or terrace is appurtenant to their Residential Unit and is a Limited Common Element of their Residential Unit. All repairs, maintenance and any replacement of any heating, cooling or other mechanical system servicing an individual Residential Unit that is located in or on the Common Elements and/or all apparatus, installations, systems equipment and facilities in the Common Elements (including pipes, wire, ducts, vents, cables, conduits and lines) which serve or benefit a Residential Unit exclusively shall be the responsibility of the Residential Unit Owner. All repairs to the exterior of any door, building, open area or other generally visible portion of the Condominium must be in conformation with the style and colors initially installed by the Sponsor. All maintenance, repairs and replacements to all Residential Units, whether structural or non-structural, ordinary or extraordinary, will be made by the Board of Managers and the cost thereof will be a Common Charge payable by all Unit Owners.

The Condominium shall be responsible for the maintenance, repairs and replacements to all elements of the building which service two (2) or more Residential Units and which are located in the space between the exterior face of the sheetrock wall enclosing the interior of a Residential Unit and the exterior face of the exterior masonry wall. As such, any Common Elements located within a Residential Unit shall not be considered a part of such Unit.

The Board of Managers and their agents, employees and contractors shall have the right of access to any Unit for the purpose of making any repairs or replacements to any of the General Common Elements and Limited Common Elements contained therein or elsewhere in the Condominium or to remedy any condition which would result in damage to any other Unit or the General Common Elements or Limited Common Elements, or which would violate the provisions of any mortgage covering another Unit or for the purpose of complying with any laws, orders, rules or regulations of any governmental body having jurisdiction thereof or for the purpose of carrying out any of its obligations under this Offering Plan, the By-Laws or the Declaration of the Condominium. Such right of access shall be exercised in such manner as will not unreasonably interfere with the use of the Units but no prior notice shall be required in the event the Board of Managers shall determine that action is immediately necessary for the preservation or safety of the Condominium or its property, or the Units, or for the safety of Condominium residents or other persons, or required to avoid the suspension of any necessary service to the Condominium.

### Restoration or Reconstruction After Fire or Other Casualty

In the event of damage to or destruction of a Building as a result of fire or other casualty, the Board of Managers shall arrange for the prompt repair and restoration of a Building and the Board of Managers or the Insurance Trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a Common Expense and the Board of Managers may assess all the Unit Owners for such deficit as part of the Common Charges.

If seventy-five (75%) percent or more of the Residential Units (2 Units) are destroyed or substantially damaged and seventy-five (75%) percent or more of the Residential Unit Owners do not resolve to proceed with repair or restoration, the Property shall be subject to an action for partition at the suit of any Unit Owner or lienor, as if owned in common in which event the net proceeds of sale, together with the net proceeds of insurance policies shall be divided by the Board of Managers or the Insurance Trustee, as the case may be, among all the Unit Owners in proportion to their respective Common Interests, after first paying out of the share of each Unit Owner the amount of any unpaid liens on the Unit, in the order of the priority of such liens.

### Insurance

The Board of Managers shall obtain and maintain, to the extent obtainable, fire insurance with extended coverage, water damage, vandalism and malicious mischief endorsements insuring a Building, including all of the Units and the bathroom, kitchen and laundry equipment initially installed therein by the Sponsor, together with all heating, air conditioning equipment and other service machinery contained therein, covering the interest of the Condominium, the Board of Managers and all Unit Owners and their mortgagees, as their interest may appear, in an amount equal to the full replacement value of a Building. Each of such policies shall contain a New York Standard Mortgagee clause in favor of each mortgagee of a Unit which shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee hereinafter set forth; and such other insurance as the Board of Managers may determine.

### Reports to Residential Unit Owners

All Residential Unit Owners will receive within four (4) months of the end of each fiscal year, copies of an annual report of the Condominium including a balance sheet and profit and loss statement prepared by an independent public accountant, a statement regarding any taxable income attributable to the Residential Unit Owners, and a notice of the holding of the annual Residential Unit Owners meeting. All Residential Unit Owners shall be entitled to examine the books and records of the Condominium on reasonable notice to the Board but not more often than once a month.

During such time as the Sponsor retains a majority of the Board of Managers, the Board shall provide a certified annual statement at the cost of the Condominium.

### Amendments

The Declaration may be amended upon a vote of at least sixty-six and two-thirds (66 $\frac{2}{3}$ %) percent of the Residential Unit Owners in number held at a duly called meeting of the Residential Unit Owners, provided however, that:

- (i) No amendment shall change any Condominium parcel, nor a Unit Owner's proportionate share of the Common Charges, nor the voting rights appurtenant to any Residential Unit, unless all of the record owner(s) in number and Common Interest thereof and the first mortgagees, if any, of each of these same Units agree to such revocation by recorded instrument.
- (ii) No amendment shall be passed which shall affect, impair or prejudice the validity, interest, rights and priorities of mortgagees or the Sponsor.
- (iii) No amendment to the Declaration shall affect the Limited Common Elements appurtenant to a specific Residential Unit without the written consent of the specific Residential Unit Owner affected thereby unless required for the health and safety of the Condominium.

The By-Laws may be amended at any duly called Residential Unit Owners meeting provided:

- (i) That the notice of the meeting shall contain a full statement of the proposed amendment;
- (ii) That the amendment shall be approved by at least sixty-six and two-thirds (66 $\frac{2}{3}$ %) percent of the Residential Unit Owners in number and Common Interest; and
- (iii) Said amendment shall be set forth in a duly recorded amendment to the Declaration.

No amendment to the Declaration or By-Laws shall be passed which would affect or impair the validity or priority of the Residential Unit Owners' interest and the interests of holders of a mortgage encumbering a Residential Unit or Residential Units. No amendment to the Declaration or By-Laws shall be passed which would impair or prejudice the rights and priorities of mortgagees or the Sponsor.

### Units Acquired by the Board of Managers

All Units which are acquired by the Board of Managers, or its designee as a result of foreclosure of a lien for non-payment of Common Charges, shall be held by the

Board on behalf of all Unit Owners. The percentage of Common Interest acquired by the Board shall remain as originally designated in Schedule A of the Offering Plan and the Declaration of Condominium and the Board shall be responsible for paying all Common Charges appurtenant to said Unit. The Board shall be entitled to cast all votes that are appurtenant to said Units at any Unit Owners meeting for all purposes except for the election of Members to the Board of Managers.

#### Termination of Condominium

This property shall not be withdrawn from the provisions of Article 9-B of the Real Property Law unless at least eighty (80%) percent of the Residential Unit Owners in number and in Common Interest and the first mortgagees, if any, of these same Residential Units agree to the withdrawal of this property from the provisions of such Article. The Sponsor or its nominee will not cast any of its votes for withdrawal, unless eighty (80%) percent of Residential Unit Owners other than Sponsor so vote.

#### Covenant Against Partition of Common Elements

The Common Elements are not subject to partition nor are they severable from the Residential Units except in accordance with the Real Property Law.

### **XVIII. RIGHTS AND OBLIGATIONS OF UNIT OWNERS AND BOARD OF MANAGERS**

#### Sale or Lease of Units

Units can be sold or leased by a Unit Owner, provided that the Unit Owner is not in arrears on the payment of Common Charges (except where the payment of such unpaid Common Charges is paid by the Grantee or provided for out of the proceeds of the sale).

Any Residential Unit Owner who wishes to enter into a lease for their Residential Unit shall be required to provide the Board of Managers with a copy of the proposed lease prior to its execution. Any lease entered into must contain a provision that the Lessee is subject to the Declaration, By-Laws and Rules and Regulations of the Condominium, the provisions of Article XI, Section 2 of the Condominium By-Laws and the Deed to the Residential Unit. Failure to comply with the above shall be deemed an automatic violation of the By-Laws of the Condominium. Rental of a Residential Unit in the Condominium is not currently subject to any local or state regulation and is not subject to a right of first refusal by the Board of Managers.

A Residential Unit Owner is free to make a gift of the Residential Unit Owner's Unit to anyone during the Residential Unit Owner's lifetime or to devise the Residential Unit by will, or to have it pass by intestacy without any restriction. The restrictions regarding the sale or lease of a Residential Unit shall not pertain to the Sponsor.

The Board of Managers 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 its sale or lease of any Residential Unit which it acquires.

The terms on leases of Residential Units are not currently subject to any state or local laws.

Each Unit Owner, on the closing of title to his or her Unit shall be required to execute a Power of Attorney in the form contained in Part II of this Plan as Exhibit E, as same may be amended from time to time as required by applicable law, constituting the fact, coupled with an interest, for the purpose of selling, conveying, mortgaging, leasing, subleasing (but not voting the votes of) or otherwise dealing with Units acquired by the Board of Managers or their designee, on behalf of all Unit Owners, and otherwise acting in accordance with the Condominium's Declaration and By-Laws designating the Sponsor as Purchaser's attorney-in-fact to file an amendment to the Declaration of Condominium permitting the certification by a registered architect or professional engineer certifying that the floor plans filed as part of an amended Declaration are an accurate copy of portions of the plans of a Building and fully and fairly depict the layout, location, designation and approximate dimensions of the Units as built or amending such Declaration to create any utility easements or to carry out any of the provisions of the Offering Plan of such Condominium as described in Article Tenth, Section (c) of the Declaration of Condominium.

No Unit can be sold without a simultaneous sale of the undivided interest in the Common Elements.

#### Real Property Law Section 339-kk

Pursuant to the provisions of Section 339-kk of the Real Property Law of the State of New York any non-occupying owner who rents a Residential Unit in the Condominium to a rental tenant and then fails to make payments due for Common Charges, assessments or late fees for such Residential Unit within sixty (60) days of the expiration of any grace period after they are due is subject to the following: Upon notice in accordance with the statute, all rental payments from the tenants shall thereafter be directly payable to the condominium association. A complete copy of Section 339-kk of the Real Property Law is contained in Part II of the Plan as Schedule M.

#### Restrictions on Occupancy and Use

There is no restriction upon ownership of a Unit. Occupancy of a Residential Unit, however, may only be for residential purposes in accordance with the applicable zoning regulations of the municipality having jurisdiction over the Condominium.

The Storage Closet may only be utilized for storage of household items, No flammable, combustible or explosive fluid, material, chemical or substance is permitted to be stored in a Storage Closet.

The By-Laws of the Condominium contain the following use restrictions: No immoral, improper, offensive or unlawful use shall be made of the Condominium nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Unit Owners, their families, employees, guests and any permitted pets shall not use or permit the use of the Units and Common Elements in any manner that would be illegal, disturbing or a nuisance to other Unit Owners. No Unit Owner shall put any advertisement, poster, or signs, including for-sale signs of any kind in or on the Condominium without the consent of the Board of Managers. It is prohibited to hang garments, rugs, etc. from the windows or from a Building or to string clothes lines on or over the Common Elements or to use any of the Common Elements for storage unless designated for such use. No Residential Unit Owner shall paint the exterior surfaces of the windows, walls or doors opening out of their Residential Unit. All Residential Unit Owners must maintain their thermostat at a minimum of sixty (60°) degrees Fahrenheit to avoid pipes from freezing. Any Unit Owner failing to adhere to this provision shall be responsible for any and all damage to the Condominium or any other Unit as a result thereof. See Schedule J, Article VIII for complete details.

#### Restrictions on Pets

No animals shall be kept or harbored in the Condominium or any Residential Units except that each Residential Unit Owner may keep up to two (2) domestic dogs or household cats; two (2) domestic birds and domestic fish. Fish tanks and/or aquariums shall not exceed one-hundred (100) gallons. No exceptions will be permitted unless the same in each instance be expressly permitted in writing by the Board of Managers of the Condominium. The Board of Managers may require the permanent removal of any animal kept in a Residential Unit that is not in compliance with the above as well as any animal causing or creating a nuisance or unreasonable disturbance or noise upon three (3) days written notice from the Board of Managers.

In no event shall any pet be permitted in any of the public corridors or lobbies of the Condominium unless carried or on leash. All Unit Owners shall be responsible for picking up and disposing of their pets' waste and for any damage caused by their pets to any Common Elements of the Condominium and shall comply with the local and municipal rules and regulations regarding pets.

#### Mortgage of Residential Units by Residential Unit Owners

A Unit Owner may mortgage the Unit Owner's Unit at any time after the Unit Owner acquires title to the Unit in whatever amount and under whatever terms the Unit Owner can obtain provided the Unit Owner first notifies the Board of Managers. Any Unit Owner may, upon the resale of their Unit, grant a purchase money mortgage to a

purchaser of their Unit. A Unit Owner may mortgage their Unit only if all arrears for Common Charges, if any, are provided for at the closing of the mortgage.

#### Common Charges Assessment and Collection

The Board of Managers will prepare and furnish its budget to the Residential Unit Owners and their mortgagees annually. Based upon such budget and any modification thereof approved by the Board of Managers, all the Unit Owners will be charged for the cost of the Common Expenses for operation of the Condominium in accordance with their interest in the Common Elements.

The charges assessed by the Board of Managers ("Common Charges"), in addition to the cost of repairing and maintaining the Common Elements, assessments and other normal operational costs, may include, in the discretion of the Board of Managers, reserves, working capital and other sums necessary to carry on the affairs of the Condominium. In addition Common Charges may have to be increased as a result of Residential Unit Owners not paying their Common Charges.

The estimate of Condominium expenditures in Schedules A and B were made by the Sponsor and passed upon by CQP Properties, LLC, 421 Seventh Avenue, Suite 800., New York, New York 10001. Although the Sponsor is of the opinion that such estimates are accurate and reasonable, they are not intended and cannot be construed as an assurance of the actual expenses and are merely based upon information available at this time. Actual costs may be lesser or greater than as set forth herein.

It is presently anticipated that the Common Charges are to be used to pay for the line items set for in the budget for the first year of condominium operation (see Schedule B of the Offering Plan), which includes, but is not limited to, fire and other casualty insurance on the Building and the Common Elements, public liability and property damage insurance, legal and accounting expenses, supplies and a contingency reserve. The Common Charges do not include maintenance, repairs or decoration of interior of the Residential Units or portions thereof, payments required pursuant to the terms of Unit Owners' mortgages or real estate taxes covering the individual Residential Units.

The Common Charges which may be collected monthly by the Board of Managers and other costs of maintenance of the Units are set forth on Schedule A. See Schedule B-1 for estimated heating and other utility costs for the Residential Units. However, additional services which the Residential Unit Owners may desire or other factors can increase these charges.

The initial Board of Managers may commence the collection of Common Charges upon the closing of title to the first Residential Unit or at any subsequent date as in its sole discretion it may determine. Prior to the collection of Common Charges, Sponsor shall be obligated to provide all the services disclosed in the first year budget at its sole expense. The Board's collection of Common Charges will be in an amount

necessary to carry out the duties of the Board of Managers as is set forth in this Offering Plan and such Common Charges shall be paid by the Unit Owners and the Sponsor as Owner of the unsold Units in accordance with the Common Interest set forth herein. The Common Charges will initially be placed in an account in the name of the Board of Managers in a bank authorized to do business in the State of New York.

Sponsor reserves the right to delay the commencement of collection of Common Charges. During any such delay, the Sponsor will timely pay all expenses of the Condominium, including but not limited to insurance premiums and any reserve fund payments required by lenders. Upon commencement of collection of Common Charges, there will not be an assessment for any item set forth in the approved budget for the Condominium. Sponsor shall remain obligated to update the budget for the Condominium as provided for in governing regulations. In the event Sponsor elects to delay the collection of Common Charges, it will disclose such a fact in the closing notice to Purchasers and will further disclose such fact in the Post-Closing Amendment to the Offering Plan. Such Amendment will also disclose the anticipated period of delay. Sponsor will notify all Owners in writing 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 following Amendment to the Offering Plan.

In the event a Unit is damaged by casualty and the proceeds of insurance are not sufficient to cover the repair of the damage, the amount necessary to restore the Unit over and above the proceeds from any fire insurance on the Units will be a Common Charge to all Unit Owners. In order to protect the Unit Owner against the possibility of such Common Charges, the Board of Managers determines the amount of blanket casualty insurance covering all Units (the cost of such insurance is part of the Common Charges) and reviews the amount of such coverage annually.

The Sponsor shall be liable for the Common Charges, special Common Charge assessments, real estate taxes and individual utility costs of all Residential Units to which title has not been transferred to a Purchaser commencing when Common Charges are first collected by the Board of Managers. Once title has passed to a Purchaser, the Purchaser shall be solely responsible for all costs associated with the Residential Unit including but not limited to Common Charges, any special Common Charge assessments, real estate taxes and all individual utility costs.

#### Liens for the Non-Payment of Common Charges

Under Section 339-z of the Real Property Law of the State of New York, the Board of Managers shall have a lien against each Unit for its unpaid Common Charges and legal interest thereon prior to all other liens except liens for the payment of taxes and all sums unpaid on a first mortgage of record. The lien shall continue in force even after resale of a Unit except that the Board shall, in accordance with the Declaration, release the lien and right to collect unpaid Common Charges against any purchaser of a Unit where such purchase arises out of a foreclosure of a first institutional mortgage when the Board of Managers has been made a party to the foreclosure action.

The Board of Managers may foreclose the lien in the same manner as a mortgage on real property or being a separate action to collect the unpaid Common Charges and in doing so shall be entitled to recover all costs incurred including reasonable attorney's fees. The liability of each Unit Owner for the payment of Common Charges thereafter assessed against the Unit Owner's Unit shall terminate upon a sale, transfer or conveyance of such Unit in accordance with the provisions of the Condominium Declaration and By-Laws. Further, any Unit Owner may convey their Unit to the Board of Managers or its nominee, on behalf of all other Unit Owners, without any compensation and in accordance with the Declaration and By-Laws, and in such event the Unit Owner shall be exempt from any Common Charges thereafter assessed, but not relieved of their obligation to pay the Unit Owner's mortgage. However a Unit Owner may not be exempt from liability for the Unit Owner's Common Charges by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit Owner's Unit.

Upon a resale, the Purchaser of a Unit shall be liable for the payment of unpaid Common Charges assessed against such Unit prior to the acquisition of such Unit by the Purchaser, except that a first mortgagee who acquires title to a Unit or a Purchaser at a foreclosure sale shall not be liable and the Unit shall not be subject to a lien for the payment of Common Charges assessed prior to the acquisition of title to such Unit by the first mortgagee or purchaser at a foreclosure sale. In such event and in the event of a foreclosure by the Board of Managers of its lien on any Unit for unpaid Common Charges where the proceeds of the foreclosure sale are not sufficient for the payment of such unpaid Common Charges, the unpaid balance shall be charged to all Unit Owners as a Common Expense.

During the period of time the Sponsor retains a majority of the seats of the Board of Managers, the Sponsor will cause the Board of Managers to file a lien as provided for in Section 339-aa of the Real Property Law on Units in which Sponsor is more than thirty (30) days in arrears of Common Charges.

#### Repairs, Alterations and Improvements to the Units

No Residential Unit Owner shall make any addition, alteration or improvement (of either a temporary or permanent nature) of a structural nature in or to the Residential Unit Owner's Residential Unit, any Limited Common Element or any portion of the Condominium which affects two (2) or more Residential Units, without the prior written approval of the Board of Managers. Furthermore, no Residential Unit Owner may alter or remove any interior wall without the prior written approval of the Board of Managers. The Board of Managers shall have the obligation to answer any written request by a Residential Unit Owner for approval of a proposed structural addition, alteration or improvement in such Residential Unit Owner's Residential Unit within forty-five (45) days after such request is received, and failure to do so within the stipulated time shall constitute a denial by the Board of Managers of the proposed addition, alteration or improvement. No Residential Unit Owner will make any addition, alteration or improvement of a structural nature in or to any Residential Unit, any Limited Common

Element or any portion of the Condominium which affects two (2) or more Residential Units, without first (1) obtaining and maintaining during the course of such work such insurance as the Board of Managers may reasonably prescribe and providing the Board with a certificate of insurance prior to the commencement of the work, (2) executing and delivering to the Board of Managers an agreement, in form and substance reasonably satisfactory to the Board, setting forth the reasonable terms and conditions under which such alteration, addition or improvement may be made, including, without limitation, the days and hours during which any such work may be done, (3) executing and delivering to the Board of Managers an agreement indemnifying and holding harmless the Board, its members and officers, and all Residential Unit Owners from and against any liability, cost or expense arising out of or connected to such work and (4) obtaining all approvals, as necessary, from the City of New York or any other governmental agency. In the event the Board of Managers chooses to have the proposed addition, alteration or improvement reviewed by an independent architect or engineer, the Residential Unit Owner shall pay the charges of such architect or engineer. The Residential Unit Owner shall also bear the cost of any increased taxes or insurance premiums resulting from their alterations, additions or improvements to their Residential Unit.

Any application to any department of The City of New York or any other governmental authority for a permit to make an addition, alteration or improvement in or to any Residential Unit shall be completed by the Residential Unit Owner and executed by the Board of Managers only, without however, incurring any liability on the part of the Board of Managers or any of them to any contractor, subcontractor or material man on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. The above provisions regarding changes to a Residential Unit shall not apply to Residential Units owned by the Sponsor or its designee until such Residential Units shall have been initially conveyed to a bona fide purchaser by the Sponsor or such designee.

All maintenance (including electrical repairs and plumbing stoppages in the Residential Units, interior painting and decorating of the Residential Units), repairs and replacements to the interior of the Residential Units including repairs to the heating/air conditioning system servicing said Residential Unit whether inside or outside the Residential Unit, all appliances located therein, pipes, wires and conduits servicing a single Residential Unit other than as may be set forth in the Condominium By-Laws shall be made by the respective Residential Unit Owner at the Residential Unit Owner's sole cost and expense. All maintenance and repair to the interior portion of the window area and doors which open from a Residential Unit are the responsibility of the Residential Unit Owner at the Residential Unit Owner's sole cost and expense. All maintenance, repair and replacement to the external portion of the window area, the actual window and external portion of the doors which open from a Residential Unit will be the responsibility of the Condominium, unless the maintenance, repair or replacement of the external portion of the window, the actual window and external portion of the doors which open from a Residential Unit are caused as a direct result of the negligence or act of a Residential Unit Owner. In such an event it shall be the Residential Unit Owners responsibility to repair or replace the external portion of the

window, the window or the external portion of the doors which open from a Residential Unit.

All general maintenance and repairs to the patios or terraces that are Limited Common Elements, including cleaning, snow removal and all repairs not structural in nature, (including maintenance or replacement of the surface of the patios or terraces), shall be the responsibility of the Residential Unit Owner whose patio or terrace is appurtenant to their Residential Unit and is a Limited Common Element of their Residential Unit. Although the cost of repairs and replacements of the Limited Common Elements shall be borne by the Residential Units Owners, the Board of Managers shall be charged with performing all such repairs and replacements at the Residential Unit Owners sole cost and expense.

In the event that the Residential Unit Owner fails to make any repair or creates any condition which affects a Building, the General Common Elements, the Limited Common Elements, or any other Residential Unit, the Board of Managers, may, upon notice given in accordance with the provisions of the By-Laws, make such repair or correct such condition and charge the Residential Unit for the cost of such service.

All maintenance, repairs and replacements to Storage Closet, whether structural or non-structural, ordinary or extraordinary, will be made by the Board of Managers and the cost thereof will be a Common Charge payable by all Unit Owners.

In the event it becomes necessary for the Board of Managers to bring any lawsuit or other proceeding to enforce its right to make such repair or correct such condition or to collect any sum due on account thereof, the Board of Managers shall also be entitled to collect reasonable attorney's fees in connection with such suit or proceeding.

Prospective Purchasers should refer to Section XVII of the Offering Plan for repairs, alterations and improvements to the General and Limited Common Elements.

### Insurance

The Board of Managers shall obtain and maintain, to the extent obtainable, fire insurance with extended coverage, water damage, vandalism and malicious mischief endorsements insuring a Building, including all of the Units and the bathroom, kitchen and laundry equipment initially installed therein by the Sponsor, together with all heating, any air conditioning equipment and other service machinery contained therein, covering the interest of the Condominium, the Board of Managers and all Unit Owners and their mortgagees, as their interest may appear, in an amount equal to the full replacement value of a Building. Each of such policies shall contain a New York Standard Mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee hereinafter set forth; and such other insurance as the Board of Managers may determine.

In addition to the insurance set forth herein, the Purchaser may desire to insure their personal effects and the interior of the Residential Unit itself for fire and liability. Such insurance, if taken by the Purchaser, will be payable by the Purchaser directly.

The proceeds of all policies of physical damage insurance carried by the Board shall be payable to the Insurance Trustee if the loss shall amount to more than \$40,000 to be applied for the purpose of repairing, restoring or rebuilding a Building unless otherwise determined by the Residential Unit Owners, as hereinafter set forth.

All policies of physical damage insurance shall contain waivers of subrogation and of any reduction of pro-rata liability of the insurer as a result of any insurance carried by the Residential Unit Owners or of the invalidity arising from any acts of the insured or any Residential Unit Owners and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of Units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums shall be delivered to all mortgagees of Units at least ten (10) days prior to expiration of the then current policies.

The amount of fire insurance to be maintained on the entire Building upon the transfer of title to the first Residential Unit and until the first meeting of the Board of Managers following the first annual meeting of the Unit Owners will be in the amount reflected in the footnotes to Schedule B, the budget for the first year of operation of the Condominium. The Board of Managers shall review the amount of fire insurance annually.

A New York Bank or Trust Company shall be the Insurance Trustee unless or until replaced by a bank or trust company in the State of New York, designated by the Board of Managers. In the event that the Insurance Trustee shall resign or not qualify, the new Insurance Trustee shall also be a bank or trust company in the State of New York designated by the Board of Managers. The Insurance Trustee shall hold all proceeds of insurance policies in accordance with Section 254.4 of the Real Property Law.

The cost of all such insurance and the fees and expenses of the Insurance Trustee shall be paid by the Board of Managers and shall constitute a General Common Expense. The Board of Managers shall also obtain and maintain, to the extent obtainable: (1) fidelity insurance covering all employees of the Condominium who handle Condominium funds; (2) Worker's Compensation insurance; and (3) in order to limit the liability of Unit Owners for personal injury and tort, public liability insurance covering each Member of the Board of Managers and each Unit Owner, in such limits as the Board of Managers may deem proper. The Board of Managers shall review such limits once each year.

The public liability insurance policy to be maintained until the first meeting of the Board of Managers following the first annual meeting of the Unit Owners will be a limit of

\$1,000,000 per occurrence covering all claims for bodily injury and for property damage arising out of any one (1) occurrence in the Common Elements.

Residential Unit Owners shall not be prohibited from carrying other insurance for their own benefit provided such policies contain waivers of subrogation and further provided that the liability of the carriers issuing insurance procured by the Board of Managers shall not be affected or diminished by reason of any Residential Unit Owner's other insurance.

**THE CONDOMINIUM INSURANCE COVERAGE DOES NOT COVER FIRE AND LIABILITY INSURANCE FOR THE PURCHASER'S PERSONAL EFFECTS AND INTERIOR OF THE RESIDENTIAL UNIT. PURCHASERS ARE ADVISED TO SECURE SUCH COVERAGE.**

The insurance the Sponsor will initially procure for the Condominium will contain officers and directors liability or fidelity bond insurance.

The Board will arrange for repair of the Units in the event of casualty loss. In the event the insurance proceeds are not sufficient to cover the cost of repairs to the Units, the balance of the cost of such repairs will be assessed against all Unit Owners. For further provisions regarding repair or reconstruction of Units, after fire or casualty and condemnation provisions see Article VII and XII of the By-Laws. In the event of a casualty loss, the Unit Owners will continue to pay the Common Charges on his or her Unit.

Although there is no requirement for annual appraisals to ascertain whether the insurance coverage is adequate, such appraisals are required prior to renewal of any fire policy. See Schedule B for the estimated insurance costs of the Condominium.

#### Access by Board of Managers

The Board of Managers and its agents, employees and contractors shall have a right of access to any Unit and to all portions of the Common Elements for the purpose of carrying out any of its obligations under the Declaration and By-Laws.

#### By-Laws and Rules and Regulations

Ownership of a Unit in the Condominium subjects the Unit Owner to compliance with the provisions of the Declaration and By-Laws as well as any rules and regulations contained in the Declaration or By-Laws or established by the Condominium in accordance therewith. The rules and regulations set forth in the Declaration and By-Laws can be found in Part II of the Plan in Schedule I, Article Seventeenth and Schedule J, Article VIII. The Board of Managers can institute legal actions to enforce compliance with the provisions of the Declaration and By-Laws as well as the rules and regulations established therewith.

The provisions of the By-Laws which require Members of the Board of Managers to be Residential Unit Owners will not apply to the first Board of Managers or any Sponsor designees to the Board of Managers.

### Easements

Each Unit Owner will have an easement in common with all other Unit Owners for the use, maintenance and repair of all pipes, wires, conduits and public utility lines located in the Common Elements or located in other Units and servicing the Unit Owner's Unit. Further, each Unit Owner will have an easement for the continuance of any encroachment by their Unit on any adjoining Unit or Common Element now existing or which may come into existence hereafter as a result of the settling of the Units or repair or alteration of the Unit by the Board of Managers, after damage by fire or other casualty or as a result of condemnation or eminent domain proceedings, or by reason of an alteration made by the Board to the Common Elements so that any such encroachment may remain undisturbed so long as the Unit stands. Each Unit will be subject to such encroachments and easements in favor of all other Units.

Each Residential Unit Owner will have, in common with all other Residential Unit Owners and each Residential Unit will be subject to, an easement for the use of a Residential Unit's Limited Common Elements and any facilities located therein, including but not limited to, such easement as will be necessary to operate, maintain, repair, rebuild, restore and replace, as necessary, such Residential Unit Owner's Residential Unit and an easement to connect to existing utilities including, but not limited to, utilities for gas, electricity, water and ventilation.

Each Unit will have an easement of support from all structural members (including, but not limited to, columns, footings, bracings, foundations, slabs, and exterior walls) supporting or serving the Building and any replacements thereof and additions thereto and an easement of necessity, and each Unit will be subject to an easement of support and necessity in favor of all other Units and the Common Elements. Each Unit will have an easement for lateral and vertical support among all adjoining Units and Common Elements.

The Board of Managers, its agents and employees shall have a right of access to the Units and to the Common Elements (irrespective of the restricted nature of such Common Element) to inspect, maintain or repair the Common Elements or any pipe, wire, or conduit therein or to make repairs to the Unit to prevent damage to the Common Elements or any other Unit.

### Allocation of Common Interest

The Common Interest of the Condominium establishes the Unit Owners percentage of ownership in the Common Elements of the Condominium and percentage of liability for the payment of General Common Charges. Each Unit Owner has the percentage of Common Interest in the Condominium set forth on Schedule A.

The Common Interest of each Unit has been 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. Said method of determining the percentage of Common Interest in a condominium complies with and is pursuant to Section 339-i (1) (iv) of the Real Property Law of the State of New York. This percentage determines the amount that the Residential Unit Owners will pay for their Common Charges.

The percentage of the undivided interest in the Common Elements shall not be changed except with the consent of all Unit Owners affected expressed in a duly recorded amendment to the Declaration.

Copies of both the Declaration and By-Laws are contained in Part II of the Offering Plan.

## **XIX. REAL ESTATE TAXES**

In accordance with the New York State Condominium Act, real estate taxes applicable to each Unit will be separately assessed. After the Units are separately assessed, each Unit will be taxed as a separate tax lot for real estate tax purposes and the Unit Owners will not be responsible for the payment, nor will the Unit be subject to any lien arising from the non-payment of real estate taxes on Units other than their own. The estimated monthly costs and charges to be incurred by the owner of each Unit in the first year in which the property will be fully subject to real estate taxes together with estimated Common Charges on each Unit and other carrying costs are set forth on Schedule A.

The New York City Department of Finance is the assessing authority with jurisdiction over this Condominium. Based on an estimate dated November 3, 2017 from Moseson & Associates, Corp., 769 Empire Avenue, Far Rockaway, New York 11691, the assessed value of the Building upon completion of construction will be \$584,711.13 and the property will be assessed as part of Tax Class II. Based on the current tax rate for of \$12.892 per \$100 of assessed value, the total estimated real estate taxes due for the Residential Units will be \$70,739.87. The Building does not qualify for 421-a tax benefits. Sponsor anticipates completion of the entire Development by May 2020.

Schedule A reflects the estimated Real Estate Taxes assuming an estimated assessed value upon completion of construction of \$584,711.13 and a tax rate of \$12.892 per \$100 of assessed value.

A copy of the letter dated November 3, 2017, from Moseson & Associates, Corp. can be found on page 87.

Each Unit will be given a separate block and lot designation.

The estimate of real estate taxes for each Unit for the first year of Condominium operation further assumes that the amount of real estate taxes payable with respect to each Unit will be calculated by dividing the total tax liability among the Units in proportion to the percentage of Common Interest of the individual Units indicated in Schedule A. There is no assurance that the City of New York will allocate taxes among the Units in proportion to the individual Units' percentage of Common Interest. If they do not, Owners of Units with the same percentage of Common Interest will pay different amounts of real estate taxes.

Although in the Sponsor's opinion this method of calculating the real estate taxes applicable to each Unit is reasonable, there can be no assurance that this method of calculation of real estate taxes applicable to each Unit will be the final method used by the New York City taxing authorities in establishing the real estate tax assessment for each Unit. If for any reason a different method of calculation is used or a different assessment is placed upon any of the Units by such authorities, real estate taxes may increase or decrease, depending upon the final decision of such taxing authorities.

In the event the Units have not been separately assessed for real estate tax purposes prior to the closing of title to the first Unit, Sponsor may place in escrow, in the name of the Board of Managers, an amount equal to the unpaid real estate taxes which will be levied against the Units in the Condominium for the six (6) month period following the first closing. Thereafter, at each closing during said period, each Purchaser will reimburse the Sponsor for the pro-rata amount paid on behalf of said Unit. In the event the actual assessment is greater than the amount adjusted, Purchaser agrees to reimburse Sponsor after the closing to the extent of the actual assessment. In the event the actual assessment is less than the amount adjusted, Sponsor agrees to reimburse the Purchaser after the closing to the extent of the actual assessment.

Alternatively, the Sponsor may place in escrow, in the name of Board of Managers, an amount equal to the real estate taxes attributable to the unsold Units for such six (6) month period and may collect at each closing the estimated amount of taxes attributable to such Unit for the balance of the six (6) month period. The Board of Managers will pay the real estate taxes from the escrow account when taxes are due and payable and the funder of the escrow account will be entitled to reimbursement from Unit Owners to the extent of the actual assessment.

Unit Owners will not be responsible for or subject to any lien arising from the non-payment of real estate taxes on any other Unit.

There are no tax certiorari proceedings currently pending for the property. The By-Laws empower the Board of Managers to bring such proceedings on behalf of the Unit Owners.

The Sponsor anticipates that the real estate tax rate will vary in future years rather than remain constant. The estimates of projected real estate taxes in this Offering Plan have been prepared by the Sponsor and cannot be construed as an assurance of

the final tax costs, but are merely estimates based upon information available to the Sponsor at this time. In no event will the Sponsor or Sponsor's Counsel be liable to any Purchaser under this Plan, nor will any Purchaser have the right to rescind his or her Purchase Agreement, in the event the amount of the taxes differ from those projected.

## **XX. INCOME TAX DEDUCTIONS TO RESIDENTIAL UNIT OWNERS AND TAX STATUS OF THE CONDOMINIUM**

The Sponsor has been advised by its counsel, Moritt Hock & Hamroff LLP, that each Residential Unit Owner will be entitled under present law to a deduction for Federal, New York State and New York City income tax purposes for the real estate taxes paid by each Residential Unit Owner covering their Residential Unit, up to a maximum of \$10,000 per year, and, provided the Residential Unit is used as the Residential Unit Owners primary residence or one (1) other residence that the Residential Unit Owner selects pursuant to Section 163(h) of the Internal Revenue code of 1986 and the Tax Cuts and Jobs Act of 2017, for the interest paid by the Residential Unit Owner on any mortgage covering the Residential Unit Owner's Residential Unit up to \$750,000. See the Opinion of Counsel in Section XXI of the Offering Plan. Similarly, the Sponsor has been advised by counsel that certain Residential Unit Owners who are veterans of the United States Armed Forces may be entitled to deductions covering part of the real estate taxes applicable to their respective Residential Units.

The Sponsor has been advised by its counsel that the Condominium will be taxed on any excess of income over expenses from unrelated sources. Examples of unrelated source income include interest earned on reserve and other invested funds, income from concessions and income from dues or fees received from persons other than the Residential Unit Owners. If the Condominium is required to pay taxes, the amount thereof will be levied as an additional Common Charge.

Sponsor has also been advised that pursuant to Section 528 of the Internal Revenue Code, certain Condominiums, substantially all of whose Residential Units are used for residences, are afforded the opportunity to elect to be treated as tax exempt organizations. In order to qualify, sixty (60%) percent or more of the gross income of each must consist of amounts received as membership dues, fees or assessments from the Residential Unit Owners and ninety (90%) percent or more of the expenditures of each must be for the acquisition, construction, management, maintenance and care of the Condominium Properties, which properties, as defined in Section 528 of said Code, include property held by the Condominium, property commonly held by the members of the Condominium, or property within the Condominium held by the members of the Condominium. This Condominium has been structured so that it will meet the requirements of Section 528 of the Internal Revenue Code and as a result the Condominium will be eligible to be treated as a tax exempt organization under Section 528 of the Internal Revenue Code. Purchasers should refer to the Opinion of Counsel in Section XXI of the Offering Plan.

## **XXI. OPINION OF COUNSEL**

April 9, 2020

96-16<sup>th</sup> Street  
137 Varick Street, Suite 503  
New York, New York 11228

Gentlepeople:

We note that the Offering Plan for the above-captioned Condominium states that it is believed that the monthly payments of interest on any mortgage, up to a maximum of \$750,000, which becomes a lien on a condominium Residential Unit and real estate taxes payable by a Residential Unit Owner, which are assessed against the Residential Unit by any governmental taxing authority, up to a maximum of \$10,000 per year, are a proper deduction in connection with Federal, New York State and New York City Income Taxes payable by the owner of such Condominium Residential Unit.

We have given this matter careful study, and it is our opinion that, pursuant to the provisions of the Internal Revenue Code of 1986 (the "Code") (See Revenue Ruling 64-31, C.B.1964-300), the corresponding provision of the New York State Law (See Section 615 of the Tax Law) and the Tax Cuts and Jobs Act of 2017, such interest payments and the aforesaid real estate payments are proper deductions by the owner of a Condominium Residential Unit, in connection with their Federal, New York State and City income taxes. Similarly, we are of the opinion that each Condominium Residential Unit Owner whose Residential Unit is either their principal residence or the one other residence selected pursuant to Section 163 (h) (5) (A) (i) (II) of the Code will be entitled, under Section 216 (a) (2) of the Code and Section 615 (a) of the State Law, and the Tax Cuts and Jobs Act of 2017, to deduct interest paid or accrued by the Residential Unit Owner on any mortgage, up to a maximum of \$750,000, which becomes a lien on a Condominium Residential Unit. The Residential Unit may be so selected if the Residential Unit Owner either uses it as a residence within the meaning of Code Section 280A (d) (1) (i.e., uses it for personal purposes for a number of days which exceed the greater of fourteen (14) days, or ten (10%) percent of the number of days during the year for which the Residential Unit is rented at a fair rental), or neither rents nor uses the Residential Unit at any time during the year. In addition, certain Residential Unit Owners who are veterans of the United States Armed Forces may be entitled to deductions covering part of the real estate taxes applicable to their Residential Unit.



In adding a new Section 528 to the Code, the Tax Reform act of 1976 affords certain Condominiums, substantially all of whose Residential Units are used for residences, the opportunity to elect to be treated as tax exempt organizations. In order to qualify, sixty (60%) percent or more of the gross income of each must consist of amounts received as membership dues, fees or assessments from the Residential Unit Owners and ninety (90%) percent or more of the expenditures of each must be for the acquisition, construction, management, maintenance and care of the Condominium properties, which properties, as defined in Section 528 of the Code, include property held by the Condominium, or property within the Condominium. Based upon our examination of the Offering Plan and subject to the Condominium, actually satisfying the minimum percentage income and expenditure criteria set forth above, it is our opinion that the Condominium will be eligible to be treated as a tax exempt organization under Section 528 of the Code.

Such an election will exempt from Federal, New York State and New York City Income Taxation all amounts received by the Condominium from the Residential Unit Owners as membership dues, fees or assessments. The Condominium will be taxed, however, on any excess of income over expenses from unrelated sources. Examples of unrelated sources income include interest earned on reserve funds, income from concessions and income from dues or fees received from persons other than the Residential Unit Owners. In the event the Condominium fails to qualify for and elect Section 528 taxation status in any year, it may, to the extent it has any income from unrelated sources or from accumulated revenues received by virtue of dues, fees and assessments received from Residential Unit Owners not expended in any taxable year, be subject to Federal, New York State and New York City Income Taxation (see Rev. Ruling 74-99, 1974-1 C.B. 131).

We have considered the relevant cases and rulings on the tax status of the Condominium including Revenue Rulings 74-17, 74-99, 75-370 and 75-371. These rulings, under certain circumstances, permit assessments for capital replacements and new or replacement equipment to be excluded from the Condominium's income and be treated for tax purposes as additional capital contributions. In such case each Residential Unit Owner's assessment for such purposes would add to their tax basis. Although the Condominium described in the Plan may be deemed a taxable entity under such Rulings, assuming that all expenses are designated and accounted for, and that certain other special purpose assessments are properly treated as trust funds, the Condominium should not realize any significant amount of taxable income, other than with respect to incidental investment income, such as interest earned on reserve funds deposited in bank accounts.



We have examined the exceptions to title set forth in Section XIII of the Offering Plan, and we are of the opinion that none of such exceptions of title are contrary to the terms of the Purchase Agreement nor do they interfere with the quiet use or enjoyment of the Purchaser's Unit as set forth in the Offering Plan.

We have examined the Declaration and By-Laws pertaining to the proposed Condominium. It is our opinion that the Declaration and By-Laws, when recorded, will validly create a Condominium in accordance with Article 9-B of the Real Property Law of the State of New York.

In addition, we note that the percentage of Common Interest for each Residential Unit as contained in Schedule A has been determined 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 our opinion, this is a proper method of determining the percentage of Common Interest in a Condominium and complies with Section 339-i (1)(iv) of the Real Property Law.

In our opinion, the Condominium will be eligible for tax exempt status, if it so elects, and Residential Unit Owners will be entitled to the above-mentioned income tax deductions. However, this opinion is not a guarantee; it is based on existing rules of law applied to the given facts and documents referred to above. No assurances can be given that the tax laws upon which counsel bases this opinion will not change. In no event will the Sponsor, the Sponsor's counsel, the Board of Managers of the Condominium, any selling agent or any other person be liable if there are changes in the facts on which counsel relied in issuing this opinion or if there are changes in the applicable statutes, regulations, decisional law or Internal Revenue Service rulings on which counsel relied which cause the Condominium to cease to meet the requirements of Section 528 of the Code or the New York State tax law as amended or New York City tax law and Residential Unit Owners not to be entitled to income tax deductions.

It is our understanding that this letter will be made a part of the Offering Plan of 96 16<sup>th</sup> Street Condominium and we consent to its inclusion therein.

Very truly yours,

**MORITT HOCK & HAMROFF LLP**

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

Anthony J. Ficara, Partner

Moseson & Associates Corp.  
769 Empire Avenue  
Far Rockaway, NY 11691  
Telephone ( 718 ) 327-5779  
Fax ( 718 ) 327-5737

November 3, 2017

96 16<sup>th</sup> Street LLC  
96 16 Street  
Brooklyn, NY 11215

RE: 4 Residential Condominium Apartments located at 96 16 Street, Brooklyn NY  
Block: 1051 Lot: 28

Dear Sir:

You have requested me to advise you with respect to the opinion of estimated The City of New York's real estate tax for the above referenced project after completion.

1. Prior to the construction the property was occupied by a 2 family residential frame structure. The existing structure was demolished at the end of 2016.

2. Property tax is only levied on a portion of the market value. This portion is called the assessed value. In regard to 4 - 7 family homes and condominiums with no more than eight ( 8 ) dwelling units, the assessed values are levied on 45% of the market value. In it's current state, the above mentioned property, prior to commencement of construction the assessor has designated the structure as a tax class 1, rendering the assessed value 6% of the marked value. Based on assessment guidelines, the proposed conversion to condos will be classed as a tax class 2B; thereby the assessed value will be levied on 45% of the market value. Also there is a 8-30% limitation that restricts the Department of Finance from increasing the assessment to no more than 8 percent annually and no more than 30 percent over a five year period.

3. Upon completion, the project will consist of a 5 story building with 4 residential condominium apartments.

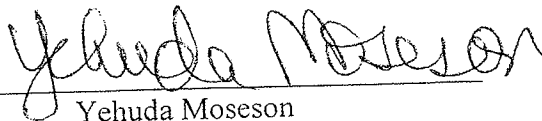
## CONCLUSION

The total assessed value of the property (i.e. the aggregate assessment of all residential units) following completion of construction is estimated to be approximately \$584,711.13 Using the foregoing estimate of assessed value upon completion assuming completion to be on or before Dec. 30, 2018 and assuming the tax rate remains the same as the current rate (i.e., \$12.892% per \$100 of assessed value Tax Class 2B 2016/2017 tax year) then the estimated real estate taxes for the residential units combined with be \$70,739.87 plus any equalization increases.

We have been retained by you to undertake the procedures outlines in this letter and consent to the inclusion of this letter in any offering plan with respect to the project. We make no representations and express no opinion as to whether or not any or all of the requirements and conditions set fourth herein will be fulfilled.

Although the estimate of the post-construction Actual Assessed Valuation is a good faith estimate, it is not possible to estimate it with any degree of certainty, and thus such assessed valuation when actually made, may be lesser or greater than as estimated. In no event will my firm, the Sponsor, the Sponsors' counsel, the Condominium Board or any other person be liable if the assessed valuation when actually made is lesser or greater then predicted, Administrative Code and the applicable rules and regulations of the City of New York are in the future changed or if the facts as represented to my firm prove to be untrue.

As officer of Moseson & Associates a real estate tax consulting firm, I have represented homeowners, real estate developers, attorneys and corporations since 1989 in dealings with the NYC Department of Housing Preservation and Development. I specialize primarily in obtaining Section 421a, 421b, ICAP tax abatement for my clients.

  
Yehuda Moseson

## **XXII. RESERVE FUND**

The Condominium budget includes as a reserve fund line item of \$1,800 to be collected out of the Common charges paid by the Unit Owners. The reserve fund is to be used for replacement of the Common Elements. See Footnote 11 to Schedule B for complete details.

No representation is made that the reserve fund will be adequate for future replacements of Common Elements. If additional funds are required over and above the reserve fund, it may be necessary to increase the Common Charges payable by the Unit Owners or to collect a Special Assessment from each Unit Owner.

During the period Sponsor is in control of the Board of Managers, the reserve fund will not be used to reduce the estimated Common Charges.

Neither the Department of Law nor any other Governmental Agency has passed upon the adequacy of the reserve fund.

## **XXIII. WORKING CAPITAL FUND**

At closing the Sponsor will collect an amount equal to two (2) months Common Charges from each Purchaser to be paid to the Condominium as initial working capital. While Sponsor is in control of the Board of Managers of the Condominium the working capital funds will not be used to reduce the Common Charges. The working capital fund may be utilized to reimburse Sponsor for prepaid expenses of the Condominium. The only budgetary item that might require a substantial credit to the Sponsor would be the insurance disclosed in Schedule B. If any portion of the working capital funds are used during this period to pay for prepaid expenses, such amounts will be repaid to such fund out of future Common Charges collected. At such time as the Sponsor closes title to the last Residential Unit, the working capital fund will be turned over to the Board.

In the event the Building requires replacement of Building components and systems in an amount exceeding funds available in the Reserve Fund and/or Working Capital Fund, the Board may implement a Special Assessment and/or engage a commercial lender to obtain funds to cover such expenses.

Neither the Department of Law nor any other Governmental Agency has passed upon the adequacy of such funds.

## **XXIV. MANAGEMENT AGREEMENT, CONTRACTS AND LEASES**

The Sponsor has not entered into any management contract to provide for management of the Condominium.

The Board of Managers of the Condominium will be responsible for the management of the Condominium, and may perform this function itself or hire a

managing agent to bill and collect the Common Charges, hire and fire employees, supervise alterations and repairs, maintain the Condominium's books and records, advise the Board of Managers of its proposed annual budget, provide each Unit Owner annually with a Financial Statement prepared by an independent public accountant, purchase supplies for the Condominium and generally perform the duties of a managing agent for residential property. During the period Sponsor maintains a majority of the Board of Managers, the financial statement will be certified. In performing its duties, the Board of Managers or a managing agent employed by it, may engage contractors for the purpose of carrying out the maintenance and repair of the Condominium. **No representation is made as to the costs, terms or availability of a managing agent in the event the Board decides to hire one in the future.**

## **XXV. IDENTITY OF PARTIES**

### Sponsor

The Sponsor is 96 16<sup>TH</sup> Street LLC, a New York limited liability company with an address at 137 Varick Street, Suite 503, New York, New York 0013. The corporation was formed on January 21, 2016. The Sponsor entity has not had any prior public offerings.

The Principals of the Sponsor are Jorge Mastropietro, Anish Karyat, Carolina Garcia Paris and Pedro Moreno-Mengibar.

Jorge Mastropietro is a licensed architect and owner of Jorge Mastropietro Architect Atelier, PLLC. Mr. Mastropietro has been involved with the design and development of several residential condominium projects in the New York metropolitan area.

Anish Karyat is an executive with Jane Street Capital, Carolina Garcia Paris is an executive with TD Ameritrade and Pedro Moreno-Mengibar is an executive with Google, Inc.

Neither the Sponsor, nor any affiliates of the Sponsor or Principal has been involved in any prior public offering in the past five (5) years nor do any currently own ten (10%) percent or more of any unsold units in any other condominium, home owners association or cooperative in the State of New York. .

Neither the Sponsor nor the Principal of the Sponsor has ever had any prior convictions, felony convictions, bankruptcies, judgments and/or injunctions placed against them.

### Selling Agent

The Selling Agent is Compass with an address at 90 5<sup>th</sup> Avenue, 3<sup>rd</sup> Floor, New York, New York 10011. The Selling Agent is a licensed real estate broker in the State of New York and is experienced in the sale of condominium units.

Neither Modern Compass nor any principals thereof have ever had any prior felony convictions, bankruptcies, judgments and/or injunctions placed against them.

### Attorneys

Moritt Hock & Hamroff LLP, 1407 Broadway, 39<sup>th</sup> Floor, New York, New York 10018, counsel to the Sponsor, have been selected by the Sponsor to represent the Condominium in connection with all legal matters incident to the operation and management of the Condominium. No legal fee will be charged for such representation except for work actually performed after the formation of the Condominium. The Condominium can, at any time, choose to select different attorneys to represent it.

All legal matters in connection with the establishment of the Condominium, the tax opinion of counsel contained herein and the preparation of this Offering Plan have been passed upon for the Sponsor by Moritt Hock & Hamroff LLP. The individual attorney in said firm responsible for said work is Anthony J. Ficara, Esq.

Moritt Hock & Hamroff LLP will also represent the Sponsor in connection with the individual Unit closings and will also act as the Escrow Agent as described in Section X of the Offering Plan.

Moritt Hock & Hamroff LLP does not have any financial interest in the Property, the Sponsor, the Condominium or any other party involved in this transaction, except for fees for services rendered in connection with the Condominium.

### Insurance

The estimated insurance rates have been passed upon by JCH Associates, LLC, 134 Warner Avenue, Roslyn Heights, New York 11577.

### Architect

The architect who prepared the report in Part II and who executed the Certification in Part II is Ahmed Emara, AIA, LEED GA, 1133 Broadway, Suite 1607, NY, NY 10010. Mr. Emara has had prior experience in the preparation of plans and specifications for other condominiums and home owner associations in the Metropolitan area. Mr. Emara is an independent licensed architect, however he has collaborated and worked with Jorge Mastropietro Architect Atelier, PLLC, which is owned and controlled by a Principal of the Sponsor.

A few of Ahmed Emara architect's projects are:

93 Bright Street, Jersey City, NJ 07302  
353 Fourth Street, Jersey City, NJ 07302  
54 Bright Street, Jersey City, NJ 07302  
349 4th Street, Jersey City, NJ 07302  
227 Montgomery Street, Jersey City, NJ 07302

Ahmed Emara is not a principal of the Sponsor.

## **XXVI. REPORTS TO RESIDENTIAL UNIT OWNERS**

It is the obligation of the Board of Managers of the Condominium to give all Residential Unit Owners annually:

- (i) a financial statement of the Condominium prepared by a certified public accountant or public accountant by a specific date; such statement shall be certified while the Sponsor retains a majority of the Members of the Board of Managers and such statement shall be provided no later than four (4) months after the close of the fiscal year;
- (ii) prior notice of the annual Residential Unit Owners' meeting; and
- (iii) a copy of the proposed annual budget of the Condominium within thirty (30) days of the date set for adoption by the Board of Managers. While Sponsor is in control of the Board of Managers such budget will be certified in accordance with the regulations of the Department of Law.

## **XXVII. DOCUMENTS ON FILE**

Sponsor shall keep copies of the Plan, all documents referred to in the Plan and all Exhibits submitted to the Department of Law in connection with the filing of the Plan, on file and available for inspection without charge and copying at a reasonable charge at Sponsor's office for six years from the date of first closing. The Sponsor shall deliver to the Board of Managers a copy of all documents filed with the appropriate recording office at the time of the closing of the first Residential Unit.

## **XXVIII. GENERAL**

### Pending Litigation

As of the date of this Offering Plan, there is no litigation or administrative proceedings pending against the Condominium or the Sponsor or any other party which would affect their ability to perform their obligations relating to this offering, or which would in any way affect this offering.

### Prior Offerings

This property has not been the subject of any prior public offerings. No contracts or agreements, written or oral, have been entered into for the sale or transfer of any of the Residential Units being offered for sale in the Plan and no deposits or advances of funds have been taken by or on behalf of Sponsor in connection with the reservation, sale or transfer of such Residential Units, prior to acceptance of the Plan by the Department of Law. The property forming the Condominium is vacant land and therefore, there are no residential or commercial tenants occupying the premises.

### Non-Discrimination

In accordance with the provisions of the laws of the State of New York, the Sponsor represents that it will not discriminate against any person because of his or her race, creed, sex, sexual orientation, color, disability, marital status, national origin or ancestry in the sale of Residential Units under this Plan.

### Amendment of Plan

The Plan may be amended at any time and from time to time provided that, if the amendment is a material and substantial modification of the Plan which adversely affects Purchasers, then anyone who has theretofore executed a Purchase Agreement shall be given not less than thirty (30) days after a copy of the duly filed amendment is mailed or otherwise delivered to them by written notice to the Sponsor to cancel the Purchase Agreement and to obtain a refund, in full, of the down payment made therewith with interest, if any. No person has been authorized to make any representation which is not expressly contained herein. This Plan may not be changed or modified orally.

### Other Circumstances

The Sponsor has no knowledge of any other circumstances that may affect the use or enjoyment of the Building and its appurtenances, not disclosed elsewhere in the Plan.

## **XXIX. SPONSOR'S STATEMENT OF SPECIFICATIONS OR BUILDING CONDITION**

Sponsor adopts the Description of Property set forth in Part II of the Plan. Sponsor has no knowledge of any material defects or need for major repairs except as set forth in the Description of Property Report set forth in Part II of the Plan.

Date of Offering Plan: \_\_\_\_\_, 2020  
New York, New York

**96-16 Street LLC**  
Sponsor

---

**OFFERING STATEMENT**

**96 16<sup>th</sup> STREET CONDOMINIUM**

96-16<sup>th</sup> Street,  
Brooklyn, New York 11215

---

**PART II**

**RESIDENTIAL PURCHASE AGREEMENT**

Residential Unit No. \_\_\_\_\_

Date \_\_\_\_\_

Parking Space Unit No. N/A

Storage Unit No. \_\_\_\_\_

Anticipated Closing Date: \_\_\_\_\_

Seller: 96 16 STREET LLCAddress: 137 Varick Street, Suite #503, New York, New York 11228

Purchaser(s): \_\_\_\_\_

Home Address: \_\_\_\_\_

Residential Telephone Number: \_\_\_\_\_

Business Telephone Number(s): \_\_\_\_\_

Social Security Number(s): \_\_\_\_\_

Purchaser's Attorney: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

Attorney's Phone/Fax Numbers: Phone: \_\_\_\_\_ Fax \_\_\_\_\_

**Seller and Purchaser agree as follows:**1) **PURCHASE PRICE:**

Residential Unit

\$ \_\_\_\_\_

Builder upgrades &amp; options ("Extras")

\$ \_\_\_\_\_

**TOTAL \$** \_\_\_\_\_**PAYABLE AS FOLLOWS:**

On the signing of this Purchase Agreement,  
10% of the Purchase Price plus Extras, the  
receipt whereof is hereby acknowledged  
(the "Downpayment")

\$ \_\_\_\_\_

Purchaser's certified or bank cashier's check  
(drawn on a New York Bank payable directly to  
the order of Seller or Seller's designee on  
the Closing of Title

\$ \_\_\_\_\_

**TOTAL \$** \_\_\_\_\_**SCHEDULE D**

Any payment made by check is accepted subject to collection. If any check tendered is not honored, Purchaser shall provide a certified check or bank cashier's check payable directly to the payee on the dishonored check within seventy-two (72) hours after demand for replacement therefore.

Notwithstanding the foregoing, if for any reason whatsoever the check given by Purchaser as the down payment hereunder is dishonored, Seller shall have the right to cancel this Purchase Agreement. Seller's election to cancel shall not be deemed a waiver by Seller of its right to pursue other remedies.

**THE PAYMENT DUE AT CLOSING IN ACCORDANCE WITH THIS PURCHASE AGREEMENT ON ACCOUNT OF THE PURCHASE PRICE MUST BE MADE BY PURCHASER'S PERSONAL CERTIFIED CHECK OR OFFICIAL TELLERS CHECK ON A NEW YORK CLEARINGHOUSE BANK PAYABLE DIRECTLY TO SELLER OR SELLER'S DESIGNEE. IF PAYMENT SHALL BE MADE TO SELLER'S DESIGNEE, SELLER SHALL GIVE PURCHASER PRIOR INSTRUCTIONS. UNCERTIFIED CHECKS OF FUNDING COMPANIES, ATTORNEY'S ESCROW CHECKS AND CHECKS PAYABLE TO PURCHASER OR ANOTHER PARTY AND ENDORSED TO SELLER WILL NOT BE ACCEPTED AND TENDER OF SAME WILL NOT CONSTITUTE COMPLIANCE BY PURCHASER OF THEIR OBLIGATIONS HEREUNDER.**

Title to all items of personal property shall be delivered free and clear of all liens and encumbrances, except the lien of the mortgage applied for by Purchasers herein, if any.

2) **DESCRIPTION OF UNIT** - Seller agrees, at its own cost and expense, to erect and complete, and Purchaser shall buy from Seller, the condominium unit(s) known as Residential Unit No. \_\_\_\_\_ (the "Residential Unit") with a \_\_\_\_\_ percent undivided interest in the common elements of the condominium (the "Common Elements") known as 96-16<sup>th</sup> Street Condominium (the "Condominium"), located on 96 16<sup>th</sup> Street, Brooklyn, New York 11215, and as described in the Declaration of Condominium to be recorded in the New York County Register's Office, Kings County, to be built by Seller on property comprising the Condominium Map (the "Property") filed or to be filed in the New York County Register's Office, Kings County. The Residential Unit, shall hereinafter be referred to as the "Unit". The Unit shall be constructed in accordance with the requirements as to materials and workmanship of the Building Department of the City of New York, which, when completed, will be in substantial accordance with the plans as filed or to be filed with the Building Department of the City of New York.

The Unit may vary from any models displayed to Purchaser, and Purchaser should not rely on any model depiction of the units in the Condominium. All dimensions are approximate and may vary from the floor plans of the Condominium.

The Unit shall not include any of the following if displayed in any unit or model

unit: decorative fixtures, furniture, furnishings, paint, wallpaper, carpeting, shelves, wall and window treatments, built-ins, burglar alarm systems, site lighting, special landscaping installed at any model units, washer/dryer, central vacuum systems, patios, decks, highhat lighting, additional fixtures and switches added for decorative purposes, pull down staircases and skylights and other optional fixtures or features exhibited in any model units and/or any sales office excepting those specifically set forth as may be attached to this Purchase Agreement, or above. Purchaser acknowledges that the above features, as contained in any model unit and/or sales office are for display purposes only and are not included in this sale unless specifically provided for in this Purchase Agreement.

All improvements containing natural materials are subject to fade. Seller shall not be responsible to change, replace or remove any improvements in the event they fade.

3) **OFFERING PLAN** - Seller has exhibited and delivered to the Purchaser, and Purchaser acknowledges having received, read and understood, the Offering Plan for condominium ownership of the Property and all amendments thereto filed to date, all of which are incorporated by reference and made a part of this Purchase Agreement, with the same force and effect as if fully set forth in this Purchase Agreement. Purchaser agrees to be bound by the Offering Plan, including all amendments thereto now or hereafter filed by Seller (collectively the "Plan"). Seller may freely amend the Plan in any respect from time to time, without Purchaser's approval or consent. Any conflict between the Plan and this Purchase Agreement shall be resolved according to the terms of the Plan. Purchaser acknowledges having received and read the Plan at least three (3) business days prior to signing this Purchase Agreement and having had full opportunity to examine all papers and documents and investigate all matters set forth in the Plan.

Purchaser shall deliver all documents to Seller and perform all acts required by Seller to carry out the provisions of the Plan, establish the Condominium and conform to all applicable laws and regulations. This Paragraph shall survive Closing and delivery of the deed.

4) **GOVERNMENTAL REQUIREMENTS** - If after the date of this Purchase Agreement any law or governmental authority requires any substitutions, changes or additions in any part of the construction of the Unit, the materials used in construction, the manner of construction or any other aspect of development, then the actual cost of such substitution, change or addition shall be added to the price of the Unit and shall be payable by Purchaser to Seller at Closing (defined below), provided, however, that if the amount of such additional cost exceeds \$1,000, then Purchaser may cancel this Purchase Agreement and receive a full refund of all payments made to Seller on account of the purchase price, whereupon neither party shall have any further liability of obligation to the other in connection with this Purchase Agreement or transaction. However, such right to cancel this Purchase Agreement shall automatically terminate if

Purchaser fails to give written notice of cancellation to Seller within ten (10) days after

Seller informs Purchaser of the amount of the additional expense.

5) **MORTGAGE FINANCING** - This Purchase Agreement is not conditioned upon Purchaser obtaining mortgage financing. In the event Purchaser is unable to obtain a mortgage, this Purchase Agreement shall remain in effect and Purchaser shall have an ongoing obligation to consummate the transaction. If a Purchaser does not consummate the transaction and close title to the Unit as a result of Purchaser's inability to obtain a mortgage, Purchaser will be in default under this Purchase Agreement and Seller may retain all monies as provided for in Paragraph 22 herein. Purchaser further understands and agrees that if he or she chooses to finance the purchase of the Unit through a lending institution and obtain 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 his financial status or condition shall release or relieve him of his obligations pursuant to this Purchase Agreement and Sponsor shall have no liability as a result of any scheduling or adjournment of the closing beyond the expiration of the loan commitment.

6) **CLOSING DATE; ADJOURNMENTS; CONSTRUCTION DELAYS BY SELLER**  
The act of transferring ownership of the Unit in return for payment in full of the Purchase Price and all other sums due from Purchaser under this Purchase Agreement is known as the "Closing". The Anticipated Closing Date indicated on the first page of the Purchase Agreement is an approximate date and Seller cannot make any guarantees that such date will be the actual Closing Date. Seller shall have the right to adjourn or advance such Closing Date as provided herein. The Closing shall take place at such time and place and on such date as Seller shall designate by prior written notice ("Notice for Closing") delivered in accordance with Paragraph 30 herein, which shall be given no less than thirty (30) days before the date set for Closing. Purchaser may waive the thirty (30) day notice period by execution and delivery of a waiver in the form set forth as Schedule D-2 to the Purchase Agreement in the Plan.

Should Seller be unable to convey title to Purchaser in accordance with the Notice for Closing, Seller shall have the right, from time to time, to adjourn the date and time for Closing on written notice to Purchaser. In such event, Seller shall, by a new Notice for Closing, fix a new date and time for Closing, which shall be no less than ten (10) days before the new scheduled date and time for Closing.

If the Closing takes place at the request of Purchaser at any location other than the office of Seller's attorney, Purchaser shall pay to Seller's attorney a travel fee in the sum of \$250. The Closing may not take place in any other location without Seller's prior written consent.

In the event the Closing is adjourned with Seller's consent, at the request of Purchaser or Purchaser's attorney within forty-eight (48) hours of the scheduled time of Closing, Purchaser shall also pay Seller's attorney an adjournment fee in the sum of \$500.

In the event that the closing of title to the first Residential Unit in the Condominium has not occurred within twelve (12) months of the anticipated date of first

closing set forth in the Offering Plan, as same may be amended, Purchasers will be afforded a right of rescission.

If Purchaser is not in default under this Purchase Agreement and the Closing has not taken place within twelve (12) months after the Anticipated Closing Date set forth on the first page of this Purchase Agreement, either Seller or Purchaser may cancel this Purchase Agreement by forwarding written notice of cancellation to the other no later than ten (10) days after expiration of such twelve (12) month period whereupon Seller shall refund to Purchaser, subject to the escrow provisions as disclosed in Section XII of the Plan, all payments, other than Funds used towards upgrades, options or extras, made by Purchaser to Seller on account of the Purchase Price and neither party shall thereafter have any further liability or obligation to the other in connection with this Purchase Agreement or transaction. Purchaser shall be obligated to notify Seller in writing of its intent to exercise said option no later than ten (10) days after the twelve (12) month period. Failure to so notify Seller shall be deemed a waiver of this provision, and Purchaser shall continue to be bound by the terms of the Purchase Agreement. In the event Seller shall be unable to convey title to the Residential Unit within twenty-four (24) months of the proposed date of delivery through no fault of the Purchaser, the Purchase Agreement shall be deemed null and void and Seller shall return all monies being held in escrow within thirty (30) days thereafter.

7) **ADDITIONAL MONEY TO BE PAID BY PURCHASER AT CLOSING** - In addition to all other sums payable or reimbursable elsewhere under this Purchase Agreement, Purchaser shall at Closing pay, or reimburse to Seller if Seller has already made payment, or pay to any Lender, all applicable charges for:

- (a) Any Lender's charges for inspections, appraisals, title examination and policy insuring the Lender's interest, Lender's attorneys' fees for preparation of all loan documents, all commitment fees, points, origination fees and other fees and charges (however characterized) imposed or exacted by the Lender or incurred by Seller or Purchaser in connection with Purchaser's mortgage loan;
- (b) any mortgage recording taxes on Purchaser's mortgage;
- (c) governmental charges which may be assessed on account of any mortgage loan;
- (d) mortgage insurance, if required, on Purchaser's mortgage;
- (e) New York State real estate transfer tax on the deed;
- (f) New York City real estate transfer tax on the deed;
- (g) Mansion Tax pursuant to Section 1402-a of the Tax Law of the State of New York, if applicable;
- (h) all recording and filing charges payable on account of the transfer of title and recording of all documents in connection therewith including without limitation any mortgage, the deed, power of attorney, affidavit required

pursuant to Section 339-ee of the New York State Real Property Law and any blanket mortgage release documents;

- (i) a sum equal to the partial mortgage tax credit to which Purchaser may be

- entitled under any applicable law by reason of mortgage taxes having been previously paid by Seller;
- (j) an initial non-reimbursable capital contribution in an amount equal to two (2) months Common Charges, payable to the Condominium;
  - (k) a pro-rata portion of the Condominium's estimated first year insurance, based on the Unit's percentage of Common Interest; and
  - (l) \$2,500 to Seller's attorney for the preparation of the closing documents.

Purchaser shall also apportion with Seller as of the end of the day prior to Closing, and pay to Seller at Closing, the apportioned amount due for taxes, condominium Common Charges, sewer use, water use, fuel oil (if any) and any other utility costs. Purchaser shall also pay the deposits required by the Lender to establish the estimated or escrow fund for future payments of taxes, condominium Common Charges, sewer use and insurance premiums (if applicable). In addition, in the event Seller's attorney prepares the New York City "ACRIS" transfer documents, Purchaser shall be required to pay Seller's attorney an additional fee of \$250. In the event the title company prepares the ACRIS, Purchaser shall pay the applicable fee of the title company. If through no fault of Seller, Purchaser fails for any reason to close title on the date originally scheduled in Seller's Notice for Closing, or such later date (if applicable) to which Seller in a subsequent Notice for Closing adjourned the Closing, all of the aforementioned apportionments shall be made as of the end of the day preceding (i) the date originally scheduled for Closing or (ii) Seller's adjourned closing date (as the case may be).

Purchaser shall pay to Seller at or prior to the date of the actual adjourned Closing, an amount equal to .0438% per diem (which equals an annual rate of 16%) of the Purchase Price for the Unit for each day beyond such originally scheduled or Seller adjourned Closing Date, to and including the date of actual Closing, for reimbursement and defrayal of Seller's carrying costs and other charges, which amount Purchaser acknowledges to be reasonable and proper.

Any errors or omissions in computing apportionments or any other sums payable under this Paragraph which are communicated to the other party within six (6) months after Closing shall be corrected and payment made to the proper party promptly after such communication. This Paragraph shall survive Closing and delivery of the deed.

8) **CONSTRUCTION LOAN MORTGAGE** - This Purchase Agreement is subject and subordinate without the necessity of Purchaser signing or delivering any documents or papers, to the lien of any existing or future construction loan mortgage and all payments or expenses already made or incurred or which may hereafter be made or incurred in connection with such construction loan mortgage. This subordination shall apply whether such advances are voluntary or involuntary and whether made in accordance with the construction loan schedule of payments or accelerated thereunder by virtue of the construction lender's right to make advances before they become due in accordance with the schedule of payments. The Unit and /its/their appurtenant percentage of Common Interest in the Common Elements (as such term is defined in the Plan), shall be released from the lien of such construction loan mortgage upon

Closing, except where such mortgage is converted to Purchaser's individual mortgage on the Unit. In such case, the Unit shall remain subject to the lien of such construction loan mortgage and Purchaser shall reimburse to Seller at Closing, in addition to all other sums to be reimbursed by Purchaser to Seller under this Purchase Agreement, an amount equal to the mortgage tax paid by Seller on such construction loan mortgage. In all other cases, any mortgage tax credit available under Real Property Law Section 339-ee shall inure exclusively to the benefit of Seller.

9) **DEED AND ENCUMBRANCES UPON OWNERSHIP** - The deed to be given by Seller to Purchaser at Closing shall be a Bargain and Sale with Covenant against Grantor's Acts deed, but subject, nevertheless, to the matters set forth in subparagraphs (a) through (f) below which need not be recited in the deed given at Closing but shall survive Closing, and Seller's covenant in the deed against encumbrances shall be deemed modified accordingly. The deed shall be duly executed and acknowledged by Seller in proper statutory form for recording (except for payment of the New York State and City transfer tax which is the obligation of Purchaser) so as to convey to Purchaser fee simple title to the Unit, free and clear of all liens and encumbrances, except as herein stated. The deed shall also contain the covenant required by subdivision 5 of Section 13 of the Lien Law. Purchaser shall accept such title and deed description of the Unit subject to the liens, encumbrances and other matters set forth in this Purchase Agreement, as Old Republic National Title Insurance Company, a title company authorized to do business in the State of New York, 521 Fifth Avenue, 23rd Fl., New York, New York 10175, (212) 599-1300 ("Old Republic"), is willing to approve and insure without additional premium. Purchaser may obtain title insurance from any title insurance company or abstract company, or Purchaser may decline to obtain any title insurance at all, however Seller recommends that Purchaser utilize Stewart. In the event of a claimed breach of any covenant of the grantor contained in the deed, Purchaser must first seek recovery against the title insurance company which insured Purchaser's title to the Unit before proceeding against Sponsor, it being agreed that the liability of Sponsor will be limited to any loss of damage not covered by such title insurance company. In the event that Purchaser elects not to purchase title insurance, then the liability of Sponsor shall be limited to any loss or damage which would have been covered by the title insurance that was available to Purchaser at the time of closing of title.

Purchaser shall be responsible for payment to the title company of the entire premium for Purchaser's title insurance, and shall also pay the applicable New York State and City transfer tax and mansion tax, if applicable.

The sale and transfer of ownership of the Unit to Purchaser shall, even though not stated in the deed, be subject to:

- (a) Ordinances, rules, regulations, requirements and approvals of applicable governmental authorities, provided not violated by the Unit to be constructed.
- (b) Rights for installation, use and/or maintenance of easements and rights of

way for utilities, sewer, cable television, drainage, scenic purposes, screening and planting which have already been granted or may be granted after this Purchase Agreement is signed or after Closing, provided they do not prevent use of the Unit for their intended purposes.

- (c) Declarations, covenants, restrictions, reservations, exceptions, easements and agreements which have been recorded, or appear in recorded documents, or are yet to be recorded, provided they do not prevent use of the Unit for their intended purposes.
- (d) Unpaid taxes and liens, provided the title insurance company shall insure against collection of same out of the Unit.
- (e) The filed Condominium Map and all matters reflected thereon.
- (f) The Declaration and By-Laws of the Condominium and any amendments or supplements thereto.

Purchaser shall deliver to Seller's attorney at least ten (10) days prior to Closing, a written notice setting forth each objection to title, if any (other than those specifically set forth herein subject to which the Property are being sold), and a copy of Purchaser's title report. Seller shall have the right to a reasonable adjournment of Closing, not to exceed sixty (60) days, for the purpose of curing any title defect; however, no such action taken by Seller shall be deemed an admission by Seller that such defect is one that would entitle Purchaser to cancel this Purchase Agreement. However, if such defect in title existed at least ten (10) days prior to the closing of title and Purchaser failed to send Sponsor's attorney written notice of such defect in title at least ten (10) days prior to the closing of title, then Purchaser shall be deemed at fault for not having sent timely notice, and the closing adjournment to allow Sponsor to correct or remove such title defect shall be considered at the request of Purchaser.

10) **PERSONAL PROPERTY INCLUDED IN SALE** - All articles of personal property, fixtures and equipment for the Unit which are included in this sale will be delivered free and clear of all liens and encumbrances, except as stated in Paragraph 9 herein, if applicable.

11) **POWER OF ATTORNEY** - At closing, Purchaser shall execute, acknowledge and deliver to Seller in recordable form, a power of attorney in the form set forth as Schedule E, as same may be amended from time to time to comply with applicable law, to the Plan (the "Power of Attorney"), in favor of the Board of Managers of the Condominium relative to leasing and purchasing of Units in the Condominium under certain circumstances and to foreclose upon Units in the Condominium for which the payment of Common Charges is delinquent, and in favor of Seller relative to amending the Condominium documents to the extent provided for in the Plan. In the event the form Power of Attorney set forth in the Plan is deemed to be insufficient, in Seller's sole discretion, due to statutory changes to the New York State short form power of attorney, Purchaser shall execute an amended power of attorney to effectuate the powers

granted in the Power of Attorney set forth in the Plan. This paragraph shall survive delivery of the deed.

12) **ENCUMBRANCES/LIENS EXISTING AT CLOSING** - The existence of anything affecting the sale at Closing, including unpaid taxes or liens of any kind, shall not constitute an objection to title provided Stewart, or another title or abstract company selected by Purchaser, is willing to insure Purchaser's title clear of the matter or is willing to insure against enforcement or collection out of the Unit upon Seller's doing whatever acts as may be required by said company and/or the depositing of money. The parties agree that the Seller may pay and discharge any liens and encumbrances upon the Unit, not provided for in this Purchase Agreement, out of the monies to be paid by the Purchaser at the time of Closing.

13) **EXTRA WORK AND EXTRA ITEMS ORDERED BY PURCHASER** - Any work or items ordered from Seller by Purchaser which are not included in the plans or standard model of the Unit shall, except as may otherwise be provided in this Purchase Agreement or in a writing signed by Seller, be paid for in full by Purchaser at the time they are ordered. The failure of Seller to perform or supply and install such work or items shall not entitle Purchaser to cancel this Purchase Agreement even if Purchaser has already paid for such work or items. Purchaser's only right, in the event of Seller's failure to perform such extra work or supply and install such extra items, is to receive a refund or credit at Closing equal to the total payments made to Seller for such extra work or extra items. All extras must be ordered prior to commencement of construction and must not delay construction. In the event Purchaser orders upgraded or optional items or finishes other than the standard provided by Seller, Seller or Seller's contractors shall not be responsible or liable for any defects in quality of materials or workmanship in installation. Failure to make any payments due in accordance with the payment schedule of Seller, Seller's contractors or sub-contractors, as applicable, shall constitute a breach in accordance with Paragraph 22 herein. As noted as a Special Risk in the Plan, in the event a Purchaser is entitled to rescission, the Purchaser will not receive a refund of any funds paid for Extras. Seller shall have no responsibility for any work, fixtures, appliances, equipment or materials not ordered directly from Seller by Purchaser. For the purposes of this provision, any orders which Purchaser places directly with Seller's contractors or suppliers shall not be deemed to have been ordered directly from Seller.

14) **OPTIONS AND COLOR SELECTIONS** - Any choices given by Seller to Purchaser in colors, products, materials, design, features and similar matters shall be made by Purchaser in writing at Seller's office or model site, within ten (10) days after notification to Purchaser to make such choices. If there is anything as to which Purchaser has a choice, and Purchaser fails to inform Seller of Purchaser's choice within such ten (10) day time period, then Seller may make the choice on Purchaser's behalf and Purchaser shall accept such choice so made by Seller as if originally made by Purchaser. No claim or objection to Closing shall be made by Purchaser because of any choice made by Seller in any case where Purchaser failed to give Seller timely notice of Purchaser's choice.

15) **NO INSPECTIONS DURING CONSTRUCTION** - Purchaser acknowledges that unsupervised visits to the Property (the "Construction Site") present a dangerous circumstance and could incur liability to Seller. **Unless specifically agreed to by Seller in writing, Purchaser shall not visit the Unit or any other portion of the Construction Site, and shall only have the right to visit the Seller's sales office (the "Sales Office").** Any unauthorized visits to the Construction Site by Purchaser are subject to a charge by Seller of \$500 per visit, which Purchaser agrees to pay Seller within ten (10) days of billing thereof. Purchaser hereby releases and indemnifies, defends and holds Seller harmless for all claims and liabilities incurred by Seller resulting from the presence of Purchaser or Purchaser's family members or invitees on the Property prior to Closing. Purchaser further agrees to execute the Express Assumption of Risk Form, in the form set forth as Schedule D-3 to the Plan.

16) **PURCHASERS' INTERFERENCE** - Purchaser acknowledges that it may not interfere with Seller's ability to construct the Unit or other unit(s) or facilities, including interference with work performed on site by Seller's staff in connection with the construction of the Unit or any other units, attempts to hire any of Seller's staff or contractors, and/or attempts to bring contractors, materialman, subcontractors or workers onto the site for work on the Unit prior to Closing, unless otherwise agreed to in writing by Seller.

17) **PURCHASER MAY NOT TAKE POSSESSION OF THE UNIT PRIOR TO CLOSING**- Neither Purchaser nor anyone acting on Purchaser's behalf may enter or take possession of any part of the Unit nor have any work performed or materials supplied or installed at the Unit prior to Closing without the prior written consent of Seller.

Purchaser acknowledges and agrees that Seller will accept no liability whatsoever for any property belonging to the Purchaser, their agents, employees, family, or belonging to any party other than Seller which is placed on the Property and/or in the Unit prior to Closing. No act of the Seller, whatever its nature, shall constitute a waiver of this Paragraph.

18) **CHANGES BY SELLER** - In building the Unit and performing any other work on the Property, Seller reserves the right to: (a) make changes or substitutions of materials or construction from those shown in the model units or building plans, provided any such changes or substitutions are of substantially similar or better quality; (b) determine the exterior color and design of the Building; (c) change the location and type of the Units to be constructed in the Condominium; (d) fix the location and setbacks of the Building; (e) determine whether existing trees, shrubs and other plant life on the Property are to be moved or removed, (f) add or remove retaining walls on the Property where required by grade conditions; (g) determine the location of electric, gas and water meters, electric transformers, air conditioning compressors, mailboxes; (h) change appliances as long as they are equal to or better than originally offered; (i) change the location of kitchen and bathroom cabinets, counters and drawers; (j) make changes to the Unit, which result in variations of up to five (5%) percent of the Unit square footage

listed in Schedule A to the Offering Plan; and (k) make any other changes required by the City of New York.

Seller shall notify Purchaser of any major changes, specifications, deviations, additions or deletions, which are beyond the scope of those set forth above ("Extraordinary Changes"). If Seller notifies Purchaser in writing of any Extraordinary Changes, Purchaser shall be deemed to have approved of same, unless Seller receives Purchaser's written disapproval thereof within ten (10) days from date of the notice by Seller. Upon receipt of Purchaser's disapproval, Seller may, within thirty (30) days thereafter, give Purchaser written notice withdrawing its proposed Extraordinary Changes, in which case Seller shall thereafter continue with its development activities without the Extraordinary Changes. If Seller fails to give Purchaser notice of withdrawal within such thirty (30) day period, Purchaser may declare this Purchase Agreement null and void by so notifying Seller in writing delivered to Seller no later than forty-five (45) days after having delivered Seller the original notice of disapproval, whereupon Seller shall promptly return to Purchaser all monies paid by Purchaser to Seller, except Funds used towards upgrades, options or extras, on account of the purchase price and thereafter neither party shall have any further liability or obligation to the other in connection with this Purchase Agreement or transaction.

**19) COMPLETION OF CONSTRUCTION - PURCHASER'S INSPECTION -** Purchaser shall accept title (without abatement in or credit against the Purchase Price or provision for escrow) notwithstanding that construction of (a) minor details of the Unit or the building in which it is located, or (b) other units in the Condominium, or (c) the landscaped areas of the Property, or (d) parking spaces or driveway or garage, or (e) other portions of the Common Areas have not been completed. Purchaser will inspect the Unit with a representative of the Seller during normal business hours approximately three (3) days prior to Closing and will sign and deliver to Seller on or before Closing, a Pre-Title Inspection Statement supplied by Seller, acknowledging the condition of the Unit. Receipt of the executed Pre-Title Inspection Statement shall be a condition precedent to closing. Purchaser agrees to accept the Pre-Title Inspection Statement wherein the Seller shall agree to complete all unfinished items within six (6) months from the date of Closing, weather and other circumstances permitting. Any such incomplete items shall not constitute an objection to closing provided Seller executes and delivers to Purchaser, a letter agreement in accordance with the foregoing. Purchaser shall allow Seller, its agents, servants and/or employees the right to enter the Unit and shall provide reasonable access thereto subsequent to Closing to complete any incomplete items.

In the event Seller is required to make any repair or complete any item of work to be performed by Seller after Closing, the limit of Seller's liability shall be to make said repair and/or to complete such item. This Paragraph shall survive Closing and delivery of the deed.

**20) CERTIFICATE OF OCCUPANCY -** At Closing, Seller shall deliver to Purchaser a temporary or permanent Certificate of Occupancy for the Unit (or building in which it is located) and, if available, a New York Board of Fire Underwriter's Certificate for the Unit.

21) **UNIT PART OF DEVELOPMENT** - Purchaser acknowledges that they may be living in an active construction site after Closing on the Unit. During the period of construction, there may be dirt and debris and construction material on the Property, construction vehicular traffic, construction noises, unfinished areas of the Condominium and other inconveniences, which are normal in a community undergoing construction. Purchaser further acknowledges that other units and infrastructure are presently being constructed at the Property and that Seller anticipates that such construction shall continue until the Condominium project is completed in accordance with the Plan. Accordingly, Purchaser agrees that such continuing construction shall not be deemed a nuisance nor an interference with Purchaser's quiet enjoyment of the Unit after Closing. This Paragraph shall survive Closing and the delivery of the deed.

22) **PURCHASER'S DEFAULT** - If Purchaser fails to appear and close title in accordance with this Purchase Agreement on the date and at the time and place stated in Seller's Notice for Closing, or if Purchaser fails to observe or perform any other thing to be observed or performed by Purchaser under this Purchase Agreement, Seller may send Purchaser a written notice of default giving Purchaser thirty (30) days from the date of such notice to cure any such default. Upon Purchaser's failure to cure such default within such thirty (30) day period, this Purchase Agreement shall, at Seller's option, be deemed canceled and Seller shall have the right to retain as and for liquidated damages, all sums paid by Purchaser to Seller on account of the Purchase Price plus all additional sums paid and/or payable by Purchaser for all Extras ordered by Purchaser, together with all interest credited thereon, if any, which total amount Purchaser acknowledges to be fair and reasonable.

The notice of default shall be deemed notice to the Purchaser by the Escrow Agent of the Escrow Agent's intent to release the funds being held in escrow on behalf of the Purchaser pursuant to the dispute resolution provisions of the Attorney General's escrow regulations as described in Section X of the Offering Plan.

**TIME IS OF THE ESSENCE FOR PURCHASER TO CURE SUCH DEFAULT WITHIN SUCH THIRTY (30) DAY PERIOD.**

Upon cancellation of this Purchase Agreement for Purchaser's failure to timely cure any such default, Seller shall be released and discharged of all further liability and obligations to Purchaser under this Purchase Agreement. Thereafter the Unit may be sold or disposed of as though this Purchase Agreement had never existed and without any accounting to Purchaser for the proceeds of any subsequent sale. The foregoing remedy shall be in addition to any and all other remedies available to Seller under this Purchase Agreement or at law for any default by Purchaser under this Purchase Agreement.

23) **SELLER'S RIGHT TO CANCEL** - Seller may cancel this Purchase Agreement by forwarding a full refund of the Downpayment to Purchaser together with written notice of cancellation in the event of the occurrence of any of the following:

- (a) any governmental authority imposes a ban on the construction or

completion of residential dwellings or imposes restrictions on the manufacture, sale, distribution and/or use of materials from Seller's regular suppliers or from using same in the construction and/or completion of the Unit; or

- (b) Seller is unable to obtain materials from its usual sources due to labor troubles, lockouts, war, military operations and requirements, civil unrest, act of God or national emergencies; or
- (c) the installation of public utilities is restricted or curtailed; or
- (d) should zoning and/or building restrictions and regulations, imposed by any governmental body having jurisdiction over the construction of residential housing and appurtenances, either presently in effect or as enacted or promulgated in the future, create or impose requirements upon the Seller which are not presently contemplated; or
- (e) the Plan is abandoned, withdrawn or not consummated for any reason.

Upon such cancellation and refund, this Purchase Agreement shall be terminated and 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 Purchase Agreement and the Offering Plan.

**24) INABILITY OF SELLER TO TRANSFER OWNERSHIP** - Except for Seller's willful default, if Seller is unable to transfer ownership of the Unit in accordance with this Purchase Agreement, Seller shall only be liable to Purchaser for the return to Purchaser of the Downpayment. Thereafter, this Purchase Agreement shall be deemed canceled and neither party shall have any further liability to the other in connection with this Purchase Agreement or transaction. Seller shall not be required to commence any action or proceeding or incur any expense in order to remove the condition, which prevents Seller from transferring ownership of the Unit in accordance with this Purchase Agreement.

**25) PROHIBITION AGAINST ASSIGNMENT OR RECORDING OF PURCHASE AGREEMENT** - Neither this Purchase Agreement nor Purchaser's interest hereunder may be assigned by Purchaser without the written consent of Seller. In addition, neither shall this Purchase Agreement nor any memorandum thereof be recorded in the office of any county clerk or the King's County Register's Office by Purchaser or anyone on Purchaser's behalf. Should Purchaser violate the provisions of the foregoing sentence, this Purchase Agreement, at Seller's option, shall become null and void, whereupon all rights of the Purchaser shall cease and terminate and Seller shall have the right to retain the Downpayment and all amounts paid by Purchaser for Extras, as and for liquidated damages on account of such default by Purchaser pursuant to the provisions of Paragraph 22 hereunder.

**26) PROHIBITION AGAINST SIGNS ON UNIT** - Purchaser shall not place any sign

anywhere on the Unit or Property at any time.

27) **PROHIBITION AGAINST ADVERTISING OF UNIT FOR SALE** - From and after the date hereof, Purchaser shall not place an advertisement for the sale of the Unit in any newspaper or other publication or media, or list the Unit with any real estate broker prior to Closing. Such action will constitute a material breach of this Purchase Agreement entitling Seller to retain monies paid on account of the Purchase Agreement plus the cost of Extras as liquidated damages.

28) **RESTRICTIONS ON SALE** - Purchaser covenants and agrees to retain ownership in the condominium unit for a period of two (2) years from the date Purchaser acquired the condominium unit, except in the case of the death of Purchaser or spouse. Failure to abide by this requirement shall result in the Purchaser paying the Seller a sum equal to 25% of the difference between the new purchase price of the condominium unit and the Purchase Price set forth in paragraph 1 of this Purchase Agreement but in no event less than 10% of the purchase price set forth in paragraph 1 of this Purchase Agreement. The provisions of this Paragraph shall survive delivery of the deed and the closing of title.

29) **NO BROKER CONSULTED BY PURCHASER** – Purchaser represents that no broker other than Seller's broker (the "Broker") brought about this sale, and Purchaser agrees to indemnify Seller against any claim brought by any other broker for brokerage commission based upon Purchaser's acts. Seller shall pay the Broker pursuant to separate agreement. In the event Purchaser is represented or has consulted with an outside broker (other than the Broker), Purchaser shall be responsible for all costs and commissions associated therewith and Seller shall not be responsible for any co-broker commission. This Paragraph shall survive Closing and delivery of the deed.

30) **TRUST FUNDS** - The law firm of Moritt Hock & Hamroff LLP, with an address at 1407 Broadway, 39th Floor, New York, New York 10018, telephone number (212) 239-2000 shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. The signatories on this account authorized to withdraw funds include the following Partners of MHH: Anthony J. Ficara, Ted A. Berkowitz and Robert M. Finkel. 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.

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 Downpayment from escrow.

The Escrow Agent has established the escrow account at Popular Community Bank, located at 85 Broad Street, New York, New York 10004, in the State of New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled "Moritt Hock & Hamroff LLP, F/B/O 96 16<sup>th</sup> Street Condominium –

IOLA Escrow Account" ("Escrow Account"). The Escrow Account is an IOLA account. The Escrow Account is federally insured by the FDIC at the maximum amount of \$250,000 per deposit. Any deposit in excess of \$250,000 will not be insured.

All Downpayments received by Purchaser shall be in the form of checks, money orders, wire transfers, or other instruments, and shall be made payable to the order of Moritt Hock & Hamroff LLP, as Escrow Agent.

The Escrow Account is an IOLA account and no interest will be paid to Purchaser. No fees of any kind may be deducted from the Escrow Account, and the Sponsor shall bear all costs associated with the maintenance of the Escrow Account.

The Purchase Agreement shall only be deemed accepted when countersigned by the Seller or Seller's authorized agent. **In addition, although all funds received by Seller for Extras will initially be placed in the Escrow Account; such funds may be released from the Escrow Account as long as Seller uses the funds for such Extras. In the event Purchaser is entitled to a right of rescission, the return of their Downpayment shall not include any funds paid towards Extras.** At Closing the Downpayment shall be paid to Seller upon consummation of the Closing and execution of this Purchase Agreement shall be deemed a writing executed by both Seller and Purchaser authorizing the Escrow Agent to release said funds to Seller at Closing. Purchaser shall execute the Tender of Escrow form, as set forth in Schedule D-4 of the Plan upon execution of this Purchase Agreement; and shall execute the Release form, as set forth in Schedule D-1 of the Plan, at Closing.

Within five (5) business days after the Purchase Agreement has been tendered to Escrow Agent along with the Deposit, the Escrow Agent shall sign the Purchase Agreement and place the Deposit into the Escrow Account. With ten (10) business days of the placing the deposit in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Sponsor, conforming the Deposit. The notice shall provide the account number and the initial interest rate to be earned on the Deposit. Any Deposits made for upgrades, extras, or custom work shall be initially deposited into the Escrow Account, and released in accordance to the terms of a written agreement between Purchaser and Sponsor.

The Escrow Agent is obligated to send notice to the Purchaser once the Deposit is placed in the Escrow Account. If the Purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the Deposit, he or she may cancel the Purchase Agreement within ninety (90) days after tender of the Purchase Agreement and Deposit 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, 28 Liberty Street, New York, NY 10005. 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.

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 the Purchaser's money, and may not be comingled 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 §§ 352-3(2-b) and 352-h.

The Escrow Agent shall release the Deposit if so directed:

- (a) pursuant to terms and conditions set forth in the Purchase Agreement in Section 5 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/building] 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.

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.

Escrow Agent shall maintain the Escrow Account under its direct supervision and control.

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).

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.

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.

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.

Sponsor shall obtain or cause the selling agent under the Plan to obtain a completed and signed Form W-9 or W-8, as applicable, from Purchaser and deliver such form to Escrow Agent together with the Deposit and this Purchase Agreement.

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.

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.

31) **NOTICES** - Any notices, statements, certificates, requests or demand required or permitted to be given or delivered under this Purchase Agreement shall be in writing and may be sent by mail, overnight courier or personal delivery, addressed to Purchaser or to Seller, as the case may be, at their respective addresses shown at the beginning of this Purchase Agreement, or to such other address as Purchaser or Seller may designate in the manner herein provided, or to their respective attorneys. Such notice, statement, certificate, request or demand shall be deemed to have been given

- (a) when delivered to an overnight courier service, if sent by overnight courier,
- (b) upon personal delivery actually being made, and
- (c) upon receipt or first refusal of delivery or inability of delivery after delivery to the United States Post Office with proper postage prepaid, if sent by regular mail, registered or certified mail return receipt requested.

Notwithstanding the foregoing, any notice of default must be delivered only by overnight courier service, personal delivery, or certified mail return receipt requested.

32) **PURCHASER GENERAL REPRESENTATIONS** - Purchaser represents that Purchaser has not relied upon any architect's plans, sales plans, selling brochures, advertisements, representations, warranties, statements or estimates, written or oral, of any nature whatsoever, made by Sponsor, or otherwise, including but not limited to, any of the above relating to the description or physical condition of a Condominium building or the Unit or the Property, the size or the dimensions of the Unit or the rooms therein contained or any physical characteristics thereof, the services offered by the Condominium, the estimated Common Charges for 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, the potential for future profit with respect to the Unit, any future appreciation in value of the Property, the Condominium building or the Unit, any rental income potential, depreciation or investment potential with respect to the Property, the Condominium building or the Unit, any monetary or financial advantage with respect to the Property, the Condominium building or the Unit, or any other data, the environmental and/or flood plan conditions affecting the Condominium building, the availability of liability, casualty and flood insurance or the cost thereof, the costs of ongoing maintenance and repair of the Condominium building or any other matter or estimate not set forth herein and in the Plan. Purchaser further represents that Purchaser has not relied on any verbal or written representations made by the Broker or any other agent of Seller. No person has been authorized to make any representation on behalf of Sponsor except as herein or in the plans specifically set forth. Purchaser further acknowledges having had full opportunity to examine all documents and investigate all facts referred to and stated herein and in the Plan. Purchaser has relied solely on his own judgment and investigation in deciding to enter into this Purchase Agreement and purchase of the Unit. No oral representations or statements shall be considered a part of this Purchase Agreement, and any current or prior oral statements are void and have no effect. 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. Purchaser agrees that the Seller shall have no liability or responsibility to Purchaser and that Purchaser will not be relieved from his or her obligations hereunder, by reason of any inaccuracy or error in the layout or dimensions of the Unit or any part thereof, or of the Common Elements, and (2) any immaterial or insubstantial accuracy or error. Purchaser agrees that a change in the square foot area and dimensions of the Unit due to the failed conditions, construction variances and tolerances, which do not increase or decrease the square foot area of the Unit by more than 5% (excluding interior partitions), shall not be deemed a material or adverse change the provisions of this paragraph shall survive the closing of title or the termination of this Purchase Agreement. Purchaser understands and acknowledges that the Seller cannot guarantee a firm completion and availability date for the Unit and agrees that the Seller shall not be obligated to make, provide or compensate for any accommodations or costs to Purchaser as a result of construction delays nor shall such delays serve to cancel, amend or diminish any of Purchaser's obligations hereunder.

**33) ACKNOWLEDGMENT THAT THERE ARE NO OTHER UNDERSTANDINGS -** All prior understandings and agreements are hereby superseded and merged into this Purchase Agreement, which alone contains the final and entire understanding and agreement between Seller and Purchaser. Neither Seller nor Purchaser shall be bound by any terms, conditions, statements, or representations, oral or written, not set forth in this Purchase Agreement or in the Offering Plan. Purchaser acknowledges that Purchaser is buying a Unit in a condominium development which may not yet have been formed at the time this Purchase Agreement is signed, and that, except as stated in this Purchase Agreement, the Declarations, By-Laws, Exhibits, Schedules and Plan, Purchaser has not relied on any representations or other statements of any kind or nature made by Seller or anyone else except as set forth in the Plan or any amendment thereto and this Purchase Agreement, including but not limited to, the description, size

or dimensions of the Unit or rooms therein, or the estimated common charges, or other expenses relative thereto.

Purchaser also acknowledges that none of Seller's representatives has the authority to modify this Purchase Agreement or to make any oral promise, agreement or representation inconsistent or contrary to the terms of this Purchase Agreement. This Purchase Agreement may be changed only by a written document signed by both Purchaser and Seller's Authorized Agent. The invalidity or unenforceability of any particular provision of this Purchase Agreement will not affect the other provisions, and this Purchase Agreement will be interpreted in all respects as if such unenforceable provisions were omitted.

**34) RISK OF LOSS -** The risk of loss or damage to the Unit by fire or any other cause until delivery of the deed is assumed by Seller. In the event a substantial portion of the Unit or Condominium shall be destroyed or damaged prior to Closing, Seller shall be entitled to cancel this Purchase Agreement by written notice to Purchaser, together with a check in the amount of the Downpayment paid by Purchaser, with interest, if any;

however, Purchaser will not receive a refund of any funds paid for Extras. The parties shall thereafter be released from any further liability hereunder.

If any part of the Unit is damaged or destroyed by any casualty prior to Closing, Seller will have the option to restore the Unit to its previous condition as soon as reasonably possible. In the event Seller elects to restore the Unit, then the Closing Date and any other applicable date or deadline will be extended in a reasonable manner by Seller. Seller agrees to notify Purchaser of Seller's decision within ten (10) business days of the date of such casualty. In the event Seller elects not to restore the Unit, then this Purchase Agreement will terminate and Purchaser will receive a full refund of all monies paid to Seller. The parties shall thereafter be released from any further liability hereunder.

**35) DAMAGE TO PUBLIC IMPROVEMENTS, AMENITIES AND COMMON ELEMENTS** - Purchaser shall repair and/or restore to their original condition and standards any public improvement, amenity or Common Elements on the Property damaged by Purchaser or Purchaser's agents, employees, contractors or licensees. Upon failure of Purchaser to complete such repair and/or restoration work within thirty (30) days after written notice from Seller, then and in that event, Seller may complete same at the expense of Purchaser who shall reimburse Seller for the cost thereof immediately upon demand. This Paragraph shall survive Closing and delivery of the deed.

**36) STRICT COMPLIANCE; SEVERABILITY; WAIVER OF TRIAL BY JURY** - Any failure by Seller to insist upon strict performance by Purchaser of any of Purchaser's obligations under this Purchase Agreement shall not be deemed a waiver of such obligations, and Seller may at any time insist upon strict performance by Purchaser of any and all obligations to be performed by Purchaser under this Purchase Agreement irrespective of the number of times Purchaser failed to strictly comply with such obligations in the past. If any part of this Purchase Agreement or the Plan is invalid or unenforceable with respect to a particular individual or circumstance, the remainder of this Purchase Agreement or the Plan and the applicability to other individuals or circumstances shall not be affected thereby but shall continue in full force and effect. Purchaser waives all rights to trial by jury in any action, proceeding or counterclaim in any way arising out of or relating to this Purchase Agreement or the Plan. Purchaser agrees to pay all court fees, including reasonable attorney fees, should Purchaser bring an action against Seller in any court of proper jurisdiction (including small claims court) and be unsuccessful. Further Purchaser agrees to waive the right to file a Lis Pendens if not filed within sixty (60) days of the cancellation of this Purchase Agreement.

Purchaser and Seller hereby waive trial by jury in any action, proceeding or counterclaim arising out of this Purchase Agreement, provided such waiver is not prohibited by any laws of the State of New York. Any action or proceeding brought by either party hereto against the other, directly or indirectly, arising out of this Purchase Agreement, shall be instituted in a court in Kings County and all motions in any such action shall be made in Kings County.

This Paragraph shall survive Closing and delivery of the Deed.

37) **LIEN OF DEPOSIT** - All sums paid on account of this Purchase Agreement are hereby made liens upon the Unit, but such liens shall not continue after default by the Purchaser under this Purchase Agreement.

38) **MISCELLANEOUS:**

- (a) The start of any activity by Seller in connection with the Unit is not to be deemed a waiver of any of Seller's rights under this Purchase Agreement.
- (b) The personal property referred to in this Purchase Agreement shall be deemed conveyed by the deed, and no part of the Purchase Price shall be deemed allocated to such personal property.
- (c) The attorneys representing the Seller or any Lender represent such parties only and not the Purchaser. The Purchaser may retain independent counsel at Purchaser's own expense in order to protect Purchaser's own interest.
- (d) The delivery of the deed for the Unit to Purchaser or Purchaser's representative at Closing shall be deemed to mean that all things required to be done by Seller under this Purchase Agreement have been done and that Purchaser shall not claim otherwise except as to those things, if any, which are specifically stated in this Purchase Agreement or in a separate writing signed by Seller or Seller's attorney on Seller's behalf, to survive or continue beyond Closing or delivery of the deed.
- (e) The paragraph headings set forth in this Purchase Agreement are inserted solely for convenience of reference and in no way deemed to affect, amend, define, describe or limit the scope or intent of the provisions set forth in this Purchase Agreement.
- (f) No provision of this Purchase Agreement may be changed, waived, discharged, or terminated orally, by telephone, or by any other means, except an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge, or termination is sought and then only to the extent set forth in such instrument.
- (g) Any singular word or term herein shall also be read as in the plural whenever the sense of this Purchase Agreement may require it. The use of the masculine gender shall be deemed to refer to the feminine gender, or neuter, whenever the context so requires.
- (h) If two (2) or more persons are named as Purchaser in this Purchase Agreement, (i) each person shall be jointly and severally liable for payment, observance and performance of all obligations under this

Purchase Agreement and (ii) anyone of them is hereby made agent for the other in all matters of any and every kind or nature with respect to the Unit and/or this Purchase Agreement. The act, assent, election or approval by one shall conclusively constitute the act, assent, election and approval by all.

- (i) The provisions of this Purchase Agreement shall bind and inure to the benefit of Purchaser and Purchaser's heirs, legal representatives, successors and permitted assigns and shall bind and inure to the benefit of Seller and its successors and assigns.
- (j) This Purchase Agreement shall not be binding or effective until fully executed and delivered by Seller and Purchaser.
- (k) Seller represents that its Federal Employer Identification Number is \_\_\_\_\_; and Purchaser represents that his/her/their social security number(s) is \_\_\_\_\_ and \_\_\_\_\_.
- (l) In the event any portion of this Purchase Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Purchase Agreement and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Purchase Agreement.
- (m) The parties agree that this Purchase Agreement shall be governed by, and construed in accordance with the laws of the State of New York.

**39) LIMITED WARRANTY - THE LIMITED WARRANTY SET FORTH IN SCHEDULE D-1 OF THE OFFERING PLAN AND INCORPORATED HEREIN BY REFERENCE (THE "LIMITED WARRANTY") IS IN PLACE OF AND EXCLUDES THE HOUSING MERCHANT IMPLIED WARRANTY, AS DEFINED IN ARTICLE 36-B OF THE NEW YORK GENERAL BUSINESS LAW, AS SAME MAY BE AMENDED FROM TIME TO TIME, AND ALSO EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS PURCHASE AGREEMENT AND THE CONSTRUCTION AND SALE OF THE HOUSE. SELLER MAKES NO HOUSING MERCHANT IMPLIED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THE LIMITED WARRANTY, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS PURCHASE AGREEMENT AND THE CONSTRUCTION AND SALE OF THE HOUSE, WHICH EXTEND BEYOND THE FACT THEREOF.**

**PRIOR TO THE EXECUTION OF THIS PURCHASE AGREEMENT BY PURCHASER, PURCHASER ACKNOWLEDGES THAT SELLER HAS SUPPLIED TO PURCHASER FOR EXAMINATION AND PURCHASER HAS RECEIVED, READ AND**

**UNDERSTOOD A WRITTEN COPY OF THE EXPRESS TERMS OF THE LIMITED WARRANTY.**

**THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF TITLE AND DELIVERY OF THE DEED.**

40) **SMOKING POLICY** - In compliance with Local Law 147 and pursuant to Article 17 of the New York City Administrative Code, the Sponsor has adopted the following smoking policy for the Building (the "Smoking Policy"):

Smoking is PROHIBITED (i) in all commons areas of the Building, including, but not limited to, the lobby, entryways, vestibules, ante rooms, mail rooms, storage rooms, bike rooms, common rooms, amenity rooms, gym, roof decks, garbage chute rooms, compactor rooms, basement, corridors, hallways, stairwells, elevators, playroom, garage, garage ramp, walkways; and (ii) within twenty-five (25) feet of any outside entrance to the Building or within twenty-five (25) feet of any outdoor air intake or operable window opening onto Common Elements or Units.

For the purposes of this Smoking Policy, the term "smoking" includes, but is not limited to, inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or any other form of lighted object or device which contains tobacco, including the use of electronic cigarettes or any similar device that delivers vapor for inhalation (including any refill, cartridge or other component of an electronic cigarette or similar device), or any other items or materials that may be smoked, whether such substance is a legal substance or an illegal substance. This Smoking Policy applies to all unit owners, tenants, subtenants, occupants and residents of the Building, and to any guests, agents, licensees and invitees of a Unit Owner. It is the Unit Owner's responsibility to ensure that its tenants, subtenants, occupants, residents, guests, agents, licensees and invitees comply with this Smoking Policy.

Smoking is PERMITTED within individual apartments and on the terraces, balconies, patios and yards attached to individual apartments (except within twenty-five (25) feet of any outside entrance to the Building or within twenty-five (25) feet of any outdoor air intake or operable window opening onto Common Elements or Units). However, if there are reported and substantiated incidents of infiltration of smoke/smoke odors into common areas of the Building (including, but not limited to, hallways) and/or other apartments in the Building, it will be the offending Unit Owner's responsibility, at its sole cost and expense, to abate the nuisance.

Any Unit Owner who sells, leases, or subleases its apartment must include a copy of this Smoking Policy in the contract of sale, lease or sublease.

41) **NOTICES TO PURCHASER - WHEN SIGNED BY SELLER AND PURCHASER (OR PURCHASER'S AUTHORIZED AGENT), THIS PURCHASE AGREEMENT WILL BECOME A LEGALLY BINDING AGREEMENT. PURCHASER SHOULD MAKE SURE THAT ALL PROVISIONS ARE READ AND UNDERSTOOD BEFORE SIGNING. IF PURCHASER DOES NOT UNDERSTAND ANY PROVISION,**

**PURCHASER SHOULD SEEK LEGAL ADVICE.**

**PURCHASER MUST BE GIVEN A COPY OF THE PLAN PRIOR TO THE SIGNING OF THIS PURCHASE AGREEMENT. BY SIGNING THIS PURCHASE AGREEMENT, PURCHASER ACKNOWLEDGES RECEIPT OF THE OFFERING PLAN AND THAT PURCHASER HAS HAD AN OPPORTUNITY TO READ THE OFFERING PLAN AT LEAST THREE (3) BUSINESS DAYS PRIOR TO SIGNING THIS PURCHASE AGREEMENT.**

IN WITNESS WHEREOF, the parties hereto have executed this Purchase Agreement as of the date first above written.

**PURCHASERS:**

**96 16<sup>th</sup> STREET LLC**

\_\_\_\_\_  
Signature

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

**ESCROW AGENT  
MORITT HOCK & HAMROFF LLP**

\_\_\_\_\_  
Signature

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

RIDER TO PURCHASE AGREEMENT DATE \_\_\_\_\_, 20 BY AND  
 BETWEEN 96 16<sup>TH</sup> STREET, LLC AS SELLER, AND \_\_\_\_\_  
 \_\_\_\_\_, AS PURCHASER.

### LIMITED WARRANTY

NAME OF PURCHASER(S): \_\_\_\_\_

ADDRESS OF PURCHASER(S): \_\_\_\_\_  
 \_\_\_\_\_

DESIGNATION OF RESIDENTIAL  
 UNIT WARRANTED: \_\_\_\_\_

NAME OF SELLER: 96 16<sup>TH</sup> STREET, LLC.

ADDRESS OF SELLER: 137 Varick Street, Suite #503  
New York, New York 11228

EFFECTIVE DATE OF THIS LIMITED  
 WARRANTY:

The date that Purchaser or its family shall first occupy the Residential Unit warranted or the date of delivery of the deed to such Residential Unit to Purchaser, whichever occurs first.

SELLER'S LIMIT OF TOTAL  
 LIABILITY:

In no event shall the Seller's total liability to Purchaser under this Limited Warranty exceed fifty thousand (\$50,000) dollars, less any insurance proceeds received by Purchaser (the "Maximum Liability of Seller").

**THIS LIMITED WARRANTY EXCLUDES AND PRECLUDES ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, AND INDIRECT DAMAGES.**

**THIS LIMITED WARRANTY IS IN LIEU OF AND REPLACES ALL OTHER WARRANTIES ON THE CONSTRUCTION AND SALE OF THE RESIDENTIAL UNIT AND ITS COMPONENTS, BOTH EXPRESS AND IMPLIED (INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF. THE PURPOSE OF THIS LIMITED WARRANTY IS TO IDENTIFY THE SELLER'S RESPONSIBILITIES FOR CONSTRUCTION DEFECTS OF A LATENT OR HIDDEN NATURE THAT COULD NOT HAVE BEEN FOUND OR DISCLOSED ON FINAL INSPECTION OF THE RESIDENTIAL UNIT.**

1. To Whom Given. This Limited Warranty is given to the Purchaser named on page 1 while the Purchaser owns the Residential Unit. IT DOES NOT EXTEND TO SUBSEQUENT OWNERS, HEIRS, TENANTS OR MORTGAGEES IN POSSESSION OF THE RESIDENTIAL UNIT, ANY ONE WHO MAY SUCCEED TO THE RIGHTS OF PURCHASER OR ANY OTHER PERSONS.

2. By Whom Made. This Limited Warranty is made exclusively by the Seller whose name and address appear on page 1.

3. Final Inspection of the Residential Unit. Before the Purchaser moves into the Residential Unit or accepts the deed, the Seller will schedule an appointment for final inspection of the Residential Unit with the Purchaser. The purpose of this final inspection is to discover any defects of a visible, obvious or patent nature, or any other unfinished work.

All defects found on final inspection of the Residential Unit will be itemized on a Final Inspection Sheet, which will be signed by the Purchaser and the Seller before occupancy of the Residential Unit or delivery of the deed.

4. Warranty Coverages and Periods. The Warranty Period for all of the following coverage begins on the Effective Date of this Warranty shown on page 1 of this warranty.

**FIRST YEAR BASIC COVERAGE:** for one year from the Effective Date of this warranty, the Residential Unit will be free from latent defects that constitute:

(a) defective workmanship by the Seller, or an agent, employee or subcontractor of the Seller;

(b) defective materials furnished by the Seller, or an agent, employee or subcontractor of the Seller;

(c) defective design, provided by an architect, engineer, surveyor, or other design professional retained exclusively by the Seller; or

(d) defective installation of appliances sold as part of the Residential Unit by the Seller or an agent, employee or subcontractor of the Seller.

Seller under this coverage is not responsible for any defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors or for incidental or consequential damages resulting from such work or materials.

**TWO YEAR MAJOR SYSTEM COVERAGE:** for two years from the Effective Date of this warranty, the Plumbing, Electrical, Heating, Cooling and Ventilation Systems of the Residential Unit which have been installed by the Seller are warranted to be free from latent defects resulting from defective installation by the Seller.

The Plumbing System refers to the gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system.

The Electrical System refers to all wiring, electrical boxes, switches, outlets and connections up to the public utility connection.

The Heating, Cooling and Ventilation System refers to all duct work, steam, water and refrigerant lines, registers, convertors, radiation elements and dampers.

Except by reason of a defect in installation by Seller, this major system coverage does not include defects in appliances, fixtures and items of equipment.

Seller under this coverage is not responsible for any defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors or for incidental or consequential damages resulting from such work or materials.

**SIX YEAR MAJOR STRUCTURAL DEFECT COVERAGE:** for six years from the Effective Date of this warranty, the Residential Unit will be free from latent Major Structural Defects that result from:

(a) defective workmanship by the Seller, or an agent, employee or subcontractor of the Seller;

(b) defective materials furnished by the Seller, or an agent, employee or subcontractor of the Seller; or

(c) defective design, provided by an architect, engineer, surveyor, or other design professional retained exclusively by the Seller.

A Major Structural Defect is a defect resulting in actual physical damage to the following load-bearing portions which affects their load-bearing functions to the extent that the Residential Unit becomes unsafe, unsanitary or otherwise unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

Damage to the following non-load bearing portions of the Residential Unit are not covered by this six-year coverage: roofing and sheathing; drywall and plaster; exterior

siding; brick, stone and stucco veneer; floor covering material; wall tile and other wall coverings; non-load bearing walls and partitions; concrete floors in attached garages and basements that are built separately from foundation walls or other structural elements of the Residential Unit; electrical, plumbing, heating, cooling and ventilation systems; appliances, fixtures and items of equipment; paint; doors and windows; trim; cabinets; hardware; and insulation.

Seller under this coverage is not responsible for any defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors or for incidental or consequential damages resulting from such work or materials.

In all coverages under this Paragraph 4, workmanship, materials, design and installation will be considered to be defective if they fail to meet or exceed the relevant standards and specifications of the applicable building code of the municipality in which the Residential Unit is located, in effect on the date that the building permit for the Residential Unit was issued, as supplemented by the annexed locally accepted building standards and practices.

ALL TIME PERIODS FOR THESE COVERAGES ARE OF THE ESSENCE AND WILL NOT BE EXTENDED.

5. Exclusions From All Coverages. The following are not covered by this warranty:

(a) patent defects including defects shown on the Final Inspection Sheet and defects which an examination of the Residential Unit prior to the Effective Date of this warranty ought to have revealed;

(b) defects in detached garages and carports; swimming pools and other recreational facilities, if any; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping (including sodding, seeding, shrubs, trees and plantings); and any other improvements not a part of the Residential Unit itself;

(c) raised butt joints; ridging, scuffing on kitchen cabinet or vanity surfaces; shading variations and fading of natural material on all cabinets, appliances, vanities, doors, fixtures, floors, counter tops, vanity tops and all exterior surfaces; variations of wood grain or staining of kitchen cabinets or vanities; shading variations of the exterior siding staining (on the face surface or grooves), and on fascias from staining; doors and windows sticking because of weather; adjustment of bi-fold doors; chips, scratches, marks, breaks, or other blemishes in windows, window sashes, sliding doors, screens, electric fixtures and globes, woodwork, doors, interior painted surfaces, sinks, tubs, bowls, counter tops, vanity tops and bases, mirrors, hardware, flooring and cabinets; dented appliances; broken screens; minor chips (nicks) to cultured marble floors and counter tops; nail pops; ridging on sheet rock walls; lumber shrinkage; door warpage of

less than 1/4"; warpage and shrinkage of deck wood; normal plumbing, heating and air conditioning noises and paint touch-ups.

(d) defects in any work or materials ordered directly by Purchaser from Seller's subcontractors or suppliers or other outside suppliers or subcontractors and for incidental or consequential damages resulting from such work or materials;

(e) damage caused by the failure by the Purchaser or anyone other than the Seller, its employees, agents or subcontractors, to comply with the warranty requirements of manufacturers or suppliers of appliances, fixtures or items of equipment;

(f) damage caused by the misuse, abuse, or interference by Purchaser or anyone other than Seller or its employees, agents and subcontractors with the Seller's original construction or installations;

(g) additional damage caused by the failure of the Purchaser to give notice to the Seller of any defects or damage in a timely manner as provided in this warranty;

(h) damage caused by changes in grade made by anyone other than the Seller, its employees, agents or subcontractors and damage caused by changes in grade made by Seller's agents and subcontractors if such work was ordered directly by Purchaser;

(i) damage caused by changes, alterations or additions made to the Residential Unit by anyone other than Seller or its employees, agents or subcontractors after the Effective Date of this warranty;

(j) damage caused by changes, alterations or additions made to the Residential Unit by Seller's agents and subcontractors if such work was ordered directly by Purchaser after the Effective Date of this warranty;

(k) damage caused by dampness or condensation due to the failure of the Purchaser to maintain adequate ventilation;

(l) loss or damage caused by or resulting from accidents, riot and civil commotion, fire, explosion, smoke, water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mud slide, earthquake, volcanic eruption, wind-driven water, soil movement and changes in the underground water table;

(m) loss or damage caused by seepage of water unless such loss or damage is the direct result of a construction defect;

(n) any damage which Purchaser has not taken timely action to minimize;

- (o) normal wear and tear and normal deterioration;
- (p) insect, vermin and/or rodent damage and infestation, or damage caused by other animals or pests;
- (q) bodily injury, death, or damage to personal property;
- (r) costs of shelter, transportation, food, moving, storage or other expenses related to relocation during repair or replacement;
- (s) consequential, incidental, special and indirect damages;
- (t) any claim not filed in a manner set forth in paragraph 7 of this warranty;
- (u) damage which arises while the Residential Unit is being used for nonresidential purposes; and
- (v) damage due to abnormal loading on floors which exceeds design loads as mandated by the applicable building code or building standards.
- (w) damage due to ice build-up on the roof.
- (x) defects in appliances, fixtures and items of equipment except if caused by defect in installation by Seller.
- (y) fading of color of any natural materials in any improvement.

6. What Seller Will do in the Event of a Defect Covered by This Warranty. If a defect occurs in an item covered by this warranty, the Seller will repair, replace, or pay the Purchaser the reasonable cost of repairing or replacing the defective item(s), within sixty (60) days after the Seller's inspection or testing discloses the problem, subject to weather conditions, acts of God, availability of materials, and other events beyond Seller's control. The choice among repair, replacement or payment is solely that of the Seller. In making any repairs or replacements, Seller shall have the right to select the method and materials to be used in performing such repairs or replacements.

Seller's liability under this warranty is limited in the aggregate to the amount listed on page 1 of the warranty.

Repair of damage to the load-bearing portions of the Residential Unit will be limited to that which is necessary to restore their load-bearing function. Repair of other Major Structural Defects will be limited to repair of those defects which made the Residential Unit unsafe, unsanitary or otherwise unlivable.

7. Step by Step Claims Procedures. (a) Written notice of any warranty claim must be made on the attached "Notice of Warranty Claim Form" and must be received by the Seller no later than the tenth (10th) day after the expiration of the applicable warranty period. Such notice must be sent by Purchaser to Seller by certified or express mail, return receipt requested. If this form shall not properly be completed and received by the Seller by that deadline, the Seller will have no duty to respond to any complaint or demand contained in such form, and any or all claims may be rejected. COMPLETION AND DELIVERY OF SUCH NOTICE OF WARRANTY CLAIM IN A TIMELY MANNER IS NECESSARY TO PROTECT THE RIGHTS OF THE PURCHASER UNDER THIS LIMITED WARRANTY.

(b) No steps taken by the Seller, Purchaser or any other person to inspect, test or correct defects will extend any time period under this Warranty. No steps taken by the Seller in response to an improperly completed or untimely notice of a warranty claim will give rise to any liability of Seller to Purchaser in connection with such claim.

(c) In response to a Notice of Warranty Claim, or any other complaint or request of the Purchaser, the Seller and the Seller's agents will have the right to inspect and test the portion of the Residential Unit to which the claim, complaint or request relates. The Purchaser and occupants of the Residential Unit must provide reasonable access to the Seller and the Seller's agents during normal business hours, Monday through Friday, to complete inspection, testing and repair or replacement. Failure by Purchaser to provide such access shall invalidate this warranty with respect to the defect(s) set forth on the Notice of Warranty Claim.

(d) The Seller will complete inspection and testing within a reasonable time under the circumstances after receipt of a timely and properly completed Notice of Warranty Claim Form. Upon completion of inspection and testing, the Seller will determine whether to accept or reject the claim. If the Seller rejects the claim, the Seller will give written notice of that decision to the Purchaser at the address shown on the Notice of Claim Form. If the Seller accepts the claim, the Seller will take corrective action within a reasonable time under the circumstances. The Seller will use good faith efforts to process and handle claims in a timely manner, but all time periods for repair or replacement of defects necessary are subject to weather conditions, availability of materials, and other events beyond the Seller's control.

8. Legal Actions. (a) No claim under this warranty may be commenced or asserted against Seller in any lawsuit unless a properly completed Notice of Warranty Claim Form has been received by the Seller in the time period set forth in paragraph 7 of this warranty.

(b) No lawsuit against the Seller under this warranty may be commenced more than thirty (30) days after the expiration date of the applicable warranty coverage, or thirty (30) days after Seller has given written notice of its rejection of Purchaser's claim

with respect to such claim, or thirty (30) days after Builder has substantially completed corrective action for a defect with respect to such defect.

9. Miscellaneous Provisions. (a) To the extent any coverage under this warranty applies to common elements of a condominium, such coverage shall be deemed given to the Board of Managers of the condominium.

(b) This warranty may not be amended in any way without Seller's prior written consent in each instance.

(c) If any provision of this warranty will not be enforced by an appropriate court, the determination will not affect the enforceability of the remaining provisions.

(d) Use of one gender in this warranty includes the other gender, and use of the plural includes the singular, as may be appropriate.

(e) This warranty shall be governed in accordance with the laws of the State of New York.

(f) The National Association of Home Builders Building Standards, as they may be amended, establishes the standards by which it will be determined whether the Residential Unit has a problem which is covered by this Limited Warranty and the obligation of the Seller to correct such problem.

**INSTRUCTIONS TO COMPLETE  
NOTICE OF WARRANTY CLAIM FORM**

To ask the Warrantor to correct a defect in your Residential Unit that you think is covered by the Warrantor's Limited Warranty, you must complete this form and deliver it to the Warrantor. This is necessary to protect your rights to warranty performance under the Limited Warranty.

Describe the defect(s) which you think are covered by the Limited Warranty. Be sure to include when each defect first occurred or when you first noticed it. Use additional sheets, as necessary, to fully describe the problem. If you do not know the answers to any questions, write "Don't know." **Please do not leave any items blank.**

**NOTICE OF WARRANTY CLAIM FORM**

(We) \_\_\_\_\_  
(insert your name(s))

am the owner of Residential Unit # \_\_\_\_\_ located at \_\_\_\_\_

My mailing address and office and Residential Unit telephone numbers are as follows:

Address: \_\_\_\_\_

Office Telephone Number: \_\_\_\_\_

Residential Unit Telephone Number: \_\_\_\_\_

I first occupied the Residential Unit as my residence on \_\_\_\_\_

I closed title to the Residential Unit on \_\_\_\_\_.

Set forth below are defects in my Residential Unit and the approximate date the defects occurred or I became aware of them:

NATURE OF DEFECTS

DATE OCCURRED OR  
FIRST OBSERVED

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

This completed and signed form must be sent to Warrantor at its address listed on the first page of the Warranty by certified or express mail, return receipt requested.

**FORM FOR THE RELEASE OF ESCROW FUNDS**

Date

MORITT HOCK & HAMROFF LLP  
1407 Broadway, 39<sup>th</sup> Floor  
New York, New York 10018

Re: **96 16<sup>th</sup> Street Condominium**  
**Purchaser:**  
**Unit #:**

Dear Sirs:

You have been holding in a trust account my/our downpayment for the above-referenced Unit in the amount of \$ \_\_\_\_\_. I/we acknowledge that a closing has taken place this date. Accordingly, MORITT HOCK & HAMROFF LLP is authorized to release the funds being held in said amount to whomever the Sponsor so designates. In addition, MORITT HOCK & HAMROFF LLP, as Escrow Agent on said account, is hereby released from any and all liability or further obligation to us with respect to said downpayment.

Very truly yours,

\_\_\_\_\_  
Purchaser\_\_\_\_\_  
Sponsor's representative

**WAIVER OF NOTICE OF CLOSING**

, being duly sworn, does hereby depose and state:

1. I am the Purchaser of Unit # \_\_\_\_\_ at 96 16<sup>th</sup> Street Condominium.
2. Pursuant to a Purchase Agreement dated \_\_\_\_\_, 20\_\_\_\_, I am entitled to thirty (30) days' written notice of the closing for my Unit.
3. I hereby waive the applicable notice provision contained in the Purchase Agreement and agree to close on \_\_\_\_\_, 20\_\_\_\_.

Purchaser

Sworn to before me this      day  
of                      20 .

Notary Public

**EXPRESS ASSUMPTION OF RISK**

I/We \_\_\_\_\_ understand that by entering onto a construction site, there are extraordinary risks of grave bodily injury and/or death. In consideration for being allowed to enter upon the premises herein, I/we expressly assume all risks associated with the construction site, including but not limited to:

1. Falling debris;
2. Falls associated with excavations, uncleared ice and/or snow incomplete sidewalks and roads and downed trees and/or bushes;
3. Injuries associated with incomplete construction;
4. Injuries associated with operating machinery;
5. Injuries associated with incomplete or no railings; and
6. Injuries associated with incomplete and/or insufficient lighting.

I/We \_\_\_\_\_ further agree to fully indemnify and hold harmless 96 16<sup>th</sup> STREET LLC, its members, officers, directors, principals, shareholders, successors and assigns for any and all damage to any personal property.

\_\_\_\_\_  
\_\_\_\_\_

## TENDER OF ESCROW DEPOSIT

Date: \_\_\_\_\_

Tender of Deposit of \$\_\_\_\_\_, for Unit \_\_\_\_\_ and Storage Unit \_\_\_\_\_ at 96 16<sup>th</sup> Street Condominium located at 96-16<sup>th</sup> Street, Brooklyn, New York 11215.

Purchaser named below has tendered on \_\_\_\_\_, 20\_\_\_\_, the above escrow deposit to Sponsor as a deposit for the above Unit and Storage Unit.

Purchaser: \_\_\_\_\_

Address of Purchaser: \_\_\_\_\_

Phone number of Purchaser:

Cellular: \_\_\_\_\_

Social Security Number of Purchaser \_\_\_\_\_

Purchaser's Signature \_\_\_\_\_

---

### RECEIPT

The SPONSOR of the above named property hereby acknowledges receipt of the above escrow deposit.

96 16<sup>TH</sup> STREET, LLC

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

Date of Receipt: \_\_\_\_\_

### **MORTGAGE CONTINGENCY RIDER**

**RIDER to Purchase Agreement dated \_\_\_\_\_, 20\_\_, by and between 96 16<sup>th</sup> STREET LLC as Seller/Sponsor and \_\_\_\_\_, as Purchasers for Residential Unit No. \_\_\_\_ at 96 16<sup>th</sup> Street Condominium.**

1. Notwithstanding Paragraph 5 of the Purchase Agreement, this Purchase Agreement is subject to and conditioned upon issuance of a written commitment (the "Commitment") for a conventional (fixed or adjustable rate) mortgage loan encumbering the Premises from a reputable lender licensed to do business in New York (the "Lender"), for a term of fifteen (15) or thirty (30) years, at the prevailing rate of interest, in an amount as applied for by Purchaser, not to exceed eighty (80%) percent of the total Purchase Price of the Residential Unit (the "Loan"). Purchaser shall make application for the Loan within seven (7) days from the date hereof to Lender, and diligently, truthfully and in good faith pursue the Loan. Purchaser shall furnish and execute all documents and shall pay all costs and expenses required by the Lender to process the application and issue the Commitment.
2. Purchaser shall, at Seller's request, furnish Seller with a copy of its application for the Loan, along with the name and address of the Lender.
3. Purchaser represents that they have no judgments outstanding or proceedings pending against Purchaser in any Court, nor has Purchaser ever been adjudicated as bankrupt. Purchaser represents that they have inquired and are familiar with the requirements to obtain the Commitment and believes they have sufficient income and assets to qualify for same.
4. Upon issuance of a Commitment, Purchaser shall provide Seller with a copy of same and the provisions of this Rider shall be deemed satisfied and of no further force and effect. Therefore, the Purchase Agreement shall be deemed firm and unconditional and equivalent to an "all cash" deal. Any risk that the Commitment may be revoked, cancelled or may expire shall be borne solely by Purchaser (i.e., should Purchaser lose such Commitment after obtaining it, Purchaser shall be obligated to close hereunder in accordance with the terms of the Purchase Agreement or be deemed in default hereunder). In the event the Commitment contains a provision that it is conditioned upon the sale of any real estate or other assets owned by Purchaser or upon the occurrence of any other events, then such conditions in the Commitment shall not be grounds for Purchaser to cancel this Purchase Agreement, and to that extent, the Commitment shall be deemed unconditional. Notwithstanding the foregoing, should the Purchasers Commitment lapse or expire, through no fault of Purchaser, prior to closing, due to Seller's inability to deliver the Home, and Purchaser has made a good faith effort to extend the Commitment without success, Sponsor shall grant Purchaser a right of rescission and a reasonable period of time in which to exercise such right.
5. Upon receipt by Purchaser of a written denial of Purchaser's application for the Loan (the "Denial"), Purchaser shall promptly notify Seller of such Denial, but in no event later than five (5) days from the date of such Denial, and shall enclose a copy of the denial letter.

6. In the event Purchaser has not received a Commitment or a Denial within thirty (30) days from the date of the Purchase Agreement (the "Contingency Period"), then Purchaser may elect to cancel this Purchase Agreement by providing notice to Seller no later than thirty (30) days from the date of the Purchase Agreement. Should Purchaser provide notice of cancellation to Seller, as set forth in this Paragraph, and provided Purchaser shall have complied with all of the provisions contained herein, the down payment made hereunder shall be returned to Purchaser, and all rights and obligations between the parties shall cease and terminate, except for those herein which expressly survive termination of this Purchase Agreement. Notwithstanding the foregoing, in the event Purchaser sends a notice of cancellation within the Contingency Period, Seller may, in its sole discretion, extend Purchaser's time to obtain the Commitment for a period not to exceed thirty (30) days, and Purchaser's notice of cancellation shall not be deemed effective until the expiration of such additional time. In the event Seller elects to extend Purchaser's time to obtain the Commitment, then Purchaser shall continue to diligently pursue the issuance of the Commitment within such additional time. Notwithstanding the foregoing, if Purchaser does not provide Seller with the notice of cancellation, as provided in this Paragraph, the provisions of this Rider shall be deemed satisfied and of no further force and effect, and the Purchase Agreement shall be deemed firm and unconditional.
7. In the event Purchaser elects to terminate the Purchase Agreement pursuant to the terms of this Rider, Seller shall have the right but not the obligation to require Purchaser to make application with another lender of Seller's choice within seven (7) days from the date Seller receives notice of the Denial or Purchaser's notice of cancellation, or obtain a loan commitment letter for Purchaser from a lender licensed to do business in the State of New York or a licensed mortgage banker, upon similar terms and conditions as set forth herein (the "Loan Commitment Letter"). In the event that Seller obtains a Loan Commitment Letter pursuant to the terms of this Paragraph, Purchaser shall be obligated to accept such Loan Commitment Letter, comply with its requirements and close title hereunder.
8. In the event the Loan is approved in a reduced amount, Purchaser agrees to accept the Loan on the condition that it can be reduced no more than \$10,000.00, and Purchaser shall pay the difference at closing in cash or certified check.
9. Seller does not make any representation as to whether Purchaser will qualify for financing or as to the terms, cost or availability of such financing. The Seller shall have no liability or responsibility to Purchaser if Purchaser's attempts to obtain are not successful for any reason.

SELLER:  
96 16<sup>th</sup> STREET LLC

BY: \_\_\_\_\_

PURCHASER(S):

\_\_\_\_\_

## POWER OF ATTORNEY

**CAUTION TO THE PRINCIPAL:** Your Power of Attorney is an important document. As the "principal," you give the person whom you choose (your "agent") authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority.

When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. "Important Information for the Agent" at the end of this document describes your agent's responsibilities.

Your agent can act on your behalf only after signing the Power of Attorney before a notary public.

You can request information from your agent at any time. If you are revoking a prior Power of Attorney by executing this Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to the financial institutions where your accounts are located.

You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly.

Your agent cannot make health care decisions for you. You may execute a "Health Care Proxy" to do this.

The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, [www.senate.state.ny.us](http://www.senate.state.ny.us) or [www.assembly.state.ny.us](http://www.assembly.state.ny.us).

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I (We) residing at \_\_\_\_\_ ("Principal") the owner of Condominium Unit No. \_\_\_\_ in the Condominium known as 96 16<sup>th</sup> Street Condominium covering the property located in the Borough and County of Kings, City and State of New York, do hereby nominate, constitute and appoint the Members of the Board of Managers of 96 16<sup>th</sup> Street Condominium c/o 96 16<sup>TH</sup> Street LLC, located at 137 Varick Street, Suite, #503, New York, New York 11228 and their successors, jointly, my true and lawful attorneys-in-fact, coupled with an interest, with power of substitution, in my name and on my behalf to acquire, in their own name or in the name of their designee by deed on behalf of all owners of Condominium Units in said property, any Condominium Unit whose owner desires to abandon the same, or which shall be the subject of a foreclosure sale or in lieu of a foreclosure sale, at such price and on such terms as my said attorneys-in-fact shall, in their sole discretion deem proper and thereafter to convey, sell, lease, sublease, mortgage, vote or otherwise deal in such Condominium Unit so acquired, at such terms as my attorneys-in-fact may in their sole discretion determine, granting to my said attorneys-in-fact the power to do all things in the said premises which I could do if I were personally present.

I (We) do further hereby nominate, designate, constitute and appoint the Members of the Board of Managers of 96 16<sup>th</sup> Street Condominium and their successors, jointly, my true and lawful attorneys-in-fact, coupled with an interest, with power of substitution, in my name and on my behalf, the right to act in my behalf to take any and all action necessary against any tenant(s) that may be residing in my Residential Unit including but not limited to, the right to seek an eviction in a court of law for failure to adhere to any of the provisions of the Declaration of Condominium, By-Laws and/or Rules and Regulations of 96 16<sup>th</sup> Street Condominium .

I (We) do hereby further irrevocably nominate, constitute and appoint 96 16<sup>th</sup> Street LLC and its successors, my true and lawful attorneys-in-fact coupled with an interest in my name and on my behalf to vote at any Unit Owners meeting for, and to file an amendment to the Declaration of Condominium of 96 16<sup>th</sup> Street Condominium permitting the certification by a registered architect or professional engineer, certifying that the floor plans filed as part of an amended Declaration are an accurate copy of portions of the plans of the building and fully and fairly depict the layout, location, designation and approximate dimensions of the Units, as built, and to amend any Filed Map or amending such Declaration to create any utility easements or to carry out any of the provisions of the Offering Plan of such Condominium as described in Article Eleventh, Section (c) of the Declaration of Condominium of 96 16<sup>th</sup> Street Condominium

Terms used in this Power of Attorney, which are used in the Declaration submitted by 96 16<sup>TH</sup> Street LLC, establishing a Plan for Condominium Ownership of the premises known as 96 16<sup>th</sup> Street Condominium under the Condominium Act (the "Declaration"), dated \_\_\_\_\_, 20\_\_ and recorded in Kings County Register's Office on \_\_\_\_\_, 20\_\_ as CRFN \_\_\_\_\_ together with the Exhibits attached thereto, shall have the same meanings herein as in the Declaration.

This document does not revoke any power of attorney I/we have previously executed. In order to revoke a prior power of attorney, I/we will execute a revocation specifically referring to the power to be revoked.

Notwithstanding anything set forth herein to the contrary, this power of attorney is irrevocable and shall not be revoked by any subsequent power of attorney I/we may execute.

Whenever two or more powers of attorney are valid at the same time, the agents appointed on each shall act separately, unless specified differently in the documents.

IN WITNESS WHEREOF, I (we) have set my (our) hand(s) and seal this      day  
of      , 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF NEW YORK    )  
                                         : ss  
COUNTY OF                )

On the      day of      in the year 20\_\_, before me, the undersigned,  
personally appeared      , personally known to me or proved  
to me on the basis of satisfactory evidence to be the individual whose name is  
subscribed to the within instrument and acknowledged to me that they executed the  
same in their capacity, and that by their signature on the instrument, the individual, or  
the person upon behalf of which the individual acted, executed the instrument.

STATE OF NEW YORK    )  
                                         : ss  
COUNTY OF                )

On the      day of      in the year 20\_\_, before me, the undersigned,  
personally appeared      , personally known to me or proved  
to me on the basis of satisfactory evidence to be the individual whose name is  
subscribed to the within instrument and acknowledged to me that they executed the  
same in their capacity, and that by their signature on the instrument, the individual, or  
the person upon behalf of which the individual acted, executed the instrument.

**IMPORTANT INFORMATION FOR THE AGENTS:**

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

1. act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;
2. avoid conflicts that would impair your ability to act in the principal's best interest;
3. keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;
4. keep a record of all receipts, payments, and transactions conducted for the principal; and
5. disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manner: (Principal's Name) by (Your Signature) as Agent, or (Your Signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or give major gifts to yourself or anyone else unless the principal has specifically granted you that authority in this Power of Attorney or in a Statutory Major Gifts Rider attached to this Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

**Liability of agent:**

The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

**AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:** It is not required that the principal and the agents sign at the same time, nor that multiple agents sign at the same time.

I, \_\_\_\_\_, Member of 96 16<sup>TH</sup> STREET LLC, have read the foregoing Power of Attorney. 96 16<sup>TH</sup> STREET LLC is one of the entities identified therein as agent for the principal named therein. On behalf of 96 16<sup>TH</sup> STREET LLC, I acknowledge my/our legal responsibilities.

Agent(s) sign here:

**96 16<sup>TH</sup> STREET LLC**

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

STATE OF NEW YORK )  
 : ss  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

**AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:** It is not required that the principal and the agents sign at the same time, nor that multiple agents sign at the same time.

I, \_\_\_\_\_ of the Board of Managers of 96 16<sup>th</sup> Street Condominium have read the foregoing Power of Attorney. The Board of Managers of 96 16<sup>th</sup> Street Condominium is one of the entities identified therein as agent for the principal named therein. On behalf of the Board of Managers, I acknowledge our legal responsibilities.

Agent(s) sign here:

**BOARD OF MANAGERS OF 96 16<sup>TH</sup> STREET CONDOMINIUM**

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

STATE OF NEW YORK    )  
                                          : ss  
COUNTY OF                    )

On the        day of                                    in the year 20\_\_, before me, the undersigned, personally appeared                                    , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

**POWER OF ATTORNEY**

---

to

Board of Managers of 96 16<sup>th</sup> Street Condominium

and

96 16<sup>TH</sup> STREET LLC

Unit \_\_\_\_  
96 16<sup>th</sup> Street  
Brooklyn, New York 11215

Section \_\_, Block \_\_\_\_

Lot \_\_\_\_

County of Kings

**Record and Return to:**

Anthony J. Ficara, Esq.  
MORITT HOCK & HAMROFF LLP  
1407 Broadway 39<sup>th</sup> Floor.  
New York, New York 10018

**DEED**

THIS INDENTURE made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between 96 16<sup>th</sup> STREET LLC, a New York Limited Liability Company, having a place of business at 137 Varick Street, Suite 503, Brooklyn, New York 11215, Party of the First Part and

Party of the Second Part;

**WITNESSETH**

That the Party of the First Part, in consideration of Ten Dollars (\$10.00), lawful money of the United States, and other good and valuable consideration, paid by the Party of the Second Part, does hereby grant and release unto the Party of the Second Part, the heirs or successors and assigns of the Party of the Second part forever,

All that certain piece or parcel of real property, with the improvements therein contained, situate and being a Condominium Unit (the "Residential Unit") in Kings County, City and State of New York, known as Residential Unit No. \_\_\_\_\_ in the Condominium known as 96 16<sup>th</sup> Street Condominium, said Residential Unit designated and described as Residential Unit No. \_\_\_\_ and said Parking Space Unit designated and described as Parking Space Unit No. \_\_\_\_, in the Declaration establishing a plan for Condominium Ownership of said premises under Article 9-B of the Real Property Law of the State of New York (the "New York Condominium Act"), dated and recorded in the Office of the City Register, Kings County (the "Register's Office") on \_\_\_\_\_ in Reel \_\_\_\_\_ page \_\_\_\_\_ and also designated as Tax Lot \_\_\_\_\_ in Block \_\_\_\_\_ of Section \_\_\_\_\_ of Kings County on the Tax Map of the Real Property Assessment Department of the City of New York, and on the Floor Plan of said building certified by \_\_\_\_\_ on \_\_\_\_\_ and filed with the Real Property Assessment Department of the City of New York on \_\_\_\_\_ as Condominium Plan No. \_\_\_\_\_, and also filed in the Register's Office on \_\_\_\_\_ as Condominium Plan No. \_\_\_\_\_, Map No. \_\_\_\_\_.

**TOGETHER** with an undivided \_\_\_\_\_% interest in the Common Elements.

**SCHEDULE F**

The premises within which the Residential Unit is located are more particularly described as follows:

(PROPERTY DESCRIPTION)

**TOGETHER** with the appurtenances and all the estate and rights of the Party of the First Part in and to said premises.

**TOGETHER** with the benefits, rights, privileges, easements and subject to the burdens, covenants, restrictions, by-laws, regulations and easements all as set forth in the Condominium Documents filed and recorded as aforesaid.

**SUBJECT TO:** The provisions of the Declaration, By-Laws, site plan and floor plans of the Condominium as the same may be further amended from time to time by instruments recorded or filed in the Register's Office of the City of New York, Queens County, which provisions, together with any amendments thereto shall bind any person having at any time any interest or estate in the Residential Unit, as though such provisions were recited at length herein.

**SUBJECT TO** the Party of the Second Part notifying the Party of the First Part of any resale of the Residential Unit within two (2) years of the date of this indenture and the Party of the Second Part making a payment to the Party of the First Part of the greater of twenty-five (25%) percent of the resale price or ten (10%) percent of the original purchase price of the Residential Unit.

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

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

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

The use for which the Residential Unit is intended is that of a one family residence or non-residential use, subject to the applicable governmental regulations and the restrictions contained in the Declaration.

This conveyance is made in the regular course of business actually conducted by the Party of the First Part.

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

**IN WITNESS WHEREOF**, the Party of the First Part has duly executed this deed and the Party of the Second Part has duly assumed the mortgage therein referred to, the day and year first above written.

**96 16<sup>th</sup> STREET LLC**

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

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 person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his or her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

CONDOMINIUM APARTMENT BUILDING  
96 16<sup>th</sup> St  
Brooklyn, NY 11215

February 10, 2020

General: The property described herein consists of a new 4-Story residential elevator building with Private Bulkhead at Roof Level and a Cellar. The building will house four new residential units with exterior spaces. The 1st Floor unit will include some space at Cellar Level as well as exterior space at the rear yard, while the 2nd Floor unit will include a rear balcony and rear yard space. The 3rd Floor unit will include a rear balcony and the 4<sup>th</sup> Floor unit will include a private bulkhead at the Roof Level as well as the exterior roof terrace at the Roof Level.

(a) Location of Property:

- |     |                                     |                                                                                                                |
|-----|-------------------------------------|----------------------------------------------------------------------------------------------------------------|
| (1) | Address:                            | 96 16 <sup>th</sup> St<br>Brooklyn, NY 11215<br>(Situated between 4 <sup>th</sup> Ave and 3 <sup>rd</sup> Ave) |
| (2) | Block No.:<br>Lot No.:              | 1051<br>28                                                                                                     |
| (3) | Zoning District:<br><br>Zoning Map: | R6B<br><br>16d                                                                                                 |
| (4) | Permissible Uses                    | Residential Use Groups 1, 2, 3 and 4                                                                           |
| (5) | Landmark Status:                    | None                                                                                                           |
| (6) | Compliance:                         | Property and proposed use will comply with all zoning and use requirements at closing.                         |

## (b) Status of Construction

(1) The construction will be a new building.

- i) Quality Housing Program: This building elects to use the optional quality housing bulk regulations and complies with all quality housing requirements as shown in table below:

## QUALITY HOUSING

|         |                                                                                                                                     |
|---------|-------------------------------------------------------------------------------------------------------------------------------------|
| ZR28-33 | PLANTING AREAS<br>AREA BETWEEN STREET LINE AND STREET WALL SHALL BE PLANTED, EXCEPT AT ENTRANCES AND EXITS<br>PLANTED AREA PROVIDED |
| ZR23-22 | R6B DWELLING UNIT FACTOR = 680<br>MAX SF 5083/680 = MAX 7 DWELLING UNITS<br>4 DWELLING UNITS PROVIDED                               |
| ZR28-22 | DOUBLE GLAZED WINDOWS REQUIRED<br>TRIPLE GLAZED WINDOWS PROVIDED                                                                    |
| ZR28-31 | RECREATION SPACE<br>REQUIRED FOR BUILDINGS WITH 9 OR MORE UNITS<br>NOT REQUIRED                                                     |
| ZR28-25 | CORRIDOR DAYLIGHTING<br>20 SF REQUIRED<br>24 SF PROVIDED                                                                            |
| ZR28-41 | DENSITY PER CORRIDOR<br>MAX NUMBER OF DWELLING UNITS PER CORRIDOR IS 11<br>1 PROVIDED                                               |

- (2) The permit for the construction of the new building was issued on March 8, 2017 . The project is mid-way through the construction process. The projected date of substantial completion is on or about May 2020 unless delayed by weather, strikes, lockouts, acts of God, shortages of, or inability to obtain materials, equipment or labor, governmental restrictions or preemption, damage by fire or the elements or any other cause over which the Sponsor has no control.
- (3) Class of Construction: The building is classified as 2A non-combustible construction and will conform to all applicable regulations as set forth in the 2008 Building code of the City of New York. All fireproofing shall meet requirements set forth in chapter 7 of the said code.

| Building Element                                         | Hourly Rating (Type 2A) |
|----------------------------------------------------------|-------------------------|
| Structural Frame (Columns, Girders)                      | 1 hour                  |
| Bearing Walls (Interior & Exterior)                      | 1 hour                  |
| Non Bearing Walls - Exterior                             | 1 hour                  |
| Non Bearing Walls - Interior                             | 0 hour                  |
| Floor Construction (including supporting beams & joists) | 1 hour                  |
| Roof Construction (including supporting beams & joists)  | 1 hour                  |

The building plans have been filed with the New York City Department of Buildings, Job No. 321044160, and approval was granted on March 9, 2016. (List of project construction documents at Attachment C.)

- (4) 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 ("Department of Buildings"). 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 unit closing.

(c) Site

- (1) The site dimensions are 20 ft by 127 ft with an area of approximately 2,540 square feet.
- (2) There will be a 4-story new building with a private roof bulkhead and a cellar below. Floors will be designated as Cellar, 1 (Ground), 2, 3, 4 and Roof. The Cellar floor will be used for accessory space to the 1<sup>st</sup> floor apartment and for common building service spaces. The 1<sup>st</sup> (Ground) floor will be used for the residential lobby and a residential unit. The 2<sup>nd</sup> through 4<sup>th</sup> floors will be used for residential units. The Roof Level will contain a private bulkhead for unit 4.

- (3) The site has a street frontage of 20.00 feet on 16<sup>th</sup> Street.

- ii) The streets adjacent to the site are paved with asphalt topping and are in good condition.
- iii) The existing curbs will be repaired or replaced as needed
- iv) The street is presently pitched to drain via catch basins into the New York City storm water drainage system.
- iv) The street lighting is provided by the City of New York.
- v) The building conforms to local fire district and municipal codes.

(4) Drives, Sidewalk, Ramps

- i) There will be no drives, ramps, or curb cuts.
- ii) The existing sidewalk and curb at 96 16<sup>th</sup> St will be replaced with new.
- iii) The new sidewalk shall slope away from the building to the street.
- iv) The street is presently pitched to drain via catch basins into the New York City storm water drainage system.
- v) The street lighting is provided by the City of New York.
- vi) The building conforms to local fire district and municipal codes.

(d) Utilities

- (1) Water supply and combined sewer servicing the building units will be provided by public utilities located in 16<sup>th</sup> St. Water will be master metered. Gas will be provided by National Grid and electrical service will be provided by Consolidated Edison. Electricity will be supplied and individually metered for each residential unit. Gas will be metered by four

house meters: Each meter serves the gas range and domestic water heater. Telephone service will be provided by a telephone company to be selected by each unit owner.

(e) Sub-soil Conditions

- (1) A new poured-in-place concrete foundation will be provided with concrete footings and a slab on grade floor at cellar level.
- (2) There is no observable evidence of seepage.
- (3) There is no apparent danger of damage to the building from natural flooding, soil erosion or mud slides.
- (4) No sub-surface water was encountered at the time the boring was performed.
- (5) No expansive soils were encountered at the time the boring was performed.
- (6) Land subsidence is not anticipated due to the Clayey Sand (SC) or Silty Sand (SM) encountered at the time the boring was performed.

(f) Landscape & Enclosure

- |     |                                       |   |                                                                                                                                                                                                                                                                                                                 |
|-----|---------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | Grass cover                           | - | Rear yard                                                                                                                                                                                                                                                                                                       |
| (2) | Plantings                             | - | There will be new plantings and landscaping at the rear yard.                                                                                                                                                                                                                                                   |
| (3) | Trees                                 | - | Along 16 <sup>th</sup> St, as required by the New York City Zoning ordinance for Quality Housing, 1 Deciduous Tree will be Protected.                                                                                                                                                                           |
| (4) | Fencing                               | - | A 7'-0" high wood and metal perimeter fencing will be provided around the rear yard.                                                                                                                                                                                                                            |
| (5) | Gates                                 | - | A powder coated steel gate will be provided at the entry.                                                                                                                                                                                                                                                       |
| (6) | Garden Wall                           | - | See fencing above                                                                                                                                                                                                                                                                                               |
| (7) | Retaining Walls                       | - | Wood retaining at rear yard separating outdoor space of unit one and unit two shall be pressure treated timber, 3'-0" high retaining wall with a 6'-0" red cedar wood fence on top.<br><br>Concrete retaining wall at cellar level in the rear yard shall be 1'-0" wide and 11'-6" high cast-in-place concrete. |
| (8) | Display Pools & Fountains             | - | None                                                                                                                                                                                                                                                                                                            |
| (9) | Open Recreation Space & Sitting areas | - | Unit 1 shall have partial access and use of the rear yard garden. Unit 2 shall have partial access and use of the rear yard garden. An open porch shall be provided for Unit 3.                                                                                                                                 |

Unit 4 shall have private access of the roof level terrace.

(g) Building Size

- (1) The total height of the building from the property line elevation of 43.64' Brooklyn Topographical datum, to the top of the roof penthouse high point is 49'-11".
- (2) Crawl spaces: None
- (3) There will be 4 floors with a private bulkhead and a cellar:
  - (i) Cellar floor height is approximately 9'-7 1/2" floor to floor at the highest point.
  - (ii) First (Ground) floor height is approximately 10'-0" floor to floor at the highest point.
  - (iii) Second floor height is approximately 10'-0" floor to floor at the highest point.
  - (iv) Third floor height is approximately 10'-0" floor to floor at the highest point.
  - (v) Fourth floor height is approximately 10'-0" floor to floor at the highest point.
  - (vi) Penthouse floor height is approximately 9'-1" from roof deck to penthouse roof deck.
- (4) Parapet: Height from top of roof finish to top of parapet will be a minimum of 1'-0", and a metal and glass railing will be installed front and rear to a minimum height of 3'6"
- (5) Equipment rooms: There are 3 main equipment rooms in the building.
  - (i) Cellar level: Elevator equipment room
  - (ii) Cellar level: Water pump room
  - (iii) Cellar level: Electrical meters rooms

(h) Structural System

The structural system of the 4-story new building with bulkhead and roof deck will consist of CMU bearing walls with light gauge metal C-joists frame; flooring for all levels consists of 2" lightweight concrete on top of 9/16-in metal deck. The foundations will consist of cast in place concrete walls and concrete footings.

- i) Waterproofing: Bituminous waterproofing membrane shall be applied to the exterior surface of foundation walls. Plastic vapor barrier shall be installed below slab on grade.
  - ii) Sound Insulation: Demising and corridor walls are provided with sound batt insulation to achieve the required acoustical separation. Floor assemblies are designed with resilient channels and sound batt insulation to reduce impact noise between floors.
  - iii) Foundation drains: drains will be provided at exterior foundation walls and connected to the storm water drain system.
- (1) Exterior of buildings:
- i) Walls: front exterior façade construction consists of insulated tempered glass and exterior insulation on a 6" galvanized metal stud backup with stucco finish, wall is not fire rated; side exterior walls construction consists of stucco with exterior insulation on 8" masonry backup, walls are fire rated for 2 hours; rear exterior facade construction consists of insulated tempered glass and exterior insulation

on a 6" galvanized metal stud backup with stucco finish, wall is not fire rated. Interior face of exterior walls will be finished with 5/8" GWB. The insulation installed in the walls will meet New York City Energy Conservation Code.

- ii) Windows: The windows at all floors will be U-PVC casement windows. Double pane windows reinforced with steel U-channels for increased strength and stability. The windows sit on metal stud sill, with U-PVC sill cover and metal stud lintel, with U-PVC window head. Windows shall have double seals between panes of glass for improved thermal performance. Windows shall be the "Arcade" line, from INTUS. Windows shall be installed with a standard manufacturer's warranty. The warranty period will start from the date of substantial completion of the project and extend for 5 years for material and labor.
- iii) Lot Line Windows: N/A
- iv) Landmarks: N/A
- (2) Parapets and Copings: The roofs and terrace parapets will be metal stud wall back-up with 3-5/8" brick or stucco with aluminum copings. Exposed exterior flashing for the building will be stainless steel or 1/8" thick pre-painted aluminum.
- (3) Chimneys and Caps: There will be four (4) gas-fired water heater C-PVC flues that will terminate above the roof structure as required by the Building Code of New York City.
- (4) Balconies and Terraces: U-PVC frames and insulated glass doors to balconies and terraces. Glazing shall be double pane glass with reinforced steel U-channels for increased strength and stability. Doors shall have double seals between panes of glass for improved thermal performance. Doors shall be the "Arcade" line from INTUS, or EQ.
  - i) Deck Finish: Wood pedestal pavers at the rear yard porch; Planted trays and concrete pedestal pavers at roof terraces.
  - ii) Balustrade: steel or tempered glass at roof terrace.
  - iii) Railings: shall be tempered glass. Railings do not create a "ladder effect."
  - iv) Copings: 3mm thick aluminum copings at all parapets.
  - v) Soffits: N/A.
  - vi) Doors to balconies and terraces:
- (5) Exterior Entrance and Ground Floor Public Areas
  - i) Exterior Doors and frames: The main entrances at the residential lobby shall be U-PVC frames and insulated glass doors to balconies and terraces. Glazing shall be double pane glass with reinforced steel U-channels for increased strength and stability. Doors shall have double seals between panes of glass for improved thermal performance. Doors shall be the "Arcade" line from INTUS, or EQ. Doors shall have passage locks.

- ii) Vestibules Doors and Frames: The vestibule doors will be 1-1/2 hour fire rated metal doors and frames. Clear vision insulated glass shall be in the door. Doors shall be the "Arcade" line from INTUS, or EQ. Doors shall have privacy locks allowing access to the building to people that have key/card.
- iii) Exterior Stairs: A steel stair with stainless steel railings will be provided from Unit 1 to rear yard.
- iv) Railings: Aluminum Fence will be provided around planted area.
- v) Mail Boxes: Mail boxes will be located in the Lobby at the Ground Floor and will be front-loading finished metal and U.S. Postal Service approved.
- v) Storage rooms: Will be provided at the basement level and divided among unit owners.
- vi) Lighting: Lighting will be provided at the building exterior entrance, in the lobby, and public corridors. Wall-mounted lighting will be provided at the private terraces and at the roof levels.
- vii) Marquee: None
- (6) Service Entrances: N/A
- (7) Roof and Roof Structures
  - i) Type of Roof
    - (a) Material: The roofing system will be Firestone TPO membrane roofing over tapered roof insulation sloped to drains with a slope of 1/8" per foot (or as recommended by the roofing manufacturer), with a slip sheet on top. The paver system at the terraces and roof deck will be concrete pedestal pavers, and planted trays over the roofing system described above.
    - (b) Insulation: Insulation shall be 2 inches XPS rigid foam insulation above roof structure and 7 inches mineral wool insulation below structure amounting to R-38 to meet the New York City Energy Conservation Code.
    - (c) Surface Finish: The surface finish will be concrete pedestal pavers and planted trays as described above.
    - (d) Bond or Warranty: The roofing system will have a two-year minimum manufacturer's warranty. Warranty is issued by manufacturer and installation to follow manufacturer's requirement. Expected Useful Life: The roofing system will have a minimum life of up to 10 years from the date of final installation.
    - (e) Flashing Material: There will be stainless steel counter flashing and membrane base flashing as required and will be compatible with the roof assembly.

- ii) Drains:
  - (a) Material and Type: There will be cast iron dome-type roof drains for roofs and flat type cast-iron grates on roof drains for terraces.
  - (b) Scuppers and Leaders: At roof bulkheads, main roof, and terraces fabricated of galvanized steel material.
- iii) Skylights: There will be a curb mounted skylight on the stair bulkhead, installed per manufacturer's instructions. Skylight shall be 53" x 29" mounted on a steel studs. Skylight shall have fixed low-E3 tempered glass.
- iv) Bulkheads: There will be one elevator bulkhead and one public stair bulkhead and one private bulkhead allowing roof access to one of the units.
  - a) Stair Bulkhead: Bulkheads roof will be composite metal deck with 2 inches of insulation above and 7 inches of insulation below structure. The walls will be steel studs with stucco exterior finish.
  - b) Elevator Bulkhead: Bulkhead's roof will be composite metal deck with 2 inches of insulation above and 7 inches of insulation below structure. The walls will be 8" masonry block with stucco exterior finish.
- v) Metal Work at Roof Levels
  - (a) Exterior Metal Stairs: N/A
  - (b) Vertical Ladders: An exterior ladder at roof level will provide access to the roof of the private bulkhead.
  - (c) Railings: Provided to a height of 3'-6" above finished roof levels in all locations. Steel or aluminum railing.
  - (d) Other: None
- (8) Roof Top Facilities: Roof terrace at roof level are accessible by private residential code compliant winder stairs for unit 4. The roof recreational area, designed to be code compliant, is 42% of the entire roof area. The recreational area is average 13' x 58'. The recreational area of the roof shall be concrete pavers on sleepers and will be installed per manufacturer's requirement. The rest of the roof area shall be a green roof. The roof finish is appropriate for daily foot traffic and use as a terrace. The rooftop shall be allocated as an accessory to the residential space in the Certificate of occupancy.
  - i) Number of Stairs: There will be one stair serving the building, which will extend from the cellar to the roof. The stair will discharge through the lobby with a 3'-0" non-obstructed walkway to the outside.
  - ii) Enclosure: The stairs will be enclosed with minimum 2-hour fire-rated partitions.

- iii) Stair Construction: Egress stairs will be of structural steel stringer with metal brackets and concrete treads. Interior stairs will be of metal and wood construction.
  - iv) Stringers: Steel for egress and interior stairs.
  - v) Treads: Concrete for egress stairs and wood for interior stairs.
  - vi) Risers: Steel for egress stairs and wood for interior stairs.
  - vii) Hand Rails: There shall be a steel pipe handrail for egress stairs and wood steel handrails for interior stairs in conformance with the NYC Building Code.
  - viii) Balustrade: Steel bars or pipe rail as required.
- (9) Yard and Courts: The building has a rear yard that will be deeded to Units 1& 2 accessed via stairs. The rear yard is 20' x 50'. The rear yard will be a seeded (grass) area.
- i) Paving: N/A
  - ii) Drainage: The rear yard shall be a grassy area allowing water to drain through soil.
  - iii) Railings: The access stairs will have wood railings with vertical balusters.
  - iv) Stairs: The rear yard will be accessed via 2 stairs. A cast-in-place concrete stair with bluestone treads. Second stair shall be steel stairs with steel treads.
  - v) Fencing: Rear yard fence will be Red Cedar wood board on board type.
  - vi) Retaining Walls: retaining walls are 12" wide reinforced concrete walls designed to take lateral pressures from soil.
- (10) Interior Stairs
- i) Winder Stairs: Winder stairs interior to unit 4 will connect the unit main level and the private roof deck level above. The winder stairs will be constructed to meet the requirements of 2008 NYC BC section 1009.3 exception 7. Winder treads will have a minimum depth of 6 inches at any point.
- (11) Interior Doors and Frames
- i) Unit Entrances: The Residential units shall enter from a vestibule from a common public corridor. All residential entrance doors shall be 1 1/2-hour fire-rated insulated hollow metal frame/door and will meet the NYC Building Code requirement. The apartment interior doors shall be wood doors with wood frames.
  - vii) Corridor Doors and Frames: All doors and frames shall be 1 1/2" hour fire-rated hollow-metal and will meet the NYC Building Code requirements.

- iii) Stair Doors and Frames: All doors and frames shall be 1½-hour fire-rated hollow-metal and will meet the NYC Building Code requirements.
  - v) Roof Doors, Lower Level Doors and Frames: These doors and frames shall meet the NYC Building Code requirements.
- (12) Elevators:
- i) There will be one residential elevator serving floors: cellar, first (ground), second, third, fourth. The elevator shall be Schindler 330A Holeless Hydraulic. The elevator's capacity shall be 4000 pounds; 13 to 19 passengers. The elevator controls shall be automatic. The elevator doors shall be automatic sliding doors. The elevator machine room shall be located in the cellar level.
- (13) Elevator Cabs:
- i) Manufacturer: Thyssenkrupp
  - ii) Cab Floor: Vinyl composite tiles
  - iii) Cab Walls: Plastic laminate
  - iv) Cab Ceiling: Stainless steel suspended ceiling with LED lighting
  - v) Cab lighting: LED lighting
  - vi) Alarm, Safety system: When any fire alarm devices such as smoke detectors, pull stations and sprinkler alarm are activated a fire alarm signal will be sent to the Fire Alarm Panel and in turn a signal will be sent to the Elevator Controller for an elevator recall to bring the elevator down main entrance lobby level.
- (13) Wheelchair lift: None.
- (i) Auxiliary Facilities: The building will have storage rooms in the cellar. The rooms' floor finish will be concrete and the walls will be 8" masonry block.
- (1) Laundry Room:
- i) Each apartment will have hook-ups for a sponsor-supplied vented washer and dryer unit. They shall be front loading gas dryer with advanced moisture sensing. The laundry rooms will have swing doors and walls will have painted gypsum finish. The dryer will be vented through the rear of the machine and to the roof of the building in an exhaust duct.
- (2) Refuse Disposal
- i) Incinerators: N/A
  - ii) Refuse Chutes: N/A

- vii) Compactor: N/A
- viii) Storage Location: Storage location for refuse disposal will be in an enclosed area located in the cellar.
- ix) Bags and recyclables from the residential refuse storage shall be transported to street by the building superintendent, and then removed by the New York City Department of Sanitation.

(i) Auxiliary Facilities

- (1) Storage: Each residential unit shall have a dedicated storage room located in the cellar.
- (2) Bicycle Storage: None

(j) Plumbing and Drainage

(1) Water Supply:

- i) 2 ½" domestic water shall be supplied from a 4" combined water service with a curb valve connected to the street water main in 16th St. Domestic waster shall be mastered metered.
- ii) NYC approved backflow preventer shall be provided as part of the motor assembly.
- iii) Residual City water main pressure shall provide water pressure to equipment and to the plumbing fixtures.
- iv) The domestic hot water temperature to all fixtures will be 120 deg. F. Domestic water heating will be provided to each unit by individual gas water heaters. Flow conservation devices will be provided on all water supplies to all showers and fixtures as required by building code.
- v) Backflow preventers and vacuum breakers will be provided as required to protect the domestic water supply connections.
- vi) Air chambers are provided at the top of all risers and throughout the piping systems to prevent water hammer.
- vii) The cold, hot and hot water circulation piping shall be copper Type 'L' with 95-5 solder joints.
- viii) The 2 1/2" domestic service pipe shall be of cement-lined, ductile-iron material.
- ix) All water risers will be provided with control and drain valves.
- x) Expansion compensators and loops will be provided on hot and cold water circulation piping systems where required.
- xi) Water conserving plumbing fixtures will be provided as per building code. Hot & cold domestic water piping shall be provided with insulation throughout as per

NYS ECCC requirements and as indicated in the specifications. Insulation thicknesses shall be as per the following table:

| Insulation Thickness in Inches for Pipe Sizes |             |             |              |              |          |               |
|-----------------------------------------------|-------------|-------------|--------------|--------------|----------|---------------|
| Service                                       | Material    | 1" and less | 1-1/4" to 2" | 2-1/2" to 4" | 5" to 6" | 8" and larger |
| Horizontal storm drains and drain bodies      | Glass fiber | ---         | ---          | 1/2          | 1/2      | 1/2           |
| Hot Water                                     | Glass fiber | 3/4         | 1            | 1            | 1        | 1             |
| Domestic Cold Water                           | Glass fiber | 1           | 1            | 1            |          | 1             |

- xii) Domestic Hot Water: The instantaneous (tank-less) gas fired high efficiency 95% AFUE efficiency, hot water heater manufacture by Rheem, Model RTG 649 provides domestic hot water for each apartment. Domestic hot water will be supplied to the plumbing fixtures via copper pipe. The heater has 12 year limited warranty.
- (2) Fire Protection System:
- i) A 4" fire service shall be supplied from a 4" combined water service.
  - ii) The 4" fire service shall connect to sprinkler system.
  - iii) Sprinklers will be provided throughout the existing building except for residential closets and bathrooms.
  - iv) In all unfinished areas without ceilings, upright type sprinkler heads will be provided as required. In all finished areas with hung ceilings, the heads will be concealed heads with white painted cover plates. Approved horizontal sidewall type heads will also be provided. The sprinkler system shall be designed for light and ordinary hazard occupancy as applicable.
  - v) A Siamese shall be provided. 3 inch single inlet Fire Department connection is provided and located in front of the building in accordance with the New York City Building Code.
  - vi) Fire Standpipe: None provided as not required by applicable codes.
  - vii) Fire hoses/racks: None provided as not required by applicable codes.
- (3) Water Storage Tank: None provided.

## (4) Water Pressure:

- i) Domestic water pressure is provided by the residual city water main pressure, through an approved water meter, located in the Cellar

## (5) Sanitary Sewage System:

- i) A complete sanitary drainage system shall convey all soil and waste from plumbing fixtures, drains and equipment, by gravity flow, through vented branches, stacks and building drains, to the city sewer.
- ii) Sanitary piping above ground shall be cast iron piping with no-hub fitting. Piping below grade is cast iron service weight pipe with Bell and Spigot fittings and neoprene gasket joints.
- iii) The sanitary drainage flows to the city public sewer system in 47th Road.

## (6) Permits Required:

Permits and approvals to be delivered on closing by the developer for:

- Plumbing (including water services)
- Sprinkler

## (7) Storm Drainage System:

- i) A complete storm water drainage system designed for gravity flow shall convey storm water drainage from the building roof, roof terraces and balconies, to the city combined sewer system or drywell in private backyard.
- ii) There shall be at least one (1) drain for each roof or paved drainage area.
- iii) The piping material above the floor will be cast iron with no-hub joints. Piping below the Ground floor slab shall be hub and spigot cast iron.

- (8) Sump Pumps: two sump pumps Federal Model # VSP -2A, 50GPM 10Ft Head, 1/4 HP, or approved equal.

- (9) Elevator Sump Pump: A simplex, Oil Minder type pump located in the in the elevator pit, Model Stancor SB -12, 20GPM @ 20 Ft Head.

## (k) Heating and Air Conditioning

1. Heating and cooling is provided by a split A/C system known as Variable Refrigerant Flow (VRF) heat pump system consisting of an outdoor condensing unit and indoor fan coil unit. This system provides all heating and cooling requirements. For each apartment has an outdoor unit located on the roof and indoor fan coils located in the ceiling which distributes conditioned air via a system of ductwork and wall/ceiling diffusers. The HVAC system is all electric and is highly energy efficient. All heat pump cooling units

shall be as manufactured by Mitsubishi or equal and shall have the following capacities and locations:

| SPLIT SYSTEM INDOOR UNIT SCHEDULE (COOLING/HEATING)                                                                                                                                                                                                                                                                                                                                                    |             |                            |                            |              |                       |                            |            |         |             | BASIS OF DESIGN: MITSUBISHI    |                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------------------------|----------------------------|--------------|-----------------------|----------------------------|------------|---------|-------------|--------------------------------|-----------------------|
| TAG                                                                                                                                                                                                                                                                                                                                                                                                    | MODEL       | COOLING<br>NOMINAL<br>BTUH | HEATING<br>NOMINAL<br>BTUH | POWER<br>MCA | ELECTRICAL<br>VOLTAGE | AIRFLOW<br>LOW/HIGH<br>CFM | ESP<br>IN. | REFRIG. | WT<br>(lbs) | DIMENSIONS<br>H x W x D<br>IN. |                       |
| AC-C                                                                                                                                                                                                                                                                                                                                                                                                   | SEZ-KD18NA4 | 18000                      | 18000                      | 1            | 208/1/60              | 635                        | 0.6        | R-410A  | 45          | 7-7/8 x 46-7/8 x 27-9/16       | DUCTED CONCEALED UNIT |
| AC-1                                                                                                                                                                                                                                                                                                                                                                                                   | PEAD-A36AA4 | 32000                      | 36000                      | 3.3          | 208/1/60              | 1201                       | 0.6        | R-410A  | 91          | 9-7/8 x 55-1/8 x 28-7/8        | DUCTED CONCEALED UNIT |
| AC-2                                                                                                                                                                                                                                                                                                                                                                                                   | PEAD-A36AA4 | 36000                      | 37000                      | 3.3          | 208/1/60              | 1201                       | 0.6        | R-410A  | 91          | 9-7/8 x 55-1/8 x 28-7/8        | DUCTED CONCEALED UNIT |
| AC-3                                                                                                                                                                                                                                                                                                                                                                                                   | PEAD-A36AA4 | 36000                      | 37000                      | 3.3          | 208/1/60              | 1201                       | 0.6        | R-410A  | 91          | 9-7/8 x 55-1/8 x 28-7/8        | DUCTED CONCEALED UNIT |
| AC-4                                                                                                                                                                                                                                                                                                                                                                                                   | PEAD-A36AA4 | 36000                      | 37000                      | 3.3          | 208/1/60              | 1201                       | 0.6        | R-410A  | 91          | 9-7/8 x 55-1/8 x 28-7/8        | DUCTED CONCEALED UNIT |
| AC-SUN                                                                                                                                                                                                                                                                                                                                                                                                 | MSZGE06NA   | 6000                       | 7200                       | 1            | 208/1/60              | 364                        | 0          | R-410A  | 22          | 11-5/8 x 31-7/16 x 9-1/8       | WALL UNIT             |
| AC-EL                                                                                                                                                                                                                                                                                                                                                                                                  | PKA-A12HA4  | 12000                      | -                          | 1            | 208/1/60              | 425                        | 0          | R-410A  | 29          | 11-5/8 x 35-3/8 x 9-13/16      | WALL UNIT             |
| 1. PROVIDE DISCONNECT SWITCH<br>2. PROVIDE DIGITAL THERMOSTAT CONTROL FOR EACH AC<br>3. PROVIDE WARRANTY, 1 YR ON PARTS & DEFECTS<br>AND 7 YRS ON COMPRESSOR.<br>4. FILTERS W/MERV 13<br>5. SECONDARY DRAIN PAN W/ OVERFLOW SWITCH FOR EACH UNIT<br>6. PROVIDE CONDENSATE DRAIN PUMP FOR EACH<br>AC UNIT AS REQUIRED. PROVIDE 1" CONDENSATE DRAIN<br>7. DUCTED CEILING UNIT<br>8. CEILING ACCESS PANEL |             |                            |                            |              |                       |                            |            |         |             |                                |                       |

2. Each air handling unit which provides heated and cooled air is controlled via programmable digital room thermostat to maintain the desired set temperature.
3. The heating system is designed to meet the NY State Energy Code. The system will maintain a minimum 70-degree F interior temperature at 15-degree F outdoor temperature with a 10 MPH wind as per NYS Energy Code.
4. All HVAC units energy efficiency rating of SEER 16 which are higher than required by the NYC Energy Codes.
5. The outdoor air cooled condensing units located on the roof are supported on the custom roof curb to reduce vibration transmission.
6. Indoor air handling units are supported by hanging rods which are equipped with spring vibration isolators.
7. Oil Tanks: None.

(l) Gas Supply

- i) Gas is supplied by National Grid and utilized for cooking and domestic hot water heater.

Type - natural gas

Meter: A gas meter for each unit.

Piping - is black steel Schedule 40 pipe.

- (m) Air Conditioning: The information delineated in Item 1 is applicable as the same systems provide air conditioning.

- (1) Air conditioning systems shall be designed to meet all requirements of the NY State Energy Code. The system will maintain 78 degree F interior temperature at 89 degree F outdoor temperature as per the NY State Energy Code. AC unit shall be provided for bedrooms and living rooms.

## (n) Ventilation

- i) All bathrooms shall be mechanically ventilated to the exterior. Each apartment bathroom is mechanically ventilated via a ductwork and dedicated exhaust fan located on the roof. The dryer from each apartment is exhausted via its own dedicated duct riser and it terminates on the roof.
- ii) Ventilation is not provided for kitchen as the hood above the cooking stove is equipped with a recirculating fan and a carbon filter to control the odors. This is in compliance with New York City Code, Section 505.1 Domestic Systems:  
Exceptions:  
1. Where installed in accordance with the manufacturer's installation instructions and where mechanical or natural ventilation is otherwise provided in accordance with Chapter 4, listed and labeled ductless range hoods shall not be required to discharge to the outdoors
- iii) Cellar area has a mechanical exhaust system consisting of the ductwork, exhaust grilles and roof exhaust fan. The cellar area without the windows provided with the mechanical ventilation and meets the code requirements. The mechanical exhaust of 900 CFM is provided and is well above the code requirement.
- iv) The mechanical ventilation systems noise emission are controlled with the proper sizing of the ductwork and the specifying the A/C units and fans. The noise levels within the occupied spaces from the indoor and outdoor mechanical equipment meets the requirements of the Chapter 1207.

## (o) Electrical

- i) Electrical service to the Building will be provided by Con Edison Co. at 120/208V, 3 phase, 4 wire to electric service switchboard and distribution panels throughout the building. The service is as follows:
  - (a) 250 amp for house common space and 300 amp for residential units.
  - (b) Residential units will be served by one meterbank with four (4) meters. Each meter will be 120/208V, 3ph, 4 wire with a 100 amp main circuit breaker. Each unit will have a 100 amp, 30 pole copper bus panel located within the unit.
  - (c) 400A main distribution panel for house loads will provide power to elevator, and to multiple house panels and building equipment, which will serve all common space usage. (i.e. boilers, pumps, lighting, fans, elevator, and power required).

(d) The main service equipment shall be fusible switches as required by code. Main fuses will vary in rating. The size of fuses shall be suitable to the loads served.

(e) Wire and Insulation: Copper conductors with THWN, THHN or XHHW insulation, except provide THHW-2, THWN-2 or XHHW-2 insulation for conductors 1/0 and larger in "wet" locations. Conductors utilized in underground installations are UL Listed for use in wet locations. Conductors are run in raceways as described in Section 26 "Raceways and Boxes". Type THHW and THHW-2 are not utilized where excluded by conduit sizing. Type THWN are not utilized for connection to 100% rated overcurrent devices. Type AC armored cable may optionally be utilized for lighting and appliance branch circuitry concealed in the voids of hung ceilings or hollow partitions except where excluded by code. Type AC cable has 90 degree C insulation and is UL listed as type "ACTHH".

(d) Stand-by/Emergency Power: There is no emergency provided, not mandated by code.

(1) Residential Units

- i) The service to each residential unit will be three phase, 4 wire, 120/208V 60Hz AC. Electric service will be supplied to each residential unit via tenants meter bank at Cellar level Electric Service Room.
- ii) All residential units shall have the proper number of wall receptacles, switches, appliance receptacles, etc. as required by the National Electrical Code, 2014 Edition, and NYC Amendments.
- iii) Switched lighting fixtures are provided in bedrooms, bathrooms, walk-in closets, dining room, hallways, foyer, and kitchen.
- iv) Lighting fixtures are as follows:  
Kitchen Pendant – Incandescent  
Wet location – fluorescent  
All other fixtures are LED
- v) Multiple 20 amp, 120V circuit breakers shall be provided to handle lighting and general purpose receptacles.
- vi) Five 20 amp, 120V circuit shall be provided in the kitchen area for 120V kitchen appliances.
- vii) One 30amp, 208V, single-phase and one 2-amp, 208V, single-phase circuit (sized according to condensing unit requirements) shall be provided for each A/C unit. One unit shall have a 45amp, 208V, single-phase circuit for the condensing unit.
- viii) Receptacles shall be provided in all rooms and with ground fault circuit interruption in all bathrooms and kitchens as required by building code.

(2) Audio Intercom and Buzzer Service

- i) The building shall be provided with a video intercom system, with remote access control from each residential unit.
- (3) TV Reception Facilities and Telephone Services:
  - i) Cable television service will be available to each tenant on an individual subscription basis (separate charge). High speed Internet access will also be made available at a separate charge.
  - ii) Location of outlets: Living room and in each bedroom.
  - iii) The building will be pre-wired for telephone services. A jack will be located in the living room, bedrooms and kitchen of each unit.
- (4) Combination Smoke Detectors / Carbon Monoxide Detectors are provided in each sleeping room and within 15 feet of each bedroom door per NYC Code.
- (p) Intercommunication and/or door signal systems, security closed circuit TV
  - i) All residential units shall be connected to an intercom and remote door release system with an annunciation panel located at the lobby entrance. The intercom will be Aiphone GT-Series color video intercom, or approved equal. Each unit shall be provided with one apartment station for communication. All residential units shall have cable television and telephone connection terminals.
- (q) Public Area Lighting
  - i) All lighting in public areas except the vestibule and lobby will be ceiling and/or wall mounted fixtures and will comply with all applicable codes. Lighting for the vestibule and lobby will be recessed ceiling mounted fixtures, recessed floor mounted fixtures, chandelier and lighting track fixture.
  - ii) Manufacturer and Model Number: Cellar level and public corridors shall have 2 types of lights. There shall be fluorescent ceiling mount light in cellar level, manufacturer: Lithonia, model: 3324 2L17W. Public Corridors shall have ceiling recessed light fixture, manufacturer: Lithonia, Model: LK3GMW LPI M6.
  - iii) Lighting in mechanical spaces and storage rooms will be fluorescent.
- (r) Garages and Parking areas – N/A
- (s) Swimming Pools – N/A
- (t) Recreational Facilities – N/A
- (u) Permits and Certificates
  - i) Governmentally-required inspections shall be conducted concurrently with construction with final sign-off at the issuance of the Certificate of Occupancy.
    - NYC Department of Buildings

- Mechanical and Plumbing
- Department of Air Resources
- Electrical
- Fire Department

ii) Recurring inspections after building is in operation:

- (a) Annual sprinkler system testing, done by third party.
- (b) Annual Elevator testing, done by third party.
- (c) Annual RPZ (backflow), done by third party.

(v) Violations

i) Any Building Code Violations will be corrected prior to the issuance of the Permanent Certificate of Occupancy:

Per the DOB website- "PARTIAL STOP WORK ORDER EXISTS ON THIS PROPERTY VIOLATION FOR FAILURE TO CERTIFY CORRECTION OF CLASS 1 VIOLATION EXISTS ON THIS PROPERTY." *This violation has been issued because of a missing construction license access agreement. That is an agreement that outlines the terms and conditions under which access to the neighboring property will be permitted.* The plan is to resolve this issue as soon as possible without halting the entire construction schedule.

ii) No asbestos will be used in the construction of the building.

(w) Unit information

- i) There will be 4 Type B units as per NYC Building Code and ICC/ANSI 117.1 2003. Type B Unit is defined as a dwelling unit or sleeping unit designed and constructed for accessibility in accordance with this code and the provisions for Type B units in ICC A117.1, consistent with the design and construction requirements of the federal Fair Housing Act.
- ii) This building contains Class "A" dwellings units under by the New York State Multiple Dwelling Law. A "Class 'A'" multiple dwelling is a multiple dwelling which is generally occupied for permanent residence purposes. Class "A" multiple dwellings include apartments buildings and "apartment hotels," and most other types of apartments.

The number of units is in compliance with the requirements of the New York City Zoning Resolution.

| Unit Designation | Unit Type           | Gross Square Footage of Condo Unit* | Storage Space | Exterior Garden | Exterior Terrace/Balcony Area |
|------------------|---------------------|-------------------------------------|---------------|-----------------|-------------------------------|
| Unit 1           | 1 Bedroom/1.5 Baths | 1,538                               | 50            | 311             | 268                           |
| Unit 2           | 2 Bedrooms/2 Baths  | 1,050                               | 46            | 622             | 130                           |
| Unit 3           | 2 Bedrooms/2 Baths  | 1,050                               | 46            | n/a             | 130                           |

|        |                       |       |     |     |       |
|--------|-----------------------|-------|-----|-----|-------|
| Unit 4 | 2 Bedrooms/2<br>Baths | 1,215 | 50  | n/a | 818   |
| Totals | 4 Units               | 4,853 | 192 | 933 | 1,346 |

\*(Unit Sizes are calculated from the exterior face of exterior walls adjacent to the unit to the centerline of the demising wall between Units, Corridors, Elevator, and Stairs)

iii) Wood floors: manufacturer and finish to be determined.

iv) Walls and ceilings shall have one coat of primer and two coats of finish paint.

(x) Finishes /Appliances

Room finish schedule:

| LEVEL        | ROOM # | LOCATION      | WALL          |        | FLOOR       |        | CEILING  |        | BASE        |        | NOTES       |
|--------------|--------|---------------|---------------|--------|-------------|--------|----------|--------|-------------|--------|-------------|
|              |        |               | MATERIAL      | FINISH | MATERIAL    | FINISH | MATERIAL | FINISH | MATERIAL    | FINISH |             |
| CELLAR       | B101   | WATER PUMPS   | MSMRY/GYP.    | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B102   | ELEC. METERS  | MSMRY/GYP.    | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B103   | STORAGE D     | MSMRY/GYP.    | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B104   | STORAGE C     | MSMRY/GYP.    | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B105   | STORAGE B     | MSMRY/GYP.    | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B106   | STORAGE A     | MSMRY/GYP.    | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B107   | ELEV. MECH.   | MSMRY/GYP.    | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B108   | CORRIDOR      | GYP. BD.      | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B109   | GARAGE        | MASONRY BLOCK | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              | B110   | FOYER         | GYP. BD.      | P1     | CONCRETE    | C02    | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | B111   | CLOSET        | GYP. BD.      | P1     | CONCRETE    | C02    | GYP. BD. | P2     | -           | -      |             |
|              | B112   | POUNDER RM    | TILE          | PT1    | TILE        | PT1    | GYP. BD. | P2     | -           | -      |             |
|              | B113   | ACCESSORY     | GYP. BD.      | P1     | CONCRETE    | C02    | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | B114   | PATIO         | CONCRETE      | -      | WOOD PAVERS | W2     | -        | -      | -           | -      |             |
|              | B115   | STAIR B       | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | -           | -      |             |
|              | B116   | STAIR C       | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
| FIRST FLOOR  | 101    | ENTRYWAY      | STUCCO        | ST1    | CONCRETE    | C02    | GYP. BD. | P2     | -           | -      |             |
|              | 102    | CORRIDOR      | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 103    | CORRIDOR      | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 104    | BEDROOM       | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 105    | BATHROOM      | TILE          | PT2    | TILE        | PT2    | GYP. BD. | P2     | -           | -      |             |
|              | 106    | FOYER         | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 107    | KITCHENETTE   | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 108    | LIVING+DINING | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 109    | PATIO         | -             | -      | WOOD PAVERS | W2     | -        | -      | -           | -      |             |
|              |        | STAIR A       | GYP. BD.      | P1     | CONCRETE    | C02    | -        | P2     | -           | -      |             |
|              |        | STAIR B       | GYP. BD.      | P1     | CONCRETE    | C02    | -        | P2     | -           | -      |             |
|              |        | STAIR C       | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              |        | STAIR D       | -             | -      | WOOD        | -      | -        | -      | -           | -      |             |
|              |        |               | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              |        |               | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
| SECOND FLOOR | 201    | FOYER         | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 202    | CORRIDOR      | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 203    | BEDROOM       | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 204    | BEDROOM       | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 205    | M. BATHROOM   | TILE          | PT4    | TILE        | PT4    | GYP. BD. | P2     | -           | -      |             |
|              | 206    | HC BATHROOM   | TILE          | PT3    | TILE        | PT3    | GYP. BD. | P2     | -           | -      |             |
|              | 207    | KITCHENETTE   | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 208    | LIVING+DINING | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 209    | BALCONY       | -             | -      | WOOD PAVERS | W2     | -        | -      | -           | -      |             |
|              | 210    | STAIR A       | GYP. BD.      | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |
|              |        |               | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
| THIRD FLOOR  | 301    | FOYER         | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 302    | CORRIDOR      | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 303    | M. BEDROOM    | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 304    | M. BEDROOM    | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 305    | M. BATHROOM   | TILE          | PT4    | TILE        | PT4    | GYP. BD. | P2     | -           | -      |             |
|              | 306    | HC BATHROOM   | TILE          | PT3    | TILE        | PT3    | GYP. BD. | P2     | -           | -      |             |
|              | 307    | KITCHENETTE   | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 308    | LIVING+DINING | GYP. BD.      | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PRIMED |
|              | 309    | BALCONY       | -             | -      | WOOD PAVERS | W2     | -        | -      | -           | -      |             |
|              | 310    | STAIR A       | GYP. BD.      | P1     | CONCRETE    | C02    | -        | -      | -           | -      |             |

| LEVEL        | ROOM # | LOCATION      | WALL     |        | FLOOR       |        | CEILING  |        | BASE        |        | NOTES        |
|--------------|--------|---------------|----------|--------|-------------|--------|----------|--------|-------------|--------|--------------|
|              |        |               | MATERIAL | FINISH | MATERIAL    | FINISH | MATERIAL | FINISH | MATERIAL    | FINISH |              |
| FOURTH FLOOR | 401    | FOYER         | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
|              | 402    | CORRIDOR      | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
|              | 403    | BEDROOM       | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
|              | 404    | M. BEDROOM    | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
|              | 405    | M. BATHROOM   | TILE     | PT4    | TILE        | PT4    | GYP. BD. | P2     | —           | —      |              |
|              | 406    | HC BATHROOM   | TILE     | PT3    | TILE        | PT3    | GYP. BD. | P2     | —           | —      |              |
|              | 407    | KITCHENETTE   | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
|              | 408    | LIVING+DINING | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
|              | 409    | STAIR A       | GYP. BD. | P1     | CONCRETE    | CO2    | —        | —      | —           | —      |              |
|              | 410    | STAIR E       | GYP. BD. | P1     | WOOD        | W1     | —        | —      | —           | —      |              |
| FIFTH FLOOR  | 501    | SUNROOM       | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
|              | 502    | STAIR A       | GYP. BD. | P1     | CONCRETE    | CO2    | GYP. BD. | P2     | —           | —      |              |
|              | 503    | STAIR E       | GYP. BD. | P1     | WOOD        | W1     | GYP. BD. | P2     | WOOD POPLAR | P1     | BACK PAINTED |
| ROOF         | R01    | COMMON ROOF   | STUCCO   | ST1    | WOOD PANELS | W2     | —        | —      | —           | —      |              |

### Finish Types:

- PT: Porcelain Tile
  - PT1: To be selected by Architect
  - PT2: To be selected by Architect
  - PT3: To be selected by Architect
  - PT4: To be selected by Architect
- W: Wood
  - W1: Interior to be selected by Architect
  - W2: Exterior to be selected by Architect
- CO: Concrete
  - CO1: NOT USED
  - CO2: 'Armor Seal' Urethane water based sealant
- P: PAINTED
  - P1: Benjamin Moore OC-17 White dove finish: semigloss
  - P2: Benjamin Moore Ceiling ultra-flat 508
- CP: Porcelain Tile
  - PT1: To be selected by Architect
  - PT2: To be selected by Architect
  - PT3: To be selected by Architect
  - PT4: To be selected by Architect
- ST: Stucco
  - ST1: STOLIT Stucco Finish, Color: To be selected by Architect
- PL: Plastic
  - PL1: Frosted acrylic

### i) Residential Lobby

Floor – Stone, ¾" x 12" x 24", honed.

Walls – Ceramic Tile

Walls – painted gypsum board

Ceiling – Painted gypsum board

Mail Counter – Wood or stone.

Mailbox Trim – Wood or stone.

Entry doors - Aluminum curtain wall storefront framing with tempered clear glass panels.

ii) Interior of Residential Condominium Units, General, including penthouse

Doors –Solid and hollow core doors mdf painted  
 Floor – Hardwood floors, stained and clear coat finish  
 Base: mdf painted.  
 Walls: Painted gypsum board.  
 Ceilings - Painted gypsum board.  
 Stair Treads (for stairs to penthouse) – Hardwood.  
 Stair Guard Rails: N/A  
 Stair Railing: Stainless Steel or Wood Railing

iv) Kitchens

- \* Refrigerator – Fischer & Paykel RS36A72J1 stainless steel
- \* Dishwasher – Bosch SGV68U53UC stainless steel
- \* Gas Range – Fischer & Paykel CG305DNGX1 stainless steel
- \* Hood – Faber CRIS30SSH stainless steel
- \* Washer/Dryer - LG WM3270CW/LG DLG3171W
- \* Kitchen sink – Kohler Strive K5286NA
- \* Kitchen sink faucet – Kohler Simplice K597CP
- \* Kitchen Cabinets –Plastic laminate
- \* Floor –Tile
- \* Walls – Painted Gypsum Board
- \* Countertop - Stone
- \* Ceiling - Painted Gypsum Board
- \* Lighting – Recessed down-lights at ceiling, undercounter fluorescent.

v) Master Bathroom

- \* Toilet – Kohler Cimarron Comfort
- \* Sink – Kohler Verticyl undermount
- \* Shower – Danze Parma Trio; 3/8" Glass Door.
- \* Walls – Tile
- \* Floor – Tile

## (y) Safety and warning devices.

- i) Photoelectric/ionization type combination carbon monoxide and smoke detectors, hard wired, 120 volt shall be provided inside each bedroom and within 15 feet of each bedroom as per NYC Building Code.
- ii) Upon activation of the sprinkler system, a building fire alarm will be activated.

## (z) Description of the property. See attached floor and unit plans.

## (aa) Asbestos.

This is a new construction and no asbestos containing materials will be used in the construction.

## (bb) Lead.

This is a new construction and no lead based paint will be used in the construction.

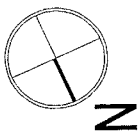
## (cc) Upon completion of construction there will not be any lead-based paint or asbestos on the premises.

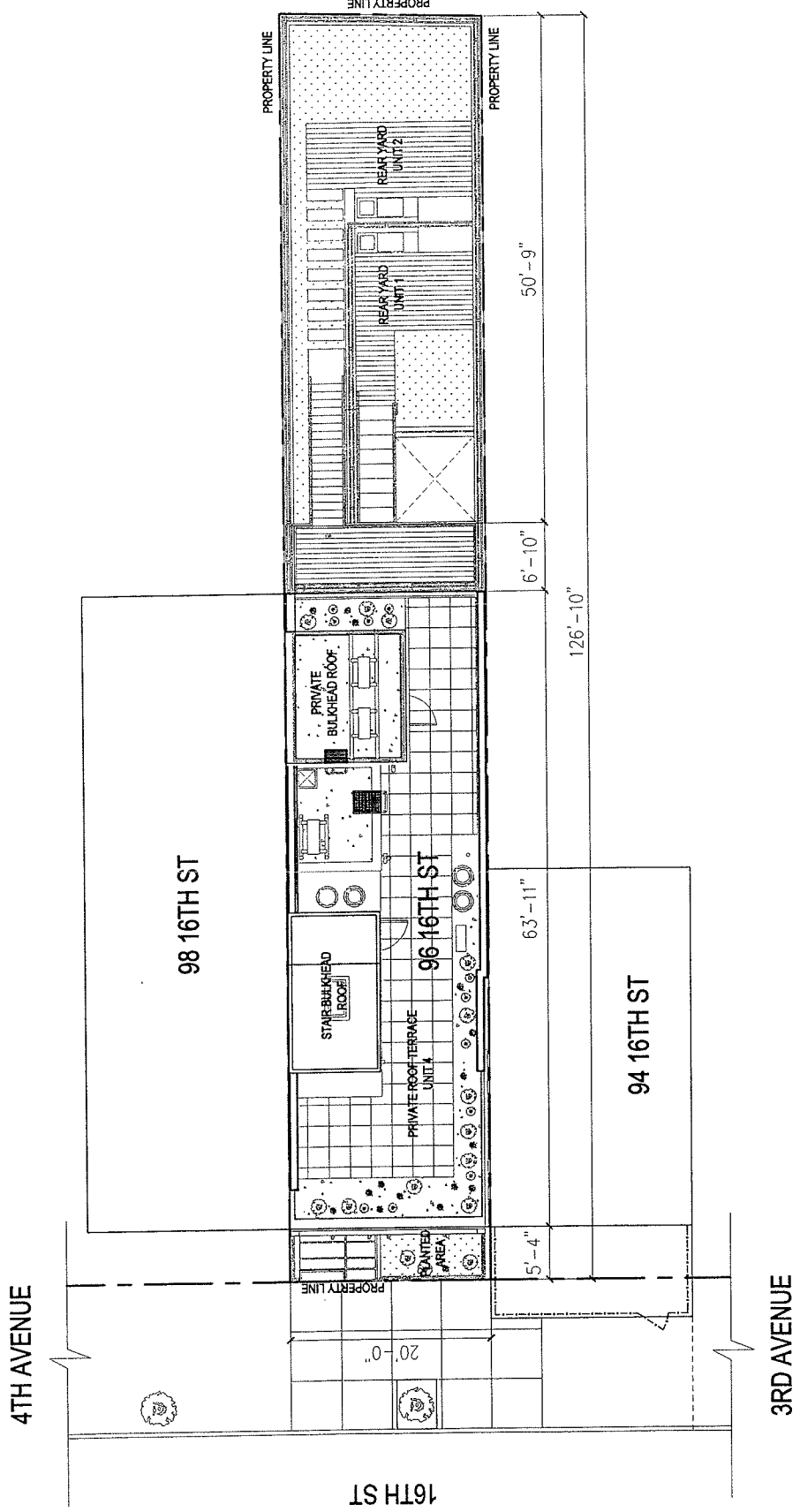
Name of Architect



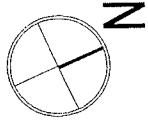
Signature of Architect

February 10, 2020

|                                                                                   |                                            |                                |     |                                  |
|-----------------------------------------------------------------------------------|--------------------------------------------|--------------------------------|-----|----------------------------------|
|  | <b>96 16TH ST</b><br>BROOKLYN, NY<br>11215 | RESIDENTIAL<br>4-UNIT BUILDING | 171 | design<br>workshop<br><b>jma</b> |
|-----------------------------------------------------------------------------------|--------------------------------------------|--------------------------------|-----|----------------------------------|



SCHEDULE G-1



96 16TH ST  
BROOKLYN, NY  
11215

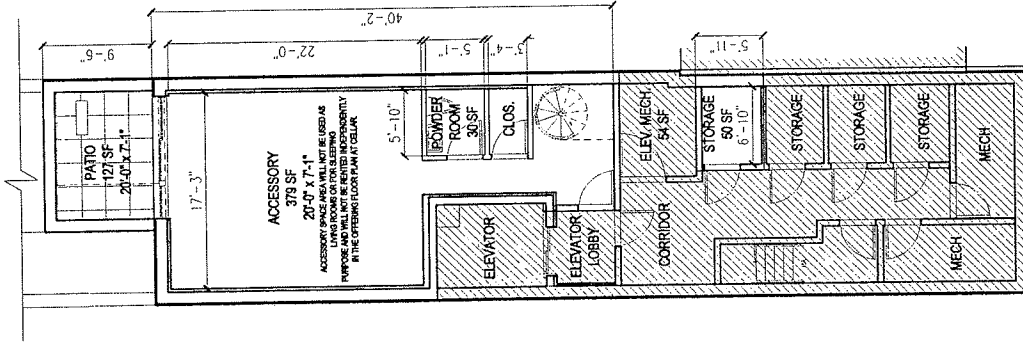
# UNIT 1

1 BEDROOM  
1 FULL BATH  
1 HALF BATH

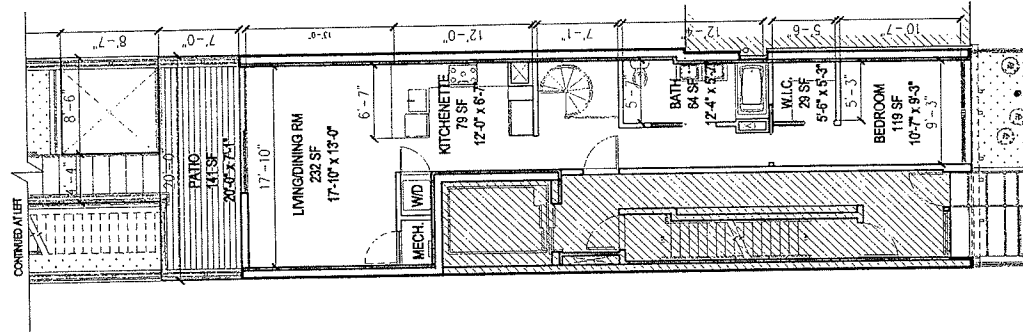
INTERIOR: 1,538 SF<sup>1,2</sup>  
STORAGE: 50  
EXTERIOR: 579 SF

FLOOR AREAS ARE CALCULATED FROM THE EXTERIOR FACE OF EXTERIOR WALLS TO THE CENTERLINE OF DEMISING WALLS AND THE FULL EXTENT OF COMMON SPACE WALLS. DIMENSIONS ARE APPROXIMATE AND ARE SUBJECT TO VARY DUE TO FIELD CONDITIONS AND CONSTRUCTION TOLERANCES. DIMENSIONS ARE OVERALL DIMENSIONS AND DO NOT INCLUDE PROJECTIONS.

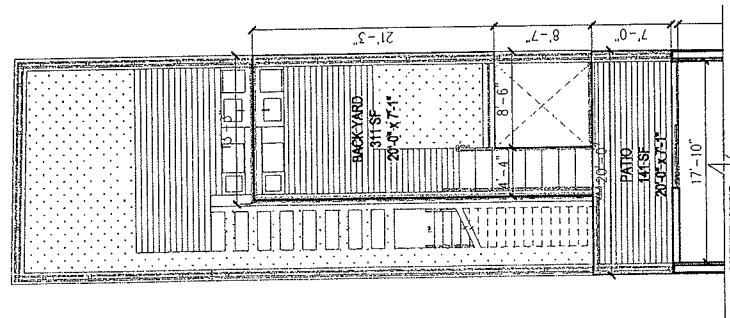
design workshop  
**jma**



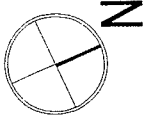
1ST FLOOR



CELLAR



REAR YARD



96 16TH ST  
BROOKLYN, NY  
11215

UNIT 2

2 BEDROOM

2 FULL BATH

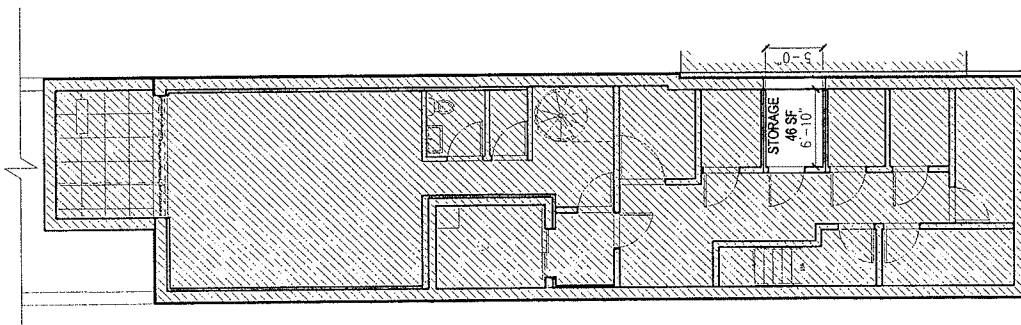
INTERIOR: 1,050 SF<sup>173</sup>

STORAGE: 46 SF

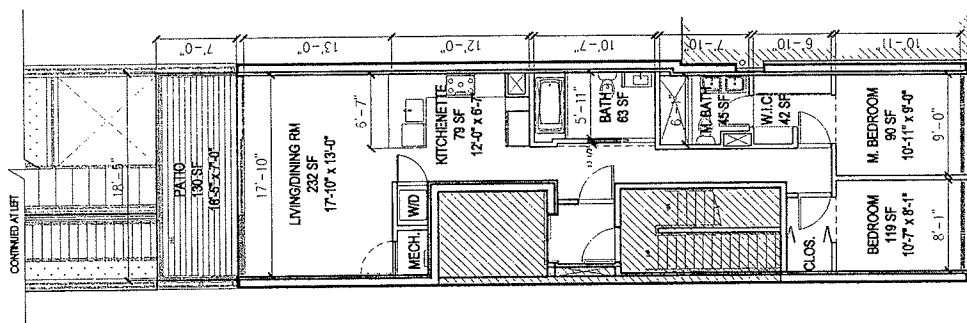
EXTERIOR: 752 SF

FLOOR AREAS ARE CALCULATED FROM THE EXTERIOR FACE OF EXTERIOR WALLS TO THE CENTERLINE OF DEMISING WALLS AND THE FULL EXTENT OF COMMON SPACE WALLS. DIMENSIONS ARE APPROXIMATE AND ARE SUBJECT TO VARY DUE TO FIELD CONDITIONS AND CONSTRUCTION TOLERANCES. DIMENSIONS ARE OVERALL DIMENSIONS AND DO NOT INCLUDE PROJECTIONS.

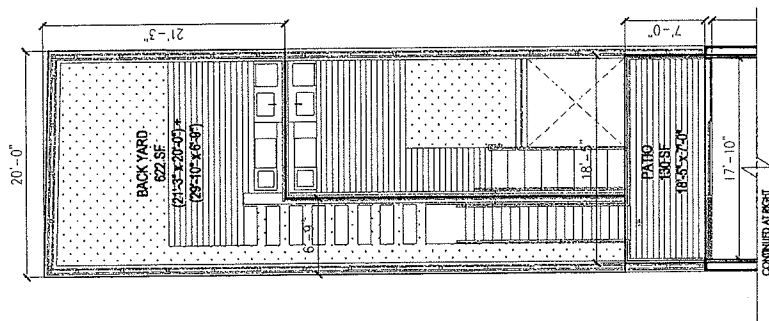
design  
workshop  
**jmd**



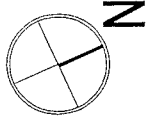
CELLAR



2ND FLOOR



REAR YARD

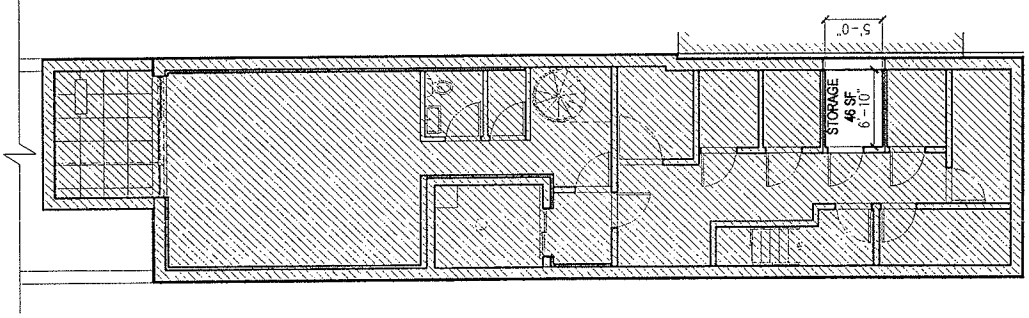


96 16TH ST  
BROOKLYN, NY  
11215

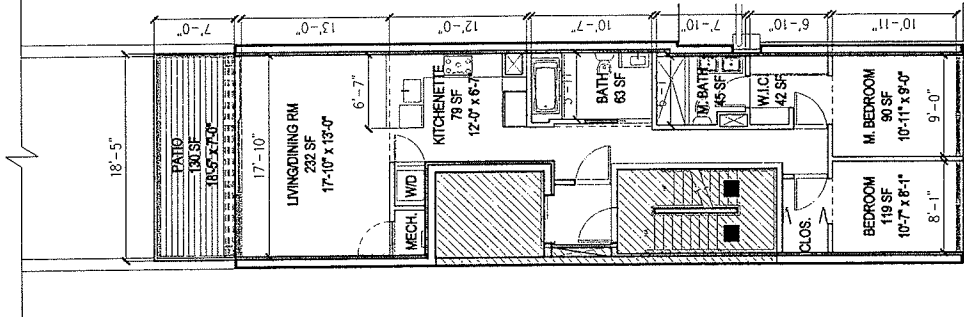
UNIT 3  
2 BEDROOM  
2 FULL BATH  
INTERIOR: 1,050 SF<sup>74</sup>  
STORAGE: 46 SF  
EXTERIOR: 130 SF

FLOOR AREAS ARE CALCULATED FROM THE EXTERIOR FACE OF EXTERIOR WALLS TO THE CENTERLINE OF DEMISING WALLS AND THE FULL EXTENT OF COMMON SPACE WALLS. DIMENSIONS ARE APPROXIMATE AND ARE SUBJECT TO VARY DUE TO FIELD CONDITIONS AND CONSTRUCTION TOLERANCES. DIMENSIONS ARE OVERALL DIMENSIONS AND DO NOT INCLUDE PROJECTIONS.

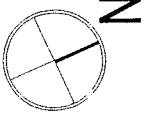
design  
**jma**  
workshop



3RD FLOOR



CELLAR

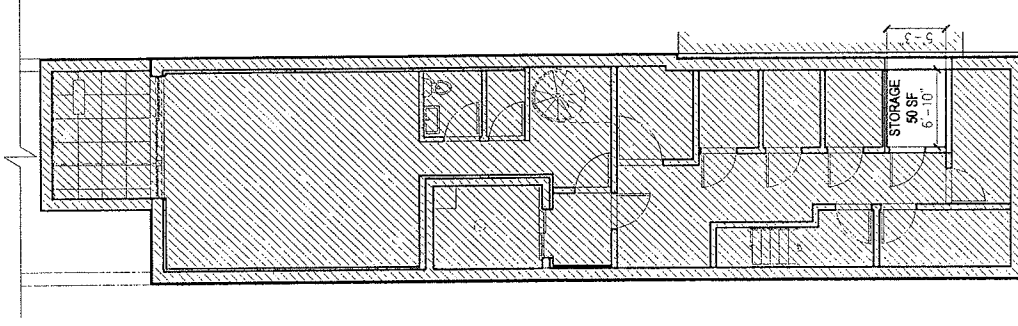


96 16TH ST  
BROOKLYN, NY  
11215

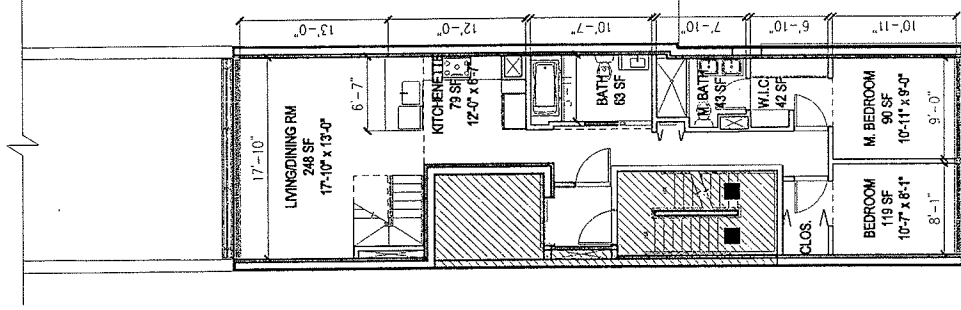
**UNIT 4**  
2 BEDROOM  
2 FULL BATH  
INTERIOR: 1,215 SF  
STORAGE: 50 SF  
EXTERIOR: 818 SF

FLOOR AREAS ARE CALCULATED FROM THE EXTERIOR FACE OF EXTERIOR WALLS TO THE CENTERLINE OF DEMISING WALLS AND THE FULL EXTENT OF COMMON SPACE WALLS. DIMENSIONS ARE APPROXIMATE AND ARE SUBJECT TO VARY DUE TO FIELD CONDITIONS AND CONSTRUCTION TOLERANCES. DIMENSIONS ARE OVERALL DIMENSIONS AND DO NOT INCLUDE PROJECTIONS.

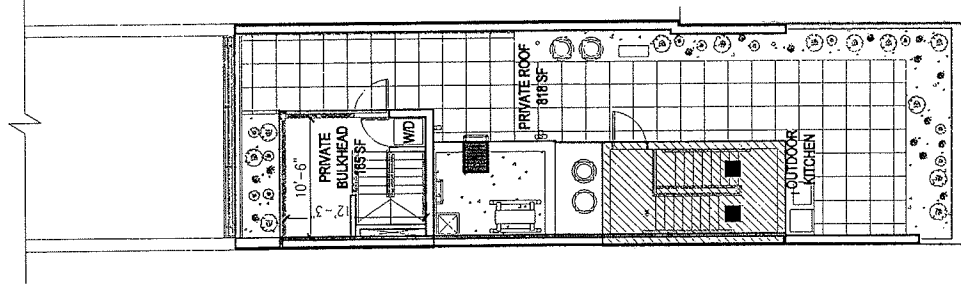
design workshop  
**jma**



CELLAR

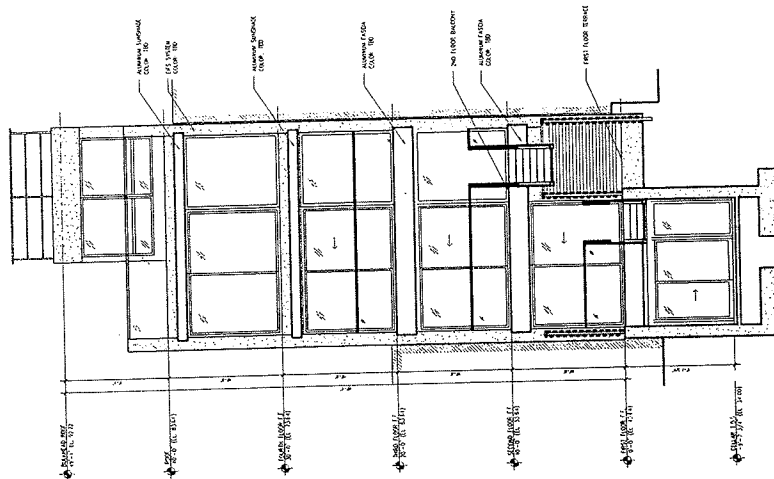


4TH FLOOR

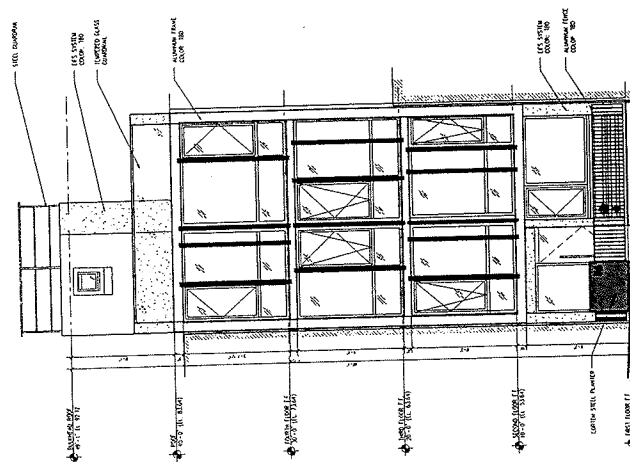


PRIVATE BULKHEAD /  
ROOF

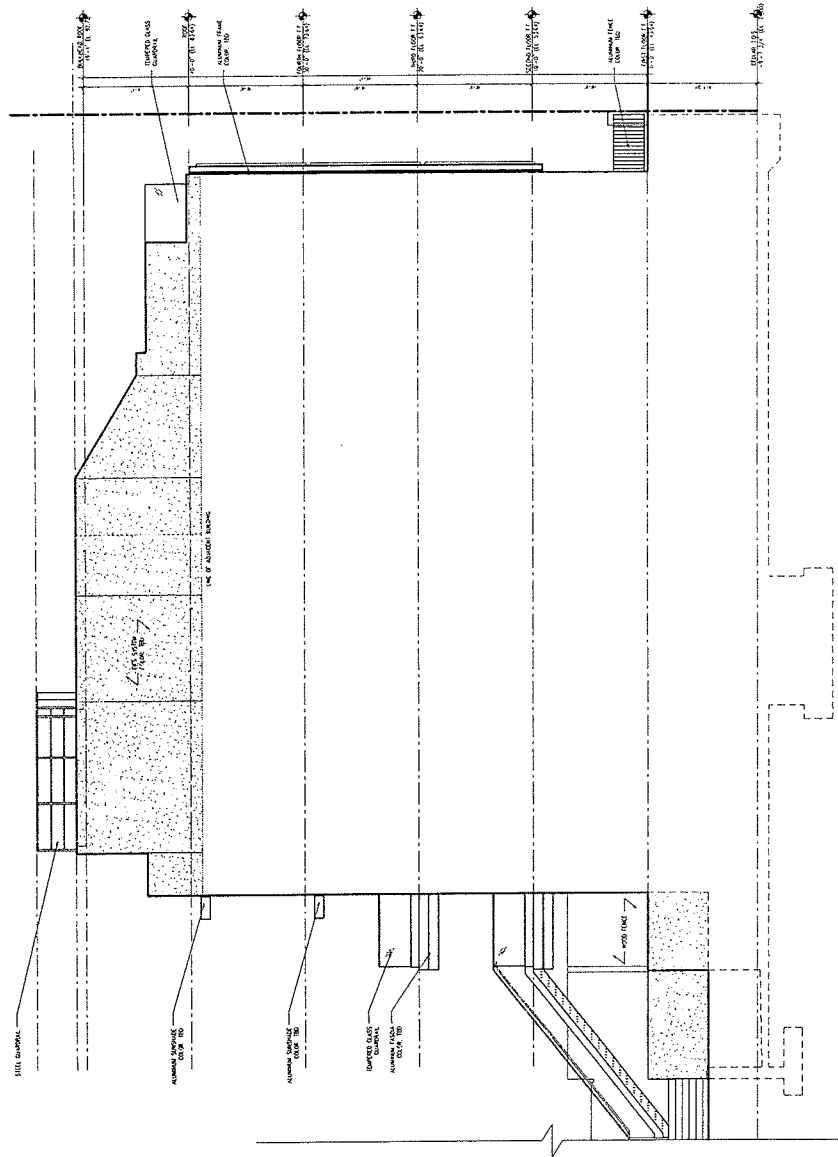
|  |                                     |                                               |  |                                  |
|--|-------------------------------------|-----------------------------------------------|--|----------------------------------|
|  |                                     | 176                                           |  |                                  |
|  | 96 16TH ST<br>BROOKLYN, NY<br>11215 | NORTH & SOUTH<br>ELEVATIONS<br><br>SCALE: NTS |  | design<br>workshop<br><b>jma</b> |

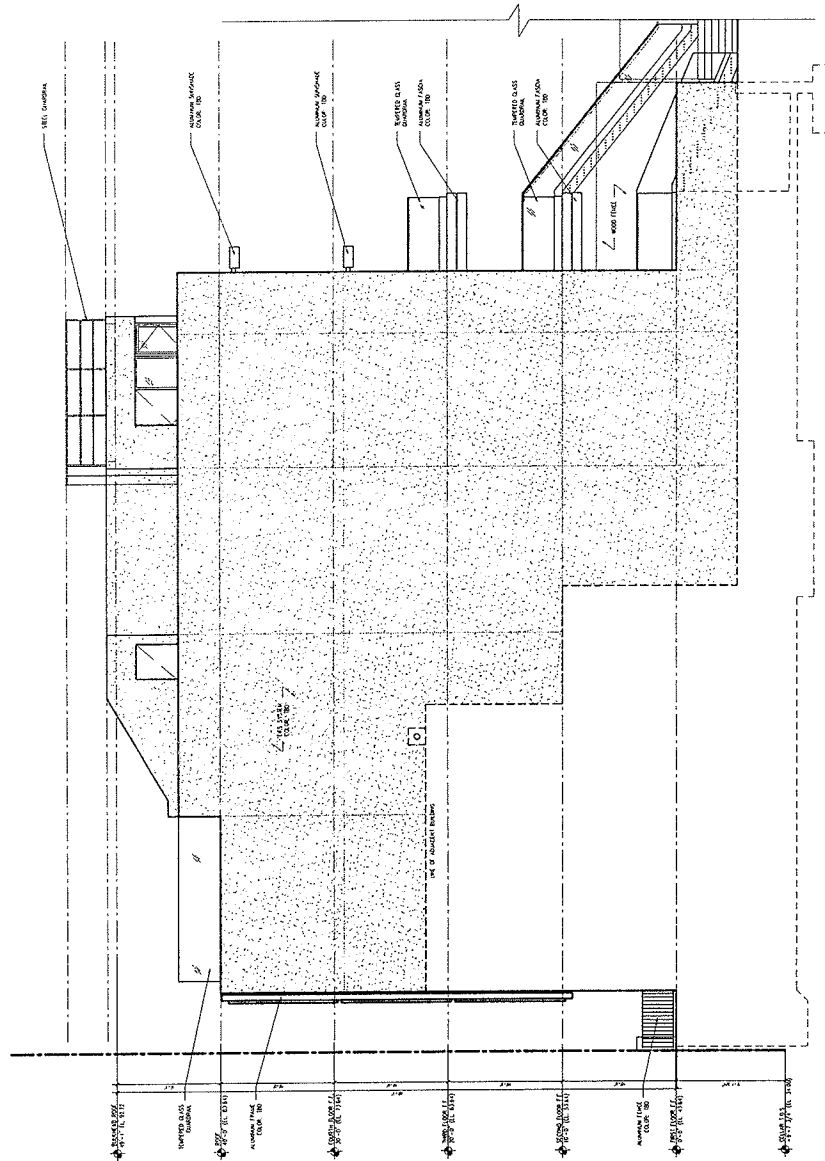


SOUTH ELEVATION



NORTH ELEVATION





**FEE TITLE DESCRIPTION**

A "Residential and Storage Unit" as hereinafter referred to shall be defined as follows:

Each Residential Unit shall consist of the area enclosed horizontally by the exterior side of the exterior walls of the Building and by the centerline of those walls and partitions which separate the Residential Unit from the corridors, stairs, mechanical equipment spaces and other Residential Units, and enclosed vertically by the top of the concrete slab floor, underneath the Residential Unit's finished flooring and under side of the concrete slab above. The doors and windows which open from the Residential Unit shall be deemed part of the Residential Unit. No Residential Unit Owner shall be deemed to own the supporting columns, pipes, wires, conduits or other public lines running through the Residential Unit which are utilized for or serve more than one (1) Residential Unit. The Description of Residential Units set forth herein pertains to the location of the walls, floors and roof of the Residential Units as they are finally set forth in the building plans to be filed simultaneously with the recording of the Declaration.

**SCHEDULE H**

**DECLARATION**

ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP  
OF PREMISES LOCATED AT  
96-16<sup>th</sup> STREET, BROOKLYN  
CITY AND STATE OF NEW YORK,  
PURSUANT TO ARTICLE 9-B OF THE REAL PROPERTY  
LAW OF THE STATE OF NEW YORK.

NAME: 96 16<sup>th</sup> STREET CONDOMINIUM

DECLARANT: 96 16<sup>th</sup> Street LLC  
137 Varick Street, Suite #503  
New York, New York 11228

DATE OF DECLARATION:

BLOCK:  
FKA LOT:  
NKA LOTS:

**MORITT HOCK & HAMROFF LLP**  
Attorneys for the Sponsor  
1407 Broadway, 39<sup>th</sup> Floor  
New York, New York 10018

**SCHEDULE I**

# TABLE OF CONTENTS

|                        | <u>Page</u>                                 |
|------------------------|---------------------------------------------|
| ARTICLE FIRST:         | SUBMISSION OF PROPERTY.....1                |
| ARTICLE SECOND:        | DESCRIPTION OF PROPERTY.....1               |
| ARTICLE THIRD:         | DEFINITIONS.....1                           |
| ARTICLE FOURTH:        | COMMUNITY.....3                             |
| ARTICLE FIFTH:         | COMMON ELEMENTS.....4                       |
| ARTICLE SIXTH:         | EASEMENTS.....6                             |
| ARTICLE SEVENTH:       | SERVICE OF PROCESS.....8                    |
| ARTICLE EIGHTH:        | COMMON INTEREST.....9                       |
| ARTICLE NINTH:         | ADMINISTRATION.....9                        |
| ARTICLE TENTH:         | AMENDMENTS AND WITHDRAWAL.....9             |
| ARTICLE ELEVENTH:      | SUBJECT TO DECLARATION, BY-LAWS, ETC.....11 |
| ARTICLE TWELFTH:       | COMMON CHARGES.....11                       |
| ARTICLE THIRTEENTH:    | UNITS ACQUIRED BY THE BOARD.....12          |
| ARTICLE FOURTEENTH:    | POWER OF ATTORNEY.....12                    |
| ARTICLE FIFTEENTH:     | ENCROACHMENTS.....12                        |
| ARTICLE SIXTEENTH:     | UNIT OWNERSHIP.....13                       |
| ARTICLE SEVENTEENTH:   | USE OF UNITS.....13                         |
| ARTICLE EIGHTEENTH:    | CONVEYANCE OF A UNIT.....13                 |
| ARTICLE NINETEENTH:    | COVENANT OF FURTHER ASSURANCES.....13       |
| ARTICLE TWENTIETH:     | COVENANTS AND RESTRICTIONS.....14           |
| ARTICLE TWENTY-FIRST:  | FIRST LIEN HOLDERS' RIGHTS.....17           |
| ARTICLE TWENTY-SECOND: | SPECIAL RIGHTS OF DECLARANT.....18          |
| ARTICLE TWENTY-THIRD:  | INVALIDITY.....19                           |
| SCHEDULE B             |                                             |
| EXHIBIT A              | Legal Description                           |
| EXHIBIT B              | By-Laws of Condominium                      |

## PLAN OF CONDOMINIUM UNIT OWNERSHIP

### DECLARATION OF 96 16th STREET CONDOMINIUM PURSUANT TO ARTICLE 9-B OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK

In the Borough and County of Kings, City and State of New York on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, 96 16th Street LLC, a limited liability company organized and existing under the laws of the State of New York, whose principal office is situated at 137 Varick Street, Suite #503, New York, New York 11228, hereinafter referred to as the "Declarant" or "Sponsor" represented in this Declaration by Tien Vominh, who is fully empowered and qualified to execute this Declaration on behalf of the company does hereby state:

**FIRST: SUBMISSION OF PROPERTY.** By this Declaration the Declarant submits the property described in this Declaration, including the land and the Building and all other improvements erected and to be erected thereon, all easements, rights and appurtenances belonging thereto and all other property, real, personal or mixed, intended for use in connection therewith, to the provisions of Article 9-B of the Real Property Law of the State of New York.

**SECOND: DESCRIPTION OF PROPERTY.** The Declarant owns all that certain plot, piece or parcel of land, with the building and improvements thereon erected, situate, lying and being in Borough and County of Kings, City and State of New York, and more particularly bounded and described on Exhibit A annexed hereto and made a part hereto.

**THIRD: DEFINITIONS.** The following words as hereinafter referred to shall be defined as follows:

1. "Board of Managers" – The governing body of the Condominium responsible for its affairs.
2. "Board Member" or "Member" – Each individual representative elected, designated or appointed to the Board of Managers.
3. "Building" – The four (4) story building containing four (4) Residential Units.
4. "By-Laws" – The document governing the operation of the Condominium.

5. "Common Charges" – Each Unit Owner's proportionate share of the General Common Expenses as determined in accordance with the Common Interest appurtenant to the Unit.
6. "Common Elements" – All portions of the Condominium, other than the Units. Common Elements are divided into General Common Elements which are Common Elements shared by all Unit Owners, including all sewer and drainage pipes for the Building, and Limited Common Elements which are Common Elements that are irrevocably restricted for the exclusive use of an individual Residential Unit Owner.
7. "Common Expenses" – (a) Expenses incurred by all Unit Owners for the purpose of paying costs of the Condominium in connection with the repair, maintenance, replacement, restoration or operation of, and any alteration, addition or improvement to the General Common Elements; and (b) All sums designated common expenses by or pursuant to the provisions of the Condominium Act, the Declaration or the By-Laws.
8. "Common Interest" – The proportionate, undivided interest each Unit Owner has in the Common Elements.
9. "Community" or "Development" – As used herein refers to 96 16<sup>th</sup> Street Condominium.
10. "Condominium" – 96 16<sup>th</sup> Street Condominium, which is comprised of the Common Elements, Residential Units, and Unit Owners.
11. "Declaration of Condominium" – The instrument by which the property is submitted to the provisions of the Condominium Act, and such instrument as from time to time is amended, consistent with the provisions of the Condominium Act and of the By-Laws.
12. "Equal or better quality" – Comparable or better quality as recognized by industry standards for performance, efficiency, longevity, and/or classifications, as applicable.
13. "Escrow Account" – The attorney's account where a Purchaser's initial deposit will be held as provided for in Section X of the Offering Plan.
14. "Escrow Agent" – The attorney or law firm overseeing the Escrow Account as provided for in Section X of the Offering Plan.
15. "Irrevocably Restricted" or "Limited Common Elements" – A Common Element appurtenant to a particular Residential Unit or Units, the use of which is restricted to the Owners of such Residential Unit or Units.

16. "Purchaser" – The person(s) who have entered into a Purchase Agreement to acquire a Residential Unit and Storage Unit, if applicable, in the Condominium.
17. "Purchase Agreement" – The document to be executed by the Purchaser which will obligate the Purchaser to acquire the Residential Unit and Storage Unit, if applicable, in the Condominium and which will obligate the Seller to sell to Purchaser the Residential Unit and Storage Unit, if applicable, in the Condominium.
18. "Residential Units" – The four (4) Residential Units designated in the Declaration of Condominium for residential use. As used herein the terms "Residential Unit" is equivalent to the term "Unit" in Article 9-B of the Real Property Law of the State of New York.
19. "Sponsor" – 96 16<sup>th</sup> Street LLC, a New York limited liability company with an address at 137 Varick Street, Suite 503, New York, New York 11228 , and its successors and/or assigns.
20. "Unit" – A Unit includes all the Residential Units in the Condominium. As used herein the term "Residential Unit is equivalent to the term "Unit" in Article 9-B of the Real Property Law of the State of New York.
21. "Unit Owner" – A Unit Owner includes all the Residential Unit Owners in the Condominium.
22. "Unsold or Untitled Residential Unit" – Any Residential Unit in which title is retained by the Sponsor and any successors or assigns until such time as the same has been sold and title conveyed to a third party. It shall not include a Residential Unit which is used for personal occupancy of the Sponsor, any of its principals or any of its successors or assigns.

**FOURTH: COMMUNITY.** The Declarant is constructing on the parcel of land described above a Condominium Community known as 96 16th Street Condominium, according to the plans filed simultaneously with the recording of this Declaration in the Office of the Register of the City of New York, Kings County, which Plans set forth a description of the Building stating the number of stories and number of Units.

The Community will consist of four (4) Residential Units located in a four (4) story building as set forth on the Floor Plans filed simultaneously with this Declaration. The Building structure will be masonry, steel and concrete. Each of the Units has access to a public street by means of a walk, driveway or roadway. For the purposes of describing the location of a Building, approximate area, type and number of rooms of each Residential Unit and the Common Elements to which each Unit has immediate access, each Unit is described on Schedule B annexed hereto. Each Unit will be sold to one or more Unit Owners, each Unit Owner obtaining fee ownership in, and exclusive

right of occupancy and possession of, the Unit, together with an undivided interest in the Common Elements of the Condominium, as listed hereinafter in this Declaration, and referred to as the "Common Elements," all of the above in accordance with Article 9-B of the Real Property Law of the State of New York. Each Unit Owner will automatically become a part of the Condominium. The designation of the number of rooms, interior partitions and kitchen and bathroom facilities may be changed by mutual consent of the Declarant and the Residential Unit Owner at the time of construction of the Residential Unit.

The aforesaid Condominium has a total lot area of approximately 2,500 square feet.

**FIFTH: COMMON ELEMENTS.** The Common Elements will consist of the entire property, including all parts of the Building and improvements thereon, other than the Units, and will consist of General Common Elements to be shared by all Unit Owners and Limited Common Elements irrevocably restricted in use to specified Residential Unit Owners.

**A. General Common Elements** - General Common Elements are those shared by all Unit Owners and include all portions of the Condominium except for the individual Units and the Limited Common Elements and include without limitation the following:

1. The land on which the Building is erected and all other land within the boundaries of the property;
2. All foundations, columns, girders, beams and supports;
3. Those portions of the walls and partitions dividing Residential Units located between the unexposed faces of the sheetrock walls enclosing the Residential Units; those portions of the ceilings of the highest floor above the unexposed face of the sheetrock;
4. Roofs, stairs and stairways, which are not located wholly within a Residential Unit and entrances to and exits from a Building other than entrances to the individual Residential Units;
5. All improved and unimproved areas of the property outside the boundary of an individual Unit except for any Limited Common Elements;
6. All central and appurtenant installations in the Building or Property that provide service to the entire Building, such as power, light, telephone, television, gas, hot and cold water and heat (including all pipes, ducts, wires, chutes, cables and conduits used in connection therewith located in the Common Elements) and all other mechanical equipment spaces;

7. All sewer pipes and drainage pipes and facilities that provide service to the entire Building or two (2) or more Units;
8. All meter rooms, compactor rooms, refuse rooms, equipment rooms and any other mechanical rooms or areas that service two (2) or more Units;
9. All pedestrian walkways, intended for the common use of all Unit Owners;
10. The intercom system; and
11. All other parts of the property and all apparatus and installations existing in a Building or on the property for common use to all Units or necessary or convenient to the existence, maintenance or safety of the property.

**B. Irrevocably Restricted Areas/Limited Common Elements** - Certain portions of the Common Elements are irrevocably restricted in use to specified Residential Unit Owners, subject to the right of the Board of Managers of the Condominium to enter upon any restricted area for maintenance, repair or improvement of a Residential Unit or Common Element and subject to the rules of the Board of Managers (see By-Laws, Article VIII). Said irrevocably restricted Common Elements are also referred to as a Limited Common Element. Any portion of the Common Elements which is not restricted in use may be used by any Residential Unit Owner. Following are detailed descriptions of the irrevocably restricted common elements:

1. The rear yard appurtenant to Residential Units 1 and 2.
2. The porch appurtenant to Residential Unit 3.
3. The roof terrace appurtenant to Residential Unit 4.
4. Any heating, cooling or other mechanical system servicing an individual Residential Unit that is located in or on the Common Elements.
5. All apparatus, installations, systems equipment and facilities in the Common Elements (including pipes, wire, ducts, vents, cables, conduits and lines) which will serve or benefit a Residential Unit exclusively.

All general maintenance, repairs and replacements to a yard or terrace that is a Limited Common Element, including cleaning, snow removal and all repairs not structural in nature, including the repair of leaks and the repair or replacement of the yard or terrace surface shall be the responsibility of the Residential Unit Owner whose yard or terrace is appurtenant to their Residential Unit and is a Limited Common Element of their Residential Unit.

### **C. Provisions Applicable to All Common Elements -**

1. The Common Elements shall remain undivided and no Unit Owner shall bring any action for partition or division unless otherwise provided by law.
2. The Common Elements are not subject to partition nor are they severable from the Units except in accordance with the Real Property Law.
3. The percentage of the undivided interest in the Common Elements established herein shall not be changed except with the consent of all of the Unit Owners affected expressed in a duly recorded amendment to this Declaration.
4. The undivided interest in the Common Elements shall not be separated from the Units to which it appertains and shall be deemed conveyed or encumbered with the Units even though such interest is not expressly mentioned or described in the conveyance or other instrument.

**SIXTH: EASEMENTS.** All pipes and maintained wires, conduits and public utility lines located within each Unit shall be owned and maintained by such Unit Owner. Any portion of such pipes, wires, conduits and public utility lines located in the Common Elements and servicing two or more Units, will be owned in common by the Unit Owners. Every Unit Owner shall have an easement in common with the owners of other Units to maintain and use all pipes, wires, conduits and public utility lines located in other Units and servicing such Unit Owner's Unit. Each Unit shall be subject to an easement in favor of the Unit Owners of other Units to maintain and use the pipes, wires, conduits and public utility lines servicing such other Units and located in such Unit. The Board of Managers shall have a right of access to each Unit for maintenance, repair or improvements to any pipes, wires, conduits and public utility lines located in any Unit and servicing any other Unit or causing damage to any other Unit. The cost of such repairs shall be a Common Expense. In the event any portion of such pipes, wires, conduits and public utility lines is located in any of the Limited Common Elements, the cost of any repairs to such pipes, wires, conduits and public utility lines shall be the sole responsibility of the respective Unit Owner(s) for whom the Limited Common Element is limited in use. The Board of Managers shall have a right of access to all Common Elements for maintenance, repair or improvement whether such Common Elements are restricted or not.

The Board of Managers shall have the right to grant such additional electric, gas, steam or other utility easements or relocate any existing utility easement in any portion of the Condominium as the Board of Managers shall deem necessary or desirable for the proper operation and maintenance of the Condominium, or any portion thereof, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of any Unit for its permitted purposes. Any utility company and its employees and agents shall have the right of access to or upon any Unit or the Common Elements in furtherance of such easements, provided such right of

access shall be exercised in such a manner as shall not unreasonably interfere with the use of any Unit for its permitted purposes by its owner, tenants or occupants.

The Declarant, its successors, assigns, and purchasers of undeveloped or unsold Units, reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Common Elements of the Condominium for the purpose of completing construction and sale of the Units and facilities in the Condominium and towards this end, reserves the right to grant and reserve easements and rights-of-way in, through, under, over and across the Common Elements for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, solar energy panels and other utilities and for any other materials or services necessary for the completion of the work. The Declarant, its successors, assigns, and purchasers of undeveloped or unsold Units, also reserve the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of the Common Elements. The Declarant, its successors and assigns, and purchasers of undeveloped or unsold Units, shall have an easement to erect and maintain general sales, leasing, business or administration offices and/or model Units, to erect, maintain, repair and replace from time to time one or more free-standing and other selling, directional and informational signs in/or on the Condominium as it deems necessary for the purposes of advertising the sale or lease of Units, and for the purpose of showing the Property to prospective Purchasers or lessees and for access to Units and Common Elements consistent with the purposes of the Declaration, as the same may be amended, and Declarant's rights and obligations thereunder, including, without limitation the right to develop, renovate, maintain, repair, refurbish, offer, sell and lease Units, together with their interest in the Common Elements. Finally, the Declarant, its successors, assigns and purchasers reserve the right to continue to use the Common Elements and any facilities, sales offices, model Units, signs located on the Common Elements, in its efforts to market or lease Units constructed in the Condominium and to complete construction of the Condominium. This paragraph shall not be amended without the consent of the Declarant.

Each Unit Owner hereby grants a right of access to and through their Unit to Declarant or its designee, and any contractors, subcontractors, agents, and employees of the foregoing for the purposes of the repair and completion of any installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change being performed or to be performed by or on behalf of Declarant with respect to the Common Elements and/or the Units.

The Board of Managers will have and each Unit will be subject to, an easement (a) to install, utilize, operate, maintain, repair, alter, rebuild, restore and replace the General Common Elements located in, over, under, through or upon any Unit, or any other Common Elements or elsewhere in the Condominium and (b) to maintain any encroachment on any Unit or Common Elements resulting from the repair, alteration, rebuilding, restoration or replacement of the General Common Elements.

The Board of Managers shall have an easement through the Units for access, installation, maintenance, repair and replacement of any flues, vents, air-conditioning, gas, heating, ventilating, water and other mechanical lines and fixtures and any other machinery, pipes, wires, conduits, equipment or meters servicing any portion of the Building.

Each Unit will have an easement of support from all structural members (including, but not limited to, columns, footings, bracings, foundations, slabs, and exterior walls) supporting or serving the Building and any replacement thereof and additions thereto and an easement of necessity, and each Unit will be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

Each Unit will have an easement for lateral and vertical support among all adjoining Units and Common Elements.

Any easements granted to Declarant, the Board of Managers, any Unit or any Unit Owner under this Declaration and the By-Laws may be exercised by such Declarant's, Board of Managers or Unit Owner's employees, agents, contractors, suppliers, customers, guests, invitees, licensees, servants, visitors, tenants, subtenants, tenants and/or tenant-shareholders, as the case may be, to the extent necessary to effectuate the purpose for the easement or as otherwise authorized by the Declarant, the Unit Owner or Board of Managers.

Each Unit Owner will have a right and easement to use its Unit and the Limited Common Elements appurtenant to such Unit, and the General Common Elements, subject to and in accordance with the terms and conditions of this Declaration and By-Laws.

All emergency vehicles and personnel, including, but not limited to, police, fire and medical shall be granted an easement of ingress and egress over, upon and through any access areas in 96 16th Street Condominium.. This Paragraph may not be amended by the Unit Owners in the Condominium.

**SEVENTH: SERVICE OF PROCESS:** Service of process on the Residential Unit Owners in any action with relation to the Common Elements shall be made upon the Secretary of State as the agent of the Board of Managers of the Condominium. The post office address to which the Secretary of State shall mail a copy of any process against this Condominium served upon him as agent for service of this Condominium during the period the Declarant controls the Board of Managers is: 96 16th Street LLC, 137 Varick Street, Suite #503, New York, New York 11228. Once the Declarant no longer controls the Board of Managers, the Board of Managers must notify the Secretary of State that the post office address to which the Secretary of State shall mail a copy of any process against this Condominium served upon him as agent of this Condominium is: Board of Managers, 96 16th Street Condominium, 96-16th Street, Brooklyn, New York or such other address as the Board of Managers of the Condominium selects.

**EIGHTH: COMMON INTEREST.** Each Unit Owner shall have such percentage of interest in the Common Elements as is set forth in Schedule B attached hereto and shall bear such percentage of the Common Expenses of the Condominium except as otherwise described herein in reference to the Limited Common Elements. Each Residential Unit Owner shall have one vote for all voting purposes at any meeting of the Unit Owners. The percentage of interest of each Unit in the Common Elements has been 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. Said method of determining the percentage of Common Interest in a condominium complies with and is pursuant to Section 339-i (1) (iv) of the Real Property Law of the State of New York.

**NINTH: ADMINISTRATION.** The administration of the Condominium, and parcel of land described herein shall be in accordance with the provisions of this Declaration and with the provisions of the By-Laws which are made a part of this Declaration and are attached hereto as Exhibit "B".

**TENTH: AMENDMENTS AND WITHDRAWAL.**

A. The dedication of the property to Condominium ownership herein shall not be revoked or the property withdrawn from Condominium ownership unless eighty (80%) percent of the Residential Unit Owners in number and in Common Interest and the first mortgagees, if any, of each of these same Residential Units agree to such revocation or removal of the property from the Plan by duly recorded instruments.

B. The provisions of this Declaration may be modified or amended by an instrument executed by the Board of Managers upon a vote of sixty-six and two-thirds (66⅔%) percent of the Residential Unit Owners in number held at a duly-called meeting of the Residential Unit Owners, provided however, that:

1. No amendment shall change any condominium parcel, nor a Unit Owner's proportionate share of the Common Charges, nor the voting rights appurtenant to any Residential Unit, unless all of record owner(s) in number and Common Interest thereof and the first mortgagees, if any, of each of these same Units agree to such revocation by recorded instrument.
2. No amendment shall be passed which shall impair or prejudice the validity, interest, rights and priorities of mortgagees.
3. Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition or deletion of, to or from this Declaration, the By-Laws or any rules and regulations shall be effective in any way against Declarant or its designee or any Unsold Unit, as long as

the Declarant owns an Unsold Unit in the Condominium unless the Declarant has given its prior written consent thereto. This provision is not subject to amendment.

There shall be a presumption for a period of sixty (60) days subsequent to the recording of the amendment that the vote of the Residential Unit Owners was made at a duly called meeting and that the requisite voting percentage was obtained. After the sixty (60) day period such presumption will be deemed conclusive.

C. The Declarant, its successors, assigns and purchasers of undeveloped or unsold Units shall have the right without vote or consent of the Residential Unit Owners, the Board of Managers or the holders of Residential Unit mortgages to execute or (on its request) to require the Board of Managers to execute and record in the Office of the Register of the City of New York, Kings County and elsewhere, if required by law, an amendment or amendments to this Declaration (together with such other documents, plan and maps as may be required to effectuate the same) to reflect (i) the certification by a registered architect or professional engineer, certifying that the floor plans filed as part of an amended Declaration are an accurate copy of portions of the plans of the Building and fully and fairly depict the layout, location, designation and approximate dimensions of the Residential Units as built, or (ii) utility easements, or (iii) technical corrections to the Declaration to conform to other documents including but not limited to the Offering Plan or as-built plans (iv) to amend Schedule B of this Declaration to conform the model type, square footage and type and number of rooms and any other required information for a specified Unit, so long as the appurtenant percentage of Common Interest does not change for said Unit, or (v) to amend Schedule B of this Declaration to consolidate Units subject to all necessary approvals by the City of New York, to revise the square footage and type and number of rooms and any other required information for a specified Unit and to change the appurtenant percentage of Common Interest so long as the new percentage of Common Interest equals the combined percentage of Common Interest of the Units that were combined, or (vi) to effectuate permissible changes in unsold Units or (vii) to amend Schedule B to make technical corrections to said Schedule including, but not limited to, square footage of Units, assign or revise Limited Common Elements appurtenant to a Residential Unit or to revise the number and description of rooms contained in a Residential Unit or (viii) the carrying out of other provisions of the Offering Plan of Murray Park North Condominium.

D. Any amendment to this Declaration shall not take effect until it is recorded in the Office of the Register of the City of New York, Kings County.

Regardless of any other provision of this Declaration, no action for partition or division of the Common Elements shall be brought nor shall this plan of condominium ownership be terminated where such partition, division or termination will result in a violation of the then existing local zoning and building laws and codes.

**ELEVENTH: SUBJECT TO DECLARATION, BY-LAWS, ETC.** All present or future Unit Owners, tenants, future tenants, or any other person that might use the facilities of the Condominium in any manner, are subject to the provisions of this Declaration, the By-Laws and Rules and Regulations of the Condominium and the mere acquisition or rental of any of the Units of the Condominium or the mere act of use or occupancy of any of said Units shall signify that the provisions of this Declaration and the By-Laws and Rules and Regulations of the Condominium are accepted and ratified 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, conveyance or lease thereof.

**TWELFTH: COMMON CHARGES.** All sums assessed as Common Charges by the Board of Managers of the Condominium but unpaid together with the maximum interest permitted in New York thereon, chargeable to any Unit Owner shall constitute a lien on his or her Unit prior to all other liens except: (a) tax or assessment liens on the Unit by the taxing subdivisions of any governmental authority, including but not limited to State, County, City, and School District taxing agencies; and (b) all sums unpaid on any first mortgage of record encumbering any Unit. Such lien may be foreclosed when past due in accordance with the laws of the State of New York, by the Condominium, in like manner as a mortgage on real property, and the Condominium shall also have the right to recover all costs incurred including reasonable attorneys' fees and costs of collection (but such right shall not be a lien against the Unit). In the event the proceeds of the foreclosure sale are not sufficient to pay such unpaid Common Charges, the unpaid balance shall be charged to all Unit Owners as a Common Expense. However, where the holder of an institutional mortgage of record, or other purchaser of a Unit at a foreclosure sale of an institutional mortgage, obtains title to the Unit as a result of foreclosure, or the institutional mortgage holder obtains title by conveyance in lieu of foreclosure, such acquirer of title, his successors or assigns, shall not be liable and the Unit shall not be subject to a lien for the payment of Common Charges chargeable to such Unit which were assessed and became due prior to the acquisition of title to such Unit by such acquirer. In such event, the unpaid balance of Common Charges will be charged to all other Unit Owners as a Common Expense. The term "institutional mortgage" herein used shall mean a first mortgage granted by a bank, savings and loan association, life insurance company, pension fund, trust company or other institutional lender or a mortgage granted by the Declarant to a purchaser of a Unit or in which the Declarant participates with one of the above.

In addition to the Board's right to bring an action to foreclose a lien on a Unit Owner's Unit, the Board (on behalf of the Unit Owners) shall have the right to bring suit to recover a money judgment for unpaid Common Charges at the option of the Board, without foreclosing or waiving the lien securing such charges. In such an event, the Condominium shall be entitled to recover all cost of suit including reasonable attorneys' fees.

Every Unit Owner shall pay the Common Charges assessed against the Unit Owner when due as determined by the Board of Managers and no Unit Owner may be exempt from liability for the payment of the Common Charges assessed against the Unit Owner by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of a Unit. However, no Unit Owner shall be liable for the payment of any Common Charges accruing subsequent to a sale, transfer or other conveyance by the Unit Owner of such Unit made in accordance with Section 339-x of the Real Property Law or in accordance with the provisions of this Declaration and the By-Laws.

**THIRTEENTH: UNITS ACQUIRED BY THE BOARD.** In the event any Unit Owner shall convey their Unit to the Board of Managers in accordance with Section 339-x of the Real Property Law or in the event the Board of Managers shall purchase any Unit at a foreclosure sale in accordance with Article IX of the By-Laws, title to such or the rights to the lease of such Unit shall be held by the Board of Managers or its designee on behalf of all of the other Unit Owners.

**FOURTEENTH: POWER OF ATTORNEY.** In order to carry out the provisions of Article Thirteenth of the Declaration and Article XI of the By-Laws, each Unit Owner shall, upon becoming such, grant an irrevocable power of attorney, coupled with an interest to the Board of Managers and their successors to acquire title or lease any such Unit acquired by the Board of Managers under whatever terms the Board may in its sole discretion deem proper and to sell, lease, sublease, mortgage, vote or otherwise deal with such Unit under such terms as the Board in its sole discretion shall deem proper. Each Unit Owner shall upon becoming a Unit Owner further grant an irrevocable power of attorney, coupled with an interest to the Board of Managers to nominate, designate, constitute and appoint the members of the Board of Managers of the Condominium and their successors, jointly, their true and lawful attorneys-in-fact, coupled with an interest, with power of substitution, in their name and on their behalf, the right to act in their behalf to take any and all action necessary against any tenant(s) that may be residing in a Unit Owner's Condominium Unit including but not limited to, the right to seek an eviction in a court of law for failure to adhere to any of the provisions of the Declaration of Condominium, By-Laws and/or Rules and Regulations of the Condominium.

**FIFTEENTH: ENCROACHMENTS.** The Unit Owners agree that if any portion of a Unit or the Common Elements (whether restricted in use to an individual Residential Unit Owner or not) encroaches upon another or shall hereinafter encroach upon another as a result of original construction or settling of the Building, a valid easement for the encroachment and the maintenance of the same, so long as it stands, shall and does exist. In the event the Building is partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and is rebuilt, the Unit Owners agree that encroachments of any portion of the Unit or the Common Elements as afore described due to construction, shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the Building or reconstructed Building shall stand.

**SIXTEENTH: UNIT OWNERSHIP.** Upon the closing of title to a Unit, a purchaser shall automatically become a Unit Owner in the Condominium and shall remain such until such time as the Unit Owner ceases to own the Unit for any reason. Occupancy of the Residential Units shall be restricted to residential occupancy in accordance with the applicable zoning regulations of the municipality having jurisdiction over the Condominium.

**SEVENTEENTH: USE OF UNITS.** Residential Units shall be restricted to residential occupancy in accordance with the applicable zoning regulations of the municipality having jurisdiction over the Community.

**EIGHTEENTH: CONVEYANCE OF A UNIT.** In any conveyance of a Unit, either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Unit shall be jointly and severally liable with the Grantor for any unpaid Common Charges against the latter assessed and due up to the time of the grant or conveyance without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. Any such Grantee shall be entitled to a statement from the Board of Managers setting forth the amount of the unpaid Common Charge against the Grantor and such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for any unpaid Common Charge against the Grantor in excess of the amount set forth in such statement. Grantee as used herein shall not include either the holder of an institutional mortgage of record or other purchaser of a Unit at a foreclosure sale of an institutional mortgage.

**NINETEENTH: COVENANT OF FURTHER ASSURANCES.** Any party subject to the terms of this Declaration, whether such party is a Unit Owner, a lessee or sublessee of a Unit Owner, or the occupant of a portion of a Residential Unit, a Member of the Board of Managers, an officer of the Condominium, or otherwise, shall, at the expense of any such other party requesting the same, execute, acknowledge and deliver to such other party such instruments, in addition to those specifically provided for herein, and take such other action, as such other party 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.

If any Unit Owner or any other party subject to the terms of this Declaration fails to execute, acknowledge or deliver any instrument, or fails or refuses, within ten (10) days after request thereof, to take any action which the Unit Owner or such other party is required to take pursuant to this Declaration, then the Board of Managers is hereby authorized as attorney-in-fact for such Unit Owner or other party, coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action, in the name of such Unit Owner, or other party and such document or action shall be binding on such Unit Owner or other party.

If any Unit Owner or the Board of Managers or any other party who is subject to the terms of this Declaration fails or refuses to execute, acknowledge or deliver any instrument, or fails or refuses within ten (10) days after request therefore, to take any action that the Board of Managers, any Unit Owner, or other party is required to take pursuant to this Declaration at the request of Declarant or Declarant's designee, then Declarant or Declarant's designee, as the case may be, is hereby authorized as attorney-in-fact for the Board of Managers, such Unit Owner, or other party, which power shall be deemed to be coupled with an interest, to execute, acknowledge and deliver such instrument, or to take such action, in the name of the Board of Managers, such Unit Owner, or other party, and such document or action shall be binding on the Board of Managers, such Unit Owner, or other party, as the case may be.

Each Unit Owner will have the affirmative duty to maintain its respective Unit in such a manner so as to reasonably prevent and avoid inflicting harm to other Units, the Limited Common Elements, however described, the General Common Elements or the Building. In the event any Unit Owner causes or permits any condition, or fails to take any action to prevent a condition, that has a deleterious effect on another Unit, any Limited Common Element, the General Common Elements or the Building, the Condominium Board will give written notice to such Unit Owner including a request that the Unit Owner take specific steps to ameliorate such a condition ("Remedy Notice"). If the Unit Owner fails to remedy the condition within seven (7) days of the receipt of the Remedy Notice, or, if the condition is such that it cannot be remedied within seven (7) days, fails to commence appropriate remedies, the Condominium Board may, upon ten (10) business days additional notice to the Unit Owner, enter into the Unit and effect a reasonable remedy, at the Unit Owner's sole cost and expense. In the event a Unit Owner reasonably believes another Unit Owner has caused, permitted, or failed to prevent a condition that has a deleterious effect on its Unit, the first Unit Owner may request that the Board of Managers send a Remedy Notice. If the Board of Managers fails or otherwise determines not to send the Remedy Notice, the Unit Owner will have all rights to enjoin, abate or remedy by appropriate legal proceedings against the other Unit Owner or the Board of Managers, either at law or in equity, the continuance of any such condition or breach and to seek reimbursement for any costs or expenses incurred in connection therewith.

The Board of Managers will not promulgate and/or enforce any rules or regulations, or otherwise act, in a discriminatory manner.

**TWENTIETH: COVENANTS AND RESTRICTIONS.** The use of the Unit by the Unit Owner or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and Rules and Regulations of the Board of Managers and the following covenants and restrictions:

- (a) The Residential Unit and areas restricted to the Residential Unit Owner's use shall be maintained in good repair and overall appearance.

- (b) No alteration, addition, decoration or change to any part of the Common Elements may be made and no structure or other improvement may be built or placed on any portion of the Common Elements or Limited Common Elements or any portion of the Condominium which affects two (2) or more Units, without the written consent of the Board of Managers. The provisions of this paragraph shall not apply to Declarant.
  
- (c) No Residential Unit Owner shall make any structural addition, alteration or improvement (of either a temporary or permanent nature) in or to their Residential Unit, any Limited Common Element or any portion of the Condominium which affects two (2) or more Residential Units, without the prior written approval of the Board of Managers. In addition, no Residential Unit Owner may alter or remove any interior wall without written approval of the Board of Managers. The Board of Managers shall have the obligation to answer any written request by a Residential Unit Owner for approval of a proposed structural addition, alteration or improvement in such Residential Unit Owner's Residential Unit within forty-five (45) days after such request is received, and failure to do so within the stipulated time shall constitute a denial by the Board of Managers of the proposed structural addition, alteration or improvement. No Residential Unit Owner shall make any structural addition, alteration or improvement in or to any Residential Unit or any Limited Common Element without first (1) obtaining and maintaining during the course of such work such insurance as the Board of Managers may reasonably prescribe and providing the Board with a certificate of insurance prior to the commencement of the work, (2) executing and delivering to the Board of Managers an agreement, in form and substance reasonably satisfactory to the Board, setting forth the reasonable terms and conditions under which such alteration, addition or improvement may be made, including, without limitation, the days and hours during which any such work may be done, (3) executing and delivering to the Board of Managers an agreement indemnifying and holding harmless the Board, its members and officers, and all Residential Unit Owners of the Condominium from and against any liability, cost or expense arising out of or connected to such work and (4) obtaining all approvals, as necessary, from the City of New York or any other governmental agency. In the event the Board of Managers chooses to have the proposed structural addition, alteration or improvement reviewed by an independent architect or engineer, the Residential Unit Owner shall pay the charges of such architect or engineer. The Residential Unit Owner shall also bear the cost of any increased taxes or insurance premiums resulting from the structural alterations, additions or improvements.

Any application to any department of the City of New York or any other governmental authority for a permit to make a structural addition, alteration or improvement in or to any Residential Unit or Limited

Common Element shall be completed by the Residential Unit Owner and executed by the Board of Managers only, without however, incurring any liability on the part of the Board of Managers or any of them to any contractor, subcontractor or material men on account of such structural addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising there from.

In the event a Residential Unit Owner violates this provision of the Declaration, the Board of Managers, in addition to all remedies it may have under this Declaration and the By-Laws, may institute legal action against the Residential Unit Owner for the enforcement of this provision. In such an event the Residential Unit Owner shall be responsible for the payment of reasonable attorney's fees of the Condominium, plus interest and costs of suit, as well as all costs associated with remedying the violation.

These provisions shall not apply to Residential Units owned by the Declarant or its designee until such Residential Units shall have been initially conveyed by the Declarant or such designee.

- (d) Any interior alterations or improvements made to a Residential Unit shall be made in accordance with all applicable rules, regulations, permits and zoning ordinances of any governmental agencies having jurisdiction thereof.
- (e) Any Unit Owner who mortgages their Unit shall notify the Board of Managers providing the name and address of the mortgagee.
- (f) The Board of Managers shall, at the request of the mortgagee of the Unit, report any unpaid Common Charges due from the Unit Owner of such Unit.
- (g) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents.
- (h) No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (i) Regulations promulgated by the Board of Managers concerning the use of the property shall be observed by the Residential Unit Owners, provided, however, that copies of such regulations are furnished to each

Residential Unit Owner prior to the time the said regulations become effective.

- (j) The Common Charges shall be paid when due.

## **TWENTY-FIRST: FIRST LIEN HOLDERS' RIGHTS**

(a) Notices of Action. A holder, insurer or guarantor of a first mortgage, upon written request to the Condominium, (such request to state the name and address or such holder, insurer or guarantor and the unit number), shall be entitled to timely written notice of:

- (1) Any proposed amendment of the Condominium instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the general or Limited Common Elements appertaining to any Unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the Condominium appertaining to any Unit or (iv) the purposes to which any Unit or the Common Elements are restricted;
- (2) Any proposed termination of the Condominium regime;
- (3) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- (4) Any delinquency in the payment of assessments or charges owed by a Unit Owner of a Unit subject to the mortgage of such eligible holder, insurer or guarantor, which such delinquency has continued for a period of sixty (60) days; and
- (5) Any lapse, cancellation or material modification of any insurance policy maintained by the Condominium.

(b) Other Provisions for First Lien Holders. To the extent permitted under applicable law, the following protections for the benefit of first mortgage holders will be legally binding with respect to the Condominium:

- (1) Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least fifty-one (51%) percent

of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained;

- (2) Any election to terminate the Condominium regime after substantial destruction or a substantial taking in condemnation of the Condominium property must require the approval of the eligible holders of first mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to mortgages held by such eligible holders are allocated; and
- (3) Unless the formula for reallocation of interests in the Common Elements after a partial condemnation or partial destruction of the Condominium project is fixed in advance by the Declaration or by applicable law, no reallocation of interests in the Common Elements resulting from a partial condemnation or partial destruction of the Condominium project may be effected without the approval of the eligible holders of first mortgages on Units to which at least eighty (80%) percent of the votes of Units subject to mortgages held by such eligible holders are allocated.

As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a Unit in a Condominium which has requested notice in accordance with the provisions of (a) above.

## **TWENTY-SECOND: SPECIAL RIGHTS OF DECLARANT.**

Notwithstanding anything to the contrary contained herein Declarant, its successors, assigns or designees shall have the right, without requiring the consent of either the Condominium or Board of Managers, and without charge or limitation, to:

- (a) have its employees, contractors, subcontractors and sales agents present on the properties described in Exhibit "A" and any Building erected thereon;
- (b) erect and maintain signs and other promotional materials (including, without limitation, "For Sale", and "For Rent" signs), in connection with the promotion, sale, leasing, management, or operation of the Units;
- (c) use any one or more Units as;
  - (i) model Units,
  - (ii) offices for the promotion, sale, rental, management and/or operation of any unsold Units,
  - (iii) offices in connection with any installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change being performed, or to be

- performed, by, or on behalf of, Declarant with respect to the Common Elements and/or the Units; or any unsold Units; and/or
  - (iv) for any other purpose;
- (d) do and cause to be done all of the things that are necessary, desirable or appropriate (including, without limitation, the use of the Common Elements, the Units and any unsold Units) for the purpose of:
  - (i) the promotion, sale, rental, management and/or operation of any unsold Units,
  - (ii) the performance and completion of installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change being performed, or to be performed, by, or on behalf of, Declarant with respect to the Common Elements and/or
  - (iii) the exercise performance and discharge of Declarant's other rights and obligations under this Declaration, the By-Laws or the rules and regulations;
- (e) make any other changes required by the City of New York or other Municipal Agency.

In no event, however, shall Declarant or such designee be entitled to use any portion of the Common Elements in such a manner as will unreasonably interfere with the use of the same or of any Unit for its permitted purposes.

The provisions of this Article Twenty-Second may not be amended without the written consent of the Declarant, or its successors or assigns.

**TWENTY-THIRD: INVALIDITY.** Invalidation of any of the covenants, limitations or provisions of the Declaration by judgment or court order shall in no wise affect any of the remaining part or parts hereof, and the same shall continue in full force and effect.

**96 16<sup>TH</sup> STREET LLC**

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

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 person 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 person or the entity upon behalf of which the person acted executed the instrument.

\_\_\_\_\_  
 NOTARY PUBLIC

**SCHEDULE A**

(TO BE COMPLETED PRIOR TO RECORDATION)

**EXHIBIT A**

(TO BE COMPLETED PRIOR TO RECORDATION)

Exhibit A to the Declaration of Condominium

**DECLARATION OF CONDOMINIUM AND BY-LAWS**

ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP  
OF PREMISES LOCATED AT  
96 -16TH STREET, BROOKLYN  
CITY AND STATE OF NEW YORK,  
PURSUANT TO ARTICLE 9-B OF THE PROPERTY  
LAW OF THE STATE OF NEW YORK.

NAME: 96 16TH STREET CONDOMINIUM

DECLARANT: 96 16th Street LLC  
137 Varick Street, Suite #503  
New York, New York 11228

DATE OF DECLARATION: \_\_\_\_\_, 2020

BLOCK:  
FKA LOT:  
NKA LOTS:

Record and Return to:

**MORITT HOCK & HAMROFF LLP**  
Attorneys for the Sponsor  
1407 Broadway, 39<sup>th</sup> Floor  
New York, New York 10018  
(212) 239-2000  
Attn: Anthony J. Ficara, Esq.

**BY-LAWS  
OF  
96 16th STREET CONDOMINIUM**

**MORITT HOCK & HAMROFF LLP**  
Attorneys for the Sponsor  
1407 Broadway, 39<sup>th</sup> Floor  
New York, New York 10018

**EXHIBIT B  
to the Declaration of Condominium**

**SCHEDULE J  
to the Offering Plan**

**BY-LAWS**  
**OF**  
**96 16<sup>th</sup> STREET CONDOMINIUM**

**TABLE OF CONTENTS**

|                                                                                | <u>Page</u> |
|--------------------------------------------------------------------------------|-------------|
| ARTICLE I. PLAN OF CONDOMINIUM OWNERSHIP .....                                 | 2           |
| Section 1. Condominium Unit Ownership.....                                     | 2           |
| Section 2. By-Laws Applicability .....                                         | 2           |
| Section 3. Personal Application .....                                          | 2           |
| Section 4. Definitions .....                                                   | 2           |
| ARTICLE II. CONDOMINIUM, VOTING, QUORUM, PROXIES AND WAIVERS .....             | 2           |
| Section 1. Condominium .....                                                   | 2           |
| Section 2. Voting .....                                                        | 2           |
| Section 3. Quorum .....                                                        | 3           |
| Section 4. Vote Required to Transact Business.....                             | 3           |
| Section 5. Right to Vote. ....                                                 | 3           |
| Section 6. Proxies .....                                                       | 3           |
| Section 7. Waiver and Consent.....                                             | 3           |
| Section 8. Place of Meetings.....                                              | 4           |
| Section 9. Annual Meetings Control of Board of Managers by Sponsor.....        | 4           |
| Section 10. Special Meetings .....                                             | 4           |
| Section 11. Notice of Meetings .....                                           | 4           |
| Section 12. Order of Business .....                                            | 5           |
| ARTICLE III. BOARD OF MANAGERS .....                                           | 5           |
| Section 1. Number and Term .....                                               | 5           |
| Section 2. Vacancy and Replacement .....                                       | 6           |
| Section 3. Removal.....                                                        | 6           |
| Section 4. Resignation .....                                                   | 6           |
| Section 5. First Board of Managers.....                                        | 6           |
| Section 6. Powers .....                                                        | 7           |
| Section 7. Repairs and Maintenance .....                                       | 10          |
| Section 8. Compensation .....                                                  | 12          |
| Section 9. Meetings.....                                                       | 12          |
| Section 10. Annual Statement.....                                              | 13          |
| Section 11. Fidelity Bonds.....                                                | 13          |
| Section 12. Management Agent.....                                              | 13          |
| Section 13. Liability of the Board of Managers, Officers and Unit Owners ..... | 13          |
| ARTICLE IV. OFFICERS .....                                                     | 15          |
| Section 1. Elective Officers .....                                             | 15          |
| Section 2. Election .....                                                      | 15          |

|                                                                              |    |
|------------------------------------------------------------------------------|----|
| Section 3. Appointive Officers .....                                         | 15 |
| Section 4. Term.....                                                         | 15 |
| Section 5. The President.....                                                | 15 |
| Section 6. The Vice-President.....                                           | 15 |
| Section 7. The Secretary.....                                                | 16 |
| Section 8. The Treasurer .....                                               | 16 |
| Section 9. Agreements, etc. ....                                             | 16 |
| ARTICLE V. NOTICES .....                                                     | 16 |
| Section 1. Definition .....                                                  | 16 |
| Section 2. Service of Notice-Waiver.....                                     | 16 |
| ARTICLE VI. FINANCES .....                                                   | 16 |
| Section 1. Checks .....                                                      | 17 |
| Section 2. Assessments.....                                                  | 18 |
| Section 3. Purpose of Common Charges.....                                    | 18 |
| Section 4. Foreclosures of Liens for Unpaid Common Charges .....             | 18 |
| Section 5. Statement of Common Charges.....                                  | 19 |
| Section 6. Liability for Utilities .....                                     | 19 |
| Section 7. Operating Account .....                                           | 19 |
| Section 8. Other Accounts .....                                              | 19 |
| Section 9. Determination of Common Expenses and Fixing of Common Charges ... | 19 |
| ARTICLE VII. INSURANCE AND INSURANCE TRUSTEE.....                            | 20 |
| Section 1. Insurance to be Carried by the Board .....                        | 20 |
| Section 2. The Insurance Trustee .....                                       | 22 |
| Section 3. Restoration or Reconstruction After Fire or Other Casualty .....  | 22 |
| ARTICLE VIII. HOUSE RULES .....                                              | 23 |
| Section 1. General .....                                                     | 23 |
| Section 2. Violations of Rules and Regulations.....                          | 29 |
| Section 3. Costs.....                                                        | 30 |
| Section 4. Board of Managers Right to Change Rules and Regulations.....      | 30 |
| Section 5. Sponsor.....                                                      | 31 |
| ARTICLE IX. DEFAULT.....                                                     | 32 |
| ARTICLE X. AMENDMENTS.....                                                   | 32 |
| ARTICLE XI. SELLING, MORTGAGING AND LEASING UNITS .....                      | 33 |
| Section 1. Selling and Leasing Units.....                                    | 33 |
| Section 2. Leasing Requirements .....                                        | 33 |
| Section 3. Tenant Bound by Declaration.....                                  | 34 |
| Section 4. Lenders .....                                                     | 35 |
| Section 5. Sponsor.....                                                      | 35 |
| Section 6. Waiver of Partition Rights.....                                   | 35 |
| Section 7. Real Property Law Section 339-kk .....                            | 35 |
| Section 8. Gifts, etc.....                                                   | 35 |
| ARTICLE XII. CONDEMNATION.....                                               | 36 |
| ARTICLE XIII. SPONSOR RIGHTS.....                                            | 36 |
| Section 1. Sales .....                                                       | 36 |
| Section 2. Signs .....                                                       | 36 |
| ARTICLE XIV. MISCELLANEOUS .....                                             | 36 |
| Section 1. Insurance .....                                                   | 36 |

|                                                   |    |
|---------------------------------------------------|----|
| Section 2. Severability.....                      | 36 |
| Section 3. Notice to Condominium.....             | 36 |
| Section 4. Notice of Unpaid Assessments .....     | 36 |
| Section 5. Examination of Books and Records ..... | 37 |
| Section 6. Construction .....                     | 37 |
| Section 7. Compliance with Article 9-B .....      | 37 |

**BY-LAWS**  
**OF**  
**96 16<sup>th</sup> STREET CONDOMINIUM**

**ARTICLE I. PLAN OF CONDOMINIUM OWNERSHIP**

**Section 1. Condominium Unit Ownership.** The property located at 96 16th Street, Brooklyn, Kings County, City and State of New York as specifically set forth in the Declaration and more commonly known as 96 16th Street Condominium has been submitted to the provisions of Article 9-B of the Real Property Law of the State of New York.

**Section 2. By-Laws Applicability.** The provisions of these By-Laws are applicable to the Condominium. The term "Condominium" as used herein shall include the land and the Building and improvements thereon including the Condominium Units (hereinafter referred to as "Residential Units"), and the Common Elements and the use and occupancy thereof, the term "Building" as hereinafter used shall be as defined in the Declaration of Condominium.

**Section 3. Personal Application.** All present or future Unit Owners, mortgagees and lessees, or their employees, guests or any other person that might use the facilities of the Condominium in any manner are subject to these By-Laws, the Declaration and any Rules and Regulations established by the Board of Managers. The mere acquisition or rental of any of the Units or the mere act of use or occupancy of any of said Units will signify that these By-Laws, the Declaration and the Rules and Regulations are accepted, ratified, and will be complied with.

**Section 4. Definitions.** The definitions contained in the Declaration of Condominium shall be applicable to these By-Laws unless otherwise indicated.

**ARTICLE II. CONDOMINIUM, VOTING, QUORUM, PROXIES AND WAIVERS**

**Section 1. Condominium.** The Condominium shall be limited to Unit Owners.

**Section 2. Voting.** Each Unit Owner (including the Sponsor and the Board of Managers, if the Sponsor or the Board of Managers shall then own or hold title to one or more Units) shall be entitled to cast one vote for each .01% (rounded off to the nearest .01%) of Common Interest attributable to its Unit or Units (including, without limitation, for each Board member to be elected) in proportion to the Common Interest of all Units unless otherwise mandated by law or expressly provided for in the Declaration of Condominium (the "Declaration"). In the event the Board of Managers acquires a Unit on behalf of the Condominium it shall not cast any of its votes appurtenant to such Unit, for the election of any Member of the Board. "Sponsor" as referred to in these By-Laws

shall mean the Declarants who executed the Declaration and any successor in interest, assignee, of such Declarant's rights or designee of such Declarant.

**Section 3. Quorum.** So many Residential Unit Owners as shall represent at least fifty-one (51%) percent of the total authorized votes of all Residential Unit Owners present in person or represented by written proxy shall constitute a quorum at all meetings of the Unit Owners for the transaction of business, except as otherwise provided by Statute, by the Declaration, or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the Unit Owners, the Unit Owners entitled to vote thereat, present in person or represented by written proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting. At such adjourned meeting so many Residential Unit Owners as shall represent at least thirty-three and one-third (33⅓%) percent of the total authorized votes of all Residential Unit Owners shall constitute a quorum. At such adjourned meeting any business may be transacted which might have been transacted at the meeting originally called. If, however, such quorum shall not be present or represented at any meeting of the Unit Owners, the Unit Owners entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting. At such adjourned meeting so many Residential Unit Owners as shall represent at least twenty-five (25%) percent of the total authorized votes of all Residential Unit Owners shall constitute a quorum. Any business may be transacted which might have been transacted at the meeting originally called.

**Section 4. Vote Required to Transact Business.** When a quorum is present at any meeting, the vote of a majority of the Residential Unit Owners present in person or represented by written proxy shall decide any question brought before such meeting and such vote shall be binding upon all Unit Owners, unless the question is one upon which, by express provisions of the Declaration, Statute, or of these By-Laws, a different vote is required, in which case such express provisions shall govern and control the decision of such question.

**Section 5. Right to Vote.** At any meeting of Unit Owners, every Residential Unit Owner having the right to vote shall be entitled to vote in person, or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

**Section 6. Proxies.** All proxies shall be in writing and shall be filed with the Secretary prior to the meeting at which the same are to be used. A notation of such proxies shall be made in the minutes of the meeting.

**Section 7. Waiver and Consent.** Whenever the vote of Residential Unit Owners at a meeting is required or permitted by any provision of the Declaration, Statutes or of these By-Laws to be taken in connection with any action of the Condominium, the meeting and vote of Residential Unit Owners may be dispensed with if all Residential Unit Owners who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken.

**Section 8. Place of Meetings.** Meetings shall be held at such suitable place convenient to the Residential Unit Owners as may be designated by the Board of Managers.

**Section 9. Annual Meetings Control of Board of Managers by Sponsor.** The initial Board of Managers will call for the first annual meeting of the Unit Owners to elect a new Board of Managers within one (1) year of the closing of the first Residential Unit. At such meeting, Members of the Board of Managers shall be elected by the Residential Unit Owners, other than the Members of the Board the Sponsor shall have the right to designate, and the former Members of the Board shall thereupon resign. Thereafter annual meetings shall be held on the anniversary of such date each succeeding year or such other convenient date as the Board of Managers may so designate. At such meetings there shall be elected by ballot of the Residential Unit Owners a Board of Managers in accordance with the requirements of Article III of these By-Laws. The Residential Unit Owners may also transact such other business of the Condominium as may properly come before them. The Sponsor will have voting control and may designate a majority of the Board of Managers for a period ending (i) three (3) years from date of the closing of the first Residential Unit, or (ii) one hundred and twenty (120) days after the closing of seventy-five (75%) percent of all Residential Units in the Condominium, whichever is later. Thereafter, the Sponsor shall retain the right to designate one (1) Member of the Board of Managers until such time as Sponsor no longer owns a Residential Unit. At such time as Sponsor no longer owns a Residential Unit in the Condominium, Sponsor may not hold a seat on the Board of Managers.

**Section 10. Special Meetings.** It shall be the duty of the President to call a special meeting of the Condominium, if so directed by the Board of Managers, or upon the presentation to the Secretary of a petition signed by a majority of the Residential Unit Owners. The secretary shall cause a notice of such special meeting stating the time, place and object thereof and the officer or other person or persons by whom the meeting is called, to be delivered personally or mailed as provided in Section 11 of this Article to each Residential Unit Owner of the Condominium entitled to vote at such meeting not less than ten (10) nor more than thirty (30) days before such meeting. The date of the special meeting shall be determined by the Board of Managers and shall be held no later than sixty (60) days from receipt of any written request pursuant to this Section 10 unless a later date is agreed to in writing by the Residential Unit Owners of the Condominium or the Board of Managers, requesting such meeting. No business other than that stated in such notice shall be transacted at such special meeting unless all Residential Unit Owners of the Condominium are present in person or by proxy. Any or all of the Board of Managers of the Condominium, other than those designated by the Declarant may be removed without cause by vote of the Members at a special meeting called pursuant to this section if the meeting is called for such purpose.

**Section 11. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Residential Unit Owner of record, at least ten

(10) but not more than thirty (30) days prior to such meeting. The mailing of a notice in the manner provided in these By-Laws shall be considered notice served.

**Section 12. Order of Business.** The order of business at all meetings shall be as follows:

- (a) Roll Call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Report of officers
- (e) Report of committees
- (f) Election of inspectors of election (in the event there is an election and only if requested by a Residential Unit Owner present at the meeting)
- (g) Election of managers (in the event there is an election)
- (h) Unfinished business
- (i) New business

### **ARTICLE III. BOARD OF MANAGERS**

**Section 1. Number and Term.** The affairs of the Condominium shall be governed by a Board of Managers. The first Board of Managers shall consist of three (3) Members designated by the Sponsor who shall hold office and exercise all powers of the Board of Managers until the first annual meeting of the Unit Owners. Until succeeded by the Members elected at the first annual meeting of Unit Owners, Members need not be Residential Unit Owners; thereafter, all Members, other than designees or nominees of the Sponsor, shall be Residential Unit Owners. The Members shall be elected or designated at the annual meeting of the Unit Owners.

At the first annual meeting of Unit Owners called pursuant to Section 9 of Article II a total of three (3) Members shall be elected or designated. All Members, other than those designated by the Sponsor, shall be elected by the Residential Unit Owners. The term of office of one (1) of the Members shall be fixed for three (3) years, the term of office of one (1) of the Members shall be fixed at two (2) years, and the term of office of one (1) of the Members shall be fixed at one (1) year. Separate ballots shall be conducted for each of the three terms of office. Each Residential Unit Owner (including the Sponsor and the Board of Managers, if the Sponsor or the Board of Managers shall then own or hold title to one or more Units) shall be entitled to cast one vote for each .01% (rounded off to the nearest .01%) of Common Interest attributable to its Unit or Units, for each Residential Board Member to be elected, in proportion to the Common Interest of all Units unless otherwise mandated by law or expressly provided for in the Declaration. The one nominee(s) on each of the ballots, as the case may be, receiving the highest number of votes on their ballot shall constitute the duly elected Board of Managers. At the expiration of the initial term of office of each respective Member, the Member's successor shall be elected to serve a term of three (3) years. The Members shall hold office until their successors have been elected and hold their first meeting.

Notwithstanding the foregoing, the Sponsor will have voting control and may designate a majority of the Board of Managers for a period ending (i) three (3) years from date of the closing of the first Residential Unit, or (ii) one hundred and twenty (120) days after the closing of seventy-five (75%) percent of all Residential Units in the Condominium, whichever is later. Thereafter, the Sponsor shall retain the right to designate one (1) Member of the Board of Managers until such time as Sponsor no longer owns a Residential Unit.

This Section may not be amended without the written consent of Sponsor.

**Section 2. Vacancy and Replacement.** If the office of any Member or Members becomes vacant by reasons of death, resignation, retirements, disqualification, removal from office or otherwise, a majority of the remaining Members, though less than a quorum, at a special meeting of Members duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred. The Board of Managers shall also have the right to call for a special meeting in accordance with Article II, Section 10 to elect the Member's successor to fill the unexpired portion of the term of office. In the event of the failure to hold any election of the Board of Managers at the time designated for the annual election of the Board of Managers or in the event that the Board of Managers shall not have filled any such vacancy, a special meeting of the Unit Owners to elect a new Board of Managers or to fill such vacancy or vacancies may be called in the manner generally provided for the calling of special meetings of the Unit Owners. If the vacancy occurs with respect to any Member of the first Board of Managers (see Section 4 of this Article III) or any other Member who has been designated by the Sponsor and the Sponsor still retains ownership of at least one (1) Residential Unit, the Sponsor shall have the sole right to choose such Member's successor to fill the unexpired portion of the term.

**Section 3. Removal.** Members may be removed for cause by an affirmative vote of a majority of the Residential Unit Owners. No Member, other than a Member of the first Board of Managers or a designee of the Sponsor, shall continue to serve on the Board if, during their term of office, they shall cease to be a Residential Unit Owner. In the event a Sponsor designee is removed for cause and the Sponsor still retains ownership of at least one (1) Residential Unit, the Sponsor shall have the sole right to designate a replacement.

**Section 4. Resignation.** Any Member may resign at any time by written notice delivered in person or sent by certified registered mail to the President or Secretary of the Condominium. Such resignation shall take effect at the time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

**Section 5. First Board of Managers.** The first Board of Managers shall consist of Tien Vominh, Amit Veeramachaneni and Samir Kothari who shall hold office and exercise all powers of the Board of Managers until the first annual meeting of Unit Owners. The Sponsor has the right to substitute or change any or all of said

representatives of the first Board of Managers. Any or all of said Members shall be subject to replacement in the event of resignation or death in the manner set forth in Section 2 of this Article.

### **Section 6. Powers.**

(a) The property and business of the Condominium shall be managed by its Board of Managers, which may exercise all such powers of the Condominium and do all such lawful acts and things as are not by Statute or by the Declaration or by these By-Laws, directed or required to be exercised or done by the Unit Owners personally. These powers shall specifically include, but not be limited to, the following items:

1. To determine and levy monthly assessments ("Common Charges") to cover the cost of Common Expenses, payable in advance. The Board of Managers may increase the monthly assessments or vote a special assessment in excess of annual Common Charges, if required, to meet any additional necessary expenses, but said increases can only be assessed among all the Unit Owners pro-rata according to their respective percentage of Common Interest.
2. To collect, use, and expend the Common Charges collected to maintain, care for and preserve the Units, the Building, and other Common Elements;
3. To open bank accounts on behalf of the Condominium and to designate the signatories to such bank accounts;
4. To make repairs, restore or alter any Unit or the Common Elements after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;
5. To enter into and upon the Units when necessary and at as little inconvenience to the Unit Owners as possible in connection with the maintenance, care and preservation of the property. No notice is required to gain access for repairs. Any repairs required as the result of negligence of the Unit Owner will be at the expense of the Unit Owner;
6. To insure and keep insured the General Common Elements, Limited Common Elements and the Units. A Unit Owner may secure supplemental coverage for the Unit and its contents and the liability coverage for the Unit;
7. To collect delinquent Common Charges and special Common Charge assessments by suit or otherwise, to abate nuisances and to enjoin or seek damages from the Unit Owners of the property for violations of the house rules or rules and regulations herein referred to;

8. To make reasonable rules and regulations applicable to the Common Elements of Units and Unit Owners and to amend the same from time to time, and such rules and regulations and amendments shall be binding upon the Unit Owners when the Board has approved them in writing. A copy of such rules and all amendments shall be delivered to each Residential Unit;
9. To employ and terminate the employment of employees and independent contractors and to purchase supplies and equipment, to enter into contracts, and generally to have the powers of a manager in connection with the matters hereinabove set forth;
10. To bring and defend actions by or against more than one Residential Unit Owner and pertinent to the operation of the Condominium and to levy special Common Charge assessments to pay for the cost of such litigation;
11. To acquire a Unit in foreclosure or as a result of abandonment and to take any or all steps necessary to repair or renovate any Unit so acquired and to vote as a Residential Unit Owner, offer such Unit for sale or lease or take any other steps regarding such Unit as shall be deemed proper by the Board of Managers;
12. To make additions, alternations, or improvements to the General Common Elements of the Condominium and those portions of the Condominium which are included in the description of an individual Unit but which service two (2) or more Units in the Condominium;
13. To borrow money on behalf of the Condominium when required in connection with the operation, care upkeep and maintenance of the General Common Elements, provided, however, that no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the written consent of the Owners of said Unit.
14. Pursuant to Section 339-y(4) of the New York Real Property Law, the Board of Managers may (but is not obligated to) act as an agent for one or more Unit Owners who have given their written authorization to file a single complaint and bring a special proceeding on behalf of Unit Owners who wish to contest the real estate tax assessments of their Units. In such event, the Board could retain counsel on behalf of such Unit Owners and charge each Unit Owner for whom it is acting a pro rata share of expenses, disbursements and legal fees, the payment for which would be secured by a lien on each Unit;

15. To make payment for the real estate taxes assessed to the Building until the Units are separately assessed for taxes and to collect a reasonable adjustment for same from the individual Unit Owners.
16. To grant utility or other easements over or to the Common Elements as may, at any time, be required for the benefit of the Condominium and the Unit Owners without the necessity of the consent thereto, or joinder therein, by the Unit Owners or any mortgagee (except that if the granting of such easement impairs the ability of one (1) or more Unit Owners who have the right to use such Common Elements to the exclusion of any other Unit Owners, the consent of all such affected Unit Owners shall be required in writing before such easement shall be granted); and
17. To impose reasonable fines upon Unit Owners for violating the rules and regulations of the Community, as contained in these By-Laws or as promulgated by the By-Laws.

(b) The Board of Managers may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, each of such committees to include at least one (1) Member which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Managers in the management of the business affairs of the Condominium and may have power to sign all papers which may be required, provided the said resolutions shall specifically so provide. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Managers. Committees established by resolution of the Board of Managers shall keep regular minutes of their proceedings and shall report the same to the Board as required.

(c) Notwithstanding anything to the contrary contained in these By-Laws, for a period ending not more than five (5) years after the closing of title to the first Residential Unit or whenever the unsold Residential Units constitute less than twenty-five (25%) percent of the Common Interest, whichever is sooner, the Board of Managers, may not, without the Sponsor's prior written consent: (i) make an addition, alteration or improvement to the Common Elements or to any Unit, costing cumulatively more than \$25,000, the foregoing not to include necessary repairs and maintenance work, or (ii) assess any Common Charges for the creation of, addition to, or replacement of all or part of a reserve, contingency or surplus fund, in excess of the reserve for contingencies contained in the Condominium budget for the first year of operation, (iii) hire any employee in addition to the employees referred to in the Plan of Condominium ownership, or (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of closing of the first Residential Unit, or (v) borrow money on behalf of the Condominium, (vi) reduce the services or maintenance set forth in the Condominium budget for the first year of operation, or (vii) charge any special Common Charge assessment for a non-budgeted item unless required by law, municipal agency, emergency or for the health and safety of the Condominium; or (viii) increase the Common Charges of the Condominium more than ten (10%) percent from

the prior year's budget, unless documentation is provided to the Sponsor in the nature of a financial statement, bids from contractors or verified increases in utility rates, evidencing the need for an increase greater than ten (10%) percent, or (ix) utilize Condominium funds or assess the Sponsor in order to commence a lawsuit against the Sponsor or any of its principals.

(d) Notwithstanding Article III, Section 6(c) of these By-Laws Sponsor may not exercise veto power over expenses described in the proposed first year budget, as described in the Offering Plan, or over expenses required:

- (i) to comply with applicable laws or regulations; or
- (ii) to remedy any notice of violation; or
- (iii) to remedy any matter regarding the health and safety of the occupants of the Building; or
- (iv) to remedy any work order by an insurer.

(e) Sponsor may exercise veto power over expenses, other than those described in Article III, Sections 6(c) and (d) of the By-Laws, for a period ending not more than five (5) years after the closing of the first Residential Unit or whenever the unsold Residential Units constitute less than twenty-five (25%) percent of the common interest, whichever is sooner.

The provisions of this paragraph may not be amended without the written consent of Sponsor.

**Section 7. Repairs and Maintenance.** All maintenance, repairs and replacements to the Common Elements including but not limited to exterior walls of the Building, windows, roof and roof members, as well as all maintenance, repairs and replacements to any pipes, wires, conduits and public utility lines, any portion of which is located in one Residential Unit and services another Residential Unit or more than one (1) Unit or so much of any pipes (including sewer and water pipes), wires, conduits and public utility lines as are located in the Common Elements but serve one or more Units shall be made by the Board of Managers and the cost thereof shall be a Common Charge payable by all Unit Owners. The Board of Managers shall repair all plumbing stoppages and electrical repairs occurring in the Common Elements.

All maintenance (including electrical and plumbing repairs in the Residential Units and painting and decorating of the inside of the Residential Units), repairs and replacements to the Residential Units including windows (including all glass breakage), doors, windows and doors which open from a Residential Unit (except painting and maintenance of the exterior surface which is performed by the Board of Managers on behalf of the Condominium), and repairs to any heating (boiler)/air conditioning/hot water system servicing a Residential Unit, pipes, wires and conduits located within or

without the same Residential Unit other than as set forth above shall be made by the respective Residential Unit Owners at their own expense.

All general maintenance, repairs and replacements to a yard or terrace that is a Limited Common Element, including cleaning, snow removal and all repairs not structural in nature, including the repair of leaks and the repair or replacement of the yard or terrace surface shall be the responsibility of the Residential Unit Owner whose yard or terrace is appurtenant to their Residential Unit and is a Limited Common Element of their Residential Unit. No Residential Unit Owner shall make any addition, alteration or improvement (of either a temporary or permanent nature) of a structural nature in or to any Limited Common Element, without the prior written approval of the Board of Managers. Any repair or replacement to any Limited Common Element by a Residential Unit Owner, if permitted, shall conform to the requirements contained in Article Eighteenth (2) of the Declaration of Condominium. The yard and terrace are not permitted to be used for storage and are not permitted to be enclosed. All repairs, maintenance and any replacement of any heating, cooling or other mechanical system servicing an individual Residential Unit that is located in or on the Common Elements and/or all apparatus, installations, systems equipment and facilities in the Common Elements (including pipes, wire, ducts, vents, cables, conduits and lines) which serve or benefit a Residential Unit exclusively shall be the responsibility of the Residential Unit Owner. All repairs to the exterior of any door, building, open area or other generally visible portion of the Condominium must be in conformation with the style and colors initially installed by the Sponsor.

The Board of Managers on behalf of the Condominium shall repair and replace any public utility lines located underground or overhead of any Limited Common Element except where such repair or replacement is necessitated because of the negligence or misuse or neglect of the Residential Unit Owner to which the Common Element is restricted in use, in which event such Residential Unit Owner shall make such repairs or replacements at their own expense.

The Board of Managers and their agents, employees and contractors shall have the right of access to any Unit for the purpose of making any repairs or replacements to any of the General Common Elements and Limited Common Elements contained therein or elsewhere in the Condominium or to remedy any condition which would result in damage to any other Unit or the General Common Elements or Limited Common Elements, or which would violate the provisions of any mortgage covering another Unit or for the purpose of complying with any laws, orders, rules or regulations of any governmental body having jurisdiction thereof or for the purpose of carrying out any of its obligations under the By-Laws or the Declaration of the Condominium. Such right of access shall be exercised in such manner as will not unreasonably interfere with the use of the Residential Units but no prior notice shall be required in the event the Board of Managers shall determine that action is immediately necessary for the preservation or safety of the Condominium or its property, or the Units, or for the safety of Condominium residents or other persons, or required to avoid the suspension of any necessary service to the Condominium.

All replacements, repairs, painting or maintenance, whether made by the Unit Owner or by the Board of Managers to the doors, windows, or the exterior surface of a Unit, including roofs, or to any generally visible portion of the Common Elements shall be carried out in such a manner so as to conform to the materials, style and color initially provided by the Sponsor and shall comply with the requirements of Article Twentieth (c) of the Declaration of Condominium.

In the event that a Unit Owner fails to perform any maintenance or repair which maintenance or repair is necessary to protect any of the Common Elements or any other Unit, the Board of Managers shall have the right to make such maintenance or repair (after the failure of the Unit Owner to do so after ten (10) days written notice, or written or oral notice of a shorter duration in the event of any emergency situation) and to charge the Unit Owner for the cost of all such repairs and/or maintenance. In the event that the Board of Managers charges a Unit Owner for repairs or maintenance to Unit Owner's Unit or for repairs to any Common Element restricted in use to such Unit Owner, and the Unit Owner fails to make prompt payment, the Board of Managers shall be entitled to bring suit thereon and, in such event, the Unit Owner shall be liable for the reasonable Attorneys' fees and costs of such suit or proceeding together with interest on all sums due.

**Section 8. Compensation.** Members and officers, as such, shall receive no compensation for their services.

**Section 9. Meetings.**

- (a) The first meeting of each Board newly elected by the Residential Unit Owners shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board of Managers shall be held at the same place as the Unit Owners meetings, and immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board shall take place.
- (b) Regularly scheduled meetings of the Board may be held without special notice.
- (c) Special meetings of the Board may be called by the President on two (2) days notice to each Member either personally or by mail or telegram. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Members.
- (d) At all meetings of the Board, a majority of the Members shall be necessary and sufficient to constitute a quorum for the transaction of business, and an act of the majority of the Members present at any meeting at which

there is a quorum shall be the act of the Board of Managers, except as may be otherwise specifically provided by statute or by the Declaration or by these By-Laws. If a quorum shall not be present at any meetings of Members, the Members present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

- (e) Before or at any meeting of the Board of Managers, any Member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- (f) Members of the Board may participate in a meeting by means of a conference telephone call or similar communications equipment by means of which all persons participating in such meeting can hear each other and such participation shall constitute presence at such meeting.

**Section 10. Annual Statement.** The Board of Managers shall furnish to all Residential Unit Owners and their mortgagees and shall present annually (at the annual meeting, but in no event later than four (4) months after the close of the fiscal year) and when called for by a vote of the Residential Unit Owners at any special meeting of the Residential Unit Owners, a full and clear statement of the business conditions and affairs of the Condominium, including a balance sheet and profit and loss statement verified by an independent public accountant and a statement regarding any taxable income attributable to the Unit Owner and a notice of the holding of the annual Unit Owners meeting.

**Section 11. Fidelity Bonds.** The Board of Managers shall require that all officers and employees of the Condominium handling or responsible for Condominium funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be a common expense.

**Section 12. Management Agent.** The Board of Managers may employ for the Condominium a management agent under a term contract or otherwise at a compensation established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, all of the delegable duties of the Board listed in this Article.

**Section 13. Liability of the Board of Managers, Officers and Unit Owners.** No Member of the Board of Managers or officer of the Condominium shall have any personal liability to the Condominium or to any Unit Owner for damages for any breach of duty in his or her capacity as a Member of the Board or officer, provided that this provision does not eliminate or limit the liability of a Member of the Board or officer if a

judgment or other final adjudication adverse to him or her establishes (a) that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, or (b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

The Condominium, through the Unit Owners, shall indemnify to the fullest extent permitted by law any person made, or threatened to be made, a party to an action or proceeding, whether civil or criminal, including an action by or in the right of the Condominium to procure a judgment in its favor or an action other than one by or in the right of the Condominium and including an action by or in the right of any corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any Member of the Board or 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 Board or officer of the joint venture, trust, employee benefit plan or other enterprise in any capacity; provided that no indemnification may be made to or on behalf of any Member of the Board or officer if a judgment establishes that his or her 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 or she personally gained in fact a financial profit or the advantage to which he or she was not legally entitled.

The Unit Owners shall indemnify and hold harmless each of the Members of the Board of Managers against all contractual liability to others arising out of contracts made by the Board of Managers on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provision of the Declaration or of these By-Laws. It is intended that the Members of the Board of Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium (except as Unit Owners). It is understood and permissible for the original Board of Managers, who may be members of or be employed by the Sponsor, to contract with the Sponsor and affiliated corporations and entities without incurring any liability for self-dealing. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Managers or out of the aforesaid indemnity in favor of the Member of the Board of Managers shall be limited to such proportion of the total liability thereunder as his or her interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements. Every agreement made by the Board of Managers or by the managing agent or by the manager on behalf of the Condominium shall provide that the Members of the Board of Managers, or the managing agent, or the manager, as the case may be, are acting only as agent for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners).

Each Unit Owner's liability pursuant to this Section shall be limited to such proportion of the total liability thereunder as his or her interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

## ARTICLE IV. OFFICERS

**Section 1. Elective Officers.** The officers of the Condominium shall be chosen by the Board of Managers and shall be a President, a Vice President, a Secretary and a Treasurer. The Board of Managers may also choose one (1) or more Assistant Secretaries and Assistant Treasurers and such other officers as in their judgment may be necessary. All officers must be Residential Unit Owners, Members of the first Board of Managers or designated Members of the Board of Managers of the Sponsor. Two (2) or more offices may be held by the same person, except that the President may only hold the office of President.

**Section 2. Election.** The Board of Managers at its first meeting after each annual Unit Owners Meeting shall elect a President, a Vice-President, a Secretary and a Treasurer. Only the President must be a member of the Board.

**Section 3. Appointive Officers.** The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

**Section 4. Term.** The officers shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Managers may be removed with or without cause, at any time, by the affirmative vote of a majority of the whole Board of Managers. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Managers.

**Section 5. The President.** The President shall be the chief executive officer of the Condominium; the President shall preside at all meetings of the Unit Owners and Members, the President shall be an ex-officio member of all standing committees, shall have general and active management of the business of the Condominium, shall see that all orders and resolutions of the Board are carried into effect and shall have such other powers and duties as are usually vested in the office of President of a stock corporation organized under the Business Corporation of the State of New York.

**Section 6. The Vice-President.** The Vice President shall take the place of the President and perform the President's duties whenever the President shall be absent or unable to act and shall have such other powers and duties as are usually vested in the office of Vice President of a stock corporation organized under the Business Corporation Law of the State of New York.

**Section 7. The Secretary.** The Secretary and/or Assistant Secretary shall attend all sessions of the Board and all Unit Owners meetings and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all Unit Owners meetings and special meetings of the Board

of Managers, and shall perform such other duties as may be prescribed by the Board of Managers or by the President, under whose supervision the Secretary shall be.

**Section 8. The Treasurer.** The Treasurer shall have the custody of the Condominium funds and securities and shall keep full and accurate chronological accounts of receipts and disbursements in books belonging to the Condominium including the vouchers for such disbursements, and shall deposit all monies and other valuable effects in the name and to the credit of the Condominium in such depositories as may be designated by the Board of Managers.

The Treasurer shall disburse the funds of the Condominium as may be ordered by the Board, making proper vouchers for such disbursements and shall render to the President and Members, at the regular meeting of the Board or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Condominium.

The Treasurer shall keep detailed financial records and books of account of the Condominium, including a separate account for each Unit which, among other things, shall contain the amount of each assessment of Common Charges against such Unit, the date when due, the amounts paid thereon and the balance remaining unpaid.

**Section 9. Agreements, etc.** All agreements and other instruments shall be executed by the President or such other person as may be designated by the Board of Managers.

## ARTICLE V. NOTICES

**Section 1. Definition.** Whenever under the provisions of the Declaration or of these By-Laws, notice is required to be given to the Board of Managers, any Member or Unit Owner, it shall not be construed to mean personal notice; but such notice may be given in writing, by mail, by depositing the same in a post office or letter box in a postpaid sealed wrapper, addressed to the Board of Managers, such Member or Unit Owner at such address as appears on the books of the Condominium.

**Section 2. Service of Notice-Waiver.** Whenever any notice is required to be given under the provisions of the Declaration, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

## ARTICLE VI. FINANCES

**Section 1. Checks.** All checks or demands for money and notes of the Condominium shall be signed by the President and Treasurer, or by such other officer or officers or such other person or persons as the Board of Managers may from time to time designate.

**Section 2. Assessments.** The Board of Managers shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Condominium and shall send a copy of the budget and supplement to the budget to every Residential Unit Owner and mortgagee. They shall determine the total amount required, including the operational items such as insurance, repairs, reserves, betterments, maintenance of the Common Elements and other operating expenses as well as charges to cover any deficits from prior years.

The total annual requirements shall be assessed as a single sum against all Units and prorated against each of said Units according to the respective Common Interest appurtenant to such Units. This proration of assessments shall remain constant regardless of the percentage of the building square footage included in each Unit or the Common Elements restricted to the use of the Unit Owner of said Unit.

Said assessments shall be payable monthly or such other manner as ordered by the Board of Managers and shall be referred to as Common Charges. Special Common Charge assessments, should such be required, shall be levied and paid in the same manner as herein above provided for regular assessments.

The Unit Owner agrees to pay promptly when due the monthly Common Charges and all special Common Charge assessments assessed against the Unit Owner's own Unit. In the event any Unit Owner fails to make payment of the Unit Owner's Common Charge payment, the Unit Owner who owns such Unit shall be obligated to pay (a) a "late charge" of \$.15 for each \$1.00 of such amounts which remain unpaid for more than ten (10) days from their due date (although nothing herein shall be deemed to extend the period within which such amounts are to be paid) and (b) interest at the rate of two (2%) percent per month (but in no event in excess of the maximum rate theretofore collected on such amounts) computed from the due date thereof, and (c) all expenses, including, without limitation, attorneys' fees paid or incurred by the Board or by any managing agent in any proceeding brought to collect such unpaid Common Charges or in an action to foreclose the lien on such Unit Owner's Unit arising from said unpaid Common Charges in the manner permitted by applicable law. All such "late charges," interest and expenses shall be added to and shall constitute Common Charges payable by such Unit Owner.

In addition, in the event of a default in payment of Common Charge assessments by any Unit Owner, the Board, at its sole option, may declare the Common Charge assessment on said Unit Owner's Unit for the balance of the fiscal year immediately due and payable. Prior to making any such declaration following a default the Board shall send notice to the delinquent Unit Owner and the mortgagee, if any, of such Unit giving the Unit Owner a five (5) day grace period in which to make the late payment.

The Board may take action to collect any Common Charges due from any Unit Owner which remains unpaid ninety (90) days from its due date by way of foreclosure of the lien on such Unit in accordance with Section 339 of the Real Property Law or

otherwise. During the period of time the Sponsor retains a majority of the seats of the Board of Managers, the Sponsor will cause the Board of Managers to file a lien as provided for in Section 339-aa of the Real Property Law on Units in which Sponsor is more than thirty (30) days in arrears of Common Charges.

No Unit Owner shall be liable for any Common Charges, which accrue against the Unit Owner's Unit subsequent to a sale, transfer or other conveyance of the Unit by the Unit Owner in accordance with these By-Laws and the Declaration. A purchaser of a Unit shall be liable for the payment of all future Common Charges assessed against the Unit as well as unpaid Common Charges assessed against the Unit at the time of the purchase. However, where a holder of an institutional mortgage of record, or other purchaser of a Unit at a foreclosure sale of an institutional mortgage, obtains title to the Unit as a result of foreclosure, or the institutional mortgage holder obtains title by conveyance in lieu of foreclosure, such acquirer of title, its successors or assigns, shall not be liable and the Unit shall not be subject to a lien for the payment of Common Charges chargeable to such Unit which were assessed and became due prior to the acquisition of title to such Unit by such acquirer. In such event, the unpaid balance of Common Charges will be charged to all other Unit Owners as a Common Expense. The term "institutional mortgage" herein used shall mean a first mortgage granted by a bank, savings and loan association, life insurance company, pension fund, trust company or other institutional lender or a mortgage granted by the Declarant to a purchaser of a Unit or in which the Declarant participates with one of the above.

**Section 3. Purpose of Common Charges.** The Common Charges shall be used to pay for the Common Expenses of the Condominium including but not limited to repair and maintenance of the General Common Elements, including all sewer and drainage pipes for the Building; insurance; common utilities; labor; common water and sewer charges; legal and accounting; services and supplies; management fees; contingencies; reserve fund and any other expenses that are Common Expenses of the Condominium.

**Section 4. Foreclosures of Liens for Unpaid Common Charges.** The Board shall have the power to purchase any Unit at a foreclosure sale resulting from any action brought by the Board to foreclose a lien on the Unit because of unpaid Common Charges. In the event of such purchase, the Board shall have the power to hold, lease, mortgage, vote, sell or otherwise deal with the Unit. A suit to recover a money judgment for unpaid Common Charges shall also be obtainable separately without waiving the lien on the Unit. In either event the Unit Owner shall be liable for all costs of suit, including reasonable attorneys' fees.

**Section 5. Statement of Common Charges.** Upon the written request of any Unit Owner or their mortgagee, the Board shall promptly furnish such Unit Owner or their mortgagee with a written statement of the unpaid Common Charges due from such Unit Owner.

**Section 6. Liability for Utilities.** Any utility, including gas and electricity, consumed and individually metered in a Residential Unit shall be an expense of each individual Residential Unit Owner.

**Section 7. Operating Account.** There shall be established and maintained a cash deposit account to be known as the "Operating Account," into which shall be deposited the operating portion of all monthly and special assessments as fixed and determined for all Units. Disbursements from said account shall be for the general need of the operation including, but not limited to, wages, repairs, betterments, maintenance and other operating expenses of the Common Elements and for the purchase, lease, sale or other expenses resulting from the purchase or lease of Units.

**Section 8. Other Accounts.** The Board shall maintain any other accounts it shall deem necessary to carry out its purpose.

**Section 9. Determination of Common Expenses and Fixing of Common Charges.** The Board of Managers shall from time to time, and at least annually, prepare a budget for the operation of the General Common Elements and Common Expenses of the Condominium, determine the amount of the Common Charges payable by the Unit Owners to meet the Common Expenses of the General Common Elements and other expenses for, and allocate and assess such Common Charges and Common Expenses among all the Unit Owners in proportion to their respective Common Interests in the Condominium as reflected in Schedule A of the Declaration of Condominium.

The Common Expenses of the Condominium shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers pursuant to the provisions of Article VIII and the fees and disbursements of the Insurance Trustee. The Common Expenses may also include such amounts as the Board of Managers may deem proper for the operation and maintenance of the General Common Elements including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the Common Expenses for any prior year. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Board of Managers or its designee, corporate or otherwise, on behalf of all Unit Owners, of any Unit whose Owner has elected to sell or lease such Unit or of any Unit which is to be sold at a foreclosure or other judicial sale.

The Board of Managers shall advise all Unit Owners promptly, in writing, of the amount of Common Charges and Expenses payable by each of them, respectively, as determined by the Board of Managers, as aforesaid, and shall furnish copies of each budget on which such Common Charges and expenses are based, to all Unit Owners pursuant to the provisions of Article III, Section 10 of these By-Laws.

The Sponsor or its designee shall be responsible for the Common Charges assessed against each Unit owned by it until such Unit is sold to a bona fide purchaser.

## ARTICLE VII. INSURANCE AND INSURANCE TRUSTEE

**Section 1. Insurance to be Carried by the Board.** The Board of Managers shall be required to obtain and maintain, to the extent obtainable from generally acceptable insurance carriers, the following insurance: blanket property insurance, liability insurance as provided below, flood insurance (if applicable), fidelity bond coverage and worker's compensation, insuring all of the Common Elements, Limited Common Elements and the Units in the Building in the Condominium (except land, foundations, excavation and other items normally excluded from coverage) including fixtures, to the extent they are part of the Common Elements of the Condominium, building service equipment and supplies, and other common personal property belonging to the Condominium. In addition, any fixtures, equipment or other property within the Units which are to be financed by a mortgage (regardless of whether or not such property is part of the Common Elements, but not including wall, ceiling or floor decoration, furniture, furnishings or other personal property supplied or installed by the Unit Owners), contained therein, covering the interest of the Condominium, the Board of Managers and all Unit Owners and their mortgagees, as their interest may appear, in an amount equal to the full replacement value of the Building, exclusive of land, foundation, excavation and other items normally excluded from coverage. Each of such policies shall be in favor of the Condominium, and shall contain a New York standard mortgagee clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Board of Managers and the Insurance Trustee as defined below, hereinafter set forth; and such other insurance as the Board of Managers may determine. All such policies shall provide that adjustment of loss shall be made by the Board of Managers with the approval of the Insurance Trustee as defined below, and that the net proceeds thereof, if \$40,000 or less, shall be payable to the Board of Managers, and if more than \$40,000 shall be payable to the Insurance Trustee. Each Unit Owner and each Unit Owner's mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership applicable to said Unit.

The fire insurance will commence with the Closing of Title to the first Unit in an amount as required by the mortgagee of such Unit and such amount will be increased upon the Closing of Title to all Units. Until the first meeting of the Board of Managers following the first Unit Owners meeting, such amount shall be at least in the sum as provided for in the estimated first year budget contained in the Offering Plan upon completion of the Building.

All policies of physical damage insurance shall contain waivers of subrogation and of any reduction of pro rata liability of the insurer as a result of any insurance carried by Unit Owners or of the invalidity arising from any acts of the insured or any Unit Owners, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to all of the insured, including all mortgagees of a Unit. Duplicate originals of all policies of physical damage insurance and of all renewals thereof together with proof of payment of premiums, shall be delivered to all mortgagees of a Unit at least ten (10) days prior to expiration of then

current policies. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board of Managers shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the Building, including all of the Common Elements appurtenant thereto for the purpose of determining the amount of fire insurance to be effected pursuant to this Section.

All policies must also provide for the following: recognition of any, Insurance Trust Agreement; a waiver of the right of subrogation against Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Unit Owners collectively; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss. All policies shall include the standard form of a "Special Condominium Endorsement" or its equivalent. All policies shall include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement".

The Board of Managers shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of Managers may from time to time determine, covering the Common Elements, each Member and Officer of the Board of Managers, the managing agent and each Unit Owner. Such public liability coverage shall also cover cross liability claims of one insured against another. Until the first meeting of the Board of Managers following the first annual Unit Owners meeting, such public liability insurance shall be a minimum of \$1,000,000 covering all claims for bodily injury, deaths and property damage arising out of one occurrence in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Condominium. Such policies must provide that they may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Condominium and to each holder of a first mortgage on any Unit in the Condominium which is listed as a scheduled holder of a first mortgage in the insurance policy. Such coverage may also include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including, but not limited to, host liquor liability, employers liability insurance, contractual and all-written contract insurance, and comprehensive automobile liability insurance. Such public liability insurance shall commence on the closing of title to the first Unit.

In addition to the above, blanket fidelity bonds shall be required to be maintained by the Condominium for all officers, directors and employees of the Condominium and all other persons handling or responsible for, funds of or administered by the Condominium. In the event a management agent has the responsibility for handling or administering funds of the Condominium, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of the Condominium. Such fidelity bonds shall name the Condominium as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Condominium or the management agent, as the case may be, at any given time during the term of each bond. In no event may the aggregate amount of such bonds be less

than a sum equal to three (3) months aggregate assessments on all units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Condominium as a Common Expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Condominium or Insurance Trustee. Such bonds shall also provide that, if applicable, the Federal National Mortgage Association ("FNMA") and servicers on behalf of FNMA, shall also receive such notice of cancellation or modification.

Unit Owners shall not be prohibited from carrying other insurance for their own benefit provided that such policies contain waivers of subrogation and further provided that the liability of the carriers issuing insurance procured by the Board of Managers shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

**Section 2. The Insurance Trustee.** The Board of Managers on behalf of the Condominium, shall name an authorized representative, including any trustee with whom the Condominium may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose subject to the adjustment of loss provision contained in the first paragraph of this Section 1 of Article VII. The Insurance Trustee shall be a bank or trust company located in the State of New York, designated by the Board of Managers and costs associated with the Insurance Trustee shall constitute a Common Expense of the Condominium. In the event the Insurance Trustee resigns or fails to qualify, the Board of Managers shall designate a new Insurance Trustee which shall be a bank or trust company located in the State of New York. The Insurance Trustee shall have a capital, surplus and undivided profits of \$50,000 or more.

**Section 3. Restoration or Reconstruction After Fire or Other Casualty.** In the event of damage to or destruction of the Building as a result of fire or other casualty (unless seventy-five (75%) percent or more of the Residential Units are destroyed or substantially damaged and seventy-five (75%) percent or more of the Residential Unit Owners do not duly and promptly resolve to proceed with repair or restoration), the Board of Managers shall arrange for the prompt repair and restoration of the Buildings (including any damaged Residential Units, and any kitchen or bathroom fixtures initially installed therein by the Sponsor, any heating, air conditioning or other service machinery which is covered by insurance but not including any wall, ceiling or door decorations or coverings or other furniture, furnishings, fixtures or equipment installed by Residential Unit Owners in the Residential Units), and the Board of Managers or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate

progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a Common Expense and the Board of Managers may assess all the Unit Owners for such deficit as part of the Common Charges.

If seventy-five (75%) percent or more of the Residential Units are destroyed or substantially damaged and seventy-five (75%) percent or more of the Residential Unit Owners do not duly and promptly resolve to proceed with repair or restoration, the Property shall be subject to an action for partition at the suit of any Residential Unit Owner or lienor, as if owned in common in which event the net proceeds of sale, together with the net proceed of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of this Section 3, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration then the excess of such insurance proceeds) shall be divided by the Board of Managers or the Insurance Trustee, as the case may be, among all the Unit Owners in proportion to their respective Common Interests, after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Residential Unit, in the order of the priority of such liens.

## **ARTICLE VIII. HOUSE RULES**

**Section 1. General.** In addition to the other provisions of these By-Laws, the following house rules and regulations together with such additional rules and regulations as may hereafter be adopted by the Board of Managers shall govern the use of the Units and the conduct of all residents thereof:

- (a) All Residential Units shall be used for residential purposes only. All rentals, other than rentals by the Sponsor, must be subject to local zoning ordinances and must comply with the requirements contained in these By-Laws under Article XI, Section 2.
- (b) Owners, members of their families, their employees, guests and their pets, if permitted, shall not use or permit the use of the premises in any manner which would be illegal or disturbing or a nuisance to other said Owners, or in such a way as to be injurious to the reputation of the Condominium.
- (c) The Common Elements shall not be obstructed, littered, defaced or misused in any manner.
- (d) Every Residential Unit Owner must perform promptly all maintenance and repair work to their own Residential Unit and any Limited Common Element for the Residential Unit Owner's exclusive use which, if omitted, would affect the Condominium in its entirety or in a part belonging to other Residential Unit Owners, or the Building of which the Residential Unit forms apart, the Residential Unit Owner being expressly responsible for the damages and liabilities that the failure to do so may engender.

- (e) All the repairs to internal installations of the Residential Unit located in and servicing only that Residential Unit, such as telephones and sanitary installations shall be at the Residential Unit Owner's expense.
- (f) Residential Unit Owners are not permitted to make any alterations to any part of the General Common Elements nor may any structural addition, alteration or improvement (of either a temporary or permanent nature) in or to their Residential Unit, or any Limited Common Element for its exclusive use, without the prior written approval of the Board of Managers. In addition, no alteration or removal of an interior wall of a Residential Unit may be made without the prior written approval of the Board of Managers. The Board of Managers shall have the obligation to answer any written request by a Residential Unit Owner for approval of a proposed structural addition, alteration or improvement in such Residential Unit Owner's Residential Unit within forty-five (45) days after such request is received, and failure to do so within the stipulated time shall constitute a denial by the Board of Managers of the proposed structural addition, alteration or improvement. No Residential Unit Owner shall make any structural addition, alteration or improvement in or to any Residential Unit or any Limited Common Element without first (1) obtaining and maintaining during the course of such work such insurance as the Board of Managers may reasonably prescribe and providing the Board with a certificate of insurance prior to the commencement of the work, (2) executing and delivering to the Board of Managers an agreement, in form and substance reasonably satisfactory to the Board, setting forth the reasonable terms and conditions under which such alteration, addition or improvement may be made, including, without limitation, the days and hours during which any such work may be done, (3) executing and delivering to the Board of Managers an agreement indemnifying and holding harmless the Board, its members and officers, and all Residential Unit Owners of the Condominium from and against any liability, cost or expense arising out of or connected to such work and (4) obtaining all approvals, as necessary, from the City of New York or any other governmental agency. In the event the Board of Managers chooses to have the proposed structural addition, alteration or improvement reviewed by an independent architect or engineer, the Residential Unit Owner shall pay the charges of such architect or engineer. The Residential Unit Owner shall also bear the cost of any increased taxes or insurance premiums resulting from the structural alterations, additions or improvements.

Any application to any department of the City of New York or any other governmental authority for a permit to make a structural addition, alteration or improvement in or to any Residential Unit or Limited Common Element for its exclusive use shall be completed by the Residential Unit Owner and executed by the Board of Managers only, without however, incurring any liability on the part of the Board of Managers or any of them

to any contractor, subcontractor or materialmen on account of such structural addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.

These provisions shall not apply to Residential Units owned by the Sponsor or its designee until such Residential Units shall have been initially conveyed by the Sponsor or such designee.

- (g) No resident of the Condominium shall post any signs, advertisement, or posters of any kind in or on the Common Elements (General or Limited) or their Units including "For Sale" and "For Rent" signs except as authorized and approved by the Board of Managers.
- (h) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out of a Residential Unit or on any balcony or exposed on any part of the Common Elements. The General Common Elements and Limited Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials. No rugs or mops shall be shaken or hung from or on any of the doors, windows, or balconies, nor shall a Residential Unit Owner sweep or throw or permit to be swept or thrown therefrom any dirt or other substance.
- (i) No Residential Unit Owner shall paint the exterior surfaces of the windows, walls or doors opening out of their Residential Unit.
- (j) No television or radio antenna or any other type of receiving or transmitting antenna or structure shall be erected on the exterior of the Building without the prior written consent of the Board of Managers.
- (k) Each Residential Unit Owner shall keep their Residential Unit and its appurtenant Limited Common Element in a good state of preservation, condition, repair and cleanliness in accordance with the terms of the By-Laws.
- (l) No animals shall be kept or harbored in the Condominium or any Residential Unit except for the following: one (1) dog weighing sixty (60) pounds or less; one (1) household cat; one (1) domestic bird and one (1) domestic fish tank. No exceptions will be permitted unless the same in each instance be expressly permitted in writing by the Board of Managers of the Condominium. The Board of Managers may require the permanent removal of any animal kept in a Residential Unit that is not in compliance with the above as well as any animal causing or creating a nuisance or unreasonable disturbance or noise upon three (3) days written notice from the Board of Managers. In no event shall any pet be permitted in any of the public corridors or lobbies of the Condominium unless carried or on leash. All Residential Unit Owners shall be responsible for picking up and

disposing of their pets' waste and responsible and liable for any damage caused by their pets to any Common Elements of the Condominium and shall comply with the local and municipal rules and regulations regarding pets.

- (m) No television or radio antenna or any other type of receiving or transmitting antenna or structure shall be erected on the exterior Residential Unit without the prior written consent of the Board of Managers. The Board of Managers may adopt such rules and regulations pertaining to antenna so as to comply with the Federal Communications Commission rules adopted on October 14, 1996.
- (n) Any Unit Owner who sells their Unit shall notify the Board of Managers, providing the name and address of the new Unit Owner, within thirty (30) days of the execution of the Purchase Agreement of the sale of the Unit for the new Purchaser.
- (o) All Unit Owners who mortgage or refinance their Unit shall be required to provide the Board of Managers with the name and address of the mortgagee within thirty (30) days of the issuance of the mortgage.
- (p) The Board of Managers shall, at the request of the mortgagee of the Unit, report any delinquent assessments due from the Owner of such Unit.
- (q) Every Unit Owner shall be liable for any and all damage to the Common Elements and the property of the Condominium, which shall be caused by said Unit Owner, the Unit Owner's permitted lessees and occupants of Residential Units, their respective family members and guests and such other person for whose conduct the Unit Owner is legally responsible.
- (r) No Residential Unit Owner shall make or permit any disturbing noises in any Residential Unit or do or permit anything to be done therein, which will interfere with the rights, comforts or conveniences of other Residential Unit Owners.
- (s) No Residential Unit Owner nor any of the Residential Unit Owner's agents, servants, employees, licensees, or visitors shall at any time bring into or keep in their Residential Unit or any storage area any flammable, combustible or explosive fluid, material, chemical or substance, except for normal household use.
- (t) The agents of the Board of Managers or the managing agent, if any, and any contractor or workman authorized by the Board of Managers or the managing agent, may enter any Unit at any reasonable hour of the day 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, insect or other pest, provided that such right will be exercised in such a manner as will not unreasonably interfere with the residential use of the Units.

- (u) If any key or keys are entrusted by a Unit Owner or occupant or by the Unit Owner's agent, servant, employees, licensee or visitor to any employee of the Board of Managers, whether for any Unit or an automobile or other type of personal property, the acceptance of the key shall be at the sole risk of such Unit Owner or occupant, and the Board of Managers shall not be liable for injury, loss or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith.
- (v) The Board of Managers or the managing agent may retain a pass-key to each Residential Unit. The Residential Unit Owner shall not alter any lock on any door leading to their Residential Unit without the written consent of the Board of Managers or the managing agent. If such consent is given, the Board of Managers or the managing agent shall be provided with a key.
- (w) No Residential Unit Owner shall install or permit to be installed any window mounted air conditioning unit in their Residential Unit.
- (x) Planting of fruits or vegetables is absolutely prohibited in or on any Common Element and/or Limited Common Element.
- (y) Unit Owners will faithfully observe the procedures established from time to time by the Board of Managers or the managing agent with respect to services provided and the management of the Building.
- (z) All Residential Unit Owners shall keep their thermostats at a minimum of sixty (60°) degrees Fahrenheit to prevent freezing of pipes. Any Residential Unit Owner failing to adhere to this requirement shall be responsible for any damage done to the Common Elements of the Condominium and/or any other Residential Unit.
- (aa) The entrances, passages, public halls, elevators (if applicable), vestibules, corridors and stairways of the Condominium may not be obstructed or used for any other purpose other than ingress to and egress from the Units.
- (bb) No article (including, but not limited to, bicycles, garbage cans, bottles or mats) may be placed in any of the passages, elevators (if applicable), public halls, vestibules, corridors or stairways of the Condominium, nor may any fire exit be obstructed in any manner.

- (cc) Neither occupants nor their guests are permitted to play in, exercise or use for any unintended purposes, the entrances, passages, public halls, elevators (if applicable), vestibules, corridors and stairways of the Condominium.
- (dd) No public hall or public elevator or vestibule, if applicable, of the Condominium is permitted to be decorated or furnished by any Unit Owner in any manner.
- (ee) No window guards or window decorations (other than curtains and window treatments which conform to the By-Laws) are permitted to be used in or about any Residential Unit, unless otherwise required by law, except such as will have been approved in writing by the Board of Managers.
- (ff) No construction or repair work or other installation involving noise is permitted to be conducted in any Residential Unit except on weekdays (not including legal holidays) and only between the hours of 8:00 A.M. and 5:00 P.M., unless such construction or repair work is necessitated by an emergency or unless such work is performed by the Sponsor.
- (gg) Water closets and other water apparatus and utility closets are not permitted to be used for any purpose other than those for which they were designed, nor are any sweepings, rubbish, rags or any other article permitted to be thrown into the same. Any damage resulting from misuse of any water closets or other apparatus in a Residential Unit will be repaired and paid for by the Residential Unit Owner of such Residential Unit.
- (hh) No Unit Owner is permitted to send any employee of the Condominium or of the managing agent thereof out of the Building on any private business.
- (ii) Corridor doors are required to be kept closed at all times except when in actual use for ingress or egress to and from public corridors.
- (jj) Except as permitted under the Declaration and By-Laws, Unit Owners, their families, guests, servants, employees, agents, visitors, tenants, sublessees or licensees are not permitted at any time or for any reason whatsoever to enter upon or attempt to enter upon the roofs of the Building.
- (kk) Unit Owners, their guests, servants, employees, agents, visitors, tenants, sublessees or licensees will not cause or permit any unusual or objectionable odors to be produced upon or to emanate from their Units or any public portions of the Building.

- (ll) Nothing may be done or kept in any Unit or in the General or Limited Common Elements, which will increase the rate of insurance of the Building or contents thereof without the prior written consent of the Board of Managers. No Unit Owner will permit anything to be done or kept in such Unit Owner's Unit or in the General or Limited Common Elements which may result in the cancellation of insurance on the Building or which would be in violation of any law. No waste will be permitted in the General or Limited Common Elements.
- (mm) No group tour or exhibition of any Unit or its contents will be conducted, nor will any auction sale or other sale of contents be permitted to be held in any Unit, without the prior consent of the Board or the managing agent.
- (nn) In the event that any Residential Unit is used for home occupation purposes, which may be permitted by Law and the By-Laws, in no event will any patients, clients or other invitees be permitted to wait in any lobby, public hallway or vestibule.
- (oo) There will be no barbecuing permitted in the Units, in or on their Limited Common Elements, or the General Common Elements.
- (pp) No person shall park an automobile on any of the General Common Elements of the Condominium or obstruct any Unit Owner's use of ingress or egress to any Parking Space Unit. Automobiles shall include SUV's, station wagons or other similar types of automobiles. Any person parking an automobile illegally shall be subject to their automobile being towed and/or the Condominium imposing a fine. In the event an automobile is towed, all costs associated with the removal of the automobile shall be paid for by the owner of the automobile and the Condominium shall not be held responsible for any damage to the automobile.

## **Section 2. Violations of Rules and Regulations.**

- (a) Upon receipt, by the President of the Board of Managers or by the managing agent, of a signed written complaint alleging violation of any of the House Rules or other provisions of the By-Laws as herein established or hereafter established or adopted by the Board of Managers, the President of the Board, or in the President's absence, the Vice President together with a minimum of two (2) other Members of the Board, without a formal meeting of the Board, shall make a determination as to the validity of the complaint. Any Unit Owner accused of a violation of the House Rules or other provisions of the By-Laws shall be entitled to receive written notice by registered mail of such accusation. The written notice shall contain the following statements:

- i) A copy of the rule or regulation the Unit Owner has violated and a description of the manner in which the Unit Owner violated the rule or regulation.
  - ii) A time and place at which the Unit Owner shall be given the opportunity to present a defense before final action is taken.
- (b) If, after said notice and hearing it is determined that the complaint is valid and justified the managing agent shall be directed to send written notice to the violator. If the violation is not corrected or eliminated within a period of three (3) days from the date of receipt of such notice, another notice will be sent levying a fine of up to five hundred (\$500) dollars upon the violator; such fine is to be considered as an additional Common Charge to the account of the violator and shall be treated as such regarding late penalties and a lien upon the property as elsewhere provided for in the Declaration of Condominium or By-Laws. If after imposition of a fine the violation is not corrected or eliminated, the Board of Managers may assess additional fines of up to two hundred and fifty (\$250) dollars each after serving written notice upon the violator as provided for above. If the violation results in loss of or damage to property classified as a Common Element, the Board of Managers shall itself or direct the managing agent, if employed, to have said loss or damage repaired or replaced and the actual cost of said repair or replacement shall be assessed to the violator as an additional Common Charge.

**Section 3. Costs.** Any costs incurred by the Board of Managers to remedy or cure any violation of these By-Laws, the Rules and Regulations as herein or hereafter established, shall be an additional Common Charge charged to the violator in addition to the one hundred fifty (\$150) dollar fine(s) levied upon the violator. Fines may be levied against a Unit Owner's tenant, and the Unit Owner shall be jointly and severally liable with his tenant for the payment of same.

In the event the Condominium institutes legal action for the collection of any fines or the enforcement of any of the provisions of the Declaration, By-Laws and/or Rules and Regulations of the Condominium, then the Defendant shall be responsible for payment of reasonable attorney's fees of the Condominium, plus interest and costs of suit.

**Section 4. Board of Managers Right to Change Rules and Regulations.** The Board of Managers reserves the right to rescind, alter, waive or add, as to one or more or all occupants, any rule or regulation at any time prescribed for the Condominium when, in the reasonable judgment of the Board of Managers, the Board of Managers deems it necessary or desirable for the reputation, safety, character, security, care, appearance or interests of the Condominium, or the preservation of good order therein, or for the operation or maintenance of the Condominium or the equipment thereof, or the comfort of Unit Owners, occupants or others in the Condominium. No rescission, alteration, waiver or addition of any rule or regulation in respect of one Unit Owner or

other occupant will operate as a rescission, alteration or waiver in respect of any other Unit Owner or other occupant.

**Section 5. Sponsor.** The above provisions shall not apply to the Sponsor unless required: (a) to comply with applicable laws or regulations, or (b) to remedy any notice of violation.

**Section 6. Smoking Policy.** In compliance with Local Law 147 and pursuant to Article 17 of the New York City Administrative Code, the following smoking policy has adopted for the Building (the "Smoking Policy"):

Smoking is PROHIBITED (i) in all commons areas of the Building, including, but not limited to, the lobby, entryways, vestibules, ante rooms, mail rooms, storage rooms, bike rooms, common rooms, amenity rooms, gym, roof decks, garbage chute rooms, compactor rooms, basement, corridors, hallways, stairwells, elevators, playroom, garage, garage ramp, walkways, ; and (ii) within twenty-five (25) feet of any outside entrance to the Building or within twenty-five (25) feet of any outdoor air intake or operable window opening onto Common Elements or Units.

For the purposes of this Smoking Policy, the term "smoking" includes, but is not limited to, inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or any other form of lighted object or device which contains tobacco, including the use of electronic cigarettes or any similar device that delivers vapor for inhalation (including any refill, cartridge or other component of an electronic cigarette or similar device), or any other items or materials that may be smoked, whether such substance is a legal substance or an illegal substance. This Smoking Policy applies to all unit owners, tenants, subtenants, occupants and residents of the Building, and to any guests, agents, licensees and invitees of a Unit Owner. It is the Unit Owner's responsibility to ensure that its tenants, subtenants, occupants, residents, guests, agents, licensees and invitees comply with this Smoking Policy.

Smoking is PERMITTED within individual apartments and on the terraces, balconies, patios and yards attached to individual apartments (except within twenty-five (25) feet of any outside entrance to the Building or within twenty-five (25) feet of any outdoor air intake or operable window opening onto Common Elements or Units). However, if there are reported and substantiated incidents of infiltration of smoke/smoke odors into common areas of the Building (including, but not limited to, hallways) and/or other apartments in the Building, it will be the offending Unit Owner's responsibility, at its sole cost and expense, to abate the nuisance.

Any Unit Owner who sells, leases, or subleases its apartment must include a copy of this Smoking Policy in the contract of sale, lease or sublease.

In the event of a violation of this Smoking Policy, in addition to and not in diminution of, all other remedies available to the Condominium, as provided in its Declaration of Condominium and By-Laws, or at law or in equity, with regard to a default

by the Unit Owner, the Board shall have the right to impose an administrative fee in the amount of Two Hundred Fifty (\$250.00) Dollars on the Unit Owner for each such violation of this Smoking Policy. A continuing violation shall be considered a new violation. This fine shall be in addition to any other violation fine permitted in these By-Laws.

The Board will advise Unit Owners of any changes to the Smoking Policy.

## **ARTICLE IX. DEFAULT**

In the event a Unit Owner does not pay any sums, charges or assessments required to be paid when due, as determined by the Board of Managers, the Board of Managers, acting in behalf of the Board shall notify the Unit Owner and the mortgagee, if any, of such Unit. If such sum, charge or assessment shall remain unpaid for ninety (90) days after the giving of such notice, the Board may foreclose the lien encumbering the Unit as a result of the non-payment of the required monies as set forth in the Declaration (subject to the lien of any first mortgage), in the same manner as the foreclosure of a mortgage. In the event the owner of a Unit does not pay the Common Charge assessment required to be paid by him on its due date, the Board of Managers may collect said fees and take such action as is provided in Article VI, Section 2 of these By-Laws and said Unit Owner shall be liable for the Condominium's reasonable costs and a reasonable attorney's fee incurred by it incident to the collection or enforcement of such lien.

In addition to the Board's right to bring an action to foreclose a lien on a Unit Owner's Unit, the Board (on behalf of the Unit Owners) shall have the right to bring suit to recover a money judgment for unpaid Common Charges at the option of the Board, without foreclosing or waiving the lien securing such charges. In such an event the Unit Owner shall be liable for the reasonable costs and reasonable attorney's fee incurred by it incident to the collection of the delinquent Common Charges

## **ARTICLE X. AMENDMENTS**

These By-Laws may be altered, amended or added to at any duly called Residential Unit Owners meeting; provided: (1) that the notice of the meeting shall contain a full statement of the proposed amendment; (2) that the amendment shall be approved by sixty-six and two-thirds ( $66\frac{2}{3}\%$ ) percent of the Residential Unit Owners in number and Common Interest and (3) said amendment shall be set forth in a duly recorded amendment to the Declaration. However, no amendment will affect or impair the validity or priority of the Unit Owners' interest and/or the validity, interest, rights and priorities of holders of a mortgage encumbering a Unit or Units.

Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition or deletion of, to or from the By-Laws or any rules and regulations shall be effective in any way against Sponsor or its designee or any Unsold Unit, as long as the Sponsor owns an Unsold Unit in the Condominium unless Sponsor has given its prior written consent thereto. This provision is not subject to amendment.

## ARTICLE XI. SELLING, MORTGAGING AND LEASING UNITS

**Section 1. Selling and Leasing Units.** Any Residential Unit may be conveyed or leased, subject to the leasing requirements contained in Section 2, subject to local zoning ordinances, by its Residential Unit Owner free of any restrictions except that no Residential Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease their Residential Unit unless and until all unpaid Common Charges assessed against the Residential Unit Owner's Residential Unit shall have been paid to the Board of Managers of the Condominium. However, such unpaid Common Charges can be paid out of the proceeds of the sale of a Residential Unit, or by the Grantee. Notwithstanding the above any Residential Unit Owner who wishes to enter into a lease for the Residential Unit Owner's Residential Unit shall be required to provide the Board of Managers of the Condominium with a copy of the lease prior to its execution. All leases must comply with all the requirements contained in Section 2 below. Failure to comply will be deemed an automatic violation of the By-Laws of the Condominium. Further, a Unit Owner may convey the Unit Owner's Unit and Common Interest appurtenant thereto, to the Board of Managers on behalf of all Unit Owners free of any cost to the Board or the Unit Owners and upon such conveyance such Unit Owner shall not be liable for any Common Charges thereafter accruing against such Unit. Any sale or lease of any Unit in violation of this section shall be voidable at the election of the Board of Managers.

The provisions of this section shall not apply to the acquisition or sale of a Unit by a first mortgagee who shall acquire title to such Unit by foreclosure or by deed in lieu of foreclosure. Such provisions shall, however, apply to any purchaser from such mortgagees.

Whenever the term "Residential Unit" is referred to in this section, it shall include the Residential Unit, the Residential Unit Owners undivided interest in the Common Elements and Residential Unit Owners interest in any Residential Units acquired by the Board of Managers.

**Section 2. Leasing Requirements.** Except as noted in Sections 4, 5 and 6 every lease on every Residential Unit in the Condominium is subject to the following rules and regulations, regardless of whether stated in the lease:

- (a) the lease must be in writing;
- (b) the lease must be for the entire Residential Unit;
- (c) the lease must be for a minimum and maximum of twelve (12) months. Renewals shall be for a one (1) year term and are subject to review by the Board of Managers of the Condominium;
- (d) the Residential Unit must be covered by adequate renters insurance for the duration of the lease and any subsequent extensions. A copy of such policy shall be forwarded to the Board of Managers prior to a tenant taking occupancy of a Residential Unit.

- (e) the use of the premises is subject to the Declaration and the By-Laws of the Condominium and the rules and regulations of the entire Condominium;
- (f) within thirty (30) days of occupancy by the tenant, the name and telephone number of the tenant, together with a clear and complete copy of the lease, must be furnished to the managing agent or if no managing agent to a Member of the Board of Managers of the Condominium;
- (g) within forty-five (45) days of any renewal of a lease of a tenant, the name and telephone number of the tenant, together with a clear and complete copy of the renewal lease, must be furnished to the managing agent or if no managing agent to the Board of Managers of the Condominium for review;
- (h) the Residential Unit cannot be used as a motel or hotel or otherwise for transient tenants;
- (i) if any Residential Unit Owner (landlord) or tenant is in violation of any of the provisions of the Declaration or By-Laws, or both, including any rules and regulations, the Board of Managers of the Condominium may bring an action in its own name or in the name of the Residential Unit Owner, or both, to have the tenant evicted or to recover damages, or both.

In order to carry out the provisions of this Article XI and pursuant to the provisions of Article Fourteenth of the Declaration of Condominium each Unit Owner shall upon becoming a Unit Owner grant or be deemed to have granted an irrevocable power of attorney, to nominate, designate, constitute and appoint the Members of the Board of Managers of the Condominium and their successors, jointly, their true and lawful attorneys-in-fact, coupled with an interest, with power of substitution, in their name and on their behalf, the right to act in their behalf to take any and all action necessary against any tenant(s) that may be residing in a Residential Unit Owner's Condominium Residential Unit including but not limited to, the right to seek an eviction in a court of law for failure to adhere to any of the provisions of the Declaration of Condominium, By-Laws and/or Rules and Regulations of the Condominium. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies available to the Board of Managers of the Condominium. If permitted by present or future law, the Condominium may recover all of its costs, including court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Residential Unit that shall bind the Residential Unit in the hands of the then Residential Unit Owner and the Residential Unit Owner's successors and assigns. The Board of Managers of the Condominium shall give the tenant and the Residential Unit Owner written notice of the nature of the violation of the rules, and thirty (30) days from the mailing of the notice in which to cure the violation before the Board of Managers of the Condominium may file for eviction.

**Section 3. Tenant Bound by Declaration.** By becoming a tenant, each tenant agrees to be bound by the Declaration, By-Laws and the other rules and regulations of the Condominium and recognizes and accepts the right and the power of the Board of Managers of the Condominium to evict the tenant for any violation by the tenant of the above, and the other rules and regulations of the Condominium.

**Section 4. Lenders.** To protect first mortgage lenders and to encourage first mortgage lenders to make loans on Units in the Condominium, only subsections (b), (d), (e), (f), (g) and (h) of Section 2 of this Article XI shall apply to a first mortgage lender who has title to the Unit through (a) foreclosure of its first mortgage on the Unit; or (b) a deed in lieu of foreclosure of its first mortgage on the Unit. Any subsequent purchaser from the first mortgage lender is subject to all the terms of Article XI.

**Section 5. Sponsor.** The terms of Sections 2, 3 and 4 of this Article XI shall not be applicable to the Sponsor, its successors or assigns.

**Section 6. Waiver of Partition Rights.** The Residential Unit Owners waive all of their voting rights concerning partition respecting any Residential Unit acquired by the Board of Managers in accordance with this Article.

**Section 7. Real Property Law Section 339-kk.** Pursuant to the provisions of Section 339-kk of the Real Property Law of the State of New York, any non-occupying Unit Owner who rents any Unit in the Condominium to a rental tenant and then fails to make payments due for Common Charges, assessments or late fees for such Unit within sixty (60) days of the expiration of any grace period after they are due is subject to the following: Upon notice in accordance with the statute, all rental payments from the tenants shall thereafter be directly payable to the condominium association. The provisions of Section 339-kk of the Real Property Law shall control any dispute pursuant to this provision of the By-Laws.

**Section 8. Gifts, etc.** Any Unit Owner may convey or transfer their Unit by gift during their lifetime or devise their Unit by will or pass the same by intestacy, without restriction.

## **ARTICLE XII. CONDEMNATION**

In the event all or part of the Common Elements are taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Insurance Trustee if the award is more than \$40,000 and to the Board of Managers if the award is \$40,000 or less, to be distributed in accordance with Section 3 of Article VII but in the following amounts:

(a) so much of the award as is applicable to unrestricted Common Elements, to the Unit Owners pro rata according to the respective Common Interest appurtenant to the Units owned by such Unit Owners.

(b) so much of the award as is applicable to Irrevocably Restricted Common Elements to the Residential Unit Owner having general use of such Common Element.

In such eminent domain or condemnation proceeding the Board shall request that the award shall set forth the amount allocated to unrestricted Common Elements and to each Irrevocably Restricted Common Element. In the event the award does not

set forth such allocation then the question of such allocation shall be submitted to the arbitration in accordance with the Arbitration Statutes of the State of New York.

### **ARTICLE XIII. SPONSOR RIGHTS**

**Section 1. Sales.** The Sponsor, its nominees and agents, shall have the right and privilege to maintain general and local sales offices in and about the Condominium, including any model Residential Units located within the Condominium Buildings or elsewhere throughout the project, and shall have the right and privilege to have their representatives, employees and agents present on the Condominium premises to show the Units to prospective purchasers, to utilize the Common Elements, and without limitation, to do any and all things necessary to incident to the sale of the Units, without charge or contribution other than in the form of Common Charge payments as otherwise provided for herein.

**Section 2. Signs.** The Sponsor shall have the right to continue to employ signs of its choice upon the Condominium premises in its efforts to construct and sell the Units. Incident to the rights and privileges provided for herein, the officers, employees, agents, contractors, guests and invitees of the Sponsor, its successors and assigns, shall have the right of ingress and egress to and throughout the Common Elements of the Condominium. This Article XIII may not be modified or amended without the written consent of the Sponsor so long as the Sponsor continues to own one (1) or more unsold Units.

### **ARTICLE XIV. MISCELLANEOUS**

**Section 1. Insurance.** Under no circumstances shall a Unit Owner permit or suffer anything to be done or left in their Unit which will increase the insurance rates on their Unit or any other Unit or on the Common Elements.

**Section 2. Severability.** Should any of the covenants, terms or provisions herein imposed be void or be or become unenforceable at law in equity, the remaining provisions of these By-Laws shall, nevertheless, be and remain in full force and effect.

**Section 3. Notice to Condominium.** A Unit Owner who mortgages a Unit, shall notify the Condominium through the management agent, if any, or the President of the Board of Managers of the Condominium and the President of the Board of Directors of the Unit Owners Association in the event there is no management agent, of the name and address of his mortgagee; and the Board of Managers shall maintain such information in a book entitled "Mortgagees of Units".

**Section 4. Notice of Unpaid Assessments.** The Board of Managers shall at the request of a mortgagee of a Unit, report any unpaid assessments due from the Unit Owners of such Unit.

**Section 5. Examination of Books and Records.** Every Residential Unit Owner or his representative and mortgagee shall be entitled to examine the books and records of the Condominium on reasonable notice to the Board but not more often than once a month.

**Section 6. Construction.** Wherever the masculine singular form of the pronoun is used in these By-Laws, it shall be construed to mean the masculine, feminine or neuter; singular or plural; wherever the context so requires.

**Section 7. Compliance with Article 9-B.** These By-Laws are set forth to comply with the requirements of Article 9-B of the Real Property Laws of the State of New York. In case any of these By-Laws conflict with the provisions of said Statute or of the Declaration, the provisions of the Statute or of the Declaration, whichever the case may be, shall control.

## **ESCROW AGREEMENT**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between 96 16<sup>th</sup> STREET LLC, with an address at 137 Varick Street, Suite #503 New York, New York 11228 ("SPONSOR") as Sponsor of the offering plan for 96 16<sup>th</sup> Street Condominium and MORITT HOCK & HAMROFF LLP with an address at 1407 Broadway, 39<sup>th</sup> Floor, New York, New York 10018 ("ESCROW AGENT") as ESCROW AGENT.

**WHEREAS**, 96 16<sup>th</sup> STREET LLC is the SPONSOR of an offering plan to develop a condominium for the premises located at 96-16<sup>th</sup> Street, Brooklyn, New York 11215, which premises are known as 96 16<sup>th</sup> Street Condominium; and

**WHEREAS**, MORITT HOCK & HAMROFF LLP, is authorized to act as an ESCROW AGENT hereunder in accordance with General Business Law ("GBL") Section 352-e(2-b) and the New York State Attorney General's ("Attorney General") regulations promulgated thereunder; and

**WHEREAS**, SPONSOR desires that ESCROW AGENT act as ESCROW AGENT for deposits and payments by purchasers and subscribers, pursuant to the terms of this agreement.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained herein and other good and valuable consideration, the parties hereby agree as follows:

### **1. ESTABLISHMENT OF THE ESCROW ACCOUNT**

1.1. ESCROW AGENT shall establish an escrow account for the purpose of holding the Deposit made by purchasers or subscribers. The escrow account has been opened with Popular Community Bank, 85 Broad Street, New York, New York 10004 in the State of New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled "MORITT HOCK & HAMROFF LLP, F/B/O 96 16<sup>th</sup> STREET CONDOMINIUM – IOLA ESCROW ACCOUNT" ("Escrow Account"). The account number is TBD.

1.2. ESCROW AGENT has designated the following attorneys to serve as signatories: Anthony J. Ficara, Ted A. Berkowitz, and Robert M. Finkel. All designated signatories are admitted to practice law in the State of New York.

All of the signatories on the Escrow Account have an address of 1407 Broadway, 39<sup>th</sup> Floor New York, New York 10018, and a telephone number of (212) 239-2000.

1.3. 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 this Agreement or otherwise concerning the maintenance of or release of the Deposit from escrow.

1.4 Neither ESCROW AGENT nor any authorized signatories on the Escrow Account are the Sponsor, Selling Agent, Managing Agent (as those terms are defined in the Plan), or any principal thereof, or have any beneficial interest in any of the foregoing

1.5 The Escrow Account is an IOLA account established pursuant to Judiciary Law Section 497.

## **2. DEPOSITS INTO THE ESCROW ACCOUNT**

2.1 All funds received from prospective purchasers or subscribers prior to closing, whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be placed into the Escrow Account. All instruments to be placed into the Escrow Account shall be made payable directly to the order of MORITT HOCK & HAMROFF LLP, as ESCROW AGENT, pursuant to the terms set forth in the Plan. Any instrument payable to, or endorsed other than as required hereby, and which cannot be deposited into such Escrow Account, shall be returned to the prospective purchaser or subscriber promptly, but in no event more than five (5) business days following receipt of such instrument by ESCROW AGENT. In the event of such return of the Deposit, the instrument shall be deemed not to have been delivered to ESCROW AGENT pursuant to the terms of this Agreement.

2.2 ESCROW AGENT is hereby obligated to send a notice of all Deposits received by ESCROW AGENT to a purchaser within ten (10) business days of receipt of same. Such notice shall set forth the Bank, the account number, and the initial interest rate earned thereon. If the purchaser does not receive notice within fifteen (15) business days after tender of the Deposit, the purchaser may cancel the subscription purchase agreement within ninety (90) days after tender of the Deposit. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, 21<sup>st</sup> Floor, New York, N.Y. 10005. 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 the Deposit and requisite notice was timely mailed to the purchaser.

## **3. RELEASE OF FUNDS**

3.1 Under no circumstances shall SPONSOR seek or accept release of the Deposit of defaulting purchaser to SPONSOR 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 shall not relieve SPONSOR or ESCROW AGENT of any obligation to a purchaser as set forth in GBL §§ 352-3(2-b) and 352-h.

3.2 ESCROW AGENT shall continue to hold the funds in escrow until otherwise directed in (a) pursuant to terms and conditions set forth in the purchase agreement and this Agreement, upon closing of title to the [shares/unit/membership interest/fractional interest]; 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 of competent jurisdiction; or (d) the ESCROW AGENT is changed pursuant to the terms of the Escrow Agreement in connection with the transfer of funds to the new escrow agent; or (e) funds which were deposited prior to the acceptance of the contract are returned to the purchaser because of rejection of the contract by the SPONSOR; or (f) any governmental authority imposes a ban on the construction or completion of residential dwellings or imposes restrictions on the manufacture, sale, distribution and/or use of materials from SPONSOR's regular suppliers or from using same in the construction and/or completion of the Home making the construction or completion of the Development unlikely; or (g) SPONSOR is unable to obtain materials from its usual sources due to labor troubles, lockouts, war, military operations and requirements, civil unrest, acts of God or national emergencies making the construction or completion of the Development unlikely; or (h) the installation of public utilities is restricted or curtailed making the construction or completion of the Development unlikely; or (j) until released in accordance with paragraphs 3.3 and 3.4. Funds deposited in escrow for upgrades and extras to the Unit may be released from the escrow account without the requirements outlined herein provided SPONSOR uses the funds for such upgrades and extras and notifies the ESCROW AGENT in writing of such fact.

3.3 If Escrow Agent is not directed to release the Deposit pursuant to paragraph 3.2 above, and Escrow Agent receives a request by either SPONSOR or a purchaser 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 purchaser and SPONSOR informing them of said release. If Escrow Agent receives a written notice from either a purchaser or SPONSOR 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 paragraph 3.2 above. Notwithstanding the foregoing, 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/building] is located and shall give written notice to both SPONSOR and purchaser of such deposit.

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

3.4.1 Purchaser, if purchaser timely rescinds in accordance with an offer of rescission contained in the Plan or an Amendment to the Plan; or

3.4.2 Purchaser after an Amendment abandoning the Plan is accepted for filing by the New York State Department of Law.

#### **4. RECORDKEEPING**

4.1 ESCROW AGENT shall maintain all records concerning the Escrow Account for seven years after release of the Deposit.

4.2 Upon the dissolution of the law firm which was ESCROW AGENT, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the partners or members of the firm or by the successor firm and shall notify the New York State Department of Law of such transfer.

4.3 ESCROW AGENT shall make available to the Attorney General, upon request, all books and records of ESCROW AGENT relating to the funds deposited and disbursed hereunder.

#### **5. GENERAL OBLIGATIONS OF ESCROW AGENT**

5.1 ESCROW AGENT shall maintain the Escrow Account under its direct supervision and control.

5.2 A fiduciary relationship shall exist between ESCROW AGENT, and the purchasers, and ESCROW AGENT acknowledges its fiduciary and statutory obligations pursuant to GBL §§ 352(e)(2-b) and 352(h).

5.3 ESCROW AGENT may rely upon any paper or document which may be submitted to it in connection with its duties under this 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.

#### **6. RESPONSIBILITIES OF SPONSOR**

6.1 SPONSOR agrees that SPONSOR and its agents, including any selling agents, shall deliver the Deposit received by them prior to closing of the [unit/shares/membership interest/fractional interest] 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 a purchaser, along with the form of tender of deposit attached hereto as Exhibit "A" to this Escrow Agreement, executed by Sponsor.

6.2 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.

6.3 SPONSOR shall obtain or cause the selling agent under the Plan to obtain a completed and signed Form W-9 or W-8, as applicable, from each purchaser and deliver such form to ESCROW AGENT together with the Deposit and purchase agreement.

## **7. TERMINATION OF AGREEMENT**

7.1 This Agreement shall remain in effect unless and until it is canceled by either:

7.1.1 Written notice given by SPONSOR to ESCROW AGENT of cancellation of designation of ESCROW AGENT to act in said capacity, which cancellation shall take effect only upon the filing of an amendment to the Plan with the Department of Law providing for a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law.

7.1.2 The resignation of ESCROW AGENT, which shall not take effect until ESCROW AGENT is replaced by a successor escrow agent that meets the requirements set forth in applicable regulations of the New York State Department of Law, and notice is given to purchaser of the identity of the successor escrow agent, the Bank in the State of New York where the Deposit is being held, and the account number therefor.

7.2 Upon termination of the duties of ESCROW AGENT as described in paragraph 7.1.1 or 7.1.2 above, ESCROW AGENT shall deliver the Deposit held by ESCROW AGENT and the purchase agreement and any other documents maintained by ESCROW AGENT relating to the Deposit to the successor escrow agent.

## **8. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon SPONSOR and ESCROW AGENT and their respective successors and assigns.

## **9. GOVERNING LAW**

This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

## **10. ESCROW AGENT'S COMPENSATION**

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.

## **11. SEVERABILITY**

If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of such provision to other persons or to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

## 12. INDEMNIFICATION

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 this Agreement or the performance or non-performance of ESCROW AGENT'S duties under this Agreement, except with respect to actions or omissions taken or suffered by ESCROW AGENT in bad faith or in willful disregard of this 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.

## 13. ENTIRE AGREEMENT

This Agreement, read together with GBL §§ 352-e(2-b) and 352-(h) and the New York State Department of Law's regulations, constitutes the entire agreement between the parties with respect to the subject matter hereof.

## 14. NOTICES

14.1 Any notice required to be given or given hereunder shall be given by depositing such notice in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, or by Express Mail, Federal Express or similar overnight courier, facsimile transmission, messenger service (with proper receipt therefor), addressed to the party at the address herein above set forth with a copy of any such notice by regular mail to the attorney for such party as follows:

IF TO ESCROW AGENT:

MORITT HOCK & HAMROFF LLP  
1407 Broadway, 39<sup>th</sup> Floor  
New York, New York 10018  
Attn: Anthony J. Ficara, Esq

IF TO SPONSOR:

96 16<sup>th</sup> STREET LLC  
137 Varick Street, Suite #503  
New York, New York 11228  
Attn: Jorge Mastropietro

Any notice may be given by the attorney for a party and shall have the same force as if given by the party. Either party may, by notice, change the address at which notices are to be given hereunder.

## 15. CAPTIONS AND HEADINGS

15.1 The captions and headings used in this Agreement are intended for convenience and reference only and shall not imply or convey any additional meanings to the contents of the respective provisions.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the day and year first written above.

**ESCROW AGENT:**

MORITT HOCK & HAMROFF LLP

By: \_\_\_\_\_  
Anthony J. Ficara, Esq.

**SPONSOR:**

96 16<sup>th</sup> STREET LLC

By: \_\_\_\_\_  
Jorge Mastropietro

## TENDER OF ESCROW DEPOSIT

Date: \_\_\_\_\_

Tender of Deposit of \$ \_\_\_\_\_, for Unit \_\_\_\_\_ at \_\_\_\_\_  
 \_\_\_\_\_ located at \_\_\_\_\_, New  
 York.

Purchaser(s) named below has/have tendered on \_\_\_\_\_, 20\_\_, the  
 above escrow deposit to Sponsor/Selling Agent as a deposit for the above Unit.

Purchaser(s)

Address of Purchaser(s)

Phone number of Purchaser(s):

Home:

Business:

Social Security Number(s) or  
 Tax Identification Number(s)  
 of Purchaser(s)

-----  
**RECEIPT**

The SPONSOR/SELLING AGENT of the above named property hereby  
 acknowledges receipt of the above escrow deposit.

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

\_\_\_\_\_  
 Title of Position

Date of Receipt: \_\_\_\_\_

EXHIBIT "A"

**CERTIFICATION BY SPONSOR AND SPONSOR'S PRINCIPALS  
PURSUANT TO 13 NYCRR 20.4 (b)**

Date: December 12, 2017

State of New York  
Department of Law  
28 Liberty Street  
New York, NY 10005

**RE: 96 16<sup>th</sup> STREET CONDOMINIUM**

Gentlepeople:

We are the Sponsor and the principals of Sponsor of the Condominium Offering Plan for the above-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 they 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;

SCHEDULE L-1

- (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.

Very truly yours,

96 16<sup>th</sup> STREET LLC

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

Jorge Mastropietro, Managing Member

SPONSOR'S PRINCIPALS:

\_\_\_\_\_  
Jorge Mastropietro

\_\_\_\_\_  
Anish Karyat

\_\_\_\_\_  
Carolina Garcia Paris

\_\_\_\_\_  
Pedro Moreno-Mengibar

STATE OF NEW YORK  
COUNTY OF NEW YORK

Sworn to before me this  
12<sup>th</sup> day of November, 2017  
~~December~~

Mary Saragoussi  
Notary Public

MARY SARAGOUSSI  
Notary Public, State of New York  
No. 01SA6262738  
Qualified in Kings County  
Term Expires May 29, 2020

**CERTIFICATION BY SPONSOR AND SPONSOR'S PRINCIPALS  
PURSUANT TO 13 NYCRR 20.4 (b)**

Date: December 13, 2017

State of New York  
Department of Law  
28 Liberty Street  
New York, NY 10005

**RE: 96 16<sup>th</sup> STREET CONDOMINIUM**

Gentlepeople:

We are the Sponsor and the principals of Sponsor of the Condominium Offering Plan for the above-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 they 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;

SCHEDULE L-1

- (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.

Very truly yours,

**96 16<sup>th</sup> STREET LLC**

By: \_\_\_\_\_  
Jorge Mastropietro, Managing Member

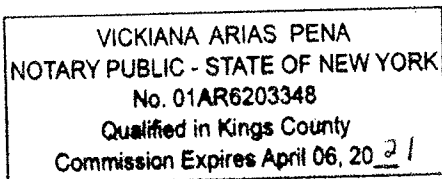
**SPONSOR'S PRINCIPALS:**

\_\_\_\_\_  
Jorge Mastropietro

\_\_\_\_\_  
Anish Karyat

\_\_\_\_\_  
Carolina Garcia Paris

\_\_\_\_\_  
Pedro Moreno-Mengibar



Sworn to before me this  
13 day of November, 2017

*V. L. Jara*  
\_\_\_\_\_  
Notary Public

**CERTIFICATION BY SPONSOR AND SPONSOR'S PRINCIPALS  
PURSUANT TO 13 NYCRR 20.4 (b)**

Date: November 30, 2017

State of New York  
Department of Law  
28 Liberty Street  
New York, NY 10005

**RE: 96 16<sup>th</sup> STREET CONDOMINIUM**

Gentlepeople:

We are the Sponsor and the principals of Sponsor of the Condominium Offering Plan for the above-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 they 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;

SCHEDULE L-1

- (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.

Very truly yours,

**96 16<sup>th</sup> STREET LLC**

By: \_\_\_\_\_  
Jorge Mastropietro, Managing Member

**SPONSOR'S PRINCIPALS:**

\_\_\_\_\_  
Jorge Mastropietro

\_\_\_\_\_  
Anish Karyat

*Carolina Garcia Paris*  
\_\_\_\_\_  
Carolina Garcia Paris

*Pedro J. Moreno-Mengibar*  
\_\_\_\_\_  
Pedro Moreno-Mengibar

Sworn to before me this  
30 day of November, 2017

\_\_\_\_\_  
Notary Public

RICHARD MENDEZ

NOTARY PUBLIC OF NEW JERSEY  
My Comm. Exp. Date 12/20/2018

11-30-17

**SPONSOR'S ENGINEER OR ARCHITECT CERTIFICATION  
PURSUANT TO 13 NYCRR 20.4 (c)**

Date: February 10, 2020

State of New York  
Department of Law  
28 Liberty Street  
New York, NY 10005

**RE: 96-16<sup>th</sup> Street Condominium**

Gentlepeople:

The sponsor of the offering plan to convert the captioned property to condominium ownership retained me/our firm to prepare a report describing the construction of the property (the "Report"). I examined the building plans and specifications that were prepared by Jorge Mastropietro Architects Atelier, LLC dated September 30, 2016 and I prepared the Report dated February 10, 2020; a copy of which is intended to be incorporated into the offering plan so that prospective purchasers may rely on the Report.

I am a registered architect/licensed engineer in the State in which the property is located.

I understand that I am 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.

I have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

I certify that the Report:

- (i) sets forth in narrative form the description of the entire property as it will exist upon completion of construction, provided that construction is in accordance with the plans and specifications that I/we examined;
- (ii) in my/our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description of the property as it will exist upon completion of construction,

provided that construction is in accordance with the plans and specifications that I/we examined;

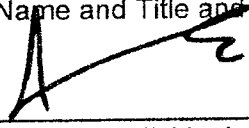
- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where I/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.

I further certify that I am/we are not owned or controlled by and have no beneficial interest in the sponsor and that my/our compensation for preparing this Report is not contingent on the conversion of the property to a condominium or on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.

Very truly yours,

Ahmed Emara, Registered Architect  
Print Name and Title and Position

By:

  
\_\_\_\_\_  
Signature of Individual if prepared by Firm

\_\_\_\_\_  
Title or Position if prepared by Firm

Sworn to before me this  
10<sup>th</sup> day of February, 2020

  
\_\_\_\_\_  
Notary Public

**JODI ZIMMERMAN**  
Notary Public, State of New York  
No. 02216183698  
Qualified in Nassau County  
Commission Expires 05/04/2020

CQP PROPERTIES, LLC  
421 SEVENTH AVENUE, SUITE 800, NEW YORK, NY 10001  
PHONE (516) 972-3704 FAX (646) 349-1977  
SGGLASSBERG@CQPPROPERTIES.COM

**CERTIFICATION OF ADEQUACY OF OPERATING BUDGET  
PURSUANT TO 13 NYCRR 23.4 (d)**

February 1, 2018

State of New York  
Department of Law  
120 Broadway - 23rd Street  
New York, NY 10271

**RE: 96-16 Gowanas**

Gentlepeople:

The Sponsor of the Condominium Offering Plan Application for the captioned property retained me/our firm to review or prepare Schedule B containing projections of income and expenses for the first year of condominium operation. Our experience in this field includes the preparation of budgets for numerous condominium and cooperative building in the New York area.

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 Schedule B.

We have reviewed the Schedule and investigated the facts set forth in the Schedule and 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 numerous buildings.

We certify that the projections in Schedule B 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 the Schedule:

- (i) sets forth in detail the projected income and expenses for the first year of condominium operation;
- (ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of condominium operation;
- (iii) does not omit any material fact;

## CQP PROPERTIES, LLC

421 SEVENTH AVENUE, SUITE 800, NEW YORK, NY 10001

PHONE (516) 972-3704 FAX (646) 349-1977

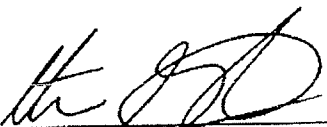
SGGLASSBERG@CQPPROPERTIES.COM

- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where 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.

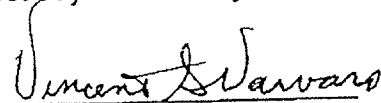
We further certify that I we are not owned or controlled by the Sponsor. We understand that a copy of this Certification is intended to be incorporated into an Offering Plan. This statement is not intended as a guarantee or warranty of the income and expenses for the first year of condominium operation.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Very truly yours,  
CQP PROPERTIES, LLC

By:   
Steven Glassberg

Sworn to before me this  
1st day of February, 2018.

  
Notary Public

VINCENT S. VARVARO  
Notary Public, State of New York  
No. 01VA9449650  
Qualified in Queens County  
Commission Expires August 31, 2018

The Real Property Law is amended by adding a new Section 339-kk to read as follows:

“§ 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.”

This act may be enforced by any party by means of a special proceeding brought pursuant to Article 4 of the Civil Practice Law and Rules.

#### SCHEDULE M

## HOUSING MERCHANT IMPLIED WARRANTY LAW

ARTICLE 36-B

## WARRANTIES ON SALE OF NEW HOMES

Section 777. Definitions.

777-a. Housing Merchant Implied Warranty.

777-b. Exclusion or Modification of Warranties.

Section 777. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Builder" means any person, corporation, partnership or other entity contracting with an owner for the construction or sale of a new home.

2. "Building code" means the uniform fire prevention and building code promulgated under section three hundred seventy-seven of the executive law, local building code standards approved by the uniform fire prevention and building code council under section three hundred seventy-nine of the executive law, and the building code of the city of New York, as defined in titled twenty-seven of the administrative code of the city of New York.

3. "Constructed in a skillful manner" means that workmanship and materials meet or exceed the specific standards of the applicable building code. When the applicable building code does not provide a relevant specific standard, such term means that workmanship and materials meet or exceed the standards of locally accepted building practices.

4. "Material defect" means actual physical damage to the following load-bearing portions of the home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unlivable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

5. "New home" or "home" means any single family house or for-sale unit in a multi-unit residential structure of five stories or less in which title to the individual units is transferred to owners under a condominium or cooperative regime. Such terms do not include dwellings constructed solely for lease, mobile homes as defined in section seven hundred twenty-one of this chapter, or any house or unit in which the builder has resided in or leased continuously for three years or more following the date of completion of construction, as evidenced by a certificate of occupancy.

## SCHEDULE N

6. "Owner" means the first person to whom the home is sold and, during the unexpired portion of the warranty period, each successor in title to the home and any mortgagee in possession. Owner does not include the builder of the home or any firm under common control of the builder.

7. "Plumbing, electrical, heating, cooling and ventilation systems" shall mean:

a. in the case of plumbing systems: gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system;

b. in the case of electrical systems: all wiring, electrical boxes, switches, outlets and connections up to the public utility connection; and

c. in the case of heating, cooling and ventilation systems: all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

8. "Warranty date" means the date of the passing of title to the first owner for occupancy by such owner or such owner's family as a residence, or the date of first occupancy of the home as a residence, whichever first occurs.

#### Section 777-a. Housing merchant implied warranty.

1. Notwithstanding the provisions of section two hundred fifty-one of the real property law, a housing merchant implied warranty is implied in the contract or agreement for the sale of a new home and shall survive the passing of title. A housing merchant implied warranty shall mean that:

a. one year from and after the warranty date the home will be free from defects due to a failure to have been constructed in a skillful manner;

b. two years from and after the warranty date the plumbing, electrical, heating, cooling and ventilation systems of the home will be free from defects due to a failure by the builder to have installed such systems in a skillful manner; and

c. six years from and after the warranty date the home will be free from material defects.

2. Unless the contract or agreement by its terms clearly evidences a different intention of the seller, a housing merchant implied warranty does not extend to:

a. any defect that does not constitute (i) defective workmanship by the builder or by an agent, employee or subcontractor of the builder, (ii) defective materials

supplied by the builder or by an agent, employee or subcontractor of the builder, or (iii) defective design provided by a design professional retained exclusively by the builder; or

b. any patent defect which an examination ought in the circumstances to have revealed, when the buyer before taking title or accepting construction as complete has examined the home as fully as the buyer desired, or has refused to examine the home.

3. In the case of goods sold incidentally with or included in the sale of the new home, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers and dryers, a housing merchant implied warranty shall mean that such goods shall be free from defects due to failure by the builder or any agent, employee or subcontractor of the builder to have installed such systems in a skillful manner. Merchantability, fitness and all other implied warranties with respect to goods shall be governed by part three of article two of the uniform commercial code and other applicable statutes.

4. a. Written notice of a warranty claim for breach of a housing merchant implied warranty must be received by the builder prior to the commencement of any action under paragraph b of this subdivision and no later than thirty days after the expiration of the applicable warranty period, as described in subdivision one of this section. The owner and occupant of the home shall afford the builder reasonable opportunity to inspect, test and repair the portion of the home to which the warranty claim relates.

b. An action for damages or other relief caused by the breach of a housing merchant implied warranty may be commenced prior to the expiration of one year after the applicable warranty period, as described in subdivision one of this section, or within four years after the warranty date, whichever is later. In addition to the foregoing, if the builder makes repairs in response to a warranty claim under paragraph a of this subdivision, an action with respect to such claim may be commenced within one year after the last date on which such repairs are performed. The measure of damages shall be the reasonable cost of repair or replacement and property damage to the home proximately caused by the breach of warranty, not to exceed the replacement cost of the home exclusive of the value of the land, unless the court finds that, under the circumstances, the diminution in value of the home caused by the defect is a more equitable measure of damages.

c. In addition to any other period for the commencement of an action permitted by law, an action for contribution or indemnification may be commenced at any time prior to the expiration of one year after the entry of judgment in an action for damages under paragraph b of this subdivision.

5. Except as otherwise provided in section seven hundred seventy-seven-b of this article, any provision of a contract or agreement for the sale of a new home which

excludes or modifies a housing merchant implied warranty shall be void as contrary to public policy.

6. Except as otherwise provided in section seven hundred seventy-seven-b of this article, other implied warranties may arise from the terms of the contract or agreement or from course of dealing or usage of trade.

777-b. Exclusion or modification of warranties.

1. Except in the case of a housing merchant implied warranty, the builder or seller of a new home may exclude or modify all warranties by any clear and conspicuous terms contained in the written contract or agreement of sale which call the buyer's attention to the exclusion or modification of warranties and make the exclusion or modification plain.

2. Except in the case of a housing merchant implied warranty, the builder or seller of a new home may exclude or modify warranties with respect to particular defects by any clear and conspicuous terms contained in the written contract or agreement of sale which identify such defects, call the buyer's attention to the exclusion or modification of warranties and make the exclusion or modification plain.

3. A housing merchant implied warranty may be excluded or modified by the builder or seller of a new home only if the buyer is offered a limited warranty in accordance with the provisions of this subdivision.

a. A copy of the express terms of the limited warranty shall be provided in writing to the buyer for examination prior to the time of the buyer's execution of the contract or agreement to purchase the home.

b. A copy of the express terms of the limited warranty shall be included in, or annexed to and incorporated in, the contract or agreement.

c. The language of the contract or agreement for sale of the home must conspicuously mention the housing merchant implied warranty and provide that the limited warranty excludes or modifies the implied warranty. Language to exclude all implied warranties is sufficient if it states, for example, that "There are no warranties which extend beyond the face hereof."

d. The limited warranty shall meet or exceed the standards provided in subdivisions four and five of this section.

4. A limited warranty sufficient to exclude or modify a housing merchant implied warranty must be written in plain English and must clearly disclose:

a. that the warranty is a limited warranty which limits implied warranties on the sale of the home; the words "limited warranty" must be clearly and conspicuously captioned at the beginning of the warranty document;

b. the identification of the names and addresses of all warrantors;

c. the identification of the party or parties to whom the warranty is extended and whether it is extended to subsequent owners; the limited warranty must be extended to the first owner of the home and survive the passing of title but may exclude any or all subsequent owners;

d. a statement of the products or parts covered by the limited warranty;

e. the clear and conspicuous identification of any parts or portions of the home or premises that are excepted or excluded from warranty coverage, and the standards that will be used to determine whether a defect has occurred; provided, however, that:

i. any exception, exclusion or standard which does not meet or exceed a relevant specific standard of the applicable building code, or in the absence of such relevant specific standard a locally accepted building practice, shall be void as contrary to public policy and shall be deemed to establish the applicable building code standard or locally accepted building practice as the warranty standard; and

ii. any exception, exclusion or standard that fails to ensure that the home is habitable, by permitting conditions to exist which render the home unsafe, shall be void as contrary to public policy.

f. what the builder and any other warrantor will do when a defect covered by the warranty does arise, and the time within which the builder and any other warrantor will act;

g. the term of the warranty coverage and when the term begins, provided, however, that such term shall be equal to or exceed the warranty periods of a housing merchant implied warranty, as defined in subdivision one of section seven hundred seventy-seven-a of this article;

h. step-by-step claims procedures required to be undertaken by the owner, if any, including directions for notification of the builder and any other warrantor; an owner shall not be required to submit to binding arbitration or to pay any fee or charge for participation in nonbinding arbitration or any mediation process;

i. any limitations on or exclusions of consequential or incidental damages, and any limitations on the builder's and other warrantor's total liability,

conspicuously expressed on the first page of the warranty. Notwithstanding the foregoing, a limited warranty shall not be construed to permit any limitation on or exclusion of property damage to the home proximately caused by a breach of the limited warranty, where the court finds that such limitation or exclusion would cause the limited warranty to fail of its essential purpose, except that such property damage may be limited by an express limitation on the builder's or other warrantor's total liability in accordance with the provisions of this paragraph.

5. a. This article shall not be construed to authorize or validate any covenant, promise, agreement or understanding which is void and unenforceable under Section 5-322.1 of the general obligations law.

b. This article shall preempt any local law inconsistent with the provisions of this article. This article shall not preempt any builder subject to its provisions from complying with any local law with respect to the regulation of home builders except as expressly provided herein.

c. Nothing in this article shall be construed to repeal, invalidate, supersede or restrict any right, liability or remedy provided by any other statute of the state, except where such construction would, as a matter of law, be unreasonable.