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

# 389 BERGEN CONDOMINIUM

389 Bergen Street
Brooklyn, New York 11217

| | |
|---|---|
| 2 Residential Units | $ 6,345,000 |
| **TOTAL OFFERING** | **$ 6,345,000** |

## SPONSOR AND SELLING AGENT

389 Bergen LLC
132 Mulberry Street
New York, New York 10013

## SPONSOR'S ATTORNEY

CERTILMAN BALIN ADLER & HYMAN, LLP
90 Merrick Avenue, 9th Floor
East Meadow, New York 11554

THE DATE OF ACCEPTANCE FOR FILING IS _____, 2020. THE OFFERING PLAN MAY NOT BE USED AFTER _____, 2021 UNLESS EXTENDED BY AMENDMENT.

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

**BECAUSE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER THAN SELL THE RESIDENTIAL UNITS, AFTER CONSUMMATION OF THE OFFERING PLAN, THIS OFFERING 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. (SEE THE SPECIAL RISK SECTION OF THE OFFERING PLAN.) PURCHASERS FOR THEIR OWN OCCUPANCY MAY NEVER GAIN CONTROL OF THE BOARD OF MANAGERS OF THE CONDOMINIUM UNDER THE TERMS OF THIS OFFERING PLAN.**

**THIS OFFERING PLAN IS THE SPONSOR'S ENTIRE OFFER TO SELL THESE CONDOMINIUM RESIDENTIAL UNITS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS OFFERING PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY CONDOMINIUM RESIDENTIAL 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**


| | | Page |
|---|---|---|
| | SPECIAL RISKS | iii |
| I. | INTRODUCTION | 1 |
| II. | DEFINITIONS | 10 |
| III. | DESCRIPTION OF PROPERTY AND IMPROVEMENTS | 15 |
| IV. | LOCATION AND AREA INFORMATION | 18 |
| V. | SCHEDULE A | 20 |
| VI. | SCHEDULE B | 25 |
| VII. | SCHEDULE C | 32 |
| VIII. | COMPLIANCE WITH REAL PROPERTY LAW SECTION 339-I | 37 |
| IX. | CHANGES IN PRICES OF RESIDENTIAL UNITS | 38 |
| X. | INTERIM LEASES | 40 |
| XI. | PROCEDURE TO PURCHASE | 41 |
| XII. | FINANCING FOR QUALIFIED PURCHASERS | 48 |
| XIII. | EFFECTIVE DATE OF THE OFFERING PLAN | 49 |
| XIV. | TERMS OF SALE | 51 |
| XV. | CLOSING COSTS AND ADJUSTMENTS | 57 |
| XVI. | RIGHTS AND OBLIGATIONS OF THE SPONSOR | 63 |
| XVII. | CONTROL BY THE SPONSOR | 74 |
| XVIII. | BOARD OF MANAGERS | 77 |
| XIX. | RIGHTS AND OBLIGATIONS OF RESIDENTIAL UNIT OWNERS AND BOARD OF MANAGERS | 100 |
| XX. | REAL ESTATE TAXES | 119 |
| XXI. | INCOME TAX DEDUCTIONS TO RESIDENTIAL UNIT OWNERS AND TAX STATUS OF THE CONDOMINIUM | 122 |
| XXII. | OPINION OF COUNSEL | 123 |
| XXIII. | RESERVE FUND | 129 |
| XXIV. | WORKING CAPITAL FUND | 130 |
| XXV. | MANAGEMENT AGREEMENT, CONTRACTS AND LEASES | 131 |
| XXVI. | IDENTITY OF PARTIES | 132 |
| XXVII. | REPORTS TO RESIDENTIAL UNIT OWNERS | 133 |
| XXVIII. | DOCUMENTS ON FILE | 134 |
| XXIX. | GENERAL | 135 |
| XXX. | SPONSOR'S STATEMENT OF SPECIFICATIONS OR BUILDING CONDITION | 136 |

**PART II**
**SCHEDULES**


| | | Page |
|---|---|---|
| D | PURCHASE AGREEMENT | 138 |
| D-1 | TENDER OF ESCROW FORM | 164 |
| D-2 | FORM TO RELEASE ESCROW FUNDS. | 165 |
| D-3 | WAIVER OF NOTICE OF CLOSING | 166 |
| D-4 | EXPRESS ASSUMPTION OF RISK | 167 |
| D-5 | SMOKING POLICY RIDER | 168 |
| D-6 | LIMITED WARRANTY | 170 |
| E | POWER OF ATTORNEY | 200 |
| F | FORM OF DEED | 202 |
| G | DESCRIPTION OF PROPERTY (SPECIFICATIONS) AND BUILDING CONDITION) | 205 |
| | 1. Site Plan | 227 |
| | 2. Floor Plans/Elevation | 228 |
| H | FEE TITLE DESCRIPTION | 239 |
| I | DECLARATION OF CONDOMINIUM | 240 |
| J | CONDOMINIUM BY-LAWS | 271 |
| K | HOUSING MERCHANT IMPLIED WARRANTY LAW (Article 36-B of the General Business Law) | 337 |
| L | CERTIFICATIONS | |
| | 1. SPONSOR | 343 |
| | 2. SPONSOR'S ENGINEER OR ARCHITECT | 345 |
| | 3. SPONSOR'S EXPERT CONCERNING ADEQUACY OF BUDGET | 347 |
| M | SECTION 339-KK OF THE REAL PROPERTY LAW | 349 |

## SPECIAL RISKS

1. The Sponsor has the right to designate all of the Members of the Board of Managers of the Condominium until all of the Residential Units in the Condominium have been sold or transferred to Residential Unit Owners other than the Sponsor, its Principals, Sponsor Affiliates, successors, assignees and/or designees ("Sponsor Control Period"). There is no limit on the period of time it may take Sponsor to convey all the Residential Units in the Condominium and as a result the Sponsor may control the Board of Managers indefinitely. The First Annual Meeting of the Residential Unit Owners will be held within a reasonable period of time subsequent to the Sponsor Control Period. As a result, the First Annual Meeting of the Residential Unit Owners may not be held within the first year of the Closing of Title to the first Residential Unit in the Condominium.

Notwithstanding the Sponsor Control Period, the Board of Managers has a fiduciary duty to the Residential Unit Owners to enforce Sponsor's obligations. Sponsor's intentional refusal to allow the Board of Managers to pursue litigation against the Sponsor may constitute a breach of fiduciary duty to the Board of Managers. In addition, the Residential Unit Owners may commence a lawsuit in the nature of a derivative action. In the event a Sponsor controlled Board does not undertake the enforcement of the Sponsor's obligations, the Residential Unit Owners may have to independently raise funds to pursue such enforcement and any other causes of action against the Sponsor. Notwithstanding said fact, Sponsor has the right to voluntarily relinquish a majority of the Members of the Board of Managers before the last Residential Unit is closed. If Sponsor relinquishes control of the Members of the Board of Managers, there is no provision in the By-Laws that requires that a majority of the Members of the Board of Managers 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 as a Residential Unit to live in as opposed to purchasing as an investment. See Sections XVII and XVIII of the Offering Plan.

2. In view of the fact the Condominium will only contain two (2) Residential Units and only have two (2) Residential Unit Owners there is a possibility of a deadlock in the operation of the Condominium. In the event of a dispute pertaining to any portion of the By-Laws or the Declaration of Condominium or if there is a deadlock in any determination by the Board of Managers or if the two (2) Residential Unit Owners in the Condominium cannot agree on any matter pertaining to the operation of the Condominium, the matter shall be referred to the American Arbitration Association and the cost of such arbitration shall be borne equally by each Residential Unit Owner pursuant to the provisions of Article XII of the By-Laws contained in Part II of the Offering Plan as Schedule J. See Section XVIII of the Offering Plan.

3. The Sponsor has 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

Percentage of Common Interest, whichever is sooner. During this period the Sponsor will have control of maintenance, facilities and services to be provided to the Condominium and will determine the Common Charges to be paid by all Residential Unit Owners, including those paid by the Sponsor. During this period the Sponsor will also have control over the enforcement of the Sponsor's obligations and will also 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, the placing of easements on the property and making improvements to the Common Elements. Notwithstanding the above, the Board of Managers has a fiduciary duty to the Residential Unit Owners to enforce Sponsor's obligations. Sponsor's intentional refusal to allow the Board of Managers to pursue litigation against the Sponsor entity may constitute a breach of fiduciary duty to the Board of Managers. In addition, the Residential Unit Owners may commence a lawsuit in the nature of a derivative action. In the event a Sponsor-controlled Board does not undertake the enforcement of the Sponsor's obligations, the Residential Unit Owners may have to independently raise funds to pursue such enforcement and any other causes of action against 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) necessary for the preservation or safety of the Building or for the safety of occupants of the Building or required to avoid the suspension of any necessary service to the Building. See Section XVII 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. Because Sponsor is retaining the unconditional right to rent rather than sell the Residential Units after the consummation of the Offering Plan, this Offering 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. Purchasers for their own occupancy may never gain control of the Board of Managers under the terms of the Offering Plan. 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 of the Residential Units being offered for sale excluding Residential Units of an ancillary nature (15% x 2 = 1 Residential Unit) necessary to declare the Offering Plan effective and owner-occupants may never gain effective control and management of the Condominium. Sponsor shall not rent a Residential Unit in the Condominium prior to Consummation of the Offering Plan as defined in Title 13 NYCRR § 20.1(c)(6). See Section XIII of the Offering Plan.

5. Purchasers will be obligated to pay the New York City Real Property Transfer Tax and New York State Real Property Transfer Tax which by law are the primary obligation of the Sponsor but have been transferred to a Purchaser by contractual agreement. The New York State Real Estate Transfer Taxes are at the rate of $2.00 per $500 of consideration where the consideration is less than $3,000,000 and $3.25 per $500 where the consideration is $3,000,000 or more. The New York City

Transfer Tax is at the rate of one (1%) percent of the Purchase Price for Residential Units where the consideration is less than $500,000 and 1.4259 percent where the consideration is $500,000 or greater.

In addition, pursuant to Sections 1402-a and 1402-b of the Tax Law of the State of New York, a Purchaser will be required to pay a tax for a Residential Unit where the consideration is $1,000,000 or more (the "Mansion Tax"). The following are the rates applicable to the Mansion Tax in New York City effective as of July 1, 2019:

| **Total Consideration** | **Mansion Tax (as of July 1, 2019)** |
|---|---|
| Less than $1,000,000 | Not subject to tax |
| $1,000,000 to $1,999,999.99 | 1% |
| $2,000,000 to $2,999,999.99 | 1.25% |
| $3,000,000 to $4,999,999.99 | 1.5% |
| $5,000,000 to $9,999,999.99 | 2.25% |
| $10,000,000 to $14,999,999.99 | 3.25% |
| $15,000,000 to $19,999,999.99 | 3.5% |
| $20,000,000 to $24,999,999.99 | 3.75 |
| $25,000,000 or more | 3.9% |

For purposes of calculating the above taxes, the amounts of such taxes, other than the Mansion Tax, will be included in the consideration subject to such tax. Therefore, the purchase price and transfer taxes payable by Purchaser are added together to arrive at a total consideration. As a result, a Residential Unit priced at $980,000 or more where Purchaser pays the transfer taxes and legal fees of Sponsor, could subject Purchaser to liability for the Mansion Tax as the aggregate price plus tax would exceed $1,000,000.

Pursuant to the provisions of the statute the obligation to pay the Mansion Tax is the Purchasers.

See Section XV 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. Sponsor has the financial resources to fulfill its unsecured obligations under the Offering Plan. See page Section XVI.

7. Although all funds received by Sponsor from Purchaser for upgrades, options, extras, special work or custom work ("Extras") not included in the base price of a Residential Unit will initially be placed in the Escrow Account as described in Section XII of the Offering Plan, such funds may be released from the Escrow Account as long as the Sponsor uses the funds for such Extras. 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 Extras which (i) have been installed by Sponsor, (ii) not installed, but paid for by Sponsor or (iii) not installed, but which have been ordered but not installed by

Sponsor and for which Sponsor is obligated to pay for unless the Offering Plan has been abandoned. In the event the Offering Plan is abandoned the Purchaser shall be entitled to receive a refund of all funds paid to the Sponsor for such Extras. See Section XI of the Offering Plan.

8. The First Annual Meeting will be held within a reasonable period of time after the expiration of the Sponsor Control Period which may occur later than one (1) year after the date of the Closing of Title to the first Residential Unit in the Condominium. See Section XVIII of the Offering Plan.

9. 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, or any Individual Residential Unit's 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-First of Schedule I and Article VIII of Schedule J.

10. A Purchaser may not interfere with Sponsor's ability to construct the Residential Unit or other unit(s) or facilities, including, without limitation, interference with work performed on the Property by Sponsor's staff, contractors and/or sub-contractors in connection with the construction of the Residential Unit or any other Residential Unit(s), attempts to hire any of Sponsor's staff, contractors or subcontractors, and/or attempts to bring contractors, materialman, sub-contractors or workers onto the Property for work on the Residential Unit prior to Closing, unless otherwise agreed to by Sponsor in writing. Sponsor shall have the right to remove or replace (and discard) any unauthorized installations, constructions and/or other materials installed or situated in or on any Residential Unit or any portion of the Property by or at the direction of any Purchaser prior to Closing without Sponsor's prior written consent. See Section XIV of the Offering Plan.

11. The Purchase Agreement is not contingent 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 Deposit in the event a Purchaser is unable to obtain a mortgage. 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 a Residential Unit as a result of Purchaser's inability to obtain a mortgage Sponsor will have the right to retain the Deposit as liquidated damages, including the cost of any Extras paid by Purchasers, which have been installed by Sponsor, paid for but not installed by Sponsor or which have been ordered but not installed by Sponsor and for which Sponsor is obligated to pay. The obligations of a Purchaser under a Purchase Agreement are not conditioned on obtaining financing. Any prospective Purchaser who executes a Purchase Agreement and does not obtain financing may lose Purchaser's Deposit if the Purchaser 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. Notwithstanding the above, in the event the Offering Plan is abandoned a Purchaser will be entitled to a return of Purchaser's Deposit including any monies paid for Extras. See Section XII of the Offering Plan.

12. Pursuant to existing regulation, the Sponsor may declare the Offering Plan effective by selling a minimum of fifteen (15%) percent of the Residential Units being offered for sale excluding Residential Units of an ancillary nature (15% x 2 Residential Units being offered for sale = 1 Residential Unit). Even if the Offering 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 event all Purchase Agreements are either rescinded or terminated prior to the date of the closing of title to the first Residential Unit the Sponsor will be obligated to re-declare the Offering Plan effective prior to closing title to the first 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 the Residential Units 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 has not sold a substantial percentage of the Residential Units in the building or group of buildings, which in some cases may be as high as seventy percent (70%). Moreover, some lenders will not provide financing in a building or group of buildings where an investor other than the original Sponsor has an ownership interest of ten percent (10%) or more. It may also be difficult for a Purchaser to resell a Residential Unit if prospective buyers are unable to obtain a loan due to the same minimum sales and investor ownership restrictions.

Even after Residential Units have closed, lenders may still impose minimum sales requirements before granting a loan. It then may be difficult for a Purchaser to resell if prospective buyers are unable to obtain a loan due to such minimum sales requirements. See Section XII of the Offering Plan.

13. Sponsor anticipates that the first Closing of Title to a Residential Unit will occur by September 1, 2020. Purchasers will be offered a right of rescission if: (i) the actual date of Closing of Title to the first Residential Unit; or (ii) the projected date of Closing of Title to the first Residential Unit occurs later than August 31, 2021, twelve (12) months after the projected date for the first Closing contained in this Offering Plan. If the Offering Plan is amended to provide for a later projected date of the first Closing, Purchasers who have entered into a Purchase Agreement subsequent to the date of the Amendment 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 Residential Unit Closing occurs before August 31, 2021, the Sponsor may schedule the Closing of Title to other Residential Units significantly later than such date. Unless a Purchaser's Purchase Agreement contains an outside Closing Date, the Sponsor is not obligated to

schedule a Closing within any specified time frame or to ensure that Closing of Title to the Residential Unit will occur by any date certain.

In addition, each Purchase Agreement provides that in the event Sponsor is unable to convey title to a Purchaser's 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 Deposit 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 of the proposed date of delivery set forth in the Purchase Agreement. Purchaser's failure to so notify Sponsor of Purchaser's intent to cancel Purchaser's Purchase Agreement due to Sponsor being unable to convey title to the Purchaser's Residential Unit within the twelve (12) month period shall be deemed a waiver of said 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 5 of the Purchase Agreement in Part II of the Offering Plan.

PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER SUCH RISKS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A RESIDENTIAL UNIT. See Section XI.

14. All Deposits received from Purchaser will initially be deposited into an escrow account of the law firm of TAB Law Firm, PC, 27 Union Square West, Suite 307, New York, New York 10003 (the "Escrow Agent"), in Bank of America, 29 Broadway, New York, New York 10006, as described in Section XI of the Offering Plan. The escrow account is an IOLA account consistent with Section 487 of the Judiciary Law of the State of New York. The maximum deposit insurance amount will be $250,000. If an individual makes a deposit in excess of said amount for the purchase of a Residential Unit, it is a Special Risk of this offer that such Deposit will not be federally insured in excess of said amount. Purchasers should further note that in the event a Purchaser has an account at Bank of America the funds in Purchaser's account are factored into the maximum insured amount of $250,000. See Section XI.

15. The projections for the first year of operation of the Condominium contained in the budget are only estimates. Actual expenses may vary from the amounts shown. Purchasers should further note that premiums for insurance have been extremely volatile in recent years. Sponsor cannot predict whether or not the insurance rates will increase or stabilize at the commencement of the first year of operation of the Condominium. 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. See Schedule B, the proposed first year budget and the footnotes immediately following thereto.

16. It shall be the responsibility of each Purchaser to pay the following additional Closing Costs, if applicable: (a) an initial non-reimbursable capital contribution equal to two (2) months Common Charges for the Residential Unit to the Condominium; (b) reimbursement to the Sponsor based on each Residential Unit's percentage of Common Interest for Sponsor's advancement for the cost of the Condominium's insurance for the first year of operation; (c) $3,500 to Sponsor's attorney for the preparation of the Closing documents. Purchaser shall also pay, or reimburse to Sponsor, if Sponsor has already made payment, the following charges, if applicable: (a) inspections, (b) appraisals, (c) surveying services, (d) water and sewer tap and connection fees, water meter deposit, water vault, water meter reading equipment and water and sewer test fees and (e) advance sewer use payments, if any. See Section XV of the Offering Plan.

17. 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 Residential 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 XV of the Offering Plan.

18. As a result of the fact gas pipes, water pipes and electric wires run throughout the walls of the Building, Purchasers should be careful when placing any items on the wall or drilling into the walls of their Residential Unit. See Section XIX of the Offering Plan.

19. Purchasers of a Residential Unit should refer to the floor plans in Schedule G-2 of Part II of the Offering Plan for details of each type of Residential Unit. The approximate (within reasonable tolerances) physical dimensions of each Residential Unit consists of the area measured horizontally from the exterior face of the exterior walls to the centerline of walls separating one Residential Unit from corridors, stairs, and other mechanical spaces or any common elements (as herein defined). Each Residential Unit will consist of the area measured vertically from the top of the structural slab to the underside (of any fire protection) of the structural members above. As such the areas are not based upon measurements from interior surfaces of interior walls, and the actual living area comprising the Residential Unit may be significantly less than the area listed in Schedule A.

20. Terraces and balconies may not be used for any type of occupancy including but not limited to dining, sleeping, living room, recreation room, office, etc. To

do so may result in a violation against the Building being issued by the Building Department. See Section XIX of the Offering Plan.

21. All Residential Unit Owners are required to keep their thermostats at a minimum of sixty (60) degrees Fahrenheit to prevent freezing of pipes. In the event the Residential Unit Owner fails to adhere to this requirement the Residential Unit Owner shall be responsible for any damage done to the Common Elements of the Condominium and/or any other Residential Unit. See the By-Laws contained in Part II of the Offering Plan as Schedule J.

22. Sponsor must either return a fully executed Purchase Agreement within thirty (30) days to the Purchaser or reject the Purchase Agreement and refund the Deposit monies. In the event the Sponsor does not act within said thirty (30) day period the Purchase Agreement will be deemed rejected by the Sponsor. See Section XI of the Offering Plan.

23. If Purchaser fails to appear and Close Title in accordance with the Purchase Agreement on the date and at the time and place stated in Sponsor's Notice for Closing, or if Purchaser fails to observe or perform any other thing to be observed or performed by Purchaser under the Purchase Agreement, Sponsor 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 is of the Essence for Purchaser to cure such default within such thirty (30) day period. In such an event the Sponsor, in its sole discretion may thereupon terminate the Purchase Agreement. If Sponsor so elects to terminate the Purchase Agreement Sponsor shall have the right to retain, as and for liquidated damages, the Deposit (and any interest earned of the Deposit, if any) plus the costs incurred by Sponsor for any Extras, if any, in the Residential Unit ordered by the Purchaser. Upon the termination of the Purchase Agreement, Purchaser and Sponsor will be released and discharged of all further liability and obligations under the Offering Plan. See Paragraph 22 of the Purchase Agreement contained in Part II of the Offering Plan.

24. Purchasers should note that pursuant to the terms of the Offering Plan as long as the Sponsor retains control of the Board of Managers, the Board of Managers of the Condominium retains the right to delay commencement of the collection of Common Charges. During any such delay period, the Sponsor will timely pay all expenses of the Condominium, including but not limited to insurance premiums and any reserve funds reflected in the Budget. Upon the commencement of the collection of Common Charges, there will be no assessment of Residential Unit Owners for prior expenses of the budget during the period Sponsor was paying the Common Expenses of the Condominium. Sponsor shall remain obligated to update the budget for the Condominium as provided for in the governing regulations. In the event Sponsor elects to delay collection of Condominium Common Charges, it will disclose such fact in the closing notice to Purchasers and will further disclose such fact in the Post-Closing Amendment to the Offering Plan. Such Amendment will also disclose the anticipated period of delay. Sponsor will notify all Residential Unit Owners in writing of the expiration of the delay period at least thirty (30) days prior to commencing collection of

Common Charges and will disclose such fact in the following Amendment to the Offering Plan.

See Section I of the Offering Plan.

25. Purchasers should note that the Residential Unit Owners shall indemnify and hold harmless each of the Members of the Board of Managers of the Condominium 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 of Condominium 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 Residential Unit Owners). It is understood and permissible for the original Board of Managers, who may be affiliated with 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 Residential Unit Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Members of the Board of Managers shall be limited to such proportion of the total liability thereunder as the Purchaser's Percentage of Common Interest in the Common Elements bears to the Percentage of Common Interest of all the Residential Unit Owners in the Common Elements. Every agreement made by the Board of Managers or by the managing agent or by a Member on behalf of the Condominium, shall provide that the Members of the Board of Managers, or the managing agent, or the Member, as the case may be, are acting only as agent for the Residential Unit Owners and shall have no personal liability thereunder (except as Residential Unit Owners). See Section XVIII of the Offering Plan and Article III, Section 14 of the By-Laws of the Condominium.

26. The Percentage of Common Interest of each of the Residential Units has been determined pursuant to Section 339-i(1)(iv) of the Condominium Act, based on 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 Residential Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Residential Unit. Based upon final specifications, construction conditions and/or "as-built" plans for the Building reflecting relative measurements, areas and uses of portions of the Building, application of such method of allocation the Percentage of Common Interest may justify a minor increase or decrease in the aggregate Percentage of Common Interest appurtenant to Residential Units. In such event, the Percentage of Common Interest appurtenant to each individual Residential Unit would be adjusted pro rata. Sponsor expressly reserves the right, from time to time, prior to the first Closing, to effect such a change in the Percentage of Common Interests and to amend the Offering Plan so as to reflect the same. In no event, however, will the Percentage of Common Interest of any Residential Unit be increased or decreased as the result of any of the foregoing a material amount. See Section XIX of the Offering Plan.

27. Purchasers are advised that in New York, newly constructed and newly renovated buildings are sometimes offered as condominium projects without a permanent Certificate of Occupancy ("PCO") 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. The TCOs and PCOs are issued by the New York City Department of Buildings ("Building Department)". 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 Building Department. 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 Residential Units. In New York City, it is common for sponsors to commence Residential Unit closings when some or all Residential Units are covered by a TCO rather than a PCO. 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 PCO 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 the Building Department will issue the PCO within such two (2) year period. Notwithstanding the foregoing, Sponsor and its principals are obligated to procure the PCO for the entire building and shall exercise its best efforts to obtain the PCO within such two (2) year period while keeping the TCO current. Residential Unit Owners and the Board of Managers shall be obligated to cooperate with and refrain from obstructing Sponsor in these undertakings. Residential Unit Owners will not be permitted to make any changes, additions or alterations to their Residential Unit requiring Building Department approval prior to the issuance of a Permanent Certificate of Occupancy or renewal of a temporary Certificate of Occupancy. See Section III of the Offering Plan.

28. Residential Unit Owners will not be permitted to make any changes, additions or alterations to their Residential Unit prior to the issuance of a Permanent Certificate of Occupancy for the Residential Unit and/or Building. Residential Unit Owners will be permitted to make standard improvements to their Residential Units such as painting, installation of flooring, cabinetry, fixtures etc. as long as the improvements do not affect the ability of the Sponsor to obtain a Permanent Certificate of Occupancy or extension or renewal of a Temporary Certificate of Occupancy. Residential Unit Owners are responsible for obtaining all necessary permits from the City of New York and any other required municipal agencies for any changes the Residential Unit Owner makes to their Residential Unit subsequent to the Closing of Title with the Sponsor. Sponsor will not be liable for nor responsible to a Residential Unit Owner in the event an inspection by the Department of Buildings of the City of New York prevents the issuance of a renewal and/or extension of a Temporary Certificate of Occupancy or Permanent Certificate of Occupancy as a result of changes made to the Residential Unit by a Residential Unit Owner. In the event a Residential Unit Owner makes any changes, additions or alterations to their Residential Unit prior to the issuance of a Permanent Certificate of Occupancy for the Residential Unit and/or Building, the Residential Unit Owner shall reimburse Sponsor within ten (10) days

following Sponsor's demand therefore, for any and all costs incurred by Sponsor with respect to the Residential Unit Owner's changes to the Residential Unit that prevent the extension or renewal of a Temporary Certificate of Occupancy or the issuance of a final Certificate of Occupancy by the Department of Buildings of the City of New York. Any such alteration by a Residential Unit Owner that affects the extension of a Temporary Certificate of Occupancy or the issuance of a Permanent Certificate of Occupancy shall not affect the Sponsor's obligation to obtain a Permanent Certificate of Occupancy for the Building. See Section XVI of the Offering Plan.

29. Purchasers should note that the actual assessed value of the Residential Units, which will be determined by the City of New York, may be higher than what is currently estimated and therefore may result in greater total estimated taxes on said Residential Units in the Condominium.

30. Common Charges are generally levied in proportion to each Residential Unit's Percentage of Common Interest in the Common Elements. However, as provided for in Section 339-m of The Real Property Law of the State of New York, the Board of Managers may also make allocations and assessments of Common Charges to the General Common Elements and any Individual Residential Unit's Limited Common Element that is the Condominium's obligation to repair and maintain, in accordance with sub-metering, contract allocations and usage (both projected and actual) so long as such allocations are reasonable under the circumstances and are based on intensive, special or exclusive use or availability or exclusive control of particular Residential Units or Common Elements by particular Residential Unit Owners. See Section I of the Offering Plan.

31. The Smoke-Free Air Act of New York City prohibits Smoking and using E-cigarettes of any kind in indoor common areas, including but not limited to, lobbies, hallways, stairwells, mailrooms, fitness areas, storage areas, garages and laundry rooms in any building with three or more Residential Units. NYC Admin. Code, § 17-505. Effective as of August 28, 2018, Local Law 147 of the City of New York became effective. Local Law 147 amends the Administrative Code of the City of New York to require that all class A multiple dwellings (i.e. buildings with 3 or more residential dwelling Residential Units) adopt a written smoking policy (the "Smoking Policy"). In accordance with Article VIII, Section 2 of the By-Laws and Local Law 147 the following is the smoking policy that will apply to this Condominium:

(a) Definitions:

(i) Smoking: Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, little cigar, pipe, water pipe or hookah, herbal cigarette, non-tobacco smoking product (e.g., marijuana or non-tobacco shisha), or any similar form of lighted object or device designated for people to use to inhale smoke.

(ii) Electronic Cigarette (E-cigarette): A battery-operated device that heats a liquid, gel, herb or other substance and produces a vapor for people to inhale.

(b) Policy:

(i) All types of Smoking and use of Electronic Cigarettes as defined above are prohibited from all general common areas of the Condominium, including but not limited to any lobby, hallway, stairwell, mailroom, fitness room or other recreational facility, meeting room, laundry room, storage area, mechanical room, equipment room, cellar, basement, elevator, garage, rooftop, play areas, parking areas, shared balconies, shared courtyards, shared patios, shared porches, shared yards and/or any outdoor common area within 15 feet of entrances, exits, windows, and air intake Residential Units on property grounds.

(ii) All types of Smoking and Electronic Cigarette use are prohibited from any balcony and/or terrace or any space designated as an Individual Residential Unit's Limited Common Element appurtenant to the Residential Unit.

(iii) All legal Smoking and Electronic Cigarette use is permitted within the interior area of a Residential Unit.

(iv) The Smoking Policy shall be applicable to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Condominium.

(v) Any Residential Unit Owner who leases their Residential Unit shall incorporate the provisions of the Smoking Policy into the lease with the Residential Unit Owner's tenant.

(c) Complaints:

Complaints about smoke drifting into a Residential Unit or common area should be made promptly to the Managing Agent. Complaints should be made in writing and should be as specific as possible, including the date, approximate time, location where smoke was observed, building address, description of incident and apparent source of smoke.

The Smoking Policy shall be applicable to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Property and any Building located thereon constituting the Condominium. Pursuant to the requirements of Article VIII, Section 2 of the By-Laws and Local Law 147 all tenants in the Building are required to receive a copy of the Building's Smoking Policy and the Smoking Policy must be incorporated into all leases or interim leases.

The provisions of Local Law 147 of the City of New York shall take precedent in the event of any conflict with the Smoking Policy contained herein. The Smoking Policy is contained in Article VIII (the "Rules and Regulations") , Section 2 of the By-Laws. Purchasers should also refer to Section XIX of the Offering Plan and Paragraph 38 of the Purchase Agreement.

32. No representation is made that the reserve fund line item will be adequate for future expenses including repairs or replacements of Common Elements during the first five (5) years of the Condominium. If additional funds are required over and above said funds, it may be necessary to increase the Common Charges payable by the Residential Unit Owners, collect a Special Assessment from each Residential Unit Owner or borrow money for such repairs or replacements. See Section XXIII of the Offering Plan.

33. This Development is subject to the Housing Merchant Implied Warranty Law of the State of New York, 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 Offering Plan. Pursuant to Section 777-b of said statute the Sponsor is permitted to provide its own Limited Warranty ("Limited Warranty") and as such, the Sponsor is providing its own Limited Warranty to Purchasers of Residential Units in the Condominium. As a result, Sponsor excludes the warranty provisions set forth in Article 36-B of the General Business Law and all other warranties except the Limited Warranty. The Limited Warranty provides for a Limited Warranty to Purchasers on certain items. Certain of the limitations contained in the Limited Warranty are noted as follows: the Limited Warranty provides coverage for the first Residential Unit Buyer only; Sponsor's liability is limited to seventy-five thousand ($75,000) dollars, less any insurance proceeds received by Purchaser but including any deductible paid by Purchasers; 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 as well as detailed procedures for commencing a lawsuit against Sponsor. See the complete terms of the Limited Warranty contained in the Rider to the Purchase Agreement set forth in Schedule D-5. NOTWITHSTANDING ANYTHING STATED ABOVE, SPONSOR HAS AN ABSOLUTE DUTY TO MAKE ANY IMPROVEMENTS TO THE PREMISES IN ACCORDANCE WITH ALL APPLICABLE CODES AND FILED PLANS AND SPECIFICATIONS SUBJECT TO FIELD CHANGES THAT MEET APPLICABLE CODE. Any conflict with the terms of the Limited Warranty and the obligations of the Sponsor to construct the Condominium in accordance with all applicable laws and the terms of the Plan shall be resolved in favor of the latter. For details see Section XVI of the Offering Plan and the full text of the law set forth in Schedule K of the Offering Plan.

34. The Sponsor has not entered into any management agreement to provide for management of the Condominium for the first year of operation and there is no fee for a managing agent in the proposed budget for the first year of operation of the Condominium. No representation is made as to the ultimate cost, terms or availability of a managing agent. Notwithstanding said fact, a Condominium of this size may ultimately determine there is a need to hire a managing agent. The current cost of a

managing agent to manage a Condominium of this size may vary from approximately $1,000 per annum per Residential Unit to approximately $1,500 per annum per Residential Unit.

The Board of Managers of the Condominium will be responsible for the management of the Condominium during the first year of operation. The duties of a managing agent usually include the following: bill and collect the annual 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 Residential Unit Owner annually with a financial statement prepared and certified by an independent public accountant while Sponsor retains a majority of the Board of Managers, purchase supplies for the Condominium and generally perform the duties of a managing agent for residential property. 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 Common Elements. 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, however, Common Charges will increase in the event a managing agent is hired in the second or any subsequent year of operation of the Condominium. See Section XXV of the Offering Plan.

35. At each Closing the Sponsor will collect the equivalent of 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 may be used to reduce the Common Charges. The Working Capital fund may also 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 the first-year budget contained in Schedule B. At such time as the Sponsor relinquishes control of the Board of Managers any remaining balance of the Working Capital fund will be turned over to the Board of Managers. See Section XXIV of the Offering Plan.

36. Purchasers should note that pursuant to the Federal Tax Cuts and Jobs Act of 2017 (the “Tax Act”), which went into effect on January 1, 2018, the maximum mortgage in which an individual can deduct the interest on is $750,000. In addition, the Act placed a maximum of $10,000 on the amount an individual can deduct for the combined amount of real estate taxes and State income taxes. Purchasers are advised to seek the advice of their tax consultant to ascertain the income tax ramifications to the Purchaser pursuant to the Tax Cuts and Jobs Act of 2017. See Section XXI of the Offering Plan.

37. Any failure by Sponsor to insist upon strict performance by Purchaser of any of Purchaser’s obligations under the Purchase Agreement shall not be deemed a waiver of such obligations, and Sponsor may at any time insist upon strict performance by Purchaser of any and all obligations to be performed by Purchaser under the Purchase Agreement irrespective of the number of times Purchaser failed to strictly comply with such obligations in the past.

Purchaser and Sponsor waive trial by jury in any action, proceeding or counterclaim arising out of the 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 the Purchase Agreement, shall be instituted in a court in the County of Kings, State of New York and all motions in any such action shall be made in the County of Kings, State of New York. Purchaser agrees to waive the right to file a lis pendens if not filed within sixty (60) days of the cancellation of the Purchase Agreement. See Paragraph 35 of the Purchase Agreement.

38. Purchasers should note that any dispute as to the allocation of the Common Charges to Residential Unit Owners would require arbitration pursuant to the terms of the Offering Plan and Article XIV of the By-Laws.

39. The Board of Managers shall have the right to require that a Residential Unit Owner utilize a contractor or sub-contractor of the Board of Manager's choosing for any repairs, maintenance and/or replacement of an Individual Residential Unit's Limited Common Element that is a Residential Unit Owner's obligation at the Residential Unit Owner's sole cost and expense. See Section I of the Offering Plan.

40. Regarding the Common Elements of the Condominium not covered by any Limited Warranty, the Sponsor will correct any defects in the renovation 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 as may be changed by Sponsor from time to time provided and on condition that Sponsor is notified of or becomes aware of such defect(s) within twelve (12) months from the issuance of a temporary or permanent Certificate of Occupancy, whichever is then applicable upon the Closing of Title to the first Residential Unit. In no event will Sponsor be liable for consequential damages (whether based on negligence, breach of contract, warranty, or otherwise), it being intended that Sponsor's sole obligations under the Offering Plan will be to repair or, at Sponsor's option, replace (or cause to be repaired or replaced) any defective item of construction (whether arising as a result of defects in material or improper workmanship or material substantially at variance with the Plans and Specifications), subject to the terms and conditions (and within the time limits) set forth in this paragraph. The quality of renovation shall be comparable to local standards customary in the particular trade and in accordance with the plans and specifications. See Section XVI of the Offering Plan.

41. The projected real estate taxes for the first year of operation contained in Schedule A are based on an assessment of the Building before renovation is complete. Purchasers are advised that real estate taxes may increase materially when the Building is reassessed after renovation is complete. See footnote number 5 to Schedule A for more information regarding the projected assessed valuation after completion of renovation. In addition, the actual assessed value of the Residential Units will be determined by the City of New York may be higher than what is currently estimated and therefore may result in greater total estimated taxes on said Residential

Units of the Condominium. See Section XXII of the Offering Plan and the Opinion of Counsel contained in Section XXIV of the Offering Plan.

42. Purchasers should note that the only access to the roof of the Building is through Residential Unit #2.The Board of Managers shall have an easement in and through Residential Unit #2 for access to the roof for maintenance or repair and for any other reason the Board of Managers may need access to the roof. The Board of Managers shall provide the Residential Unit Owner of Unit #2 a minimum of three (3) days' notice in the event access to the roof is necessary unless access is required for an emergency or to protect the health and safety of the residents. In such an event no notice is required. In such an event no notice is required. See Section XIX of the Offering Plan.

43. The cellar will include accessory use for Unit #1 to be used for a washer/dryer. The cellar will also include a residential storage room for the use of Unit #2. The accessory use for Unit #1 and the storage room for Unit #2 cannot be used for cooking, living or sleeping. To do so may result in a violation against the Building being issued by the Building Department. See the Description of Property Report contained Schedule G of Part II of the Offering Plan.

# 389 BERGEN CONDOMINIUM

# PLAN OF CONDOMINIUM OWNERSHIP

## I. INTRODUCTION

This is an Offering Plan (the "Offering Plan") for the sale of two (2) Residential Units ("Residential Units") to Residential Unit Owners, in a Condominium to be known as the 389 Bergen Condominium located at 389 Bergen Street, Brooklyn NY 11217.

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

The Offering 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 of Condominium 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 of Condominium 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 Sponsor of the Offering Plan is 389 Bergen LLC, with an address at 389 Bergen Street, Brooklyn, New York 11217, a New York limited liability company. Sponsor is the owner of the property having acquired it by deed dated August 15, 2018.

The Condominium as proposed will contain three (3) floors and a basement and cellar.

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

All portions of the Condominium, excluding the Residential Units, are Common Elements of the Condominium. The Common Elements of the Condominium are described as follows:

A. General Common Elements – General Common Elements are those shared by all Residential Unit Owners and include all portions of the Condominium except for the individual Residential Units and the Individual Residential Unit's 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 Condominium is erected and all other land within the boundaries of the Property;

2. All portions of the roof, including any gutters and leaders, ladders, parapets, roof drains, flashing, copings and bulkheads, that are not restricted for the exclusive use of Residential Unit #2 located on the 3rd floor as a Limited Common Element and are intended for the common use and service of the entire Building;

3. All exterior walls of the Building;

4. All foundations, footings, columns, girders, beams, supports, floor slabs and ceilings that are not part of a Residential Unit and any interior load bearing walls that are not part of a Residential Unit;

5. Stairs, stairways, common hallways which are not located wholly within a Residential Unit and entrances and exits to and from the Condominium other than entrances to the individual Residential Units:

6. All improved and unimproved areas of the Condominium located outside the boundaries of the Residential Units intended for the common use of the Residential Unit Owners;

7. All central and appurtenant installations for services such as power, light, telephone, television, gas, hot and cold water and heat (including all boilers, pipes, ducts, wires, chutes, cables and conduits used in connection therewith located in the Common Elements) and all other mechanical equipment spaces, including but not limited to refuse rooms, utility meters, telephone and cable rooms and storage areas (as applicable) that are intended for the common use of the Condominium;

8. All drainage systems, sanitary systems, sanitary house lines, house trap, sewers and/or storm sewer, pipes, drywells, or detention tanks or facilities intended for the common use of the Condominium;

9. Any heating, cooling or other mechanical system located in the Common Elements intended for the common use of the Condominium;

10. The fire protection system including standpipes/combined standpipe sprinkler risers, fire hose valve, sprinkler heads and Siamese connections that service the Building;

11. The laundry room located in the cellar intended for the common use of the residents of the Condominium;

12. The powder room located in the cellar for the common use of the residents and employees of the Condominium;

13. The mechanical room located in the cellar for the common use of the residents and employees of the Condominium;

14. Any fire escape located on the exterior of the Building;

15. Any fence on the Property of the Condominium;

16. All tanks, pumps, motors, fans, compressors and control equipment intended for the common use of the Condominium;

17. Any sprinkler system located in the Common Elements and intended for the common use of the Condominium;

18. Any plantings and landscaping intended for the common use of the Condominium;

19. Any pedestrian walkways and ramps intended for the common use and service of the Condominium;

20. All flues, chimneys and vent caps for the common use and service of the Condominium;

21. Any intercom system intended for the common use and service of the Condominium; and

22. All other parts of the Condominium, Building and all apparatus and installations existing in the Building or Property for common use and necessary or convenient to the existence, maintenance or safety of the Condominium.

B. Individual Residential Unit's Limited Common Elements - Certain portions of the Common Elements are irrevocably restricted in use to specified Residential Units 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 Elements and subject to the Rules and Regulations of the Board of Managers (see By-Laws, Article VIII). Said irrevocably restricted Common Elements are also referred to as an Individual Residential Unit's 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 descriptions of the Individual Residential Unit's Limited Common Elements:

1. Any hot water tank, boiler, air conditioning condenser, fireplace, heat pumps and any other heating, cooling or other mechanical system exclusively servicing an individual Residential Unit that is located in or on the Common Elements;

2. Any portion of a hot water flue exclusively servicing an individual Residential Unit that is located in the Common Elements;

3. Any deck or terrace appurtenant to a Residential Unit is for the exclusive use of the applicable Residential Unit;

4. The rear yard that is appurtenant to Residential Unit #1;

5. Any portion of the roof that is for the exclusive use of the Residential Unit Owner of Residential Unit #2 located on the 3rd floor of the Building;

6. 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 Article Fifth Section 2 of the Declaration of Condominium regarding the Limited Common Elements.

C. Provisions Applicable to All Common Elements –

1. The Common Elements shall remain undivided and no Residential 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 Residential Units except in accordance with the Real Property Law.

3. The Percentage of Common Interest in the Common Elements established herein shall not be changed except with the consent of all of the Residential Unit Owners affected as expressed in a duly recorded amendment to the Declaration of Condominium.

4. The Percentage of Common Interest in the Common Elements shall not be separated from the Residential Units to which it appertains and shall be deemed conveyed or encumbered with the Residential Units even though such interest is not expressly mentioned or described in the conveyance or other instrument.

The Board of Managers shall have the right to require that a Residential Unit Owner utilize a contractor or sub-contractor of the Board of Manager's choosing for any repairs, maintenance and/or replacement of an Individual Residential Unit's Limited Common Element that is a Residential Unit Owner's obligation at the Residential Unit Owner's sole cost and expense.

The Common Expenses associated with the Condominium, General Common Elements, and Individual Residential Unit's Limited Common Elements, that are the obligation of the Condominium to repair maintain and replace, as necessary and other costs designated as a Condominium obligation or Common Expense shall be paid for by all Residential Unit Owners based upon their Percentage of Common Interest in the Condominium as reflected in Schedule A of the Offering Plan, except as provided in Section 339-m of the Real Property Law. See Special Risk No. 30.

Each Residential Unit has a different floor plan. See Schedule G-2 in Part II of the Offering Plan for a detailed description of each Residential Unit. 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 Residential Units in the Condominium however, Sponsor is retaining the unconditional right to rent rather than sell the Residential Units after consummation of the Offering Plan. Because Sponsor is retaining the unconditional right to rent rather than sell the Residential Units this Offering 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 unrelated to the Sponsor. As a result, Purchasers for their own occupancy may never gain control of the Board of Managers under the terms of the Offering Plan. Due to the fact Sponsor is not limiting the conditions under which it will rent rather than sell Residential Units, there is no commitment to sell more Residential Units than the fifteen (15%) percent necessary to declare the Offering 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 Residential Units. A bulk sale consists of the transfer of twenty (20%) percent or more of the total number of Residential Units in the Condominium.

Sponsor has entered into a Building and Loan Agreement with TD Bank which will enable the Sponsor to develop and construct the Building. The Sponsor will satisfy and pay off the loan prior to or on the date of the closing of title to the First Residential Unit. Sponsor will further comply with the terms of the loan.

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 Individual Residential Unit's Limited Common Elements that pertain to an individual Residential Unit for the

Individual Residential Unit's Limited Common Elements. A full description of the General and applicable Individual Residential Unit's Limited Common Elements is described above.

The approximate (within reasonable tolerances) physical dimensions of each Residential Unit consists of the area measured horizontally from the exterior face of the exterior walls to the centerline of walls separating one Residential Unit from corridors, stairs, and other mechanical spaces or any common elements (as herein defined). Each Residential Unit will consist of the area measured vertically from the top of the structural slab to the underside (of any fire protection) of the structural members above. As such the areas are not based upon measurements from interior surfaces of interior walls, and the actual living area comprising the Residential Unit may be significantly less than the area listed in Schedule A.

A Residential 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 (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 September 1, 2020. Purchasers should refer to Section XIX as to the right of the first Board of Managers to commence the collection of Common Charges at a subsequent date. Purchasers should note that pursuant to the terms of the Offering Plan as long as the Sponsor retains control of the Board of Managers, the Board of Managers retains the right to delay the commencement of the collection of Common Charges. During any such delay period, the Sponsor will timely pay all expenses of the Condominium, including but not limited to insurance premiums and any reserve funds reflected in the Budget. Upon the commencement of the collection of Common Charges, there will be no assessment of Residential Unit Owners for prior expense of the budget during the period Sponsor was paying the Common Expenses of the Condominium. Sponsor shall remain obligated to update the budget for the Condominium as provided for in the governing regulations. In the event Sponsor elects to delay collection of Condominium Common Charges, it will disclose such fact in the closing notice to Purchasers and will further disclose such fact in the post-closing Amendment to the Offering Plan. Such Amendment will also disclose the anticipated period of delay. Sponsor will notify all Residential Unit Owners in writing of the expiration of the delay period at least thirty (30) days prior to commencing collection of Common Charges and will disclose such fact in the following Amendment to the Offering Plan.

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 Residential 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, in the event the collection of Common Charges has commenced, and individual expenses associated with the Residential Unit, as well as any costs associated with the Individual Residential Unit's Limited Common Elements that pertain to the Purchasers' Residential Unit.

A Residential Unit Owner, upon acquiring title to their Residential 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 XIX of the Offering Plan. The Board of Managers will have a Right of First Refusal on the sale or rental of a Residential Unit as provided in Section XIX of the Offering Plan. Residential Units can be sold by a Residential Unit Owner, subject to said Right of First Refusal and provided that the Residential 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 Residential Unit. A Purchaser is free to make a gift of their Residential Unit to anyone during their lifetime or to devise their Residential Unit by will, or to have it pass by intestacy without any restriction. No Residential Unit can be sold without a simultaneous sale of the undivided interest in the Limited Common Elements that pertain to the Residential 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 XIX of the Offering Plan.

The Residential 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 Deposit 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 Purchaser's inability to obtain a mortgage Purchaser will be deemed in default of the Purchase Agreement and after Sponsor complies with the required notices may, at its option, retain as liquidated damages all or any part of the monies paid on account of the Purchase Agreement plus Extras paid by Purchaser which Extras have been installed by Sponsor, paid for but not installed by Sponsor or which have been ordered but not installed by Sponsor and for which Sponsor is obligated to pay, unless the Offering Plan has been abandoned. In the event the Offering Plan is abandoned a Purchaser will be entitled to a return of all funds paid for Extras.

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

Primary responsibility for operating the Condominium rests with the Board of Managers who are elected by the Residential Unit Owners. See the By-Laws contained in Part II of the Offering Plan. For information concerning Sponsor's initial control of the Board of Managers, see Section XVII of the Offering Plan.

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

Each Residential Unit will be taxed separately for real estate tax purposes and may be separately mortgaged. Therefore, no Residential Unit Owner is liable for the payment of real estate taxes or mortgage payments on any other Residential Unit. In the opinion of counsel, a Residential Unit Owner is presently entitled to deductions for federal income tax purposes for payments for state and local income taxes and real estate taxes applicable to their Residential Unit to a maximum of $10,000 as currently permitted by law under the Federal Tax Cuts and Jobs Act of 2017 (the "Tax Act"). In addition, provided the Residential Unit will be the Purchaser's principal residence, a Residential Unit Owner may also deduct the interest on a mortgage, up to a maximum mortgage of $750,000, they procure to finance the purchase of their Residential Unit for income tax purposes pursuant to the Tax Act. See Section XXI of the Offering Plan.

Fire and liability insurance covering the General Common Elements and Individual Residential Unit's Limited 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 Individual Residential Unit's Limited Common Elements for an Individual Residential Unit Owner's exclusive use should be carried by the individual Purchaser. Common Charges are levied in proportion to the Percentage of Common Interest in the "Common Elements" appurtenant to each Residential Unit. However, Purchasers should see Special Risk No. 30 which provides that as permitted in Section 339-m of the Real Property law of the State of New York, the Board of Managers may also make allocations and assessments of Common Charges to the General Common Elements and in accordance with sub-metering, contract allocations and usage (both projected and actual) so long as such allocations are reasonable under the circumstances and are based on special or exclusive use or availability or exclusive control of particular Residential Units or common areas by particular Residential Unit Owners. For possible increases in Common Charges upon default in payment by a Residential Unit Owner see Section XIX 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 Offering Plan. Installation and the cost of any extras, upgraded appliances, upgraded fixtures or appliances or fixtures not provided is the sole responsibility of each Residential Unit Owner. The Sponsor reserves the right to provide fixtures and appliances by different manufacturers which are of Equal or Better Quality than noted in the Description of Property found in Part II of the Offering Plan.

The prices for the Residential 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 Schedules submitted along with the Offering Plan together constitute the entire Offering Plan. Copies of the Offering Plan and Parts A, B, C and D of the Schedules 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, 28 Liberty Street, 21st Floor, New York, New York 10005.

See Section XIX as to the Right of First Refusal on the sale or rental of a Residential Unit.

**THE PURCHASE OF A CONDOMINIUM RESIDENTIAL 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. "Annual Meeting" – The meeting of the Residential Unit Owners of the Condominium held on a yearly basis or such other convenient date as the Board of Managers may designate subsequent to the First Annual Meeting.

2. "Board of Managers" - The governing body of the Condominium responsible for its affairs.

3. "Board Member" or "Member" – Each individual representative elected, designated or appointed to the Board of Managers.

4. "Building" - The one (1) building including the Residential Units and Common Elements of the Condominium.

5. "Building Department" – The Building Department of the City of New York.

6. "By-Laws" - The document governing the operation of the Condominium.

7. "Closing" or "Close Title" or "Closing of Title" or "Title Closing" – The consummation of the sale of the Residential Unit transferring title via a deed from the Sponsor to the Purchaser.

8. "Closing Costs" or "Closing Adjustments" or "Closing Fees" or "Closing Apportionments" – Fees and expenses over and above the price of the Residential Unit, incurred by the Purchaser and/or Sponsor at the Closing.

9. "Closing Date" or "Date of Closing" – The date of Closing of Title.

10. "Common Charges" - Each Residential Unit Owner's proportionate share of Common Expenses of the Condominium.

11. "Common Elements" - All portions of the Condominium, other than the Residential Units. The Common Elements are divided as follows:

    (a) General Common Elements, which are Common Elements shared by all Residential Unit Owners; and

    (b) Individual Residential Unit's Limited Common Elements which are Common Element for the exclusive use of an individual Residential Unit Owner or Owners.

12. “Common Expenses” - (a) Expenses incurred by all Residential 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 of Condominium or the By-Laws.

13. “Community” or “Development” - As used herein is equivalent in meaning to the term “Condominium” as same is used in Article 9-B of the Real Property Law.

14. “Condominium” – 389 Bergen Condominium which includes the Residential Units and the Common Elements.

15. “Condominium Act” - Article 9-B of the Real Property Law of the State of New York.

16. “Condominium Documents” - The Declaration of Condominium, the By-Laws, the As-Built Floor Plans of the Residential Units and the Condominium Residential Unit Designation Map (as provided in the Condominium Act) as the same may be amended from time to time.

17. “Condominium Property” or “Property” – The overall area of the Condominium.

18. “Declaration of Condominium” - The instrument by which the Property is submitted to the provisions of the Condominium Act, as such instrument may from time to time be amended, consistent with the provisions of the Condominium Act and of the By-Laws.

19. “Department of Finance” - The New York City agency that assigs separate tax lots to the individual Units in the Condominium.

20. “Department of Law” – The New York State agency responsible for the review and enforcement of offering plans for the offer and sale to the general public of condominiums, cooperatives and homeowner associations.

21. “Deposit” – The amount deposited by a Purchaser towards the Purchase Price of a Residential Unit upon execution of the Purchase Agreement.

22. “Description of Property Report” – The report contained as Schedule G in Part II of the Offering Plan.

23. “Equal or Better Quality” – Comparable or better quality as recognized by industry standards for performance, efficiency, longevity, and classifications, as applicable.

24. “Escrow Account” – The attorneys’ accounts where a Purchaser’s Deposit will be held as provided for in Section XI of the Offering Plan.

25. “Escrow Agent” – The attorneys or law firms overseeing the Escrow Accounts as provided for in Section XI of the Offering Plan.

26. “Extras” – All funds received by Sponsor from Purchaser for upgrades, options, extras, custom or special work that is not included in the base price of the Residential Unit.

27. “First Annual Meeting” – The date of the first annual meeting of the Residential Unit Owners as disclosed in the Offering Plan.

28. “First Board of Managers” – The initial Board Members of the Board of Managers appointed by the Sponsor and Owner.

29. “Grantee” – The person to whom an interest in real property is conveyed.

30. “Grantor” – The person conveying an interest in real property.

31. “Institutional Mortgage” - 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 Sponsor, its successor, designee or assignee to a purchaser of a Residential Unit or in which the Sponsor, its successor, designee or assignee participates with one of the above.

32. “Mansion Tax” - The tax paid by a Purchaser at the closing of title pursuant to Sections 1402-a and 1402-b of the Tax Law of the State of New York when the consideration paid for the Unit is $1,000,000 or more.

33. “Notice for Closing” – The written notice of the date of the closing of title to a Residential Unit provided to a Purchaser.

34. “Officer” – One (1) of the officers of the Condominium chosen by the Board of Managers as provided for in Article IV of the By-Laws of the Condominium including the President, Vice President, Secretary and Treasurer.

35. “Percentage of Common Interest” - The proportionate, undivided interest each Residential Unit Owner has in the Common Elements.

36. “Property” – The overall land area of the Condominium.

37. “Purchase Agreement” – The document to be executed by the Purchaser which will obligate the Purchaser to acquire the Residential Unit in the Condominium and which will obligate the Sponsor to sell the Purchaser the Residential Unit in the Condominium.

38. “Purchaser” – The person(s) who have entered into a Purchase Agreement to acquire a Residential Unit in the Condominium.

39. “Reserve Fund” – The fund to be held by the Condominium for capital improvements for the Condominium.

40. “Residential Unit” – A Residential Unit includes all the Units in the Condominium designated for residential use as reflected in the Declaration of Condominium and Schedule B of the Declaration of Condominium.

41. “Residential Unit Owner” – The owner of a Residential Unit.

42. “Right of First Refusal” - The right of the Board of Managers to match a bona fide offer of a sale or lease of a Residential Unit as provided for in the By-Laws.

43. “Rules and Regulations” – The Rules and Regulations contained in Article VIII of the By-Laws as the same may be amended, altered, waived or added to by the Board of Managers.

44. “Special Assessment” – A Common Expense of the Condominium that is not included in the monthly Common Charges applicable to a Residential Unit.

45. “Special Meeting”- A special meeting of the Residential Unit Owners called by pursuant to Article II, Section 10 of the By-Laws.

46. “Sponsor” – 389 Bergen LLC a New York limited liability company and its successors, assigns and designees.

47. “Sponsor Control Period” – The period of time the Sponsor has the right to retain control of the Board of Managers of the Condominium.

48. “Sponsor’s Counsel” – Certilman Balin Adler & Hyman LLP, 90 Merrick Avenue, East Meadow, New York 11554 (Offering Plan) and TAB Law Firm PC, 27 Union Square, Suite 307, New York, New York 10003 (Closing Attorney).

49. “Tax Act” – The Federal Tax Cuts and Jobs Act of 2017.

50. “Tax Consultant” – The tax expert who has provided the opinion letter regarding real estate taxes applicable to this Condominium.

As used herein the term “Residential Unit is equivalent to the term “Residential Unit” in Article 9-B of the Real Property Law of the State of New York.

51. “Unsold or Untitled Residential Unit” - Any Residential Unit in which title is retained by the Sponsor and any successors or assigns or designees 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 or designees.

52. “Working Capital”- The funds paid by each Purchaser at Closing to the Condominium to be used towards expenses of the Condominium and to reimburse Sponsor for prepaid expenses of the Condominium as described in Section XXIV of the Offering Plan.

## III. DESCRIPTION OF PROPERTY AND IMPROVEMENTS

Location, Acreage and Zoning

The Condominium is located at 389 Bergen Street, Brooklyn, New York 11217. The Condominium is zoned R6B. The overall zoning lot size of the Condominium is approximately 2,000 square feet.

Topographical Features

The site consists of a renovated building over gently sloped land.

Improvements - General Description

The Building is in the process of being constructed and it is anticipated that the Closing to the first Residential Unit will occur on or about September 1, 2020 subject to factors beyond Sponsor's control such as weather conditions, strikes, material shortages, acts of God and sales conditions. The Building will contain two (2) Residential Units located on three (3) floors.

The Building Plans have been filed with the Building Department of the City of New York and 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 Offering Plan have complied and will comply with all applicable laws, rules and regulations and other governmental requirements pertaining thereto. Renovation and 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 all Residential Units in that Building will have been partially or substantially completed. The Sponsor reserves the right to provide fixtures and appliances by different manufacturers which are of an Equal or Better Quality than noted in the Description of Property Report found in Part II of the Offering Plan.

Purchasers are advised that in New York, newly constructed and newly renovated buildings are sometimes offered as condominium projects without a permanent Certificate of Occupancy ("PCO") 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 PCOs are issued by the New York City Department of Buildings ("Building Department"). 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 Building Department. 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 Residential Units. In New York City, it is common for sponsors to commence Residential Unit closings when some or all Residential Units are covered by a TCO rather than a PCO. 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 the Building Department will issue the PCO within such two (2) year period. Notwithstanding the foregoing, Sponsor and its principals are obligated to procure the PCO for the entire Building and shall exercise its best efforts to obtain the PCO within such two-year period while keeping the TCO current. Residential Unit Owners and the Board of Managers shall be obligated to cooperate with and refrain from obstructing Sponsor in these undertakings. Residential Unit Owners will not be permitted to make any changes, additions or alterations to their Residential Unit requiring Building Department approval prior to the issuance of a Permanent Certificate of Occupancy or renewal of a temporary Certificate of Occupancy.

Construction Data for Residential Units, Common Elements and Individual Residential Unit's Limited Common Elements

The Building, the Residential Units and Common Elements will be renovated and constructed in the manner set forth in the Building Plans filed with the City of New York, which Plans will not be changed so as to adversely affect the Residential Unit Owners. For a detailed description of such data see the Description of Property Report in Part II of the Offering Plan. Renovation and construction of the Building has commenced and Closing of Title to the first Residential Unit is expected to take place on September 1, 2020, barring any unforeseen delays beyond the control of the Sponsor such as weather conditions, strikes, material shortages, acts of God and sales conditions.

Unsupervised visits to the Property may present a dangerous circumstance and could incur liability to Sponsor. Unless specifically agreed to by Sponsor in writing and escorted by a representative of Sponsor in each instance, Purchaser shall not visit the Unit or any other portion of the Property and shall only have the right to visit the sales office prior to Closing. Pursuant to Paragraph 13 of the Purchase Agreement, Purchaser will agree to release and indemnify, defend and hold Sponsor harmless from and against any and all claims and liabilities incurred by Sponsor resulting from the presence of Purchaser or Purchaser's family members, agents, licensees or invitees on the Property prior to Closing. Purchaser will also be required to execute the Express Assumption of Risk Form included as Schedule D-4 to the Offering Plan.

Allocation of Common Interest

The Common Interest of the Condominium establishes the Residential Unit Owners' percentage of ownership in the Common Elements and percentage of liability for the payment of Common Charges subject to the provisions of Section 339-m. See Special Risk No. 30. Each Residential Unit Owner has the Percentage of Common Interest in the Condominium set forth on Schedule A. The Percentage of Common Interest of each of the Residential Units has been determined pursuant to Section 339-i(1)(iv) of the Condominium Act, based on 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 Residential Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Residential Unit. See Special Risk No. 26 as to Sponsor's right to adjust the Percentage of Common Interest a de minimis amount so that the Percentage of Common Interest equals 100%.

Recreational Facilities

The Condominium will not have any recreational facilities.

## IV. LOCATION AND AREA INFORMATION

The Condominium is situated at 389 Bergen Street, Brooklyn, New York 11217 in the Park Slope section of Brooklyn.

Transportation

Public transportation is convenient to all parts of New York City by subway or bus.

The Atlantic Terminal is approximately .3 miles from the Condominium.

Emergency Services:

Police Department

The 78th Police Precinct being located at 65 6th Avenue, is approximately .8 miles from the Condominium.

Fire Department

The nearest fire house is FDNY Fire Squad 2 located at One Bergen Street.

Gas

Gas service as described in the Description of Property Report will be provided by National Grid for apartment cooking, space heating and domestic water.

Electric

Electric service will be provided by Con Edison as described in the Description of Property Report in Part II of the Offering Plan. Any electricity consumed for the General Common Elements will be metered by Con Edison and paid for as part of the Common Charges. Each Residential Unit will be individually metered for electric usage, and the cost thereof will be an individual expense of each Residential Unit Owner.

Telephone

Local telephone service is provided by Verizon. Each Residential Unit Owner will be responsible for their own phone service and activation.

Water and Sewage

Water supply and sewer servicing the Building will be provided by the City of New York as described in the Description of Property Report in Part II of the Offering Plan. Water will be metered through one main building water meter for domestic supply.

Refuse Removal

Refuse removal will be provided by the New York City Department of Sanitation.

Snow Removal

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

NY Presbyterian Brooklyn Methodist Hospital, 506 6th Street, Brooklyn, New York 11215 is approximately 1.7 miles away

Public schools located in the general vicinity are as follows:

The New York City public schools in the Park Slope area will be the schools any students in the Condominium would attend.

Sponsor makes no representation that the public schools referred to above will be the schools that the children of the Condominium will attend nor whether the children will have school bus service provided.

The above listing is by no means inclusive. No representation is made that the children of Residential Unit Owners will be entitled to attend any particular school.

Religious Institutions

There are several houses of worship of the major faiths within the vicinity of the Condominium.

Zoning

The zoning classification of the property is R6B which permits renovation of the Building for its intended use.

All surrounding areas are fully developed.

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

389 Bergen Street Condominium
389 Bergen Street
Brooklyn, New York
OFFERING PRICES AND RELATED INFORMATION
PROJECTED COMMON CHARGES AND REAL ESTATE TAXES ARE FOR THE FIRST YEAR OF CONDOMINIUM OPERATION BEGINNING SEPTEMBER 1, 2020 -AUGUST 31, 2021

| Unit | Number of Bedrooms (2) | Number of Baths (2) | Square Footage Each Unit (2) | Square Footage of Cellar Space Limited Common Element (2) | Square Footage Terrace Limited Common Element (2) | Square Footage Deck Limited Comon Element (2) | Square Footage Roof Top Limited Common Element (2) | Square Footage Rear Yard limited common element (2) | Square Footage Storage Space Limited Common Elements | Total Square Feet (2) Including Limited Common Elements | Estimated Offering Price (1) | Common Interest 100% (3) | **Projected Monthly Real Estate Tax (5) | Projected Annual Real Estate Tax (5) | Projected Common Charges (Monthly) (4) | Projected Common Charges (Annual) (4) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 4 bed | 2 full/2 half | 2036 | 970 | 0 | 199 | 0 | 816 | 0 | 4021 | $ 3,350,000 | 58% | $ 303.39 | $ 3,640.68 | $781.12 | $7,014 |
| 2 | 3 bed | 2.5 | 1958 | 0 | 160 | 0 | 777 | 0 | 70 | 2965 | $ 2,995,000 | 42% | $ 219.70 | $ 2,636.40 | $565.64 | $5,172 |
| | | | | | | | | | | | | | | | | |
| GRAND TOTALS | | | 3994 | 970 | 160 | 199 | 777 | 816 | 70 | 6986 | $ 6,345,000 | 100% | $ 523.09 | $ 6,277.08 | $1,346.76 | $ 12,186 |

**Purchasers should refer to the Description of Property Report and Floor Plans for a detailed description of the Residential Units and areas appurtenant to the Residential Units.**

***The cellar, deck, terrace, roof top and rear yard areas are not permitted to be used for a bedroom or livingroom. Use of this space improperly may result in a building code violation being issued.**
****The projected real estate taxes for the first year of operation contained on Schedule A are based on an assessment of the building before rehabilitatoin is complete. Purchasers are advised that real estate taxes may increase materially when the building is reassessed after rehabilitation is complete. See Footnore 5 to Schedule A and Section XX of the Offering Plan for more information regarding the projected assessed valuation after completion of rehabilitation.**

## 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 Offering 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 Residential Unit purchase. See Section IX of the Offering Plan as to other terms of the offering which are negotiable. See Section XV 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-2 of Part II of the Offering Plan for details of each type of Residential Unit. The room count has been made in accordance with the standards set forth by the New York City Department of Buildings as reflected in the Description of Property Report set forth in Part II of this Offering Plan. The approximate floor area, within reasonable tolerances, of each Residential Unit consists of the exterior face of the exterior walls to the centerline of walls separating one Residential Unit from corridors, stairs, and other mechanical spaces or any common elements (as herein defined). Each Residential Unit will consist of the area measured vertically from the top of the structural slab to the underside (of any fire protection) of the structural members above. As such the areas are not based upon measurements from interior surfaces of interior walls, and the actual living area comprising the Residential Unit may be significantly less than the area listed in Schedule A. The areas displayed in Schedule A consist of habitable and uninhabitable space. Any uninhabitable space appurtenant to a Residential Unit may not be legally used as a bedroom or living room and to do so may result in the issuance of a building code violation by the New York City Department of Buildings. Purchasers should refer to the Description of Property Report and the floor plans of the various model types in Schedule G and G-3 respectively, as to the description and location of the Residential Units.

3. The Percentage of 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 Residential Unit, the availability of Common Elements for exclusive or shared use, and overall dimensions of the particular Residential 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 of Common Interest determines the amount each of said Residential Unit Owners will pay for their Common Charges, subject to the provisions of Section 339-m of the Real Property Law of the State of New York as described in Special Risk No. 30. Based upon final specifications, construction conditions and/or “as-built” plans for the Building reflecting relative measurements, areas and uses of portions of the Building, application of such method of allocation of the Percentage of Common Interest may justify a minor

increase or decrease in the aggregate of the Percentage of Common Interest appurtenant to Residential Units. In such event, the Percentage of Common Interest appurtenant to each individual Residential Unit would be adjusted pro rata. Sponsor expressly reserves the right, from time to time, prior to the first Closing, to effect such a change in the Percentage of Common Interests and to amend the Offering Plan so as to reflect the same. In no event, however, will the Percentage of Common Interest of any Residential Unit be increased or decreased as a result of any of the foregoing a material amount without the written consent of any Purchaser in contract for a Residential Unit affected.

4. Common Charges have been estimated by the Sponsor and include fire and liability insurance for the Residential Units and Common Elements and maintenance and operation of the General Common Elements and Individual Residential Unit's Limited Common Elements that are the obligation of the Condominium to repair, maintain and replace, as necessary. Common Charges exclude repair and decoration to the inside of a Residential Unit, utilities for each Residential Unit and insurance for personal belongings. See Schedule C for estimated heating and electrical costs for the Residential Units.

5. Real estate tax estimates are based upon information received from Metropolitan Realty Exemptions, 381 South 5th Street, Brooklyn, New York 11211. The figures are based upon the projected 2019/2020 residential class 1 tax rate of $21.167 per $100 of assessed valuation for the Residential Units based upon the tentative assessment for 2020/2021 of $31,054 and a total tax for 2020/2021 of $6,277 based on a tax rage of $21.167. The projected real estate taxes for the first year of operation contained on Schedule A are based on an assessment of the building before rehabilitation is complete. Purchasers are advised that real estate taxes may increase materially when the building is reassessed after rehabilitation is complete. See Section XX of the Offering Plan and below for more information regarding the projected assessed valuation after completion of rehabilitation.

   The total estimated post completion of renovation valuation for the entire Condominium for the 2021/2022 tax year is estimated to be $98,917 and total taxes for all the Residential Units for said period is estimated to be $20,938. Sponsor has been advised by its consultant that it is the policy and practice of the New York City Department of Finance ("Finance") to apportion the assessed valuation of a condominium among the various units based upon the percentage of common interest contained in the Declaration of Condominium. Estimated real property taxes by unit once fully assessed after renovation is complete (i.e., fiscal 2021/2022) based on relative percentages of common interest set forth in Schedule A in the Offering Plan are as follows:

| Unit | % of Common Interest | Estimated Assessed Value | Estimated Annual 2021/2022 Taxes |
|---|---|---|---|
| 1 | 58% | $57,371.86 | $12,144.04 |
| 2 | 42% | $41,545.14 | $ 8,793.98 |

It should be noted that, although it is currently Finance's stated policy to apportion the assessed values of condominium properties among the various units on this basis, Finance has used different methodologies in the past. No warranty or guarantee is made herein that assessed values will not be apportioned based on a different method.

The figures set forth above are approximations derived from material submitted by the Sponsor and publicly available tax records and are subject to amendment. No government agency has passed upon these figures or the estimates of assessed valuation and taxes above. Neither the Sponsor nor its counsel have passed on the accuracy of any figures or estimates contained in the Offering Plan, and offer no warranties on real estate assessments, tax classifications, taxes or tax rates for any period. All prospective Purchasers are advised that, although the estimates of assessed valuations upon conversion are good faith estimates, such assessed valuations when actually made may be less or greater than as estimated above.

The above estimates do not take into account any future increases in the level of assessed valuation applied to residential property or any increase in the real estate tax rates. The above estimates are based upon interpretations of The New York State Real Property Tax Law and The Administrative Code of the City of New York and are not intended to be a guarantee or assurance that the actual or transitional tax assessments, tax rates, or actual taxes will be as estimated.

No representation is made that the provisions of law or New York City Department of Finance policies and practices will apply at the time the property's conversion is complete. Purchasers should be aware that the laws, regulations and practices of the Department of Finance upon which the above estimates are predicted may in the future be revised in a manner adverse to a Purchaser's interests, or that there may be an adverse interpretation of the law or regulation by one or more agencies of the City of New York, or Courts of competent jurisdiction.

The above estimates are not intended and should not be construed as representations or warranties that assessments, tax rates, and taxes will not be determined in a different amount. The foregoing analysis is based upon the knowledge of the making and review of assessments by the Real Property Assessment Department and the Tax Commission of the City of New York with respect to "class 1" residential properties held in the condominium form of ownership. Application of a particular approach to valuation by an individual assessor may yield a different result.

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

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.

See Section XX for a full discussion of the real estate taxes applicable to the Residential Units. A copy of the opinion letter from Metropolitan Realty Exemptions is contained in Section XXII of the Offering Plan.

After the Condominium is divided into individual tax lots, each Residential Unit will be taxed as a separate tax lot for real estate tax purposes and the Residential Unit Owner will not be responsible for the payment of, nor will the Residential Unit be subject to, any lien arising from the non-payment of taxes on other Residential Units. In the opinion of counsel, a Residential Unit Owner is presently entitled to deductions for federal income tax purposes for payments for state and local income taxes and real estate taxes applicable to their Residential Unit to a maximum of $10,000 as is currently permitted by law under the Federal Tax Cuts and Jobs Act of 2017 (the "Tax Act"). In addition, provided the Residential Unit will be the Purchaser's principal residence, a Residential Unit Owner may also deduct the interest on a mortgage, up to a maximum mortgage of $750,000, they procure to finance the purchase of their Residential Unit for income tax purposes pursuant to the Tax Act. See Section XXI of the Offering Plan. Any projected tax deduction (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.

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.

## VI. SCHEDULE B

## 389 BERGEN CONDOMINIUM

## PROJECTED BUDGET FOR FIRST YEAR OF OPERATION

Beginning September 1, 2020

**INCOME**

| | | |
|---|---|---|
| 1. | Common Charges | |
| | **TOTAL INCOME** | **$ 16,161** |

**EXPENSES**

| | | |
|---|---|---|
| 2. | Labor | $ -0- |
| 3. | Common Electric | $ 1,760 |
| 4. | Water Charges/Sewer Rents | $ 3,251 |
| 5. | Building Repairs, Maintenance | $ 1,000 |
| 6. | Insurance | $ 4,700 |
| 7. | Management Fee | $ -0- |
| 8. | Accounting/Legal | $ 3,250 |
| 9. | Contingency | $ 500 |
| YEARLY OPERATING EXPENSES | | $14,461 |
| 10. | Reserve | $ 1,700 |
| **TOTAL YEARLY EXPENSES** | | **$16,161** |

* 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 Offering Plan to include a revised budget. See explanatory footnotes. If amended budget exceeds this 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 within a reasonable period of time that is not less than fifteen (15) days. In addition, in the event the estimated commencement date of the first year of operation of the Condominium is delayed by twelve (12) months or more, Purchasers will be offered a right of rescission unless Purchaser enters into a Purchase Agreement subsequent to an amendment disclosing a revised estimated date of the first Closing. In such an event the Purchaser will be offered a right of rescission by an amendment to the Offering Plan if the estimated date of the Closing of the first Residential Unit is delayed by twelve (12) months or more from the estimated date disclosed in the amendment.

## FOOTNOTES TO PROJECTED BUDGET

1. **COMMON CHARGES**

The estimate of the Annual Common Charges to be collected during the first year of Condominium operation is based upon a projection of the total amount of Common Charges that will be levied against the Residential Units and is based upon full occupancy of the Condominium.

2. **LABOR**

The Condominium will not have any employees. All services of the Condominium will be contracted for and performed by independent contractors who are not employees of the Condominium on an as needed basis. This does not violate any applicable housing or labor laws for this condominium.

3. **COMMON ELECTRIC/GAS/HOT WATER**

Based on the letter from R & W/Engineers, P.C., 380 Townline Road, Hauppauge, New York as follows:

Building Exterior Entrance, Vestibule, Lobby, Cellar, Hallways and Stairways Lighting (LED): 0.25 Watt/sf x 138.5 sf x 24 hours/day x 365 days x $0.21/KWH/1,000 x 1.065 = $67.80/year

Exterior Lighting: 4 fixtures (assumed) x 0.025 KW/fixture x 10 hours/day x 365 days/year $0.21/KWH x 1.065 = $81.63/year

Common Area Heating (assumed electric): 5 Watts/SF x 138.5 SF x 4 hours/day x 210 days/year x $0.21/KWH/1,000 x 1.065 = $130.10/year

Common Area Cooling (assumed electric): 0.75 KWH x 6 hours/day x 120 days/year x $0.21/KWH x 1.065 = $120.77/year

Domestic Water Booster Pumps: 2 HP x 0.746 KW/HP x 4 hours/day x 365 days/year x $0.21/KWH x 1.065 = $487.18/year

Sewage Ejector Pump, 1 Horsepower (assumed): 1 HP x 0.746 KW/HP x 4 hours/day x 365 days/year x $0.21/KWH x 1.065 = $243.59/year

Drainage Sump Pump: 2 HP (assumed) x 0.746 KW/HP x 8 hours/week x 52 weeks/year x $0.21/KWH x 1.065 = $138.81/year

Exhaust (1,200 cfm): 0.25 KW x 24 hours/day x 365 days/year x $0.21/KWH x 1.065 = $489.79/year

In addition, a 2 % inflation factor has been added to the estimate. All Residential Units have their own individual electric meter, as well as there being a separate electric meter for the common area. The budget is for the cost of the electricity in the common area only and does not include the cost for each Residential Unit, which shall be separately metered and billed directly to each Residential Unit Owner.

It is not possible to predict whether the budgeted figure will reflect the actual cost to be incurred during the first year of Condominium operation due to the level of consumption being an estimate. Many factors affect the cost of electricity, gas and water and rates may increase as a result.

Purchasers should note that there is no common gas in the Condominium.

Purchasers should refer to Schedule C as to individual utility costs.

4. **WATER CHARGES/SEWER RENTS**

Based on the letter of R & W/Engineers, P.C., 380 Townline Road, Hauppauge, New York as follows:

Water Consumption: (Does not include sewer charge)
New York City charge = $3.99/100 cubic feet or $3.99/748 gallons

Water Use = 300 gpd/unit + 0.04 gpd/sf common use area

Common Area = 138.5 sf

Residential Water Use = (300 gpd/unit x 2 units) + (0.04 gpd/sf x 138.5 sf) x 365 days/year x $3.99/748 gal x 1.065 = $1,255.62/year

Sewage Charge:
New York City charge = $6.34/100 cubic feet or $6.34/748 gallons

Sewage Charge Based on Water Usage of 300 gpd/unit + 0.04 gpd/sf common use area

Sewer Charge = (300 gpd/unit x 2 units) + (0.04 gpd/sf x 138.5 sf) x 365 days/year x $6.34/748 gal x 1.065 = $1,995.14/year

The projected rates are not guaranteed, and it must be expected that these rates may increase with the passage of time and could be affected by many factors, which are beyond the control of the Sponsor. Actual consumption will be metered and will vary based on the personal needs of the occupants and weather conditions.

5. **BUILDING REPAIRS, MAINTENANCE**

It is estimated that this sum will be sufficient for expenses in connection with general repairs and maintenance needed to maintain the public areas for the first year of Condominium operation, with the only foreseen expenses at this time consist of cleaning, painting of public halls and ceiling, waxing floors and polish. Individual Residential Unit Owners will be responsible for maintaining the Common Elements immediately in front of their Residential Unit. The Board of Managers shall be responsible for all other routine maintenance.

The budgeted figure does not include improvements and repairs to, maintenance of, or supplies for individual Residential Units. Each individual Residential Unit Owner is responsible for improvements and repairs to, maintenance of, and supplies for their Residential Unit and any Individual Residential Unit's Limited Common Elements that are not the obligation of the Condominium, restricted to their use and subject to the requirements contained in the Declaration of Condominium and By-Laws. This line item of the budget does not include the costs of repairs, hardware supplies, painting or extermination for the interior of Residential Units, which are the sole responsibility of the Residential Unit Owner.

6. **INSURANCE**

The budget figure for insurance is based on an estimate provided by Brooklyn Coverage Corp., 383 Kingston Avenue, Suite 165, Brooklyn, New York 11213 as follows:

Commercial Property

| | |
|---|---|
| Valuation: | RCV/Special Form |
| Co-Insurance: | NIL |
| Building: | $1,500,000 |
| Business Income: | $150,000 |
| Equipment Breakdown/Boiler & Machinery: | Included |
| Ordinance or Law Coverage A: | Included |
| Ordinance or Law Coverage B & C: | 10% |
| Flood & Quake: | $1,000,000 |
| Deductible: | $5,000 |
| Flood & Quake Deductible: | $50,000 |

Commercial General Liability

| | |
|---|---|
| Limits of liability insurance: | |
| Per Occurrence: | $1,000,000 |
| General Aggregate: | $2,000,000 |
| Products Completed Operations: | $2,000,000 |

| | |
|---|---|
| Personal and Advertising Injury: | $1,000,000 |
| Damages to Premises Rented to You: | $100,000 |
| Med-Pay: | $5,000 |
| Hired & Non-owned Auto: | $1,000,000 |
| Water Damage & Elevator Collision: | Included |

Commercial Excess Liability

| | |
|---|---|
| Limits of liability insurance: | |
| Per Occurrence: | $5,000,000 |
| General Aggregate: | $5,000,000 |
| Deductible/SIR: | $10,000 |

The coverage amount limited stated above for casualty insurance is based on full replacement value and should be sufficient to avoid the effects of co-insurance. The Condominium Board of Managers should review said amount annually. The above quotation does not include excess liability, workers compensation and auto liability which may be obtained at additional expense to the Condominium.

The coverage amount limit stated above for casualty insurance is based on full replacement value and should be sufficient to avoid the effects of co-insurance. The insurance policies will provide that (i) each Residential Unit Owner is an additional insured; (ii) there will be no cancellation without notice to the Condominium Board and/or their legal representatives; (iii) the right to subrogation against Residential Unit Owners is waived; (iv) the defense of invalidity because of acts of defense of pro-rata reduction in liability if Residential Unit Owners obtain additional coverage is waived; and (v) policy will follow perimeters set forth by Declaration of Condominium and By-Laws of Condominium.

The above coverage will be in place prior to or simultaneously with the closing of the first Residential Unit in the Condominium.

No coverage is provided for fire and casualty losses to the contents of each Residential Unit nor does the coverage take into account any future replacements or additions to the Residential Units or the fixtures and improvements contained therein. In addition, no liability coverage for an individual Residential Unit Owner is included in the coverage provided above for occurrences not within the Common Elements. Prospective Purchasers should consult their attorney or insurance agent to determine the advisability of obtaining insurance of their own risk of liability and fire and casualty losses.

Inflationary increases in property values and other changes in the exposures of property make it necessary to periodically review and update the coverage detailed above.

IN RECENT YEARS, PREMIUMS FOR INSURANCE (ESPECIALLY FIRE AND LIABILITY INSURANCE) HAVE INCREASED SUBSTANTIALLY. IT IS NOT

POSSIBLE TO PREDICT WHETHER FUTURE PREMIUMS WILL CONTINUE TO INCREASE OR WILL LEVEL OFF. NO REPRESENTATION IS MADE REGARDING THE ACTUAL COST OF INSURANCE AT THE TIME OF CLOSING. PURCHASERS ARE ADVISED TO PROCURE THEIR OWN FIRE AND LIABILITY COVERAGE FOR THE INTERIOR OF THE RESIDENTIAL UNIT AND THE PURCHASER'S PERSONAL AFFECTS.

## 7. MANAGEMENT FEE

The Condominium will initially be self-managed by the Board of Managers. The Board of Managers will be responsible for bookkeeping, billing, contracting for essential services, maintaining insurance on the premises, procuring a financial statement yearly and other services normally performed by a Managing Agent. In the event the Board of Managers hires a Managing Agent at the end of the first year of operation, the budget will increase accordingly. No representation is made as to the cost, terns or availability of a Managing Agent. Notwithstanding said fact, a Condominium of this size may ultimately determine there is a need to hire a Managing Agent. The current costs of a Managing Agent to manage a Condominium of this size may vary from approximately $1,000 per annum per Residential Unit to approximately $1,500 per annum per Residential Unit.

## 8. ACCOUNTING/LEGAL

Based on an estimate provided by KVLSM, CPA with offices located at 415 Crossways Park Drive, Suite 6, Woodbury, New York 11797, for the preparation of the annual certified audit and preparation of applicable tax returns. Sponsor has budgeted a small expense for legal fees for the first year of operation.

## 9. RESERVES

The Sponsor has estimated reserves for major capital improvements at approximately ten percent (10%) of the estimated operating budget. Said amount is sufficient to comply with Fannie Mae and FHA guidelines but Sponsor makes no representation regarding the Condominium's compliance with any other requirements of Fannie Mae and FHA. It shall be the obligation of the Board of Managers to collect and utilize this Reserve fund strictly and solely for capital expenditures for the Common Elements of this Condominium regime. In view of the fact this Condominium will be a completely renovated Building the annual Reserve Fund should be sufficient to cover the anticipated costs of any capital replacement within the first five (5) years after the first closing.

IN THE OPINION OF SCHIFFER MANAGEMENT, (SET FORTH IN "CERTIFICATION OF SPONSOR'S EXPERT CONCERNING ADEQUACY OF BUDGET," IN PART II OF THIS OFFERING PLAN), THE PROJECTED RECEIPTS APPEAR REASONABLE AND ADEQUATE BASED ON PRESENT PRICES (ADJUSTED TO REFLECT CONTINUED INFLATION AND PRESENT LEVELS OF CONSUMPTION FOR COMPARABLE RESIDENTIAL UNITS SIMILARLY SITUATED) TO MEET THE ESTIMATED EXPENSES FOR THEIR

FIRST YEAR OF CONDOMINIUM OPERATION, ASSUMING SUCH FIRST YEAR TO BE THE YEAR COMMENCING SEPTEMBER OF 2020. THE FOREGOING BUDGET, HOWEVER, IS NOT INTENDED AND SHOULD NOT BE TAKEN AS A WARRANTY THAT THE ANNUAL COMMON CHARGES OR COMMON EXPENSES FOR THE FIRST OR ANY SUBSEQUENT YEAR OF OPERATION OF THE PROPERTY BY THE CONDOMINIUM BOARD WILL BE AS SET FORTH IN SAID BUDGET. IT IS LIKELY THAT THE ACTUAL COMMON EXPENSES FOR THE FIRST YEAR OF CONDOMINIUM OPERATION WILL VARY FROM THE AMOUNTS SHOWN IN THE BUDGET.

## VII. SCHEDULE C

The projected energy costs for the individual Residential Units have been provided by R & W / Engineers, P.C., 380 Townline Road, Suite 150, Hauppauge, New York 11788 as per the attached projections.

Actual costs may vary depending upon the hours of use, thermostat settings and proper maintenance. These cost figures are estimates and are not intended as guarantees.

In view of the fact that these averages may include the use of energy by persons of varying need with different standards of comfort or with families of different sizes, the amount of energy used by the Purchaser may vary substantially from the average estimates herein provided. 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 optimum efficiency at the lowest cost. Further, that it has not been induced to select the appliances etc., described herein on the basis of any financial inducement other than the cooperative advertising and price of the system made to it by the manufacturer or distributor of the system or by the supplier of energy to be used in connection therewith or by any of their agents or employees. Although Sponsor is of the opinion the amounts set forth in Schedule B-1 appear reasonable and adequate under existing circumstances to meet the reasonably anticipated costs to provide utility services to the Residential Units, no item is warranted as to its accuracy, sufficiency or otherwise.

# R & W / Engineers, P.C.

380 Townline Road – Suite 150
Hauppauge, New York 11788

Larry A. Rubinson, P.E.
Michael L. Williams, P.E.

(631) 969-8535
Fax: 969-8518


December 17, 2019

Space Marketing Shop
190 5th Avenue
Brooklyn, NY 11217

**Attn: Mr. Aran Scott**

**Re: 389 Bergen Condominium, Brooklyn, NY**
**Water, Sewer, Natural Gas and Electric Utility Budgets**

Dear Mr. Scott:

Per your request, we prepared the following annual individual unit and common utility consumption (electric, natural gas, sewer and water) estimates and anticipated present day costs. The cost factor of 6.5% added to each item is based on a utility sales tax rate of 4.5% (simplified average) and an inflation factor of 2.0% over the next year. The project Sponsor indicates that the New York City Water Board is the water purveyor, Consolidated Edison will provide electric and National Grid will supply natural gas service. The NYC DEP provides the sanitary connection. The sewerage charge is based on the water use. The building contains two residential units.

The building consists of a cellar, basement and three (3) stories above grade. The cellar has utility rooms, storage and portions of one residential unit. Each of the three grade stories contains residential units and common stairs. The roof contains a unit and recreation space and utility area in addition to each unit having exterior spaces. Separate utility calculations are provided for each unit and the common space.

The two residential units are as follows:

| | | |
|---|---|---|
| Unit 1: 4 Bedroom, 2 Half & 2 Full Bath | 2,919.5 sq. ft. | 979 Sq. Ft. Outside |
| Unit 2: 3 Bedroom, 1 Half & 2 Full Bath | 2,034 sq. ft. | 937 Sq. Ft. Outside |

This letter report is based on information contained on building plans and a report of the proposed construction provided to us. Utility rates, in simplified format, are based on those used in calculations in recent utility bills for similar type construction in a nearby building.

Per the report, the utilities will be metered as follow:

Electric:

Residential units will be separately metered for electricity. An electric meter will be provided for common area uses. Electricity is provided by Consolidated Edison Company.

Natural Gas:

National Grid will provide gas to the building. The building will have separate gas meters

for each unit.

Water and Sewer:

The City of New York will provide water and sewer services to the building. Water and sewer charges will be commonly metered.

Water Consumption: (Does not include sewer charge)
New York City charge = $3.99/100 cubic feet or $3.99/748 gallons

Water Use = 300 gpd/Unit + 0.04 gpd/sf common use area

Common Area = 138.5 sf

Residential Water Use = (300 gpd/unit x 2 units) + (0.04 gpd/sf x 138.5 sf)} x 365 dys/yr x $3.99/748 gal x 1.065 = **$1,255.62/year**

Sewage Charge:
New York City charge = $6.34/100 cubic feet or $6.34/748 gallons

Sewage Charge Based on Water Usage of 300 gpd/unit + 0.04 gpd/sf common use area

Sewer Charge = (300 gpd/unit x 2 units) + (0.04 gpd/sf x 138.5 sf)} x 365 dys/yr x $6.34/748 gal x 1.065 = **$1,995.14/year**

Electric Costs
Con Edison Electric costs are based on a rate of $0.21/KWH (Simplified Delivery & Supply)

Unit 1: Four Bedrooms, Two Full and Two Half Baths Residential Electric Costs:

Refrigerator (48"): 60 KWH/month x 12 months x $0.21/KWH x 1.065 = **$161.03/year/unit**
Dish Washer (Miele G4998VI): 30 KWH/month x 12 months x $0.21/KWH x 1.065 = **$80.51/year/unit**
Oven (Wolf 30"): 4.0 KW (avg.) x 0.5 Hr/Day x 180 Day/Yr x $0.21/KWH x 1.065 = **$80.51/year**
Range Hood: 10 KWH/Month x 12 Mo/yr x $0.21/KWH x 1.065 = **$26.84/year**
Microwave (Wolf 24"): 3.0 KWH x 10 hrs/mo x 12 mo/yr x $0.21/KWH x 1.065 = **$80.51/year/unit**
Clothes Washer: 0.65 KW x 5 hrs/week x 52 weeks/year x $0.21/KWH x 1.065 = **$37.80/year**
Clothes Dryer: 120 KWH/month x 12 months x $0.21/KWH x 1.065 = **$322.06/year/unit**
Small Appliances & Lighting: 1.1 KW/dy x 10 hrs/day x 365 days x $0.21/KWH x 1.065 = **$897.95/year/unit**
Bathroom Exhaust Fans: 4 Fans x 75 W x 1 hr/day x 365 days x $0.21/KWH/1,000 x 1.065 = **$24.49/year**
Heating: 10 KW x 5 Hrs/Day x 210 dys/yr x $0.21/KWH x 1.065 = **$2,348.33/year**
Cooling: 15 KW x 4 Hrs/Day x 120 dys/yr x $0.21/KWH x 1.065 = **$1,610.28/year**
Out-door Recreation Area Lighting: 0.0015 KW/sf x 979 sf x 4 hrs/day (average) x 180

days x $0.21/KWH x 1.065 = **$236.47/year**

Electric Water Heater: 1.75 KW x 4 Hrs/Day x 365 dys/yr x $0.21/KWH x 1.065 = **$571.43/year**

Unit 2: Three Bedrooms, Two Full and One Half Baths Residential Electric Costs:

Refrigerator (36"): 50 KWH/month x 12 months x $0.21/KWH x 1.065 = **$134.19/year/unit**

Dish Washer (Miele G4998VI): 25 KWH/month x 12 months x $0.21/KWH x 1.065 = **$67.10/year/unit**

Microwave (Wolf 24"): 2.5 KWH x 10 hrs/mo x 12 mo/yr x $0.21/KWH x 1.065 = **$67.10/year/unit**

Clothes Washer (24"): 0.65 KW x 4 hrs/week x 52 weeks/year x $0.21/KWH x 1.065 = **$30.24/year**

Clothes Dryer (24"): 100 KWH/month x 12 months x $0.21/KWH x 1.065 = **$268.38/year/unit**

Small Appliances & Lighting: 0.75 KW/dy x 10 hrs/day x 365 days x $0.21/KWH x 1.065 = **$612.24/year/unit**

Bathroom Exhaust Fans: 3 Fans x 75 W x 1 hr/day x 365 days x $0.21/KWH/1,000 x 1.065 = **$18.37/year**

Heating: 7 KW x 5 Hrs/Day x 210 dys/yr x $0.21/KWH x 1.065 = **$1,643.83/year**

Cooling: 10.5 KW x 4 Hrs/Day x 120 dys/yr x $0.21/KWH x 1.065 = **$1,127.20/year**

Out-door Recreation Area Lighting: 0.0015 KW/sf x 937 sf x 4 hrs/day (average) x 180 days x $0.21/KWH x 1.065 = **$226.32/year**

Exhaust (1,200 cfm): 0.25 KW x 24 Hrs/Dy x 365 Dys/Yr x $0.21/KWH x 1.065 = **$489.79/year**

Electric Water Heater: 1.25 KW x 4 Hrs/Day x 365 dys/yr x $0.21/KWH x 1.065 = **$408.16/year**

Common Area Electric Costs:

Building Exterior Entrance, Vestibule, Lobby, Cellar, Hallways & Stairways Lighting (LED): 0.25 Watt/sf x 138.5 sf x 24 hrs/day x 365 days x $0.21/KWH/1,000 x 1.065 = **$67.80/year**

Exterior Lighting: 4 Fixtures (assumed) x 0.025 KW/fixture x 10 hrs/dy x 365 dy/yr x $0.21/KWH x 1.065 = **$81.63/year**

Common Area Heating (assumed electric): 5 Watts/SF x 138.5 SF x 4 hrs/dy x 210 dys/yr x $0.21/KWH/1,000 x 1.065 = **$130.10/year**

Common Area Cooling (assumed electric): 0.75 KWH x 6 hrs/dy x 120 dys/yr x $0.21/KWH x 1.065 = **$120.77/year**

Domestic Water Booster Pumps: 2 HP x 0.746 KW/HP x 4 Hrs/Dy x 365 Dys/Yr x $0.21/KWH x 1.065 = **$487.18/year**

Sewage Ejector Pump, 1 Horsepower (assumed): 1 HP x 0.746 KW/HP x 4 Hrs/Dy x 365 Dys/Yr x $0.21/KWH x 1.065 = **$243.59/year**

Drainage Sump Pump: 2 HP (assumed) x 0.746 KW/HP x 8 Hrs/wk x 52 Wks/Yr x $0.21/KWH x 1.065 = **$138.81/year**

Exhaust (1,200 cfm): 0.25 KW x 24 Hrs/Dy x 365 Dys/Yr x $0.21/KWH x 1.065 = **$489.79/year**

Natural Gas Costs:
National Grid Gas costs are based on a rate of $1.26/therm (Simplified Delivery & Supply)

Unit 1: Four Bedrooms, Two Full and Two Half Baths Residential Gas Costs:

Cook Top (Wolf 36" CG365P/S): 3.5 (assumed) therm/month x 12 month/Yr x $1.26/therm x 1.065 = **$56.36/year**

Unit 2: Three Bedrooms, Two Full and One Half Baths Residential Gas Costs:

Oven (Wolf 36"): 8 (assumed) therm/month x 12 month/Yr x $1.26/therm x 1.065 = **$128.82/year**

Combined utility purveyor commodity and delivery costs with several averaging assumptions were applied to derive at the single unit cost for each utility. The calculations include many assumptions on the amount of appliances and common rooms use. It is not possible to predict how closely the estimated costs will reflect the actual costs for providing water, sewer, electricity and natural gas to the individual and common spaces during the first year of operation, in part because such costs will vary with the levels of consumption, the unit price for water, electric and natural gas, weather and any conservation measures adopted by the owners, residents and staff. It is believed that the projected figures should be sufficient to cover the cost of water, sewer, electricity and gas during the first year of operation. However, the unit prices for water, natural gas and electricity have been highly volatile and unpredictable. No budgeted item is warranted.

Should you have any questions, please call my office. Trusting that the above is as requested, I remain

Very truly yours,
**R & W / Engineers, P.C.**

Larry A. Rubinson, P.E.
President

CERTILMAN BALIN
ATTORNEYS

90 MERRICK AVENUE, 9TH FLOOR
EAST MEADOW, NY 11554
PHONE: 516.296.7000 • FAX: 516.296.7111
www.certilmanbalin.com

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

July 2, 2020

State of New York
Department of Law
28 Liberty Street, 21st Floor
New York, New York 10005

Re: **389 Bergen 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 Residential Units contained in Schedule A of the Offering Plan.

Our experience includes the preparation of hundreds of Condominium Offering Plans and legal representation of numerous Condominium Boards of Managers in the State of New York for over thirty (30) years.

In reviewing said Schedule A, the Percentage of Common Interest for each Residential Unit as contained therein has been determined based upon the floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium the uniqueness of the Residential Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Residential 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 this Condominium to be filed with the Department of Law.

Very truly yours,

**CERTILMAN BALIN ADLER & HYMAN, LLP**

By:_____
Richard Herzbach, Partner

## IX. CHANGES IN PRICES OF RESIDENTIAL UNITS

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 Offering 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 Residential Unit purchase. All changes in prices which are an across the board increase or decrease affecting one (1) or more lines of Residential 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 the Residential Unit or the fixtures or equipment contained therein or credits or allowances for fixtures or equipment; treatment of reduced and/or split Deposits; financing contingency; extension of period to secure financing; financing contingency 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 Residential Unit; mortgage contingency; maintenance subsidies, rebates or other costs associated with maintaining a Residential 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 purchase of a Residential Unit and application of rent toward the purchase price. As a result, a Purchaser may receive different terms as other Purchasers for a similar Residential Unit. Furthermore, the Sponsor reserves the right to amend the Offering 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.

Sponsor will not make any changes in the size or number of Residential Units and/or their respective Percentage of Common Interest and no material change will be made in the size or quality of Common Elements, except by amendment to the Offering Plan and to the Declaration of Condominium (if the Declaration of Condominium was filed prior to such change). Sponsor reserves the right to change the model mix of the Residential Units 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, as long as the Sponsor does not change the total number of Residential Units being offered for sale or the total number of Buildings in the Condominium.

Unless an affected Purchaser consents, no material change will be made in Residential Unit size, layout, or Percentage of Common Interest if a Purchase Agreement has been executed and delivered to the Sponsor for that Residential Unit.

The Percentage of Common Interest of each of the Residential Units has been determined pursuant to Section 339-i(1)(iv) of the Condominium Act, based on 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 Residential Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Residential Unit. Based upon final specifications, construction conditions and/or "as-built" plans for the Building reflecting relative measurements, areas and uses of portions of the Building, application of such method of allocation the Percentage of Common Interest may justify a minor increase or decrease in the aggregate Percentage of Common Interest appurtenant to Residential Units. In such event, the Percentage of Common Interest appurtenant to each individual Residential Unit would be adjusted pro rata. Sponsor expressly reserves the right, from time to time, prior to the first Closing, to effect such a change in the Percentage of Common Interests and to amend the Offering Plan so as to reflect the same. In no event, however, will the Percentage of Common Interest of any Residential Unit be increased or decreased as a result of any of the foregoing a material amount. See Section XIX of the Offering Plan.

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 Common Elements.

## X. 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 the Residential Unit Owner's 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 as liquidated damages the funds being held in escrow as to a maximum of ten (10%) percent of the sales price plus the cost of Extras paid for by Purchaser which Extras have been installed by Sponsor, paid for but not installed by Sponsor or which have been ordered but not installed by Sponsor and for which Sponsor is obligated to pay for such Extras unless the Offering Plan has been abandoned. In the event the Offering Plan is abandoned the Purchaser shall be entitled to receive all funds paid to the Sponsor for such Extras.

## XI. PROCEDURE TO PURCHASE

The Sponsor hereby offers for sale the Residential Units in the Condominium for 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 renovation and construction of this Condominium.

The sales prices at which the Residential 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 Residential 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 Residential Unit; however, some Purchasers may pay less or more for the same model Residential Unit or receive different terms.

Any person may accept Sponsor's offer to sell a Residential Unit by entering into a Purchase Agreement with the Sponsor. The Agreement provides that the Purchaser will purchase from the Sponsor a designated Residential Unit in the Condominium as described in the Declaration of Condominium 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. To the extent there are any inconsistencies between the terms of the Purchase Agreement and the Offering Plan, the terms of the Offering Plan will govern.

Purchaser and Sponsor shall execute four (4) originals of the Purchase Agreement. Upon signing the Purchase Agreement, the Purchaser shall make a Deposit of up to ten percent (10%) of the purchase price of a Residential Unit but not less than $1,000, plus the cost of any Extras ordered by the Purchaser. Upon full payment of the balance of the purchase price and the balance of the cost of any Extras ordered and payable at the Closing, in cash or by mortgage proceeds, 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 Residential 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 XIV 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. After Purchaser delivers a fully executed Purchase Agreement with the required Deposit Sponsor must either return a fully executed Purchase Agreement within thirty (30) days to the Purchaser or reject the Purchase Agreement and refund the Deposit monies. In the event the Sponsor does not act within said thirty (30) day period the Purchase Agreement will be deemed accepted by the Sponsor.

The Power of Attorney attached to the Purchase Agreement 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 Closing of the first Residential Unit will occur by September 1, 2020. Purchasers will be offered a right of rescission if: (i) the actual date of Closing of Title to the first Residential Unit; or (ii) the projected date of Closing of Title to the first Residential Unit occurs later than August 31, 2021, twelve (12) months after the projected date of the first Closing. If the Offering Plan is amended to provide for a later projected date of the first Closing, Purchasers who enter into a Purchase Agreement subsequent to the acceptance date of the Amendment will be entitled to an offer of rescission if the first Closing occurs more than twelve (12) months beyond that amended, later date. Purchasers must advise the Sponsor no later than the date provided in an Amendment to the Offering Plan disclosing the later date but not less than fifteen (15) days from the date of the notice. However, if the first Residential Unit Closing occurs before August 31, 2021, the Sponsor may schedule the Closings of Title to other Residential Units significantly later than such date. Each Purchaser's Purchase Agreement will also contain an outside delivery date, as provided in the following paragraph. In the event Sponsor is unable to close title to a Residential Unit within said time frame a Purchaser will be entitled to the applicable provisions therein to rescind Sponsor is not obligated to schedule a Closing within any specified time frame or to ensure that Closing of Title to a Residential Unit will occur by any date certain. PROSPECTIVE PURCHASERS SHOULD THEREFORE CAREFULLY CONSIDER SUCH RISKS IN THEIR DETERMINATION AS TO WHETHER TO PURCHASE A RESIDENTIAL UNIT.

In addition, each Purchase Agreement provides that in the event Sponsor is unable to convey title to a Purchaser's 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 Deposit 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 of the proposed date of delivery set forth in the Purchase Agreement. Purchaser's failure to so notify Sponsor of Purchaser's intent to cancel Purchaser's Purchase Agreement due to Sponsor being unable to convey title to the Purchaser's Residential Unit within the twelve (12) month period shall be deemed a waiver of said 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 5 of the Purchase Agreement in Part II of the Offering 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- 3 to the Offering Plan.

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

The risk of loss or damage to a Residential Unit by fire or any other cause until the delivery of the deed is assumed by the Sponsor. In the event of damage to a Residential Unit prior to a Purchaser taking occupancy the Sponsor will notify the Purchaser within ten (10) days of the damage taking place to advise the Purchaser as to whether or not it will repair the damage from a casualty or other cause and if to be repaired the estimated time frame of the repair. In the event the Sponsor elects not to do the repair, Sponsor will return Purchaser's Deposit and any Extras within ten (10)) days of the notice to the Purchaser. Subsequent to the Closing of Title to a Residential Unit the Purchaser assumes all risk of loss to the Residential Unit.

A Purchaser will inspect Purchaser's Residential Unit with a representative of the Sponsor during normal business hours three (3) days prior to the Closing Date and will sign and deliver to Sponsor on or before the Closing Date a Pre-Title Inspection Statement supplied by Sponsor, acknowledging the condition in which Purchaser has received Purchaser's Residential Unit. Sponsor shall agree to complete any open items within six (6) months after Closing, weather and circumstances permitting.

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 Offering Plan will be resolved in favor of the Offering Plan. The Purchase Agreement and Offering 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 Deposit 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 Purchaser shall be deemed in default of the Purchase Agreement and Sponsor may retain as liquidated damages the funds being held in escrow to a maximum of ten (10%) percent of the sales price plus the cost of Extras paid for by Purchaser which Extras have been installed by Sponsor, paid for but not installed by Sponsor or which have been ordered but not installed by Sponsor and for which Sponsor is obligated to pay for such Extras unless the Offering Plan has been abandoned. In the event the Offering Plan is abandoned the Purchaser shall be entitled to receive all funds paid to the Sponsor for such Extras.

Neither the Purchase Agreement nor the Deposit or any payment given for Extras is a lien against the Property or the Residential Unit. Purchaser may not record the Purchase Agreement and will be in default if Purchaser records the Purchase Agreement.

Neither the Purchase Agreement nor any provisions thereof, can be orally changed, terminated or waived.

Pursuant to the terms of the Purchase Agreement, upon the occurrence of a Default to pay the balance of the Purchase Price or other obligations pursuant to the Purchase Agreement, Purchaser shall have thirty (30) days from the giving of written notice of such default to cure the specified default. If the default is not cured within such thirty (30) days, TIME BEING OF THE ESSENCE, the Sponsor, in its sole discretion may thereupon terminate the Purchase Agreement. If Sponsor so elects to terminate, the Purchase Agreement shall be deemed terminated, and Sponsor shall have the right to retain, as and for liquidated damages, the Deposit (and any interest earned of the Deposit, if any) plus the costs incurred by Sponsor for any Extras, if any, in the Residential Unit ordered by the Purchaser. Upon the termination of the Purchase Agreement, Purchaser and Sponsor will be released and discharged of all further liability and obligations under the Offering Plan and the Purchase Agreement, and the Residential Unit may be sold to another as though the Purchase Agreement had never been made, and without accounting to the Purchaser for any of the proceeds for such sale.

The Offering Plan and the Purchase Agreement provide that any conflict between the Offering Plan and the Purchase Agreement will be resolved in favor of the Offering Plan.

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

## ESCROW AND TRUST FUND PROVISIONS

The Sponsor will comply with the escrow and trust fund requirements of General Business Law (“GBL”) Sections 352-e(2-b) and 352-(h) and the Attorney General’s regulations promulgated pursuant thereto as amended on November 14, 2012 as follows:

### The Escrow Agent:

The law firm of TAB Law Firm, PC, 27 Union Square West, Suite 307, New York, New York, telephone number (212) 379-6405, shall serve as escrow agent ("Escrow Agent") for Sponsor and Purchaser. Taliya Bashani, Esq. is the signatory on the account. Neither the Escrow Agent nor its authorized signatories on the account are the Sponsor, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

**The Escrow Account:**

The Escrow Agent has established the escrow account at Bank of America, 29 Broadway, New York, New York 10006 ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled “389 Bergen Condominium Escrow Account” ("Escrow Account"). The Escrow Account is federally insured by the FDIC at the maximum amount of $250,000 per Deposit. The maximum deposit insurance amount will be $250,000. Any Deposit in excess of $250,000 will not be insured. It is a Special Risk of this Offering Plan that if an individual makes a Deposit in excess of said amount for the purchase of a Residential Unit; the excess amount will not be federally insured. Purchasers should also note that if the Purchaser has any accounts in the Bank where the funds are being held, the funds in those accounts will count towards the $250,000 FDIC insurance limit.

All Deposits received from Purchaser shall be in the form of checks, money orders, wire transfers, or other instruments, and shall be made payable to or endorsed by the Purchaser to the order of TAB Law Firm, as Escrow Agent.

Any Deposits made for Extras shall initially be deposited into the Escrow Account and released in accordance to the terms of a written agreement between Purchaser and Sponsor as provided for in Paragraph 13 of the Purchase Agreement.

The Escrow Account is an Interest-on-Lawyer Account (“IOLA”) account consistent with Section 487 of the Judiciary Law of the State of New York. Pursuant to said law, all interest earned on the IOLA account will be paid to the State of New York.

**The Purchase Agreement:**

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

**Notification to Purchaser:**

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. Purchaser shall be required to complete the Tender of Escrow Agreement contained as Schedule D-1 in Part II of the Offering Plan upon execution of the Purchase Agreement. Within ten (10) business days of the placing of the Deposit in the Escrow Account, the Escrow Agent shall provide written notice to Purchaser and Sponsor, confirming the Deposit. The notice shall provide the account number of the account. Any Deposits made for Extras shall be deposited initially into the Escrow Account and released in accordance to the terms of the Purchase Agreement.

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, Purchaser may

cancel the Purchase Agreement within ninety (90) days after tender of the Purchase Agreement and Deposit to the 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, 21st Floor, New York, New York. 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.

**Release of Funds:**

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

Under no circumstances shall Sponsor seek or accept release of the Deposit of a defaulting Purchaser until consummation of the Offering Plan as defined in Section 20.1 (c) (6) of the Department of Law regulations which defines consummation of the Offering Plan, as the filing of the Declaration of Condominium and the first transfer of title to a Residential Unit to at least one Purchaser under the Offering Plan following a declaration of effectiveness by the Sponsor and acceptance of the amendment of the declaration of effectiveness by the Attorney General's Office. Consummation of the Offering Plan does not relieve the Sponsor of its obligations pursuant to GBL §§ 352-e(2-b) and 352-h.

The Escrow Agent shall release the Deposit Funds in escrow if so directed:

(a) pursuant to terms and conditions set forth in the Purchase Agreement upon Closing of Title to the Residential 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 Residential Unit is located and shall give written notice to both parties of such Deposit.

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

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

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

Purchasers should note that it shall be an express condition of Closing of Title that the Purchaser sign the form contained in Part II as Schedule D-2 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 the Escrow Account to determine compliance with all applicable statutes and regulations.

**Waiver Void:**

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 any Deposit 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 provision in the Purchase Agreement, Offering Plan or any amendments.

**General:**

Nothing contained herein shall diminish or impair the Sponsor's statutory obligation to each Purchaser pursuant to GBL § 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 Offering Plan does not relieve Sponsor of its obligations pursuant to GBL § 352-h. Funds from any 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.

The Escrow Agent shall maintain all records concerning their 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.

## XII. FINANCING FOR QUALIFIED PURCHASERS

THIS OFFERING 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 RESIDENTIAL UNITS.

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 Deposit 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 Purchaser shall be deemed in default of the Purchase Agreement and Sponsor may retain a liquidated damages the funds being held in escrow to a maximum of ten (10%) percent of the sales price plus the cost of Extras paid for by Purchaser which Extras have been installed by Sponsor, paid for but not installed by Sponsor or which have been ordered but not installed by Sponsor and for which Sponsor is obligated to pay for such Extras unless the Offering Plan has been abandoned. In the event the Offering Plan is abandoned the Purchaser shall be entitled to receive all funds paid to the Sponsor for such Extras.

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 Residential 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.

## XIII. EFFECTIVE DATE OF THE OFFERING PLAN

Sponsor's offer to sell the Residential Units is contingent upon the Offering Plan being declared effective and no Closing to a Residential Unit will be held until the Offering 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 for sale under the Offering Plan excluding Residential Units of an ancillary nature (15% x 2 Residential Units = 1 Residential Unit). The Sponsor will declare the Offering Plan effective by personal service of notice on every Purchaser or commencement of service by mail stating that the Offering Plan has been declared effective. Sponsor will, within five (5) business days of said notice, submit for filing an amendment to the Offering Plan disclosing the Offering 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. In the event all Purchase Agreements are either rescinded or terminated prior to the date of the closing of title to the first Residential Unit, regardless of whether the Declaration of Condominium has been recorded, the Sponsor must re-declare the Offering Plan effective prior to closing title to a Residential Unit. The Offering 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 Offering Plan effective, the Sponsor has the option not to close title to the Residential Units and to abandon the Offering Plan at any time, if less than eighty (80%) percent in number of Residential Units offered hereby are sold and title to any Residential Unit has not been conveyed (80% x 2 Residential Units being offered for sale = 2 Residential Units). In the event Sponsor exercises such option, it shall forthwith return to the Purchaser all monies paid with interest, if any,

within ten (10) days of the abandonment of the Offering Plan. When Purchase Agreements for eighty (80%) percent of the Residential Units have been entered into the Sponsor must declare the Offering Plan effective.

Once the Offering 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 percent (½%) of the total amount of the offering or (ii) substantial damage or destruction of the Building by fire or other casualty which cannot be cured for less than one-half percent (½%) 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 Offering Plan and are either known to the Sponsor or are a matter of public record. In addition, said amount will exclude any judgments and liens against the property resulting from acts of the Sponsor or any of its Principals which are known to the Sponsor on the acceptance date of the Offering Plan. In the event Sponsor abandons the Offering Plan, it shall do so by means of a filed amendment to the Offering Plan. As of the date of the acceptance for filing of the Offering Plan, ½% of the total offering is equal to $31,450. All monies advanced by Purchasers will be returned to them within ten (10) days of the abandonment of the Offering Plan. If Sponsor decides to abandon the Offering Plan before declaring the Offering Plan effective, Sponsor will file an amendment disclosing such abandonment and file a RS-3 Form with the Department of Law. In such event, Sponsor shall return any Deposit paid by Purchaser within five (5) days of acceptance of the amendment abandoning the Offering Plan.

## XIV. TERMS OF SALE

After the Offering 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. Said notice will also include notice of the obligation to pay the balance of the purchase price.

Such notice will be served no less than thirty (30) days before the date set for the Closing of the Residential Units for those Purchasers who entered into a Purchase Agreement before the Offering Plan was declared effective. Sponsor may permit Purchasers to waive the thirty (30) day provision by a written waiver. Any Purchaser who enters into a Purchase Agreement after the Offering Plan is declared effective will also receive not less than thirty (30) days written notice of the date, time and place for the Closing of Title to Purchaser's Residential Unit, unless Purchaser gives a written waiver of such thirty (30) day notice. A form for such waiver of the thirty (30) day notice is contained as Schedule D-3 to the Offering Plan.

On the Closing Date, fee title to the Residential Unit will be conveyed to the Purchaser together with the Residential Unit's undivided Percentage of Common Interest in the Common Elements. The Closing of Title to the first Residential Unit is expected to commence by approximately September 1, 2020. Such Closing, however, will only take place after or simultaneously with the happening of the following events:

1. The delivery to the Residential 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 Offering 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.

3. The issuance of a temporary or permanent 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 Residential Unit and its appurtenant Percentage of Common 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 Residential Unit Deed. Purchasers have the right to obtain title insurance from any title company of their choice that is authorized to do business in the State of New York.

5. The Sponsor has utilized Millenium Abstract Corp. ("Millenium"), as agent for a title company authorized to do business in the State of New York, for title insurance with an address at 35 N. Tyson Avenue, Floral Park, New York 11001, telephone number (516) 355-0800 to provide title insurance. The New York State Department of Insurance does not permit the Sponsor to dictate the title company to be used or to infer that a given company should be selected because of a discount or bulk rate and Purchaser is free to use a title or abstract company of their choosing without incurring a penalty. The insurance rates and fees for recording documents are uniform and will be the same regardless of the title company used.

6. All personal property located within the Residential Unit on the date the Purchase Agreement is signed or located within the Common Elements on the date the Declaration of Condominium is filed, that is owned by the Sponsor or the owner of the property, is included in the conveyance unless specifically excepted in the Offering Plan.

7. The Declaration of Condominium, 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 Register's Office of the City of New York.

8. The Residential Unit and its undivided Percentage of Common 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. Title to each Residential Unit and its appurtenant interest in the Common Elements will be conveyed to a Purchaser at the Closing free and clear of all liens, encumbrances and title exceptions other than those described in the Offering Plan and the proposed Residential Unit deed.

10. The Sponsor will give each Purchaser who entered into a Purchase Agreement before the Offering Plan was declared effective not less than thirty (30) days' prior written notice of the date, time and place for the transfer of title to Purchaser's Residential Unit unless a Purchaser waives such thirty (30) days' notice. Any Purchaser who enters into a Purchase Agreement after the Offering Plan is declared effective will also receive not less than thirty (30) days' written notice of the date, time and place for the transfer of title to Purchaser's Residential Unit, unless Purchaser

waives such thirty (30) day notice. A form for such waiver of the thirty (30) day notice is contained as Schedule D-3 to the Offering Plan.

11. The filing of an amendment to the Offering Plan disclosing that the Offering Plan has been declared effective and that the terms of this Section XIV will be met, that the Residential Units to be closed have been constructed in accordance with the plans and specifications filed with the Building Department of the City of New York and that the Sponsor has complied with the requirements of this Section.

12. 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.

13. The Purchaser shall execute an instrument in the form annexed to the Purchase Agreement designating the Board of Managers as 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 Residential 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 of Condominium are an accurate copy of portions of the plans of the building and fully and fairly depict the layout, location, designation and approximate, within reasonable tolerances, dimensions of the Residential Units as built or amending such Declaration of Condominium 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.

14. Purchasers should note that the Financial Crimes Enforcement Network ("FinCEN"), of the U.S. Department of the Treasury issued a revised Geographic Targeting Order ("GTO") dated November 8, 2019 requiring U.S. title insurance companies and any of its subsidiaries and agents, to report to FinCEN the personal identity of purchasers in residential transactions in which:

    (1) Residential real property is purchased by a legal entity as defined in the GTO as follows: a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the Residential United States or a foreign jurisdiction, other than a business whose common stock or analogous equity interests are listed on a securities exchange regulated by the Securities Exchange Commission ("SEC") or a self-regulatory organization registered with the SEC, or an entity solely owned by such a business;

(2) the Purchaser purchases residential real property located in the Boroughs of Brooklyn, Queens, Bronx, Staten Island or Manhattan in New York City;

(3) the total purchase price is in the amount of $300,000 or more;

(4) such purchase is made without a bank loan or other similar form of external financing; and

(5) such purchase is made at least in part, using currency or a 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.

The Order affects all residential real property closings occurring on or after November 12, 2019 and ending on May 9, 2020. All questions about the Order should be directed to the FinCEN Resource Center at FRC@FinCEN.gov.

Title to the Residential Unit 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 of Condominium, 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 Condominium of the Condominium as they are subsequently recorded in the Offering Plan and Purchase Agreement, including:

   (a) Easements in favor of the Residential Unit Owners of other Residential Units to use the pipes, wires, conduits, cable television, and public utility lines located in the Common Elements or in the Residential Unit itself servicing such other Residential 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 Residential Unit and to the Common Elements to inspect, maintain or repair or to make repairs to any Residential Unit to prevent damage to the Common Elements or any other Residential Units, to

make repairs to the Common Elements, to any wires, pipes, conduits or cable television system servicing any of the Residential Units or to make repairs to any other Residential 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 for the continuance of encroachments on any Residential Unit and on the Common Elements by other Residential Units or portions of the Common Elements, now existing by reason of the renovation or construction of the Residential Units, or hereafter occurring by reason of the settling or shifting of the Residential Units, or by reason of the repair and/or restoration by the Board of Managers of the Residential Units or such other Residential 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 Residential Units stand.

(e) The following covenants and restrictions:

1. Rights of tenants or persons in possession, if any.

2. Taxes, tax liens, tax sales, water rates, sewer rates, sewer rents and assessments set forth herein.

3. Mortgages returned herein.

4. Any state of acts which a guaranteed survey of current date would disclose.

5. Terms, restrictions, conditions, and easements set forth in the Declaration of Condominium and By-Laws of the 389 Bergen Condominium to be recorded in the New York City Register's Office.

(f) Any covenants, restrictions, easements, charges or liens of record.

5. Any additional 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 Residential Unit as a one (1) family residence permitted by applicable law and the Common Elements for their intended use and purpose and do not constitute a lien against the Residential Unit or any of the Common Elements.

If any existing mortgages or construction loans will not be satisfied at or prior to the Closing of the first Residential Unit then at the time of conveyance of the first Residential Unit each mortgagee will either:

(i) consent to the formation of a condominium and acknowledge that its lien will be limited to unsold Condominium Residential Units;

(ii) subordinate the lien of its mortgage to the Declaration of Condominium; or

(iii) release its lien on the Condominium Residential Unit being conveyed and its interest in the Common Elements.

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 Residential Unit or the Common Elements of the Condominium.

The risk of loss or damage to the Residential Unit by fire or any other cause until delivery of the deed is assumed by the Sponsor. In the event a substantial portion of the Residential Unit or Condominium shall be destroyed or damaged prior to Closing, Sponsor shall be entitled to cancel the Purchase Agreement by written notice to the Purchaser, together with a check in the amount of the Deposit paid by Purchaser, with interest, if any and any Extras paid by Purchaser. The parties shall thereafter be released from any further liability. In the event a Purchaser takes actual possession prior to Closing, said Purchaser will assume the risk of losses not covered by insurance upon production of the policy by the Sponsor to the Purchaser which provides that actions of interim lessees are not covered under the then existing policy. If Purchaser is or becomes the occupant or tenant of the Residential Unit prior to Closing, then, as of the date of Purchaser's occupancy, Purchaser shall be responsible for any and all damage caused by any acts or omissions of Purchaser, or Purchaser's agents, employees, invitees or family members. If any part of the Residential Unit is damaged or destroyed by any casualty prior to Closing, Sponsor will have the option to restore the Residential Unit to its previous condition as soon as reasonably possible. In the event Sponsor elects to restore the Residential Unit then the Closing Date and any other applicable date or deadline will be extended in a reasonable manner by Sponsor. The additional time required to restore a damaged Residential Unit will not affect the outside date provided in the Purchase Agreement unless agreed to by both the Sponsor and Purchaser. Sponsor agrees to notify Purchaser of Sponsor's decision within ten (10) business days of the date of such casualty. In the event Sponsor elects not to restore the Residential Unit, then the Purchase Agreement will terminate, and the Sponsor will return Purchaser's Deposit and any Extras within ten (10) days of the notice to the Purchaser. The Purchaser and Sponsor shall thereafter be released from any further liability.

## XV. CLOSING COSTS AND ADJUSTMENTS

At Closing, each Purchaser shall be required to pay certain costs and expenses. The following is a list of the types and amounts of costs and expenses Purchasers should expect to pay and are based on current rates and charges which are subject to change without prior notice.

1. If a Purchaser elects to obtain fee title insurance and for mortgage title insurance, the Purchaser will pay the premium therefor which will vary depending upon the purchase price and whether or not a mortgage title policy is obtained simultaneously with the fee title policy. Title insurance rates are set by the New York Board of Title Underwriters and filed with the New York State Insurance Department. The Purchaser is free to obtain title insurance from any company of their choice without incurring a penalty.

2. Purchasers should anticipate additional fees for Endorsements to the Owner and Mortgage Title Insurance, as applicable, and fees for municipal and other searches. These fees can be estimated at approximately $3,393.

3. Fees for the recording of the mortgage, deed, power of attorney and any affidavit required in connection with the mortgage tax credit available under RPL §339-ee which total approximately $725.

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 be required to pay a 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 and 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 7 on Residential Units which are not covered by mortgages.

5. As of July 1, 2019 the New York State Transfer Tax will be $2.00 per $500 of the purchase price where the purchase price is under $3,000,000 and $3.25 per $500 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 1.4259% where the consideration is $500,000 or greater. These taxes are normally an expense of the Sponsor; however, by contractual arrangement they will be paid by 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 = $3,295,000

(1) $3,295,000 x .0065 = $21,417

(2) $3,295,000 x .014259 = $46,983

(3) $3,295,000 + $21,417 + $46,983 = $3,363,400

(4) $3,363,400 x .0065 = $21,862 = amount due for State Transfer Tax

(5) $3,363,400 x .014259 = $47,959 = amount due for New York City Real Property Transfer Tax.

6. Residential Units that are being offered for sale for $1,000,000 or more are also subject to the provisions of Section 1402-a and 1402-b of the Tax Law of the State of New York (Mansion Tax) which requires a New York State Tax of the Purchase Price as follows based on the following total consideration:

| **Total Consideration** | **Mansion Tax (as of July 1, 2019)** |
|---|---|
| Less than $1,000,0000 | Not subject to tax |
| $1,000,000 to $1,999,999.99 | 1% |
| $2,000,000 to $2,999,999.99 | 1.25% |
| $3,000,000 to $4,999,999.99 | 1.5% |
| $5,000,000 to $9,999,999.99 | 2.25% |
| $10,000,000 to $14,999,999.99 | 3.25% |
| $15,000,000 to $19,999,999.99 | 3.5% |
| $20,000,000 to $24,999,999.99 | 3.75% |
| $25,000,000 or more | 3.9% |

Pursuant to the provisions of the statute the obligation to pay the tax is the Purchasers.

7. Working capital equal to two (2) months Common Charges to be paid to the Condominium. While Sponsor is in control of the Board of Managers, the working capital fund may be used to reduce the Common Charges of the Condominium.

8. Each Purchaser shall pay $3,500 to Sponsor's counsel, representing a fee for services in connection with preparing the Residential Unit Deed, the Residential 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. Reimbursement to the Sponsor based on each Residential Unit's percentage of Common Interest for Sponsor's advancement for the cost of the Condominium's insurance for the first year of operation.

As an example, a Purchaser of a Residential Unit in which the purchase price is $3,295,000, who procures a first mortgage in the amount of $2,636,000 and who has a Percentage of Common Interest of 58% will pay the following approximated Closing Costs:

| | | |
|---|---|---|
| **Owners Policy and Endorsements:** | | |
| Fee Title Insurance | $ | 12,268 |
| Market Value Rider | $ | 1,227 |
| **Loan Policy and Endorsements:** | | |
| Mortgage Insurance | $ | 2,496 |
| Mortgage | $ | 50 |
| TIRSA-8.1 Environmental Lien | $ | 50 |
| Waiver of Arbitration | $ | 50 |
| TIRSA-4 Condominium | $ | 50 |
| **Miscellaneous Charges:** | | |
| Municipals | $ | 395 |
| Bankruptcy Search | $ | 100 |
| Patriot Search | $ | 100 |
| Escrow Service Fee | $ | 50 |
| Estimated Sales Tax | $ | 52 |
| **State and Local Taxes:** | | |
| Mortgage Tax | $ | 50,713 |
| New York State Transfer Tax | $ | 21,862 |

| | | |
|---|---|---|
| New York City Transfer Tax | $ | 47,928 |
| Mansion Tax | $ | 50,450 |
| **Recording Fees:** | | |
| Mortgage Recording (up to 25 pgs + $5 per Additional page) | $ | 250 |
| Deed Recording Fee (up to 3 pgs + $5 per Additional page) | $ | 275 |
| Condominium POA | $ | 100 |
| Assignment | $ | 100 |
| **Additional Expenses** | | |
| Condominium Working Capital | $ | 2,006 |
| Pro-Rata Insurance | $ | 2,726 |
| Sponsor Attorney Fees for Preparation of Deed, Power of Attorney and other Closing: | $ | 3,500 |
| Water Tap Fee | $ | 1,000 |
| Sewer Tap Fee | $ | 1,000 |
| Survey Fee | $ | 1,000 |
| Fee for completion of any Lender's Mortgage questionnaire | $ | 150 |
| **TOTAL:** | **$** | **199,948** |

Purchasers obtaining mortgage loans are also advised that they will be responsible for the payment of all closing costs and expenses in connection therewith in amounts determined by the lender. These costs customarily include origination fees (or "points"), commitment fees, fees for credit checks, mortgage title insurance, lender's attorneys' fees and appraisal fees. Also, a Purchaser obtaining a mortgage may be required by the lending institution to deposit monthly with the lending institution, commencing with the Closing Date, an escrow for the payment of annual real estate taxes and insurance premiums. The amount of such escrow deposit to be made at Closing will depend on the number of months remaining between the Closing of Title and the date these amounts are next due to be paid and the estimated amounts then payable, as well as the custom and practice of the particular lender involved.

To the extent that the Purchaser is entitled to any credit against the mortgage recording tax by reason of any prior mortgage against the Residential Unit or the Property, the Purchaser shall pay to Sponsor at the Closing for such Residential Unit the amount of any such credit, if applicable, which may be available pursuant to Section 339-ee(2) of the New York State Condominium Act. If a Purchaser's Lender assumes or consents to the assignment of a mortgage lien encumbering only such Purchaser's Residential Unit and as a result is entitled to an exemption of all or a portion of the mortgage tax which would have been available to the Purchasers and shall pay to Sponsor the amount of such exemption.

In addition, if a Closing takes place, at the request of Purchaser, at any location other than Sponsor's attorney's office, Purchaser shall pay to Sponsor's attorney a travel fee in the sum of $1,250.

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 $500. 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 $1,250.

In the event the Residential Units have not been separately assessed for real estate tax purposes prior to the Closing of Title to the first Residential 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 Residential 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 Residential Unit. 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 Residential Units for such six (6) month period and may collect at each Closing the estimated amount of taxes attributable to such Residential 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. After the Residential Units are separately assessed, the funder of the escrow account and the Residential Unit Owner will be reimbursed for any overpayment of taxes or assessed for an underpayment.

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 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% per day (which equals an annual rate of 16%) of the purchase price for the Residential 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.

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 Residential 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 Purchaser written notice at least thirty (30) days prior to the Closing Date.

## XVI. 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 Residential Unit Owners and not by the individual Residential Unit Owners. During the time the principals of the Sponsor control the Board of Managers, 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 Residential Units in the Condominium. Notwithstanding, Sponsor retains the unconditional right to rent rather than sell the Residential Units after consummation of the Offering Plan. Because Sponsor is retaining the unconditional right to rent rather than sell Residential Units after consummation of the Offering Plan, this Offering 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 unrelated to the Sponsor. As a result, Purchasers for their own occupancy may never gain control of the Board of Managers under the terms of the Offering Plan. Due to the fact Sponsor is not limiting the conditions under which it will rent rather than sell Residential Units, there is no commitment to sell more Residential Units than the fifteen (15%) percent necessary to declare the Offering Plan effective and owner-occupants may never gain effective control and management of the Condominium Sponsor shall not rent a Residential Unit in the Condominium prior to consummation of the Offering Plan as defined in Title 13 NYCRR § 20.1(c)(6).

2. The Sponsor has the obligation to defend any suits or proceedings arising out of Sponsor's acts or omissions under applicable law and regulations and the obligations in the Offering Plan, and to indemnify the Board of Managers and the Residential Unit Owners.

3. 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.

4. Until title to a Residential 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 Residential 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 Residential 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 Residential Units and Sponsor's assets. Sponsor currently has the resources necessary to meet its obligations under the Offering Plan.

5. The Sponsor has the option to repair any damage from a casualty or other cause that occurs before the Closing of a Purchaser's Residential Unit.

6. Sponsor will initially procure fire and casualty insurance for the Condominium on the terms set forth in the budget. The fire and casualty insurance will either be for an agreed amount replacement value or in an amount sufficient to avoid co-insurance. Each Purchaser will be required to pay a pro-rata portion of the first year Condominium insurance based on each Residential Unit's percentage of common interest.

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

8. Sponsor has entered into a Building and Loan Agreement with TD Bank which will enable the Sponsor to develop and construct the Building. Such loan will remain as a lien on the Property up until the time of Closing of the First Residential Unit. At or prior to the Closing of Title to the First Residential Unit the Sponsor will satisfy the mortgage with TD Bank. After the recording of the Declaration and before the Closing of Title to the first Residential Unit the Lender of any mortgage that encumbers the property at the time of conveyance of the first Residential Unit will either: (i) consent to the formation of a condominium and acknowledge that its lien will be limited to unsold condominium Residential Units; (ii) subordinate the lien of its mortgage to the Declaration of Condominium; or (iii) release its lien on the condominium Residential Unit being conveyed and its interest in the Common Elements. In addition, before the Closing of Title to the first Residential Unit all liens and mortgages affecting the Condominium shall be paid and satisfied on the Residential Unit being conveyed and its appurtenant interest in the Common Elements shall be released therefrom by partial release duly recorded.

9. The Sponsor will diligently and expeditiously complete renovation of the Condominium substantially in accordance with the plans and specifications described 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 of Condominium or any amendment thereto and in addition will provide the Board of Managers with a full set of building plans filed with the City of New York together with any "field changes" made during the course of construction and renovation. 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. Sponsor reserves the right to change the size, number and location of the improvements or Common Elements, provided 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 unless 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 in the Building; determine the location of electric, gas and water meters, electric transformers, air conditioning compressors, other Building wide equipment, mailboxes; and make any other changes required by the City of New York.

10. The Sponsor will obtain a permanent or temporary 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 the event a permanent Certificate of Occupancy is not issued as of the Date of Closing of a Residential Unit, Sponsor anticipates obtaining the permanent Certificate of Occupancy within two (2) years of the Closing of the Residential Unit. However, Sponsor and its principals make no representation or guarantee that the New York City Department of Buildings will issue the permanent Certificate of Occupancy within such two (2) year period. The Sponsor will renew any temporary Certificate of Occupancy until a permanent Certificate of Occupancy is issued for the Building. Sponsor has the right to Close Title with a temporary Certificate of Occupancy.

    In the event a permanent Certificate of Occupancy for the Building or 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 XI 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 any of the funds from the escrow account.

Residential Unit Owners will not be permitted to make any changes, additions or alterations to their Residential Unit that will prevent the issuance of a permanent Certificate of Occupancy or extension or renewal of a temporary Certificate of Occupancy for the Residential Unit and/or Building. Residential Unit Owners will be permitted to make standard improvements to their Residential Units such as painting, installation of flooring, cabinetry, fixtures etc. as long as the improvements do not affect the ability of the Sponsor to obtain a permanent Certificate of Occupancy or extension or renewal of a temporary Certificate of Occupancy. Residential Unit Owners are responsible for obtaining all necessary permits from the City of New York and any other required municipal agencies for any changes the Residential Unit Owner makes to their Residential Unit subsequent to the Closing of Title with the Sponsor. Sponsor will not be liable for nor responsible to a Residential Unit Owner in the event an inspection by the Department of Buildings of the City of New York prevents the issuance of a renewal and/or extension of a temporary Certificate of Occupancy or permanent Certificate of Occupancy as a result of changes made to the Residential Unit by a Residential Unit Owner. In the event a Residential Unit Owner makes any changes, additions or alterations to their Residential Unit prior to the issuance of a Permanent Certificate of Occupancy for the Residential Unit and/or Building, the Residential Unit Owner shall reimburse Sponsor within ten (10) days following Sponsor's demand therefore, for any and all costs incurred by Sponsor with respect to Residential Unit Owner's changes to the Residential Unit that prevent the extension or renewal of a Temporary Certificate of Occupancy or the issuance of a final Certificate of Occupancy by the Department of Buildings of the City of New York.

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 Offering Plan except those (if any) which may be expressly stated in the Offering 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 Offering 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 three (3) days 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 Offering Plan, provided that if Purchaser finds that Sponsor's improvements have not been completed as described in the Offering 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 Offering 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 Offering Plan. Notwithstanding the foregoing, Purchaser will retain the right to pursue any remedy available under their individual Limited Warranty. 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 in and out of the Residential Unit. This may include "move in" and/or "move out" fees which will be refunded to the Purchaser unless the Purchaser or the Purchaser's agents cause damage to the Building during the move in or move out of the Residential Unit. In such an event the move in or move out fees will be used to repair said damage. In the event the move in and move out fees paid are less than any damage caused, the Purchaser will be responsible for the additional amount of the damage. In the event the move in or move out fees paid are greater than the damage caused, the Purchaser will be refunded the excess amount.

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 Offering 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; Sponsor's liability is limited to seventy-five thousand ($75,000) dollars exclusive of options and less any insurance proceeds received by Purchaser but including any deductible paid by Purchaser; 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. The Limited Warranty provides the following coverages for the Residential Units:

FIRST YEAR BASIC COVERAGE: for one 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 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 in 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 Schedule D-5 and Article 36-B of the General Business Law set forth in Schedule K.

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 not covered by any Limited Warranty, the Sponsor will correct any defects in the

renovation 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 as may be changed by Sponsor from time to time provided and on condition that Sponsor is notified of or becomes aware of such defect(s) within twelve (12) months from the issuance of a temporary or permanent Certificate of Occupancy, whichever is then applicable upon the Closing of Title to the first Residential Unit. In no event will Sponsor be liable for consequential damages (whether based on negligence, breach of contract, warranty, or otherwise), it being intended that Sponsor's sole obligations under the Offering Plan will be to repair or, at Sponsor's option, replace (or cause to be repaired or replaced) any defective item of construction (whether arising as a result of defects in material or improper workmanship or material substantially at variance with the Plans and Specifications), subject to the terms and conditions (and within the time limits) set forth in this paragraph. The quality of renovation 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 in the Residential Unit or the Common Elements 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 immaterial 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) immaterial deviations in the level of ceilings, and imperfections in ceiling finishes; (v) imperfections in painting finishes; (vi) immaterial deviations in the level of a floor or failure of finished floors and walls to be straight or on plane or at less than 90º 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 the HVAC system; (x) normal floor noises and creaking; (xi) carpet or floor discoloring or stretching; (xii) 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; insulation attached to the curtain wall; sliding glass 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 of any 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 or balcony 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; (xxv) remove mold from the Building or any Residential Unit therein, or (xxvi) or normal water penetration in frameless shower doors. 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 OR RENOVATED BUILDING OR RESIDENTIAL UNIT. PURCHASERS WHO PURCHASE A RESIDENTIAL UNIT IN THE BUILDING OR IN ANY OTHER NEWLY CONSTRUCTED OR RENOVATED BUILDING MAY EXPERIENCE SOME OR ALL OF THESE ITEMS AND CONDITIONS IN THEIR RESIDENTIAL UNIT, THE COMMON ELEMENTS OR ELSEWHERE IN THE BUILDING OR RESIDENTIAL UNIT. 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 OF MANAGERS THEREOF. IF PURCHASERS OR ANY BOARD OF MANAGERS 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 immaterial variations from the plans and specifications or the description of any portion of the Building or a Residential Unit set forth in the Offering Plan or (ii) immaterial variations from the Plans and Specifications or the description of any portion of the Building or a Residential Unit set forth in the Offering 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 Offering Plan as solely determined by Sponsor's architect. Any such variation affecting the Building or a Residential Unit which is material will be disclosed in a duly filed amendment to the Offering Plan. Notwithstanding the above, regardless of any limitations in a warranty offered under the Offering Plan or in the Offering Plan, the Sponsor's obligation is to construct the premises in accordance with all applicable codes and filed plans and specifications, and 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 latter.

All personal property located within the Residential Unit on the date the Purchase Agreement is executed or that is located within an Individual Residential Unit's Limited Common Element for the exclusive use of the Residential Unit on the date the Declaration of Condominium is filed, that is owned by the Sponsor or anyone else, will be included in the conveyance to Purchaser of their Residential Unit unless specifically excepted in the Offering Plan or Purchase Agreement.

14. The Sponsor will deliver to the Purchaser and/or the Board of Managers upon the recording of the Declaration of Condominium all manufacturers' and sub-contractors heating, electrical, plumbing, roofing and appliance warranties and bonds relating to the Purchaser's Residential 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 and renovation of the Building containing the Residential Units in the Condominium for work performed and fixtures, material and equipment supplied or installed in the renovation and construction of the Building containing the Residential Units in the Condominium and will cause all mechanics' liens arising out of the renovation and construction of the Building containing 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, architectural and engineering fees, and costs of filing this Offering Plan and amendments thereto.

The Sponsor has the financial resources to complete the renovation of the Condominium and Sponsor's obligations under the Offering Plan.

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 renovation, construction and sale or rental of Residential 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. The Sponsor reserves the right to continue to use the Common Elements and any facilities, sales offices, model or unsold Residential Units and signs located on the Common Elements, in its efforts to market or lease the Residential Units in the Condominium. Sponsor will be obligated to repair any damage to the Common Elements and Residential Units caused as a result of its use of the easements, licenses, rights and privileges of a right-of-way to complete the renovation of the Building containing the Residential Units in the Condominium. Upon reasonable notice to a Residential Unit Owner, Sponsor shall have a right of access to any Residential Unit for the purpose of carrying out any of the above easements, licenses, rights and privileges. During the construction and renovation period some obstructions, detours, storage of materials and equipment will likely be necessary. Patience and understanding of these conditions will be required of Residential Unit Owners. Sponsor shall not unreasonably interfere with the use of an Owner's Residential Unit during the construction and renovation period.

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 of Condominium is recorded for examination by any person who has purchased a condominium interest offered by this Offering Plan or otherwise has participated in this offering: This Offering Plan; the proposed Declaration of Condominium and By-Laws of the Condominium; public liability, fire and casualty policy, and Schedules submitted to the Department of Law in conjunction with this Offering 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 of Condominium are an accurate copy of portions of the plans of the Building 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. The Condominium By-Laws provide that the Board of Managers has the right to act as an agent for one (1) or more Residential Unit Owners to file a single complaint and bring a special proceeding on behalf of Residential Unit Owners who wish to contest the real estate tax assessments of their Residential Unit if applicable, pursuant to Section 339-y(4) of the New York Property Law. In such event, the Board of Managers on behalf of the Condominium could retain counsel on behalf of such Residential Unit Owners and charge each Residential 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 Residential Unit. The Board of Managers on behalf of the Condominium is not obligated to perform such services and it is necessary to obtain the written authorization of the Residential Unit Owners.

## XVII. CONTROL BY THE SPONSOR

Prior to the First Annual Meeting the initial Board of Managers will consist of two (2) Sponsor's appointed Members. At the First Annual Meeting of the Residential Unit Owners and thereafter the Board of Managers shall consist of a total of two (2) elected Residential Unit Owners and/or Sponsor designated Members to the Board of Managers. The Sponsor, as the owner of Unsold Residential Units, will be entitled to designate all of the Members of the Board of Managers of the Condominium until all of the Residential Units in the Condominium have been sold or transferred to Residential Unit Owners other than the Sponsor, its Principals, successors, assignees and/or designees. There is no limit on the period of time it may take Sponsor to convey all the Residential Units in the Condominium and as a result the Sponsor may control the board indefinitely. The First Annual Meeting will be held to elect the new Members of the Board of Managers unrelated to Sponsor on or about thirty (30) days after the expiration of the Sponsor Control Period. Notwithstanding, the Sponsor shall have the right but not the obligation to voluntarily relinquish control before said date.

As a result of the above 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 Members of the Board of Managers for said period, purchasers for their own occupancy may never gain control of the Board of Managers under the terms of this Offering Plan. 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 Residential Unit Owners excluding the Sponsor or obtained through independent funds of the Residential Unit Owners. The Sponsor will also, during this indeterminate period, have control of maintenance, facilities and services to be provided to the Condominium and will determine the Common Expenses to be paid by all Residential Unit Owners, including the Sponsor and will also be responsible for the enforcement of the Sponsor's obligations through the Board of Managers. 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 Members of the Board of Managers must 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 as a Residential Unit to live in as opposed to purchasing as an investment.

The initial Members of the Board of Managers of the Condominium will consist of Aran Scott and Edward Scott. Aran Scott is the principal of the Sponsor. Edward Scott is the principal's father. 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. Thereafter the Sponsor shall have the right to substitute Members of the Board it has appointed as Sponsor so determines. The First Annual Meeting will be held on or about thirty (30) days after the Sponsor Control Period which may occur later than one (1) year after the date of the Closing of Title to the first Residential Unit in the

Condominium. At the First Annual Meeting, the Residential Unit Owners will elect a new Board of Managers. Said Board will consist of two (2) Members. Until such time as the Sponsor relinquishes control of the Board of Managers, the Sponsor shall appoint the two (2) Members of the Board of Managers for one (1) year terms and shall continue to appoint the two (2) members of the Board of Managers until the Sponsor is required to hold the First Annual Meeting.

At such time as all of the Residential Units are Closed Sponsor will not be entitled to any representation of the Members on the Board of Managers. Upon the election and designation of the new Board of Managers at the First Annual Meeting, the Members of the first Board will resign. Members of the Board of Managers, other than Sponsor designees, may be removed for cause by an affirmative vote of one hundred percent (100%) of the Residential Unit Owners. Sponsor designees can only be removed by the Sponsor. Officers of the Condominium may be removed with or without cause, at any time, by the affirmative vote of the Members of the Board of Managers.

As long as the Sponsor retains at least one (1) Unsold Residential Unit in the Condominium, the Board of Managers may not, without the Sponsor's prior written consent (i) make any additions, alterations or improvements to the General Common Elements, Individual Residential Unit's Limited Common Elements of the Condominium that is not a Residential Unit Owner's obligation and/or to any Residential Unit costing cumulatively more than $50,000, 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 Offering 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; or

(iv) necessary for the preservation or safety of the Condominium or for the safety of occupants of the Condominium or required to avoid the suspension of any necessary service to the Condominium.

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.

Notwithstanding the above the Members of the Board of Managers have a fiduciary obligation to act within the best interests of the Condominium. Residential Unit Owners are entitled to pursue all available remedies, if Members of the Board of Managers (including without limitation Sponsor designated Members of the Board of Managers) breach such obligations.

The detailed provisions for the management of the Condominium are set forth in the attached By-Laws. 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.

Members and officers of the Board of Managers serve without compensation.

## XVIII. BOARD OF MANAGERS

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

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

Board of Managers

The affairs of the Condominium shall be governed by a Board of Managers. The first Board of Managers shall consist of two (2) 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 Residential Unit Owners which shall be held within a reasonable period of time after the Sponsor Control Period (the "First Annual Meeting"). Until succeeded by the Members elected at the First Annual Meeting of Residential 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 Residential Unit Owners.

At the First Annual Meeting of Residential Unit Owners a total of two (2) Members shall be elected. All Members shall be elected by the Residential Unit Owners. The term of office of both Members of the Board of Managers shall be fixed for one (1) year.

Each Residential Unit Owner shall be entitled to cast one vote for each Member to be elected to the Board of Managers. At the expiration of the initial term of office of each respective Member, their successor shall be elected to serve one (1) year terms. The Members shall hold office until their successors have been elected and hold their first meeting.

Any Residential Unit Owner in default of the payment of Common Charges, Special Assessments, late fees, interest and/or penalties shall be ineligible to be elected to the Board of Managers and/or vote at any general, annual or special meeting.

The Sponsor shall have the right to designate the initial Members of the Board of Managers until the First Annual Meeting or the closing of title to all Residential Units in the Condominium whichever occurs last. This Section may not be amended without the written consent of Sponsor.

In addition to the Members designated by the Sponsor, as long as Sponsor retains an unsold Residential Unit in the Condominium, Sponsor may vote as Sponsor so determines for any other Members, so long as the Members are not on Sponsor's slate of Members for the Board of Managers, Sponsor's payroll or as long as they did not receive other financial backing from the Sponsor other than any mortgage that may be held by the Sponsor or affiliated entity of the Sponsor, if applicable.

Sponsor is entitled to designate the initial Members to the Board of Managers and shall be entitled to retain control of the Board of Managers until the First Annual Meeting or the closing of title to all Residential Units in the Condominium whatever occurs last. Sponsor Members shall be appointed for one (1) year terms. At the expiration of the Sponsor Member terms, if Sponsor is still entitled to nominate Members to the Board of Managers, the Sponsor Members shall thereafter continue to be appointed as Members for one (1) year terms until the Sponsor is required to relinquish the position or Sponsor voluntarily resigns the position. When the designated Members of the Sponsor are required to relinquish their position on the Board of Managers the Sponsor will call for the First Annual Meeting of the Residential Unit Owners within a reasonable period of time thereafter. In the event the Sponsor voluntarily relinquishes a position on the Board of Managers the Board of Managers will either (a) call for a special meeting of the Residential Unit Owners pursuant to the provisions of Article II, Section 10 of the By-Laws to elect a Residential Unit Owner for the balance of the Sponsor Member term or (b) the remaining Members of the Board of Managers will appoint a Residential Unit Owner to the Board of Managers for the balance of the Sponsor Member term. At the expiration of the term the Residential Unit Owners shall have a meeting to elect a Residential Unit Owner to a one (1) year term. Notwithstanding the aforementioned, in the event the Sponsor voluntarily relinquishes a position on the Board of Mangers before the Sponsor is obligated to do so, upon notice from the Sponsor to the Board of Managers that the Sponsor desires to reclaim said position the Member appointed or elected to said position shall resign and the Sponsor shall reappoint a Member to the Board.

Disputes

In view of the fact the Condominium will only contain two (2) Residential Units and only have two (2) Residential Unit Owners there is a possibility of a deadlock in the operation of the Condominium. In the event of a dispute pertaining to any portion of the By-Laws or the Declaration of Condominium or if there is a deadlock in any determination by the Board of Managers or if the two (2) Residential Unit Owners in the Condominium cannot agree on any matter pertaining to the operation of the Condominium, the matter shall be referred to the American Arbitration Association and the cost of such arbitration shall be borne equally by each Residential Unit Owner pursuant to the provisions of Article XII of the By-Laws contained in Part II of the Offering Plan as Schedule J.

Compensation

Members of the Board of Managers and Officers of the Condominium serve without compensation.

Removal/Suspension of Members of the Board of Managers

Members, other than Sponsor designees, may be removed with or without cause by an affirmative vote of one hundred percent (100%) in number of the Residential Unit Owners entitled to vote at a special meeting called pursuant to Article II, Section 10 of the By-Laws. Members designated by the Sponsor may only be removed by the

Sponsor. No Member other than a Member designated by the Sponsor shall continue to serve on the Board of Managers if, during their term of office, they shall cease to be a Residential Unit Owner. In the event a Sponsor designee Member is removed, the Sponsor shall have the sole right to designate the Sponsor Member replacement.

Any Member of the Board of Managers in default of the payment of Common Charges, Special Assessments, late fees, penalties and/or interest shall be suspended from the Board of Managers until such time as all Common Charges, Special Assessments, late fees, penalties and/or interest are paid in full to the Condominium.

Powers and Duties of Board of Managers

(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 of Condominium or by the By-Laws, directed or required to be exercised or done by the Residential 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. The Common Charges are payable in advance as determined by the Board of Managers. The Board of Managers may increase the monthly Common Charges or vote a Special Assessment in excess of the Common Charges, if required, to meet any additional necessary Common Expenses, but said increases can only be assessed among the Residential Unit Owners pro-rata according to their respective Percentage of Common Interest as reflected in Schedule B of the Declaration of Condominium or in such other manner as provided in Article VI, Section 9 of the By-Laws.

2. To determine and impose penalties, late fees and interest against Residential Unit Owners delinquent in the payment of their Common Charges and to revise the amount of such fees as the Board of Managers so determines.

3. To determine and impose move in and move out fees and to revise said fees in its good faith discretion.

4. To collect, use, and expend the Common Charges collected to maintain, care for and preserve the General Common Elements, and Individual Residential Unit's Limited Common Elements that have been designated to the Condominium to repair, replace and maintain and any other Common Expenses of the Condominium.

5. To make repairs, restore or alter any Residential Unit or the Common Elements after damage or destruction by fire or other

casualty or as a result of condemnation or eminent domain proceedings.

6. To enter in and upon the Residential Units when necessary and at as little inconvenience to the Residential Unit Owners as possible in connection with the maintenance, care, and preservation of the property, including any inspection or repairs necessitated by mold. 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 Residential Units, or for the safety of Condominium residents or other persons or required to avoid the suspension of any necessary service to the Condominium. Any repairs required as the result of negligence of a Residential Unit Owner will be at the expense of the Residential Unit Owner.

7. To open bank accounts on behalf of the Condominium and to designate the signatories to such bank accounts.

8. To insure and keep insured the Common Elements and Residential Units in accordance with Article VII of the By-Laws.

9. To collect delinquent Common Charges, Special Assessments, late fees, penalties and/or interest by suit or otherwise, to abate nuisances and to enjoin or seek damages from the Residential Unit Owners of the Condominium for violations of the Declaration of Condominium, By-Laws or the Rules and Regulations of the Condominium.

10. To make reasonable Rules and Regulations applicable to all Residential Units and all Residential Unit Owners and to amend the same from time to time, and such Rules and Regulations and amendments shall be binding upon all the Residential Unit Owners when the Board of Managers has approved them in writing. A copy of such Rules and Regulations and all amendments shall be delivered to each Residential Unit Owner.

11. 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 herein above set forth.

12. To bring and defend actions by or against one (1) or more Residential Unit Owners that are pertinent to the operation of the Condominium and to levy Special Assessments to pay for the cost of such litigation, subject to the provisions regarding the Sponsor as contained in Article III, section 7 (c) of the By-Laws.

13. To acquire a Residential Unit in foreclosure or as a result of abandonment and to take any or all steps necessary to repair or renovate any Residential Unit so acquired and to vote as a Residential Unit Owner subject to any restrictions contained in the By-Laws, offer such Residential Unit for sale or lease or take any other steps regarding such Residential Unit as shall be deemed proper by the Board of Managers.

14. To make additions, alterations, or improvements to the General Common Elements and Individual Residential Unit's Limited Common Elements that have been delegated to the Condominium to maintain, repair and/or replace as provided in the Declaration of Condominium and/or the By-Laws.

15. To borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements, or for capital expenditures such as repair or replacement of Building components or systems or to remedy a major Building defect, provided, however, that no lien to secure repayment of any sum borrowed may be created on any Residential Unit or its appurtenant interest in the Common Elements without the written consent of the Owners of said Residential Unit.

16. To act as an agent for one (1) or more Residential Unit Owners to file a single complaint and bring a special proceeding on behalf of Residential Unit Owners who wish to contest the real estate tax assessments of their Residential Unit pursuant to Section 339-y(4) of the New York Real Property Law. In such an event, the Board of Managers could retain counsel on behalf of such Residential Unit Owners and charge each Residential Unit Owner for whom it is acting a pro-rata share of expenses, disbursements and legal fees, based upon the Residential Unit's Percentage of Common Interest as reflected in Schedule B of the Declaration of Condominium, the payment for which would be secured by a lien on each Residential Unit. The Board of Managers is not obligated to perform such services and it is necessary to obtain the written authorization of the Residential Unit Owners it will perform such service for.

17. To determine and impose penalties, late fees and interest against Residential Unit Owners delinquent in the payment of their Common Charges and/or Special Assessments and in violation of the Rules and Regulations. The Board of Managers shall have the right to revise the amount of such fees as the Board of Managers so determines.

18. To enter into contracts, settlement agreements and/or other matters on behalf of the Condominium.

19. To enter into revocable license agreements for the use of space within the General Common Elements so long as the license agreement does not hinder or encroach upon the rights of Residential Unit Owners to use the General Common Elements, and/or Individual Residential Unit's Limited Common Elements.

20. 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 Residential Unit Owners without the necessity of the consent thereto, or joinder therein, by the Residential Unit Owners or any mortgagee (except that if the granting of such easement impairs the ability of one or more Residential Unit Owners who have the right to use such Common Elements to the exclusion of any other Residential Unit Owners, the consent of all such affected Residential Unit Owners shall be required in writing before such easement shall be granted);

(b) The Board of Managers may, by resolution or resolutions passed by a majority of the whole Board of Managers, designate one or more committees, each of such committees to consist of at least one (1) Member of the Board of Managers, 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 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 of Managers as required.

(c) As long as the Sponsor retains at least one (1) Unsold Residential Unit in the Condominium, the Board of Managers may not, without the Sponsor's prior written consent: (i) make an addition, alteration or improvement to the General Common Elements, or individual Residential Unit's Common Elements and/or to any Residential Unit, costing cumulatively more than $50,000, the foregoing not to include necessary repairs and maintenance work, (ii) assess any Common Charges for the creation of, addition to, or replacement of all or part of a reserve, contingency or surplus fund, (iii) hire any employee in addition to the employees referred to in the Budget for the first year of operation of the Condominium, (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first Closing, (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, (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, (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. The provisions of this paragraph may not be amended without the written consent of the Sponsor.

(d) Notwithstanding Article III, Section 7(c) of the 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:

1. to comply with applicable laws or regulations; or

2. to remedy any notice of violation; or

3. to remedy any work order by an insurer, or

4. necessary for the preservation or safety of the Building or for the safety of occupants of the Building or required to avoid the suspension of any necessary service to the Building.

(e) Sponsor may exercise veto power over expenses described herein, other than those described in Article III, Section 7(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 Section may not be amended without the written consent of Sponsor.

Liability and Indemnification of Board of Managers, Officers and Residential 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 Residential Unit Owner for damages for any breach of duty in the Member's capacity as a Member of the Board of Managers or Officer of the Condominium, provided that this provision does not eliminate or limit the liability of a Member of the Board of Managers or Officer of the Condominium if a judgment or other final adjudication adverse to the Member establishes (a) that the Member's or Officer's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, or (b) that the Member or Officer personally gained in fact a financial profit or other advantage to which the Member was not legally entitled.

The Condominium, through the Residential 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 limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, which any Member of the Board of Managers or Officer of the Condominium served in any capacity at the request of the Condominium, by reason of the fact that the Member, the Officer, the Member's or Officer's testator, was a Member of the Board of Managers, Officer of the Condominium 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 of Managers or Officer of the Condominium if a judgment establishes that the Member's or Officer's 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 the Member or Officer personally gained in fact a financial profit or the advantage to which the Member or Officer was not legally entitled.

The Residential Unit Owners shall indemnify and hold harmless each of the Members of the Board of Managers and Officers of the Condominium against all contractual liability to others arising out of contracts made by the Board of Managers or Officers of the Condominium on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration of Condominium or of the By-Laws. It is intended that the Members of the Board of Managers and Officers of the Condominium shall have no personal liability with respect to any contract made by them on behalf of the Condominium (except as Residential Unit Owners). It is understood and permissible for the Board of Managers or Officer of the Condominium, who may be members of or be employed by the Sponsor, to contract with the Sponsor and affiliated corporations and entities on reasonable terms and prevailing rates without incurring any liability for self-dealing. It is also intended that the liability of any Residential Unit Owner arising out of any contract made by the Board of Managers, or Officer of the Condominium or out of the aforesaid indemnity in favor of the Member of the Board of Managers or Officer of the Condominium shall be limited to such proportion of the total liability thereunder as the Residential Unit Owner's Percentage of Common Interest in the Common Elements bears to the Percentage of Common Interest of all the Residential Unit Owners in the Common Elements. Every agreement made by the Board of Managers, a managing agent, by a Member of the Board of Managers or Officer of the Condominium on behalf of the Condominium shall provide that the Members of the Board of Managers, or the managing agent, or the Member, or Officer of the Condominium as the case may be, are acting only as agent for the Residential Unit Owners and shall have no personal liability thereunder (except as Residential Unit Owners).

Each Residential Unit Owner's liability pursuant to this Section shall be limited to such proportion of the total liability there under as the Residential Unit Owner's Percentage of Common Interest in the Common Elements bears to the Percentage of Common Interest of all Residential Unit Owners in the Common Elements.

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 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 or Members of the Board of Managers except any Assistant Secretaries or Assistant Treasurers. In addition, the President must be both a Residential Unit Owner and a Member of the Board of Managers. Two (2) or more offices may be held by the same person.

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.

Arbitration

In the event of a dispute pertaining to any portion of the By-Laws or the Declaration of Condominium or if there is a deadlock in any determination by the Board of Managers or if the two (2) Residential Units Owners in the Condominium cannot agree on any matter pertaining to the operation of the Condominium, the matter shall be referred to the American Arbitration Association and the cost of such arbitration shall be borne equally by each Residential Unit Owner as per the provisions of Article XII of the By-Laws.

Repairs, Alterations and Improvements to Common Elements

All maintenance, painting, repairs and replacement to the General Common Elements including but not limited to exterior walls, sections of the roof and roof members of the Building that are General Common Elements, as well as painting, repair and/or maintenance of the exterior surfaces, roof, windows and doors which open from the Building, as well as all maintenance, repairs and replacements of foyers and stairways of the Building, and of any pipes, wires, conduits and utility lines, or any portion of which is located in one Residential Unit and services another Residential Unit or more than one Residential Unit or so much of any pipes, wires, conduits and utility lines as are located in the General Common Elements shall be the responsibility of the Board of Managers and the cost thereof shall be a Common Expense except if such maintenance, painting, repair or replacement is necessitated because of the negligence, misuse or neglect of a Residential Unit Owner or the prior alteration of the Residential Unit by a Residential Unit Owner, in which event the cost thereof shall be assessed individually and paid for by the applicable Residential Unit Owner.

All maintenance, repair and replacement to any pipes, sewers and/or drainage lines and wires, conduits and public utility lines located within each Residential Unit for the exclusive use of a Residential Unit Owner shall be the sole obligation of such Residential Unit Owner at the Residential Unit Owner's sole cost and expense.

All maintenance, repair and replacement to any portion of any pipes, sewers and/or drainage lines and wires, conduits and public utility lines located in the General Common Elements shall be the responsibility of the Condominium. The cost thereof shall be a Common Expense except if such maintenance, repair or replacement is necessitated due to the negligence, misuse or neglect of a Residential Unit Owner or the prior alteration of a Residential Unit by a Residential Unit Owner, in which event the cost thereof shall be assessed individually and paid for by the applicable Residential Unit Owner.

All maintenance, repair and replacement to pipes, sewers and/or drainage lines and wires, conduits and public utility lines located in a Limited Common Element servicing two (2) Residential Units, shall be the responsibility of the Condominium and a Common Expense of the Condominium. The cost thereof shall be a Common Expense except if such maintenance, repair or replacement is necessitated due to the negligence, misuse or neglect of a Residential Unit Owner or the prior alteration of a Residential Unit by a Residential Unit Owner, in which event the cost thereof shall be assessed individually and paid for by the applicable Residential Unit Owner.

All maintenance and repairs to the interior portion of Residential Units, other than to any General Common Elements contained therein, are the responsibility of the respective Residential Unit Owners at their sole expense. All structural changes to a Residential Unit shall comply with the provisions of Article VIII, Section 1(f) of the By-Laws.

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

who owns the applicable Residential Unit. All maintenance, repair and any replacement to the external portion of the window area, the actual window and external portion of the doors (including painting if necessary) which open from a Residential Unit will be the responsibility of the Condominium and the cost thereof shall be a Common Expense of the Condominium and paid for by all Residential Unit Owners as provided in Article VI of the By-Laws. Notwithstanding the above, should 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 be caused as a direct result of the negligence or act of a Residential Unit Owner, occupant, tenant, guest or any other person residing, visiting or doing work in the Residential Unit, the Condominium will repair or replace the external portion of the window, the window or the external portion of the doors which open from a Residential Unit and the cost of such repair or replacement shall be charged to the Residential Unit Owner as an additional Common Charge or Special Assessment.

The interior glass surfaces of all windows located in the Residential Units are to be cleaned at the Residential Unit Owner's sole cost and expense. The exterior surfaces of all Residential Unit windows shall be cleaned by the Board of Managers and the cost shall be a Common Expense. Broken window glass in a Residential Unit shall be replaced by the Residential Unit Owner at the Residential Unit Owner's sole cost and expense, unless such breakage was caused by the Board of Managers or its agents, in which case replacement shall be made by the Board of Managers as a Common Expense.

Entrance doors to Residential Units and the roof of the Building shall be maintained and repaired by the Board of Managers unless the damage thereto was caused by a Residential Unit Owner in which case the Board of Managers shall make the repair and charge the Residential Unit Owner accordingly.

All structural repairs and replacements to the rooftop area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and any balcony, patio, terrace area that is an Individual Residential Unit's Limited Common Element of any other Residential Unit will be the responsibility of the Condominium and a Common Expense of the Condominium. All general maintenance and repairs to the rooftop area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and to any balcony, patio and/or terrace that is an Individual Residential Unit's Limited Common Element of any other Residential Unit, including cleaning, snow removal and all repairs not structural in nature, (including the repair of leaks, painting or staining the roof top area, balcony, patio and/or terrace, the replacement of pavers and the repair or replacement of the surface of the roof top area, balcony, patio and/or terrace), shall be the responsibility of the Residential Unit Owner of Residential Unit #2 as it applies to the roof top area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and to any other Residential Unit Owner whose balcony or terrace is appurtenant to their Residential Unit and is an Individual Residential Unit's Limited Common Element of their Residential Unit. The Board of Managers shall have the right to designate or approve a contractor or contractors to do

the necessary work to the roof top area, balcony, patio and/or terrace that is the Residential Unit Owner's responsibility at the Residential Unit Owner's sole cost.

The roof top area, balconies, patios and/or terraces are not permitted to be used for storage, are not permitted to be enclosed and are not permitted to be used for any type of occupancy including but not limited to dining, sleeping, living room, recreation, office or similar use. Drains located on the roof top area and on a balcony, patio and/or terrace must always be kept open to prevent flooding. Residential Unit Owners will not be permitted to store any combustible material or other items in or on the roof top area, balcony, patio and/or terrace. Neither the Condominium nor any Residential Unit Owner will be permitted to enclose or make any structural changes to a balcony, patio and/or terrace except as required for repair or replacement.

All maintenance, repairs, landscaping (if any) and/or replacement to any portion of the yard that is an Individual Residential Unit's Limited Common Element of Residential Unit #1 will be the responsibility of the Residential Unit Owner of Residential Unit #1. The Board of Managers shall have the right to designate or approve a contractor or contractors to do the necessary work to the yard that is the Residential Unit Owner of Residential Unit #1's responsibility at the Residential Unit Owner of Residential Unit Owner #1's sole cost and expense. In the event the Residential Unit Owner of Residential Unit #1 does not maintain, repair, landscape or replace any portion of the yard that is the responsibility of the Residential Unit Owner of Residential Unit #1, the Board of Managers shall have the right to make the necessary maintenance, landscaping, repair or replacement (after the failure of said Residential Unit Owner to do so after ten (10) days written notice, or written or oral notice of a shorter duration in the event of an emergency situation) and to charge said Residential Unit Owner for the cost of all such repairs, and/or landscaping, and/or maintenance and/or replacement. In the event that the Board of Managers assesses said Residential Unit Owner for repairs, landscaping, maintenance and/or replacement to the yard that is an Individual Residential Unit's Limited Common Element of Residential Unit #1 the Board of Managers shall have the right to bring suit thereon and, in such event, the Residential Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with interest on all sums due.

All repairs, maintenance and any replacement and all costs associated therewith of any hot water tank, gas boiler, air conditioning compressor and/or condenser, air handler or any other heating, cooling or other mechanical system servicing an individual Residential Unit that is located in the Residential Unit or is an Individual Residential Unit's Limited Common Element 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 applicable Residential Unit Owner for such equipment, services, etc. The Board of Managers shall have the right to designate or approve a contractor or contractors to do the necessary work so said equipment that is a Residential Unit Owner's responsibility at the Residential Unit Owner's sole cost and expense.

All maintenance, repair and replacement of windows from the General Common Elements and Limited Common Elements shall be contracted for by the Board of Managers and the cost thereof shall be a Common Expense of the Condominium payable by all Residential Unit Owners except that the cost of any maintenance or repairs necessitated because of the negligence, misuse or neglect of a Residential Unit Owner occupant, tenant, guest or any other person residing in, visiting or doing work in the Residential Unit, or caused by any prior alteration of a Residential Unit, shall be assessed to and paid by the applicable Residential Unit Owner.

The Board of Managers shall repair all plumbing stoppages and electrical repairs occurring in the General Common Elements and the cost thereof shall be a Common Expense payable by all the Residential Unit Owners as provided in Article VI of the By-Laws. Notwithstanding, the cost of any maintenance or repairs necessitated due to the negligence, misuse or neglect of a Residential Unit Owner, occupant, tenant, guest or any other person residing in, visiting or doing work in a Residential Unit, or caused by any prior alteration of a Residential Unit, shall be assessed to and paid by the applicable Residential Unit Owner.

All snow removal and cleaning of any sidewalks and entranceways that abut the Condominium that is not the responsibility of the City of New York and all snow removal to the General Common Elements shall be the responsibility of the Condominium and a Common Expense of all the Residential Units in the Condominium.

The Board of Managers and their agents, employees and contractors shall have the right of access to any Residential Unit for the purpose of making any repairs or replacements to any Common Elements, no matter how classified, contained therein or elsewhere in the Condominium or to remedy any condition which would result in damage to any other Residential Unit or any other Common Element, no matter how classified, or which would violate the provisions of any mortgage covering another Residential 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 a 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 Residential 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 repairs, painting or maintenance, whether made by the Residential Unit Owner or the Board of Managers, to the doors, windows, or the exterior surface of the Building or to any generally visible portion of the General Common Elements or Individual Residential Unit's Limited Common Elements shall be carried out in such a manner as to conform to the materials, style and color initially provided by the Sponsor, unless changed by the Board of Managers.

All repairs, replacement, modification or maintenance of a lot line window shall be the responsibility of the Residential Unit Owner if part of a Residential Unit or Individual Residential Unit's Limited Common Elements or the responsibility of the Condominium's if part of the General Common Elements. The Condominium shall approve all work and shall have the right to designate or approve the contractor doing the work.

In the event that a Residential Unit Owner fails to maintain, repair or replace its Residential Unit or any Individual Residential Unit's Limited Common Element for the Residential Unit Owner's exclusive use, which maintenance, repair or replacement is necessary to protect any of the General Common Elements, or any other portions of the Building or any other Residential Unit or other Individual Residential Unit's Limited Common Element, the Board of Managers shall have the right to make the necessary maintenance, repair or replacement (after the failure of said Residential Unit Owner to do so after ten (10) days written notice, or written or oral notice of a shorter duration in the event of an emergency situation) of the Residential Unit or Limited Common Elements for a Residential Unit's exclusive use and to charge said Residential Unit Owner for the cost of all such repairs and/or maintenance and/or replacement. In the event that the Board of Managers charges a Residential Unit Owner for repairs, maintenance and/or replacement to their Residential Unit or for repairs to any Common Elements restricted in use to such Residential Unit Owner, and the Residential Unit Owner fails to make prompt payment, the Board of Managers shall be entitled to bring suit thereon and, in such event, the Residential Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with interest on all sums due.

The Board of Managers shall have the right to designate or approve a contractor to do any such work required by a Residential Unit Owner at the Residential Unit Owner's sole expense.

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 Building (including any damaged Residential Unit, 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 or changed 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 Residential 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 proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of this Section 3, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration then the excess of such insurance proceeds) shall be divided by the Board of Managers or the Insurance Trustee, as the case may be, among all the Residential Unit Owners in proportion to the respective Percentage of Common Interest, after first paying out of the share of each Residential Unit Owner the amount of any unpaid liens on his or her Residential Unit, in the order of the priority of such liens.

Insurance

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, no matter how classified and the Residential Units in the Building of 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 Residential 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 Residential Unit Owners, contained therein, covering the interest of the Condominium, the Board of Managers and all Residential 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 Residential Unit which shall provide that the loss, if any, there under 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, and that the net proceeds thereof, if $100,000 or less, shall be payable to the Board of Managers, and if more than $100,000 shall be payable to the Insurance Trustee. Each Residential Unit Owner and each Residential Unit Owner's mortgagee, if any, shall be beneficiaries of the policy in the Percentage of Common Interest applicable to said Residential Unit.

The blanket property insurance as provided above will commence with the Closing of Title to the first Residential Unit.

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 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 a Residential 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 Residential Unit at least ten (10) days prior to expiration of the 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 the Common Elements appurtenant thereto for the purpose of determining the amount of fire insurance to be affected 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 Residential Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Residential Unit Owners which is not in the control of such Residential Unit Owners collectively; and that the policy is primary in the event the Residential 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 Residential 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 Residential 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 Residential Unit in the Condominium which in 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, employer's 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 Residential 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 *3* months aggregate assessments on all Residential 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 10 days' prior written notice to the Condominium or Insurance Trustee. Such bonds shall also provide that, if applicable, the Federal National Mortgage Association, ("Fannie Mae") Servicers on behalf of Fannie Mae, also receive such notice of cancellation or modification.

Residential Unit Owners shall be required to carry individual insurance on their Residential Units as provided below.

Residential Unit Owner Insurance

Each Residential Unit Owner is required to carry insurance covering their contents, fixtures, personal property and improvements and betterments (collectively "Contents") and liability insurance covering their Residential Unit and extended to include the Board of Managers, the Condominium, any Managing Agent and other Homeowners as additional insured's. Such insurance is subject to the approval of the Board of Managers in advance of the purchase of a Residential Unit, in the Board of Manager's sole discretion. The policy shall be extended to include any additional insured including but not limited to the Sponsor, other Residential Unit Owners and any Mortgagees. All such insurance must be provided by a carrier that is recognized as a licensed admitted carrier in the State of New York with a rating equal to a Best Rating Guide of AV or better. The Board of Managers reserves the right to alter or increase the coverage required hereunder at any time and from time to time. In addition to the foregoing, Residential Unit Owners are instructed to carry coverage for loss of rents, water damage, sewer and drain back up and such other coverage for their contents as they may determine to be in their best interests. The Board of Managers shall have the right to require that a Residential Unit Owner provide evidence to the Board of Managers of the insurance required herein as requested by the Board of Managers.

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

Amendments to Declaration of Condominium

The provisions of the Declaration of Condominium 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:

a. No amendment altering a Residential Unit Owner's Percentage of Common Interest shall be made without the consent of all Residential Unit Owners affected.

b. No amendment shall be passed which shall affect, impair or prejudice the validity, interest, rights and priorities of mortgagees.

c. No amendment, modification, addition or deletion of, to or from the Declaration of Condominium, the By-Laws or any Rules and Regulations shall be effective in any way against Sponsor or its successors, assigns or designees or against any Unsold Residential Unit, as long as the Sponsor, its successors, assigns, or designees owns an Unsold Residential Unit in the Condominium unless the Sponsor, its successors, assigns or designees has given its prior written consent thereto. This provision is not subject to amendment.

d. The Declaration of Condominium may not be altered, amended or repealed in such a manner as would adversely affect the Sponsor, its successors, assigns or designees without the written consent of the Sponsor, its successors, assigns or designees. This provision is not subject to amendment.

e. The Board of Managers and the Sponsor, as long as the Sponsor owns an Unsold Residential Unit in the Condominium, shall have the right to amend the Declaration of Condominium without the vote or consent of the Residential Unit Owners or the holders of any Residential Unit mortgages and to execute and record in the New York City Registrar's Office, such amendment as may be required to reflect (i) changes in the Declaration of Condominium (including Schedule B), As-Built Floor Plans and Condominium or Unit

Designation Map that are corrective in nature or (ii) to resolve or clarify any inconsistency or which is patently a mistake or a scrivener's error, or (iii) technical corrections; or (iv) to comply with any federal, state or city law or regulation that may affect the Condominium. In connection therewith, each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest to the Board of Managers of the Condominium and to the Sponsor to amend the Declaration of Condominium for said purposes.

f. In addition, in the case of material changes, approval must be obtained from first mortgage holders representing at least fifty-one (51%) percent of the votes of Residential Units that are subject to first mortgages. A change to any of the following would be considered as material: voting rights; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the General Common Elements or Individual Residential Unit's Limited Common Elements, or rights to their use; boundaries of any Residential Unit; convertibility of Residential Units into Common Elements or vice versa; expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project; insurance or fidelity bonds; revisions to the leasing provisions of Residential Units contained in Article XI of the By-Laws; imposition of any restrictions on a Residential Unit Owner's right to sell or transfer the Residential Unit Owner's Residential Unit; a decision by the Condominium to establish self-management when professional management had been required previously by an eligible mortgage holder; restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. An addition or amendment to the Declaration of Condominium shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any eligible mortgage holder who received a written request by certified or registered mail, return receipt requested, to approve amendments who does not deliver to the Condominium a negative written response within sixty (60) days of the receipt of the request shall be deemed to have approved such amendment.

There shall be a presumption for a period of eight (8) 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 eight (8) day period such presumption will be deemed conclusive.

The Sponsor, its successors, assigns and purchasers of undeveloped or unsold Residential 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 Register's Office of the City of New York, and elsewhere, if required by law, an amendment or amendments to the Declaration of Condominium (together with such other documents, plans 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 and/or amended As-Built Floor Plans, Condominium or Residential Unit Designation Map filed as part of an amended Declaration of Condominium are an accurate copy of portions of the Building Plans 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 of Condominium and By-Laws to conform to other documents including but not limited to the Offering Plan or as-built plans (iv) to amend Schedule B of the Declaration of Condominium to conform the model type, square footage and type and number of rooms and any other required information for a specified Residential Unit, so long as the appurtenant Percentage of Common Interest does not change for said Residential Unit subject to the rights provided in subsections 3 (v), (vii) and (viii) hereof or (v) to amend Schedule B prior to the first closing, to effect a change in the Percentage of Common Interest of all or specific Residential Units and revise Schedule B accordingly or (vi) to amend Schedule B of the Declaration of Condominium to assign or revise a Residential Unit's Individual Residential Unit's Limited Common Elements appurtenant to another Residential Unit or (vii) to amend Schedule B of the Declaration of Condominium to consolidate or subdivide Residential Units subject to all necessary approvals by the Building Department of the City of New York, or other municipality or administrative agency, to revise the square footage and type and number of rooms and any other required information for a specified Residential Unit and to change the appurtenant Percentage of Common Interest so long as the new Percentage of Common Interest equals the Percentage of Common Interest of the Residential Units that were consolidated or subdivided, or (viii) to effectuate permissible changes in unsold Residential Units including the Percentage of Common Interest of one (1) or more of the Unsold Residential Units as long as it does not change the Percentage of Common Interest of a sold Residential Unit and to amend Schedule B accordingly, or (ix) to amend Schedule B to make technical corrections to said Schedule including, but not limited to, square footage of Residential Units, assign or revise Individual Residential Unit's Limited Common Elements appurtenant to a Residential Unit or to revise the number and description of rooms contained in a Residential Unit or (x) to make changes or revisions to comply with the requests, guidelines and/or requirements of any major participant in the secondary market for mortgages, including but not limited to, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal Housing Association ("FHA") of the Housing and Urban Development ("HUD"), the Veterans Administration ("VA") and/or any State or Local Funding Agencies, or (xi) to make corrections that are patent errors, inconsistencies, scrivener's errors and technical errors, or (xii) to comply with any federal, state or city law or regulation that may affect the Condominium; or (xiii) the carrying out of other

provisions of the Offering Plan of the Condominium. In connection thereof, each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest, to the Sponsor, its successors, assigns and purchasers of undeveloped or unsold Residential Units to amend the Declaration of Condominium for the above purposes.

Any amendment to the Declaration of Condominium shall not take effect until it is recorded in the New York City Register's Office.

Regardless of any other provision of the Declaration of Condominium, no action for partition or division of the Common Elements shall be brought nor shall this Offering 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.

Amendments to By-Laws

The By-Laws may be altered, amended or added to at any duly called Residential Unit Owners meeting; provided: (a) that the notice of the meeting shall contain a full statement of the proposed amendment; (b) that the amendment shall be approved by all of the Residential Unit Owners in number and Percentage of Common Interest and (c) said amendment shall be set forth in a duly recorded amendment to the Declaration of Condominium. In addition, the following shall apply to amendments to the By-Laws:

(a) No amendment shall be passed which will affect or impair the validity of the Residential Unit Owners' interest in a Residential Unit.

(b) 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, assignee or successor or any Unsold Residential Unit, as long as the Sponsor, its designee, assignee or successor owns an Unsold Residential Unit in the Condominium unless Sponsor, its designee, assignee or successor has given its prior written consent thereto. This provision is not subject to amendment.

(c) The Board of Managers shall have the right to amend the By-Laws without the consent of the Residential Unit Owners to make corrections to the By-Laws that are patent errors, inconsistencies, scrivener's errors and technical errors. In connection therewith, each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest, to the Board of Managers to amend the By-Laws for said purposes.

(d) No amendment to the By-Laws shall be passed which shall impair or prejudice the validity, interest, rights and priorities of a mortgagee.

(e) The Sponsor shall have the right to amend the By-Laws without the consent of the Residential Unit Owners or the Board of Managers to (a) make corrections that are patent errors, inconsistencies, scrivener's errors or technical errors, to conform to other documents, or (b) to make changes or revisions to comply with the requests, guidelines and/or requirements of any major participant in the secondary market for mortgages, including but not limited to the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ( "Freddie Mac"), the Federal Housing Association ("FHA") of the Housing and Urban Development ("HUD"), the Veterans Administration ("VA") and/or any State or Local Funding Agencies, or (c) to reduce the Sponsor control period of the Board of Managers, or (d) to comply with any federal, state, city or local law or regulation that may affect the Condominium. In connection therewith, each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest, to the Sponsor, its successors, assigns and purchasers of undeveloped or unsold Residential Units to amend the By-Laws for said purposes.

(f) In addition, in the case of material changes, approval must be obtained from first mortgage holders representing at least fifty-one (51%) percent of the votes of Residential Units that are subject to first mortgages. A change to any of the following would be considered as material: voting rights; method of assessments, assessment liens, or subordination of assessment liens; responsibility for maintenance and repairs; reallocation of interests in the General or Individual Residential Unit's Limited Common Elements, or rights to their use; convertibility of Residential Units into Common Elements or vice versa; expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project; insurance or fidelity bonds; revisions to the leasing provisions of Residential Units contained in Article XI of the By-Laws; imposition of any restrictions on a Residential Unit Owner's right to sell or transfer the Residential Unit Owner's Residential Unit; restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; any action to terminate the legal status of the project after substantial destruction or in the event condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. An addition or amendment to the By-Laws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any eligible mortgage holder who received a written request by certified or registered mail, return receipt requested, to approve amendments who does not deliver to the Condominium a negative written response within sixty (60) days of the receipt of the request shall be deemed to have approved such amendment.

Residential Units Acquired by the Board of Managers

All Residential 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 or a Right of First Refusal shall be held by the Board of Managers on behalf of all Residential Unit Owners. The Percentage of Common Interest acquired by the Board of Managers shall remain as designated in Schedule B of the Declaration of Condominium and the Board of Managers shall be responsible for paying all Common Charges appurtenant to said Residential Unit. The Board of Managers shall be entitled to cast all votes that are appurtenant to the Residential Unit s at any Residential Unit Owners meeting for all purposes except for the election of Members to the Board of Managers.

Termination of Condominium

The Property shall not be withdrawn from the provisions of Article 9-B of the Real Property Law unless one hundred percent (100%) of the Residential Unit Owners entitled to vote in number and Percentage of 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 any other Residential Unit Owner 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.

## XIX. RIGHTS AND OBLIGATIONS OF RESIDENTIAL UNIT OWNERS AND BOARD OF MANAGERS

Sale or Lease of Residential Units

Any Residential Unit may be conveyed 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 or sell their Residential Unit unless and until all unpaid Common Charges, Special Assessments and any other fees or charges owed the Condominium that have been 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. In addition, all sales are subject to the Right of First Refusal of the Board of Managers as provided for in Article XI, Section 2 of the By-Laws.

Right of First Refusal

Any Residential Unit Owner who receives a bona fide offer to purchase the Residential Unit Owner's Residential Unit and intends to accept such offer, must give notice by certified or registered mail to the Board of Managers of the receipt of such bona fide offer within ten (10) days of such offer. The giving of such notice shall constitute an offer by such Residential Unit Owner to sell the Residential Unit Owner's Residential Unit to the Board of Managers or its designee, corporate or otherwise, on behalf of all other Residential Unit Owners, upon the same terms and conditions as contained in such bona fide offer. No later than ten (10) days after the receipt of such notice, the Board of Managers may elect, by sending written notice to such Residential Unit Owner before expiration of said ten (10) day period, by certified or registered mail, return receipt requested, to purchase such Residential Unit as the case may be. In such event, title shall close at the office of the attorneys for the Condominium, in accordance with the terms of the bona fide offer, within forty-five (45) days after the giving of notice by the Board of Managers of its election to accept such offer. See Article XI, Sections 2 through 6 of the By-Laws.

The purchase of a Residential Unit by the Board of Managers or its designee, on behalf of all Residential Unit Owners, may be made from funds deposited in the capital and or expense account of the Condominium. If the funds in such accounts are insufficient to effectuate any such purchase, the Board of Managers may levy an assessment against each Residential Unit Owner, in proportion to each Residential Unit's Percentage of Common Interest as a Special Assessment, and/or the Board of Managers may in its discretion finance the acquisition of the Residential Unit; provided, however, that no such financing may be secured by an encumbrance, or an hypothecation of any portion of the Property other than the Residential Unit to be purchased. If financed. all costs of the financing and any debt service on the financing shall be paid solely by the Residential Unit Owners in proportion to each Residential Unit's Percentage of Common Interest as a Special Assessment of just the Residential Units.

Permissible Use

During the period a Residential Unit is owned by the Condominium it may be rented or used for any other permissible use under the applicable zoning laws. Any Residential Unit owned by the Condominium may be sold or leased. All proceeds of any sale or lease will become income to the Condominium to be used towards Common Expenses or other Condominium purposes.

No Discrimination

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 if it rents or sells a Residential Unit acquired through its Right of First Refusal. See the By-Laws in Part II of the Plan.

Conveyance to the Board of Managers

Any Residential Unit Owner may convey the Residential Unit Owner's Residential Unit and Percentage of Common Interest appurtenant thereto, to the Board of Managers on behalf of all Residential Unit Owners free of any cost to the Board of Managers or the Residential Unit Owners and upon such conveyance such Residential Unit Owner shall not be liable for any Common Charges thereafter accruing against such Residential Unit.

Right to Lease

Any Residential Unit may be leased subject to the Board of Managers' Right of First Refusal and to the leasing requirements contained in Section 7 of Article XI of the By-Laws. In addition, 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 at least thirty (30) days prior to its execution. All Residential Unit Owners who wish to enter into a new lease for the Residential Unit Owner's Residential Unit shall be required to submit all documentation required by the Board of Managers as set forth in Section 7 of Article **XI** of the By-Laws to the Managing Agent or the Board of Managers in the absence of a Managing Agent. All leases must comply with all the requirements contained in said Section 7. Failure to comply will be deemed an automatic violation of the By-Laws of the Condominium.

The provisions contained herein shall not apply to the acquisition or sale of a Residential Unit by a mortgagee who shall acquire title to such Residential 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 Percentage of Common Interest in the Common Elements and the Residential Unit Owners' interest in any Residential Units acquired by the Board of Managers.

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

Except as noted below, 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 Right of First Refusal as provided in Article XI, Section 2 of the By-Laws.

(b) No later than thirty (30) days prior to execution of a lease, the Residential Unit Owner must provide the Board of Managers of the Condominium with a copy of the lease, name of the proposed tenant and terms of the lease, credit and background check (including criminal background), a minimum of two (2) referrals and any other information that may be requested by the Board of Managers;

(c) the lease must be in writing;

(d) the lease must be for the entire Residential Unit;

(e) the lease must be for a minimum term of twelve (12) months. Renewal terms shall also have a minimum of twelve (12) months.

(f) the form of the lease and any renewal lease must contain a provision that the tenant has thoroughly read and agrees to be subject to the Declaration, the By-Laws and Rules and Regulations of the Condominium and agrees to accept the power of attorney of the Condominium to evict the tenant for any violation by the tenant of the Declaration, the By-Laws and the Rules and Regulations of the Condominium and agrees to be jointly and severally liable with the Residential Unit Owner for any and all fines and costs levied against the tenant for any violation of the provisions of the Rules and Regulations, By-Laws and/or Declaration of Condominium;

(g) the use of the premises is subject to the Declaration, the By-Laws and the Rules and Regulations of the entire Condominium;

(h) within thirty (30) days of occupancy by the tenant or renewal of any lease, the name and telephone number of the tenant, together with a clear and complete copy of the executed lease, must be furnished to the Managing Agent or if no Managing Agent to the Board of Managers of the Condominium;

(i) the Residential Unit cannot be used as a youth hostel, Airbnb, bed and breakfast, motel, hotel and/or for any other transient or similar purposes;

(j) no Residential Unit Owner, Resident or tenant shall be permitted to place any signs for rent in or on the Residential Unit or the Common Elements of the Condominium;

(k) all leases and tenants are subject to all municipal requirements applicable to rentals, if any;

(l) the lease must contain the Smoking Policy provisions contained in Article VIII, Section 1 (aaa) of the By-Laws; and

(m) 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.

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 Residential Unit Owner who rents any 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. The provisions of Section 339-kk of the Real Property Law shall control any dispute pursuant to the applicable provision of the By-Laws. A complete copy of Section 339-kk of the Real Property Law is contained in Part II of the Offering Plan as Schedule L.

Restrictions on Occupancy and Use

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

The By-Laws of the Condominium contain the following use restrictions regarding the Residential Units: 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. Residential Unit Owners, their families, employees, guests and any permitted pets shall not use or permit the use of the Residential Units and Common Elements in any manner that would be illegal, disturbing or a nuisance to other Residential Unit Owners. No resident shall put any advertisement, poster, or signs, including for-sale signs of any kind in or on a Residential Unit or the Common Elements without the consent of the Board of Managers. It is prohibited to use any of the Common Elements for storage except as may be provided in the Condominium. 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 60 degrees Fahrenheit to avoid pipes from freezing. Any Residential Unit Owner failing to

adhere to this provision shall be responsible for any and all damage to the Condominium or any other Residential Unit as a result thereof. Any improvements beyond the interior walls of a Residential Unit will require the approval of the Board of Managers.

Restrictions on Pets

Residential Unit Owners will be permitted to keep dogs, cats or other common household pets in their Residential Unit subject to the provisions of this regulation. The foregoing notwithstanding, no breed or mix of dog, including American Pit Bulls, Terrier or Rottweiler, deemed to be dangerous to the safety of the residents of the Condominium shall be permitted to be kept or harbored in the Condominium or any Residential Unit. No exceptions will be permitted unless the same in each instance be expressly permitted in writing by the Board of Managers of the Condominium and unless the dog is a qualified service dog under the American Disabilities Act required for a qualified resident, tenant and/or guest. No animals may be kept or maintained in a Residential Unit for any commercial purposes; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance, or noise shall be permanently removed from the Property upon fifteen (15) days written notice from the Board of Managers. All Residential Unit Owners shall advise the Board of Managers of any household pet intended to be kept in their Residential Unit prior to the household pet residing therein. In addition to the above restrictions, the Board of Managers shall have the right to further adopt additional rules and regulations regarding pets including, but not limited to limiting the number, size and type of pet including but not limited to the type of breed of such pet permitted to be kept in a Residential Unit. In no event shall any animal be permitted in any of the public corridors or lobbies of the Condominium unless carried or on leash and in compliance with the local and municipal rules and regulations regarding pets. All Residential Unit Owners shall be responsible for picking up and disposing of their pet's waste and for any damage caused by their pets to any Common Elements of the Condominium.

Smoking Policy

The Smoke-Free Air Act New York City law prohibits smoking and using e-cigarettes of any kind in indoor common areas, including but not limited to, lobbies, hallways, stairwells, mailrooms, fitness areas, storage areas, garages and laundry rooms in any building with three or more residential units. NYC Admin. Code, § 17-505. Effective as of August 28, 2018, Local Law 147 of the City of New York became effective. Local Law 147 amends the Administrative Code of the City of New York ("NYC Administrative Code") to require that all class A multiple dwellings (i.e. buildings with 3 or more residential dwelling units) adopt a written smoking policy (the "Smoking Policy"). Pursuant to the requirements of Local Law 147 of the City of New York the following constitutes the Smoking Policy applicable to the Condominium and to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Property and any Building located thereon constituting the Condominium:

(a) Definitions:

(i) Smoking: Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, little cigar, pipe, water pipe or hookah, herbal cigarette, non-tobacco smoking product (e.g., marijuana or non-tobacco shisha), or any similar form of lighted object or device designated for people to use to inhale smoke.

(ii) Electronic Cigarette (E-Cigarette): A battery-operated device that heats a liquid, gel, herb or other substance and produces a vapor for people to inhale.

(b) Policy:

(i) All types of Smoking and use of Electronic Cigarettes as defined above are prohibited from all general common areas of the Condominium, including but not limited to any lobby, hallway, stairwell, mailroom, fitness room or other recreational facility, meeting room, laundry room, storage area, mechanical room, equipment room, cellar, basement, elevator, garage, rooftop, play areas, parking areas, shared balconies, shared courtyards, shared patios, shared porches, shared yards and/or any outdoor common area within 15 feet of entrances, exits, windows, and air intake Residential Units on property grounds.

(ii) All types of Smoking and use of Electronic Cigarettes are prohibited from any balcony and/or terrace or any space designated as an Individual Residential Unit's Limited Common Element appurtenant to the Residential Unit.

(iii) All legal Smoking and use of Electronic Cigarettes is permitted within the interior area of a Residential Unit.

(iv) The Smoking Policy shall be applicable to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Condominium.

(v) Any Residential Unit Owner who leases their Residential Unit shall incorporate the provisions of the Smoking Policy into the lease with the Residential Unit Owner's tenant.

(c) Complaints:

Complaints about smoke drifting into a Residential Unit or common area should be made promptly to the Managing Agent. Complaints should be made in writing and should be as specific as possible, including the date, approximate time, location where smoke was observed, building address, description of incident and apparent source of smoke.

The provisions of Local Law 147 of the City of New York shall take precedent in the event of any conflict with the Smoking Policy contained herein.

The Smoking Policy shall be applicable to all Residential Unit Owners, residents, tenants, guests, licensees, employees, and all persons that may be in or on any portion of the Property and any Building located thereon constituting the Condominium. The Smoking Policy is contained in Article VIII (the "Rules and Regulations"), Section 2 of the By-Laws.

Mortgage of Residential Units by Residential Unit Owners

A Residential Unit Owner may mortgage the Residential Unit Owner's Residential Unit at any time after the Residential Unit Owner acquires title to the Residential Unit in whatever amount and under whatever terms the Residential Unit Owner can obtain provided the Residential Unit Owner first notifies the Board of Managers. Any Residential Unit Owner may, upon the resale of their Residential Unit, grant a purchase money mortgage to a purchaser of their Residential Unit. A Residential Unit Owner may mortgage their Residential 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 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. The Board of Managers shall determine the total amount required, including the operational items such as insurance, repairs, reserves, betterments, maintenance of the General Common Elements, Individual Residential Unit's Limited Common Elements that are the obligation of the Condominium and other Common Expenses including but not limited to the Common Expenses provided in Article VI, Section 3 of the By-Laws, as well as charges to cover any deficits from prior years.

The total annual requirements shall be assessed as a single sum against all Residential Units and prorated against each of said Residential Units according to the provisions of Section 9 of Article VI of the By-Laws.

Said assessments shall be payable monthly or in such other manner as determined by the Board of Managers and shall be referred to as Common Charges.

The Board of Managers may also charge additional assessments in excess of the Common Charges for expenses not contemplated, foreseen or which exceed the amount budgeted. Said assessments shall be known as Special Assessments. The Board of Managers shall be entitled to charge a Special Assessment as a single sum or over a period of time as it may determine. Residential Unit Owners shall pay their portion of any Special Assessments in accordance with Section 9 of Article VI of the By-Laws.

The Residential Unit Owner agrees to pay promptly when due the monthly Common Charges and all Special Assessments assessed against the Residential Unit. In the event any Residential Unit Owner fails to make payment of the Residential Unit Owner's Common Charge payment, the Residential Unit Owner who owns such Residential Unit shall be obligated to pay (a) a "late fee" 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) all expenses, including, without limitation, attorneys' fees paid or incurred by the Board of Managers or by any Managing Agent in any proceeding brought to collect such unpaid Common Charges and/or Special Assessments or in an action to foreclose the lien on such Residential Unit Owner's Residential Unit arising from said unpaid Common Charges and/or Special Assessments in the manner permitted by applicable law. All such "late fees," interest and expenses shall be cumulative and shall be added to and shall constitute Common Charges payable by such Residential Unit Owner.

In addition, in the event of a default in payment of Common Charges by any Residential Unit Owner, the Board of Managers, at its sole option, may declare the Common Charge assessment on said Residential Unit Owner's Residential Unit for the balance of the fiscal year immediately due and payable. Prior to making any such declaration following a default the Board of Managers shall send notice to the delinquent Residential Unit Owner and the mortgagee, if any, of such Residential Unit giving the Residential Unit Owner a five (5) day grace period in which to make the late payment.

The Board of Managers may place a lien and take action to collect any past due Common Charges from any Residential Unit Owner which remains unpaid as provided in Article IX of the By-Laws from its due date by way of foreclosure of the lien on such Residential Unit in accordance with Section 339-aa of the Real Property Law or otherwise.

No Residential Unit Owner shall be liable for any Common Charges, Special Assessments or other charges against a Residential Unit which accrue against the Residential Unit Owner's Residential Unit subsequent to a sale, transfer or other conveyance of the Residential Unit Owner in accordance with the By-Laws and the Declaration of Condominium. A Residential Unit Owner shall be liable for the payment of all Common Charges. Special Assessments or other charges assessed by the Board of Managers against the Residential Unit after acquiring title to the Residential Unit, as well as any unpaid Common Charges, Special Assessments or other charges assessed against the Residential Unit by the Board of Managers at the time the Residential Unit is conveyed by means of a deed or other legal means of the conveyance, except for a mortgagee of an Institutional Mortgage whom shall be exempt for a portion of the Common Charges as provided below.

Notwithstanding any other provision in the Declaration of Condominium or the By-Laws any mortgagee of an Institutional Mortgage as defined in the Declaration of Condominium of Condominium who obtains title to a Residential Unit pursuant to the

remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Residential Unit's unpaid Common Charges accrued before acquisition of the title to the Residential Unit by the mortgagee unless otherwise required by law. If the Condominium's lien priority includes costs of collecting unpaid Common Charges and/or Special Assessments, the mortgagee of the Institutional Mortgage will be liable for any fees or costs related to the collection of unpaid Common Charges and/or Special Assessments. The unpaid balance of such Common Charges and/or Special Assessments that may be waived will be charged to all other Residential Unit Owners as a Common Expense. Upon acquisition of title the Institutional Mortgagee shall be responsible for all Common Charges, Special Assessments and/or any other costs and expenses of the Condominium thereafter due and payable.

The estimate of Condominium expenditures in Schedules A and B were made by the Sponsor and passed upon by C. Gershon Company, Inc. 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 primarily to pay for the expenses detailed in Schedule B of the Offering Plan. The Common Charges and Common Expenses do not include maintenance, repairs or decoration of interior of the Residential Units or portions thereof, payments required pursuant to the terms of Residential 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 Residential Units are set forth on Schedule A. However, additional services which the Residential Unit Owners may desire, or other factors can increase these charges. Purchasers should refer to Schedule C for estimated utility costs applicable to an individual Residential Unit.

As long as the Sponsor retains control of the Board of Managers, the Board of Managers retains the right to delay the commencement of the collection of Common Charges. During any such delay period, 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 the commencement of the collection of Common Charges, there will be no assessment of Residential Unit Owners for prior expenses of the budget during the period Sponsor was paying the Common Expenses of the Condominium. Sponsor shall remain obligated to update the budget for the Condominium as provided for in the governing regulations. In the event Sponsor elects to delay collection of Condominium Common Charges, it will disclose such fact in the closing notice to Purchasers and will further disclose such fact in the Post-Closing Amendment to the Offering Plan. Such Amendment will also disclose the anticipated period of delay. Sponsor will notify all Residential Unit Owners in writing of the expiration of the delay period at least 30 days prior to commencing collection of

Common Charges and will disclose such fact in the following Amendment to the Offering Plan.

Where a Residential 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 Residential Unit over and above the proceeds from any fire insurance on the Residential Units will be a Common Charge to all Residential Unit Owners. In order to protect the Residential Unit Owner against the possibility of such Common Charges, the Board of Managers determines the amount of blanket casualty insurance covering all Residential Units (the cost of such insurance is part of the Common Charges) and reviews the amount of such coverage annually.

Once title has passed to a Purchaser, the Purchaser will be responsible for all costs, including all Common Charges, in the event the collection of Common Charges has commenced, and all individual expenses associated with the Residential Unit, as well as any costs associated with Individual Residential Unit's Limited Common Elements that are the Residential Unit Owner's responsibility and pertain to the Purchaser's Residential Unit.

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

Upon a resale, the Purchaser of a Residential Unit shall be liable for the payment of unpaid Common Charges and Special Assessments assessed against such Residential Unit prior to the acquisition of such Residential Unit by the Purchaser. Notwithstanding any other provision in the Declaration of Condominium or the By-Laws any mortgagee of an Institutional Mortgage who obtains title to a Residential Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Residential Unit's unpaid Common Charges accrued before acquisition of the title to the Residential Unit by the mortgagee unless otherwise required by law. If the Condominium's lien priority includes costs of collecting unpaid Common Charges the mortgagee of the Institutional Mortgage will be liable for any fees or costs related to the collection of unpaid Common Charges. The unpaid balance of such Common Charges and/or Special Assessments that may be waived will be charged to all other Residential Unit Owners as a Common Expense. Upon acquisition of title the Institutional Mortgagee shall be responsible for all Common Charges, Special Assessments and/or any other costs and expenses of the Condominium thereafter due and payable.

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 Residential Units in which Sponsor is more than thirty (30) days in arrears of Common Charges and Special Assessments.

Repairs, Alterations and Improvements to the Residential Units

All maintenance, painting, repairs and replacement to the General Common Elements including but not limited to exterior walls, sections of the roof and roof members of the Building that are General Common Elements, as well as painting, repair and/or maintenance of the exterior surfaces, roof, windows and doors which open from the Building, as well as all maintenance, repairs and replacements of foyers and stairways of the Building, and of any pipes, wires, conduits and utility lines, or any portion of which is located in one Residential Unit and services another Residential Unit or more than one Residential Unit or so much of any pipes, wires, conduits and utility lines as are located in the General Common Elements shall be the responsibility of the Board of Managers and the cost thereof shall be a Common Expense except if such maintenance, painting, repair or replacement is necessitated because of the negligence, misuse or neglect of a Residential Unit Owner or the prior alteration of the Residential Unit by a Residential Unit Owner, in which event the cost thereof shall be assessed individually and paid for by the applicable Residential Unit Owner.

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 who owns the applicable Residential Unit. All maintenance, repair and any replacement to the external portion of the window area, the actual window and external portion of the doors (including painting if necessary) which open from a Residential Unit will be the responsibility of the Condominium and the cost thereof shall be a Common Expense of the Condominium and paid for by all Residential Unit Owners as provided in Article VI of the By-Laws. Notwithstanding the above, should 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 be caused as a direct result of the negligence or act of a Residential Unit Owner, occupant, tenant, guest or any other person residing, visiting or doing work in the Residential Unit, the Condominium will repair or replace the external portion of the window, the window or the external portion of the doors which open from a Residential Unit and the cost of such repair or replacement shall be charged to the Residential Unit Owner as an additional Common Charge or Special Assessment.

All structural repairs and replacements to the rooftop area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and any balcony, patio, terrace area that is an Individual Residential Unit's Limited Common Element of any other Residential Unit will be the responsibility of the Condominium and a Common Expense of the Condominium. All general maintenance and repairs to the rooftop area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and to any balcony, patio and/or terrace that is an Individual Residential Unit's Limited Common Element of any other Residential Unit, including cleaning, snow removal and all repairs not structural in nature, (including the repair of leaks, painting or staining the roof top area, balcony, patio and/or terrace, the replacement of pavers and the repair or replacement of the surface of the roof top area, balcony, patio and/or terrace), shall be the responsibility of the Residential Unit Owner of Residential Unit #2 as it applies to the roof top area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and to any other Residential Unit Owner whose balcony or terrace is appurtenant to their Residential Unit and is an Individual Residential Unit's Limited Common Element of their Residential Unit. The Board of Managers shall have the right to designate or approve a contractor or contractors to do the necessary work to the roof top area, balcony, patio and/or terrace that is the Residential Unit Owner's responsibility at the Residential Unit Owner's sole cost.

The roof top area, balconies, patios and/or terraces are not permitted to be used for storage, are not permitted to be enclosed and are not permitted to be used for any type of occupancy including but not limited to dining, sleeping, living room, recreation, office or similar use. Drains located on the roof top area and on a balcony, patio and/or terrace must always be kept open to prevent flooding. Residential Unit Owners will not be permitted to store any combustible material or other items in or on the roof top area, balcony, patio and/or terrace. Neither the Condominium nor any Residential Unit Owner will be permitted to enclose or make any structural changes to a balcony, patio and/or terrace except as required for repair or replacement.

All maintenance, repairs, landscaping (if any) and/or replacement to any portion of the yard that is an Individual Residential Unit's Limited Common Element of Residential Unit #1 will be the responsibility of the Residential Unit Owner of Residential Unit #1. The Board of Managers shall have the right to designate or approve a contractor or contractors to do the necessary work to the yard that is the Residential Unit Owner of Residential Unit #1's responsibility at the Residential Unit Owner of Residential Unit Owner #1's sole cost and expense. In the event the Residential Unit Owner of Residential Unit #1 does not maintain, repair, landscape or replace any

portion of the yard that is the responsibility of the Residential Unit Owner of Residential Unit #1, the Board of Managers shall have the right to make the necessary maintenance, landscaping, repair or replacement (after the failure of said Residential Unit Owner to do so after ten (10) days written notice, or written or oral notice of a shorter duration in the event of an emergency situation) and to charge said Residential Unit Owner for the cost of all such repairs, and/or landscaping, and/or maintenance and/or replacement. In the event that the Board of Managers assesses said Residential Unit Owner for repairs, landscaping, maintenance and/or replacement to the yard that is an Individual Residential Unit's Limited Common Element of Residential Unit #1 the Board of Managers shall have the right to bring suit thereon and, in such event, the Residential Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with interest on all sums due.

All repairs, maintenance and any replacement and all costs associated therewith of any hot water tank, gas boiler, air conditioning compressor and/or condenser, air handler or any other heating, cooling or other mechanical system servicing an individual Residential Unit that is located in the Residential Unit or is an Individual Residential Unit's Limited Common Element 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 applicable Residential Unit Owner for such equipment, services, etc.

All repairs and replacement of windows, and any snow removal from the General Common Elements shall be contracted for by the Board of Managers and the cost thereof shall be a Common Expense of the Condominium payable by all Residential Unit Owners based on their percentage of Common Interest except that the cost of any maintenance or repairs necessitated due to the negligence, misuse or neglect of a Residential Unit Owner or prior alteration of a Residential Unit shall be assessed to and paid by the applicable Residential Unit Owner.

The Board of Managers shall repair all plumbing stoppages and electrical repairs occurring in the General Common Elements and the cost thereof shall be a Common Expense payable by all the Residential Unit Owners as provided in Article VI of the By-Laws. Notwithstanding, the cost of any maintenance or repairs necessitated due to the negligence, misuse or neglect by a Residential Unit Owner, occupant, tenant, guest or any other person residing in, visiting or doing work in a Residential Unit, or caused by any prior alteration of a Residential Unit, shall be assessed to and paid by the applicable Residential Unit Owner.

All snow removal and cleaning of any sidewalks and entranceways that abut the Condominium that is not the responsibility of the City of New York shall be the responsibility of the Condominium and a Common Expense of all the Residential Units in the Condominium.

The Board of Managers and their agents, employees and contractors shall have the right of access to any Residential Unit for the purpose of making any repairs or replacements to any Common Elements, no matter how classified, contained therein or

elsewhere in the Condominium or to remedy any condition which would result in damage to any other Residential Unit or any other Common Element, no matter how classified, or which would violate the provisions of any mortgage covering another Residential 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 Condominium. Such right of access shall be exercised in such a 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 Residential 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 repairs, painting or maintenance, whether made by the Residential Unit Owner or the Board of Managers, to the doors, windows, or the exterior surface of the Building or to any generally visible portion of the General Common Elements or Individual Residential Unit's Limited Common Elements shall be carried out in such a manner as to conform to the materials, style and color initially provided by the Sponsor, unless varied by the Board of Managers.

All repairs, replacement, modification or maintenance of a lot line window shall be the responsibility of the Residential Unit Owner if part of a Residential Unit or Individual Residential Unit's Limited Common Elements or the responsibility of the Condominium's if part of the General Common Elements. The Condominium shall approve all work and shall have the right to designate or approve the contractor doing the work.

In the event that a Residential Unit Owner fails to maintain, repair or replace its Residential Unit or any Individual Residential Unit's Limited Common Element for the Residential Unit Owner's exclusive use, which maintenance, repair or replacement is necessary to protect any of the General Common Elements, or any other portions of the Building or any other Residential Unit or other Individual Residential Unit's Limited Common Element, the Board of Managers shall have the right to make the necessary maintenance, repair or replacement (after the failure of said Residential Unit Owner to do so after ten (10) days written notice, or written or oral notice of a shorter duration in the event of an emergency situation) of the Residential Unit or Limited Common Elements for a Residential Unit's exclusive use and to charge said Residential Unit Owner for the cost of all such repairs and/or maintenance and/or replacement. In the event that the Board of Managers charges a Residential Unit Owner for repairs, maintenance and/or replacement to their Residential Unit or for repairs to any Common Elements restricted in use to such Owner, and the Residential Unit Owner fails to make prompt payment, the Board of Managers shall be entitled to bring suit thereon and, in such event, the Residential Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with interest on all sums due.

The Board of Managers shall have the right to designate or approve a contractor to do any such work required by a Residential Unit Owner at the Residential Unit Owner's sole expense.

Insurance

Purchasers should refer to Section VI of the Offering Plan and the footnotes to the budget for a complete description of the insurance applicable to the Condominium.

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.

Access by Board of Managers

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

Compliance with terms of the Declaration of Condominium, By-Laws and Rules and Regulations

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

The provisions of the By-Laws which requires 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

Every Residential Unit Owner shall have an easement in common with the owners of other Residential Units to maintain and use all mechanical equipment, pipes, sewers and/or drainage lines, wires, conduits and public utility lines located in other Residential Units and/or an Individual Residential Unit's Limited Common Element and servicing such Residential Unit Owner's Residential Unit. Each Residential Unit shall be subject to an easement in favor of the Residential Unit Owners of other Residential Units to maintain and use the pipes, sewers and/or drainage lines, wires, conduits and

public utility lines servicing such other Residential Units located in such Residential Unit and/or an Individual Residential Unit's Limited Common Elements. The Board of Managers shall have a right of access to each Residential Unit and/or Individual Residential Unit's Limited Common Elements for maintenance, repair or improvements to any mechanical equipment, pipes, sewers and/or drainage lines, wires, conduits and public utility lines and any other equipment or infrastructure located in any Residential Unit and/or Individual Residential Unit's Limited Common Elements and servicing the Building, the Condominium Property and/or any other Residential Unit or causing damage or in imminent danger of causing damage to the Building, the Condominium Property and/or any other Residential Unit or any Common Element, no matter how classified. The cost of such maintenance, replacement and/or repairs shall be a Common Expense unless any damage was the result of the negligence of a Residential Unit Owner or tenant, occupant, employee or other person a Residential Unit Owner may be responsible for, in which case the cost of such maintenance, replacement and/or repairs shall be the responsibility of the Residential Unit Owner who is responsible or whose tenant, occupant, employee or other person the Residential Unit Owner is responsible for causing such damage. The Board of Managers shall have a right of access to all Common Elements for maintenance, repair, replacement, inspection and/or improvement whether such Common Elements are restricted or not. All mechanical equipment, pipes, sewers and/or drainage lines and wires, conduits and public utility lines located within each Residential Unit for the exclusive use of a Residential Unit shall be maintained by such Residential Unit Owner at the Residential Unit Owner's sole cost and expense. Any portion of such mechanical equipment, pipes, sewers and/or drainage lines and wires, conduits and public utility lines located in the Common Elements or in an Individual Residential Unit's Limited Common Elements that service two (2) or more Residential Units will be a General Common Element and all maintenance, repairs, improvements and replacement thereto shall be a Common Expense and the responsibility of the Condominium.

The Board of Managers and their agents, employees and contractors shall have an easement for access in, over and through the entire Condominium (including all Common Elements, no matter how classified, and the individual Residential Units) for the purpose of maintenance, repair, improvement and/or replacement to any Common Elements, no matter how classified, contained therein or elsewhere in the Condominium or to remedy any condition which would result in damage to any Residential Unit or any other Common Element, no matter how classified, 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 Condominium or for the health and safety of the Condominium and its residents. Access to a Residential Unit and any Individual Residential Unit's Limited Common Element shall be exercised in such a manner as is 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 Residential Units, or the Common Elements (no matter how classified) or for the safety of Condominium residents or other persons or required to avoid the suspension of any necessary service to the Condominium.

Each utility and cable company servicing any mechanical equipment, water pipes, sewer lines, sewer pipes, drainage lines or pipes, gas pipes, electric lines, electric wires, cable lines, cable towers, conduits or any other facility the utility or cable company services in or on the Property of the Condominium, shall have a right of access in, under, over and through the Property of the Condominium (including all Common Elements, no matter how classified and the individual Residential Units) for maintenance, repair, inspections, improvements and/or replacement to any mechanical equipment, water pipes, sewer lines, sewer pipes, drainage lines or pipes, gas pipes, electric lines, electric wires, cable lines, cable towers, conduits or any other facility the utility or cable company services in or on the Property of the Condominium. Access in, under, over and through the Property of the Condominium shall be exercised in such a manner as shall not unreasonably interfere with the use of any Residential Unit for its permitted purposes by its owner, tenants or occupants unless access is immediately necessary for the preservation or safety of the Condominium or its Property, or the Residential Units, or for the safety of Condominium residents or other persons or required to avoid the suspension of any necessary service to the Condominium.

The Board of Managers shall have the right to grant such additional electric, gas, water, sewer, drainage 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 Residential Unit for its permitted purposes unless required by law. Access in, under, over and through the Property of the Condominium shall be exercised in such a manner as shall not unreasonably interfere with the use of any Residential Unit for its permitted purposes by its owner, tenants or occupants unless access is immediately necessary for the preservation or safety of the Condominium or its Property, or the Residential Units, or for the safety of Condominium residents or other persons, or required to avoid the suspension of any necessary service to the Condominium.

The Board of Managers shall have an easement in, through, under and over the Residential Units and/or Individual Residential Unit's Limited Common Elements for access, installation, inspection, maintenance, repair and replacement of any flues, vents, air-conditioning, gas, heating, ventilating, water and other mechanical equipment, lines and fixtures and any other machinery, pipes, wires, conduits, equipment or meters servicing any portion of the Condominium.

Sponsor shall have and each Residential Unit Owner shall be deemed to grant a right of access in, under, over and through the Residential Unit and/or Individual Residential Unit's Limited Common Elements to Sponsor or its designee, assignee or successor 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, inspection, replacement, or change being performed or to be performed by or on behalf of Sponsor with respect to the Common Elements, no matter how classified, and/or the Residential Units.

Each Residential Unit Owner grants an easement of ingress and egress in, over and through any hallway that may be part of their Residential Unit to any other Residential Unit Owner, tenant, resident or other persons needing ingress or egress to their respective Residential Unit that may be necessary for said purpose.

The Board of Managers shall have an easement in and through Residential Unit #2 for access to the roof for maintenance or repair and for any other reason the Board of Managers may need access to the roof. The Board of Managers shall provide the Residential Unit Owner of Unit #2 a minimum of three (3) days' notice in the event access to the roof is necessary unless access is required for an emergency or to protect the health and safety of the residents. In such an event no notice is required.

The Board of Managers will have and each Residential Unit will be subject to, an easement (a) to install, utilize, operate, maintain, repair, alter, rebuild, restore and replace the General Common Elements and Individual Residential Unit's Limited Common Elements that have been delegated to and are the obligation of the Condominium to repair, maintain and replace, located in, over, under, through or upon any Residential Unit, or any other Common Elements or elsewhere in the Condominium and (b) to maintain, repair and/or replace any encroachment on any Residential Unit or Common Elements, no matter how designated, resulting from the repair, alteration, rebuilding, restoration and/or replacement of the General Common Elements or Individual Residential Unit's Limited Common Elements.

Each Residential 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 Residential Unit will be subject to an easement of support and necessity in favor of all other Residential Units and the Common Elements, no matter how designated.

Each Residential Unit will have an easement for lateral and vertical support among all adjoining Residential Units and Common Elements.

Any easements granted to Sponsor, the Board of Managers, any Residential Unit or any Residential Unit Owner under the Declaration of Condominium and the By-Laws may be exercised by such Sponsor's, Board of Managers' or Residential Unit Owner's employees, agents, contractors, suppliers, customers, guests, invitees, licensees, servants, tenants, subtenants, members, and visitors, as the case may be, to the extent necessary to effectuate the purpose for the easement or as otherwise authorized by the Sponsor, the Residential Unit Owner or Board of Managers.

Each Residential Unit Owner will have a right and easement to use its Residential Unit and the Individual Residential Unit's Limited Common Elements, subject to and in accordance with the terms and conditions of the Declaration of Condominium and By-Laws.

All Residential Unit Owners, residents, guests, tenants and anyone else needing access to a Residential Unit shall have an easement of ingress and egress, in, through

and over the Property of the Condominium, including the Common Elements regardless of how classified for access to their Residential Unit.

The Board of Managers on behalf of the Condominium will have an easement and unlimited access to all Residential Units and to any Individual Residential Unit's Limited Common Elements for the purpose of making inspections, maintenance, repairs and replacement of any General Common Elements and any Limited Common Elements of the Condominium that the Condominium may be responsible to maintain, repair and/or replace.

All emergency vehicles and personnel, including, but not limited to, police, fire and medical vehicles and personnel shall be granted an easement of ingress and egress over, upon and through all areas of the Property. This provision may not be amended by the Residential Unit Owners in the Condominium.

Allocation of Common Interest

The Percentage of Common Interest of the Condominium establishes the Residential Unit Owners percentage of ownership in the Common Elements of the Condominium and percentage of liability for the payment of Common Charges subject to the rights under Section 339-m of the Real Property Law of the State of New York as described in Special Risk No. 30. Each Residential Unit Owner has the Percentage of Common Interest in the Condominium set forth on Schedule A. Such allocation 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 Residential Unit, the availability of Common Elements for exclusive or shared use, and the overall dimensions of the particular Residential Unit. Said method of determining the percentage of Common Interest in a Condominium complies with and is pursuant to the provisions of Section 339-i(1)(iv) of the Real Property Law of the State of New York.

The Percentage of Common Interest in the Common Elements shall not be changed except with the consent of all Residential Unit Owners affected expressed in a duly recorded amendment to the Declaration of Condominium. However, based upon final specifications, renovation conditions and/or "as-built" plans for the Building reflecting relative measurements, areas and uses of portions of the Building, application of such method of allocation of the Percentage of Common Interest may justify a minor increase or decrease in the aggregate Percentage of Common Interest appurtenant to Residential Units. In such event, the Percentage Interest of Common Interest appurtenant to each individual Residential Unit would be adjusted pro rata. Sponsor expressly reserves the right, from time to time, prior to the first Closing, to effect such a change in the Percentage of Common Interests and to amend the Offering Plan so as to reflect the same. In no event, however, will the Percentage of Common Interest of any Residential Unit be increased or decreased as a result of any of the foregoing a material amount.

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

## XX. REAL ESTATE TAXES

In accordance with the New York State Condominium Act, real estate taxes applicable to each Residential Unit will be separately assessed. The estimated monthly costs and charges to be incurred by the owner of each Residential Unit in the first year in which the property will be fully subject to real estate taxes together with estimated Common Charges on each Residential Unit and other carrying costs are set forth on Schedule A.

Real estate tax estimates are based upon information received from Metropolitan Realty Exemptions, 381 South 5th Street, Brooklyn, New York 11211. The figures are based upon the projected 2019/2020 residential class 1 tax rate of $21.167 per $100 of assessed valuation for the Residential Units based upon the tentative assessment for 2020/2021 of $31,054 and a total tax for 2020/2021 of $6,277 based on a tax rage of $21.167. The projected real estate taxes for the first year of operation contained on Schedule A are based on an assessment of the building before rehabilitation is complete. Purchasers are advised that real estate taxes may increase materially when the building is reassessed after rehabilitation is complete. See Section XX of the Offering Plan and below for more information regarding the projected assessed valuation after completion of rehabilitation.

The total estimated post completion of renovation valuation for the entire Condominium for the 2021/2022 tax year is estimated to be $98,917 and total taxes for all the Residential Units for said period is estimated to be $20,938. Sponsor has been advised by its consultant that it is the policy and practice of the New York City Department of Finance ("Finance") to apportion the assessed valuation of a condominium among the various units based upon the percentage of common interest contained in the Declaration of Condominium. Estimated real property taxes by unit once fully assessed after renovation is complete (i.e., fiscal 2021/2022) based on relative percentages of common interest set forth in Schedule A in the Offering Plan are as follows:

| Unit | % of Common Interest | Estimated Assessed Value | Estimated Annual 2021/2022 Taxes |
|---|---|---|---|
| 1 | 58% | $57,371.86 | $12,144.04 |
| 2 | 42% | $41,545.14 | $ 8,793.98 |

It should be noted that, although it is currently Finance's stated policy to apportion the assessed values of condominium properties among the various units on this basis, Finance has used different methodologies in the past. No warranty or guarantee is made herein that assessed values will not be apportioned based on a different method.

The figures set forth above are approximations derived from material submitted by the Sponsor and publicly available tax records and are subject to amendment. No government agency has passed upon these figures or the estimates of assessed valuation and taxes above. Neither the Sponsor nor its counsel have passed on the accuracy of any figures or estimates contained in the Offering Plan, and offer no

warranties on real estate assessments, tax classifications, taxes or tax rates for any period. All prospective Purchasers are advised that, although the estimates of assessed valuations upon conversion are good faith estimates, such assessed valuations when actually made may be less or greater than as estimated above.

The above estimates do not take into account any future increases in the level of assessed valuation applied to residential property or any increase in the real estate tax rates. The above estimates are based upon interpretations of The New York State Real Property Tax Law and The Administrative Code of the City of New York and are not intended to be a guarantee or assurance that the actual or transitional tax assessments, tax rates, or actual taxes will be as estimated.

No representation is made that the provisions of law or New York City Department of Finance policies and practices will apply at the time the property's conversion is complete. Purchasers should be aware that the laws, regulations and practices of the Department of Finance upon which the above estimates are predicted may in the future be revised in a manner adverse to a Purchaser's interests, or that there may be an adverse interpretation of the law or regulation by one or more agencies of the City of New York, or Courts of competent jurisdiction.

The above estimates are not intended and should not be construed as representations or warranties that assessments, tax rates, and taxes will not be determined in a different amount. The foregoing analysis is based upon the knowledge of the making and review of assessments by the Real Property Assessment Department and the Tax Commission of the City of New York with respect to "class 1" residential properties held in the condominium form of ownership. Application of a particular approach to valuation by an individual assessor may yield a different result.

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

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.

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

Since the New York State Condominium Act provides that real estate taxes will be separately assessed against each individual Residential Unit Owner, the result of the tax exemption program will be to give each individual Residential Unit Owner the applicable benefit of the tax exemption program.

In the event the Residential Units have not been separately assessed for real estate tax purposes prior to the Closing of Title to the first Residential 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 Residential 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 Residential Unit. 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 Residential Units for such six (6) month period and may collect at each Closing the estimated amount of taxes attributable to such Residential 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. After the Residential Units are separately assessed, the funder of the escrow account or the Residential Unit Owner will be reimbursed for any overpayment of taxes or assessed for an underpayment.

After the Residential Units are separately assessed Residential Unit Owners will not be responsible for the payment of or subject to any lien arising from the non-payment of real estate taxes on any other Residential 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 Residential 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 or Sponsor's Tax Consultant be liable to any Purchaser under this Offering Plan, nor will any Purchaser have the right to rescind their Purchase Agreement, in the event the amount of the taxes differ from those projected.

A copy of the opinion letter from Podell, Schwartz, Schecter & Banfield, LLP is contained in Section XII of the Offering Plan.

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

The Sponsor has been advised by its counsel, Certilman Balin Adler & Hyman, 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 and, provided the Residential Unit is used as the Residential Unit Owner's primary residence or one (l) other residence that the Residential Unit Owner selects pursuant to Section 163(h) of the Internal Revenue code of 1986, for the interest paid by the Residential Unit Owner on any mortgage, covering the Residential Unit Owner's Residential Unit. Purchasers should note that pursuant to the Federal Tax Cuts and Jobs Act of 2017 (the "Tax Act"), which went into effect on January 1, 2018, the maximum mortgage in which an individual can deduct the interest on is $750,000. In addition, the Tax Act placed a maximum of $10,000 on the amount an individual can deduct for the combined amount of real estate taxes and State income taxes. Purchasers are advised to seek the advice of their tax consultant to ascertain the income tax ramifications to the Purchaser pursuant to the Tax Act. See the Opinion of Counsel in Section XXII of the Offering Plan. Similarly, the Sponsor has been advised by counsel that certain Residential Unit Owners who are veterans of the Residential United States Armed Forces may be entitled to deductions covering part of the real estate taxes applicable to their respective Residential Units.

Purchasers are advised to seek the advice of their tax consultant to ascertain the income tax ramifications to the Purchaser pursuant to the Tax Cuts and Jobs Act of 2017.

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 Residential Unit Owners of the Condominium, or property within the Condominium held by the Residential Unit Owners 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 XXII of the Offering Plan.

CERTILMAN BALIN
ATTORNEYS

90 MERRICK AVENUE, 9TH FLOOR
EAST MEADOW, NY 11554
PHONE: 516.296.7000 • FAX: 516.296.7111
www.certilmanbalin.com



RICHARD HERZBACH
PARTNER
DIRECT DIAL 516.296.7006
rherzbach@certilmanbalin.com

July 2, 2020

389 Bergen LLC
132 Mulberry Street
New York, New York 10013

Re: **389 Bergen Condominium**

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 mortgage 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, 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 to the aforesaid maximum amount currently allowed by law pursuant to the Federal Tax Cuts and Jobs Act of 2017 (the "Tax Act"), which went into effect on January 1, 2018. In addition, the Tax Act placed a maximum of $10,000 on the amount an individual can deduct for Federal income taxes for the combined amount of real estate taxes and State income taxes.

We have given this matter careful study, and it is our opinion that, pursuant to the provisions of the Internal Revenue Code (the "Code") the provision of the New York State Law (See Section 615 of the Tax Law), 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 income taxes to the maximum amount currently allowed by the Act and New York State and City income taxes to maximum allowed in each jurisdiction. Similarly, we are of the opinion that each Condominium Residential Unit Owner whose Residential Unit is their principal residence will be entitled, under the Code and Section 615 (a) of the State Law, to deduct interest paid or accrued by the Residential Unit Owner on any mortgage which becomes a lien on a Condominium Residential Unit to the maximum amount allowed by applicable law.

Pursuant to Section 528 of the Code, certain Condominiums, substantially all of whose Residential Units are used for residences, have 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

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 Offering 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 that 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 XIV 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 Residential Unit as set forth in the Offering Plan.

We have examined the Declaration of Condominium and By-Laws pertaining to the proposed Condominium. It is our opinion that the Declaration of Condominium 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 Residential Unit, the availability of Common

Elements for exclusive or shared use, and overall dimensions of the particular Residential 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 statues, 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. All Purchasers are advised to consult with their personal tax consultant as to purchasing and owning a Residential Unit in the Condominium.

Very truly yours,

**CERTILMAN BALIN ADLER & HYMAN, LLP**

By: _____
Richard Herzbach, Partner

METROPOLITAN
Realty Exemptions

Office: 381 South 5th Street, Brooklyn, NY 11211
Mailing: 118 Middleton Street, Brooklyn, NY 11206
Phone: (718) 387-3004 | Fax: (718) 228-3503
Email: martin@mretax.com |Web: www.mretax.com

February 18, 2020

389 Bergen LLC
153 Mulberry Street
New York, NY 10013

RE: 389 Bergen Street
Brooklyn, NY
Block & Lot: 930 - 59

Letter of Opinion Regarding Real Estate Tax Liabilities
Two (2) Residential Condominium Units

Dear Sir,

You have requested an opinion concerning the real property assessment to be levied upon the above property for the first full tax year after completion of construction, to be included in the Condominium Offering Plan.

In order to prepare this letter and the opinion set forth herein, you have supplied us with the following information upon which we have relied:

- The subject property is located at 389 Bergen Street, Brooklyn, NY 11217, and is known as Block: 930, Lot 59, with the NYC Department of Finance ("DOF").
- Prior to commencement of construction the Building Classification was C0, which is classified as a Tax Class 1 property with the DOF.
- Sponsor is performing construction with an Alteration Type 1 Permit, Job #321844938, to perform construction and convert the property to two (2) residential condo units.
- There will be separate condominium tax lots filed with the DOF for each residential unit.

- Based on assessment guidelines, the DOF Surveyor's Office shall class the residential building as a tax class one (1) and thus levy the assessed value on a 6% rate of the market value.

**DOF Assessment Guidelines**

The New York City Department of Finance assesses the values regarding all New York City residential and commercial properties annually. Based on the assessor's determination of the assessment on taxable status date January 5th, the Department of Finance releases tentative assessments of the property value in January of every year and final assessments every May, prior to the beginning of each tax year. Assessments in New York City are made on a fiscal year basis, beginning on July 1st of each year and ending on June 30th the following year.

The property tax assessment process commences when the city's assessors determine the market value of the property. Property tax is only levied on a portion of the market value. This portion is called the assessed value. Regarding 1-3 family homes and condominiums with no more than three (3) stories, provided such property was previous classified as class one (1), the assessed values are levied on 6% of the market value. Regarding all other properties, taxes are levied on 45% of the market value.

Real Property tax rates set each year by the City Council are applied to these property values, to determine each homeowner's annual tax liability. The current 2019/20 class 1 tax rate is 21.167% of assessed valuation.

Real Property Tax Law Section 1805 provides for the creation of a transition assessment system within the City of New York. Under the transition assessment system, the usual increase in the actual assessed value of a property between one year and the next is phased in over a five-year period in equal installments. The five-year phase in does not apply to new construction or other increases due to physical improvements to the property. Increases due to such physical improvements or new construction are added in full to the next year's assessment. Pursuant to Real Property Tax Law Section 1805, the taxable assessment is determined to be the lesser of the actual assessed valuation or the transition assessed valuation.

We believe there will be an increase in value for 2021/22 as a result of the renovation, and that such increase will be placed on the assessment roll immediately and not subject to the limitation on increases described above.

However, in future years increases in assessed value will likely result in the taxable assessment being based on a phased-in transition assessment.

**2020/21 Partial Real Estate Tax Liabilities**

The first year of condominium operation will begin on September 1, 2020 and end on August 31, 2021.

Since construction of the project was not yet completed by the Tentative Assessment Date of January 5, 2020 and/or by the Final Assessment Date (released in the end of May), the assessed value for tax year 2020/21 does not yet reflect the full increase in valuation.

## METROPOLITAN Realty Exemptions, Inc.

The DOF has set the 2020/21 Tentative Assessed Value at **$31,054** and based on the Tax Class 1 tax rate of 21.167% (i.e., $21.167 per $100 of assessed value, the 2019/20 tax rate), the real estate tax liability for tax year 2020/21 is **$6,277**.

**2021/22 Proposed Full Real Estate Tax Liabilities**
We have taken the following factors in account when formulating our opinion: (a) the recent tax assessment history on the property; (b) comparable condominium projects in the neighborhood which have been recently altered; (c) market conditions in the general area; (e) proposed estimate of the cost of construction; (f) calculation of the gross floor area mentioned above.

Considering the aforementioned factors, we are estimating that following completion of construction, the DOF will set the assessed value at approximately **$98,917**.

Assuming the 2019/20 tax rate of 21.167% for tax class 1 (i.e., $21.167 per $100 of AV), the Projected Tax Liability will be approximately **$20,938.**

In determining the assessed values for the individual units, the Department of Finance may use the common interest percentages set forth in the condominium declaration if such percentages are rationally and fairly determined.

**Disclaimer**
*Though the aforesaid estimate of the Actual Assessed Valuation is a good-faith estimate, it is not possible to estimate same with any degree of certainty. Assessed valuations, when made, may be lesser or greater based on the interpretation of the administrative code and the applicable rules and regulations of the City of New York.*

*Although we believe our opinions are well-founded, they are not intended, and should not be construed as warranties or guaranties or representations as to future assessed valuations of the property under discussion and we accept no responsibility or liability in the event that the figures or projections set forth herein are incorrect or inaccurate. In no event will this firm, the Sponsor, the Sponsor's counsel or any other person be liable if the assessed valuation, when actually made, is lesser or greater that that estimated above, or if the administrative code and the applicable rules and regulations of the City of New York are changed in the future, or if the facts as represented prove to be untrue.*

Sincerely yours,

Martin Joseph
*Metropolitan Realty Exemptions, Inc.*

## XXIII. RESERVE FUND

The Condominium budget includes a reserve fund line item to be used for future major capital improvements of the Condominium. In view of the fact the Condominium will be renovated it is not anticipated that there should be any major capital repairs or replacements during the first five (5) years of operation of the Condominium.

No representation is made that the reserve fund line item will be adequate for future expenses including repairs or replacements of Common Elements during the first five (5) years of the Condominium. If additional funds are required over and above said funds, it may be necessary to increase the Common Charges payable by the Residential Unit Owners, collect a Special Assessment from each Residential Unit Owner or borrow money.

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.

Article VI, Section 3 of the By-Laws authorizes the establishment of a reserve fund.

Article III, Section 3 of the By-Laws authorizes the Board of Managers to borrow money on behalf of the Condominium when required in connection with needed capital expenditures such as repair or replacement of Building components or systems or to remedy major Building defects, provided, however, that no lien to secure repayment of any sum borrowed may be created on any Residential Unit or its appurtenant interest in the Common Elements without the written consent of the Owners of said Residential Unit. No representation is made by the Sponsor as to the availability or cost of such financing. In the event the Condominium is unable to borrow the money, the Board of Managers may be required to assess each Residential Unit Owner for its applicable pro-rata share of the cost of the needed capital expenditure.

## XXIV. WORKING CAPITAL FUND

At Closing the Sponsor will collect the equivalent of 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 may be used to reduce the Common Charges. The Working Capital fund may also 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. At such time as the Sponsor relinquishes control of the Board of Managers any remaining balance of the Working Capital fund will be turned over to the Board of Managers.

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

## XXV. 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 Residential 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 a Condominium. 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.** Notwithstanding said fact, a Condominium of this size may ultimately determine there is a need to hire a managing agent. The current cost of a managing agent to manage a Condominium of this size may vary from approximately $1,000 per annum per Residential Unit to approximately $1,500 per annum per Residential Unit. Prospective Purchasers should see the footnotes to Schedule B regarding other contractual arrangements the Condominium may be subject to.

## XXVI. IDENTITY OF PARTIES

Sponsor and Selling Agent

The Sponsor is 389 Bergen LLC, a New York limited liability company created on March 12, 2018 with an address at 132 Mulberry Street, New York, New York 10013. The sole member of the Sponsor is Aran Scott with the same business address as the Sponsor.

Mr. Scott has been a licensed real estate broker for over ten (10) years in the metropolitan area selling high end homes and apartments. Neither the Sponsor entity nor Mr. Scott has had any prior public offerings of condominiums, cooperatives or homeowners' association. In addition, neither the Sponsor nor Mr. Scott own 10% or more of the unsold shares, units or homes in any other cooperative, condominium or homeowners' association.

Attorneys

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 Certilman Balin Adler & Hyman, LLP. The individual partner in said firm responsible for said work is Richard Herzbach, Esq.

TAB Law Firm, PC will represent the Sponsor in connection with the individual Residential Unit Closings and will also act as the Escrow Agent as described in Section XI of the Offering Plan.

The firm has any financial interest in the Property, the Sponsor, the Condominium or any other party involved in this transaction, except for its fee for services rendered in connection with the Condominium.

Architect

The architectural firm that prepared the report in Part II and which executed the Certification in Part II is Dumbo Designs, 12012 Halsey Street, Brooklyn, New York. The architect has no financial interest in the Property, the Sponsor, the Condominium or any other party involved in this transaction, except for its fee for services rendered in connection with the Condominium. The architect has had prior experience in the preparation of Offering Plans and specifications for other condominiums in the Metropolitan area.

## XXVII. 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.

## XXVIII. DOCUMENTS ON FILE

Sponsor shall keep copies of the Offering Plan, all documents referred to in the Offering Plan and all Schedules submitted to the Department of Law in connection with the filing of the Offering 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.

## XXIX. 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 Offering 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 submission of the Offering Plan to the Department of Law. The property forming the Condominium is vacant land and therefore, there are no residential or non-residential 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 Offering Plan.

Amendment of Offering Plan

The Offering 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 Offering 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 Deposit made therewith with interest, if any. No person has been authorized to make any representation which is not expressly contained herein. This Offering Plan may not be changed or modified orally.

## XXX. SPONSOR'S STATEMENT OF SPECIFICATIONS OR BUILDING CONDITION

Sponsor adopts the Description of Property set forth in Part II of the Offering 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 Offering Plan. 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.

**389 BERGEN LLC**
Sponsor

Date of Offering Plan: , 2020
East Meadow, New York

**O F F E R I N G  S TA T E M E N T**

# 389 BERGEN CONDOMINIUM

389 Bergen Street
Brooklyn, New York 11217

**PART II**

# RESIDENTIAL UNIT PURCHASE AGREEMENT

**Residential Unit No**. _____ **Date** _____

**Anticipated Closing Date:** _____

**Seller:** **389 BERGEN STREET LLC**

_____

**Address of Property:** **389 BERGEN STREET, BROOKLYN, NEW YORK, 11215**

**Purchaser(s):** _____
**Home Address:** _____

**Residential Telephone Number:** _____
**Business Telephone Number(s):** _____
**Email Address:** _____
**Social Security Number(s):** _____

**Purchaser's Attorney:** _____
**Attorney's Contact Information:** _____

_____

Phone:_____ Fax: _____
Email:_____

**Seller and Purchaser agree as follows:**

1) **PURCHASE PRICE:**

| | |
|---|---|
| Residential Unit | $_____ |
| Builder upgrades, extras, options, custom or special work (collectively, "Extras") | $_____ |
| **TOTAL** | **$**_____ |

**PAYABLE AS FOLLOWS:**

| | |
|---|---|
| On the signing of this Purchase Agreement, __% of the Purchase Price ("Deposit") to be deposited with Escrow Agent (hereinafter defined) by check subject to collection or wire | $_____ |
| Purchaser's certified or teller's check (drawn on a bank that is a member of the New York Clearinghouse) 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 deliver a certified check or bank cashier's check to Seller to replace 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 Deposit 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 at law or in equity.

**ALL PAYMENTS DUE AT CLOSING IN ACCORDANCE WITH THIS PURCHASE AGREEMENT MUST BE MADE AT SELLER'S OPTION BY WIRE OR BY PURCHASER'S CERTIFIED CHECK OR OFFICIAL BANK TELLER'S CHECK DRAWN 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 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 PURCHASER'S OBLIGATIONS HEREUNDER.**

2) **DESCRIPTION OF UNIT** - Seller agrees to sell and convey, and, at its own cost and expense, renovate, erect and complete, and Purchaser shall purchase from Seller, the condominium unit(s) known as Residential Unit No. ___ (the "Residential Unit") together with a _____ Percentage of Common Interest in the Common Elements of the condominium (the "Common Elements") known as 389 Bergen Condominium (the "Condominium"), located at 389 Bergen Street, Brooklyn, New York 11217 and as described in the Declaration of Condominium recorded or to be recorded in the Register's Office of the City of New York, renovated, built or to be built by Seller and the unit designation map (the "Condominium Map") on the Condominium Property as described in Exhibit A of the Declaration of Condominium filed or to be filed in the Register's Office of the City of New York. The Residential Unit shall hereinafter be referred to as the "Unit". The Unit shall be renovated and 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 shall 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.

Except as otherwise expressly set forth in this Purchase Agreement, 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, central vacuum systems, high-hat lighting, additional fixtures and switches added for decorative purposes and other optional fixtures or features exhibited in any model units and/or any sales office.

3) **OFFERING PLAN** - Seller has exhibited and delivered to 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 herein. 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. 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. Any defined term set forth in this Purchase Agreement which is not specifically defined herein shall have the meaning ascribed to them 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 (as hereinafter defined) and delivery of the deed.

4) **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 full force and effect and Purchaser shall have an ongoing obligation to consummate the transaction. If Purchaser does not consummate this 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.

5) **CLOSING -** 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 date of the transfer of title on the Unit to Purchaser is the Closing Date. The anticipated closing date set forth on the first page of this Purchase Agreement (the "Anticipated Closing Date") is an approximate date and Seller cannot make any guarantees that such date will be the actual date of closing ("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 (the "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-3 annexed hereto and made a part hereof.

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 prior to the new scheduled date and time for Closing. The Closing shall take place at the office of the Seller's attorney.

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 $1,250.00. The Closing may not take place in any location other than the office of Seller's attorney without Seller's prior written consent.

In the event the Closing is adjourned, with or without Seller's consent, at the request of Purchaser, Purchaser's attorney, Purchaser's lender or attorney for Purchaser's lender, if any, within forty-eight (48) hours of the scheduled date and time of Closing, Purchaser shall pay Seller's attorney an adjournment fee in the sum of $1,250.00.

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, either Seller or Purchaser may cancel this Purchase Agreement by sending a written notice of cancellation ("Notice of Cancellation") to the other no later than ten (10) days following the last day of such twelve (12) month period. Upon receipt of the Notice of Cancellation, Escrow Agent shall refund to Purchaser, subject to the escrow provisions as disclosed in Section XI of the Plan and Paragraph 29 of this Purchase Agreement, all Deposits. Thereafter, neither party shall have any further liability or obligation to the other in connection with this Purchase Agreement. Failure to timely and properly notify Seller shall be deemed a waiver of this provision, and Purchaser shall continue to be bound by the terms of this Purchase Agreement. In the event Seller shall be unable to convey title to the Unit within twenty-four (24) months of the Anticipated Closing Date through no fault of Purchaser, this Purchase Agreement shall be deemed null and void and Escrow Agent shall return all monies being held in escrow within thirty (30) days thereafter.

6) **CLOSING COSTS** - In addition to all other sums payable or reimbursable elsewhere under this Purchase Agreement, at Closing Purchaser shall 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 and 1402-b 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 the recording of all documents in connection with this transaction, including, without limitation, any mortgage, the deed, any power of attorney (including the condominium unit power of attorney), affidavits required pursuant to Section 339-ee of the New York State Real Property Law, any documents required to be recorded in connection with this Purchase Agreement and any mortgage releases, terminations (including terminations of assignments of leases and rents) and UCC-3 partial terminations and any mortgage pick-up fee or similar fee that shall be imposed by Purchaser's title company in connection with the payoff and/or release of Seller's mortgages;

(i) in the event that any mortgage of Seller shall be assigned to Purchaser's lender and/or assumed by Purchaser at Closing, 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 equal to the equivalent of two (2) months Common Charges to the Condominium;

(k) a pro-rata reimbursement of the Condominium's current year's insurance premium;

(l) water tap fee of $1,000;

(m) sewer tap fee of $1,000;

(n) survey fee of $1,000;

(o) $150 fee for the completion of any lender's mortgage questionnaire;

(p) any other municipal and/or utility company fees applicable to the Unit;

(q) $3,500 to Seller's attorney for the preparation of the closing documents; and

(r) $500 to Seller's attorney for the preparation of the New York City "ACRIS" transfer documents.

(s) $1,250 travel fee for Seller's attorney to travel to and from the Closing, if closing occurs at any location other than the office of Seller's attorney; and

(t) $1,250 adjournment fee in the event the Closing is adjourned within forty-eight (48) hours of the actual Closing Date.

Seller shall also be entitled to any other costs referenced to in Section XVI of the Plan if not specifically contained herein.

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, one (1) month advanced additional Common Charge, sewer use (if applicable), water use, fuel oil, electricity, gas and any other utility costs. Purchaser shall also pay the deposits required by Purchaser's lender to establish the estimated or escrow fund for future payments of taxes, Condominium Common Charges, sewer use and insurance premiums (if applicable).

In the event the title company, with Seller's prior written consent, prepares the ACRIS, Purchaser shall pay the applicable fee of the title company and $500 to Seller's attorney for preparation of the New York City "ACRIS" documents.

If through no fault of Seller, Purchaser fails for any reason to close title on the date originally scheduled in the 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.

If Purchaser fails to close title to the Unit on or before the date set forth in the Notice for Closing, 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 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 Purchase Agreement which are communicated to the other party within six (6) months after the 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.

7) **SEVERANCE OF MORTGAGE -** Purchaser shall use its best efforts to direct Purchaser's lender (i) to accept an assignment of the existing mortgage(s) encumbering the Property, as severed, to encumber only the Unit and its appurtenant percentage of Common Interest in the Common Elements, and (ii) to cooperate with Seller and Seller's existing lender as necessary to effectuate such assignment. At Closing, Purchaser shall execute the affidavits required pursuant to Section 255 of the Tax Law of the State of New York. Seller shall receive, as a credit from Purchaser at Closing, a sum equal to the full mortgage tax credit which Purchaser may be entitled under any applicable law by reason of mortgage taxes having been previously paid by Seller on the amount of Purchaser's mortgage. The foregoing credit shall be paid by Purchaser regardless of whether Purchaser's lender accepts the assignment of Seller's existing mortgage, as severed.

8) **MORTGAGE(S) -** All terms and provisions of this Purchase Agreement and all payments made hereunder are and shall be subject and subordinate to the lien of any acquisition, improvement, interim or building loan mortgage heretofore or hereafter made and any advances heretofore or hereafter made thereon, to the full extent thereof without the execution of any further documents by Purchaser. This subordination shall apply whether such advances are voluntary or involuntary and whether made in accordance with the loan schedule of payments or accelerated thereunder by virtue of the lender's right to make advances before they become due in accordance with the

schedule of payments. Seller shall satisfy all such mortgages or obtain a release of the Unit and its appurtenant percentage of Common Interest in the Common Elements from the liens of such mortgage(s) at or prior to Closing, unless Purchaser shall be required to take title subject to the existing mortgage(s), as severed and assigned to Purchaser's individual mortgage encumbering the Unit.

9) **DEED AND ENCUMBRANCES UPON OWNERSHIP** - The deed to be given by Seller to Purchaser at Closing shall be a Bargain and Sale Deed with Covenant's against Grantor's Acts, but subject, nevertheless, to the matters set forth in sub-paragraphs (a) through (f) below and any additional exceptions set forth in Section XV of the Plan, as it may be amended, 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 transfer tax and the New York City transfer tax which are 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 of the State of New York. Purchaser shall accept such title to the Unit subject to the liens, encumbrances and other matters set forth in this Purchase Agreement, as Millenium Abstract Corp., as agent for a title company, ("the Title Company"), a title company authorized to do business in the State of New York with an address at: 35 N. Tyson Avenue, Floral Park, New York, telephone: (516) 355-0800, Attention: Ronnie Simhon, is willing to approve and insure without additional premium. Purchaser may obtain title insurance from any other title insurance company or abstract company, or Purchaser may decline to obtain any title insurance at all.

Purchaser shall be responsible for payment to the title insurance company or abstract company of the entire premium for Purchaser's title insurance, and shall also pay the applicable New York State transfer tax and New York City transfer tax and mansion tax, if applicable. Purchaser shall also be responsible for payment to the title company or abstract company, of the entire cost of the premium for Purchaser's lender, if any, and any and all title charges relating to Purchaser's mortgage loan, if any.

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 renovated or 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 or the Common Elements 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 or the Common Elements 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.

(g) All exceptions listed in Section XV of Part I of the Plan.

Purchaser shall deliver to Seller's attorney within thirty (30) days of Purchaser's attorney's receipt of a fully executed Purchase Agreement, a written notice setting forth each objection to title, if any (other than those specifically set forth herein subject to which the Unit is 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.

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 to the Plan ("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, the Declaration and By-Laws of the Condominium. Purchaser further agrees to execute and pay for any recording fees in the event the form required to be used for a Power of Attorney is revised subsequent to the Closing Date. This Paragraph shall survive Closing and delivery of the deed.

12) **ENCUMBRANCES/LIENS EXISTING AT CLOSING** - The existence of anything affecting the transfer of title of the Unit at Closing, including unpaid taxes or liens of any kind, shall not constitute an objection to title provided the Title Company or another title or abstract company licensed to do business in the State of New York 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 reasonably required by said company and/or the depositing of money not to

exceed the net Purchase Price due Seller after payment of Seller's closing expenses and mortgage release amount. The parties agree that 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 Purchaser at the time of Closing.

13) **EXTRA WORK AND EXTRA ITEMS ORDERED BY PURCHASER -** Any Extras 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 Extras shall not entitle Purchaser to cancel this Purchase Agreement even if Purchaser has already paid for such Extras. Purchaser's only right, in the event of Seller's failure to perform the work required to install or actually install such Extras, is to receive a refund or credit at Closing equal to the total payments made to Seller for such Extras. All Extras must be ordered prior to commencement of construction/renovation and must not delay construction/renovation. In the event Purchaser orders Extras, other than the standard Extras offered by Seller, if any, 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. **All funds received by Seller for Extras will initially be placed in the Escrow Account (as provided in Paragraph 29 herein). Such funds may be released from the Escrow Account as long as Seller uses the funds for such Extras.** As noted as a Special Risk in the Plan, in the event Purchaser is entitled to rescission, Purchaser will not receive a refund of any funds paid for Extras which have been (i) installed by Seller, (ii) not installed but paid for by Seller or (iii) not installed but which have been ordered by Seller and for which Seller is obligated to pay unless the Plan has been abandoned. In the event the Plan is abandoned, Purchaser shall be entitled to receive a refund of all funds paid to Seller for such Extras. Seller shall have no responsibility for any work, fixtures, appliances, equipment or materials not ordered directly from Seller by Purchaser. Any orders which Purchaser places directly with Seller's contractors, sub-contractors or suppliers shall not be deemed to have been ordered directly from Seller and Seller shall not be responsible or liable with respect to same.

14) **OPTIONS AND COLOR SELECTIONS** – Any options offered by Seller to Purchaser with respect to colors, products, materials, design, features and similar matters shall be made by Purchaser in writing at Seller's office or the sales office, within ten (10) days after notification to Purchaser to select such options. If Purchaser fails to inform Seller of Purchaser's final selections within such ten (10) day period, Seller shall make the selection on Purchaser's behalf and Purchaser shall accept such selection. No claim or objection to Closing shall be made by Purchaser because of any selection made by Seller in the event Purchaser failed to give Seller timely notice of Purchaser's final selections.

15) **NO INSPECTIONS DURING RENOVATION/CONSTRUCTION** - Purchaser acknowledges that unsupervised visits to the Property 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 Property and shall only have the right to visit the sales office. Any unauthorized visits to the Property by Purchaser are subject to a charge by Seller of $500.00 per visit, which Purchaser agrees to pay to Seller within ten (10) days of Seller's demand thereof.** Purchaser hereby releases and indemnifies, defends and holds Seller harmless from and against any and all claims and liabilities incurred by Seller resulting from the presence of Purchaser or Purchaser's family members, agents, licensees 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-4 annexed hereto and made a part hereof.

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

17) **POSSESSION OF THE UNIT PRIOR TO CLOSING** - Neither Purchaser nor anyone acting on Purchaser's behalf may enter or take possession of all or 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.

Seller will not accept any liability whatsoever for any property belonging to Purchaser, their agents, employees, licensees, invitees, 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 Seller, whatever its nature, shall constitute a waiver of this Paragraph.

18) **CHANGES BY SELLER -** In improving and renovating the Unit and performing any other work on the Property, Seller reserves the right to: (a) make changes or substitutions of materials or construction/renovation from those shown in the model 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 units to be constructed in the Condominium; (d) change appliances as long as they are equal to or better than originally offered; and (e) make any other changes required by the City of New York or any other municipal or governmental agency having jurisdiction over the Property.

19) **COMPLETION OF CONSTRUCTION/RENOVATION; PURCHASER'S INSPECTION -** Purchaser shall accept title (without abatement or credit against the Purchase Price or provision for escrow) notwithstanding that construction or renovation of (a) minor details of the Unit or the Building, or (b) other unit(s) in the Condominium, or (c) any landscaped areas of the Property, or (d) other portions of the Common Elements have not been completed. Purchaser shall inspect the Unit with a representative of Seller during normal business hours approximately three (3) days prior to Closing and shall sign and deliver to Seller on or before Closing, a Pre-Title Inspection Statement supplied by Seller, acknowledging the condition of the Unit. Purchaser agrees to accept the Pre-Title Inspection Statement, wherein Seller shall agree to complete all unfinished items within six (6) months from the Closing Date, weather and other circumstances permitting. Any such incomplete items shall not constitute an objection to Closing. 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 final Certificate of Occupancy for the Unit (or the Building) and, if available, a New York Board of Fire Underwriter's Certificate or equivalent for the Unit. Purchaser represents and agrees that Purchaser will not do anything within their Unit to prevent the extension or renewal of a temporary Certificate of Occupancy or the issuance of a final Certificate of Occupancy. Purchaser further acknowledges that Seller will have no liability nor responsibility to Purchaser or to make improvements to the Unit in the event Purchaser has made changes to the Unit that prevents the extension or renewal of a temporary Certificate of Occupancy or the issuance of a final Certificate of Occupancy by the Department of Buildings of the City of New York. Purchaser shall reimburse Seller, within ten (10) days following Seller's demand therefore, for any and all costs incurred by Seller with respect to Purchaser's changes to the Unit that prevent the extension or renewal of a temporary Certificate of Occupancy or the issuance of a final Certificate of Occupancy by the Department of Buildings of the City of New York. This Paragraph shall survive Closing and delivery of the deed.

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/renovation, 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/renovation. Purchaser further acknowledges that other units and infrastructure are presently being constructed and renovated at the Property and that Seller anticipates that such construction and renovation shall continue until the Condominium is completed in accordance with the Plan. Accordingly, Purchaser agrees that such continuing construction and renovation 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 the Notice for Closing, or if Purchaser fails to observe or perform any other obligation on the part of Purchaser to be observed or performed 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 in accordance with Paragraph 13 of this Purchase Agreement. Purchaser acknowledges said amount to be fair and reasonable.

Prior to such funds being released to Seller, Escrow Agent shall send a notice to Purchaser of Escrow Agent's intent to release the funds being held in escrow on behalf of Purchaser pursuant to the escrow regulations as set forth in Section XII of the Plan and Paragraph 29 of this Purchase Agreement.

**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 default, Seller shall be released and discharged of any and 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, at law or in equity 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 Deposit and the funds paid for Extras 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/renovation or completion of the Building and/or the Unit 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, renovation and/or completion of the Unit and/or the Building; 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, force majeure, or national emergencies; or

(c) the installation of public utilities is restricted or curtailed; or

(d) zoning and/or building restrictions and/or regulations, imposed by any governmental body having jurisdiction over the construction/renovation of residential housing and appurtenances of the Condominium, either presently in effect or as enacted or promulgated in the future, which create or impose requirements upon 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 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 Deposit. 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 prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. In addition, neither shall this Purchase Agreement nor any memorandum thereof be recorded in the Office of the Register of the City of New York, by Purchaser or on behalf of Purchaser. 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 Purchaser shall cease and terminate as per and Seller shall have the right to retain, as liquidated damages, the Deposit and all amounts paid by Purchaser for Extras which have been (i) installed by Seller, (ii) not installed, but paid for by Seller or (iii) not installed, but which have been ordered by Seller and for which Seller is obligated to pay, pursuant to the default provisions of Paragraph 22 of this Purchase Agreement. Seller shall have the right to assign this Purchase Agreement to a successor and/or designee of Seller.

26) **PROHIBITION AGAINST SIGNS ON THE UNIT** - Purchaser shall not place any sign on or in the Unit or Property until Seller has closed title to all of the Units in the Condominium. This Paragraph shall survive Closing and delivery of the deed.

27) **PROHIBITION AGAINST ADVERTISING OF THE UNIT FOR SALE** - From and after the date hereof through the Closing Date, 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. Such action shall constitute a material breach of

this Purchase Agreement entitling Seller to retain all monies paid on account of this Purchase Agreement as liquidated damages pursuant to the provisions of Paragraph 22 of this Purchase Agreement.

28) **BROKER** – Purchaser represents that no broker other than _____ _____ (the "Broker"), brought about this sale. Purchaser hereby indemnifies and shall hold Seller harmless from and against any claim brought by any broker, other than Broker, for brokerage commission based upon Purchaser's acts. Seller shall pay Broker pursuant to a separate agreement. In the event Purchaser is represented or has consulted with an outside broker (other than Broker), Purchaser shall be responsible for all costs, expenses 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.

29) **TRUST FUNDS/ESCROW PROVISIONS** - The Deposit and all other deposits or advances (collectively "Deposits") made by Purchaser prior to Closing shall initially be held in a segregated escrow account held by Escrow Agent (as hereinafter defined) pursuant to the following:

(a) The law firm of TAB Law Firm, PC, with an address at 27 Union Square West, Suite 307, New York, New York, telephone number (212) 379-6405, shall serve as an escrow agent ("Escrow Agent") for Seller and Purchaser. Escrow Agent has designated the members of the firm to serve as signatories. All designated signatories are admitted to practice law in the State of New York. Neither Escrow Agent nor its authorized signatories on the account are Seller, Selling Agent, Managing Agent, or any principal thereof, or have any beneficial interest in any of the foregoing.

(b) 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 Purchase Agreement or otherwise concerning the maintenance or release of the Deposit from escrow.

(c) The Escrow Agent has established the escrow account at Bank of America at its branch located at 29 Broadway, New York, New York ("Bank"), a bank authorized to do business in the State of New York. The escrow account is entitled "389 Bergen Condominium Escrow Account ("Escrow Account"). The Escrow Account is an IOLA account pursuant to Judiciary Law § 497. 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.

(d) All monies received from Purchaser shall be in the form of checks, money orders, wire transfers, or other instruments approved by Seller, and shall be made payable to or endorsed by Purchaser to the order of TAB Law Firm, PC as Escrow Agent.

(e) Pursuant to Section 497 of the Judiciary Law of the State of New York, all interest earned on the IOLA account will be paid to the State of New York. No fees of any kind may be deducted from the Escrow Account, and Seller shall bear all costs associated with the maintenance of the Escrow Account.

(f) Within five (5) business days after this Purchase Agreement has been tendered to Escrow Agent along with the Deposit, Escrow Agent shall sign this Purchase Agreement and place the Deposit into the Escrow Account. Within ten (10) business days of placing the Deposit in the Escrow Account, Escrow Agent shall provide written notice to Purchaser and Seller, confirming that the Deposit has been deposited into the Escrow Account. The notice shall provide the account number. Any Deposits made for Extras shall initially be deposited into the Escrow Account and released, as long as Seller uses the funds for such work as per Paragraph 13 of this Purchase Agreement.

(g) Escrow Agent is obligated to send notice to Purchaser once the Deposit is placed in the Escrow Account. If Purchaser does not receive notice of such Deposit within fifteen (15) business days after tender of the Deposit, Purchaser may cancel this Purchase Agreement within ninety (90) days after tender of this Purchase Agreement and the 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, 21st Floor, New York, New York 10005. Rescission shall not be afforded where proof satisfactory to the Office of the Attorney General of the State of New York 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 Purchaser.

(h) All Deposits, except for advances made for Extras, received in connection with this Purchase Agreement are and shall continue to be Purchaser's money, and may not be comingled with any other money or pledged or hypothecated by Seller, as per Section 352-h of the General Business Law of the State of New York.

(i) Under no circumstances shall Seller seek or accept release of the Deposit of a defaulting Purchaser until consummation of the Plan as defined in Section 20.1 (c) (6) of the Department of Law regulations, which defines consummation of the Plan as the filing of the Declaration of Condominium and the first transfer of title to a unit to at least one (1) purchaser under the Plan following a declaration of effectiveness by Seller and acceptance of the amendment of the declaration of effectiveness by the Office of the Attorney General of the State of New York. Consummation of the Plan does not relieve Seller of its obligations pursuant to Sections 352-e(2-b) and 352-h of the General Business Law of the State of New York.

(j) Escrow Agent shall release the Deposit if so directed:

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

(ii) in a subsequent writing signed by both Seller and Purchaser; or

(iii) by a final, non-appealable order or judgment of a court of competent jurisdiction.

If Escrow Agent is not directed to release the Deposit pursuant to paragraphs (i) through (iii) above, and Escrow Agent receives a request by either party to release the Deposit, then Escrow Agent must give both Purchaser and Seller 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 such thirty (30) day period, the Deposit shall be released, and Escrow Agent shall provide further written notice to both parties informing them of said release. If Escrow Agent receives a written notice from either party objecting to the release of the Deposit within such thirty (30) day period, Escrow Agent shall continue to hold the Deposit until otherwise directed pursuant to paragraphs (i) through (iii) above. Notwithstanding the foregoing, Escrow Agent shall have the right at any time to deposit the Deposit with the clerk of the county where the Unit is located and shall give written notice to both parties of such Deposit. Escrow Agent shall disburse Purchaser's Deposit(s) escrowed under this Purchase Agreement within twenty (20) business days after the escrowed funds are permitted to be released in accordance with this Purchase Agreement.

Seller shall not object to the release of the Deposit to:

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

(ii) all purchasers after an amendment to the Plan 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.

(k) 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 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 this Purchase Agreement, the Plan, or any amendment(s) thereto.

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

(m) 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).

(n) 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.

(o) No disbursement need will be made by Escrow Agent until the Deposit has actually and finally cleared Escrow Agent’s account.

(p) Escrow Agent shall only be responsible for monies actually received and cleared, and monies earned thereon, if any.

(q) Escrow Agent undertakes to perform only such duties as are expressly set forth in this Purchase Agreement and the Escrow Regulations, as amended on November 14, 2012, promulgated by the Office of the Attorney General of the State of New York, and no implied duties or obligations shall be read into this Purchase Agreement against Escrow Agent.

(r) Seller agrees that Seller 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 five (5) business days of tender of the Deposit by Purchaser.

(s) Seller 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.

(t) The following record keeping provisions shall apply:

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

(ii) Upon dissolution of a law firm which was Escrow Agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of the

partners or members of the firm or by the successor firm and shall notify the Department of Law of such transfer.

(u) Prior to release of the Deposit, Escrow Agent's fees and disbursements shall neither be paid by Seller from the Deposit nor deducted from the Deposit by any financial institution under any circumstance.

(v) Seller agrees to defend, indemnify and hold Escrow Agent harmless from and against any and all costs, claims, expenses, demands, causes of action, liability, judgments and damages incurred in connection with or arising out of Escrow Agent's responsibilities 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.

(w) Escrow Agent shall not be liable for Seller's failure to tender Purchaser's funds to Escrow Agent within five (5) business days, for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by Escrow Agent's willful misconduct or gross negligence.

(x) Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner or execution, or validity of any written instructions delivered to it, nor as to the identity, authority, or rights of any person executing the same.

(y) The duties of Escrow Agent shall be limited to the safekeeping of the Deposits and for disbursements of same in accordance with the written instructions described in this Purchase Agreement.

(z) This Paragraph 29 shall remain in effect unless and until the following:

(i) Written notice given by Seller 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 with the Department of Law providing for a successor escrow agent; or

(ii) The resignation of Escrow Agent upon giving notice to Seller of its desire to so resign, which resignation shall take effect only upon the filing of an amendment with the Department of Law providing for a successor escrow agent; or

(iii) All units offered pursuant to the Plan have been sold and all sales transactions have been consummated.

Escrow Agent shall have no responsibility to verify qualifications of any successor escrow agent.

(aa) Upon termination of the duties of Escrow Agent as described in sub-paragraph 29(z) above, Escrow Agent shall deliver any and all funds held by it in the Escrow Account and any and all contracts or documents maintained by Escrow Agent to the successor escrow agent designated in the duly filed amendment related thereto.

(bb) Upon delivery of all funds held by Escrow Agent to the successor escrow agent pursuant to sub-paragraph 29(aa) above, this Paragraph 29 shall be terminated, and Escrow Agent shall be released from all liability hereunder.

(cc) Upon Escrow Agent disbursing the Deposit of Purchaser in accordance with the provisions of this Paragraph 29, Escrow Agent's obligations shall terminate as regards to the Deposit, and Escrow Agent shall thereafter be released of all liability in connection with Purchaser.

(dd) In the event of a good faith disagreement about the interpretation of this Paragraph 29, or about the rights and obligations, or the propriety, of any action contemplated by Escrow Agent hereunder, Escrow Agent may, in its sole discretion, retain the Deposit and payments in escrow and file an action and deposit any applicable funds in a court of competent jurisdiction to resolve said disagreement. Escrow Agent shall be indemnified by Seller for any and all costs, including reasonable attorneys' fees or reasonable value of services rendered by Escrow Agent's litigation attorneys representing Escrow Agent pro se in connection with the aforesaid action. No such action shall be filed where Escrow Agent's required course of action is clearly dictated within this Paragraph 29.

(ee) Any provision of any contract or agreement, whether oral or in writing, by which Purchaser purports to waive or indemnify any obligation of Escrow Agent holding trust funds is absolutely void. The provisions of the regulations pertaining to escrow funds, as amended on November 14, 2012, shall prevail over any conflicting or inconsistent provision in the Plan, an amendment to the Plan or in this Purchase Agreement.

(ff) This Paragraph 29 shall be construed in accordance with and governed by the laws of the State of New York without giving effect to its conflict of laws provisions.

30) **NOTICES** - Any notices, statements, certificates, requests or demands required or permitted to be given or delivered under this Purchase Agreement shall be in writing and may be sent by mail, nationally recognized 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) upon personal delivery actually being made, and

(b) upon receipt, notice of first refusal of delivery or when returned as undeliverable if delivered by: (i) the United States Post Office with proper postage prepaid, if sent by regular mail, registered or certified mail return receipt requested; or (ii) nationally recognized overnight courier service.

Notwithstanding the foregoing, any notice of default must be delivered only by nationally recognized overnight courier service, personal delivery, or certified mail return receipt requested. Notice given by an attorney for a party shall be deemed effective notice as if given by such party.

31) **PURCHASER GENERAL REPRESENTATIONS -** Purchaser represents that Purchaser has not relied upon any architect's plans, sales plans, selling brochures, advertisements, representations, warranties or statements, written or oral, of any nature, including, but not limited to, any of the above relating to the description or physical condition of the 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 or any other matter or estimate not set forth herein and/or in the Plan. Purchaser further represents that Purchaser has not relied on any verbal or written representations made by Broker or any other agent of Seller. Purchaser further acknowledges having had full opportunity to examine all documents and investigate all facts referred to and stated herein and/or in the Plan. Seller shall have no liability or responsibility to Purchaser and Purchaser shall not be relieved from Purchaser's obligations hereunder, by reason of any inaccuracy or error in the layout or dimensions of the Unit so long as the layout and specifications as they may be changed or amended are in accordance with the provisions of the Plan. Seller cannot guarantee a firm completion and availability date for the Unit and Purchaser agrees that Seller shall not be obligated to make, provide or compensate for any accommodations or costs to Purchaser as a result of construction or renovation delays nor shall such delays serve to cancel, amend or diminish any of Purchaser's obligations hereunder.

32) **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 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. 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.

33) **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 the Building 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 Deposit and all Extras paid by Purchaser. The parties shall thereafter be released from any further liability hereunder.

In the event Purchaser takes actual possession of the Unit prior to Closing, Purchaser shall assume the risk of any loss not covered by insurance upon production of the policy by Seller to Purchaser which provides that actions of interim lessees are not covered under the then-existing policy. If Purchaser is or becomes the occupant or tenant of the Unit prior to Closing, then, as of the date of Purchaser's occupancy, Purchaser shall be responsible for any and all damage caused by any acts or omissions of Purchaser, or Purchaser's agents, employees, invitees and/or family members.

If any part of the Unit is damaged or destroyed by any casualty prior to Closing, Seller shall 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 shall 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 shall receive a refund of all monies paid to Seller. The parties shall thereafter be released from any further liability hereunder.

34) **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 sole cost and expense of Purchaser who shall reimburse Seller for the cost thereof immediately upon demand. This Paragraph shall survive Closing and delivery of the deed.

35) **STRICT COMPLIANCE; 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.

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 the County of Kings, State of New York and all motions in any such action shall be made in the County of Kings, State of New York.

Purchaser hereby agrees to waive the right to file a lis pendens if not filed within sixty (60) days of the cancellation of this Purchase Agreement.

This Paragraph shall survive Closing and delivery of the Deed.

36) **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 Purchaser under this Purchase Agreement.

37) **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 Seller, or any lender represent such parties only and not Purchaser. Purchaser may retain independent counsel, at Purchaser's sole cost and expense, in order to protect Purchaser's interest.

(d) Seller's employees, agents and representatives are not authorized to make any representations regarding economic benefits to be derived from the transaction contemplated by this Purchase Agreement. Purchaser is advised that economic benefits to be derived from this transaction may vary with individual circumstances and/or market conditions, and

Purchaser should rely only upon Purchaser's attorney, accountant, and/or other counsel if guidance in such matters is desired.

(e) Purchaser acknowledges that Seller has the right to lower and/or increase the price paid for a similar unit and/or change the terms applicable to similar units. As a result, Purchaser may pay more or less and may receive better or worse terms than another purchaser for a similar unit.

(f) 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 and delivery of the deed.

(g) 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.

(h) 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.

(i) 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.

(j) All capitalized terms shall be given the definition contained in Part I of the Plan unless otherwise indicated.

(k) 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.

(l) 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.

(m) This Purchase Agreement shall not be binding or effective until fully executed and delivered by Seller and Purchaser.

(n) Seller represents that its Federal Employer Identification Number is _____; and Purchaser represents that his/her/their social security number(s) is _____ and _____.

(o) Purchaser shall execute the Tender of Escrow form attached hereto, as Schedule "D-1" upon execution of this Purchase Agreement and shall execute the Release Form attached hereto as Schedule "D-2" at Closing.

(p) To the extent there are any inconsistencies between the terms of the Purchase Agreement and the Offering Plan, the terms of the Offering Plan will govern.

(q) 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.

(r) This Purchase Agreement and any schedules, riders, addenda and amendments hereto may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall be deemed to constitute one and the same agreement. Electronic (i.e. portable document format (.pdf), email and facsimile) signatures shall be deemed originals for purposes of this Purchase Agreement.

(s) The parties agree that this Purchase Agreement shall be governed by and construed in accordance with the laws of the State of New York.

38) **SMOKING POLICY** – Purchaser acknowledges having received a copy of the Condominium's Smoking Policy a copy of which is contained in the Rules and Regulations in Article VIII, Section 2 of the Condominium By-Laws and the Rider to this Purchase Agreement as Schedule D-5.

39) **LIMITED WARRANTY - THE LIMITED WARRANTY SET FORTH IN SCHEDULE D-6 OF THE 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/RENOVATION AND SALE OF THE UNIT. 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/RENOVATION AND SALE OF THE UNIT, 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.**

**PURCHASER FURTHER ACKNOWLEDGES THAT SELLER WILL CORRECT ANY DEFECTS IN THE CONSTRUCTION OR RENOVATION OF THE COMMON ELEMENTS OF THE CONDOMINIUM NOT COVERED BY ANY LIMITED WARRANTY, OR IN THE INSTALLATION OR OPERATION OF ANY MECHANICAL EQUIPMENT THEREIN, DUE TO IMPROPER WORKMANSHIP OR MATERIAL SUBSTANTIALLY AT VARIANCE WITH THE OFFERING PLAN AS MAY BE CHANGED BY SELLER FROM TIME TO TIME PROVIDED AND ON CONDITION THAT SELLER IS NOTIFIED OF OR BECOMES AWARE OF SUCH DEFECT(S) WITHIN TWELVE (12) MONTHS FROM THE DATE OF SUBSTANTIAL COMPLETION OF THE ALLEGED DEFECTIVE COMMON ELEMENTS. SUBSTANTIAL COMPLETION SHALL MEAN THAT THE COMMON ELEMENTS ARE FUNCTIONAL FOR THEIR INTENDED USE.**

40) **NOTICES TO PURCHASER - YOU, AS PURCHASER OF THE UNIT, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.**

**WHEN SIGNED BY SELLER AND PURCHASER, THIS PURCHASE AGREEMENT SHALL BECOME A LEGALLY BINDING AGREEMENT. PURCHASER SHOULD READ AND UNDERSTAND ALL PROVISIONS 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 PLAN AND THAT PURCHASER HAS HAD AN OPPORTUNITY TO READ THE PLAN AT LEAST THREE (3) BUSINESS DAYS PRIOR TO SIGNING THIS PURCHASE AGREEMENT.**

*[Signature Page to Follow]*

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

**SELLER:**

**389 BERGEN STREET LLC**

By:_____
Name:
Title:

**PURCHASER(S):**

_____

_____

**Agreed to as to Paragraph 29 by Escrow Agent:**

By: _____
TAB LAW FIRM, PC, Escrow Agent

# TENDER OF ESCROW DEPOSIT

Date: _____

Tender of Deposit of $_____, for Unit ____ at 389 Bergen Condominium located at 389 Bergen Street, Brooklyn, New York 11217.

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) _____
_____

By: _____
Purchaser

By: _____
Purchaser

---

## RECEIPT

The SPONSOR/SELLING AGENT of the above-named property hereby acknowledges receipt of the above escrow deposit.

By: _____
_____
Title or Position

Date of Receipt: _____

SCHEDULE D-1

# FORM FOR THE RELEASE OF ESCROW FUNDS

Date

Re: **389 Bergen Condominium**
**Purchaser:**
**Residential Unit No.:**

Dear Sirs:

You have been holding in a trust account my/our Deposit for the captioned Residential Unit (if applicable) in the amount of $_____. I/we acknowledge that a closing has taken place this date. Accordingly, the Law Firm of TAB Law Firm, PC, is authorized to release the funds being held in said amount to whomever the Sponsor so designates. In addition, the Law Firm of TAB Law Firm, PC, as Escrow Agent on said account, is hereby released from any and all liability or further obligation to us with respect to said Deposit.

Very truly yours,

_____
Purchaser

_____
Purchaser

_____
Sponsor's representative

SCHEDULE D-2

**WAIVER OF NOTICE OF CLOSING**

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

_____, being duly sworn, does hereby depose and state:

1. I am the Purchaser of Unit # _____ at the 389 Bergen 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

SCHEDULE D-3

# 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 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 389 BERGEN LLC, its members, managers, officers, directors, principals, shareholders, successors and assigns for any and all damage to any personal property.

_____

_____

SCHEDULE D-4

## PURCHASE AGREEMENT SMOKING POLICY RIDER

The Smoke-Free Air Act New York City law prohibits smoking and using e-cigarettes of any kind in indoor common areas, including but not limited to, lobbies, hallways, stairwells, mailrooms, fitness areas, storage areas, garages and laundry rooms in any building with three or more residential units. NYC Admin. Code, § 17-505. Effective as of August 28, 2018, Local Law 147 of the City of New York became effective. Local Law 147 amends the Administrative Code of the City of New York ("NYC Administrative Code") to require that all class A multiple dwellings (i.e. buildings with 3 or more residential dwelling units) adopt a written smoking policy (the "Smoking Policy"). Pursuant to the requirements of Local Law 147 of the City of New York the following constitutes the Smoking Policy applicable to the Condominium and to all Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Property and any Building located thereon constituting the Condominium:

(a) Definitions:

(i) Smoking: Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, little cigar, pipe, water pipe or hookah, herbal cigarette, non-tobacco smoking product (e.g., marijuana or non-tobacco shisha), or any similar form of lighted object or device designated for people to use to inhale smoke.

(ii) Electronic Cigarette (E-Cigarette): A battery-operated device that heats a liquid, gel, herb or other substance and produces a vapor for people to inhale.

(b) Policy:

(i) All types of Smoking and use of Electronic Cigarettes as defined above are prohibited from all general common areas of the Condominium, including but not limited to any lobby, hallway, stairwell, mailroom, fitness room or other recreational facility, meeting room, laundry room, storage area, mechanical room, equipment room, cellar, basement, elevator, garage, rooftop, play areas, parking areas, shared balconies, shared courtyards, shared patios, shared porches, shared yards and/or any outdoor common area within 15 feet of entrances, exits, windows, and air intake units on property grounds.

(ii) All types of Smoking and use of Electronic Cigarettes are prohibited from any balcony and/or terrace or any space designated as an Individual Residential Unit's Limited Common Element appurtenant to the Residential Unit.

(iii) All legal Smoking and use of Electronic Cigarettes is permitted within the interior area of a Residential Unit.

(iv) The Smoking Policy shall be applicable to all Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Condominium.

(v) Any Residential Unit Owner who leases their Residential Unit shall incorporate the provisions of the Smoking Policy into the lease with the Residential Unit Owner's tenant.

(c) Complaints:

Complaints about smoke drifting into a Residential Unit or common area should be made promptly to the Managing Agent. Complaints should be made in writing and should be as specific as possible, including the date, approximate time, location where smoke was observed, building address, description of incident and apparent source of smoke.

The Smoking Policy shall be applicable to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Property and any Building located thereon constituting the Condominium. Pursuant to the requirements of Local Law 147 all tenants in the Building are required to receive a copy of the Building's Smoking Policy and the Smoking Policy must be incorporated into all leases or interim leases.

The provisions of Local Law 147 of the City of New York shall take precedent in the event of any conflict with the Smoking Policy contained herein.

SELLER

_____

389 BERGEN LLC

PURCHASER

_____

RIDER TO PURCHASE AGREEMENT DATED _____, 20__ BY AND BETWEEN **389 BERGEN LLC**, AS SELLER, AND _____, AS PURCHASER.

## LIMITED WARRANTY

NAME OF PURCHASER(S): _____

_____

ADDRESS OF PURCHASER(S): _____

DESIGNATION OF RESIDENTIAL UNIT WARRANTED: _____

| | |
|---|---|
| NAME OF SELLER: | 389 BERGEN LLC |
| ADDRESS OF SELLER: | 132 Mulberry Street<br>New York, NY 10013 |
| 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 seventy-five thousand ($75,000) dollars less, any insurance proceeds received by Purchaser, but including any deductible paid 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 l 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 l 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 (l0th) 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 annexed 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

I (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:

Mailing Address:_____

_____

Residential Unit Telephone No:_____

Office Telephone No:_____

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:

DATE OCCURRED OR NATURE OF DEFECTS 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.

# PERFORMANCE STANDARDS

The following performance standards are the accepted standards for the construction of all homes to be built.

While these performance standards define the builder's responsibility, these performance standards shall not apply, and the builder shall not be responsible to items installed or modified by the owner, or their agents, or to items subject to neglect or abnormal or improper use. Unnecessary service calls or service calls caused by misuse, modification, abuse or changes from original installation and construction shall result in a service call charge to the homeowner of a minimum of $50.00.

In no event shall the builder be responsible for the partial or total death of any trees, shrubs, bushes, or any other landscape improvements. Healthy stock is planted initially.

In no event shall the builder be responsible for normal lumber shrinkage and any ramifications caused by same, i.e. ridging of floor over "built-up" double, or triple, etc. floor beams, or shrinkage of floor or ceiling beams.

## ACCEPTED STANDARDS

The performance standards list specific items (defect) within each separate area of coverage. The first section covers workmanship and materials; the second section covers systems. The standards are expressed in terms of performance criteria. For easy comprehension, the format is designed as follows:

Possible Deficiency:
A brief statement, in simple terms, of problems that may be encountered.

Performance Standard:
A performance standard relating to a specific deficiency.

Responsibility:
A statement of the corrective action required of the builder to repair the deficiency or a statement of the Home Owner's maintenance responsibilities.

Workmanship and Materials, First Year Only:

1. Site Work
2. Concrete
3. Masonry

4. Wood and Plastic
5. Thermal and Moisture Protection
6. Doors and Windows
7. Finishes
8. Specialties
9. Equipment
10. Plumbing
11. Heating and Cooling
12. Ventilation
13. Electrical
14. Roofing

Systems, First and Second Year:
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.

Major Structural Material Defects:

"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.

# PART I

## GENERAL ELECTRICAL, PLUMBING, MECHANICAL AND STRUCTURAL STANDARDS

A. Mechanical, plumbing, structural and electrical standard should be governed by the N.Y.C. building code.

B. The issuance by the appropriate authorities of the documents indicating evidence of compliance, shall be deemed evidence of compliance. Use of the building must always comply with the Certificate of Occupancy issued at title closing to the first purchaser.

C. Appliances, Fixtures and Equipment:

a. Appliances, fixtures and equipment (including their fittings, attachments, controls and appurtenances) shall include but not be limited to furnaces, humidifiers, air purifiers, air handling equipment, ventilating fans, air conditioning condensers and compressors, water heaters, boilers, pumps, stoves, automatic garage door openers, washers and driers, bath tubs, sinks, commodes, faucets and fittings, light fixtures, light switches, convenience outlets, circuit breakers thermostats and controls.

b. The warranty period for appliances, fixtures and equipment (including their fittings, attachments, controls and appurtenances) for which there is no written manufacturer's warranty shall be one year. The initial warranty period for appliances, fixtures and equipment on those items where a manufacturer's warranty is provided by the manufacturer is the builder's warranty under these performance standards and shall be limited to the duration of the manufacturer's warranty but in no event shall the builder's responsibility under these performance standards exceed one year. (This does not, however, limit to one year the stated period of the applicable manufacturer's warranty where such warranty exceeds one year).

# PART II

## QUALITY STANDARDS

General workmanship and material defects are guaranteed under the initial warranty period. The following quality standards are intended to define the specific limits of permissible defects in materials and general workmanship. These performance standards have been developed after careful analysis of building custom and practices within this jurisdiction. These performance standards may be periodically supplemented; However, if a buyer complaint on a warrantable item should arise which is not governed by any specific performance standard, then determination of builder responsibility through conciliation and arbitration shall be made on the basis of good industry practice within jurisdiction where the home is situated.

These performance standards represent the basis for determining the validity of all home buyer complaints relating to defective materials and workmanship during the initial one-year warranty program. If any specific performance standard listed below conflicts with any of the general standards set forth in Part I, then that standard which requires a greater quality of performance shall govern.

### I. SITE WORK

#### A. Site Drainage

1. Improper draining and water runoff from the site.

Approved Standard: The builder shall be responsible for providing grades and swales to insure proper drainage away from the house as per approved plans, if any. Standing water shall not remain thirty-six hours after a rain, except swales which may drain as long as forty-eight hours. No grading decisions shall be made while there is frost on the ground or while ground is saturated.

Required Remedy: The builder is required only to establish proper grades and swales to effectuate proper drainage. It is the owner's responsibility to maintain such grades and swales once they have been properly established by the builder.

#### B. Backfill and Excavation

1. Settling of ground around filled areas, including foundation, utility trenches, etc.

Approved Standards: The maximum allowable settling around utility trenches, foundations or other filled areas shall be six inches, and settling foundation shall further not interfere with proper water drainage away from the house.

Required Remedy: The builder shall be responsible for refilling any excessively settled areas. The builder's responsibility shall be limited to one such occurrence during the one-year warranty period. The builder shall not be held responsible for any grass, shrub or other landscaping affected by such settling or by such additional backfilling.

C. Paved Driveways

1. Pooling of water and uneven settling of pavement.

Approved Standard: No standing water more than 1" deep should remain on the paved driveway twenty-four hours after a rain. Improper draining resulting from non-clearance of snow and ice is not the builder's responsibility.

Required Remedy: Builders shall fill in low spots to meet the above standard. However, the builder is not responsible for matching the patch in color or texture to the rest of the driveway.

II. MASONRY

A. Unit Masonry

1. Cracking of foundation and basement walls.

Approved Standard: While it is not unusual for some minor cracking to appear in mortar joints of masonry foundation walls, such cracks are considered excessive if greater than 1/4 inch in width.

Required Remedy: The builder shall repair visible cracks in excess of 1/4 inch by surface patching. Any such repairs should be made near the end of the one-year warranty so as to permit stabilization of the normal settling process of the home. The color or texture of the patch may not match.

2. Cracks in veneer or masonry walls.

Approved Standard: Cracks greater than 1/4 inch in width are considered excessive.

Required Remedy: The builder shall repair cracks in excess of 1/4 inch by surface patching but shall not be responsible for matching color or texture. Any such repairs should be made near the end of one-year warranty period so as to permit stabilization of the normal settling process of the home.

III. CONCRETE WORK

A. Cast-in-Place Concrete

1. Cracks in basement floor.

Approved Standard: Minor cracks in concrete basement floors are not unusual. Cracks exceeding 1/4 inch in width or 1/4 inch in vertical displacement are considered excessive.

Required Remedy: The builder shall repair by surface patching all cracks exceeding maximum tolerances in the performance standard.

2. Cracks in basement or foundations walls.

Approved Standard: While some non-structural cracking is not unusual, such cracks greater than 1/4 inch in width are considered excessive.

Required Remedy: The builder shall repair visible nonstructural cracks in excess of 1/4 inch by surface patching. Such repairs should be done once during the first-year limited warranty period.

3. Settling, cracking, or heaving of steps or stoops.

Approved Standard: Cracks of less than 3/4 inch are acceptable in concrete stoops; however, steps of stoops should not settle or heave in excess of 1-1/2 inch in relative position to the adjacent house.

Required Remedy: Builder shall repair excessive crack by surface patching.

4. Cracks in slab floor of attached garage.

Approved Standard: Cracks in excess of 1/4 inch in width and 1 inch in vertical displacement in slab floor of attached garage are considered excessive.

Required Remedy: Builder shall repair excessive cracks as required by any acceptable method.

5. Water staying on stoops.

Approved Standard: All water should drain from outdoor steps and stoops.

Required Remedy: Builder shall repair by surface patching to assure appropriate drainage.

6. Cracking in attached patio floors.

Approved Standard: Only those cracks greater than 1/4 inch in width or 1 inch in vertical displacement are considered to be excessive.
Required Remedy: Builder shall repair by surface patching providing this deficiency has not been caused by freezing fall action which is beyond the control of the builder.

7. Excess chalking or powdering of concrete surface.

Approved Standard: Excess chalking or powdering of concrete surfaces is not acceptable but shall not be confused with surface dust.

Required Remedy: The builder shall repair surfaces as necessary, utilizing "proper" resurfacing or coating material.

8. Cracking of concrete slab-on-grade floors greater than 1/4 inch.

Approved Standard: Cracks significantly diminishing performance and/or appearance of the flooring material shall not be acceptable.

Required Remedy: The builder shall repair by surface patching the cracks as necessary to diminish visibility when finish flooring material is in place. Builder is not responsible for color differences or discontinued floor covering patters.

## IV. MOISTURE PROTECTION

### A. Shingles and Roofing Tiles

1. Leaking of the roof or flashing

Approved Standard: Under normal conditions, leaking of roofing or flashing shall not be acceptable.

Required Remedy: The builder shall take corrective action as necessary to repair verified roof or flashing leaks caused by poor workmanship or materials.

### B. Waterproofing

1. Leaking of foundation or basement.

Approved Standard: Dampness of foundation or basement walls occurs frequently in newly constructed homes and should not be considered a defect. No leaks producing trickling water shall be acceptable. Any leaking which is caused by faulty landscaping installed by owner or caused by owner's failure to maintain proper grades is not covered by warranty.

Required Remedy: Except when caused by owner negligence, builder shall repair leaks as necessary; builder represents and warrants that the basement will remain free of leaks for a period of one year from date of closing under the following terms and conditions:

a. Seller shall repair said leak and/or seepage, if any, in a manner consistent with standard building practices in the City of New York.

b. In the event that all reasonable attempts to repair said leaks shall fail to resolve said problem, Seller shall have the right at Seller's sole discretion to alleviate said leak and/or seepage condition by the installation of a sump pump or similar liquid transfer system; installation of said system shall constitute complete compliance with the terms of Seller's warranty under this clause and Purchaser agrees, warrants and recognizes that no cause of action shall lie subsequently to sellers installation of said pump or similar system. Seller shall provide manufacturer's warranty on said system if available.

c. This warranty shall be void and of no force and effect in the event that leak or seepage is caused by:

(i) Act of the Purchaser
(ii) Act of God

C. Siding and Cladding

1. Cracks in siding and cladding

Approved Standard: Cracks in excess of ½ inch in joints of siding or cladding are considered excessive. Frequently, bowing in siding appears as a result of shrinkage and drying of lumber.

Required Remedy: The builder shall correct or repair as necessary open cracks in excess of ½ inch but shall not be responsible for bowing caused by shrinkage. Caulking or wood fillers are acceptable remedies.

D. Membrane roofing

1. Leaking.

Approved Standard: Should not leak under normal conditions.

Required Remedy: The builder shall repair or correct as necessary any verified roof leaks caused by poor workmanship or materials.

E. Flashing and Sheet Metal.

See IV.A.I.

F. Sealants

1. Inadequate caulking causing leaking in exterior walls.

Approved Standard: Some shrinkage in caulking is not unusual and is acceptable. Caulking around joints and cracks in exterior wall surfaces and openings to exclude entry of water must be properly maintained by the homeowner.

Required Remedy: The builder shall caulk joints, cracks and openings as necessary in exterior wall surfaces to prevent entry of water. Recaulking is a maintenance item to be done by the owner.

A. LOUVERS AND VENTS:

Possible deficiency:
Leaks due to snow or rain driven into the attic through louvers or vents.

Performance Standard:
Attic vents and/or louvers must be provided for proper ventilation of the attic space of the structure. Builder shall not be responsible if homeowner modifies ventilation as provided by builder.

Responsibility:
NONE

B. ROOFING AND SIDING:

1. Possible Deficiency:
Ice build-up on roof.

Performance Standard:
During prolonged cold spells, ice build-up is likely to occur at the eaves of a roof. This condition occurs when snow and ice accumulate and gutters and downspouts freeze up.

Responsibility:
Prevention of ice build-up on the roof is a Home Owner maintenance item.

2. Possible Deficiency:
   Roof or Flashing leaks

Performance Standard:
   Roofs or flashing shall not leak under normally anticipated conditions, except where cause is determined to result from ice build-up or Home Owner action or negligence.

Responsibility:
   Builder will repair any verified roof or flashing leaks not caused by ice build-up or Home Owner action or negligence.

3. Possible Deficiency:
   Standing water on flat roof.

Performance Standard:
   Water shall drain from flat roof except for minor ponding immediately following rainfall or when the roof is specifically designed for water retention.

Responsibility:
   Builder will take corrective action to assure proper drainage of roof.

H. PLASTIC AND WOOD

A. Exterior Finish Carpentry

1. Unsatisfactory workmanship on exterior trim.

Approved Standard: Cracks in excess of ½ inch in joints between exterior trim elements are considered excessive (this includes siding). Exclusion of the elements is necessary in all cases for exterior trim and siding to be acceptable.

Required Remedy: The builder shall repair as necessary any open cracks in excess of ½ inch by caulking same.

B. Interior Finish Carpentry

1. Unsatisfactory workmanship on interior trim.

Approved Standard: Cracks and/or gaps between moldings and joints and adjacent surfaces should not exceed 1/4 inch in width or vertical displacement, except in the

case of gaps between base or floor mounding and flooring, in which case gaps shall not exceed ½ inch.

Required Remedy: The builder shall repair or correct as necessary defective joints so as to meet the above standard. A shoe molding of quarter round molding may be installed to cover space between floor and base molding.

C. Rough Carpentry

1. Squeaking floors.

Approved Standard: While some squeaking may occur due to normal shrinking in wood floors, excessive squeaking due to loose boards is not acceptable. This applies to sub-floors.

Required Remedy: The builder shall be responsible only for face nailing loose boards. The builder is not responsible for normal squeaking due to shrinkage in wood floors. This applies to sub-floors as well.

2. Floors not level.

Approved Standard: Floor slope within any room shall not exceed 1/240 of the room width, and floors should not be more than 1/4 inch out of level within any 32-inch measurement.

Required Remedy: The builder shall repair uneven floors as necessary to meet the above standard.

3. Carpeting

1. Possible Deficiency: Open carpet seams.

   Performance Standard: Carpet seams will show. However, no visible gap is acceptable.

   Responsibility: Builder will correct.

2. Possible Deficiency: Carpeting becomes loose, seams separate or stretching occurs.

   Performance Standard: Wall to wall carpeting, installed as the primary floor covering, when stretched and secured properly shall not come up, become loose, or separate from its point of attachment.

   Responsibility: Builder will re-stretch or re-secure carpeting as needed, if original installation was performed by Builder.

3. Possible Deficiency: Spots on carpet, minor fading.

Performance Standard: Exposure to light may cause spots on carpet and/or minor fading.

Responsibility: None.

VI. FINISH ITEMS

A. Ceramic Tiles

1. Loosening or cracking of ceramic tiles.

Approved Standard: Loosening or cracking of ceramic tile is unacceptable under normal use conditions.

Required Remedy: The builder shall reseal any loose ceramic tiles and replace any cracked ceramic tiles unless cracking and/or loosening is due to poor owner maintenance or misuse.

2. Grout in joints or junctions with other material (bath, etc.) cracks; ceramic tile cracks.

3. With regard to Tile & Grout, Color and Style will be matched as close as possible. Builder shall not be responsible for discontinued patters or colors.

Approved Standard: Normal shrinkage conditions often results in cracks in the grouting of ceramic tile joints.

Required Remedy: The builder does not warrant against normal shrinkage or separation of ceramic tile grout.

B. Resilient Flooring

1. Appearance of nail "pops" on the surface of the resilient flooring material.

Approved Standard: Easily visible nail "pops" are not acceptable.

Required Remedy: The builder shall repair or replace as necessary only if material used was originally applied and installed from builder’s samples but is not responsible for color differences or discontinued floor covering patters.

2. Appearances of hollows and/or ridges in the resilient flooring due to irregularities beneath floor surface.

Approved Standard: Hollows and/or ridges exceeding 1/8 inch are not acceptable and should be repaired. Determination of hollow or ridge measurement is established by taking the measurement of the gap created at one end of a 6-inch straight edge placed over the hollow or ridge, holding three inches of the straight edge tight to the floor on the other side.

Required Remedy: The builder shall correct or repair as necessary to reduce visibility of irregularity and to bring the defect within acceptable tolerance. The builder is not responsible for color differences or discontinued patterns.

3. Resilient Flooring becomes unglued.

Approved Standard: Flooring should not become unglued, causing lifts, bubbles, etc. under normal use and proper maintenance.

Required Remedy: The builder shall repair or reinstall resilient flooring as necessary but shall not be responsible for color differences or discontinued patterns.

4. Appearance of gaps due to shrinkage or seams at joint in resilient flooring.

Approved Standard: Gaps in excess of 1/16 inch in width are not acceptable. Where resilient flooring borders other material, gaps in excess of ½ inch are not acceptable.

Required Remedy: The builder shall correct or repair as necessary, but stall not be responsible for color differences or discontinued patterns.

C. Paint

1. Peeling or degeneration of exterior paint and/or stain.

Approved Standard: While some wearing out of deck paint or stain from traffic is normal, exterior paints and/or stains should not degenerate appreciably during the first year.

Required Remedy: The builder shall appropriately repaint or restain the area so affected, including entire wall or area if the majority of such wall or area is affected. However, the warranty on the repainted or restained area shall not exceed the original warranty period. The builder shall match colors as closely as possible.

2. Other repair work necessitates painting surrounding area.

Approved Standard: Builder shall refinish area as made necessary by other repairs covered under this warranty, matching surrounding area closely.

Required Remedy: Builder shall refinish areas as may be necessary, matching surrounding areas as closely as possible.

3. Lacquer finish and/or varnish degeneration.

Approved Standard: Interior varnish and lacquer deterioration within the first year is not acceptable. However, varnish type finishes applied on the exterior are not covered by the warranty as they do tend to quickly degenerate.

Required Remedy: The builder shall refinish affected areas of interior natural finished woodwork as necessary, matching colors as closely as possible.

4. Poor quality or defective application of interior paint.

Approved Standard: Where specified, interior paint shall be applied so as to visually cover surfaces (trim, wall, ceiling, etc.) matching color closely.

Required Remedy: The builder shall repaint unacceptable surfaces where necessary to cover underlying surface.

D. Plaster and Lath

1. Cracking appears in stucco wall surfaces.

Approved Standard: Cracks in excess of 1/8 inch in width area are not acceptable. However, hairline cracks in stucco wall surfaces are not uncommon. Cracks may appear where stucco abuts other material. These cracks may be repaired by caulking or surface patching.

Required Remedy: The builder shall repair cracks in excess of 1/8 inch as necessary. However, the builder does not warrant color matching.

E. Plaster, Lath, and Gypsum Wallboard.

1. Flaws due to poor quality of workmanship (trowel Marks, excess compound, blisters, bubbles, cracks, etc).

Approved Standard: Cracks in interior wall and ceiling surfaces, nail pops and hairline cracks are not unusual in interior wall and ceiling surfaces and are not the responsibility of the builder. Cracks greater than 1/8 inch in width shall be repaired.

Required Remedy: Builder will repair cracks exceeding 1/8 inch in width one time only, during the first year of the Limited Warranty period. Paint touch ups, if necessary, with color match as closely as possible.

VII. WINDOWS AND DOORS

A. Windows

1. Windows difficult to open and close are inoperative.

Approved Standard: Windows shall open and close reasonably easy. Some air infiltration is normally noticeable around doors and windows, especially during high winds. It may be necessary for the homeowner to have storm doors and windows installed to provide satisfactory solutions during wind conditions.

Required Remedy: Builder shall take steps as necessary to facilitate proper functioning. Any channels must be kept clean to prevent clogging of week holes.

B. Wooden Doors

1. Interior passage doors warp.

Approved Standards: Warping of full opening interior doors in excess of the National Woodwork Manufacturers Association standard of 1/4 inch is not acceptable.

Required Remedy: Builder shall replace or correct warped doors and refinish if necessary, matching finish as closely as possible.

2. Exterior doors warp.

Approved Standard: Warping in excess of the National Woodwork Manufacturers Association standard of 1/4 inch is unacceptable.

Required Remedy: The builder shall adjust or replace exterior doors as required and refinish if necessary.

C. Garage doors

1. Garage door difficult to operate or inoperable.

Approved Standard: Should operate easily and as intended.

Required Remedy: The builder shall adjust or repair garage door as necessary.

D. Seals and Weather Stripping

1. Drafts around windows and doors, except garage doors.

Approved Standard: An unusually great amount of draft produced by doors and windows which don't fit properly, weather stripping that does not fit properly, or open cracks is not acceptable, although some drafting is almost always noticeable around windows and doors, particularly during storms and high winds.

Required Remedy: The builder is required to repair open cracks and to adjust ill-fitting weather stripping and ill-fitting windows and doors excluding garage doors.

VIII. EQUIPMENT

A. Residential Equipment

1. Kitchen drawers, cabinet doors, or other moving parts difficult to operate or inoperable. Equipment cannot be misused or damaged by purchaser. Builder will not be responsible for chips and cracks noted following first occupancy or fading due to over-sunlight exposure.

Approved Standard: All kitchen drawers and cabinet doors should operate reasonably as intended.

Required Remedy: Builder shall adjust or replace operating parts as necessary, matching colors closely.

2. Appearance of chips or surface cracks and/or delamination of high pressure laminated countertops.

Approved Standard: There should be no chips, cracks, or delamination in counter tops fabricated with high pressure laminate. However, abuse, misuse or damage caused by purchaser voids warranty.

Required Remedy: The builder shall repair or replace equipment as required, matching color as closely as possible.

IX. MECHANICAL.

A. Generating Heat or Power.

1. Insufficient heat.

Approved Standard: According to the specifications in the ASHRAE handbook, the heating system should be able to produce an interior temperature of 70 degrees F. as measured in the middle of each room as a height of 5 feet above the floor under local winter conditions. Shall conform to the N.Y.S. Energy Code.

Required Remedy: The builder shall adjust or repair the heating system as necessary to produce the required temperatures. However, the owner shall be responsible for balancing dampers, registers, radiators, and other minor adjustments, including filter changes and furnace lighting.

B. Refrigeration

1. Insufficient cooling.

Approved Standard: According to the specifications in the ASHRAE handbook, under local outdoor summer design conditions, the cooling system should be able to maintain a temperature of 80 degrees F., as measured in the middle of each room at a height of 5 feet above the floor, where air-conditioning is provided, with a 95 degree outside temperature.

Required Remedy: The builder shall adjust or repair the cooling system as necessary to produce and maintain the required temperatures. However, the homeowner shall be responsible for balancing dampers, registers, and other minor adjustments.

C. Plumbing

1. Fixtures, drains, and plugged sewers.

Approved Standard: Drains, fixtures and sewers should all operate properly as intended.

Required Remedy: If faulty construction practices are shown to be the cause of problems with sewers, fixtures and drains, the builder shall assume the repair costs. If owner negligence or misuse is shown to be the cause of the problems, the owner shall assume the repair costs. When a problem occurs, the owner should notify the builder and ask for recommendations. The builder shall to be responsible for drains, sewers and fixtures plugged due to negligence or misuse by owner. Stoppage in City sewers are not the responsibility of the builder.

2. Piping Leaks

Approved Standard: Condensation on piping is common and should not be construed as a leak and is not covered under the warranty. No leaks of any kind in soil, vent, waste, or water pipes are acceptable.

Required Remedy: The builder shall repair or adjust pipes as necessary to stop leaking.

3. Leaking valves or faucets

Approved Standard: No leaks should exist in valves or faucets due to poor quality of the materials or the workmanship.

Required Remedy: The builder shall repair or replace faucets and/or valves which leak unless the leaking is caused by defective washer. Leaks caused by warn out washers are the responsibility of the owner after 90 days.

4. Defects in appliances, trim fittings, and plumbing fixtures.

Approved Standard: Manufacturer's standard should be used to determine whether or not appliances, fixtures or fittings are defective.

Required Remedy: The builder shall replace fittings and fixtures which do not meet manufacturer's standards.

D. Pipe insulation

1. Freezing of plumbing pipes.

Approved Standard: All pipes (water, drain, waste, and vent) should be protected properly so as to prevent freezing during normally anticipated winter temperatures. It is the home owner’s responsibility to maintain adequate heat to prevent freeze ups.

Required Remedy: The builder shall repair or correct conditions causing pipes to freeze and shall also repair any piping which was damaged due to freezing. It is the homeowner’s responsibility to drain or otherwise protect lines and exterior faucets exposed to freezing temperatures.

E. Septic Tanks

1. Malfunction of septic system.

Approved Standard: The septic system should be able to adequately handle a normal flow of household effluent, based on requirements of local regulatory agency.

Required Remedy: The builder shall adjust or repair system as necessary. The builder shall not be responsible for malfunctioning caused by owner misuse or negligence.

F. Controls and Instruments

See IX.A.1

G. Air Distribution

See IX.A.1 and IX.B.1

H. Liquid Heat Transfer

See IX.A.1 and IX.B.1

X. ELECTRICAL

A. Conductors, Switches, Receptacles and Lighting

1. Electric switches, outlets and fixtures malfunction.

Approved Standard: Electrical outlets, fixtures and switches should operate properly and as intended.

Required Remedy: The builder shall repair or replace defective wiring, outlets, switches, and fixtures.

XI. SPECIALTY ITEMS

A. Chimneys and Fireplaces

1. Chimney or fireplace does not draw adequately.

Approved Standard: Although high winds may cause temporary negative draft situations, a correctly designed and installed chimney or fireplace should function properly and draw adequately.

Required Remedy: The builder shall correct or repair the chimney or fireplace as necessary if the problem is caused by faulty design or construction and not by obstruction.

B. Vents and Louvers

1. Attic and crawl spaces poorly ventilated.

Approved Standard: Attics should have a natural ventilation area equal to either 1/150 of the floor area or 1/300 of the floor area when an accepted vapor barrier is installed on the warm side of the ceiling, or when at least 50% of the required ventilation is provided at least 3 feet above the ceiling. Crawl spaces should have a natural ventilation area equal to either 1/150 of the floor are to 1/1500 of the floor area when the surface is covered with an accepted vapor barrier.

Required Remedy: The builder shall make provision for adequate ventilation in accordance with the above Approved Standard.

## XII. CONDENSATION

Builder shall not be responsible for any damage caused by acts of the purchaser which result in condensation. These acts include, but are not limited to the use of humidifiers, improper use of any equipment or improper ventilation.

## POWER OF ATTORNEY

I/(We) residing at _____the owner of Residential Unit No. ____in the condominium known as 389 Bergen Condominium (the "Condominium") covering that certain real property located in the Borough of Kings and Kings County, City and State of New York, do hereby nominate, constitute and appoint the Board of Managers of the Condominium, in care of 389 Bergen LLC, 132 Mulberry Street, New York, New York 10013 and its successors and/or assigns, 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 its own name, or in the name of its designee, by deed on behalf of all owners of Residential Units in the Condominium, any Residential Unit whose owner desires to abandon its Residential Unit, or which shall be the subject of a foreclosure sale or which may be acquired by deed in lieu of a foreclosure sale, at such price and on such terms as my said attorneys-in-fact shall, in its sole discretion, deem proper and thereafter to convey, sell, lease, sublease, mortgage, vote or otherwise deal in such Residential Unit so acquired, at such terms as my attorneys-in-fact may, in its sole and absolute discretion, determine, granting to my attorneys-in-fact the power to do all things in such Residential Unit which I could do if I were personally present.

I/(We) do further hereby nominate, designate, constitute and appoint the Board of Managers of the Condominium and its successors and/or assigns, my true and lawful attorneys-in-fact, coupled with an interest, with power of substitution, in my name and on 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, By-Laws and/or Rules and Regulations of the Condominium.

I/(We) do hereby further irrevocably nominate, constitute and appoint the Board of Managers of the Condominium and its successors and/or assigns, my true and lawful attorneys-in-fact coupled with an interest in my name and on my behalf to vote at any Residential Unit owners meeting for, and 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, 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 the Condominium as described in Article Tenth, Section (e) of the Declaration of Condominium.

This power of attorney shall be irrevocable.

IN WITNESS WHEREOF, I/(we) have set my/(our) hand(s) and seal this ___ day of _____, 20__.

_____

SCHEDULE E

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/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

_____
NOTARY PUBLIC

# DEED

THIS INDENTURE made the ___ day of _____ , 20_____ between 389 BERGEN LLC, a New York limited liability company authorized to do business in the State of New York, having an office at 132 Mulberry Street, New York, New York 10013 "Party of the First Part", and _____, residing at _____, "Party of the Second Part";

## W I T N E S S E T H:

That the Party of the First Part, in consideration of Ten ($10.00) Dollars, 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, successors and/or 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 Residential Unit (the "Residential Unit") in Kings County, City and State of New York, known as Residential Unit No. _____ in the Condominium known as 389 Bergen Condominium, said Residential Unit, designated and described as Residential 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 _____% Percentage of Common Interest in the Common Elements.

The premises within which the Residential Unit is located is more particularly bounded and described as follows:

(PROPERTY DESCRIPTION)

**BEING AND INTENDED TO BE** part of the same premises conveyed to the Party of the First Part by deed made by _____, dated _____, and recorded in the Office of the City Register of the City of New York, New York County on _____ as CRFN _____.

**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 documents with respect to the Condominium 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 Office of the City Register of the City of New York 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.

**TO HAVE AND TO HOLD** the premises herein granted unto the Party of the Second Part, the heirs, successors and/or 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 of the State of New York, 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, subject to the applicable governmental regulations and zoning requirements, and the restrictions contained in the Declaration, By-laws and Rules and Regulations of the Condominium.

**SUBJECT TO:** covenants, restrictions, reservations, waivers, agreements and easements of record.

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, the day and year first above written.

**389 BERGEN LLC**

By:_____
, duly authorized agent

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/she executed the same in his/her capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

_____
NOTARY PUBLIC

389BERGENCONDOMINIUM
389 BERGEN STREET, BROOKLYN, NY 1

AttorneyGeneral'sReport

**389BERGENCONDOMINIUM**
**389 BERGEN STREET**
**Brooklyn,**
**NewY ork11217**

**Doyun Kim, Architect**

7/10/2020

# 389 BERGEN CONDOMINIUM
# 389 BERGEN STREET, BROOKLYN, NY 1

**General:** The property described herein will be a gut renovated 3 Story plus Basement and Cellar residential building. When completed, the Building will have an approximate total gross area of 5,092 square feet, including the Basement and Cellar.

**A. Location and Use of Property:**

1. Address: 389 BERGEN STREET
   Brooklyn, New York 11217
2. Block No.: 930
3. Lot Numbers: 59
4. Zoning District: R6B – Brooklyn Community District6
5. Permitted Uses are as defined by the New York City Zoning Resolution: Use Group 1, 2, 3 and 4 Residential
6. Quality Housing regulations:
   Quality Housing regulations are applicable to this development. And the following Quality Housing requirements have been meet:

   - Planting area will be provided at ground floor between street lot line and street building wall.
   - Apartments will be larger than 400 sf
   - Less than eleven units per floor will be provided.
   - Washers and dryers will be provided in each unit.

7. Landmark Status: N/A
8. Energy Conservation Construction Code Regulation:
   To the best of my knowledge, belief and professional judgment these plans and specifications are in compliance with Chapter 1 of the Energy Conservation Construction Code of New York State.
9. MTA New York City Transit: N/A
10. Alteration Type 1 Plans have been filed and approved by the department of Building under #321844938-01-AL
11. This property and proposed use will comply with all zoning and use requirements at closing.

**B. Status of Construction:**

Approved amended drawing dated 3/25/2020 are accepted for Professional Certification / Operations Policy and Procedure Notice
Construction schedule:
The Alteration is currently under construction pursuant to permit No. 321844938-01-AL November 26th, 2018. The projected date of substantial completion is on or about December 15st 2019, unless delayed by weather, strikes, lockouts, acts of God, shortages of, or inability to obtain material equipment or labor, governmental restrictions or preemption, damage by fire or the elements or any other cause over which the Sponsor has no control.

389BERGENCONDOMINIUM
389 BERGEN STREET, BROOKLYN, NY 1

Status Of Construction: Completed

Proposed enlargement: Complete renovation of an existing two family home including horizontal and vertical enlargement.

§ 20.7 (e) Sub-soil conditions.
No hazardous material present

Foundation movement
No uneven foundation movement has occurred

1. Class of Construction:

The Building will be classified as Class IIB (Non-Combustible) and will conform to all applicable regulations of the 1968 New York City Building Code ("Building Code"). The building plans have been filed **with** the New York City Department of Buildings, **BIN #3018456**, Job **#321844938-01-AL. The building is designed to comply with "Quality Housing" requirements.**

2. Certificate of Occupancy:
After completion of construction, the Sponsor will apply for a Certificate of Occupancy for the Building from the New York City Department of Buildings. The Sponsor states that he will obtain a Temporary Certificate of Occupancy prior to the first unit closing. The Sponsor expects to obtain a Final Certificate of Occupancy within two years of the first unit closing.

3. Where materials, appliances, equipment, fixtures, and other construction and design details are specified in this report, developer has reserved the right to substitute, in their place, with materials, appliances, equipment, fixtures and other construction and design details of equal or better quality as recognized by industry standards for performance efficiency, longevity and other classifications as applicable.

C. **Site:**
Proposed enlargement:
Complete renovation of an existing two family home including horizontal and vertical enlargement.

1. Site Area:
The site area is approximately 2,000 square feet.

2. Building:
This project will consist of a three (3) Story building with Basement, and Cellar below grade. The building includes 2 dwelling units.
The Cellar will have a 81 sqft residential storage room for unit #2. Beside the mechanical room and storage for unit #2, the rest of the cellar will be deeded for unit #1.
The 1st floor will have a small section for the residential lobby, stair leading to unit 2, and apartment 1 located on this level

3. Streets:

i) The building site has a 20' frontage along Bergen Street.

ii) The street along Bergen Street is paved with asphalt topping and is in fair condition. Maintenance of street repair is not Condominiums responsibility.

iii) The streets are 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. Sidewalks:

i) The existing concrete sidewalks on Bergen Street is currently in fair condition, free of tripping hazards and pounding.

ii) The condominium will be responsible for maintaining the sidewalk as per New York City Local Law (LL) regulations.

iii) The street is presently pitched to drain via existing catch basins into the New York City storm water drainage system.

iv) The building, sidewalk, and curbs conform to local fire district and municipal codes.

5. Subway:

i) There is no NYC subway tunnel adjacent to the property

6. FEMA Flood Zone:

i) The building is not located in a flood zone.

D. **Utilities:**

1. A new 2" combined domestic & sprinkler service will be provided from the 4" New York City water main in Bergen Street.
2. Gas will be provided by national Grid and Electric service will be provided by Con Edison and will be metered for all entities. Each unit will have its own separate gas and electric meter that services their respective unit. There will be 1 separate electric meter servicing the common area.
3. Electricity consumption for the residential common portion of the building shall be by a master meter. Each Residential Unit will be individually metered and billed to the Residential Unit owner by the utility company.
4. All building sewage will be collected into (1) 4" combined house sewer line which connects into the existing city 12" combined sewer pipe located in Bergen Street. A single sewage ejector will be provided for all building fixtures below the sewer connection at the cellar level.
5. Telephone, Internet service and cable service will be provided by third party vendors. It will be the purchaser's responsibility to purchase telephone and arrange for telephone, cable and Internet services in their unit.

1. No uneven foundation movement or differential settling has occurred.

2. There is no evidence of moisture or seepage or ground water infiltration in the building.

E. **Landscaping and Enclosures:**

1. Trees:
One (1) tree is required by the New York City Zoning Regulation and the New York City Department of Parks and Recreation. One (1) new tree will be assigned to tree fund according to the New York City Department of Parks and Recreation and the New York City Department of Transportation regulations.

2. Landscaping:
Planting area will be provided on the ground floor between the street lot line and the building street wall line. Maintenance of this landscaped area will be the condominium's responsibility.

3. Fencing: Fencing will be located in the rear yard at the property lines for which the maintenance will be the sole responsibility of Unit 1. It is made of pressure treated wood and terminated at a height of 6ft as per NYC Department of Buildings code.

4. Gates: A gate will be located in the front of the building and will be made of steel. The maintenance of this gate will be responsibility condominium's responsibility.

5. Retaining Wall:
None.

6. Display Pools & Fountains:
None.

7. Open Recreation Space:

Rear Yard of approximately gross area of 810 Sq. Ft. will be provided as a private recreation area and will be assigned to unit 1.

Rooftop outdoor recreation area of approximately 777 Sq. Ft. will be provided as private recreation area and will be assigned to unit 2.

8. Terraces/Balconies/Decks/Yards:

i) Unit 1 has access to private metal deck at the 1st floor.

ii) Unit 2 has access to a private terrace at the 2nd floor.

F. **Building Size:**

1. Height:
The height of the main roof of the building is approximately 40'-0" above the average street elevation.

2. Crawl Spaces:
None.

3. Cellars and Basements:
There is a Cellar with an approximate gross area of 1,092 square feet. There is a Basement with an approximate gross area of 1,092 square feet.

4. The building has three (3) floors plus Basement, and Cellar. The following floor to floor dimension are approximate:

| | |
|---|---|
| Cellar level to Basement level | 7'11 |
| Basement to First Floor | 8'7 |
| First Floor to Second Floor | 9.8 |
| Second Floor to Third Floor | 9'4 |
| Third Floor to Roof | 9'0 |

5. Ceiling height in the residential units varies from 8'5 to 10ft ceiling heights.

6. Equipment rooms:
   i) Cellar: There are two equipment rooms in the Cellar Level. One of those rooms will be used as mechanical room containing HVAC and hot water heater equipment. The other will contain the building house trap, gas and water meters and a sewage ejector pit.

7. Parapets:
   Height from top of finished roof to top of parapet coping or top of railing will be a minimum of 3'-6".

G. **Structural System:**

1. General:
   i) The building is an existing masonry with metal joist building.
      a. residential units, walls and floors shall have an impact insulation class (IIC) rating greater than 50.

Building Envelope:
i) Walls:

The exterior wall construction consists of 2" EIFS, TWO (2) layer of 5/8" exterior gypsum wallboard, 18 gauge 6" metal studs at 16" o. c. R-15 minimum insulation one (1) layer of 5/8" gypsum wallboard.

Exterior of Buildings will have an impact insulation class (IIC) rating greater than 50

Residential units, walls and floors shall have an impact insulation class (IIC) rating greater than 50.

Windows:

All windows will have new aluminum clad frame with a standard manufacturer's warranty on labor and materials. Windows will be double-pane casement or double hung. The warranty period will start from the end date of completion of the window installation.

Thermal Aluminum Window System by Crystal.
Standard hardware. Window lintels are galvanized Steel. Warranty period on the windows is: 10 yrs glass, 10yrs paint, 1yr fabrication, 1yr installation.

§ 20.7 (h) Structural system.
-structural system, materials used
Masonry wall and Metal C Joists
Type of foundation
Cast in Concrete foundation (Poured Foundation)

Floor impact noise compliance with BC 1207.3
1/2" rubber sound proofing throughout subfloor and 2 layers of Sheetrock between apartments

Exterior of Buildings will have an impact insulation class (IIC) rating greater than 50

Residential units, walls and floors shall have an impact insulation class (IIC) rating greater than 50

Typical structural system of the floors.
16 gage metal C joists sitting on masonry walls

Sub-grade drainage system is provided for the foundation(s) of the building(s).
None

Method of waterproofing for the foundation walls and floor slab.
Ice and shield (blueskin) applied on the surface of the foundation. Floor slab has a 50mm moisture barrier

ii) Storefront: None

iii) Landmark Status: None

2. Lot-line Windows: None

3. Parapets and Copings:

(i) Walls:

Walls will have an impact insulation class (IIC) rating of greater than 50

i) Parapets at roof locations will be solid filled CMU embedded with vertical steel dowels on the extension portion and cold form steal on the existing portion of the house. The interior face of the parapet walls will be stucco finish. The parapet coping shall be 20 gauge aluminum metal cap. The top of the coping will be at a height of 3'-6" above the finished roof. Demising walls and its description, condition, method of construction.

ii) Exterior walls are 8" concrete blocks.

•Exterior Insulation Finishing System (EIFS) or a panel cladding is to be installed
Yes

Type: barrier or internally drained.
Rear facade is 2" styrofoam EIFS cement stucco finish. Side walls of the extension are 8" concrete blocks with cement stucco finish . Front facade is 2 course blocks and cement stucco finish.

Cornice/Lintels:
Cornice is painted wood. Lintels are steal

Chimneys and caps:
No chimneys. The fireplaces are ventless ethanol

Balconies and terraces:
Terrace and roof deck surface are finished in porcelain pavers on pegs

Deck finish
Rear deck is a steal structure, poured concrete and porcelain tile surface

•Terrace roof pavers or deck material warranty
Roof paver are accepted by manufacturer and will retain roof warranty

4. Flashing:
Exposed exterior flashing for the building shall be or 20 gauge aluminum.

5. Chimneys, Caps and Flues: none

i) Chimney flues: None.

ii) Refuse chute: None.

6. Balconies: None
7. Terraces: Finished in Porcelain pavers

i) Deck Finish: rear deck surface finish to be waterproofed concrete and finished with tile. All balcony top surfaces are pitched away from the building at a ratio of minimum 1/8" per foot..

ii) Railings: Metal railing systems at balconies and terraces shall be steel or wrought iron aluminum railings. The top of the railing systems will be at a height of 3'-6" above the balcony or terrace finished floor.
Railing design does not create "ladder effect"

iii) Copings: Terrace and roof parapet copings shall be a 20 gauge aluminum cap.

iv) Balcony Soffits: There are no balcony soffits.

v) Doors to balconies and terraces: Aluminum and glass doors with insulated thermal glass.
All doors to balconies and terraces are thermal break.
Manufacturer is Crystal windows and doors
Double insulated glass pane painted aluminum frames

8. Exterior Entrances: Existing wood doors
(5) Exterior entrances: Front door is steel frame solid wood door with double insulated glass. Cellar door is 2 hour fire rated steel door

i) Exterior Doors and frames: The main entrance at the residential lobby will be a wood frame door with clear insulated tempered glass to match the exterior window system.

ii) Exterior stairs: None.

Exterior stairs material, location.

Front stoop, stairs to the cellar from the front of the property as well as the stairs from the cellar to the backyard are cement structure cement stucco finish. Stairs from rear deck to the rear yard are painted steal.

Railings material, location.
Railings are painted steal. Railings are located on rear decks, rear of roof deck, all interior and exterior stairways.

Railing design does not create "ladder effect"

iii) Mail Boxes: Mail boxes are located in the front of building at street level. The mailboxes will be front loading brushed aluminum finished metal and U.S. Postal Office approved.

iv) Lighting: Lighting will be provided at the building exterior entrance, vestibule, lobby, and public corridors. Exterior lighting will be provided at terraces and at the roof.

1. Roof and roof structures:
(7) Roof and roof structures:

Roof and roof structures are Metal C joust, 3/4 plywood, insulation, under layers and touch down roof.

Type roofs for all areas
Touch down Timberland roof

(d) Bond or guarantee:

Roof top and terrace are allocated to unit #2

Roof terrace paver/deck material and installation warranty.
Roof terrace paver/deck material and installation is acceptable by the manufacturer to retain the roof warranty

v) Roof Types:

Roofing Material: The roofing will be a Firestone Torch down system or equal or better. Manufacturer's Warranty: No Dollar Amount (NDL) for Material and labor, for a period of 10 years from date of Substantial Completion.

(a) The roof assembly will be finished with porcelain pavers on a pedestal system for the main roof

(b) Roof Insulation: Insulation shall be as per roofing manufacturer's recommendations with an "R" value of 38 as required to meet the Energy Conservation Construction Code of New York State.

(c) Surface Finish: The surface finish will be porcelain pavers as described above.

(d) Expected Useful Life: The roofing system shall have a minimum life of up to 15 years.

(e) Bond or Warranty: The roofing system shall have a standard 10 year minimum manufacturer's warranty.

(f) Flashing Material: There will be stainless steel or aluminum counter flashing and membrane base flashing as required and will be compatible with the roofing manufacturer's recommendations.

vi) Roof Drains:
(a) Material and type: There will be Cast iron drains on terraces.

(b) Scuppers and Leaders: Scupper and leaders at roof bulkheads as required.

Drains:
Secondary roof drainage
Roofs drain into a gutter leader system, down to a drywell in the rear yard. Leaders are 3x4 inch and

gutters are 5 inch in diameter. They are located at the rear façade off each deck. No secondary roof drain

vii) Skylights:

(a) One (1) aluminum with wire mesh window will be provided at the roof stair bulkhead. Window is extruded aluminum by Crystal Inc.

viii) Stair Bulkhead:

The exterior walls of the exit stair bulkhead will be an EIFS finish system with 2" EIFS consisting of 16 gauge 6" load bearing metal studs, R-38 minimum open cell spray foam insulation and two (2) layers of type 'X' gypsum wallboard.

The height of the bulkhead at the stair measures 7.5 ft from the top of the finished roof assembly at the stair landing.

ix) Metal Work at Roof Levels:

Metal work at roof levels and railing materials are painted steel.

Rooftop facilities.
No rooftop antennae, cell phone towers, satellite dishes, lightening protection equipment are present.

Rooftop access
Rooftop access is designed in compliance with 2014 NYC Fire code, Section FC 504.4

(a) Exterior Metal Stairs: There will be one metal stair from 1st floor rear deck to rear yard. Maintenance will be the responsibility of Unit 1.

(b) Vertical Ladders: None

(c) Railings: Metal railings will be provided around at rear ofroof.

(iii) Railings:
-"ladder effect."
No ladder effect

Balconies and Terraces Manufacturer,
Thermal break. Crystal window and door Double insulated glass pane painted aluminum frames

(a) Dunnage: We will have 1 compressor on the roof to service the heating/cooling for Unit 2.

ii) Roof Top Facilities: Condominium shall have unlimited access to all areas of the roof for the purposes of making inspections or repairs. The roof is accessible by stair located in Unit 2

2. Fire Escapes: None

3. Yards: Rear yard will be allocated to outdoor recreation area and assigned for the exclusive use to unit 1.

(9) Yard and courts.

Rear Yard Stairs
Steel from rear deck to the yard is painted steel stairs.
Stairs from rear yard to cellar are concrete structure with cement stucco finished surface
The stairs are slip proof there are diamond steel treads

Cellar To Rear Yard Stair
Landing area is 3ft with an area drain at the bottom that run into a sump pump

i) Finish: Grass and concrete with pavers

ii) Drainage: Area drains will be installed for rear yard areas.

(ii) Drainage
There is a drywell located in the rear yard. Drains are at the bottom of stairs and run into a sump pump located in the mechanical room of the cellar

iii) Fence: A 6'-0" fence will be located at the property lines as a separation between neighboring at the rear yard.

iv) Stairs: Metal

v) Handrails: Metal.

vi) Walls: None.

4. Interior Public Stairs: None

i) Enclosure: The stairs will be enclosed with a minimum 2-hour fire rated gypsum board wall or equivalent. All stair walls will be painted.

ii) Stair Construction: All the stairs and landings will be wood.

iii) Stringers: Wood.

iv) Treads & Risers: Wood.

v) Hand Rails: Steel

5. Interior Stair: There are three (3) stairs. Stair one leading from parlor level to 2nd floor for Unit access. One interior stair from 2nd floor to 3rd floor. One interior stair from 3rd floor to roof. One interior stair leading from Parlor level thru the basement level to the cellar.

Interior Doors and Frames:
2 hour fire rated steal doors and frames
Roof door is painted aluminum frame glass panel door and frame Basement entrance door is 2 hour fire rated steal door and frame

i) Unit Entrances: Units 1 and 2 shall be accessed from the public corridor at the 1st floor. All unit entrance doors shall have hollow metal frame and will meet the New York City Building Code requirement. The unit interior doors shall be MDF core doors painted with semi-gloss finish.

ii) Public Corridor Doors and Frames: None

iii) Stair Doors and Frames: None

iv) Cellar Level: None

v) Roof Level Doors and Frames: These doors and frames shall be aluminum with glass and will meet the New York City Building Code requirements.

6. Elevators: None

J. Auxiliary Facilities

§ 20.7 (i) Auxiliary facilities.
U.
(1) Laundry rooms:

2 laundry rooms total. One located at the top floor and one is located on the cellar level. They are located in Individual Units. Not coin operated.
Each unit has one washer. Both are electric.
Unit #1 Electrolux Compact Washer With IQ-Touch Controls featuring perfect steam 2.4
Unit #2 5.0 Smart wi-fi enabled top load washer with turbo wash 3D Tech Unit #2, Top floor dryer is gas.
Unit #1 cellar level dryer is electric Unit #2 Top floor dryer vents to the roof
Unit #1 Cellar level dryer is ventless

(4) Storage in the Cellar:

Storage room is a 2 hour fire rated enclosure with a 2 hour fire rated door
Storage room is accessible through a locked steal hatch accessible from the front of the building.

1. Refuse Disposal:
   i) Incinerators: None
   ii) Refuse Storage will be located in the front yard

2. Storage: None

3. Fireplaces: All units will have ethanol fireplaces

4. Mechanical Rooms:
   i) The water and gas services room, electric room, as well as other accessory mechanical spaces are located at Cellar level.

5. Parking Spaces: None

J. Building Security

**None**

K. Plumbing and Drainage

§ 20.7 (j) Plumbing and drainage.

Water supply.
2" combined sprinkler and domestic water via coper pipe. Below grade piping Shut off valve located in the cellar mechanical room

- size and material(s) for all services, including, insulation of piping.

1' ¼ inch gas main , black pipe

2 inch water main, copper

4 inch sewer , cast iron

(5) Sanitary sewage system:

- Sewage piping materials.

  Sewage piping is Cast Iron

- Sewage pumps: The Sewage pumps are Liberty Pump 380 Series , 95% energy efficiency, Model P382XPRG101, 3 year warranty.

- Sewage disposal public/private; treatment; drain field; sewer.

Public. Sewage pumps are Public. No treatment or drain field required. All goes to public sewer system.

(6) Permit(s) required.

1/29/2020 : Sprinkler and Plumbing Permits were issued On same day.

Sanitary sewage system:.
Cast iron pipes

Sewage pumps
There are no sewage pumps

Sewage disposal
Public. Sewer drains into the city sewer

Permit(s) required.
List and include date(s) obtained.
1/29/2020 : Sprinkler and Plumbing Permits were issued On same day.

Storm drainage system:
Storm water drains into a drywell located in the rear yard . Location is off the 2nd floor terrace and roof deck. Method is via a painted aluminum gutter leader system down into the drywell.

Catch basins/drywell(s)
Drywell located in the rear yard. Capacity 2650 gallons

1. Domestic/Fire Protection Water Supply

A new 2" combined domestic/fire water service for the Residential Section is provided from theNew York City 6" water main in West Street. Duplex constant pressure pumps are providedthe water service room at the first floor to provide water to the building. These pumps shall be Peerless C815J 100DES20VFDGAF, 100GPM, 45' TDH, 2 HP each. Pressure for all domestic water is provided by the duplex constant pressure system, specified above.

The sprinkler system has 5 different types of heads as follows:

1. Standard concealed pendent

Sprinkler heads will be located in all living areas in the units and also the public corridors.

3. Water Pressure and how maintained: Water pressure and supply is maintained by a constant pressure set (all as described in E.1 above) to feed water supply provided throughout.

4. Sanitary Sewage System-General Description

   a. Sewage piping:

      i. Existing 4" No-hub sewer pipe to the 12" city sewer.

      ii. Sanitary, waste and leader and vent piping above ground shall be cast iron hubless pipe CISPI 301 service weight.

      iii. The horizontal piping at the cellar level, connecting the separate vertical storm water and sewage drainage stacks for the building to the city sewer in Bergen Street shall be cast iron hub less pipe CISPI 301 serviceweight. The house connection is a combined 4" house sewer.

   b. Sewage Pumps:

      i. A duplex sewage ejector pump is provided for all fixtures at the cellarlevel. It is located in the cellar

      ii. Pump efficiency shall exceed 60%.

      iii. 1 Year parts and labor warranty.

   c. Sewage Disposal:

      All Building sewage is collected into (1) combined sewer line which connects intothe existing city sewer pipe located in West Street (4" house connection).

5. Permits required. None.

6. Storm Drainage System:

   All Building storm water drainage is collected into a drywell located in the rearyard.

   a. Catch Basins: Rear yard drains route todrywalls

   b. Adequate number of roof drains is provided at all roof terraces. Drains are cast iron and are 3"size, control flow type.

   c. Piping: Piping above ground shall be cast iron hubless pipe, CISPI 301service weight.

   d. Ejector and Sump Pumps.

      i. Ejector Pumps. See E.4.b above.

      ii. Sump pumps.

      iii. Pump efficiency shall exceed 60%.

      iv. 1 Year parts and labor warranty.

      v.

7. Water Piping:

   a. Service piping - AWWA ductile iron class 52 and 104.

   b. Above ground – Copper type "L" ASTM B-88.

8. Gas Piping

a. Gas pipe shall be provided which shall be schedule 40 black steel to feed all gas ranges and central laundry.

b. Common building gas meters are provided each for cooking and the central laundry.

9. Domestic hot water:

a. All domestic hot water is provided via local electric water heaters. Eachapartment will be provided with a new Hot Water Heater manufacturer by AO Smith model "ENT" with a minimum capacity of a 30 gallon and manufacturer's warranty of 6 years.

b. Domestic hot water temperature will be individually controlled by a hot water temperature control included in each hot water heater unit.

L. **Heating**

Hot water heaters are 50 gallon electric
N.(4500 RHEMM)
There are 1 for each unit located in the cellar mechanical room

O.• Heating system:.

HVAC units shown in closets, common spaced and bathrooms are manufactured by Cooper Hunter, they are Ceiling mount cassettes ducted electric units.

-Electric mini split cassette system. Stainless steel ducts wrapped with R15 insulation. 18 gauge thickness.
-Each floor has two units
-Cellar level has one unit
-Hot water is heated by a 50 gallon electric units located in the cellar mechanical room and distributed to each unit individually via copper pipes Heating system- the mini split system has 95% efficiency functioning normal down to 18degrees below zero. It will maintain legally required conditions under anticipated weather conditions.

1. Heating of the building including all apartments shall be provided by Mitsubishi (or equivalent Daikin units) VRF low temperature split and individual heat pump systems. Condensing units to be Mitsubishi to and located on the main roof and rear yard.

2. The heating system is adequate to maintain comfortable conditions and complies with New York State Energy code. Heating temperature will be individually controlled by electronic thermostat located inside each residential unit or common area to be heated.

   In the individual units there will be various sized direct expansion fan coil units. There are three (6) different sizes that will be utilized:

3. The cost of the refrigeration supplied to the residential units for heating is billed to the individual unit owner as part of their electrical bill.

N. **Air Conditioning**

Insulation is R15. The AC is a mini split ducted system distributed by stainless steel 18 gauge ducts wrapped with aluminum foil faced R15 insulation.

Each unit has a natural fresh air intake.

**§ 20.7 (m) Air conditioning.**

HVAC units shown in closets, common spaces and bathrooms are manufactured by Cooper Hunter and are Ceiling mount cassettes ducted electric units.

§ 20.7 (u) Permits and certificates.

List all recurring inspections, after the building is in operation, including NFPA 80, Sprinkler, Elevator Safety, Boiler Safety, Fire alarm, Backflow Preventer, FISP, etc.

Only recurring inspections are for the sprinkler, which is done monthly by a licensed FDNY Certificate of Fitness Holder.
Backflow Preventer is inspected every 5 years, For 2 family property
There is no fire alarm, the boiler is less than 350,000 BTU's, so a boiler inspector is not required. There is no elevator in the building

1. The building cooling system will be provided by Mitsubishi (or Daikin equivalent) VRF system multi heat pump system and split individual heat pump systems with condensing units on the roof. Each residential unit shall be provided with an individual VRF heat pump system with ceiling-hung direct expansion units. Each unit is capable of pulling a minimum O.A. required per New York City and New York State Code.
2. Public area: None
3. Describe System types:
    a. The Building Entrance and Lobby: None
    b. Individual Apartments; all apartment areas (living room and bedrooms) will be served by Mitsubishi ceiling-hung DX heat pump units (or Daiken Equal). There are 3 different sizes that will be utilized:
4. The operating cost for the electric aspect of heat pump units within the residential units, heating and cooling will be billed to the individual unit owner as part of their electric bill.
    a. All exterior metals, including fasteners shall be corrosion resistant.
5. All piping to be properly insulated.

    Condensate and equipment drain water below 60° spray foam

O. **Ventilation**

1. Kitchens are exhaust hood ventilation.
2. Bathrooms are exhausted via vertical exhaust system to exhaust on the roof.
3. Laundry vents are exhausted via duct & exhaust fan to the rear of the building
4. Individual apartments have a supplemental fresh air supply by a mechanical ventilation system which is vented out to the rear of the building
5. Cellar ventilation is 8 x 8 inch fresh air intake

P. **Electrical System**

1. Service entrances to main service

a. Switchboards:

i. Amperes: Three switches for a total of 1,600 amp rated main service switchboard (load side) serving residential areas.

ii. One (2) 400/400 ampere switch for a total of and meter shall be provided by the house and common area.

iii. One (1) 200 ampere switch for fire pump.

iv. Voltage: 208/120V 3-phase 4 wire

v. Phases: 3

vi. Wire Protective Equipment: Fuses.

2. Compartment Switchboard:

a. The electrical service room and switchboards, distribution panels will be located at the cellar floor level. The Residential Section loads shall be fed by separately metered panels in each apartment.

3. Unit Service:

a. Rating of main switchboard: By Cutler Hammer or equal. Rated @ 200,000 sym amps.

b. Service size to Residential Units shall range from circuit breakers or fuses bunits and ratings: at a minimum of 100 amps.

c. Number, Size and Type for tapping wire for units: (3) 2 AWG.

4. Adequacy:

a. Service:

i. Number of circuits per apartment: Adequate @ 30 minimum

ii. Capacity to handle modern appliances:

a. A/C: Adequate @ 20 amps, 2 pole.

b. Dishwashers: Adequate @ 20 amps, 1 pole.

c. Refrigeration/Freezer: Adequate 20 amps, 1 pole.

d. Electric water heater: 30 amps, 2 pole.

e. Electric Combination Washer/Dryers: Adequate @ 6,000 watts-208 single phase.

b. Lighting and fixtures:

i. Apartments will have surface mounted lighting fixtures in all bedrooms and living rooms and LED recessed fixtures in all bathrooms and hallway.

ii. Public area lighting will conform to all applicable codes emergency fixtures will be provided on battery back-up units.

c. Convenience and appliance outlets:

i. Average number per living room: (4)

ii. Average number per bedroom: (4)

5. Telecom, Intercommunication and/or door signal systems.

a. Wireless Intercome.

b. The door signal shall be a mechanical knockers.

c. The Residential Section will be provided with internet, cable TV and telephone backbone, from the telecommunications room on the ground floor to a telecom central box located in the refuse room on each Residential Section floors, which will be fed by various ISP's. Every apartment will have a voice and data distribution system, providing voice and data outlets in most rooms, connected to this backbone. The residents will be responsible for arranging the service from the respective providers.

6. Television Reception Facilities

a. See 5. C. above.

7. Fire Alarm: None

Q. **Permits and Certificates**

The following inspections will be conducted concurrently with construction with final sign-off at the issuance of the Certificate of Occupancy.

i) NYC Department of Buildings
- Mechanical and Plumbing
- Electrical

ii) Recurring inspections required to be performed by code will be:
- Sprinkler System

iii) Only recurring inspections are for the sprinkler, which is done monthly by a licensed FDNY Certificate of Fitness Holder.

iv) Backflow Preventer is inspected every 5 years, For 2 family property

v) There is no fire alarm, the boiler is less than 350,000 BTU's, so a boiler inspector is not required.

vi) There is no elevator in the building

R. **Violations**

i) Any Building Code Violations will be corrected prior to the issuance of the Permanent Certificate of Occupancy.

ii) No asbestos will be used in the construction of the building.

S. **Unit information**

Ceiling heights
Cellar 7'9
Basement 8'6 1st floor 10ft 2nd floor 9'4 3rd floor 9'4

Walls/ceilings
Benjamin more paint regal grade
Walls have a coat of primer and 2 coats of paint

Method used to calculate Gross Floor area: Each Unit consists of the area measured horizontally from the exterior side of the exterior walls (columns, mechanical pipes, shafts, shaftways, chases, chaseways and conduits are not

deducted from measurement of each Unit) to the centerline of the partitions separating one Unit from another Unit, or any Common Elements not within a Unit or to the exterior side of the exterior walls. Each Unit consists of the area measured vertically from the top of the floor (located under the finished flooring and sub-flooring materials) to the underside of the ceiling.
Please note useable space of the unit is "significantly less than" the measured space.

| | Unit Designation | Unit Type | Approx. Gross Square Footage of Condo Unit | Approx. Gross Square Footage of Private Yard/ Private Terrace/Private Balcony |
|---|---|---|---|---|
| 1 | Unit 1 | 4 Bedroom / 2 Bath/2 Half Bath | 2919.5 | 810 (Rear Yard)<br>169 (Deck) |
| 2 | Unit 2 | 3 Bedroom / 2 Bath/ 1 Half Bath | 2034 | 160 Terrace<br>777 |

T. **Finishes /Appliances**

1. General: All finishes are subject to Sponsor's right to substitute finishes of equal or better quality as recognized by industry standards for performance, efficiency, longevity and/or other classifications as applicable.

i) Residential Lobby
- Floors — Porcelain Tile
- Baseboards — Porcelain Tile
- Walls — Painted
- Ceilings — Painted

ii) Interior of Residential Condominium Units, General

Finishes all units
- Floors — Engineered Hard Wood flooring
- Baseboards — Painted MDF to match walls
- Walls — Painted / Eggshell finish (1 coat primer and 2 coats of finish)
- Ceilings — Painted / Flat finish (1 coat primer and 2 coats of finish)

iii) Kitchens (All appliances shall be as specified below, or equivalent)
Appliances, fixtures, and fittings
All units
- Refrigerator:
  - Unit 1 Sub-Zero 48", panel finish, Model #BI48S/O
  - Unit 2 Sub-Zero 36", panel finish, Model #BI36U/ORH
- Dishwasher:
  - Unit 1 Miele Model# G4998VI
- Cooktop:

- Unit 1 Wolf 36" SS Gas CKTOP/PRO KNOBS #CG365P/S
- Unit 2 None

- Oven:
  - Unit 1 Wolf 30" SS Electric Double Oven Model# DO30PE/SPH
  - Unit 2 Wolf 36" SS Pro gas range Model#GR366
- Exhaust:
  - Broan Model#RMPE7004 with External 1200cfm blower Broan Model#335
- Microwave:
  - Unit 1 Wolf 24" Transitional microdrawer Model# MD24TE/S
  - Unit 2 Wolf 24" Transitional microdrawer Model# MD24TE/S
- Kitchen Sink:
  - Blanco Model# 518172
- Kitchen Faucet:
  - Brizio Model# 63025LF-PN

Finishes all units

- Floor Sawyer Mason Structured French Oak wood
- Backsplash stone
- Counters stone
- Ceiling Painted / Flat finish
- Cabinets Solid Walnut Cabinets below the countertop with lacquered cabinets above

iv) Bathroom

Fixtures and fittings

- Tub MAX
- Tub fittings Kohler or equal or better
- Sink Faucet Kohler or equal or better
- Shower Kohler or equal or better
- Shower fittings Kohler or equal or better
- Toilet Kohler

Finishes

- Floors Marble Tile
- Walls Marble tile
- Shower Floor Marble tile
- Counters Marble
- Ceilings Painted (mildew resistant) / Flat finish
- Cabinets Laminate

a. **Safety and warning devices**

ii) § 20.7 (y) Safety and warning devices.

The units and common area are wired with smoke and carbon dioxide detectors and are per electrical code. They are required by law.

No fire alarm central station installed. Only a fire alarm bell which will go off when sprinklers go off.

- Each condominium has a hard wired combination carbon monoxide/smoke detector with local alarm and local annunciating. Detectors shall be ceiling or wall mounted in each bedroom and within fifteen (15) feet of a bedroom door. Detectors shall be 120 volt type with battery backup.
- All systems described above are required by the New York City Building Code.

§ 20.7 (z) Additional information required.

The Cellar will include accessory use for unit #1 to be used for the washer/dryer. The accessory use for unit #1 cannot be used for cooking, living or sleeping purposes. The Cellar will also include an 81 square foot residential storage room for the use of unit #2. No cooking, living, or sleeping is permitted in the accessory storage room. Purchasers should refer to Special Risk No. 43 in Part I of the Offering Plan.

The cellar is recreational space for unit #1

Storage unit belongs to unit #2

There are no stairs leading to the bedroom on basement floor, north side.

Fireplace
It is on the floorplan.

Bulkhead Roof condenser
Condensers are not on bulkhead, but on the South section of the roof. See updated plans

Provide Roof Plans indicating the fire department access path.
Updated. See plans

§ 20.7 (bb) Further development.

No more units to be added

No additional structure will be added

No more work shall be done by the sponsor, no current tenants occupy the building

No more construction shall be done by the sponsor

a. **Asbestos**

- No asbestos containing material is present in insulating or fireproofing material anywhere in the building.

b. **Lead-based paint**

- No lead-based paint will be used anywhere in the construction of the building.

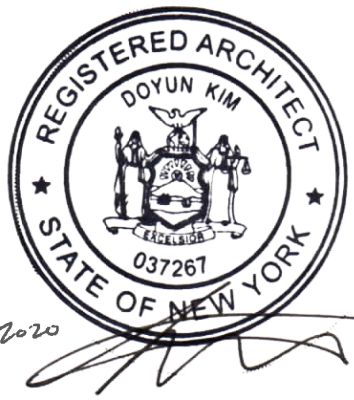
c. **New York State Energy Conservation Code**

- To the best of my knowledge, belief and professional judgment, these plans and specifications are in compliance with the Energy Conservation Code of New York State, using Chapter 8.

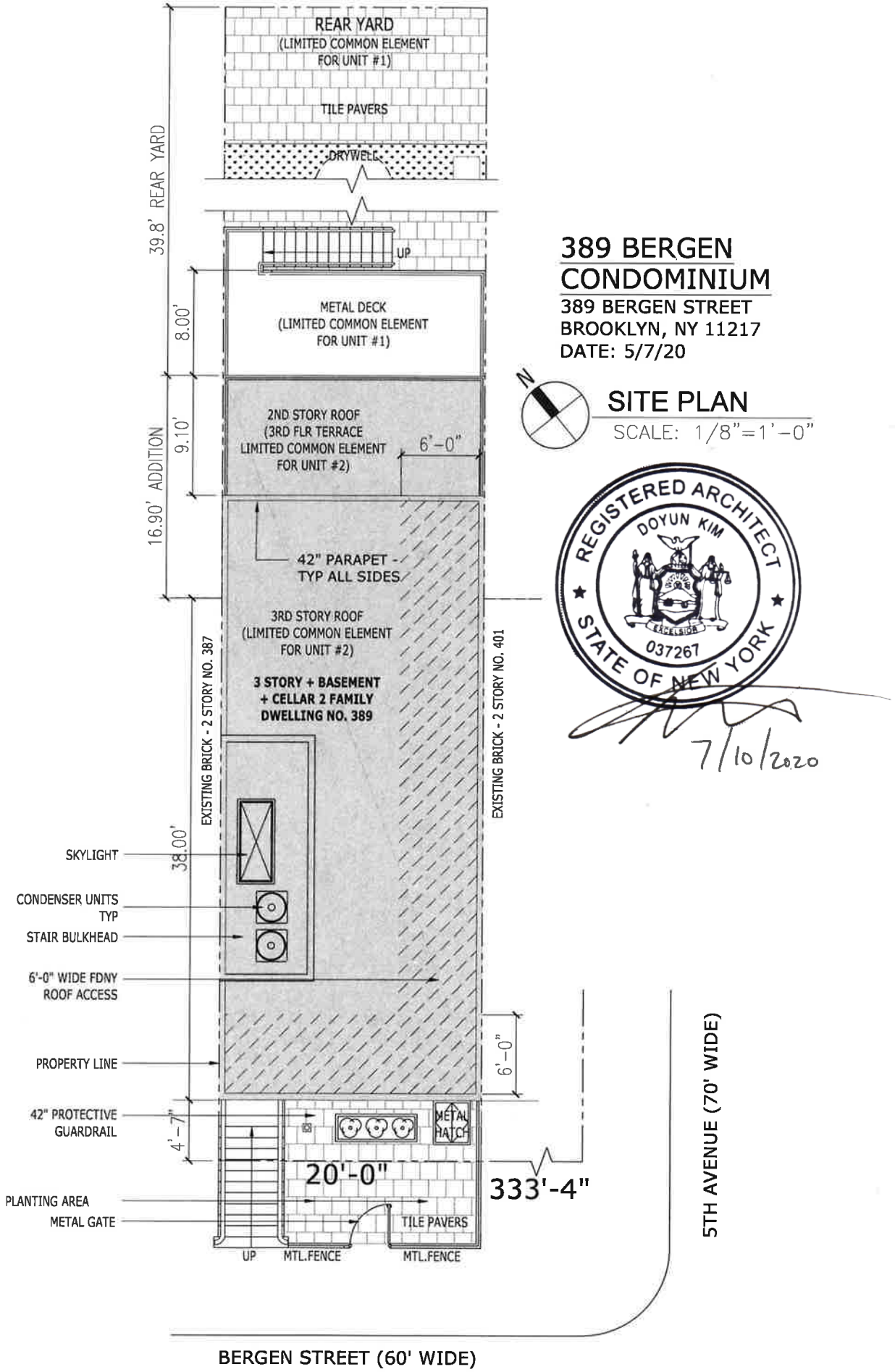
d. **Documents to be transferred to the condominium management**

- Final As-Built drawings, e. g. structural, mechanical, electrical, plumbing, approved shop drawings;
- Operation & Maintenance manuals for mechanical equipment;
- Equipment warranties;
- NDL Manufacturer's roof warranty;
- Major equipment Start-Up Sheets;

Seal




Signature of Architect 7/10/2020




# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

N

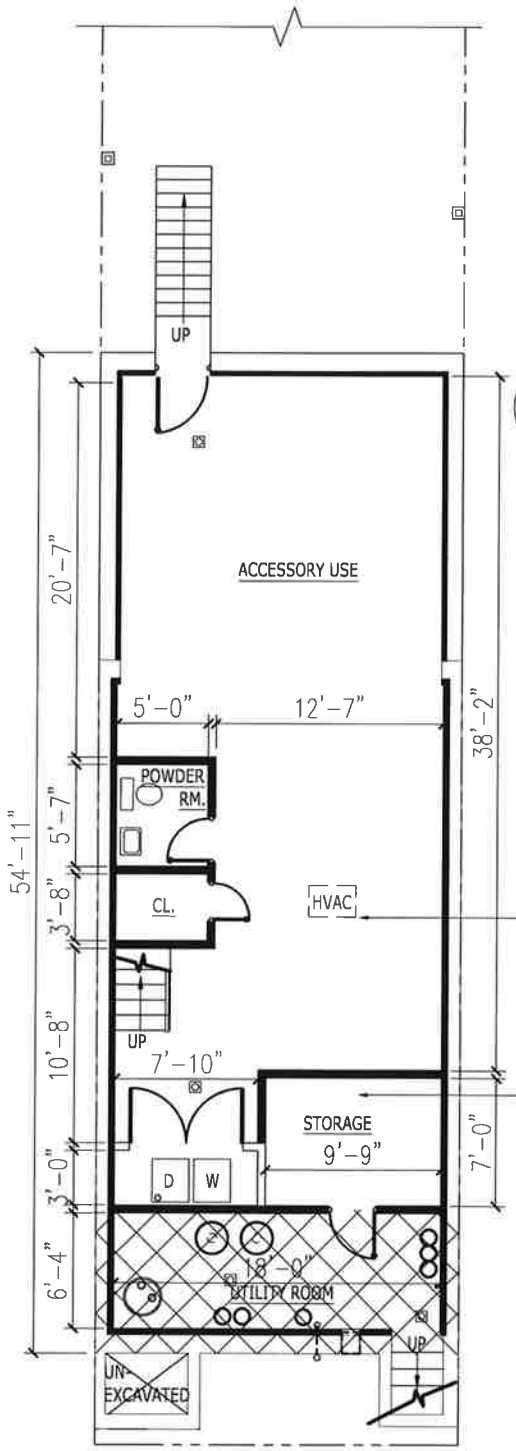
## SITE PLAN

SCALE: 1/8"=1'-0"

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

7/10/2020

SCHEDULE G-1




# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

## 1 CELLAR FLOOR PLAN

SCALE: 1/8"=1'-0"

## LEGEND

CONDO UNIT

LIMITED COMMON ELEMENT

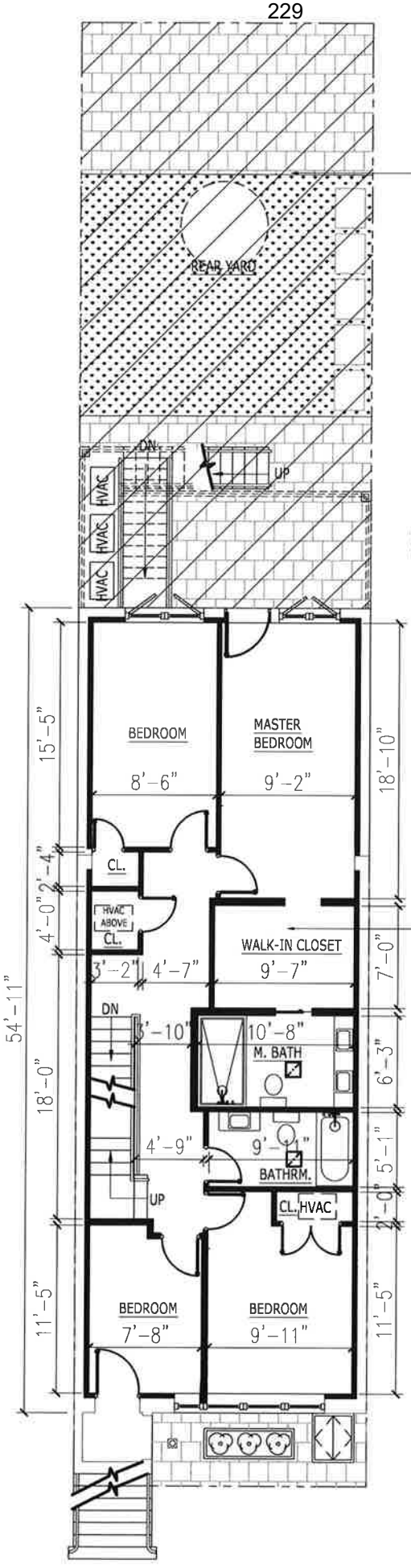
COMMON ELEMENT

PORTION OF UNIT #1
859 SQ. FT. GROSS

STORAGE UNIT
PORTION OF UNIT #2
81 SQ. FT. GROSS

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

7/10/2020




UNIT #1
LIMITED COMMON ELEMENT
802 SQ. FT. GROSS

PORTION OF UNIT #1
1,120 SQ. FT. GROSS

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

## 1 BASEMENT FLOOR PLAN

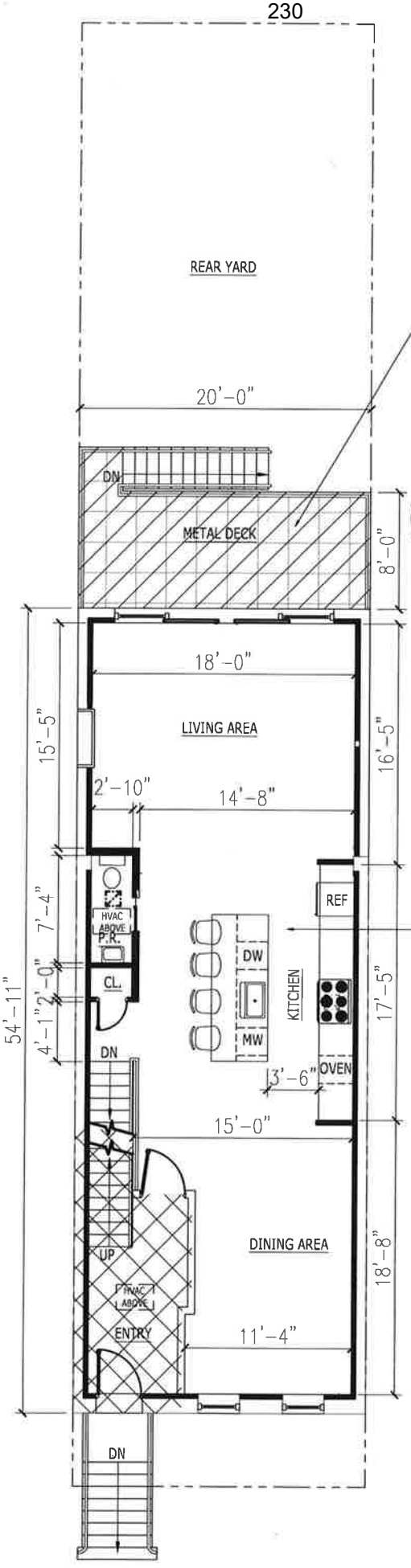
SCALE: 1/8"=1'-0"

## LEGEND

- CONDO UNIT
- LIMITED COMMON ELEMENT
- COMMON ELEMENT

REGISTERED ARCHITECT
DOYUN KIM
EXCELSIOR
037267
STATE OF NEW YORK

7/10/2020




UNIT #1
LIMITED COMMON ELEMENT
169 SQ. FT. GROSS

PORTION OF UNIT #1
965 SQ. FT. GROSS

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

## 1 FIRST FLOOR PLAN

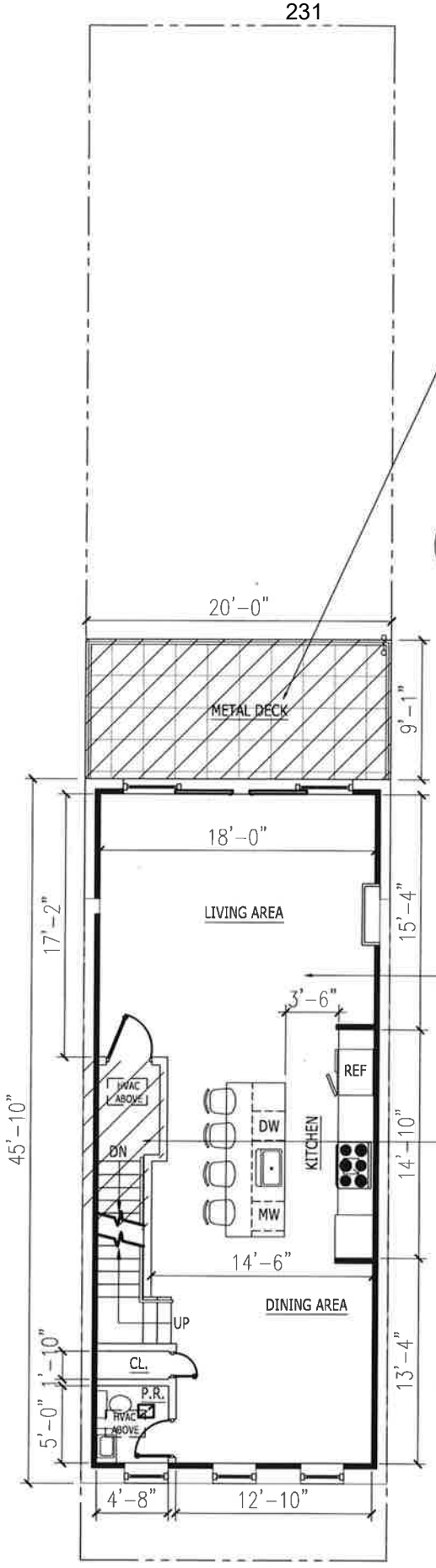
SCALE: 1/8"=1'-0"

## LEGEND

- CONDO UNIT
- LIMITED COMMON ELEMENT
- COMMON ELEMENT

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

7/10/2020




UNIT #2
LIMITED COMMON ELEMENT
182 SQ. FT. GROSS

PORTION OF UNIT #2
865 SQ. FT. GROSS

UNIT #2
LIMITED COMMON ELEMENT
51 SQ. FT. GROSS

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

## 1 SECOND FLOOR PLAN

SCALE: 1/8"=1'-0"

## LEGEND

- CONDO UNIT
- LIMITED COMMON ELEMENT
- COMMON ELEMENT

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

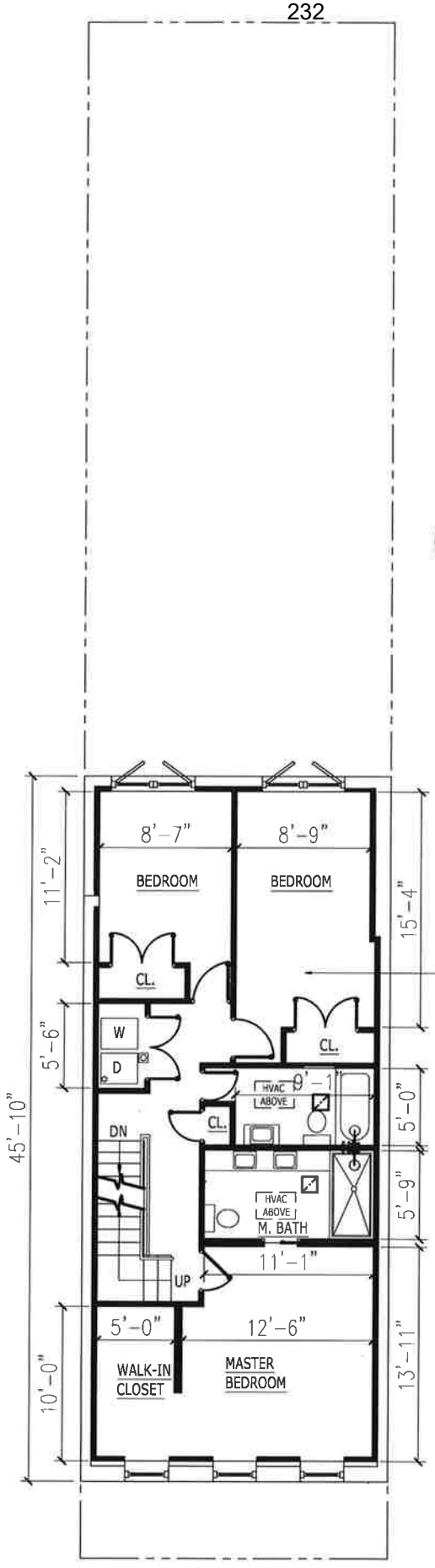
7/10/2020

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

## 1 THIRD FLOOR PLAN

SCALE: 1/8"=1'-0"



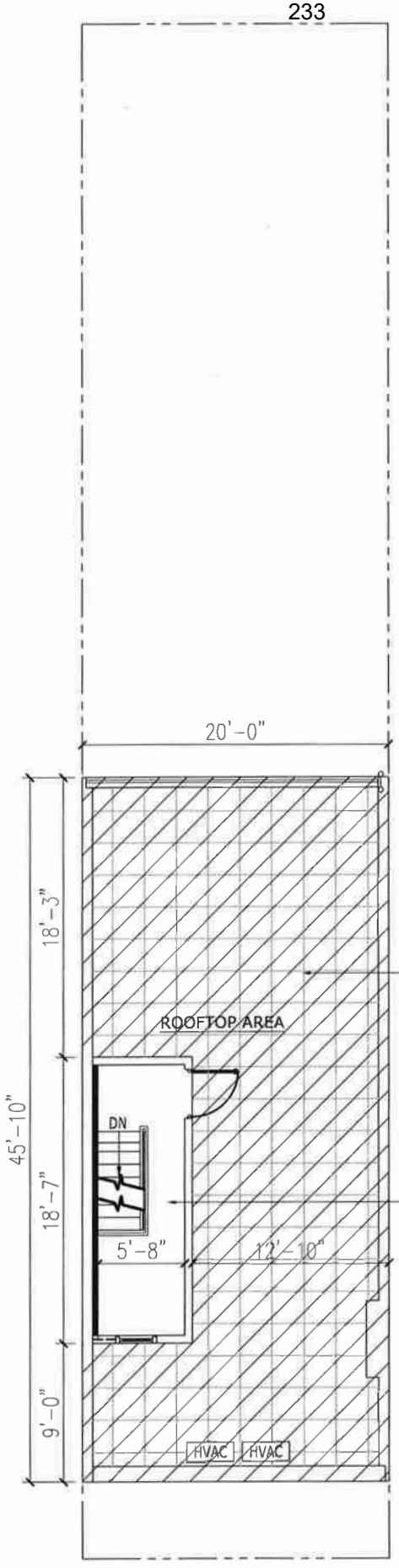

PORTION OF UNIT #2
916 SQ. FT. GROSS

## LEGEND

- CONDO UNIT
- LIMITED COMMON ELEMENT
- COMMON ELEMENT

REGISTERED ARCHITECT
DOYUN KIM
EXCELSIOR
037267
STATE OF NEW YORK

7/10/2020




# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

## 1 ROOF FLOOR PLAN

SCALE: 1/8"=1'-0"

## LEGEND

CONDO UNIT

LIMITED COMMON ELEMENT

COMMON ELEMENT

UNIT #2
LIMITED COMMON ELEMENT
783 SQ. FT. GROSS

PORTION OF UNIT #2
133 SQ. FT. GROSS

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

7/10/2020

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

## CONDO UNIT #1

4 BEDROOM, 2 1/2 BATH, 1 ACCESSORY USE SPACE

### LEGEND

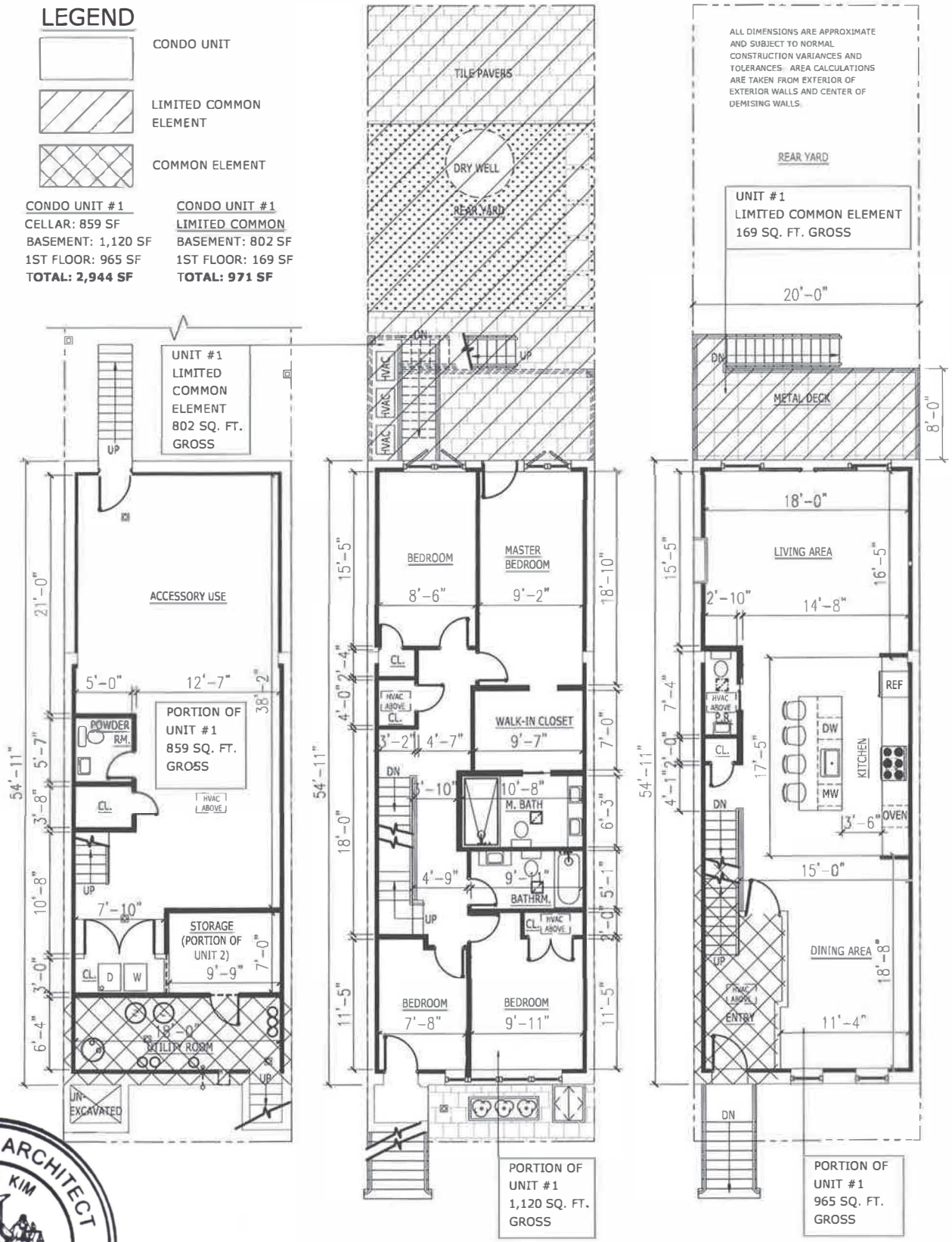
CONDO UNIT

LIMITED COMMON ELEMENT

COMMON ELEMENT

**CONDO UNIT #1**
CELLAR: 859 SF
BASEMENT: 1,120 SF
1ST FLOOR: 965 SF
**TOTAL: 2,944 SF**

**CONDO UNIT #1 LIMITED COMMON**
BASEMENT: 802 SF
1ST FLOOR: 169 SF
**TOTAL: 971 SF**




1 CELLAR FLOOR PLAN
SCALE: 1/8"=1'-0"

2 BASEMENT FLOOR PLAN
SCALE: 1/8"=1'-0"

3 FIRST FLOOR PLAN
SCALE: 1/8"=1'-0"

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

7/10/2020

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

# CONDO UNIT #2

3 BEDROOM, 2 1/2 BATH

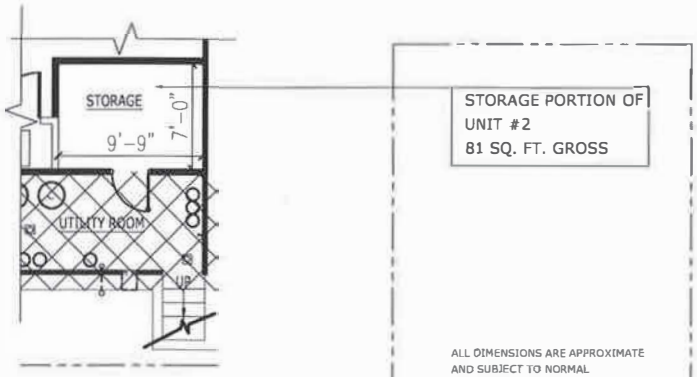
## LEGEND

CONDO UNIT

LIMITED COMMON ELEMENT

COMMON ELEMENT

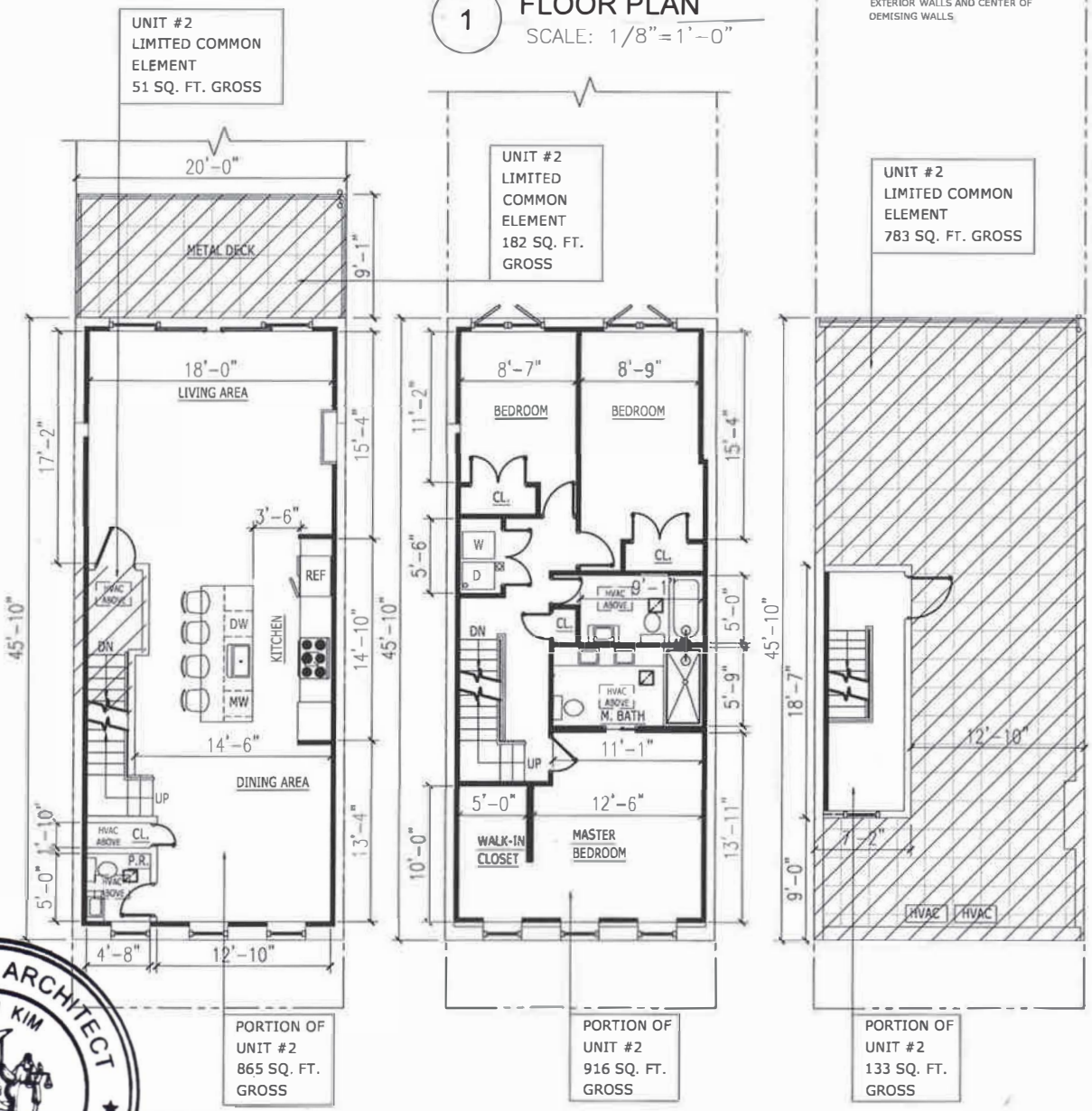
| CONDO UNIT #2 | CONDO UNIT #2 LIMITED COMMON |
|---|---|
| CELLAR: 81 SF | LANDING: 51 SF |
| 2ND FLOOR: 865 SF | 2ND FLOOR: 182 SF |
| 3RD FLOOR: 916 SF | ROOF: 783 SF |
| ROOF: 133 | **TOTAL: 1,016 SF** |
| **TOTAL: 1,995 SF** | |




## 1 PARTIAL CELLAR FLOOR PLAN

SCALE: 1/8"=1'-0"

ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO NORMAL CONSTRUCTION VARIANCES AND TOLERANCES. AREA CALCULATIONS ARE TAKEN FROM EXTERIOR OF EXTERIOR WALLS AND CENTER OF DEMISING WALLS




PORTION OF UNIT #2 865 SQ. FT. GROSS

PORTION OF UNIT #2 916 SQ. FT. GROSS

PORTION OF UNIT #2 133 SQ. FT. GROSS

## 2 SECOND FLOOR PLAN

SCALE: 1/8"=1'-0"

## 3 THIRD FLOOR PLAN

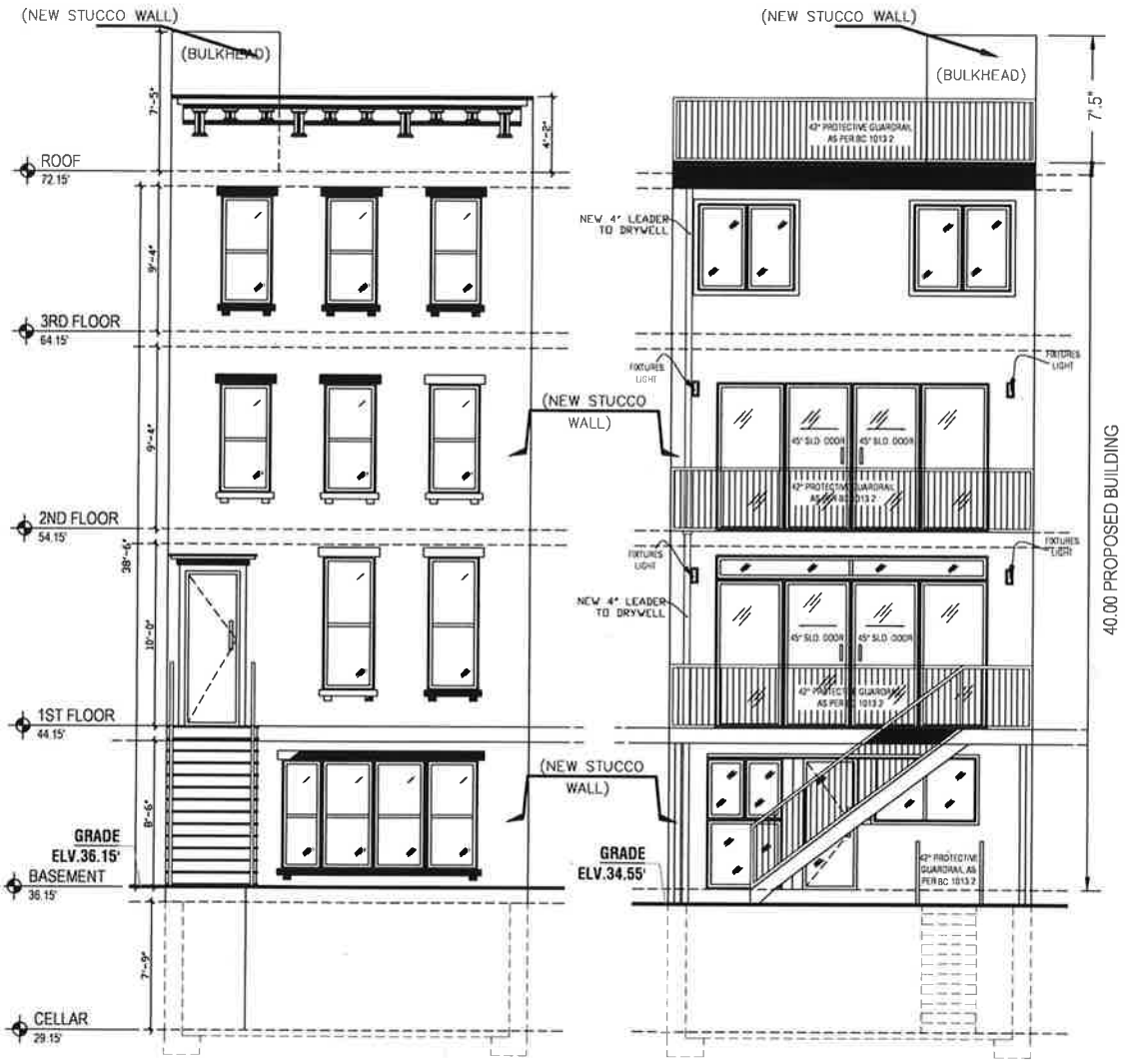
SCALE: 1/8"=1'-0"

## 4 ROOF PLAN

SCALE: 1/8"=1'-0"

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

7/10/2020




1 STREET ELEVATION
SCALE: 1/8"=1'-0"

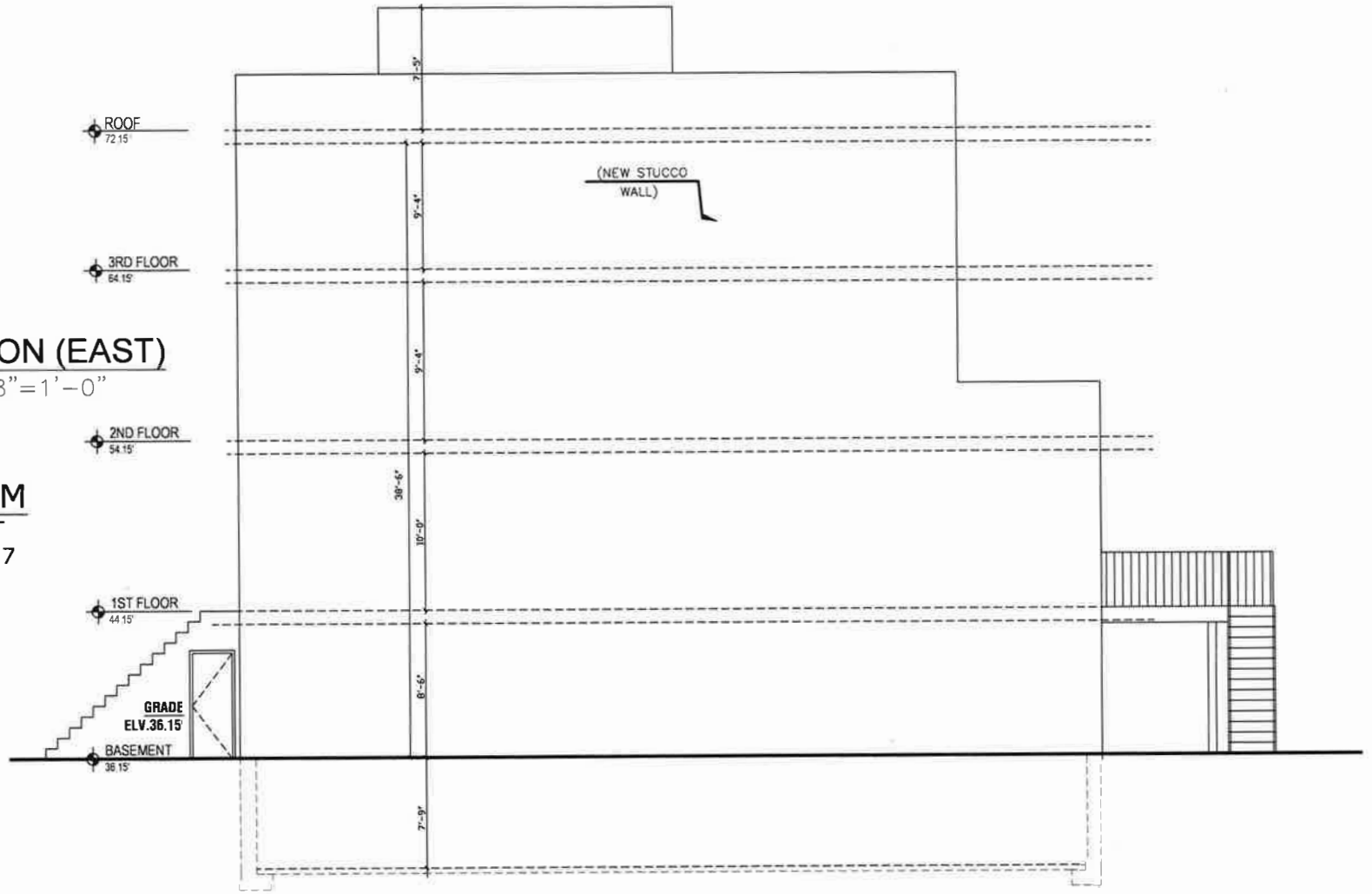
2 REAR ELEVATION
SCALE: 1/8"=1'-0"

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

REGISTERED ARCHITECT
DOYUN KIM
EXCELSIOR
037267
STATE OF NEW YORK

7/10/2020



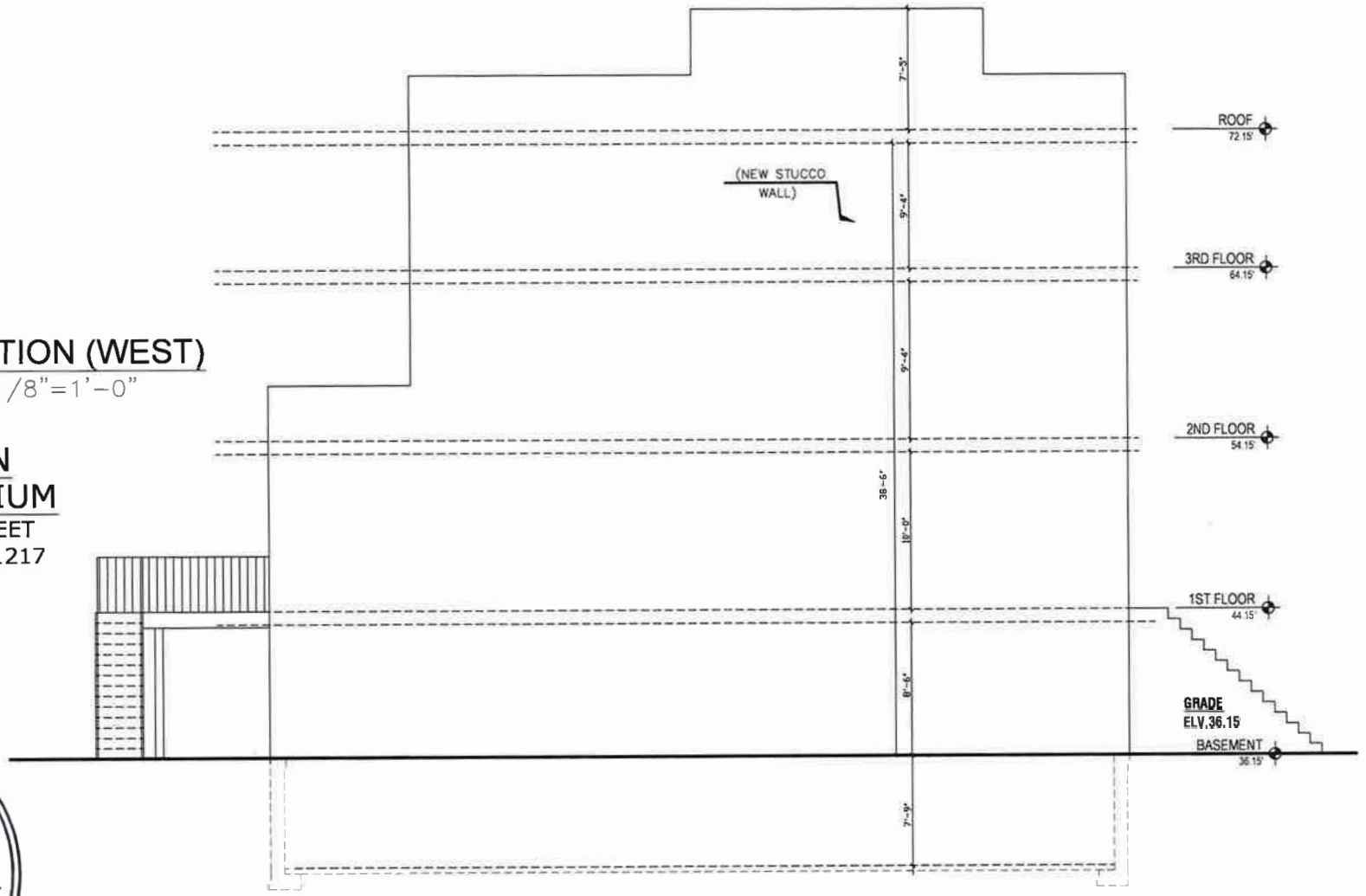

1 SIDE ELEVATION (EAST)
SCALE: 1/8"=1'-0"

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK

7/10/2020




1 SIDE ELEVATION (WEST)
SCALE: 1/8"=1'-0"

# 389 BERGEN CONDOMINIUM

389 BERGEN STREET
BROOKLYN, NY 11217
DATE: 5/7/20

REGISTERED ARCHITECT
DOYUN KIM
037267
STATE OF NEW YORK
7/10/2020

## FEE TITLE DESCRIPTION

A “Residential Unit” as hereinafter referred to shall be defined as follows:

> The approximate (within reasonable tolerances) physical dimensions of each Residential Unit consists of the area measured horizontally from the exterior face of the exterior walls to the centerline of walls separating one Residential Unit from corridors, stairs and other mechanical spaces or any common elements (as herein defined). Each Residential Unit will consist of the area measured vertically from the top of the structural slab to the underside (of any fire protection) of the structural members above.

**DECLARATION OF CONDOMINIUM**

**389 BERGEN CONDOMINIUM**
**CONDO #_____**

ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP
OF PREMISES LOCATED AT 389 BERGEN STREET,
BROOKLYN, NEW YORK
BOROUGH OF BROOKLYN
KINGS COUNTY, CITY AND STATE OF NEW YORK,
PURSUANT TO ARTICLE 9-B OF THE REAL PROPERTY
LAW OF THE STATE OF NEW YORK.

DECLARANT: **389 Bergen Street LLC**
132 Mulberry Street
New York, New York 10013

DATE OF DECLARATION:

BLOCK: 930

FKA LOT(S): 59

NKA LOTS:

**CERTILMAN BALIN ADLER & HYMAN, LLP**
Attorneys for the Sponsor
Attn: Richard Herzbach, Esq.
90 Merrick Avenue, 9th Floor
East Meadow, NY 11554

SCHEDULE I

# TABLE OF CONTENTS


| | | Page |
|---|---|---|
| FIRST: | SUBMISSION OF PROPERTY. | 1 |
| SECOND: | DESCRIPTION OF PROPERTY. | 1 |
| THIRD: | DEFINITIONS. | 1 |
| FOURTH: | COMMUNITY/MEASUREMENT OF RESIDENTIAL UNIT. | 4 |
| FIFTH: | COMMON ELEMENTS | 5 |
| SIXTH: | EASEMENTS. | 8 |
| SEVENTH: | SERVICE OF PROCESS: | 13 |
| EIGHTH: | PERCENTAGE OF COMMON INTEREST. | 13 |
| NINTH: | ADMINISTRATION. | 13 |
| TENTH: | AMENDMENTS AND WITHDRAWAL. | 13 |
| ELEVENTH: | SUBJECT TO DECLARATION, BY-LAWS, ETC. | 17 |
| TWELFTH: | COMMON CHARGES. | 17 |
| THIRTEENTH: | RESIDENTIAL UNITS ACQUIRED BY THE BOARD. | 19 |
| FOURTEENTH: | POWER OF ATTORNEY. | 19 |
| FIFTEENTH: | ENCROACHMENTS. | 20 |
| SIXTEENTH: | RESIDENTIAL UNIT OWNERSHIP. | 20 |
| SEVENTEENTH: | USE OF RESIDENTIAL UNITS. | 20 |
| EIGHTEENTH: | CONVEYANCE OF A RESIDENTIAL UNIT. | 20 |
| NINETEENTH: | COVENANT OF FURTHER ASSURANCES. | 20 |
| TWENTIETH: | RULES AND REGULATIONS. | 21 |
| TWENTY-FIRST: | FIRST LIEN HOLDER'S RIGHTS. | 21 |
| TWENTY-SECOND: | SPECIAL RIGHTS OF SPONSOR. | 23 |
| TWENTY-THIRD: | INVALIDITY | 24 |
| TWENTY-FOURTH: | WAIVER | 25 |
| TWENTY-FIFTH: | CAPTIONS | 25 |
| TWENTY-SIXTH: | CERTAIN REFERENCES | 25 |
| TWENTY-SEVENTH: | SEVERABILITY | 25 |
| TWENTY-EIGHTH: | SUCCESSORS AND ASSIGNS | 26 |

| | |
|---|---|
| SCHEDULE A | Legal Description |
| SCHEDULE B | |
| SCHEDULE C | By-Laws of Condominium |

# PLAN OF CONDOMINIUM UNIT OWNERSHIP

DECLARATION OF 389 BERGEN CONDOMINIUM
PURSUANT TO ARTICLE 9-B OF THE REAL
PROPERTY LAW OF THE STATE OF NEW YORK

In the Borough of Brooklyn, Kings County, City and State of New York on this ____ day of _____, 201_, 389 Bergen Street LLC, a New York limited liability company, organized and existing under the laws of the State of New York, with an office situated in New York , New York, hereinafter referred to as the "Declarant" or "Sponsor" represented in this Declaration by Aran Scott, 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 Sponsor 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 Sponsor owns all that certain plot, piece or parcel of land, with the Building and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, Kings County, City and State of New York, and more particularly bounded and described on Schedule A annexed hereto and made a part hereto. The property will consist of three (3) Residential Units and the Common Elements located in a building containing three (3) floors, a cellar and basement. The architect who prepared and certified the Plans is: Doyun Kim, _____.

**THIRD: DEFINITIONS.**

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

1. "Annual Meeting" – The meeting of the Residential Unit Owners of the Condominium held on a yearly basis or such other convenient date as the Board of Managers may designate subsequent to the First Annual Meeting.

2. "Board of Managers" - The governing body of the Condominium responsible for its affairs.

3. "Board Member" or "Member" – Each individual representative elected, designated or appointed to the Board of Managers.

4. “Building” - The one (1) building including the Residential Units and Common Elements of the Condominium.

5. “By-Laws” - The document governing the operation of the Condominium.

6. “Common Charges” - Each Residential Unit Owner’s proportionate share of Common Expenses of the Condominium.

7. “Common Elements” - All portions of the Condominium, other than the Residential Units. The Common Elements are divided as follows:

   (a) General Common elements which are Common Elements shared by all Residential Unit owners; and

   (b) Individual Residential Unit’s Limited Common Elements which are Common Element for the exclusive use of an individual Residential Unit Owner or Owners.

8. “Common Expenses” - (a) Expenses incurred by all Residential 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 to any Individual Residential Unit’s Limited Common Elements that have been delegated to the Condominium pursuant to the Declaration and/or the By-Laws; and (b) All sums designated common expenses by or pursuant to the provisions of the Condominium Act, the Declaration or the By-Laws.

9. “Condominium” – 389 Bergen Condominium which includes the Residential Unit Owners, the Residential Units and the Common Elements and the term “Condominium” as same is used in Article 9-B of the Real Property Law.

10. “Condominium Act” - Article 9-B of the Real Property Law of the State of New York.

11. “Condominium Documents” - The Declaration of Condominium, the By-Laws, the As-Built Floor Plans of the Residential Units and the Condominium Residential Unit Designation Map (as provided in the Condominium Act) as the same may be amended from time to time.

12. “Declarant” or “Sponsor” – 389 Bergen Street LLC, a New York limited liability company and its successors, assigns and designees.

13. “Declaration of Condominium” - The instrument by which the Property is submitted to the provisions of the Condominium Act, as such instrument

may from time to time be amended, consistent with the provisions of the Condominium Act and of the By-Laws.

14. “First Annual Meeting” – The date of the first annual meeting of the Residential Unit Owners as disclosed in the Offering Plan.

15. “First Board of Managers: - The initial Board Members of the Board of Managers appointed by the Sponsor.

16. “Grantee” – The person to whom an interest in real property is conveyed.

17. “Grantor” – The person conveying an interest in real property.

18. “Institutional Mortgage” - 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 Sponsor, its successor, designee or assignee to a purchaser of a Residential Unit or in which the Sponsor, its successor, designee or assignee participates with one of the above.

19. “Officer” – One (1) of the officers of the Condominium chosen by the Board of Managers as provided for in Article IV of the By-Laws of the Condominium including the President, Vice President, Secretary and Treasurer.

20. “Percentage of Common Interest” - The proportionate, undivided interest each Residential Unit Owner has in the Common Elements.

21. “Property” – The overall area of the Condominium as described in Exhibit A.

22. “Rules and Regulations” – The Rules and Regulations contained in Article VIII of the By-Laws as the same may be amended, rescinded, altered, waived or added to by the Board of Managers.

23. “Residential Unit” – A Residential Unit includes all the Residential Units in the Condominium as designated in Schedule B.

24. “Residential Unit Owner” – A Residential Unit Owner includes all the Residential Unit Owners in the Condominium.

25. “Right of First Refusal” – The right of the Board of Managers to match a sale or lease of a Residential Unit as detailed in Article XI of the By-Laws.

26. “Special Assessment” – A Common Expense of the Condominium that is not included in the monthly Common Charges applicable to a Residential Unit.

27. "Special Meeting" – A meeting of the Residential Unit Owners called pursuant to Article II, Section 10 of the By-Laws.

28. "Sponsor Control Period" – The period of time the Sponsor has the right to retain control of the Members of the Board of Managers of the Condominium.

29. "Unsold or Untitled Residential Unit" - Any Residential Unit in which title is retained by the Sponsor and any successors or assigns or designees 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 or designees.

**FOURTH: COMMUNITY/MEASUREMENT OF RESIDENTIAL UNIT.**

**A. Community** - The Sponsor is constructing on the described parcel a Condominium Community known as the 389 Bergen Condominium, according to the plans filed simultaneously with the recording of this Declaration in the New York City Register's Office which plans set forth a description of the Building stating the number of stories and number of Residential Units. The architect who prepared and certified the plans is: Doyun Kim with an address at _____.

The Condominium will consist of two (2) Residential Units in a three (3) story building with cellar.

The structural system consists of existing masonry with metal joists. The exterior wall consists of a layer of gypsum wallboard and metal studs. Each of the Residential Units has access to a public street upon which the Condominium abuts by means of a walk hallway, or lobby. For the purposes of describing the location of the Building, approximate area, type and number of rooms of each Residential Unit and the Common Elements to which each Residential Unit has immediate access, each Residential Unit is described as shown on Schedule B annexed hereto. Each Residential Unit will be sold to one or more Residential Unit Owners, each Residential Unit Owner obtaining fee ownership, together with an undivided Percentage of 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. The designation of the number of rooms, interior partitions and kitchen and bathroom facilities may be changed by mutual consent of the Sponsor and the Residential Unit Owner at the time of construction of the Residential Unit.

The aforesaid Condominium has a plot area of approximately 2,000 square feet.

**B. Measurement of Residential Units –** The approximate physical dimensions of each Residential Unit consists of the area measured horizontally from the exterior side of the exterior wall (columns, mechanical pipes, shafts, shaft ways, chases, chase ways, and conduits are not deducted from measurement of each Residential Unit) to the centerline of the partitions separating one Residential Unit from another Residential Unit, or separating one Residential Unit from corridors, stairs, and mechanical equipment spaces or any Common Elements not within a Residential Unit or to the exterior side of the opposite exterior walls. Each Residential Unit is measured vertically from the top of the concrete floor slab below to the underside of the ceiling. Any Common Element located within a Residential Unit will not be considered a part of such Residential Unit.

## FIFTH: COMMON ELEMENTS

The Common Elements will consist of the entire Property, including all parts of the Condominium and improvements thereon, other than the Residential Units, and will consist of the following:

**1. General Common Elements** – General Common Elements are those shared by all Residential Unit Owners and include all portions of the Condominium except for the individual Residential Units, and the Individual Residential Unit's Limited Common Elements, and include without limitation the following:

a. The land on which the Condominium is erected and all other land within the boundaries of the Property;

b. All portions of the roof, including any gutters and leaders, ladders, parapets, roof drains, flashing, copings and bulkheads, that are not restricted for the exclusive use of Residential Unit #2 located on the 3rd floor as a Limited Common Element and are intended for the common use and service of the entire Building;

c. All exterior walls of the Building;

d. All foundations, footings, columns, girders, beams, supports, floor slabs and ceilings that are not part of a Residential Unit and any interior load bearing walls that are not part of a Residential Unit;

e. Stairs, stairways, common hallways which are not located wholly within a Residential Unit and entrances and exits to and from the Condominium other than entrances to the individual Residential Units:

f. All improved and unimproved areas of the Condominium located outside the boundaries of the Residential Units intended for the common use of the Residential Unit Owners;

g. All central and appurtenant installations for services such as power, light, telephone, television, gas, hot and cold water and heat (including all boilers, pipes, ducts, wires, chutes, cables and conduits used in connection therewith located in the Common Elements) and all other mechanical equipment spaces, including but not limited to refuse rooms, utility meters, telephone and cable rooms and storage areas (as applicable) that are intended for the common use of the Condominium;

h. All drainage systems, sanitary systems, sanitary house lines, house trap, sewers and/or storm sewer, pipes, drywells, or detention tanks or facilities intended for the common use of the Condominium;

i. Any heating, cooling or other mechanical system located in the Common Elements intended for the common use of the Condominium;

j. The fire protection system including standpipes/combined standpipe sprinkler risers, fire hose valve, sprinkler heads and Siamese connections that service the Building;

k. The laundry room located in the cellar intended for the common use of the residents of the Condominium;

l. The powder room located in the cellar for the common use of the residents and employees of the Condominium;

m. The mechanical room located in the cellar for the common use of the residents and employees of the Condominium;

n. Any fire escape located on the exterior of the Building;

o. Any fence on the Property of the Condominium;

p. All tanks, pumps, motors, fans, compressors and control equipment intended for the common use of the Condominium;

q. Any sprinkler system located in the Common Elements and intended for the common use of the Condominium;

r. Any plantings and landscaping intended for the common use of the Condominium;

s. Any pedestrian walkways and ramps intended for the common use and service of the Condominium;

t. All flues, chimneys and vent caps for the common use and service of the Condominium;

u. Any intercom system intended for the common use and service of the Condominium; and

v. All other parts of the Condominium, Building and all apparatus and installations existing in the Building or Property for common use and necessary or convenient to the existence, maintenance or safety of the Condominium.

**2. Irrevocably Restricted Areas/ Individual Residential Unit's Limited Common Elements** - Certain portions of the Common Elements are irrevocably restricted in use to specified Residential Units 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 Elements, no matter how designated, and subject to the Rules and Regulations of the Board of Managers. Said irrevocably restricted Common Elements are also referred to as an Individual Residential Unit's 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 descriptions of the irrevocably restricted Individual Residential Unit's Limited Common Elements:

a. Any hot water tank, boiler, air conditioning condenser, fireplace, heat pumps and any other heating, cooling or other mechanical system exclusively servicing an individual Residential Unit that is located in or on the Common Elements;

b. Any portion of a hot water flue exclusively servicing an individual Residential Unit that is located in the Common Elements;

c. Any deck or terrace appurtenant to a Residential Unit is for the exclusive use of the applicable Residential Unit;

d. The rear yard that is appurtenant to Residential Unit #1;

e. Any portion of the roof that is for the exclusive use of the Residential Unit Owner of Residential Unit #2 located on the 3rd floor of the Building;;

f. 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.

**3. Provisions Applicable to All Common Elements**

a. The Common Elements shall remain undivided and no Residential Unit Owner shall bring any action for partition or division unless otherwise provided by law.

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

c. The Percentage of Common Interest in the Common Elements established herein shall not be changed except with the consent of all of the Residential Unit Owners affected as expressed in a duly recorded amendment to this Declaration.

d. The Percentage of Common Interest in the Common Elements shall not be separated from the Residential Units to which it appertains and shall be deemed conveyed or encumbered with the Residential Units even though such interest is not expressly mentioned or described in the conveyance or other instrument.

**SIXTH: EASEMENTS.**

Every Residential Unit Owner shall have an easement in common with the owners of other Residential Units to maintain and use all mechanical equipment, pipes, sewers and/or drainage lines, wires, conduits and public utility lines located in other Residential Units and/or an Individual Residential Unit's Limited Common Element and servicing such Residential Unit Owner's Residential Unit. Each Residential Unit shall be subject to an easement in favor of the Residential Unit Owners of other Residential Units to maintain and use the pipes, sewers and/or drainage lines, wires, conduits and public utility lines servicing such other Residential Units located in such Residential Unit and/or an Individual Residential Unit's Limited Common Elements. The Board of Managers shall have a right of access to each Residential Unit and/or Individual Residential Unit's Limited Common Elements for maintenance, repair or improvements to any mechanical equipment, pipes, sewers and/or drainage lines, wires, conduits and public utility lines and any other equipment or infrastructure located in any Residential Unit and/or Individual Residential Unit's Limited Common Elements and servicing the Building, the Condominium Property and/or any other Residential Unit or causing damage or in imminent danger of causing damage to the Building, the Condominium Property and/or any other Residential Unit or any Common Element, no matter how classified. The cost of such maintenance, replacement and/or repairs shall be a Common Expense unless any damage was the result of the negligence of a Residential Unit Owner or tenant, occupant, employee or other person a Residential Unit Owner may be responsible for, in which case the cost of such maintenance, replacement and/or repairs shall be the responsibility of the Residential Unit Owner who is responsible or whose tenant, occupant, employee or other person the Residential Unit Owner is responsible for causing such damage. The Board of Managers shall have a right of access to all Common Elements for maintenance, repair, replacement, inspection and/or improvement whether such Common Elements are restricted or not. All mechanical equipment, pipes, sewers and/or drainage lines and wires, conduits and public utility lines located within each Residential Unit for the exclusive use of a Residential Unit shall be maintained by such Residential Unit Owner at the Residential Unit Owner's sole cost and expense. Any portion of such mechanical equipment, pipes, sewers and/or drainage lines and wires, conduits and public utility lines located in the

Common Elements or in an Individual Residential Unit's Limited Common Elements that service two (2) or more Residential Units will be a General Common Element and all maintenance, repairs, improvements and replacement thereto shall be a Common Expense and the responsibility of the Condominium.

The Board of Managers shall have an easement for access to all Common Elements for maintenance, repair or improvement whether such Common Elements are restricted or not.

The Board of Managers and their agents, employees and contractors shall have an easement for access in, over and through the entire Condominium (including all Common Elements, no matter how classified, and the individual Residential Units) to install, utilize, operate, maintain, repair, alter, rebuild, restore and replace any Common Elements, no matter how classified, contained therein or elsewhere in the Condominium or to remedy any condition which would result in damage to any Residential Unit or any other Common Element, no matter how classified, 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 Condominium or for the health and safety of the Condominium and its residents. Such right of access to a Residential Unit and any Individual Residential Unit's Limited Common Element shall be exercised in such a manner as is 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 Residential Units, or the Common Elements (no matter how classified) or for the safety of Condominium residents or other persons or required to avoid the suspension of any necessary service to the Condominium.

Each utility and cable company servicing any mechanical equipment, water pipes, sewer lines, sewer pipes, drainage lines or pipes, gas pipes, electric lines, electric wires, cable lines, cable towers, conduits or any other facility the utility or cable company services in or on the Property of the Condominium, shall have a right of access in, under, over and through the Property of the Condominium (including all Common Elements, no matter how classified and the individual Residential Units) for maintenance, repair, inspections, improvements and/or replacement to any mechanical equipment, water pipes, sewer lines, sewer pipes, drainage lines or pipes, gas pipes, electric lines, electric wires, cable lines, cable towers, conduits or any other facility the utility or cable company services in or on the Property of the Condominium. Access in, under, over and through the Property of the Condominium shall be exercised in such a manner as shall not unreasonably interfere with the use of any Residential Unit for its permitted purposes by its owner, tenants or occupants unless access is immediately necessary for the preservation or safety of the Condominium or its Property, or the Residential Units, or for the safety of Condominium residents or other persons or required to avoid the suspension of any necessary service to the Condominium.

The Board of Managers shall have the right to grant such additional electric, gas, water, sewer, drainage, cable 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 Residential Unit for its permitted purposes. Any utility company and its employees and agents shall have the right of access to any Residential 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 Residential Unit for its permitted purposes by its owner, tenants or occupants.

The Board of Managers shall have the right to grant easements in any portion of the Condominium as the Board of Managers shall deem necessary or desirable for the purpose of installation, maintenance and repair of a satellite dish, cable service or other data or internet services and all ancillary wires, conduits, utility lines and any other services required for a satellite dish, cable service or other data or internet services for the use of the Residential Unit Owners in the Condominium.

The Sponsor shall have the right (without any obligation to obtain the consent of the Board of Managers or any other Residential Unit Owner or other party except as required by law) to grant such additional electric, gas or other utility easements or relocate any existing utility easements in any portion of the Property as Sponsor shall deem necessary or desirable for the proper operation and maintenance of the Condominium or any portion thereof, or for the general health or welfare of the Residential Unit Owners, tenants, and residents of the applicable Residential Units.

The Sponsor, its successors, assigns, and purchasers of undeveloped or unsold Residential Units, reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across all of the Property and the Building comprising the Condominium for the purpose of completing construction, sale and rental of Residential 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 all of the Property and the Building comprising the Condominium 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. The Sponsor, its successors, assigns, and purchasers of undeveloped or unsold Residential 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 on the Property and Building comprising the Condominium. The Sponsor, its successors and assigns, and purchasers of undeveloped or unsold Residential Units, shall have an easement to erect and maintain general sales, leasing, business or administration offices and/or model Residential 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 Property and the Building comprising the Condominium as it deems necessary for the purposes of advertising the sale or lease of Residential Units, and for the purpose of showing the Residential Units to prospective Purchasers or lessees and for access to Residential Units and Common Elements consistent with the purposes of

the Declaration, as the same may be amended, and Sponsor's rights and obligations thereunder, including, without limitation the right to develop, renovate, maintain, repair, refurbish, offer, sell and lease Residential Units, together with their Percentage of Common Interest in the Common Elements. The Sponsor, its successors and assigns reserve the right to continue to use the Common Elements and any facilities, sales offices, model Residential Units and signs located on the Common Elements, in its efforts to sell and/or lease Residential Units constructed in the Condominium and to complete construction or renovation of the Condominium. This paragraph shall not be amended without the consent of the Sponsor.

The Board of Managers shall have an easement in, through, under and over the Residential Units and/or Individual Residential Unit's Limited Common Elements for access, installation, inspection, maintenance, repair and replacement of any flues, vents, air-conditioning, gas, heating, ventilating, water and other mechanical equipment, lines and fixtures and any other machinery, pipes, wires, conduits, equipment or meters servicing any portion of the Condominium.

Sponsor shall have and each Residential Unit Owner shall be deemed to grant a right of access in, under, over and through the Residential Unit and/or Individual Residential Unit's Limited Common Elements to Sponsor or its designee, assignee or successor 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, inspection, replacement, or change being performed or to be performed by or on behalf of Sponsor with respect to the Common Elements, no matter how classified, and/or the Residential Units.

Each Residential Unit Owner grants an easement of ingress and egress in, over and through any hallway that may be part of their Residential Unit to any other Residential Unit Owner, tenant, resident or other persons needing ingress or egress to their respective Residential Unit that may be necessary for said purpose.

The Board of Managers shall have an easement in and through Residential Unit #2 for access to the roof for maintenance or repair and for any other reason the Board of Managers may need access to the roof. The Board of Managers shall provide the Residential Unit Owner of Unit #2 a minimum of three (3) days' notice in the event access to the roof is necessary unless access is required for an emergency or to protect the health and safety of the residents. In such an event no notice is required.

The Board of Managers will have and each Residential Unit will be subject to, an easement (a) to install, utilize, operate, maintain, repair, alter, rebuild, restore and replace the General Common Elements and Individual Residential Unit's Limited Common Elements that have been delegated to and are the obligation of the Condominium to repair, maintain and replace, located in, over, under, through or upon any Residential Unit, or any other Common Elements or elsewhere in the Condominium and (b) to maintain, repair and/or replace any encroachment on any Residential Unit or

Common Elements, no matter how designated, resulting from the repair, alteration, rebuilding, restoration and/or replacement of the General Common Elements or Individual Residential Unit's Limited Common Elements.

Each Residential 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 Residential Unit will be subject to an easement of support and necessity in favor of all other Residential Units and the Common Elements, no matter how designated.

Each Residential Unit will have an easement for lateral and vertical support among all adjoining Residential Units and Common Elements.

Any easements granted to Sponsor, the Board of Managers, any Residential Unit or any Residential Unit Owner under this Declaration and the By-Laws may be exercised by such Sponsor's, Board of Managers' or Residential Unit Owner's employees, agents, contractors, suppliers, customers, guests, invitees, licensees, servants, tenants, subtenants, members, and visitors, as the case may be, to the extent necessary to effectuate the purpose for the easement or as otherwise authorized by the Sponsor, the Residential Unit Owner or Board of Managers.

Each Residential Unit Owner will have a right and easement to use its Residential Unit and the Individual Residential Unit's Limited Common Elements, subject to and in accordance with the terms and conditions of this Declaration and By-Laws.

All Residential Unit Owners, residents, guests, tenants and anyone else needing access to a Residential Unit shall have an easement of ingress and egress, in, through and over the Property of the Condominium, including the Common Elements regardless of how classified for access to their Residential Unit.

The Board of Managers on behalf of the Condominium will have an easement and unlimited access to all Residential Units and to any Individual Residential Unit's Limited Common Elements for the purpose of making inspections, maintenance, repairs and replacement of any General Common Elements and any Limited Common Elements of the Condominium that the Condominium may be responsible to maintain, repair and/or replace.

All emergency vehicles and personnel, including, but not limited to, police, fire and medical vehicles and personnel shall be granted an easement of ingress and egress over, upon and through all areas of the Property. This provision may not be amended by the Residential Unit Owners in the Condominium.

Except as may otherwise be set forth in this Declaration, any easement created or granted hereunder shall be perpetual and irrevocable for so long as the Condominium shall remain in existence.

**SEVENTH: SERVICE OF PROCESS:**

The Board of Managers on behalf of the Condominium designates the Secretary of State of New York as its agent for service. 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 the Secretary of State as agent for service of this Condominium during the period the Sponsor controls the Board of Managers is: c/o 389 Bergen Street LLC, 132 Mulberry Street , New York, New York 10013 Once the Sponsor 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 the Board of Managers as agent of this Condominium is: Board of Managers, 389 Bergen Condominium, 389 Bergen Street, Brooklyn, New York 11217 or such other address as the Board of Managers of the Condominium selects.

**EIGHTH: PERCENTAGE OF COMMON INTEREST.**

Each Residential Unit Owner shall have such Percentage of Common Interest in the Common Elements as is set forth in Schedule B attached hereto and shall be responsible for its pro rata share of the Common Expenses of the Condominium based upon such Percentage of Common Interest except as otherwise described in the Declaration or By-Laws. Each Residential Unit Owner shall have one vote for each Residential Unit owned by a Residential Unit Owner for all voting purposes at any meeting of the Residential Unit Owners. The Percentage of 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 Residential Unit, the availability of Common Elements for exclusive or shared use, and overall dimensions of the particular Residential 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.**

1. 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.

2. The provisions of this Declaration may be modified or amended by an instrument executed by the Board of Managers upon a vote of all of the Residential Unit Owners in number held at a duly-called meeting of the Residential Unit Owners, provided however, that:

a. No amendment altering a Residential Unit Owner's Percentage of Common Interest shall be made without the consent of all Residential Unit Owners affected.

b. No amendment shall be passed which shall affect, impair or prejudice the validity, interest, rights and priorities of mortgagees.

c. 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 Sponsor or its successors, assigns or designees or against any Unsold Residential Unit, as long as the Sponsor, its successors, assigns, or designees owns an Unsold Residential Unit in the Condominium unless the Sponsor, its successors, assigns or designees has given its prior written consent thereto. This provision is not subject to amendment.

d. The Declaration may not be altered, amended or repealed in such a manner as would adversely affect the Sponsor, its successors, assigns or designees without the written consent of the Sponsor, its successors, assigns or designees. This provision is not subject to amendment.

e. The Board of Managers and the Sponsor, as long as the Sponsor owns an Unsold Residential Unit in the Condominium, shall have the right to amend the Declaration without the vote or consent of the Residential Unit Owners or the holders of any Residential Unit mortgages and to execute and record in the New York City Registrar's Office, such amendment as may be required to reflect (i) changes in the Declaration (including Schedule B), As-Built Floor Plans and Condominium or Unit Designation Map that are corrective in nature or (ii) to resolve or clarify any inconsistency or which is patently a mistake or a scrivener's error, or (iii) technical corrections; or (iv) to comply with any federal, state or city law or regulation that may affect the Condominium. In connection therewith, each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest to the Board of Managers of the Condominium and to the Sponsor to amend this Declaration of Condominium for said purposes.

f. In addition, in the case of material changes, approval must be obtained from first mortgage holders representing at least fifty-one

(51%) percent of the votes of Residential Units that are subject to first mortgages. A change to any of the following would be considered as material: voting rights; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the General Common Elements or Individual Residential Unit's Limited Common Elements, or rights to their use; boundaries of any Residential Unit; convertibility of Residential Units into Common Elements or vice versa; expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project; insurance or fidelity bonds; revisions to the leasing provisions of Residential Units contained in Article XI of the By-Laws; imposition of any restrictions on a Residential Unit Owner's right to sell or transfer the Residential Unit Owner's Residential Unit; a decision by the Condominium to establish self-management when professional management had been required previously by an eligible mortgage holder; restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any eligible mortgage holder who received a written request by certified or registered mail, return receipt requested, to approve amendments who does not deliver to the Condominium a negative written response within sixty (60) days of the receipt of the request shall be deemed to have approved such amendment. In order to comply with this provision of the Declaration all Residential Unit Owners are required to provide the Board of Managers with their current mortgage holder when requested by the Board of Managers and whenever a Residential Unit Owner obtains a new mortgage.

There shall be a presumption for a period of eight (8) 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 eight (8) day period such presumption will be deemed conclusive.

3. The Sponsor, its successors, assigns and purchasers of undeveloped or unsold Residential 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 Register's Office of the City of New York, 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 and/or amended As-Built Floor Plans, Condominium or Unit Designation Map 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 and By-Laws 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 Residential Unit, so long as the appurtenant Percentage of Common Interest does not change for said Residential Unit subject to the rights provided in subsections 3 (v), (vii) and (viii) hereof or (v) to amend Schedule B prior to the first closing, to effect a change in the Percentage of Common Interest of all or specific Residential Units and revise Schedule B accordingly or (vi) to amend Schedule B of this Declaration to assign or revise a Residential Unit's Individual Residential Unit's Limited Common Elements appurtenant to another Residential Unit or (vii) to amend Schedule B of this Declaration to consolidate or subdivide Residential Units subject to all necessary approvals by the Building Department of the City of New York, or other municipality or administrative agency, to revise the square footage and type and number of rooms and any other required information for a specified Residential Unit and to change the appurtenant Percentage of Common Interest so long as the new Percentage of Common Interest equals the Percentage of Common Interest of the Residential Units that were consolidated or subdivided, or (viii) to effectuate permissible changes in unsold Residential Units including the Percentage of Common Interest of one (1) or more of the Unsold Residential Units as long as it does not change the Percentage of Common Interest of a sold Residential Unit and to amend Schedule B accordingly, or (ix) to amend Schedule B to make technical corrections to said Schedule including, but not limited to, square footage of Residential Units, assign or revise Individual Residential Unit's Limited Common Elements appurtenant to a Residential Unit or to revise the number and description of rooms contained in a Residential Unit or (x) to make changes or revisions to comply with the requests, guidelines and/or requirements of any major participant in the secondary market for mortgages, including but not limited to, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal Housing Association ("FHA") of the Housing and Urban Development ("HUD"), the Veterans Administration ("VA") and/or any State or Local Funding Agencies, or (xi) to make corrections that are patent errors, inconsistencies, scrivener's errors and technical errors, or (xii) to comply with any federal, state or city law or regulation that may affect the Condominium; or (xiii) the carrying out of other provisions of the Offering Plan of the Condominium. Each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest, to the Sponsor, its successors, assigns and purchasers of undeveloped or unsold Residential Units to amend the Declaration of Condominium for the above purposes.

4. Any amendment to this Declaration shall not take effect until it is recorded in the New York City Register's Office.

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 Residential 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 Residential Units of the Condominium or the mere act of occupancy of any of said Residential 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 Residential Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance or lease thereof. Any and all leases and agreements for rental or use of a Residential Unit shall contain a provision that the tenant or individual and/or entity entering into the lease and/or any other agreement for use of a Residential Unit shall accept and abide by the provisions of the Declaration, By-Laws and Rules and Regulations of the Condominium.

**TWELFTH: COMMON CHARGES.**

Common Expenses of the Condominium shall be determined by the Board of Managers of the Condominium. The Common Expenses of the Condominium shall be assessed to and paid by the Residential Unit Owners of the Residential Units based upon each Residential Unit's Percentage of Common Interest as reflected in Schedule B of this Declaration, except as provided below pursuant to Section 339-m of the Condominium Act. The assessments paid by the Residential Unit Owners towards the Common Expenses of the Condominium shall be referred to as "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 Residential Unit Owner shall constitute a lien on the Residential Unit Owner's Residential Unit prior to all other liens except: (a) tax or assessment liens on the Residential Unit by the taxing subdivisions of any governmental authority, including but not limited to State and City taxing agencies; and (b) all sums unpaid on any first mortgage of record encumbering any Residential 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 Residential 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 Residential Unit

Owners as a Common Expense. Each Residential Unit Owner shall be personally liable for all unpaid Common Charges and any Special Assessments.

Notwithstanding the above, pursuant to Section 339-m of the Condominium Act, Common Charges, no matter how classified, may be adjusted based on allocations in accordance with sub-metering, contract allocations and usage (both projected and actual) for the Common Expenses based on special or exclusive use or availability or exclusive control of particular Residential Units or Common Elements by particular Residential Unit Owners. In the event of any dispute as to the allocation of Common Charges such dispute shall be submitted for arbitration pursuant to the provisions of Article XII of the By-Laws of the Condominium.

In addition to the Board's right to bring an action to foreclose a lien on a Residential Unit Owner's Residential Unit, the Board (on behalf of the Residential 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 costs of suit including reasonable attorneys' fees.

In addition to the Board's right to bring an action to foreclose a lien on a Residential Unit Owner's Residential Unit, the Board (on behalf of the Residential 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 costs of suit including reasonable attorneys' fees.

Every Residential Unit Owner shall pay the Common Charges assessed against the Residential Unit Owner when due as determined by the Board of Managers and no Residential Unit Owner may be exempt from liability for the payment of the Common Charges assessed against the Residential Unit Owner by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of a Residential Unit. No person or entity who is a Residential Unit Owner shall be liable for the payment of any Common Charges accruing subsequent to a sale, transfer or other conveyance by the Residential Unit Owner of such Residential 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.

Notwithstanding any other provision in this Declaration or the By-Laws any mortgagee of an Institutional Mortgage as defined herein who obtains title to a Residential Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Residential Unit's unpaid Common Charges accrued before acquisition of the title to the Residential Unit by the mortgagee unless otherwise required by law. If the Condominium's lien priority includes costs of collecting unpaid Common Charges, the mortgagee of the Institutional Mortgage will be liable for any fees or costs related to the collection of unpaid Common Charges. The unpaid balance of such Common Charges and/or Special Assessments that may be waived will be charged to all other Residential Unit Owners as a Common Expense. Upon

acquisition of title the Institutional Mortgagee shall be responsible for all Common Charges, Special Assessments and/or any other costs and expenses of the Condominium thereafter due and payable.

**THIRTEENTH: RESIDENTIAL UNITS ACQUIRED BY THE BOARD.**

In the event any Residential Unit Owner shall convey their Residential 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 Residential Unit at a foreclosure sale in accordance with Article IX of the By-Laws, title to such Residential Unit or the rights to the lease of such Residential Unit shall be held by the Board of Managers or its designee on behalf of all of the other Residential Unit Owners.

**FOURTEENTH: POWER OF ATTORNEY.**

1. In order to carry out the provisions of Article Thirteenth of the Declaration and Article XI of the By-Laws, each Residential 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 Residential Unit acquired by the Board of Managers under whatever terms the Board of Managers may in its sole discretion deem proper and to sell, lease, sublease, mortgage, vote or otherwise deal with such Residential Unit under such terms as the Board of Managers, in its sole discretion, shall deem proper.

2. Each Residential Unit Owner shall upon becoming a Residential Unit Owner shall 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 the Residential Unit Owner's behalf to take any and all action necessary against any tenant(s) that may be residing in a Residential Unit Owner's 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.

3. Each Residential Unit Owner shall, upon becoming such, shall be deemed to have granted an irrevocable power of attorney, coupled with an interest to the Board of Managers, the Sponsor and their successors, designees and/or assigns to amend the Declaration and the By-Laws for the purposes set forth in Article Tenth, Section 2 (e) of the Declaration and Article X, Sections (c) and (f) of the By-Laws for the purposes set forth therein.

**FIFTEENTH: ENCROACHMENTS.**

The Residential Unit Owners agree that if any portion of a Residential Unit or the Common Elements (no matter how classified) 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 Residential Unit Owners agree that encroachments of any portion of the Residential Unit or the Common Elements 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: RESIDENTIAL UNIT OWNERSHIP.**

Upon the conveyance of title ,via deed or otherwise, to a Residential Unit a Purchaser shall automatically become a Residential Unit Owner in the Condominium and shall remain such until such time as the Residential Unit Owner ceases to own the Residential Unit for any reason.

**SEVENTEENTH: USE OF RESIDENTIAL UNITS.**

Residential Units shall be restricted to Residential Occupancy in accordance with the applicable zoning and use regulations and requirements of the City of New York.

**EIGHTEENTH: CONVEYANCE OF A RESIDENTIAL UNIT.**

In any conveyance of a Residential Unit, either by voluntary instrument, operation of law or judicial proceeding in accordance with this Declaration or the By-Laws, the Grantee of the Residential Unit shall be jointly and severally liable with the Grantor for any unpaid Common Charges and any Special Assessments 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 therefore. 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 Residential 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 the holder of an Institutional Mortgage as provided in Article Twelfth of this Declaration.

**NINETEENTH: COVENANT OF FURTHER ASSURANCES.**

If any Residential 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 a reasonable period of time to be determined by the Board of Managers after request thereof, to take any action which the Residential 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 Residential 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 Residential Unit Owner, or other party and such document or action shall be binding on such Residential Unit Owner or other party.

If any Residential 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 a reasonable period of time to be determined by the Board of Managers after request therefor, to take any action that the Board of Managers, any Residential Unit Owner, or other party is required to take pursuant to this Declaration at the request of Sponsor or Sponsor's designee, then Sponsor or Sponsor's designee, as the case may be, is hereby authorized as attorney-in-fact for the Board of Managers, such Residential 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 Residential Unit Owner, or other party, and such document or action shall be binding on the Board of Managers, such Residential Unit Owner, or other party, as the case may be.

Each Residential Unit Owner will have the affirmative duty to maintain its respective Residential Unit in such a manner so as to reasonably prevent and avoid inflicting harm to other Residential Units, the Common Elements (no matter how classified) or the Building. In addition to any other remedies and/or rights the Board of Managers may have in this Declaration, the By-Laws and/or the Rules and Regulations of the Condominium, in the event any Residential Unit Owner causes or permits any condition, or fails to take any action to prevent a condition, that has a deleterious effect on another Residential Unit, any Common Element (no matter how classified) or the Building, the Condominium Board will give written notice to such Residential Unit Owner including a request that the Residential Unit Owner take specific steps to ameliorate such a condition ("Remedy Notice"). If the Residential Unit Owner fails to remedy the condition within a reasonable period of time as provided in such Remedy Notice, the Board of Managers may, upon additional notice to the Residential Unit Owner within a reasonable period of time to be determined by the Board of Managers, enter into the Residential Unit and effect a reasonable remedy, at the Residential Unit Owner's sole cost and expense.

**TWENTIETH: RULES AND REGULATIONS.**

The use of the Residential Unit by the Residential 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 contained in Article VIII of the By-Laws as they may be amended, rescinded, modified, altered, waived or repealed pursuant to the provisions of Article VIII of the By-Laws.

**TWENTY-FIRST: FIRST LIEN HOLDER'S RIGHTS.**

1. 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 Residential Unit number), shall be entitled to timely written notice of:

a. Any proposed amendment of the Condominium instruments effecting a change in (i) the boundaries of any Residential Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the General Common Elements, Individual Residential Unit's Limited Common Elements appertaining to any Residential Unit, Residential Units or the liability for Common Expenses appertaining thereto, (iii) the number of votes in the Condominium appertaining to any Residential Unit or (iv) the purposes to which any Residential Unit or the Common Elements are restricted;

b. Any proposed termination of the Condominium regime;

c. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Residential Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;

d. Any delinquency in the payment of assessments or charges owed by a Residential Unit Owner of a Residential Unit subject to the mortgage of such eligible holder, insurer or guarantor, which such delinquency has continued for a period of eight (8) days;

e. Any lapse, cancellation or material modification of any insurance policy maintained by the Condominium; and

f. Any proposed action that requires the consent of a specified percentage of mortgagees.

2. 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:

a. 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 Residential Units to which at least fifty-one percent (51%) of the votes of Residential Units eligible to vote that are subject to mortgages held by such eligible holders are allocated, is obtained;

b. Any election to terminate the Condominium regime after substantial destruction or a substantial taking in condemnation of the Property

must require the approval of the eligible holders of first mortgages on Residential Units to which at least fifty-one percent (51%) of the votes of Residential Units eligible to vote that are subject to mortgages held by such eligible holders are allocated; and

c. 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 Residential Units to which at least eighty (80%) percent of the votes of Residential Units eligible to vote that are 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 Residential Unit in a Condominium which has requested notice in accordance with the provisions of (a) above.

**TWENTY-SECOND: SPECIAL RIGHTS OF SPONSOR.**

Notwithstanding anything to the contrary contained herein, Sponsor, its successors, assignees and/or designees shall have, in addition to any rights granted elsewhere contained in the Declaration, By-Laws and/or Rules and Regulations, shall have the right, without requiring the consent of either the Condominium or Board of Managers, and without charge or limitation, the following rights:

1. The right to have its employees, contractors, subcontractors and sales agents present on the properties and to make improvements to the Condominium.

2. The right to 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 Residential Units or any other property, development or community the Sponsor, its successors, assigns or designees so prescribe for the life of the Condominium.

3. The right to use any one or more Residential Units as:

   a. model Residential Units,

   b. offices for the promotion, sale, rental, management and/or operation of any unsold Residential Units,

c. 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, Sponsor with respect to the Common Elements and/or the Residential Units; or any unsold Residential Units; and/or

d. for any other purpose.

4. The right to use any office in the Condominium for its exclusive use until such time as Sponsor no longer owns any Residential Units in the Condominium.

5. The right to 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, including any recreation facilities, the Residential Units and any unsold Residential Units) for the purpose of:

a. the promotion, sale, rental, management and/or operation of any unsold Residential Units,

b. 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, Sponsor with respect to the Common Elements, and/or

c. the exercise performance and discharge of Sponsor's other rights and obligations under this Declaration, the By-Laws and/or the Rules and Regulations.

6. The right to make any other changes required by the Building Department of the City of New York or any other agency of the City of New York or other municipal or administrative agency.

In no event, however, shall Sponsor 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 Residential Unit for its permitted purposes.

The provisions of this Article Twenty-Second cannot be amended without the written consent of the Sponsor, or its designees, 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.

**TWENTY-FOURTH: WAIVER**

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**TWENTY-FIFTH: CAPTIONS**

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

**TWENTY-SIXTH: CERTAIN REFERENCES**

A reference in this Declaration to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural and vice versa, unless the context otherwise requires.

The terms “herein”, “hereof”, or “hereunder” or similar terms in this Declaration refer to this entire Declaration and not to the particular provision in which the terms are used, unless the context otherwise requires.

Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of this Declaration or the By-Laws.

**TWENTY-SEVENTH: SEVERABILITY**

If any provision of this Declaration or the application thereof to any person, entity or circumstance, is determined to be invalid or unenforceable to any extent, the remainder of this Declaration, and the application of such provision to persons, entities or circumstances other than those as to which it is specifically determined to be invalid or unenforceable, shall not be affected thereby, and each provision of this Declaration shall be valid and enforced to the fullest extent permitted by law, provided that under all circumstances, the provisions hereof are required to be interpreted and applied so that there will be no adverse effect on Declarant or any other person governed by or otherwise affected by this Declaration in any material respect as a result of any invalidity or unenforceability referred to above in this Article Twenty-Seventh.

**TWENTY-EIGHTH: SUCCESSORS AND ASSIGNS**

Except as set forth in the Declaration or in the By-Laws to the contrary, the rights and/or obligations of Sponsor, its successor, assignee or its designee as set forth herein shall inure to the benefit of and be binding upon any successor, assignee or designee of Sponsor with the consent of Sponsor or its successor, assignee or designee, any transferee of some or all of the Unsold Residential Units then owned by Sponsor or its successor, assignee or designee, as the case may be. Subject to the foregoing, Sponsor, its successor, assignee and its designee shall have the right, at any time, in their sole discretion, to assign or otherwise transfer their respective interests herein, whether by sale, merger, consolidation, lease, assignment or otherwise.

**389 Bergen 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 (s)he executed the same in his/her capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

_____
NOTARY PUBLIC

## SCHEDULE A TO THE DECLARATION

Condo #

Block: 930 FKA Lot: 59 NKA Lots:

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

BEGINNING at a point on the Northerly side of Bergen Street, distant 333 feet 4 inches Westerly from the corner formed by the Northerly side of Bergen Street with the Westerly side of 5th Avenue;

RUNNING THENCE Northerly parallel with 5th Avenue and part of the distance through a party wall, 100 feet;

THENCE Westerly parallel with Bergen Street, 20 feet;

THENCE Southerly again parallel with 5th Avenue and part of the distance through a party wall, 100 feet to the Northerly side of Bergen Street;

THENCE Easterly along the Northerly side of Bergen Street, 20 feet to the point or place of BEGINNING.

# SCHEDULE B TO THE DECLARATION

389 Bergen Condominium
389 Bergen Street
Brooklyn, New York 11217

Condo #

Block: 930 FKA Lot: 59 NKA Lots:

| Unit Number | Tax Lot Number | Floor Location | Total Square Footage of Residential Unit | Terrace Square Footage as a Limited Common Element | Deck Space Square Footage as a Limited Common Element | Rear Yard Sq. Footage as a Limited Common Element | Roof Top Sq. Footage as a Limited Common Element | Percentage of Common Interest | Type and Number of Rooms |
|---|---|---|---|---|---|---|---|---|---|
| 1 | | Cellar<br>Basement<br>First Floor | 2,036 | 0 | 199 | 816 | 0 | 58% | 4 Bedrooms, 2 full baths and 2 half baths |
| 2 | | Second Floor<br>Third Floor | 1,958 | 160 | 0 | 0 | 277 | 42% | 3 Bedrooms, 2 full baths and 1 half bath |
| **Total 2 Units** | | | **3,994** | **160** | **199** | **816** | **277** | **100%** | |

# BY-LAWS

# OF

# 389 BERGEN CONDOMINIUM

**CERTILMAN BALIN ADLER & HYMAN, LLP**
Attorneys for the Sponsor
Attn: Richard Herzbach, Esq.
90 Merrick Avenue, 9th Floor
East Meadow, New York 11554

**SCHEDULE C TO THE DECLARATION OF CONDOMINIUM**

SCHEDULE J

# BY-LAWS
# OF
# 389 BERGEN CONDOMINIUM

## TABLE OF CONTENTS

**Page**

***389 BERGEN CONDOMINIUM ..... I***

***ARTICLE I. PLAN OF CONDOMINIUM OWNERSHIP ..... 1***
Section 1. Condominium Residential Unit Ownership. ..... 1
Section 2. By-Laws Applicability. ..... 1
Section 3. Personal Application. ..... 1
Section 4. Definitions. ..... 1

***ARTICLE II. CONDOMINIUM, VOTING, QUORUM, PROXIES AND WAIVERS ..... 1***
Section 1. Condominium Residential Unit Owners. ..... 1
Section 2. Voting. ..... 2
Section 3. Quorum. ..... 2
Section 4. Vote Required to Transact Business. ..... 2
Section 5. Right to Vote. ..... 2
Section 6. Proxies. ..... 3
Section 7. Waiver and Consent. ..... 3
Section 8. Place of Meetings. ..... 3
Section 9. Annual Meetings/Control of Board of Managers by Declarant. ..... 3
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. ..... 7
Section 3. Removal. ..... 7
Section 4. Resignation. ..... 7
Section 5. Suspension ..... 8
Section 6. First Board of Managers. ..... 8
Section 7. Powers. ..... 8
Section 8. Repairs and Maintenance. ..... 13
Section 9. Compensation. ..... 17
Section 10. Meetings. ..... 17
Section 11. Annual Statement. ..... 18
Section 12. Fidelity Bonds. ..... 19
Section 13. Management Agent. ..... 19
Section 14. Liability of the Board of Managers, Officers and Residential Unit Owners. ..... 19
Section 15. Annual Reports Required By Section 519A of the Not-For Profit Corporation Law. ..... 20

***ARTICLE IV. OFFICERS ..... 21***
Section 1. Elective Officers. ..... 21
Section 2. Election. ..... 21
Section 3. Appointive Officers. ..... 22
Section 4. Term. ..... 22
Section 5. The President. ..... 22
Section 6. The Vice-President. ..... 22
Section 7. The Secretary. ..... 22
Section 8. The Treasurer. ..... 23
Section 9. Agreements, etc. ..... 23

***ARTICLE V. NOTICES ..... 23***
Section 1. Definition. ..... 23
Section 2. Service of Notice Waiver. ..... 23

***ARTICLE VI. FINANCES ..... 24***
Section 1. Checks. ..... 24
Section 2. Assessments. ..... 24
Section 3. Purpose of Common Charges ..... 26
Section 4. Foreclosures of Liens for Unpaid Common Charges ..... 26
Section 5. Statement of Common Charges. ..... 27
Section 6. Liability for Utilities. ..... 27
Section 7. Operating Account. ..... 27
Section 8. Other Accounts. ..... 27
Section 9. Determination of Common Expenses and Fixing of Common Charges. ..... 27

***ARTICLE VII. INSURANCE AND INSURANCE TRUSTEE ..... 28***
Section 1. Insurance to be Carried by the Board of Managers. ..... 28
Section 2. The Insurance Trustee. ..... 31
Section 3. Restoration or Reconstruction After Fire or Other Casualty. ..... 31
Section 4. Residential Unit Owner Insurance. ..... 32
**Section 5. General.** ..... 32

***ARTICLE VIII. RULES AND REGULATIONS ..... 32***
Section 1. General. ..... 32
Section 2. Smoking Policy. ..... 44
Section 3. Violations of Rules and Regulations. ..... 45
Section 4. Costs. ..... 46
Section 5. Board of Managers Right to Change Rules and Regulations. ..... 47
Section 6. Sponsor. ..... 47
Section 7. Complaints ..... 47

***ARTICLE IX. DEFAULT ..... 47***

***ARTICLE X. AMENDMENTS ..... 48***

***ARTICLE XI. SELLING, MORTGAGING AND LEASING RESIDENTIAL UNIT ..... 50***
Section 1. Selling and Leasing Residential Units. ..... 50
Section 2. Right of First Refusal ..... 51

Section 3. Release or Waiver by Board of Managers of the Right of First Refusal. 54
Section 4. Certificate of Termination of Right of First Refusal. 54
Section 5. Financing of Purchase of Residential Unit by Board of Managers. 54
Section 6. Exceptions. 55
Section 7. Leasing Requirements for Residential Units. 55
Section 8. Waiver of Partition Rights. 57
Section 9. Gifts, etc. 58
Section 10. Tenant Bound by Declaration. 58
Section 11. Lenders. 58
Section 12. Sponsor. 58
Section 13. Section 339-kk of the Real Property Law. 58

***ARTICLE XII. ARBITRATION 59***
Section 1. Procedure. 59
Section 2. Variation by Agreement. 59
Section 3. Binding Effect. 59
Section 4. Costs and Expenses 59

***ARTICLE XIII. CONDEMNATION 59***

***ARTICLE XIV. SPONSOR RIGHTS 60***
Section 1. Sales/Rentals. 60
Section 2. Signs/Ingress/Egress 60
Section 3. Additional Rights 61
Section 4. Amendment 61

***ARTICLE XV. MISCELLANEOUS 61***
Section 1. Severability. 61
Section 2. Notice to Condominium. 61
Section 3. Notice of Unpaid Assessments. 61
Section 4. Examination of Books and Records 61
Section 5. Costs of Legal Action 61
Section 6. Reports to Residential Unit Owners 62
Section 7. Construction. 62
Section 8. Compliance with Article 9-B. 62

# BY-LAWS

# OF

# 389 BERGEN CONDOMINIUM

## ARTICLE I. PLAN OF CONDOMINIUM OWNERSHIP

### Section 1. Condominium Residential Unit Ownership.

The property located at 362 13th Street, Kings County, City and State of New York, as specifically set forth in the Declaration and more commonly known as 389 Bergen 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 Residential Units, (hereinafter referred to as "Residential Units") and the Common Elements and the use and occupancy thereof.

### Section 3. Personal Application.

All present or future Residential 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 Residential Units or the mere act of occupancy of any of said Residential 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 stated.

## ARTICLE II. CONDOMINIUM, VOTING, QUORUM, PROXIES AND WAIVERS

### Section 1. Condominium Residential Unit Owners.

The Condominium shall consist of the Residential Units and Common Elements. The Declaration, By-Laws and Rules and Regulations shall be applicable to the Residential Unit Owners. "Residential Unit Owner" as referred to herein shall mean the owner of a Residential Unit. The owners of the Residential Units shall hereinafter be referred to as Residential Unit Owners.

**Section 2.** **Voting.**

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 Residential Units), shall be entitled to cast one vote at all Residential Unit Owners' meetings for each Residential Unit owned by such Residential Unit Owner subject to the restrictions contained herein, including the provisions regarding the election of Members to the Board of Managers as provided in Article III, Section 1 of these By-Laws. In the event the Board of Managers acquires a Residential Unit on behalf of the Condominium it shall not cast any of its votes appurtenant to such Residential Unit, for the election of any Member to the Board of Managers. Any Residential Unit Owner in default of their Common Charges, Special Assessments, late fees or any other penalties imposed by the Board of Managers applicable to said Residential Unit Owner's Residential Unit shall be prohibited from voting at any annual, general or Special Meeting of the Residential Unit Owners.

**Section 3.** **Quorum.**

So many Residential Unit Owners as shall represent all 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 Residential Unit Owners for the transaction of business, except as otherwise provided by Statute, by the Declaration, or by these By-Laws.

**Section 4.** **Vote Required to Transact Business.**

When a quorum is present at any meeting, the vote of all 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 Residential 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 Residential 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. Any Residential Unit Owner in default of their Common Charges, Special Assessments, late fees or any other penalties imposed by the Board of Managers applicable to said Residential Unit Owner's Unit shall be prohibited from voting at any annual or Special Meeting of the Residential Unit Owners.

**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 or for an amendment to the Declaration or 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 Declarant.**

The Sponsor will have voting control and may designate all the Members of the Board of Managers of the Condominium until all of the Residential Units in the Condominium have been sold or transferred to Residential Unit Owners other than the Sponsor, its Principals, successors, assignees and/or designees ("Sponsor Control Period"). The initial Board of Managers will call for the First Annual Meeting of the Residential Unit Owners to elect a new Board of Managers within a reasonable period after the Sponsor Control Period. Notwithstanding the First Board of Managers as defined in Article III, Section 1 of these By-Laws shall have the right to call for the First Annual Meeting prior thereto. At the First Annual Meeting, the Members of the Board of Managers shall be elected by the Residential Unit Owners. The Sponsor shall have the right to voluntarily resign a position on the Board of Managers as per the provisions of Article III, Section 1 of these By-Laws. In the event the Board of Managers calls for the First Annual Meeting prior to the expiration of the Sponsor Control Period and the Sponsor still retains one (1) or more Residential Units the Sponsor shall have the right to designate one (1) Member to the Board of Managers After the First Annual Meeting the annual meetings shall be held on or about the anniversary of such date each succeeding year or such other convenient date as the Board of Managers may so designate (the "Annual Meeting"). At such Annual 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.

In the event the Sponsor voluntarily relinquishes control of the Board of Managers prior to sale of all Residential Units the Sponsor will be entitled to designate one (1) member to the Board of Managers until the Sponsor no longer owns any Residential Units in the Condominium. When the Sponsor no longer owns a Residential Unit in the Condominium, Sponsor may not be entitled to designate any Member to 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 one 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 entitled to vote 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 Members of the Board of Managers of the Condominium, other than those designated by the Sponsor, may be removed with or without cause by vote of all the Residential Unit Owners of the Condominium at a Special Meeting called pursuant to this section if the meeting is called for such purpose. Sponsor designated Members of the Board of Managers may only be removed by the Sponsor without cause.

**Section 11.** **Notice of Meetings.**

It shall be the duty of the Secretary or other designated agent the Board of Managers to provide written notice of the place, date and hour of each annual or Special Meeting, stating the purpose thereof at least ten (10) but not more than thirty (30) days prior to such meeting. A copy of the notice of any meeting shall be given, personally, by first class mail, facsimile telecommunications or by electronic mail to each Residential Unit Owner entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the Residential Unit Owner at the Residential Unit Owner's address as it appears on the record of Residential Unit Owners or, if the Residential Unit Owner shall have filed with the Secretary or designated agent a written request that notices to the Residential Unit Owner be mailed to some other address, then such notice shall be directed to the Residential Unit Owner's designated address. If the notice is sent by facsimile telecommunication or mailed electronically, such Notice is given when directed to the Residential Unit Owners fax number or electronic mail address as it appears on the record of the Residential Unit Owners, or, to such fax number or other electronic mail

address as filed with the Secretary or designated agent. Notwithstanding the foregoing, such Notice shall not be deemed to have been given electronically (1) if the Secretary or designated agent of the Board of Managers is unable to deliver two consecutive Notices to the Residential Unit Owner by facsimile telecommunication or electronic mail; or (2) the Secretary or the designated agent of the Board of Managers otherwise becomes aware that Notice cannot be delivered to the Residential Unit Owner by facsimile telecommunication or electronic mail.

**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)
(g) Election of Members (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 initial Board of Managers shall consist of two (2) Members designated by the Sponsor (the "First Board of Managers") who shall hold office and exercise all powers of the Board of Managers until the First Annual Meeting of the Residential Unit Owners. Unless called for sooner by the First Board of Managers, the First Annual Meeting shall occur within a reasonable period of time after the Sponsor Control Period.

Until succeeded by the Members elected at the First Annual Meeting of Residential 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.

At the First Annual Meeting of Residential Unit Owners called pursuant to Section 9 of Article II a total of two (2) Members shall be elected or designated. All Members, other than those the Sponsor can designate, shall be elected by the Residential Unit Owners. The term of office of each of the Members shall be fixed at one (1) year.

Each Residential Unit Owner shall be entitled to cast one vote for each Member to be elected to the Board of Managers. At the expiration of the initial term of office of each respective Member, their successor shall be elected to serve a term of one (1)

year. The Members shall hold office until their successors have been elected and hold their first meeting.

Any Residential Unit Owner in default of the payment of Common Charges, Special Assessments, late fees, interest and/or penalties shall be ineligible to be elected to the Board of Managers and/or vote at any general, Annual or Special Meeting.

The Sponsor shall have the right to designate the Members of the Board of Managers until the expiration of the Sponsor Control Period. This Section may not be amended without the written consent of Sponsor.

In addition to the Members designated by the Sponsor, as long as Sponsor retains an unsold Residential Unit in the Condominium, Sponsor may vote as Sponsor so determines for any other Members, so long as the Members are not on Sponsor's slate of Members for the Board of Managers, Sponsor's payroll or as long as they did not receive other financial backing from the Sponsor other than any mortgage that may be held by the Sponsor or affiliated entity of the Sponsor, if applicable.

Sponsor is entitled to designate all the Members to the Board of Managers during the Sponsor Control Period. Sponsor Members shall be appointed for a one (1) year term. At the expiration of the Sponsor Member terms, if Sponsor is still entitled to nominate Members to the Board of Managers, the Sponsor Members shall thereafter continue to be appointed as Members for one (1) year terms until the Sponsor is required to relinquish the position or Sponsor voluntarily resigns the position. When the designated Members of the Board of Managers of the Sponsor are required to relinquish their position on the Board of Managers the Sponsor will call for the First Annual Meeting of the Residential Unit Owners as per the provisions of Article II, Section 9 of these By-Laws. The Sponsor shall have the right to voluntarily resign a position on the Board of Managers. In such an event the Board of Managers will either (a) call for a Special Meeting of the Residential Unit Owners pursuant to the provisions of Article II, Section 10 of these By-Laws to elect a Residential Unit Owner for the balance of the Sponsor Member term or (b) the remaining Members of the Board of Managers will appoint a Residential Unit Owner to the Board of Managers for the balance of the Sponsor Member term. At the expiration of the term the Residential Unit Owners shall have a meeting to elect a Residential Unit Owner to a one (1) year term. Notwithstanding the aforementioned, in the event the Sponsor voluntarily relinquishes a position on the Board of Mangers before the Sponsor is obligated to do so, upon notice from the Sponsor to the Board of Managers that the Sponsor desires to reclaim said position the Member appointed or elected to said position shall resign and the Sponsor shall reappoint a Member to the Board.

This Section may not be amended without the written consent of the 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, the one remaining Member of the Board of Managers, though less than a quorum, at a Special Meeting of the Members of the Board of Managers 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. At such meeting the remaining Member(s) of the Board of Managers shall be entitled to vote for said Member's successor or successors. In the event of the failure to hold any election of the Members of the Board of Managers at the time designated for the annual election of the Members of the Board of Managers or in the event that the Members of the Board of Managers shall not have filled any such vacancy, a Special Meeting of the Residential Unit Owners to elect new Members to the 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 Residential Unit Owners in Article II, Section 10 of these By-Laws. If the vacancy occurs with respect to any Member of the Board of Managers who has been designated by the Sponsor, only the Sponsor shall have the right to choose such Member's successor to fill the unexpired portion of the term. In addition, the Sponsor shall have the right to substitute the Members of the Board of Managers it has designated at Sponsor's discretion.

The Board of Managers shall also have the right to call for a Special Meeting in accordance with Article II, Section 10 to elect a Member's successor to fill the unexpired portion of the term of office.

**Section 3.** **Removal.**

Members, other than Sponsor designees, may be removed with or without cause by an affirmative vote of all of the Residential Unit Owners entitled to vote at a Special Meeting called pursuant to Article II, Section 10 of these By-Laws. Members designated by the Sponsor may only be removed by the Sponsor. No Member other than a Member designated by the Sponsor shall continue to serve on the Board of Managers if, during their term of office, they shall cease to be a Residential Unit Owner. In the event a Sponsor designee Member is removed, the Sponsor shall have the sole right to designate the Sponsor Member replacement.

Any Member of the Board of Managers in default of the payment of Common Charges, Special Assessments, late fees, penalties and/or interest shall be suspended from the Board of Managers until all Common Charges, Special Assessments, late fees, penalties and/or interest are paid in full to the Condominium.

**Section 4.** **Resignation.**

Any Member may resign at any time by written notice delivered in person or sent by certified registered mail to an Officer 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.** **Suspension**

Any Member of the Board of Managers in default of the payment of Common Charges, Special Assessments, together with late charges, interest and expenses shall be suspended from the Board of Managers until all Common Charges, Special Assessments, together with late charges, interest and expenses, if any, are paid in full to the Condominium.

**Section 6.** **First Board of Managers.**

The First Board of Managers shall consist of two (2) Members appointed by the Sponsor who shall hold office and exercise all powers of the Board of Managers until the First Annual Meeting of Residential Unit Owners. Any or all of said Members shall be subject to replacement at the sole discretion of the Sponsor and/or in the event of resignation or death in the manner set forth in Section 2 of this Article.

**Section 7.** **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 Residential Unit Owners personally. These powers shall specifically include, but not be limited to, the following items:

1. Determine and levy monthly assessments ("Common Charges") to cover the cost of Common Expenses. The Common Charges are payable in advance as determined by the Board of Managers. The Board of Managers may increase the monthly Common Charges or vote a Special Assessment in excess of the Common Charges, if required, to meet any additional necessary Common Expenses, but said increases can only be assessed among the Residential Unit Owners pro-rata according to their respective Percentage of Common Interest as reflected in Schedule B of the Declaration of Condominium or in such other manner as provided in Article VI, Section 9 of these By-Laws.

2. Determine and impose penalties, late fees and interest against Residential Unit Owners delinquent in the payment of their Common Charges and to revise the amount of such fees as the Board of Managers so determines.

3. Determine and impose move in and move out fees and to revise said fees in its good faith discretion.

4. Collect, use, and expend the Common Charges collected to maintain, care for and preserve the General Common Elements, and Individual Residential Unit's Limited Common Elements that have been designated to the Condominium to repair, replace and maintain and any other Common Expenses of the Condominium.

5. Make repairs, restore or alter any Residential Unit or the Common Elements after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

6. Enter in and upon the Residential Units when necessary and at as little inconvenience to the Residential Unit Owners as possible in connection with the maintenance, care, and preservation of the property, including any inspection or repairs necessitated by mold. 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 Residential Units, or for the safety of Condominium residents or other persons or required to avoid the suspension of any necessary service to the Condominium. Any repairs required as the result of negligence of a Residential Unit Owner will be at the expense of the Residential Unit Owner.

7. Open bank accounts on behalf of the Condominium and to designate the signatories to such bank accounts.

8. Insure and keep insured the Common Elements and Residential Units in accordance with Article VII of these By-Laws.

9. Collect delinquent Common Charges, Special Assessments, late fees, penalties and/or interest by suit or otherwise, to abate nuisances and to enjoin or seek damages from the Residential Unit Owners of the Condominium for violations of the Declaration, By-Laws or the Rules and Regulations of the Condominium.

10. Make reasonable Rules and Regulations applicable to all Residential Units and all Residential Unit Owners and to amend the same from time to time, and such Rules and Regulations and amendments shall be binding upon all the Residential Unit Owners when the Board of Managers has approved them in writing. A copy of such Rules and Regulations and all amendments shall be delivered to each Residential Unit Owner.

11. 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 herein above set forth.

12. Bring and defend actions by or against one (1) or more Residential Unit Owners that are pertinent to the operation of the Condominium and to levy Special Assessments to pay for the cost of such litigation, subject to the provisions regarding the Sponsor as contained in Article III, section 7 (c) of these By-Laws.

13. Acquire a Residential Unit in foreclosure or as a result of abandonment and to take any or all steps necessary to repair or renovate any Residential Unit so acquired and to vote as a Residential Unit Owner subject to any restrictions contained in these By-Laws, offer such Residential Unit for sale or lease or take any other steps regarding such Residential Unit as shall be deemed proper by the Board of Managers.

14. Make additions, alterations, or improvements to the General Common Elements and Individual Residential Unit's Limited Common Elements that have been delegated to the Condominium to maintain, repair and/or replace as provided in the Declaration and/or these By-Laws.

15. Borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements, or for capital expenditures such as repair or replacement of Building components or systems or to remedy a major Building defect, provided, however, that no lien to secure repayment of any sum borrowed may be created on any Residential Unit or its appurtenant interest in the Common Elements without the written consent of the Owners of said Residential Unit.

16. Act as an agent for one (1) or more Residential Unit Owners to file a single complaint and bring a special proceeding on behalf of Residential Unit Owners who wish to contest the real estate tax assessments of their Residential Unit pursuant to Section 339-y(4) of the New York Real Property Law. In such an event, the Board of Managers could retain counsel on behalf of such Residential Unit Owners and charge each Residential Unit Owner for whom it is acting a pro-rata share of expenses, disbursements and legal fees, based upon the Residential Unit's Percentage of Common Interest as reflected in Schedule B of the Declaration of Condominium, the payment for which would be secured by a lien on each Residential Unit. The Board of Managers is not obligated to perform such

services and it is necessary to obtain the written authorization of the Residential Unit Owners it will perform such service for.

17. Determine and impose penalties, late fees and interest against Residential Unit Owners delinquent in the payment of their Common Charges and/or Special Assessments and in violation of the Rules and Regulations. The Board of Managers shall have the right to revise the amount of such fees as the Board of Managers so determines.

18. Enter into contracts, settlement agreements and/or other matters on behalf of the Condominium.

19. Enter into revocable license agreements for the use of space within the General Common Elements so long as the license agreement does not hinder or encroach upon the rights of Residential Unit Owners to use the General Common Elements, and/or Individual Residential Unit's Limited Common Elements.

20. Grant utility or other easements over or to the Common Elements that are required for the benefit of the Condominium and the Residential Unit Owners without the necessity of the consent thereto, or joinder therein, by the Residential Unit Owners or any mortgagee (except that if the granting of such easement impairs the ability of one or more Residential Unit Owners who have the right to use such Common Elements to the exclusion of any other Residential Unit Owners, the consent of all such affected Residential Unit Owners shall be required in writing before such easement shall be granted);

(b) The Board of Managers may, by resolution or resolutions passed by a majority of the whole Board of Managers, designate one or more committees, each of such committees to consist of at least one (1) Member of the Board of Managers, 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 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 of Managers as required.

(c) As long as the Sponsor retains at least one (1) Unsold Residential Unit in the Condominium, the Board of Managers may not, without the Sponsor's

prior written consent: (i) make an addition, alteration or improvement to the General Common Elements, or individual Residential Unit's Common Elements and/or to any Residential Unit, costing cumulatively more than $50,000, the foregoing not to include necessary repairs and maintenance work, (ii) assess any Common Charges for the creation of, addition to, or replacement of all or part of a reserve, contingency or surplus fund, (iii) hire any employee in addition to the employees referred to in the Budget for the first year of operation of the Condominium, (iv) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first Closing, (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, (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, (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. The provisions of this paragraph may not be amended without the written consent of the Sponsor.

(d) Notwithstanding Article III, Section 7(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:

1. to comply with applicable laws or regulations; or

2. to remedy any notice of violation; or

3. to remedy any work order by an insurer, or

4. necessary for the preservation or safety of the Building or for the safety of occupants of the Building or required to avoid the suspension of any necessary service to the Building.

(e) Sponsor may exercise veto power over expenses described herein, other than those described in Article III, Section 7(d) of these 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 8.** **Repairs and Maintenance.**

All maintenance, painting, repairs and replacement to the General Common Elements including but not limited to exterior walls, sections of the roof and roof members of the Building that are General Common Elements, as well as painting, repair and/or maintenance of the exterior surfaces, roof, windows and doors which open from the Building, as well as all maintenance, repairs and replacements of foyers and stairways of the Building, and of any pipes, wires, conduits and utility lines, or any portion of which is located in one Residential Unit and services another Residential Unit or more than one Residential Unit or so much of any pipes, wires, conduits and utility lines as are located in the General Common Elements shall be the responsibility of the Board of Managers and the cost thereof shall be a Common Expense except if such maintenance, painting, repair or replacement is necessitated because of the negligence, misuse or neglect of a Residential Unit Owner or the prior alteration of the Residential Unit by a Residential Unit Owner, in which event the cost thereof shall be assessed individually and paid for by the applicable Residential Unit Owner.

All maintenance, repair and replacement to any pipes, sewers and/or drainage lines and wires, conduits and public utility lines located within each Residential Unit for the exclusive use of a Residential Unit Owner shall be the sole obligation of such Residential Unit Owner at the Residential Unit Owner's sole cost and expense.

All maintenance, repair and replacement to any portion of any pipes, sewers and/or drainage lines and wires, conduits and public utility lines located in the General Common Elements shall be the responsibility of the Condominium. The cost thereof shall be a Common Expense except if such maintenance, repair or replacement is necessitated due to the negligence, misuse or neglect of a Residential Unit Owner or the prior alteration of a Residential Unit by a Residential Unit Owner, in which event the cost thereof shall be assessed individually and paid for by the applicable Residential Unit Owner.

All maintenance, repair and replacement to pipes, sewers and/or drainage lines and wires, conduits and public utility lines located in a Limited Common Element servicing two (2) Residential Units, shall be the responsibility of the Condominium and a Common Expense of the Condominium. The cost thereof shall be a Common Expense except if such maintenance, repair or replacement is necessitated due to the negligence, misuse or neglect of a Residential Unit Owner or the prior alteration of a Residential Unit by a Residential Unit Owner, in which event the cost thereof shall be assessed individually and paid for by the applicable Residential Unit Owner.

All maintenance and repairs to the interior portion of Residential Units, other than to any General Common Elements contained therein, are the responsibility of the respective Residential Unit Owners at their sole expense. All structural changes to a Residential Unit shall comply with the provisions of Article VIII, Section 1(f) of the By-Laws.

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 who owns the applicable Residential Unit. All maintenance, repair and any replacement to the external portion of the window area, the actual window and external portion of the doors (including painting if necessary) which open from a Residential Unit will be the responsibility of the Condominium and the cost thereof shall be a Common Expense of the Condominium and paid for by all Residential Unit Owners as provided in Article VI of these By-Laws. Notwithstanding the above, should 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 be caused as a direct result of the negligence or act of a Residential Unit Owner, occupant, tenant, guest or any other person residing, visiting or doing work in the Residential Unit, the Condominium will repair or replace the external portion of the window, the window or the external portion of the doors which open from a Residential Unit and the cost of such repair or replacement shall be charged to the Residential Unit Owner as an additional Common Charge or Special Assessment.

The interior glass surfaces of all windows located in the Residential Units are to be cleaned at the Residential Unit Owner's sole cost and expense. The exterior surfaces of all Residential Unit windows shall be cleaned by the Board of Managers and the cost shall be a Common Expense. Broken window glass in a Residential Unit shall be replaced by the Residential Unit Owner at the Residential Unit Owner's sole cost and expense, unless such breakage was caused by the Board of Managers or its agents, in which case replacement shall be made by the Board of Managers as a Common Expense.

Entrance doors to Residential Units and the roof of the Building shall be maintained and repaired by the Board of Managers unless the damage thereto was caused by a Residential Unit Owner in which case the Board of Managers shall make the repair and charge the Residential Unit Owner accordingly.

All structural repairs and replacements to the rooftop area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and any balcony, patio, terrace area that is an Individual Residential Unit's Limited Common Element of any other Residential Unit will be the responsibility of the Condominium and a Common Expense of the Condominium. All general maintenance and repairs to the rooftop area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and to any balcony, patio and/or terrace that is an Individual Residential Unit's Limited Common Element of any other Residential Unit, including cleaning, snow removal and all repairs not structural in nature, (including the repair of leaks, painting or staining the roof top area, balcony, patio and/or terrace, the replacement of pavers and the repair or replacement of the surface of the roof top area, balcony, patio and/or terrace), shall be the responsibility of the Residential Unit Owner of Residential Unit #2 as it applies to the roof top area that is an Individual Residential Unit's Limited Common Element of the Residential Unit Owner of Residential Unit #2 and to any other Residential Unit Owner

whose balcony or terrace is appurtenant to their Residential Unit and is an Individual Residential Unit's Limited Common Element of their Residential Unit. The Board of Managers shall have the right to designate or approve a contractor or contractors to do the necessary work to the roof top area, balcony, patio and/or terrace that is the Residential Unit Owner's responsibility at the Residential Unit Owner's sole cost.

The roof top area, balconies, patios and/or terraces are not permitted to be used for storage, are not permitted to be enclosed and are not permitted to be used for any type of occupancy including but not limited to dining, sleeping, living room, recreation, office or similar use. Drains located on the roof top area and on a balcony, patio and/or terrace must always be kept open to prevent flooding. Residential Unit Owners will not be permitted to store any combustible material or other items in or on the roof top area, balcony, patio and/or terrace. Neither the Condominium nor any Residential Unit Owner will be permitted to enclose or make any structural changes to a balcony, patio and/or terrace except as required for repair or replacement.

All maintenance, repairs, landscaping (if any) and/or replacement to any portion of the yard that is an Individual Residential Unit's Limited Common Element of Residential Unit #1 will be the responsibility of the Residential Unit Owner of Residential Unit #1. The Board of Managers shall have the right to designate or approve a contractor or contractors to do the necessary work to the yard that is the Residential Unit Owner of Residential Unit #1's responsibility at the Residential Unit Owner of Residential Unit Owner #1's sole cost and expense. In the event the Residential Unit Owner of Residential Unit #1 does not maintain, repair, landscape or replace any portion of the yard that is the responsibility of the Residential Unit Owner of Residential Unit #1, the Board of Managers shall have the right to make the necessary maintenance, landscaping, repair or replacement (after the failure of said Residential Unit Owner to do so after ten (10) days written notice, or written or oral notice of a shorter duration in the event of an emergency situation) and to charge said Residential Unit Owner for the cost of all such repairs, and/or landscaping, and/or maintenance and/or replacement. In the event that the Board of Managers assesses said Residential Unit Owner for repairs, landscaping, maintenance and/or replacement to the yard that is an Individual Residential Unit's Limited Common Element of Residential Unit #1 the Board of Managers shall have the right to bring suit thereon and, in such event, the Residential Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with interest on all sums due.

All repairs, maintenance and any replacement and all costs associated therewith of any hot water tank, gas boiler, air conditioning compressor and/or condenser, air handler or any other heating, cooling or other mechanical system servicing an individual Residential Unit that is located in the Residential Unit or is an Individual Residential Unit's Limited Common Element 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 applicable Residential Unit Owner for such equipment, services, etc. The Board of Managers shall have the right to designate or approve a contractor or contractors to do the necessary work so said

equipment that is a Residential Unit Owner's responsibility at the Residential Unit Owner's sole cost and expense.

All maintenance, repair and replacement of windows from the General Common Elements and Limited Common Elements shall be contracted for by the Board of Managers and the cost thereof shall be a Common Expense of the Condominium payable by all Residential Unit Owners except that the cost of any maintenance or repairs necessitated because of the negligence, misuse or neglect of a Residential Unit Owner occupant, tenant, guest or any other person residing in, visiting or doing work in the Residential Unit, or caused by any prior alteration of a Residential Unit, shall be assessed to and paid by the applicable Residential Unit Owner.

The Board of Managers shall repair all plumbing stoppages and electrical repairs occurring in the General Common Elements and the cost thereof shall be a Common Expense payable by all the Residential Unit Owners as provided in Article VI of these By-Laws. Notwithstanding, the cost of any maintenance or repairs necessitated due to the negligence, misuse or neglect of a Residential Unit Owner, occupant, tenant, guest or any other person residing in, visiting or doing work in a Residential Unit, or caused by any prior alteration of a Residential Unit, shall be assessed to and paid by the applicable Residential Unit Owner.

All snow removal and cleaning of any sidewalks and entranceways that abut the Condominium that is not the responsibility of the City of New York and all snow removal to the General Common Elements shall be the responsibility of the Condominium and a Common Expense of all the Residential Units in the Condominium.

The Board of Managers and their agents, employees and contractors shall have the right of access to any Residential Unit for the purpose of making any repairs or replacements to any Common Elements, no matter how classified, contained therein or elsewhere in the Condominium or to remedy any condition which would result in damage to any other Residential Unit or any other Common Element, no matter how classified, or which would violate the provisions of any mortgage covering another Residential 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 a 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 Residential 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 repairs, painting or maintenance, whether made by the Residential Unit Owner or the Board of Managers, to the doors, windows, or the exterior surface of the Building or to any generally visible portion of the General Common Elements or Individual Residential Unit's Limited Common Elements shall be carried out in such a

manner as to conform to the materials, style and color initially provided by the Sponsor, unless changed by the Board of Managers.

All repairs, replacement, modification or maintenance of a lot line window shall be the responsibility of the Residential Unit Owner if part of a Residential Unit or Individual Residential Unit's Limited Common Elements or the responsibility of the Condominium's if part of the General Common Elements. The Condominium shall approve all work and shall have the right to designate or approve the contractor doing the work.

In the event that a Residential Unit Owner fails to maintain, repair or replace its Residential Unit or any Individual Residential Unit's Limited Common Element for the Residential Unit Owner's exclusive use, which maintenance, repair or replacement is necessary to protect any of the General Common Elements, or any other portions of the Building or any other Residential Unit or other Individual Residential Unit's Limited Common Element, the Board of Managers shall have the right to make the necessary maintenance, repair or replacement (after the failure of said Residential Unit Owner to do so after ten (10) days written notice, or written or oral notice of a shorter duration in the event of an emergency situation) of the Residential Unit or Limited Common Elements for a Residential Unit's exclusive use and to charge said Residential Unit Owner for the cost of all such repairs and/or maintenance and/or replacement. In the event that the Board of Managers charges a Residential Unit Owner for repairs, maintenance and/or replacement to their Residential Unit or for repairs to any Common Elements restricted in use to such Residential Unit Owner, and the Residential Unit Owner fails to make prompt payment, the Board of Managers shall be entitled to bring suit thereon and, in such event, the Residential Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with interest on all sums due.

The Board of Managers shall have the right to designate or approve a contractor to do any such work required by a Residential Unit Owner at the Residential Unit Owner's sole expense.

**Section 9. Compensation.**

Members and Officers of the Board of Managers, as such, shall receive no compensation for their services.

**Section 10. Meetings.**

(a) The first meeting of the Members of the Board of Managers 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 Residential Unit Owner meetings, and

immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board of Managers shall take place.

(b) Regularly scheduled meetings of the Board of Managers may be held without special notice.

(c) Special Meetings of the Board of Managers may be called by the President on two (2) days' notice to each Member either personally, by mail or by electronic mail. Special Meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of a majority of the Members of the Board of Managers.

(d) At all meetings of the Board of Managers, 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 of Managers shall be a waiver of notice by the Member of the time and place thereof. If all the Members are present at any meeting of the Board of Managers, no notice shall be required, and any business may be transacted at such meeting.

(f) Members of the Board of Managers 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.

(g) Any disputes that cannot be resolved by the members of the Board of Managers as to the character and impact of a particular action of determination, shall be submitted to Arbitration pursuant to the provisions of Article XII of these By-Laws.

**Section 11. Annual Statement.**

The Board of Managers shall furnish all Residential Unit Owners 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 prepared by an independent public accountant and a statement regarding any taxable income attributable to the Residential Unit Owner and a notice of the holding of the annual Residential Unit Owners meeting. During the period the Sponsor retains a majority of the Members of the Board of Managers the annual statement shall be a certified statement verified by a certified public accountant.

**Section 12. 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 of the Condominium.

**Section 13. Management Agent.**

The Board of Managers may employ a management agent for the Condominium under a term contract or otherwise at compensation established by the Board of Managers, to perform such duties and services as the Board of Managers shall authorize, including, but not limited to, all of the delegable duties of the Board of Managers listed in this Article.

**Section 14. Liability of the Board of Managers, Officers and Residential 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 Residential Unit Owner for damages for any breach of duty in the Member's capacity as a Member of the Board of Managers or Officer of the Condominium, provided that this provision does not eliminate or limit the liability of a Member of the Board of Managers or Officer of the Condominium if a judgment or other final adjudication adverse to the Member establishes (a) that the Member's or Officer's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, or (b) that the Member or Officer personally gained in fact a financial profit or other advantage to which the Member was not legally entitled.

The Condominium, through the Residential 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 limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, which any Member of the Board of Managers or Officer of the Condominium served in any

capacity at the request of the Condominium, by reason of the fact that the Member, the Officer, the Member's or Officer's testator, was a Member of the Board of Managers, Officer of the Condominium 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 of Managers or Officer of the Condominium if a judgment establishes that the Member's or Officer's 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 the Member or Officer personally gained in fact a financial profit or the advantage to which the Member or Officer was not legally entitled.

The Residential Unit Owners shall indemnify and hold harmless each of the Members of the Board of Managers and Officers of the Condominium against all contractual liability to others arising out of contracts made by the Board of Managers or Officers of the Condominium on behalf of the Condominium unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these By-Laws. It is intended that the Members of the Board of Managers and Officers of the Condominium shall have no personal liability with respect to any contract made by them on behalf of the Condominium (except as Residential Unit Owners). It is understood and permissible for the Board of Managers or Officer of the Condominium, 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 Residential Unit Owner arising out of any contract made by the Board of Managers, or Officer of the Condominium or out of the aforesaid indemnity in favor of the Member of the Board of Managers or Officer of the Condominium shall be limited to such proportion of the total liability thereunder as the Residential Unit Owner's Percentage of Common Interest in the Common Elements bears to the Percentage of Common Interest of all the Residential Unit Owners in the Common Elements. Every agreement made by the Board of Managers, a managing agent, by a Member of the Board of Managers or Officer of the Condominium on behalf of the Condominium shall provide that the Members of the Board of Managers, or the managing agent, or the Member, or Officer of the Condominium as the case may be, are acting only as agent for the Residential Unit Owners and shall have no personal liability thereunder (except as Residential Unit Owners).

Each Residential Unit Owner's liability pursuant to this Section shall be limited to such proportion of the total liability there under as the Residential Unit Owner's Percentage of Common Interest in the Common Elements bears to the Percentage of Common Interest of all Residential Unit Owners in the Common Elements.

**Section 15.** **Annual Reports Required By Section 519A of the Not-For Profit Corporation Law.**

(a) The Board of Managers shall provide an annual report to the Residential Unit Owners of the Condominium, which shall be signed by each such Board Member, containing information on any contracts made, entered into, or otherwise transacted pursuant to section seven hundred fifteen of

the Not-For-Profit Corporation Law of the State of New York.

(b) The annual report required in subsection (a) of this Section 15 shall include, but not be limited to, the following:

(1) a list of all contracts voted on by the Board of Managers, including information on the contract recipient, contract amount, and the purpose of entering into the contract;

(2) the record of each meeting including Board Members attending, voting records for contracts, and how each director voted on such contracts; and

(3) the date of each vote on each contract, and the date the contract would be and remain valid.

(c) If the annual report required by Subsection (a) of this Section 15 would, notwithstanding the requirements of this Section, contain no information because of the absence of any actions taken by the Board that would otherwise qualify for inclusion in such annual report, then the Board of Managers shall instead submit to the Residential Unit Owners a document signed by each Board Member of the Board of Managers indicating: "No actions taken by the Board were subject to the annual report required pursuant to Section 519-A of the Not-For-Profit Corporation Law".

## 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 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 or Members of the Board of Managers except for appointed Officers who do not need to be Residential Unit Owners or a Member of the Board of Managers. Two (2) or more offices may be held by the same person, except the President, who can only hold the office of President.

### Section 2. Election.

The Board of Managers at its first meeting after each annual Residential Unit Owners Meeting shall elect a President, a Vice President, a Secretary and a Treasurer. Since there are two (2) seats on the Board and four (4) Officer positions all Officers can hold two (2) offices.

**Section 3.** **Appointive Officers.**

The Board of Managers may appoint such other Officers and agents as it shall deem necessary that 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 of Managers.

**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; shall preside at all meetings of the Residential Unit Owners and Members of the Board of Managers, 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 of Managers 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. The President may delegate obligations and responsibilities to other officers.

**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 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 of Managers and all Residential 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 Residential 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 the Treasurer may be ordered by the Board of Managers, making proper vouchers for such disbursements and shall render to the President and Members, at the regular meeting of the Board of Managers 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 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.

**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 ("Notice") is required to be given to the Board of Managers, any Member of the Board of Managers or any Residential Unit Owner, Notice shall be provided by first class mail, courier service, facsimile telecommunications or by electronic mail to the respective party in the same manner as provided for a Notice of Meeting contained in Article II, Section 11 of these By-Laws.

**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. The Board of Managers shall determine the total amount required, including the operational items such as insurance, repairs, reserves, betterments, maintenance of the General Common Elements and Individual Residential Unit's Limited Common Elements that are the obligation of the Condominium and other Common Expenses including but not limited to the Common Expenses provided in Article VI, Section 3 of these By-Laws, as well as charges to cover any deficits from prior years.

The total annual requirements shall be assessed as a single sum against all Residential Units and prorated against each of said Residential Units according to the provisions of Section 9 hereof.

Said assessments shall be payable monthly or in such other manner as determined by the Board of Managers and shall be referred to as Common Charges.

The Board of Managers may also charge additional assessments in excess of the Common Charges for expenses not contemplated, foreseen, or which exceed the amount budgeted. Said assessments shall be known as Special Assessments. The Board of Managers shall be entitled to charge a Special Assessment as a single sum or over a period of time as it may determine. Residential Unit Owners shall pay their portion of any Special Assessments in accordance with Section 9 of Article VI of the By-Laws.

The Residential Unit Owner agrees to pay promptly when due the monthly Common Charges and all Special Assessments assessed against the Residential Unit. In the event any Residential Unit Owner fails to make payment of the Residential Unit Owner's Common Charge payment, the Residential Unit Owner who owns such Residential Unit shall be obligated to pay (a) a "late fee" 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) all expenses, including, without limitation, attorneys' fees paid or incurred by the Board of Managers or by any Managing Agent in any proceeding brought to collect such unpaid Common Charges and/or Special Assessments or in an

action to foreclose the lien on such Residential Unit Owner's Residential Unit arising from said unpaid Common Charges and/or Special Assessments in the manner permitted by applicable law. All such "late fees," interest and expenses shall be cumulative and shall be added to and shall constitute Common Charges payable by such Residential Unit Owner.

In the event of a default in the payment of Common Charges by any Residential Unit Owner, the Board of Managers, at its sole option, may declare the Common Charge assessment on said Residential Unit Owner's Residential Unit for the balance of the fiscal year immediately due and payable. Prior to making any such declaration following a default the Board of Managers shall send notice to the delinquent Residential Unit Owner and any mortgagee of such Residential Unit giving the Residential Unit Owner a five (5) day grace period in which to make the late payment.

The Board of Managers may place a lien and take action to collect any past due Common Charges from any Residential Unit Owner which remains unpaid as provided in Article IX of these By-Laws from its due date by way of foreclosure of the lien on such Residential Unit in accordance with Section 339-aa of the Real Property Law or otherwise.

Every Residential Unit Owner shall pay the Common Charges assessed against the Residential Unit Owner when due as determined by the Board of Managers and no Residential Unit Owner may be exempt from liability for the payment of the Common Charges assessed against the Residential Unit Owner by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of a Residential Unit.

No Residential Unit Owner shall be liable for any Common Charges, Special Assessments or other charges against a Residential Unit which accrue against the Residential Unit Owner's Residential Unit subsequent to a sale, transfer or other conveyance of the Residential Unit Owner in accordance with these By-Laws and the Declaration. A Residential Unit Owner shall be liable for the payment of all Common Charges. Special Assessments or other charges assessed by the Board of Managers against the Residential Unit after acquiring title to the Residential Unit, as well as any unpaid Common Charges, Special Assessments or other charges assessed against the Residential Unit by the Board of Managers at the time the Residential Unit is conveyed by means of a deed or other legal means of the conveyance, except for a mortgagee of an Institutional Mortgage whom shall be exempt for a portion of the Common Charges as provided below.

Notwithstanding any other provision in the Declaration or these By-Laws any mortgagee of an Institutional Mortgage as defined in the Declaration of Condominium who obtains title to a Residential Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Residential Unit's unpaid Common Charges, Special Assessments or other charges accrued against the Residential Unit before acquisition of the title to the Residential Unit by the

mortgagee unless otherwise required by law. If the Condominium's lien priority includes costs of collecting unpaid Common Charges, Special Assessments and/or other charges against the Residential Unit, the mortgagee of the Institutional Mortgage will be liable for any fees or costs related to the collection of unpaid Common Charges, Special Assessments and/or other charges. The unpaid balance of such Common Charges, Special Assessments and/or other charges against the Residential Unit that may be waived will be charged to all other Residential Unit Owners as a Common Expense. Upon acquisition of title to a Residential Unit such mortgagee of an Institutional Mortgagee; its successors and assigns shall be responsible for all Common Charges, Special Assessments and/or any other costs and expenses of the Condominium thereafter due and payable thereafter.

**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 operation, repair and maintenance of the General Common Elements and any Individual Residential Unit's Limited Common Elements that have been delegated to the Condominium for repair, maintain and replacement as provided for in the Declaration of Condominium and/or these By-Laws. All Residential Unit Owners are responsible for their pro-rata share of the Common Charges as determined in Section 9 of this Article VI regardless of whether or not a Residential Unit or Residential Unit Owner utilizes the services for which the Common Charges are spent. Said Common Expenses shall include 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 VII and the fees and disbursements of any Insurance Trustee as provided in Article VII, drainage, sewer, water and/or storm systems (including sewers, storm sewer and/or water pipes, drywells, detention tanks or other facilities servicing the drainage, sewer water and/or storm systems as applicable), and other Building wide obligations of the Condominium contained in the Declaration and these By-Laws, including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements, insurance; common utilities; labor; common water and sewer charges; legal and accounting; services and supplies; management fees; contingencies and any other expenses that are Common Expenses of the Condominium and to make up any deficit in the Common Expenses from 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 Residential Unit Owners, of any Residential Unit whose Owner has elected to sell or lease such Residential Unit or of any Residential Unit which is to be sold at a foreclosure or other judicial sale.

**Section 4.** **Foreclosures of Liens for Unpaid Common Charges**

The Board of Managers shall have the power to purchase any Residential Unit at a foreclosure sale resulting from any action brought by the Board of Managers to foreclose a lien on the Residential Unit because of unpaid Common Charges. In the

event of such purchase, the Board of Managers shall have the power to hold, lease, mortgage, vote, sell or otherwise deal with the Residential Unit. A suit to recover a money judgment for unpaid Common Charges shall also be obtainable separately without waiving the lien on the Residential Unit. In either event the Residential Unit Owner shall be liable for all costs of suit, including reasonable attorney's fees.

**Section 5.** **Statement of Common Charges.**

Upon the written request of any Residential Unit Owner or their mortgagee, the Board of Managers shall promptly furnish such Residential Unit Owner or their mortgagee with a written statement of the unpaid Common Charges due from such Residential Unit Owner.

**Section 6.** **Liability for Utilities.**

Any utility, including electricity and gas, individually consumed and individually metered or sub-metered in an individual Residential Unit shall be the sole 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 Common Charges and Special Assessments as fixed and determined for all Residential 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 Common Expenses and for the purchase, lease, sale or other expenses resulting from the purchase or lease of a Residential Unit.

**Section 8.** **Other Accounts.**

The Board of Managers shall maintain any other accounts it shall deem necessary to carry out its purpose including a reserve account and working capital account. The funds in the reserve account are to be used exclusively for future major capital improvements of the Condominium.

**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 any Individual Residential Unit's Limited Common Elements that have been delegated to the Condominium to repair, maintain and replace as provided for in the Declaration of

Condominium and/or these By-Laws as well as Common Expenses of the Condominium, determine the amount of the Common Charges payable by the Residential Unit Owner(s) to meet the Common Expenses and other expenses applicable thereto, and allocate and assess such Common Charges and Common Expenses among all the Residential Unit Owners in proportion to their respective Percentage of Common Interest in the Condominium as reflected in Schedule B of the Declaration of Condominium or as provided below.

Notwithstanding the above, as provided in Section 339-m of the Condominium Act, Common Charges and/or Special Assessments, no matter how classified, may be adjusted based on allocations in accordance with sub-metering, contract allocations and usage (both projected and actual) for the Common Expenses, no matter how classified, based on special or exclusive use or availability or exclusive control of particular Residential Units or Common Elements by particular Residential Unit Owners. In the event of any dispute as to the allocation of the Common Charges such dispute shall be submitted for arbitration pursuant to the provisions of Article XII of the By-Laws of the Condominium.

Common Expenses of the Condominium shall include but not be limited to the Common Expenses referred to in Article VI, Section 3 of these By-Laws.

The Board of Managers shall advise all Residential Unit Owners promptly, in writing, of the amount of Common Charges and Common Expenses payable by each of them, respectively, as determined by the Board of Managers, as aforesaid, and shall furnish copies of the budget on which such Common Charges and Common Expenses are based, to all Residential Unit Owners.

The Sponsor, its successor, assignee and/or designee shall be responsible for the Common Charges and/or assessed against each Residential Unit owned by the Sponsor, its designee, assignee and/or successor until such Residential Unit is transferred to a bona fide purchaser.

## ARTICLE VII. INSURANCE AND INSURANCE TRUSTEE

### Section 1. Insurance to be Carried by the Board of Managers.

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, no matter how classified and the Residential Units in the Building of 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 Residential 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 Residential Unit Owners, contained therein, covering the interest of the Condominium, the Board of Managers and all Residential 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 Residential Unit which shall provide that the loss, if any, there under 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, and that the net proceeds thereof, if $100,000 or less, shall be payable to the Board of Managers, and if more than $100,000 shall be payable to the Insurance Trustee. Each Residential Unit Owner and each Residential Unit Owner's mortgagee, if any, shall be beneficiaries of the policy in the Percentage of Common Interest applicable to said Residential Unit.

The blanket property insurance as provided above will commence with the Closing of Title to the first Residential Unit.

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 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 a Residential 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 Residential Unit at least ten (10) days prior to expiration of the 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 affected 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 Residential Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Residential Unit Owners which is not in the control of such Residential Unit Owners collectively; and that the policy is primary in the event the Residential 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 Residential 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 Residential 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 Residential Unit in the Condominium which in 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, employer's 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 Residential 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 *3* months aggregate assessments on all Residential 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 10 days' prior written notice to the Condominium or Insurance Trustee. Such bonds shall also provide that, if applicable, the Federal National Mortgage Association, ("Fannie Mae") Servicers on behalf of Fannie Mae, also receive such notice of cancellation or modification.

Residential Unit Owners shall be required to carry individual insurance on their Residential Units as provided in Section 4 below.

**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, trust company, attorney or other permitted company located in the State of New York designated by the Board of Managers. All 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, trust company, attorney or other permitted company located in the State of New York. The Insurance Trustee shall have a capital, surplus and undivided profits of $10,000,000 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 Building (including any damaged Residential Unit, 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 or changed 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 more than the insurance proceeds shall constitute a Common Expense and the Board of Managers may assess all the Residential 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 proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of this Section 3, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration then the excess of such insurance proceeds) shall be divided by the Board of Managers or the

Insurance Trustee, as the case may be, among all the Residential Unit Owners in proportion to the respective Percentage of Common Interest, after first paying out of the share of each Residential Unit Owner the amount of any unpaid liens on his or her Residential Unit, in the order of the priority of such liens.

**Section 4. Residential Unit Owner Insurance.**

Each Residential Unit Owner is required to carry insurance covering their contents, fixtures, personal property and improvements and betterments (collectively "Contents") and liability insurance covering their Residential Unit and extended to include the Board of Managers, the Condominium, any Managing Agent and other Homeowners as additional insured's. Such insurance is subject to the approval of the Board of Managers in advance of the purchase of a Residential Unit, in the Board of Manager's sole discretion. The policy shall be extended to include any additional insured including but not limited to the Sponsor, other Residential Unit Owners and any Mortgagees. All such insurance must be provided by a carrier that is recognized as a licensed admitted carrier in the State of New York with a rating equal to a Best Rating Guide of AV or better. The Board of Managers reserves the right to alter or increase the coverage required hereunder at any time and from time to time. In addition to the foregoing, Residential Unit Owners are instructed to carry coverage for loss of rents, water damage, sewer and drain back up and such other coverage for their contents as they may determine to be in their best interests. The Board of Managers shall have the right to require that a Residential Unit Owner provide evidence to the Board of Managers of the insurance required herein as requested by the Board of Managers.

**Section 5. General.**

Under no circumstances shall a Residential Unit Owner permit or suffer anything to be done or left in a Residential Unit Owner's Unit which will increase the insurance rates on the Condominium.

## ARTICLE VIII. RULES AND REGULATIONS

**Section 1. General**

In addition to the other provisions of these By-Laws, the following ("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 Residential Units and the conduct of all Residential Unit Owners and occupants thereof.

(a) All Residential Units shall be used for residential purposes only in accordance with municipal regulations. All rentals are subject to local zoning ordinances and any City and State requirements.

(b) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof and all valid laws, zoning ordinances and regulations of the City and State of New York and all governmental bodies

and/or agencies having jurisdiction thereof shall be observed.

(c) 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 the City of New York and any governmental agencies having jurisdiction thereof.

(d) Any storage space in the Common Elements for use by a Residential Unit Owner may be used only for storage of normal household items. No items shall be stored in any storage spaces that may result in the cancelation or increase of insurance on the Building or contents thereof, or that would be in violation of any law. No inflammable, combustible or explosive fluid material, chemical or substance shall be stored in a storage space area. All provisions for safety shall be the sole responsibility of the Residential Unit Owner.

(e) Residential Unit Owners, members of their families, their employees, tenants, guests and their pets shall not use or permit the use of the premises in any manner which would be illegal or disturbing or a nuisance to other Residential Unit Owners, or in such a way as to be injurious to the reputation of the Condominium or which interferes with the peaceful possession and proper use of the property by its residents.

(f) The Common Elements shall not be obstructed, littered, defaced or misused in any manner.

(g) Every Residential 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 Residential Unit Owner, the Residential Unit Owner's permitted lessees and occupants of such Residential Units, their respective family members and guests, employees or such other person for whose conduct the Residential Unit Owner is legally responsible.

(h) Maintenance.

1. Each Residential Unit Owner shall maintain and keep their Residential Unit and its appurtenant Individual Residential Unit's Limited Common Element in a good state of preservation, condition, repair and cleanliness in accordance with the terms of the By-Laws.

2. Every Residential Unit Owner must perform promptly all maintenance and repair work to their own Residential Unit and any Individual Residential Unit's Limited Common Element for the Residential Unit Owner's exclusive use which is their sole responsibility and, which if not done 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 a part, the Residential Unit Owner being expressly responsible for the damages and liabilities that the failure to do so may engender.

3. All the repairs to internal installations of a Residential Unit located in and servicing a Residential Unit, such as telephones and sanitary installations shall be the respective Residential Unit Owner's sole obligation and expense.

(i) Structural Changes.

1. 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, or any Individual Residential Unit's Limited Common Element, 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 Individual Residential Unit's 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 of Managers 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 of Managers, 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 and (3) executing and delivering to the Board of Managers an agreement indemnifying and holding harmless the Board of Managers, 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 Building Department or any other agency of 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, engineer and/or other professional, the Residential Unit Owner shall pay the charges of such architect, engineer and/or other professional. 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 the Building Department or any other agency of the City of New York or any other governmental or administrative authority for a permit to make a structural addition, alteration or improvement in or to any Residential Unit or Individual Residential Unit's Limited Common Elements 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 individual Member of the Board of Managers, 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 Declarant or its successor, designee or assignee until such Residential Units shall have been transferred to a Residential Unit Owner by the Declarant or such successor, designee or assignee.

The Board of Managers shall not use the above provisions in a way that would violate any rights a Residential Unit Owner may have pursuant to the Federal Fair Housing Act or New York State Human Rights Law.

The Board of Managers shall have the right to designate or approve a contractor to do any such work at the Residential Unit Owners' sole expense. This provision shall not apply to the Sponsor.

The Board of Managers of the Condominium shall not use the above provisions in any way that would violate any rights a Residential Unit Owner may have pursuant to the Federal Fair Housing Act or New York State Human Rights Law.

2. No alteration, addition, decoration or change to any part of the General Common Elements or Individual Residential Unit's Limited Common Elements (other than may be otherwise provided in the Declaration and/or these By-Laws) may be made and no structure or other improvement (including landscaping, other than may be otherwise provided in the Declaration and/or these By-Laws) may be built or placed on any portion of the Common Elements or Individual Residential Unit's Limited Common Elements without the written consent of the Board of Managers.

3. The provisions contained in (g) 1 and 2 above shall not apply to Residential Units owned by the Sponsor or its designee until such Residential Units have been conveyed to a bona fide purchaser by the Sponsor or such designee. The Sponsor or its designee shall have the absolute right to make any and all structural alterations, additions or improvements to a Residential Unit, Individual Residential Unit's Limited Common Element or General Common Elements without the necessity of obtaining the approval of the Board of Managers.

(h) The Common Elements shall not be used for storage purposes except if specifically designated for such purposes.

(i) No Residential Unit Owner shall paint or alter the exterior surfaces of the windows, walls or doors opening out of their Residential Unit.

(k) The sidewalks, entrances, passages, public halls, elevators (if applicable) vestibules, corridors and stairways of or appurtenant to the Condominium may not be obstructed or used for any other purpose other than ingress to and egress from the Residential Units and the Building.

(l) No article (including, but not limited to, garbage cans, bottles or mats) may be placed in any of the passageways, public halls, vestibules, corridors or stairways of the public areas of the Condominium, nor may any fire exit be obstructed in any manner.

(m) Residential Unit Owners, residents, occupants, tenants, agents, servants, licensees or their guests are not permitted to play in, exercise or use for any unintended purposes, the entrances, passageways, public halls, vestibules, corridors and stairways of the Condominium.

(n) No public hall of the Condominium is permitted to be decorated or furnished by any Residential Unit Owner in any manner.

(o) No baby carriages, strollers, bicycles, scooters, or similar type of vehicles shall be allowed to be stored or left for any period of time in the public halls, passageways, or other public areas of the Building.

(q) Nothing shall be hung or shaken from any doors, windows, balconies or terraces, or placed upon the exterior window sills of the Building, and no Residential Unit Owner shall sweep or throw, or permit to be swept or thrown, any dirt, debris or other substance there from. The Common Elements and Individual Residential Unit's Limited Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(r) No playing or lounging is permitted in any entrances, passageways, public halls, vestibules, corridors, or stairways, of the Building, except in designated recreational areas, if any, or other areas designated as such in the Declaration or by the Board.

(s) The Board or the Managing Agent may, from time to time, curtail or relocate any portion of the Common Elements and/or Individual Residential Unit's Limited Common Elements that may be devoted to storage, recreation, or service purposes in the Building.

(t) Nothing shall be done or kept in any Residential Unit or in the Individual Residential Unit's Limited Common Elements that are designated for the exclusive use of an individual Residential Unit that will increase the rate of insurance of the Building or the contents thereof, without the prior written consent of the Board. No Residential Unit Owner shall permit anything to be done or kept in their Residential Unit or in the Individual Residential Unit's Limited Common Elements that are designated for the exclusive use of an individual Residential Unit that will result in the cancellation of insurance on the Building or the contents thereof, or that would be in violation of any Law. No Residential Unit Owner or any of the Residential Unit Owner's family members, tenants, agents, servants, employees, licenses, or visitors shall, at any time, bring into or keep in their Residential Unit or Common Areas any inflammable, combustible, or explosive fluid, material, chemical, or substance, except as shall be necessary and appropriate for the permitted uses of such Residential Unit or the Individual Residential Unit's Limited Common Elements that are designated for the exclusive use of an individual Residential Unit.

(u) No Residential Unit Owner shall make, cause, or permit any unusual, disturbing, or objectionable noises or odors to be produced upon or to emanate from their Residential Unit or the Individual Residential Unit's Limited Common Elements that are designated for the exclusive use of an individual Residential Unit or permit anything to be done therein that will interfere with the rights, comforts, or conveniences of the other Residential Unit Owners. No Residential Unit Owner shall play any musical instrument, or shall operate or permit to be operated a Compact Disk Player, iPod, computer, phonograph, radio, television set, or other similar equipment in such Residential Unit Owner's Residential Unit between midnight and the following 8:00 A.M., if the same shall disturb or annoy other occupants of the Building, and in no event shall any Residential Unit Owner practice either vocal or instrumental music between the hours of 10:00 P.M. and the following 9:00 A.M.

(v) No construction, repair work, or other installation involving noise shall be conducted in any Residential Unit except on weekdays (not including legal holidays) and only between the hours of 8:00 A.M. and 5:00 P.M., unless such construction or repair work is necessitated by an emergency or approved by the Board of Managers.

(w) No Residential Unit Owner shall install any plantings in the Common Elements or the Individual Residential Unit's Limited Common Elements that are for the exclusive use of a Residential Unit without the prior written approval of the Board. It shall be the responsibility of the Residential Unit Owner to maintain all plantings in the Residential Units and Individual Residential Unit's Limited Common Elements to prevent any damage to floors, walls or any other part of the Building. Residential Unit Owners shall pay for the cost of any repairs rendered necessary, or damage caused, by such plantings.

(x) Plantings installed on any terrace, balcony, patio and/or roof area shall be contained in boxes of wood, lined with metal or other materials impervious to dampness and standing on supports at least two (2) inches from the terrace, balcony, patio and/or roof area and if adjoining a wall, at least three (3) inches from said wall. Suitable weep holes shall be provided in the boxes to draw off water. It shall be the responsibility of the Residential Unit Owner to maintain the containers in good condition, and weep holes in operating condition to prevent any damage to floors and walls. The Residential Unit Owner shall pay the cost of any repairs rendered necessary by or damage caused by said plantings.

(y) Each Residential Unit Owner, at the Residential Unit Owner's sole cost and expense shall be required: (i) to maintain and repair the Residential Unit Owner's Residential Unit, including all items included in the Residential Unit, and its appurtenant Residential Unit's Limited Common Elements (other than the portions of the Limited Common Elements expressly stated to be maintained and repaired by the Condominium) in good and proper working order, first-class condition and appearance, free of water leaks and undue air penetration, free and clear of snow, ice, water accumulation, debris and objects, and otherwise in clean, neat and sanitary condition in keeping with the high quality, character, standards and dignity of the Condominium, in accordance with all applicable laws and governmental codes, regulations, restrictions and requirements; and (ii) to perform all work: (ii-1) in a good and workmanlike manner with a quality of workmanship that meets or exceeds any relevant specific standards required by applicable law or governmental requirements, as well as locally accepted construction practices for projects comparable to the Property; and (ii-2) utilizing materials compatible with, and of at least equal or better quality to, those used in the original construction of the Residential Unit.

(z) In the event that a Residential Unit Owner fails to maintain, repair or replace its Residential Unit or any Residential Unit's Limited Common Element for the Residential Unit Owner's exclusive use, which maintenance, repair or replacement is necessary to protect any of the Common Elements (no matter how classified), any other portions of the

Building or any other Residential Unit, the Board of Managers of the Condominium shall have the right to make the necessary maintenance, repair or replacement (after the failure of said Residential Unit Owner to do so after reasonable time provided by written notice, written or oral notice of a shorter duration in the event of an emergency situation) and to charge said Residential Unit Owner for the cost of all such repairs and/or maintenance and/or replacement. In the event the Board of Managers of the Condominium charges a Residential Unit Owner for repairs, maintenance and/or replacement to their Residential Unit or for repairs to any Residential Unit's Common Elements restricted in use to such Residential Unit Owner and the Residential Unit Owner fails to make prompt payment, the Board of Managers of the Condominium shall be entitled to bring suit thereon and, in such event, the Residential Unit Owner shall be liable for the reasonable attorneys' fees and cost of such suit or proceeding together with interest on all sums due.

(aa) In the event that any Residential Unit is permitted be used for home occupation or professional purposes in conformance with the Declaration and the By-Laws and applicable zoning, no patients, clients, or other invitees shall be permitted to wait in any lobby, public hallway, or vestibule.

(bb) The balconies and/or terraces designated as Individual Residential Unit's Limited Common Elements, are not permitted to be used for storage, are not permitted to be enclosed and are not permitted to be used for any type of occupancy. No barbecuing is permitted on any balcony, and/or terrace unless barbequing is not in violation of any municipal or fire code and prior written approval is received by the Board of Managers. All drains located on a balcony and/or terrace must be kept open at all times. No above ground pools, hot tubs or similar type of equipment are permitted on any balcony, terrace or any rooftop area. No above and/or in-ground pools, hot tubs or similar type of equipment are permitted in any other area of the Condominium without the prior written approval of the Board of Managers.

(cc) No ventilator or air conditioning device shall be installed in any Residential Unit without the prior written approval of the Board of Managers, which approval may be granted or refused in the sole discretion of the Board of Managers.

(dd) No sign, notice, advertisement, or illumination (including, without limitation, "For Sale," "For Lease", or "For Rent" signs) shall be inscribed or exposed on or at any window or other part of the Building, except such as are permitted pursuant to the terms of Declaration and/or By-Laws or shall have been approved in writing by the Board of Managers or the Managing Agent. Nothing shall be projected from any window of a Residential Unit without similar approval.

(ee) All radio, television, or other electrical equipment of any kind or nature installed or used in each Residential Unit shall fully comply with all rules, regulations, requirements, or recommendations of the New York Board of Fire Underwriters and the public authorities having jurisdiction, and the Residential Unit Owner alone shall be liable for any damage or injury caused by any radio, television, or other electrical equipment.

(ff) Toilets, sinks, bathtubs, showers and other water apparatus in the Building shall not be used for any purpose other than those for which they were designed, and no sweepings, rubbish, rags or any other article shall be thrown into the same. Any damage resulting from misuse of any toilets, sinks, bathtubs, showers or other water apparatus in a Residential Unit shall be repaired and paid for by the owner of such Residential Unit.

(gg) The agents of the Board of Managers or the Managing Agent, and any contractor or workman authorized by the Board or the Managing Agent, may enter any room in a Residential Unit or any Individual Residential Unit's Limited Common Element at any reasonable hour of the day, on at least one day's prior notice to the Residential Unit Owner, for the purpose of inspecting such Residential Unit or Residential Unit's Limited Common Element for the presence of any vermin, insects, or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects, or other pests. Any entry, inspection and extermination shall be done in a reasonable manner so as not to unreasonably interfere with the use of such Residential Unit for its permitted purposes.

(hh) The Board of Managers or the Managing Agent may retain a pass-key to each Residential Unit. If any lock is altered or a new lock is installed, the Board of Managers or the Managing Agent shall be provided with a key thereto immediately upon such alteration or installation. If the Residential Unit Owner is not personally present to open and permit an entry to their Residential Unit at any time when an entry therein is necessary or permissible under these Rules and Regulations or under the By-Laws, and has not furnished a key to the Board of Managers or the Managing Agent, then the Board of Managers or Managing Agent or their agents (but, except in an emergency, only when specifically authorized by an Officer of the Condominium or an Officer of the Managing Agent) may forcibly enter such Residential Unit without liability for damages or trespass by reason thereof (if, during such entry, reasonable care is given to such Residential Unit Owner's property).

(ii) If any key or keys are entrusted by a Residential Unit Owner, by any family member thereof, or by their agent, tenant, servant, employee, licensee, or visitor to an employee of the Condominium or of the Managing Agent, whether for such Residential Unit Owner's Residential Unit, automobile or other item of personal property, the acceptance of the key

shall be at the sole risk of such Residential Unit Owner, and neither the Board nor the Managing Agent shall (Except as provided in Rule (s) above) be liable for injury, loss, or damage of any nature whatsoever, directly or indirectly resulting therefrom or connected therewith.

(jj) No Residential Unit Owner of the Building shall send any employee of the Condominium or of the Managing Agent out of the Building on any private business, if the Board of Managers should hire an employee or Managing Agent.

(kk) The Board of Managers shall, at the request of a mortgagee of the Residential Unit, report any delinquent assessments due from the Owner of such Residential Unit.

(ll) Every Residential Unit Owner shall be liable for any and all damage to the Common Elements, which shall be caused by said Residential Unit Owner, the Residential Unit Owner's permitted lessees and occupants of Residential Units, their respective family members and guests and such other person for whose conduct the Residential Unit Owner is legally responsible.

(mm) Residential 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.

(nn) Residential Unit Owners will be permitted to keep dogs, cats or other common household pets in their Residential Unit subject to the provisions of this regulation and subject to the rights of a Residential Unit Owner pursuant to any federal, state or city law or regulation. The foregoing notwithstanding, no more than two (2) dogs per Residential Unit will be permitted. No exceptions will be permitted unless the same in each instance be expressly permitted in writing by the Board of Managers of the Condominium. No animals may be kept or maintained in a Residential Unit for any commercial purposes. No exotic animals such as snakes or undomesticated wild animals are permitted in a Residential Unit. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon fifteen (15) days written notice from the Board of Managers. All Residential Unit Owners shall advise the Board of Managers of any household pet intended to be kept in their Residential Unit prior to the household pet residing therein. In addition to the above restrictions, the Board of Managers shall have the right to further adopt additional rules and regulations regarding pets including, but not limited to limiting the number, size and type of pet including but not limited to the type of breed of such pet permitted to be kept in a Residential Unit. In no event shall any animal be permitted in any of the public corridors or lobbies of the Condominium unless carried or on leash and in compliance with the local and municipal rules and regulations

regarding pets. All Residential Unit Owners shall be responsible for picking up and disposing of their pet's waste and for any damage caused by their pets to any Common Elements of the Condominium.

(oo) All Residential Unit Owners shall keep their thermostats at a minimum of 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.

(pp) 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. The Board of Managers shall have the right to designate or approve a contractor to do any of such work at the Residential Unit Owners' sole expense. In no event however, shall any exterior glass surface of any windows of a Residential Unit be colored or painted. In the event window guards are required in a Residential Unit, the cost of installing the window guards shall be the sole responsibility of the Residential Unit Owner.

(qq) 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.

(rr) No group tour or exhibition of any Residential Unit or its contents may be conducted, nor will any auction sale or other sale of contents be permitted to be held in any Residential Unit, without the prior consent of the Board of Managers.

(ss) Complaints regarding the service of the Condominium shall be made in writing to the Board of Managers or to any Managing Agent.

(tt) No television or radio receiving device or any other type of receiving or transmitting device shall be erected on the exterior or roof of the Building or on any Individual Residential Unit's Limited Common Element without the prior written consent of the Board of Managers. The Board of Managers may adopt such rules and regulations pertaining to satellite dishes so as to comply with current Federal Communications Commission rules.

(uu) Any Residential Unit Owner who mortgages or sells or leases their Residential Unit shall immediately notify the Board of Managers, providing the name and address of the new mortgagee new Residential Unit Owner or tenant within thirty (30) days of the closing of the mortgage, within thirty (30) days of the execution of the Purchase Agreement of the sale of the Residential Unit for the new Purchaser or thirty (30) days prior to any

tenant occupying the Residential Unit, whichever is applicable and subject to the Board of Managers' Right of First Refusal as provided for in Article XII of these By-Laws.

(vv) Except as permitted under the Declaration and By-Laws, Residential Unit Owners, their families, guests, servants, employees, agents, visitors, tenants, sub-lessees 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 except for any portion of the roof used for passive recreational use by the Residential Unit Owners or is part of a Residential Unit or a Limited Common Element of a Residential Unit. The Board of Managers shall have the right to adopt rules and regulations regarding the use and times of operation of any portion of the roof used for passive recreational use by the Residential Unit Owners including requiring a deposit for any damage caused to said area and charging a fee for said use. No barbequing is permitted on the portion of the roof used for passive recreational use by the Residential Unit Owners, unless barbequing is not in violation of any municipal or fire code and prior written approval is received by the Board of Managers.

(ww) No Residential Unit Owner shall make any changes, additions or alterations to a Residential Unit that will obligate the Sponsor to obtain a Temporary Certificate of Occupancy and/or Permanent Certificate of Occupancy prior to the issuance of a Permanent Certificate of Occupancy for the Residential Unit or Building. Any Residential Unit Owner making such change, addition and/or alteration shall be solely liable and responsible and shall pay all costs and expenses required to replace and/or repair the Residential Unit as may be required by the Department of Buildings of the City of New York or any other City, State or Municipal agency. All costs and expenses, including reasonable legal fees, incurred by the Condominium shall be charged to the Residential Unit Owner as an additional Common Charge to the Residential Unit Owner.

(xx) The Board of Managers shall have the right to promulgate rules and regulations regarding the moving in and/or moving out of the Building by a Residential Unit Owner including the right to charge a move in and/or move out fee to said Residential Unit Owner.

(yy) Regulations promulgated by the Board of Managers, as they may be amended, rescinded, modified, altered, waived, added to or repealed concerning the use of the property shall be observed by the Residential Unit Owners, provided, however, that a copy of such regulations is furnished to each Residential Unit Owner prior to the time said regulations become effective.

(zz) Any consent or approval given under these Rules and Regulations applicable to the Residential Units may be amended, rescinded, modified, added to or repealed at any time by resolution of the Members of the Board. Any such consent or approval may, in the discretion of the Members of the Board or the Managing Agent, be conditional in nature.

**Section 2. Smoking Policy.**

The Smoke-Free Air Act New York City law prohibits smoking and using e-cigarettes of any kind in indoor common areas, including but not limited to, lobbies, hallways, stairwells, mailrooms, fitness areas, storage areas, garages and laundry rooms in any building with three or more residential units. NYC Admin. Code, § 17-505. Effective as of August 28, 2018, Local Law 147 of the City of New York became effective. Local Law 147 amends the Administrative Code of the City of New York ("NYC Administrative Code") to require that all class A multiple dwellings (i.e. buildings with 3 or more residential dwelling units) adopt a written smoking policy (the "Smoking Policy"). Pursuant to the requirements of Local Law 147 of the City of New York the following constitutes the Smoking Policy applicable to the Condominium and to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Property and any Building located thereon constituting the Condominium:

(a) Definitions:

(i) Smoking: Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, little cigar, pipe, water pipe or hookah, herbal cigarette, non-tobacco smoking product (e.g., marijuana or non-tobacco shisha), or any similar form of lighted object or device designated for people to use to inhale smoke.

(ii) Electronic Cigarette (E-Cigarette): A battery-operated device that heats a liquid, gel, herb or other substance and produces a vapor for people to inhale.

(b) Policy:

(i) All types of Smoking and use of Electronic Cigarettes as defined above are prohibited from all general common areas of the Condominium, including but not limited to any lobby, hallway, stairwell, mailroom, fitness room or other recreational facility, meeting room, laundry room, storage area, mechanical room, equipment room, cellar, basement, elevator, garage, rooftop, play areas, parking areas, shared balconies, shared courtyards, shared patios, shared porches, shared yards and/or any outdoor common area within 15 feet of entrances, exits, windows, and air intake Units on property grounds.

(ii) All types of Smoking and use of Electronic Cigarettes are prohibited from any balcony and/or terrace or any space designated as an Individual Residential Unit's Limited Common Element appurtenant to the Residential Unit.

(iii) All legal Smoking and use of Electronic Cigarettes is permitted within the interior area of a Residential Unit.

(iv) The Smoking Policy shall be applicable to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Condominium.

(v) Any Residential Unit Owner who leases their Residential Unit shall incorporate the provisions of the Smoking Policy into the lease with the Residential Unit Owner's tenant.

(c) Complaints:

Complaints about smoke drifting into a Residential Unit or common area should be made promptly to the Managing Agent. Complaints should be made in writing and should be as specific as possible, including the date, approximate time, location where smoke was observed, building address, description of incident and apparent source of smoke.

The Smoking Policy shall be applicable to all Residential Unit Owners, residents, tenants, guests, licensees, employees and all persons that may be in or on any portion of the Property and any Building located thereon constituting the Condominium. Pursuant to the requirements of Local Law 147 all tenants in the Building are required to receive a copy of the Building's Smoking Policy and the Smoking Policy must be incorporated into all leases or interim leases. The provisions of Local Law 147 of the City of New York shall take precedent in the event of any conflict with the Smoking Policy contained herein.

**Section 3. 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 Rules and Regulations or other provisions of the By-Laws or the Declaration of Condominium as herein established or hereafter established or adopted by the Board of Managers, the Board of Managers shall decide as to the validity of the complaint.

(b) If, it is determined that the complaint is valid and justified the Managing Agent, if any, or the Board of Managers if no Managing Agent, shall be directed to send written notice to the Residential Unit Owner who violated the Rules and Regulations or other provisions of the By-Laws or the Declaration of Condominium (the "Violating Residential Unit Owner") levying a reasonable fine as determined by the Board of Managers upon the Violating Residential Unit Owner and instructing the Violating

Residential Unit Owner to stop, curtail, correct or eliminate the violation, as applicable, within a period of three (3) days from the date of receipt of such notice. Such fine is to be considered as an additional Common Charge obligation to the account of the Violating Residential Unit Owner 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 the violation is not stopped, curtailed, corrected or eliminated, the Board of Managers may assess additional fines in an amount determined by the Board of Managers and may continue to levy additional fines against the Violating Residential Unit Owner in an amount determined by the Board of Managers every thirty (30) days thereafter. The initial fine and any additional fines shall be cumulative. If the violation results in loss of or damage to property classified as a Common Element, the Board of Managers shall itself or direct a 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 Violating Residential Unit Owner as an additional Common Charge.

(c) In addition to the right to issue fines for violations of the Rules and Regulations as provided above the Board of Managers shall be entitled to any other remedies that may be available to the Board of Managers to enforce the Declaration of Condominium, the By-Laws and/or the Rules and Regulations of the Condominium.

**Section 4. Costs.**

Any costs incurred by the Board of Managers to remedy or cure any violation of the Rules and Regulations, By-Laws or Declaration of Condominium as herein or hereafter established, shall be an additional Common Charge charged to the Violating Residential Unit Owner in addition to the fine(s) levied upon the Violating Residential Unit Owner as described herein. In the event a Residential Unit Owner's tenant violates the provisions of any Rule and Regulation or any other provision of the By-Laws, fines may be levied against a Residential Unit Owner's tenant, and the Residential Unit Owner shall be jointly and severally liable with the Residential Unit Owner's tenant for the payment of same. All leases for a Residential Unit shall contain a provision that permits the Board of Managers to levy a fine against the Residential Unit Owner's tenant and provides that the Residential Unit Owner shall be jointly and severally liable with the Residential Unit Owner's tenant for the payment of same.

In the event the Board of Managers institutes legal action for the collection of any fines for 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 5.** **Board of Managers Right to Change Rules and Regulations.**

Except as may be otherwise provided in this Article VIII, the Board of Managers shall have the following rights:

(a) The Board of Managers reserves the right to add, amend, rescind, modify, alter, waive or repeal, as to one or more Residential Unit Owners, occupants, lessees, guests and any other person residing in the Building, any Rule or Regulation at any time 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 the Residential Unit Owners, occupants or others in the Condominium. No rescission, alteration, waiver or addition of any Rule or Regulation in respect of one Residential Unit Owner, occupant lessee, guest or other person residing in the Building will operate as a rescission, alteration, waiver or addition in respect of any other Residential Unit Owner.

(b) Any consent or approval given under these Rules and Regulations may be amended, rescinded, modified, waived, added to, or repealed at any time by resolution of the Board of Managers. Further, any such consent or approval may, in the discretion of the Board of Managers or the Managing Agent, be conditional in nature.

**Section 6.** **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 7.** **Complaints**

Complaints regarding the service of the Condominium shall be made in writing to the Board of Managers or to the Managing Agent.

## ARTICLE IX. DEFAULT

In the event a Residential Unit Owner does not pay any Common Charges, Special Assessments, fines, late fees or any other sums, charges or assessments required to be paid when due, as determined by the Board of Managers, the Board of Managers, acting on behalf of the Condominium shall notify the Residential Unit Owner and the mortgagee, if any, of such Residential Unit and may place a lien on such Residential Unit pursuant to the provisions of Section 339-z of the Real Property Law of the State of New York.

In the event a Residential Unit Owner does not remit payment of their Common Charges, Special Assessments, fines or any other sums, charges or assessments required to be paid when due, the Residential Unit Owner shall be required to pay all late fees and other fees as provided for in Article VI, Section 2 of these By-Laws.

The Board of Managers may act to foreclose any lien for past due Common Charges, Special Assessments, late fees, fines or any other sums, charges or assessments required to be paid, in accordance with Section 339-aa of the Real Property Law or other applicable statute. In any such foreclosure the Residential Unit Owner shall be required to pay a reasonable rental for the Residential Unit for any period prior to sale pursuant to judgment of foreclosure and sale and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same.

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 Residential Units in which Sponsor is more than thirty (30) days in arrears of Common Charges, Special Assessments, or any other sums, charges or assessments required to be paid.

The Board of Managers (on behalf of the Residential Unit Owners), at the Board of Managers option, shall have the right to bring suit to recover a money judgment for unpaid Common Charges Special Assessments, fines, late fees or any other sums, charges or assessments as determined by the Board of Managers without foreclosing or waiving the lien securing such unpaid Common Charges Special Assessments, fines, late fees or other sums, charges or assessments. In such an event the Residential Unit Owner shall be liable for the reasonable costs and reasonable attorney's fee incurred by it incident to the collection of the unpaid Common Charges Special Assessments, fines, late fees or any other sums, charges or assessments as determined by the Board of Managers.

Notwithstanding anything contained herein regarding the Common Charges, Special Assessments, fines, late fees or any other sums, charges or assessments as determined by the Board of Managers, any foreclosure by a holder of an Institutional Mortgage shall be subject to the provisions of Article VI, Section 2 of these By-Laws.

## ARTICLE X. AMENDMENTS

These By-Laws may be altered, amended or added to at any duly called Residential Unit Owners meeting; provided: (a) that the notice of the meeting shall contain a full statement of the proposed amendment; (b) that the amendment shall be approved by all of the Residential Unit Owners in number and Percentage of Common Interest and (c) said amendment shall be set forth in a duly recorded amendment to the Declaration. In addition, the following shall apply to amendments to the By-Laws:

(a) No amendment shall be passed which will affect or impair the validity of the Residential Unit Owners' interest in a Residential Unit.

(b) 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, assignee or successor or any Unsold Residential Unit, as long as the Sponsor, its designee, assignee or successor owns an Unsold Residential Unit in the Condominium unless Sponsor, its designee, assignee or successor has given its prior written consent thereto. This provision is not subject to amendment.

(c) The Board of Managers shall have the right to amend these By-Laws without the consent of the Residential Unit Owners to make corrections to the By-Laws that are patent errors, inconsistencies, scrivener's errors and technical errors. In connection therewith, each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest, to the Board of Managers to amend these By-Laws for said purposes.

(d) No amendment to the By-Laws shall be passed which shall impair or prejudice the validity, interest, rights and priorities of a mortgagee.

(e) The Sponsor shall have the right to amend the By-Laws without the consent of the Residential Unit Owners or the Board of Managers to (a) make corrections that are patent errors, inconsistencies, scrivener's errors or technical errors, to conform to other documents, or (b) to make changes or revisions to comply with the requests, guidelines and/or requirements of any major participant in the secondary market for mortgages, including but not limited to the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ( "Freddie Mac"), the Federal Housing Association ("FHA") of the Housing and Urban Development ("HUD"), the Veterans Administration ("VA") and/or any State or Local Funding Agencies, or (c) to reduce the Sponsor control period of the Board of Managers, or (d) to comply with any federal, state, city or local law or regulation that may affect the Condominium. In connection therewith, each Residential Unit Owner upon becoming a Residential Unit Owner shall be deemed to grant an irrevocable power of attorney, coupled with an interest, to the Declarant, its successors, assigns and purchasers of undeveloped or unsold Residential Units to amend these By-Laws for said purposes.

(f) In addition, in the case of material changes, approval must be obtained from first mortgage holders representing at least fifty-one (51%) percent of the votes of Residential Units that are subject to first mortgages. A change to any of the following would be considered as material: voting rights; method of assessments, assessment liens, or subordination of assessment liens; responsibility for maintenance and repairs; reallocation of interests in the General or Individual Residential Unit's Limited Common Elements, or rights to their use; convertibility of Residential Units into Common Elements or vice versa; expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project; insurance or fidelity bonds; revisions to the leasing provisions of

Residential Units contained in Article XI of these By-Laws; imposition of any restrictions on a Residential Unit Owner's right to sell or transfer the Residential Unit Owner's Residential Unit; restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; any action to terminate the legal status of the project after substantial destruction or in the event condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. An addition or amendment to these By-Laws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any eligible mortgage holder who received a written request by certified or registered mail, return receipt requested, to approve amendments who does not deliver to the Condominium a negative written response within sixty (60) days of the receipt of the request shall be deemed to have approved such amendment.

## ARTICLE XI. SELLING, MORTGAGING AND LEASING RESIDENTIAL UNIT

### Section 1. Selling and Leasing Residential Units.

Any Residential Unit may be conveyed subject to the Right of First Refusal of the Board of Managers as provided for in Section 2 hereof and 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 or sell their Residential Unit unless and until all unpaid Common Charges, Special Assessments and any other fees or charges owed the Condominium that have been 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.

Any Residential Unit Owner may convey the Residential Unit Owner's Residential Unit and Percentage of Common Interest appurtenant thereto, to the Board of Managers on behalf of all Residential Unit Owners free of any cost to the Board of Managers or the Residential Unit Owners and upon such conveyance such Residential Unit Owner shall not be liable for any Common Charges thereafter accruing against such Residential Unit.

Any Residential Unit may be leased subject to the leasing requirements contained in Section 7 of this Article XI and subject to the Board of Managers' Right of First Refusal as provided in Section 2 of this Article XI. In addition, 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 at least thirty (30) days prior to its execution. All Residential Unit Owners who wish to enter into a new lease for the Residential Unit Owner's Residential Unit shall be required to submit all documentation required by the Board of Managers as set forth in Section 7 below to the Managing Agent or the Board of Managers in the

absence of a Managing Agent. All leases must comply with all the requirements contained in Section 7 below. Failure to comply will be deemed an automatic violation of the By-Laws of the Condominium.

The provisions of this section shall not apply to the acquisition or sale of a Residential Unit by a mortgagee who shall acquire title to such Residential 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 Owner's undivided Percentage of Common Interest in the Common Elements and the Residential Unit Owners' interest in any Residential Units acquired by the Board of Managers.

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

**Section 2. Right of First Refusal**

No Residential Unit Owner other than Sponsor, its successors, assigns or designees, may sell or lease their Residential Unit except by complying with the following provisions:

Any Residential Unit Owner who receives a bona fide offer to (a) purchase the Residential Unit Owner's Residential Unit together with (i) the undivided interest in the Common Elements appurtenant thereto, and (ii) the interest of such Residential Unit Owner in any Residential Unit theretofore acquired by the Board of Managers or the Board of Manager's designee on behalf of all Residential Unit Owners, or Residential Unit Owner's interest in the proceeds of sale or lease of such Residential Unit, if any, or (b) lease the Residential Unit Owner's Residential Unit, such an offer to purchase or lease a Residential Unit, as the case may be, is called an "Outside Offer", the party making any such Outside Offer is called an "Outside Offeror" and the Residential Unit Owner to whom the Outside Offer is made is called the "Offeree Residential Unit Owner". In the event the Residential Unit Owner intends to accept the Outside Offer, the Residential Unit Owner must give notice by certified or registered mail or by courier service, such as Federal Express, evidencing receipt by the Board or any Managing Agent of the receipt of such Outside Offer within ten (10) days of such Outside Offer. Said notice shall state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Managers may reasonably require. The giving of such notice to the Board of Managers shall constitute an offer by such Residential Unit Owner to sell the Residential Unit Owner's Residential Unit or Lease the Residential Unit Owner's Residential Unit to the Board of Managers or its designee, corporate or otherwise, on behalf of all other Residential Unit Owners, upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Offeree Residential Unit Owner who has received such Outside Offer to the Board of Managers, on behalf of all Residential Unit

Owners, that such Residential Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Residential Unit Owner shall submit in writing such further information with respect thereto as the Board of Managers may reasonably request. Not later than ten (10) days after the later of the receipt of such notice or such further information as may have been requested by the Board of Managers, the Board of Managers may elect, by sending written notice to such Offeree Residential Unit Owner before the expiration of said ten (10) day period, by certified or registered mail, return receipt requested, to purchase such Residential Unit or to lease such Residential Unit, as the case may be, or to cause the same to be purchased or leased by its designee (corporate or otherwise), on behalf of all Residential Unit Owners on the same terms and conditions as contained in the Outside Offer and stated in the notice from the Offeree Residential Unit Owner.

In the event the Board of Managers shall timely elect to purchase any such Residential Unit or to Lease such Residential Unit, or to cause the same to be purchased or leased by its designee, corporate or otherwise, title shall close or lease shall be executed at the office of the attorneys for the Condominium, in accordance with the terms of the Outside Offer, within forty-five (45) days after the giving of notice by the Board of Managers of its election to accept such offer. If, pursuant to such Outside Offer to purchase such Residential Unit, the Outside Offeror was to assume or take title to the Residential Unit subject to the Offeree Residential Unit Owner's existing mortgage or mortgages, the Board of Managers may purchase the Residential Unit and assume to take title to the Residential Unit subject to said existing mortgage or mortgages, as the case may be. At the closing, the Offeree Residential Unit Owner, if such Residential Unit is to be sold, shall convey the same to the Board of Managers, or to its designee, on behalf of all other Residential Unit Owners, by deed in the form required by Section 339-o of the Real Property Law of the State of New York, with all tax and other documents and/or documentary stamps affixed at the expense of such Residential Unit Owner, who shall also pay all the taxes arising out of such sale. Real estate taxes (including water charges and sewer rents if separately assessed), mortgage interests, if any, and the Common Charges shall be apportioned between the Offeree Residential Unit Owner and the Board of Managers, or its designee (corporate or otherwise), as of the closing date. In the event such Residential Unit is to be leased, the Offeree Residential Unit Owner shall execute and deliver to the Board of Managers, or to its designee (corporate or otherwise), a lease between the Offeree Residential Unit Owner, as Landlord, and the Board of Managers, or its designee (corporate or otherwise), as Tenant, covering such Residential Unit for the rental and terms contained in such Outside Offer.

In the event the Board of Managers or its designee shall fail to accept such offer within twenty (20) days after receipt of such notice, as aforesaid, or in the event the Board of Managers shall, prior thereto, waive such Right of First Refusal in accordance with Sections 3 and 4 of this Article, the Offeree Residential Unit Owner shall be free to accept the Outside Offer within a sixty (60) day period after (i) notice of refusal is sent or (ii) the expiration of the period in which the Board of Managers or its designee might have accepted such offer, as the case may be. In the event the Offeree Residential

Unit Owner shall not, within such sixty (60) day period, accept in writing the Outside Offer, or if the Offeree Residential Unit Owner shall accept the Outside Offer within such sixty (60) day period, but such sale or lease, as the case may be, shall not be consummated, then should such Offeree Residential Unit Owner thereafter elect to sell such Residential Unit or lease such Residential Unit, as the case may be, the Offeree Residential Unit Owner shall be required to again comply with all the terms and conditions of this Section.

Any deed to an Outside Offeror shall provide that the acceptance thereof by the Outside Offeror shall constitute an assumption of the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time.

Any lease executed in connection with the acceptance of an Outside Offer to lease a Residential Unit shall be consistent with these By-Laws and shall provide that it may not be modified, amended, extended, or assigned without the prior written consent of the Board of Managers; the tenant shall not assign the tenant's interest in such Lease or sublet the demised premises or any part thereof without the prior written consent of the Board of Managers; and the Board of Managers shall have the power to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder in the event of (i) a default by the tenant to perform its obligations under such lease or (ii) a foreclosure of the lien granted by Section 339-z of the Real Property Law of the State of New York.

Except as herein above set forth, the form of any such lease executed by the Board of Managers, or an Outside Offeror, shall be the then current form of apartment lease recommended by the Real Estate Board of New York, Inc., and shall contain such other modifications as provide in Section 7 of this Article XI and as shall be required and approved in writing by the Board of Managers. Any lease executed by the Board of Managers, as tenant, shall provide that the Board of Managers may enter into a sublease of the premises without the consent of the landlord.

Any purported sale or lease of a Residential Unit in violation of this section shall be voidable at the election of the Board of Managers and, if the Board of Managers shall so elect, the Residential Unit Owner shall be deemed to have authorized and empowered the Board of Managers to commence legal proceedings to evict the purported tenant (in the case of an unauthorized leasing) in the name of the said Residential Unit Owner as the purported landlord. Said Residential Unit Owner shall reimburse the Board of Managers for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.

The foregoing restrictions of Section 2 of this Article XI shall not apply to Sponsor-owned Residential Units or any mortgagee acquiring title to a Residential Unit, in a foreclosure or otherwise. The Sponsor, its successors, assignees or designees or any mortgagee acquiring title to a Residential Unit in a foreclosure or otherwise shall

have the right to freely sell their Residential Unit or to freely lease all or any part thereof without first having to offer the same for sale or lease to the Board of Managers.

**Section 3. Release or Waiver by Board of Managers of the Right of First Refusal.**

The Right of First Refusal contained in Section 2 of this Article XI may be released or waived by the Board of Managers only in the manner provided in this Section 3 of Article XI. In the event the Board of Managers shall release or waive its right of first refusal as to any Residential Unit, such Residential Unit may be sold, conveyed or leased free and clear of the provisions of said Sections 1 and 2 and all other restrictions, except that no Residential Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease the Residential Unit Owner's Residential Unit unless and until all unpaid Common Charges and/or Special Assessments assessed against the Residential Unit Owner's Residential Unit shall have been paid to the Board of Managers and all provisions regarding rentals as provided for in Section 7 of this Article XI are met. However, such unpaid Common Charges and/or Special Assessments can be paid out of the proceeds from the sale of a Residential Unit or by the Purchaser of the Residential Unit. Further, a Residential Unit Owner may convey the Residential Unit Owner's Residential Unit and the Residential Unit Owner, the Residential Unit Owner's Common Interest appurtenant thereto to the Board of Managers on behalf of all Residential Unit Owners free of any cost to the Board of Managers or the Residential Unit Owners, and upon such conveyance such Residential Unit Owner shall not be liable for any Common Charges and/or Special Assessments thereafter accruing against such Residential Unit. Any sale or lease of any Residential Unit in violation of this section shall be voidable at the election of the Board of Managers.

**Section 4. Certificate of Termination of Right of First Refusal.**

A certificate executed and acknowledged by the Secretary of the Condominium, stating that the provisions of Section 2 of this Article XI have been met by a Residential Unit Owner or stating that the Right of First Refusal contained therein has been duly released or waived by the Board of Managers, and that as a result thereof the rights of the Board of Managers thereunder shall terminate, shall be conclusive upon the Board of Managers and the Residential Unit Owners in favor of all persons who rely upon such certificate in good faith. The Board of Managers shall furnish, without charge, such certificate upon request to any Residential Unit Owner with respect to whom the provisions of such section have, in fact, terminated.

**Section 5. Financing of Purchase of Residential Unit by Board of Managers.**

The purchase of a Residential Unit by the Board of Managers or its designee, on behalf of all Residential Unit Owners, may be made from funds deposited in the capital and or operating account of the Condominium. If the funds in such accounts are insufficient to effectuate any such purchase, the Board of Managers may levy an

assessment against each Residential Unit Owner, in proportion to each Residential Unit's percentage of common interest as reflected in Schedule B of the Declaration, as a Special Assessment, and/or the Board of Managers may in its discretion finance the acquisition of the Residential Unit; provided, however, that no such financing may be secured by an encumbrance, or an hypothecation of any portion of the Property other than the Residential Unit to be purchased. If financed all costs of the financing and any debt service on the financing shall be paid as a Special Assessment or become an ongoing Common Expense of the Condominium until the debt is satisfied.

**Section 6. Exceptions.**

The provisions of Section 2 of this Article XI shall not apply with respect to any lease, sale or conveyance of a Residential Unit by (a) the Residential Unit Owner thereof to the Residential Unit Owner's spouse, adult children, parents, parents-in-law, adult siblings, or any one or more of them, (b) to any devisee or beneficiary as a result of the death of the Residential Unit Owner, pursuant to a Will or by operation of law, should the Residential Unit Owner die Intestate or (c) the Sponsor, its successor, assignee or its designee, (d) the Board of Managers, or (e) any proper officer conducting the sale of the Residential Unit in connection with the foreclosure of a mortgage or other lien covering such Residential Unit, or delivering a deed in lieu of such foreclosure; provided, however, that the new Residential Unit Owner shall be bound by, and the Residential Unit Owner's Residential Unit subject to, the provisions of this Article.

**Section 7. Leasing Requirements for Residential Units.**

In addition to the Right of First Refusal detailed in Section 2 above, 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 Right of First Refusal as provided for in Section 2 of this Article XI of the By-Laws.

(b) No later than thirty (30) days prior to execution of a lease, the Residential Unit Owner must provide the Board of Managers of the Condominium with a copy of the lease, name of the proposed tenant and terms of the lease, credit and background check (including criminal background), a minimum of two (2) referrals and any other information that may be requested by the Board of Managers;

(c) the lease must be in writing;

(d) the lease must be for the entire Residential Unit;

(e) the lease must be for a minimum term of twelve (12) months. Renewal terms shall also have a minimum of twelve (12) months.

(f) the form of the lease and any renewal lease must contain a provision that the tenant has thoroughly read and agrees to be subject to the Declaration, the By-Laws and Rules and Regulations of the Condominium and agrees to accept the power of attorney of the Condominium to evict the tenant for any violation by the tenant of the Declaration, the By-Laws and the Rules and Regulations of the Condominium and agrees to be jointly and severally liable with the Residential Unit Owner for any and all fines and costs levied against the tenant for any violation of the provisions of the Rules and Regulations, By-Laws and/or Declaration of Condominium;

(g) the use of the premises is subject to the Declaration, the By-Laws and the Rules and Regulations of the entire Condominium;

(h) within thirty (30) days of occupancy by the tenant or renewal of any lease, the name and telephone number of the tenant, together with a clear and complete copy of the executed lease, must be furnished to the Managing Agent or if no Managing Agent to the Board of Managers of the Condominium;

(i) the Residential Unit cannot be used as a youth hostel, Airbnb, bed and breakfast, motel, hotel and/or for any other transient or similar purposes;

(j) no Residential Unit Owner, Resident or tenant shall be permitted to place any signs for rent in or on the Residential Unit or the Common Elements of the Condominium;

(k) all leases and tenants are subject to all municipal requirements applicable to rentals, if any;

(l) the lease must contain the Smoking Policy provisions contained in Article VIII, Section 1 (aaa) of these By-Laws; and

(m) 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.

The Board of Managers, in its sole discretion, may add or change any of the criteria in this Section 7 with respect to the requirements of leasing Residential Units.

The Board of Managers reserves the right to deny a prospective tenant of a Residential Unit's application if the Board of Managers determines that the prospective tenant may constitute a threat to the health, safety and/or protection of the Residential Unit Owners or may result in substantial physical damage to the Common Elements of the Condominium without having to exercise the Board of Managers' Right of First Refusal. In the event the Board of Managers of the Condominium, in its sole discretion,

determines that the prospective tenant of the Residential Unit does not meet its criteria for tenancy of a Residential Unit as provided herein and in Sections 1 and 7 of Article XI of the By-Laws, the Board of Managers shall issue a denial to the Residential Unit Owner within ten (10) days of such determination. The Residential Unit Owner shall thereafter have the right to procure a second prospective tenant for the Board of Managers' Right of First Refusal, review and approval pursuant to all of the terms of Article XI of the By-Laws.

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 Residential Unit Owner shall upon becoming a Residential Unit Owner grant 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 Rule and Regulation, 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.

The foregoing restrictions of Sections 1, 2 and 7 of this Article XI shall not apply to Sponsor owned Residential Units or any mortgagee acquiring title to a Residential Unit, in a foreclosure or otherwise. The Sponsor, its successors, assignees or designees or any mortgagee acquiring title to a Residential Unit in a foreclosure or otherwise shall have the right to freely sell their Residential Unit or to freely lease all or any part thereof as long as the lease and use by a tenant is in compliance with the permitted use of the Residential Unit under applicable zoning and occupancy requirements.

**Section 8. 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 9. Gifts, etc.**

Any Residential Unit Owner may convey or transfer their Residential Unit by gift during the Residential Unit Owner's lifetime or devise their Residential Unit by will or pass the same by intestacy, without restriction.

**Section 10. Tenant Bound by Declaration.**

By becoming a tenant, each tenant agrees to be bound by the Declaration, the By-Laws and the other Rules and Regulations of the Condominium and recognizes and accepts the right and the power of the Condominium to evict the tenant for any violation by the tenant of the Declaration, the By-Laws and the other Rules and Regulations of the Condominium. Each lease on a Residential Unit shall be required to include a provision including the requirements of this Section 10.

**Section 11. Lenders.**

To protect first mortgage lenders and to encourage first mortgage lenders to make loans on Residential Units in the Condominium, only subsections (c), (e), (f), (g), (h), (i), (j) and (k) of Section 7 of this Article XI shall apply to a first mortgage lender who has title to the Residential Unit through (a) foreclosure of its first mortgage on the Residential Unit; or (b) a deed in lieu of foreclosure of its first mortgage on the Residential Unit. Any subsequent purchaser from the first mortgage lender is subject to all the terms of this Article XI. In addition, the provisions of Article Thirteenth of the Declaration of Condominium regarding an Institutional Mortgage shall be applicable regarding unpaid Common Charges accrued before acquisition of title of a Unit by the mortgagee.

**Section 12. Sponsor.**

The foregoing restrictions of Sections 1, 2 and 7 of this Article XI shall not apply to Sponsor owned Residential Units. The Sponsor, its successors, assignees or designees shall have the right to freely sell their Residential Unit or to freely lease all or any part thereof without any interference or any restrictions by the Board of Managers as long as the lease and use by a tenant is in compliance with the permitted use of the Residential Unit under applicable zoning and occupancy requirements.

**Section 13. Section 339-kk of the Real Property Law.**

Pursuant to the provisions of Section 339-kk of the Real Property Law of the State of New York, any non-occupying Residential Unit Owner who rents any Residential Unit in the Condominium to a rental tenant and then fails to make payments due for Common Charges, Special 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. The provisions of Section 339-kk of the Real Property Law shall control any dispute pursuant to this provision of the By-Laws.

## ARTICLE XII. ARBITRATION

### Section 1. Procedure.

In the event of a dispute pertaining to any portion of these By-Laws or the Declaration of Condominium or if there is a deadlock in any determination by the Board of Managers or if the two (2) Residential Unit Owners in the Condominium cannot agree on any matter pertaining to the operation of the Condominium, the matter shall be referred to the American Arbitration Association and the cost of such arbitration shall be borne equally by each Residential Unit Owner. In the event that the American Arbitration Association shall not then be in existence and has no successor organization, any such arbitration shall be held in New York City before one arbitrator appointed, upon the application of any party by the Real Estate Board of New York.

### Section 2. Variation by Agreement.

The parties to any dispute required or permitted to be resolved by arbitration pursuant to the terms of the Condominium Documents may, by written agreement, vary any of the terms of Section 1 hereof with respect to the arbitration of such dispute or may agree to resolve their dispute in any manner, including, without limitation, the manner set forth in Section 3031 of the New York Civil Practice Law and Rules and known as “New York Simplified Procedure for Court Determination of Disputes”.

### Section 3. Binding Effect.

The decision in any arbitration conducted pursuant to the terms of Section 1 and 2 hereof shall be binding upon all of the parties thereto and may be entered in any court of appropriate jurisdiction.

### Section 4. Costs and Expenses.

The fees, costs and expenses of the arbitrator shall be borne equally by the disputants. Each disputant shall also bear the fees and expenses of their counsel and expert witnesses.

All costs and expenses paid or incurred by the Condominium Board of Managers in connection with any arbitration held hereunder, including, without limitation, the fees and expenses of counsel and expert witnesses shall constitute Common Expenses.

## ARTICLE XIII. 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 $50,000 and to the Board of Managers if

the award is $50,000 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 the General Common Elements, to the Residential Unit Owners pro rata according to the respective Percentage of Common Interest appurtenant to the Residential Unit owned by such Residential Unit Owners.

(b) So much of the award as is applicable to the Individual Residential Unit's Limited Common Elements, to the Residential Unit Owner having general use of such Individual Residential Unit's Limited Common Element.

In such eminent domain or condemnation proceeding the Board of Managers shall request that the award shall set forth the amount allocated to General Common Elements, and to each Individual Residential Unit's Limited 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 Article XII of these By-Laws. Any condemnation or eminent domain award shall require that any proceeds applicable to a Residential Unit be applied first to a first mortgagee of a Residential Unit as its interest may appear.

## ARTICLE XIV. SPONSOR RIGHTS

### Section 1. Sales/Rentals.

The Sponsor, its nominees and agents, shall have the right and privilege to maintain general and local sales and rental offices in and about the Condominium, including any Unsold Residential Units located within the Condominium Building 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 Residential Units to prospective purchasers or tenants, to utilize the Common Elements, no matter how classified, and without limitation, to do any and all things necessary incident to the sale or rental of the Residential Units, without charge or contribution other than in the form of Common Charge payments as otherwise provided for herein.

### Section 2. Signs/Ingress/Egress.

The Sponsor shall have the right to continue to employ signs of its choice upon the Condominium premises in its efforts to construct, sell and lease the Residential Units, or any other property, development or community the Sponsor, its successors, assigns or designees so prescribe. 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 no matter how classified.

**Section 3.** **Additional Rights.**

The Sponsor, its successor, assignees, designees, nominees and agents shall, in addition to the above, have any additional rights afforded to the Sponsor, its successors, assignees, designees, nominees and agents in these By-Laws, Rules and Regulations and the Declaration of Condominium.

**Section 4.** **Amendment**

This Article XV 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 Residential Units.

## ARTICLE XV. MISCELLANEOUS

**Section 1.** **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 2.** **Notice to Condominium.**

A Residential Unit Owner, who mortgages the Residential Unit, shall notify the Condominium through the management agent, if any, or the Board of Managers in the event there is no management agent, of the name and address of the Residential Unit Owner's mortgagee; and the Board of Managers shall maintain such information in a book entitled "Mortgagees of Residential Units".

**Section 3.** **Notice of Unpaid Assessments.**

The Board of Managers shall at the request of a mortgagee of a Residential Unit, report any unpaid Common Charges due from the Residential Unit Owner of such Residential Unit.

**Section 4.** **Examination of Books and Records.**

Every Residential Unit Owner or the Residential Unit Owner's representative and mortgagee shall be entitled to examine the books and records of the Condominium on reasonable notice to the Board of Managers at convenient hours on weekdays (except legal holidays) but not more often than once a month. Said hours are to be determined by the Board of Managers or Managing Agent.

**Section 5.** **Costs of Legal Action**

In the event the Board of Managers institutes any legal action for the enforcement of any of the provisions of the Declaration of the Condominium, 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 Board of Managers on behalf of the Condominium, plus interest and costs of suit.

**Section 6. Reports to Residential Unit Owners**

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

(a) 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 within four (4) months of the end of each fiscal year;

(b) prior notice of the annual Residential Unit Owners meeting; and

(c) 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.

During the period Sponsor retains control of the Board of Managers of the Condominium, the Sponsor shall be required to provide certified financial statements for the Condominium. The cost of such reports shall be a Condominium Common Expense. In addition, during said period the Sponsor will be required to provide a Certification of Adequacy of the budget for the Condominium from a Managing Agent or other expert who is unaffiliated with the Sponsor for any amendments including the budget to the Offering Plan.

**Section 7. 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 8. 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.

# 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.

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.

## CERTIFICATION BY SPONSOR AND SPONSOR'S PRINCIPALS PURSUANT TO 13 NYCRR 20.4 (b)

State of New York
Department of Law
28 Liberty Street, 21st Floor
New York, NY 10005

RE: **389 BERGEN CONDOMINIUM**
389 Bergen Street, Brooklyn, New York

We are the Sponsor and principals of Sponsor of the Offering Plan for the captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Department of Law in Part 20 and such other laws and regulations as may be applicable.

We have read the entire Offering Plan. We have investigated the facts set forth in the Offering Plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the Offering Plan does, and that documents submitted hereafter by us which amend or supplement the Offering Plan will:

(i) set forth the detailed terms of the transaction and be complete, current and accurate;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

(iii) not omit any material fact;

(iv) not contain any untrue statement of a material fact;

(v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) not contain any representation or statement which is false, where 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.

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.

**389 BERGEN LLC**

By: _____
ARAN SCOTT, Sole Member

**SPONSOR'S PRINCIPALS:**

Sworn to before me this
15th day of February, 2020.

_____
NOTARY PUBLIC

_____
ARAN SCOTT

CHARLES J ALEXANDER
Notary Public, State of New York
No. 01AL6338458
Qualified In Nassau County
Commission Expires March 14, 2020

DOYUN KIM; RA
1202 HALSEY STREET
BROOKLYN, NY 11207
718-785-9666

**SPONSOR'S ENGINEER OR ARCHITECT CERTIFICATION PURSUANT TO 13 NYCRR 20.4 (c)**

Date: July 13, 2020

Office of the Attorney General
Real Estate Finance Bureau
28 Liberty Street, 21st Floor
New York, NY 10005-1413

RE: **389 Bergen Street Brooklyn, NY**

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 and/or renovation of the property (the "Report"). I/We visually inspected existing portions of the renovated property, if any, on December 31,2019 and I/we examined the building plans and specifications that were prepared by Doyun Kim, RA dated November 6,2019 and prepared the Report dated July 13, 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/we are a registered architect/licensed engineer in the state in which the property is located.

I/We understand that I am/we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to this Report.

I/We have read the entire Report and investigated the facts set forth in the Report and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

I/We certify that the Report:

(i) sets forth in narrative form the description and/or physical condition of the entire property as it will exist upon completion of renovation and construction, provided that renovation and 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 and/or physical condition of the property as it will exist upon completion of renovation and/or construction, provided that renovation and/or 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;

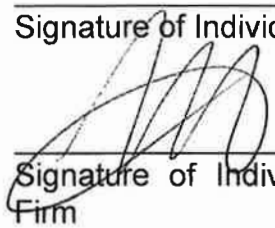
(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(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; (d) or did not have knowledge concerning the representation or statement made.

I/We 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,

Signature of Individual or Name of Firm

By: 

Signature of Individual if prepared by Firm

Doyun Kim\ Architect

Title or Position if prepared by Firm

Sworn to before me this
13th day of July, 2020.

Notary Public

(INSERT PROFESSIONAL SEAL)

NIDIA GRACIELA MERINO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6350844
Qualified in Queens County
My Commission Expires 11-21-2020

SCHIFFER MANAGEMENT GROUP
27 Craig Drive, South Huntington, NY 11746
631-288-4343 631-684-9910 (f) realtymsr@aol.com

**CERTIFICATION OF ADEQUACY**

State of New York
Department of Law
28 Liberty St. ( 21st Floor)
New York, New York 10005-1413

March 20, 2020

**Re- 389 Bergen Condominium**

Gentlepeople:

The Sponsor of above-named condominium ("Condominium") offering plan for the captioned property has retained me to review the Schedule B containing projections of income and expenses for first year of condominium operation. My experience in this field includes the management of over a dozen properties with many similarities to the captioned properties as well as thirty five (35) years' experience in managing condominium, cooperative and Home Owners Associations.

I understand that I am responsible for complying with Article 23A of the General Business Law and the Regulations promulgated by the Department of Law in Part 20 insofar as applicable to Schedule B.

I have reviewed the Schedule and investigated the facts set forth in Schedule B and the facts underlying them with due diligence in order to form a basis for this certification. I also have relied on my experience in managing residential buildings.

I certify that the projections in the Schedule B appears reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses of each of the Condominium's first year of operation.

(i) I certify that Schedule B sets forth in detail the projected income and expenses for the first year of Condominium operation.

(ii) affords potential investors, purchasers and participation adequate basis upon which to found their judgment concerning the first year of Condominium operation.

(iii) does not omit any material fact;

2270441.1

(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 not owned or controlled by the Sponsor. I understand that a copy of this Certification is intended to be incorporated into the Offering Plan.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.

Very truly yours,

Joseph Gill Schiffer, CEO,
The Schiffer Management Group.

Sworn to before me this
20 day of March 20

Notary Public

2020

6693863.1

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